

TEXAS REGISTER

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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 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 20. Cotton Pest Control

Subchapter C. Stalk Destruction Program

4 TAC §20.22

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §20.22, concerning the authorized cotton destruction dates for part of Pest Management Zone 2, Area 4. A prior emergency amendment, to be published in the October 16, 1998, issue of the *Texas Register*, extended the cotton destruction date for Zone 2, Area 4, to October 11, 1998. That emergency amendment has expired.

The department is acting on behalf of cotton farmers in Zone 2 Area 4, in Calhoun and Refugio counties only.

The current cotton destruction deadline is October 1. The cotton destruction deadline will be extended through October 25, 1998 for the specified counties. The department believes that changing the cotton destruction date is both necessary and appropriate. This filing is effective only for the 1998 crop year.

Adverse weather conditions have created a situation compelling an immediate extension of the cotton destruction date for these counties. The unusually wet weather prior to the cotton destruction period has prevented many cotton producers from destroying cotton by the October 1 deadline or the October 11 extension. A failure to act to further extend the cotton destruction deadline could create a significant economic loss to Texas cotton producers and the state's economy.

The emergency amendment to §20.22(a) will extend the date for cotton stalk destruction through October 25 of 1998 in Calhoun and Refugio counties in Zone 2, Area 4.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; §74.004, which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests and provides the department with the authority to consider a request for a cotton destruction extension due to adverse weather conditions; and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§20.22. *Stalk Destruction Requirements.*

(a) Deadlines and methods. All cotton plants in a pest management zone shall be destroyed, regardless of the method used, by the stalk destruction dates indicated for the zone. Destruction shall be accomplished by the methods described as follows:

Figure: 4 TAC §20.22(a)

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

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

TRD-9816017

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: October 13, 1998

Expiration date: October 26, 1998

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

◆ ◆ ◆

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 II. Texas Ethics Commission

Chapter 50. Legislative Salaries and Per Diem

1 TAC §50.1

The Texas Ethics Commission proposes an amendment to §50.1, to set the legislative per diem as required by the Texas Constitution, Article III, §24a. This section sets the per diem for members of the legislature and the lieutenant governor at \$119 for each day during the regular session and any special session.

Karen Lundquist, General Counsel, has determined that for each odd numbered year of the first five years this rule is in effect there will be a fiscal implication of \$611,520 for the state and no fiscal implication for local government as a result of enforcing or administering this rule.

Ms. Lundquist also has determined that for each year of the first five years this rule is in effect the public benefit expected as a result of adoption of the proposed rule is a determination, in compliance with the Texas Constitution, of the per diem entitled to be received by each member of the legislature and the lieutenant governor under the Texas Constitution, Article III, §24, and Article IV, §17, during the regular session and any special session. There is no economic cost to persons required to comply with the rule as amended. Ms. Lundquist has also determined that this rule will have no local employment impact.

The Texas Ethics Commission invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Karen Lundquist, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free, (800) 325- 8506.

This amendment is proposed under the Texas Constitution, Article III, §24a, and the Government Code, Chapter 571, §571.062.

The amended section affects the Texas Constitution, Article III, §24, Article III, §24a, and Article IV, §17.

§50.1. Legislative Per Diem.

(a) Effective January 1, 1999[1997], the legislative per diem is \$119 [95].

(b) The per diem is intended to be paid to each member of the legislature and the lieutenant governor for each day during the regular session and for each day during any special session.

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 October 12, 1998.

TRD-9815959

Tom Harrison

Executive Director

Texas Ethics Commission

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-5800

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

Subchapter B. Standards for Accreditation of a Major Resource System of Libraries in the Texas Library System

13 TAC §1.67

The Texas State Library and Archives Commission proposes an amendment to §1.67, concerning federal priorities. The amendment is proposed to update references to a federal statute.

The proposed amendment reflects the change in the federal administrative agency to the Institute of Museum and Library Services under new federal legislation, the Library Services and Technology Act.

Jeanette Larson, Director Library Development Division, has determined that for each year of the five years this proposed amendment is in effect there will be no fiscal implications for state and local government. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the proposed amendment.

Ms. Larson has also determined that for each of the first five years the proposed amendment is in effect the public benefits anticipated as a result of enforcing the proposed amendment will be to remove outdated federal legislation and replace it with current federal legislation.

Comments may be submitted to Jeanette Larson, Director of the Library Development Division, Texas State Library and Archives Commission, P. O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under Government Code §441.006 and §441.0091 which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

The proposed amendment affects Government Code §441.0091.

§1.67. Federal Priorities.

For so long as the Texas Library System is funded in whole or in part by Library Services and Technology Act [~~Library Services and Construction Act Title I~~] funds, major resource systems and regional library systems shall include in their long-range plan and annual program of services and budget projects which specifically address the Library Services and Technology Act [~~Library Services and Construction Act Title I~~] priorities, as determined by the Texas State Library and Archives Commission, upon recommendation of the Library Services and Technology Act [~~Library Services and Construction Act~~] Advisory Council.

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 October 16, 1998.

TRD-9816228

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-5440



Subchapter C. Minimum Standards for Accreditation of Libraries in the State Library System

13 TAC §1.73

The Texas State Library and Archives Commission proposes an amendment to §1.73, concerning the legal establishment

of a public library. This amendment is proposed to include public libraries established as library districts by the provisions of Local Government Code, Chapter 326 as a form of legal establishment.

This proposed amendment reflects state legislation passed allowing the establishment of public libraries through public library taxing districts under certain conditions.

The Texas State Library and Archives Commission further proposes to amend §1.73 by expanding provisions of public library service to better define public library services.

Under the existing §1.73 public libraries include any library that receives public funds and provides services free to the public. The proposed amendment adds the phrase "render general library services" thus further defining public library service. "Render general library service" is taken directly from the definition of a public library found in the American National Standard, Library Statistics, 1997, published by the National Information Standards Organization.

The Texas State Library and Archives Commission further proposes to amend §1.73 by correcting the citation of Interlocal Cooperation Act, Texas Civil Statutes, Article 4413(32c) and changing it to Government Code, Chapter 791.

Jeanette Larson, Director Library Development, has determined that for each year of the five years the section is in effect, there will be no fiscal implications for state and local government. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the section.

Ms. Larson also has determined that for each of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the section will be to include public libraries created through public library districts as legally established libraries, and expand the definition of services offered by public libraries.

Comments may be submitted to Jeanette Larson, Director of the Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under Government Code §§441.006, 441.136, and 441.0091 which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

The proposed amendment affects Government Code §441.0091 and §441.136.

§1.73. Public Library: Legal Establishment.

A public library shall be established to render general library services as a department of a city or county government by charter, resolution, or ordinance; or by contract as provided for in the [~~Interlocal Cooperation Act, Texas Civil Statutes, Article 4413(32e)~~] Government Code, Chapter 791; or as a library district established under the provisions of Local Government Code, Chapter 326, Library Districts; or as a non profit corporation chartered by the Office of the Secretary of State for the purposes of providing free public library services, and having a current contract with a city, county, [ø] school district, or library district to provide free public library services for the city, county, [ø] school district, or library district.

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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Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5440



13 TAC §1.85

The Texas State Library and Archives Commission proposes to amend §1.85 to set April 30 as the date by which a public library shall file a current and complete annual report with the Texas State Library and Archives Commission.

The proposed change removes an outdated and unused policy that required public libraries to file an annual report within 90 days after the end of the local fiscal year.

Jeanette Larson, Director Library Development Division, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for state and local government. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the section.

Ms. Larson also has determined that for each of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the section will be to remove outdated policy from the administrative code which should allow the public to more easily understand current commission policy.

Comments may be submitted to Jeanette Larson, Director of the Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under Government Code §§441.006, 441.136, and 441.0091, which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

The proposed amendment affects Government Code §441.0091 and §441.136.

§1.85. Annual Report.

A public library shall file a current and complete annual report with the Texas State Library and Archives Commission [~~within 90 days after the end of its local fiscal year; in no case shall a library file this report after April 30.~~] by April 30. Revisions to the annual report which would affect membership status for the next fiscal year will not be accepted after July 31. Staff vacancies that occur after the report is filed shall not adversely affect applications for system membership in the next fiscal year. Staff vacancies that occur prior to filing the report which affect system membership must be filled and reported prior to July 31. Willful falsification of annual reports shall cause the library to be disqualified for one year in the first instance and disqualified for three years in the second instance.

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 October 16, 1998.

TRD-9816230

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-5440



Chapter 2. General Policies and Procedures

Subchapter C. Grant Policies

Division 1. General Grant Policies

13 TAC §2.119

The Texas State Library and Archives Commission proposes amendments to §2.119, to include the guidelines for additional negotiated grants. The grants will be used to aid library staff to use and maintain new technology.

Jeanette Larson, Library Development Division Director, has determined that for each year of the first five years the section is in effect there will be fiscal implications for state and local government. State and local government will receive approximately \$600,000 in federal grants depending on subsequent appropriation levels. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the section.

Ms. Larson also has determined that for each of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be improved library service to the public.

Comments may be submitted to Jeanette Larson, Director of the Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The amendment is proposed under the Government Code §441.006 and §441.0091 which provide the Commission with authority to govern the Texas State Library and adopt rules on various subjects.

The amendment affects the Government Code §441.006 and §441.0091.

§2.119. Negotiated Grants.

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

(d) Technical Assistance Grants.

(1) Goals and Purposes. This grant provides funds for technical assistance to enable each of the ten Texas Library Systems to help public library staff use and maintain information resource technology.

(2) Eligible Applicants.

(A) Major resource library systems and regional library systems are eligible to apply for technical assistance grants.

(B) If a major resource library system or regional library system chooses not to contract for this grant program, a major resource center library located in that region can apply.

(C) If a major resource library system, regional library system, and a major resource center library located in the same region choose not to contract for this grant program, a city or county library serving a population of 100,000 or more and located in that region can apply.

(D) If neither a system or library within a region choose to apply for this grant program, the commission may contract with a non-profit corporation or business to provide technical assistance to libraries and library systems in the region.

(3) Criteria for Grant. The commission may award negotiated grants to provide technical assistance services if it determines that:

(A) the applicant demonstrates capability of delivering technical assistance in a timely fashion to the public libraries in the Texas Library System in which the applicant resides;

(B) the commission finds a continuing regional and statewide need for the services; and

(C) funds are available to continue the award.

(4) Eligible Expenses.

(A) This grant will fund cost for personnel, equipment/property, telecommunications, supplies, travel and professional services necessary to provide technical assistance to public libraries in a given Texas Library System.

(B) This grant will not fund building construction or renovation; capital expenses; food, beverages, or gifts; equipment/property or technology not specifically needed to carry out the goals of the grant; or travel for non-grant funded personnel.

(5) Renewal of Grant. Renewal of a grant is not automatic.

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 October 16, 1998.

TRD-9816231

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

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For further information, please call: (512) 463-5440



Division 4. Library Establishment Grants, Guidelines for Public Libraries

13 TAC §§2.140-2.145

The Texas State Library and Archives Commission proposes new §§2.140-2.145, for grants to establish public libraries in counties and cities without publicly supported library service.

Jeanette Larson, Director of the Library Development Division, has determined that for each year of the first five years the sections are in effect there will be fiscal implications for state and local government. State and local governments will receive approximately \$100,000 each year for the next five years in federal grants depending on future appropriation levels. There will be no fiscal implications for small businesses or individuals as a result of enforcing or administering the section.

Ms. Larson also has determined that for each of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section will be to establish additional public libraries in Texas.

Comments may be submitted to Jeanette Larson, Director of the Library Development Division, Texas State Library and Archives Commission, P.O. Box 12927, Austin, Texas 78711-2927.

The new sections are proposed under the Government Code §§441.006, 441.0091, and 441.136 which provide the Commission with the authority to govern the Texas State Library and adopt rules on various subjects.

The proposed new sections affect Government Code §§441.009, 441.0091, and 441.136.

§2.140. Goals and Purposes.

(a) The grant program proposes to establish public library service in unserved counties and in cities not served by county libraries, and to establish countywide service in areas with unserved populations, and to qualify those libraries as members of the Texas Library System as detailed in 13 TAC §§1.71-1.85 (relating to Minimum Standards for Accreditation of Public Libraries in the State Library System).

(b) Applicants that are approved for an Establishment Grant become members of the Texas Library System the first year for which the grant is awarded.

(c) Population served will be calculated for applicants by the Texas State Library and Archives Commission based on 13 TAC §1.71 (relating to Definition of Population Served).

§2.141. Requirements for a Grant.

(a) As a requirement of the grant, applicants must at minimum meet the following criteria for membership in the Texas Library System: 13 TAC §1.72 (relating to Public Library Service); 13 TAC §1.73 (relating to Public Library: Legal Establishment); 13 TAC §1.74 (relating to Local Operating Expenditures); 13 TAC §1.77 (relating to Public Library: Local Government Support); 13 TAC §1.78 (relating to County Librarian's Certificate); 13 TAC §1.81 (relating to Quantitative Standards for Accreditation of Library); and 13 TAC §1.83 (relating to Telephone Requirement).

(b) As a requirement of the grant, applicants must meet all of the criteria for membership in the Texas Library System within three years.

(c) Consultation with Texas Library System staff throughout the application process and during the grant period is required.

(d) The applicant must submit, or have on file at the Texas State Library and Archives Commission, the document which establishes the library as defined in 13 TAC §1.73 (relating to Public Library: Legal Establishment).

§2.142. Eligible Applicants.

(a) Applications will be accepted from the governing authority of counties without countywide public library service, and cities without public library service. An eligible county is defined as one with no existing countywide publicly supported library service, or a county served by a library that has not expended city, county, or school district funds for the past three years. An unserved city is one without available public library service that has not expended city, county, or school district funds for public library service for the past three years. Library's established as library districts (Local Government Code, Chapter 326) are not eligible for an establishment grant since a library district is created specifically to establish library service.

(b) Applicants may apply for second and third year funding. Staff will recommend that the commission award second and third year grants without further review if the following criteria are met:

(1) the applicant demonstrates appropriate progress toward meeting all criteria for membership in the Texas Library System as set forth in 13 TAC §§1.71-1.85 (relating to Minimum Standards for Accreditation of Public Libraries in the State Library System),

(2) the applicant submits a grant application, and

(3) the applicant submits statistical and financial reports in a timely manner.

(c) If local expenditure levels for the preceding year fall below the required level, the current year's grant will be terminated.

(d) All funds received under this grant must be refunded to the Texas State Library and Archives Commission if all system membership requirements are not met by the end of the third year.

§2.143. Eligible Expenses.

(a) This grant program will fund costs for staff, equipment, capital expenditures, materials, and professional services needed:

(1) to establish public library service,

(2) to prepare the library to meet all of the minimum criteria for system membership, and

(3) to develop a collection of library materials that meets or exceeds the minimum size requirements.

(b) This grant will not fund the following:

(1) building construction or renovation;

(2) food and beverages or gifts;

(3) equipment or technology not specifically needed to provide services to the target population or that could be funded through other state and federal grant programs; or

(4) transportation and travel for personnel not funded through the grant.

§2.144. Criteria for Award.

(a) The Library Services and Technology Act Advisory Council will score first year proposals on ten criteria. The criterion, description of criterion, and maximum points for each criterion are as follows:

(1) Population Profile (10 points)-The applicant describes the population the library will serve and includes demographic statistics and socioeconomic data. The applicant indicates the population to be served, based on figures calculated by the Texas State Library and Archives Commission. If the population to be served is less than 2,500, the applicant adequately explains factors, including geographic constraints, which prevent the library from serving a larger population.

(2) Community Involvement (10 points)-The applicant describes the community's need for a public library and its involvement in the planning process. The applicant includes information on community and civic partnerships and input, including survey results or documents, from library planning groups and advisory boards.

(3) Library Services (15 points)-The applicant provides a mission statement for the library and describes thoroughly the range of services, programs, activities, and materials the library will provide. Information should include hours of operation, plans for programs to be offered, plans for development of the collection, access to technology, online access to the catalog, etc.

(4) Personnel (10 points)-The applicant describes who will administer the grant funds, the number of library staff who will provide library services, their job qualifications, and hours staff will

work. Brief job descriptions should be provided for all library staff positions.

(5) Timetable (5 points)-The applicant presents a timetable for project activities within the fiscal year (i.e., a list of actions with a date by which they will be accomplished); provides verification that facilities will be available, and that equipment and materials will be delivered on time; and explains how the staff will be hired and trained in time to carry out the services as planned.

(6) Objectives (10 points)-The applicant sets achievable, measurable objectives with actions for achieving them; describes how the outcomes will establish library services; and presents a reasonable method to collect data to support the objectives.

(7) System Membership (10 points)-The applicant submits a plan for meeting all system membership criteria within three years. Applicants must qualify for membership in the Texas Library System at the end of the grant period (not to exceed three years). The applicant submits documentation that regional library system staff has been consulted and are involved in planning the public library services.

(8) Expenses Justified (10 points)-The applicant fully justifies the budget by describing how budget items will contribute to the establishment of public library services; quotes a source for the stated cost (e.g., city pay classification for staff, catalog or city/county bid list for equipment); and explains how the costs are reasonable to achieve the project objectives.

(9) Adequacy of Resources (15 points)-The applicant describes the local resources that will be used to support public library services during the grant year; submits estimated costs for continuing and expanding services beyond the first year; and submits a plan for assuming the costs in the future. The applicant describes the library facility, its size and location, furnishings, and equipment.

(10) Evaluation (5 points)-The applicant presents a method to count library users and use of library services. The applicant also presents a method for evaluating how the project will meet community needs throughout the grant year.

(b) TSLAC staff will review applications for second and third year funding and will recommend the award of grants if the:

(1) applicant continues to satisfy the criteria for system membership, operating budget criteria, and local government support;

(2) applicant submits a notice of intent by the deadline specified in the grant timeline;

(3) applicant submits an updated budget, job descriptions, plan for meeting system membership, actions accomplished during the preceding year, operational policies and procedures, community evaluation, and verification of expenditures; and

(4) applicant submits documentation of consultation with staff of their major resource library system or regional library system.

§2.145. Grant Review and Award Process.

(a) Commission staff will review each application for the following:

(1) legal eligibility of the institution to participate in a grant program and appropriate authorizing signature;

(2) conformance to the federal and state regulations pertaining to grants;

(3) inclusion of unallowable costs;

(4) errors in arithmetic or cost calculations;

(5) submission of all required forms; and

(6) whether the application arrived at the Texas State Library and Archives commission by the required date and time.

(b) Commission staff will raise issues and questions regarding the needs, methods, staffing, and costs of the applications. Staff comments will be sent to the LSTA Council with the applications for consideration by the council.

(c) Applicants will be sent a copy of the staff comments to give applicants an opportunity to respond in writing. Applicants may not modify the proposal in any way; however, applicants' responses will be distributed to the council.

(1) Applications with significant errors, omissions, or eligibility problems will not be rated.

(2) Commission staff will be available to offer technical assistance to council members.

(d) Applications will be scored using the following process:

(1) The Library Services and Technology Act Advisory Council will review all complete and eligible grant applications forwarded to them by commission staff and complete a rating form for each. Each member will evaluate the proposal in relation to the specific requirements of the criteria and will mark a weighted rating based on the points assigned to each criterion.

(2) No council member who is associated with an applicant or with an application, or who stands to benefit directly from an application will evaluate that application. Any council member who feels unable to fairly evaluate a particular application may choose not to review that application.

(3) Council members will consider and assess the strengths and weaknesses of any proposed project only on the basis of the documents submitted. Considerations of geographical distribution, demographics, type of library, or personality will not influence the assessment of a proposal by the council.

(4) Council members may not discuss proposals with any applicant before the proposals are reviewed. Commission staff is available to provide technical assistance to council members. Commission staff will conduct all negotiations and communication with the applicants.

(5) Council members may offer a motion to set conditions for funding a given application, e.g., reduction of project budget, revision of project objectives. Such motions must be approved by a majority vote of council members present and eligible. The motion must include a statement of the reasons for setting such conditions. Council members who are ineligible to evaluate a given proposal will not vote on funding conditions.

(6) Council members who do not attend the meeting may mail the evaluation forms to the chairperson in care of the Library Development Division of the Texas State Library and Archives Commission. In order to be counted, the mailed forms must arrive before the meeting.

§2.146. Decision Making Process.

To be considered for funding by the Texas State Library and Archives Commission, an application must receive a minimum adjusted mean score of 60 points. Commission staff will tabulate the council's work using a method that eliminates the high and low score, called an adjusted mean score.

(1) Applications will be ranked in priority order by score for consideration by the commission.

(2) If insufficient funds remain to fully fund the next application, the staff will negotiate a reduced grant with the next ranked applicant.

(3) If the council recommends funding an application, which for legal, fiscal, or other reasons, is unacceptable to the staff, a contrary recommendation will be made. The council will be informed of this situation prior to presentation to the commission. A positive recommendation to the commission will be contingent upon successfully completing these negotiations prior to the commission meeting. If council is unable to produce a set of recommendations for funding, the staff will use the same evaluation procedures to develop recommendations to the commission.

This agency hereby certifies that the 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 October 16, 1998.

TRD-9816227

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-5440

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.41, §3.42

The Railroad Commission of Texas withdraws proposed amendments to §3.41 and §3.42 relating to application for new oil or gas field designation and/or allowable, and oil discovery allowable as published in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5544), and repropose amendments to §3.41 and §3.42. This withdrawal and reproposal is based on comments received to the original proposed text.

Comments to the originally proposed amendments were received from two associations: the Texas Oil and Gas Association ("TxOGA") and the Texas Independent Producers & Royalty Owners Association ("TIPRO"). TxOGA indicated that it supports the intent of the amendments, but recommended two specific changes to §3.41 as published.

First, TxOGA noted that the preamble to the originally proposed amendments stated that the amendments exempted certain low volume (15 barrels of oil per day or less) discovery oil wells from the bottom-hole test requirement. However, the originally proposed amendments to §3.41(a)(3) provided that ". . . The commission staff may grant an exception to the requirement of reporting bottom-hole pressure for oil wells that have a potential production test of 15 barrels of oil per day or less."

TxOGA contended that there is a distinct difference between being exempted from a requirement and having to obtain an exception to the requirement. The commission agrees, but declines to adopt TxOGA's proposed language for reasons discussed in response to the TIPRO comments discussed later in this preamble.

Second, TxOGA suggested that the commission make the proposed exemption more meaningful to both operators and the state by extending it to all wells with potential production of 50 barrels of oil per day or less. However, the commission declines to make this suggested change for reasons discussed below and because it would exempt approximately 40% of all new oil discoveries, and thus eliminate 40% of all new oil discovery bottom-hole pressure data collected by the commission. The commission believes that the importance of the bottom-hole pressure data collected from wells with potential tests in the range between 15 and 50 barrels per day, which are relatively good producers, outweighs the one-time monetary expenses incurred in obtaining the test data, especially since the proposed amendments allow for additional, less expensive testing methods.

TIPRO, in its comments to the previously proposed amendments, agreed with all of the suggested changes except one: TIPRO contended that no oil wells should be exempted from the bottom-hole pressure test requirements, no matter how marginal a producer, because such exemption would deny the public information that may prove valuable in the future in developing the state's remaining oil resources.

TIPRO further asserted that such bottom-hole pressure data are needed to identify new field discoveries, and that without the data, operators will be unaware of the pressure characteristics of reservoirs discovered by low-volume wells.

Finally, TIPRO suggested that the bottom-hole pressure tests range in costs from \$250 to \$600 each. TIPRO therefore believes that a single erroneous decision based on the lack of bottom-hole pressure information might cost the industry substantially more than the savings, and thus, it remains in the long-term interest of the state to continue to require such bottom-hole pressure data.

The commission suggested to TxOGA and TIPRO that they discuss their differing positions in an attempt to reach a consensus regarding the proposed exemption, which they did. The two associations now agree that the proposed exemption to the requirement of reporting bottom-hole pressures for new oilfield discovery wells with a potential production test of 15 BOPD or less should be deleted to preserve the historical availability of the information within the public domain for use by oil operators. The commission agrees that such preservation of well information is in the public interest and, accordingly, the repropoed amendments delete the exemption for oil wells that have a potential production test of 15 barrels of oil per day or less.

The commission still proposes to move the bottom-hole pressure requirement from §3.42 to §3.41, and permit additional bottom-hole pressure test methods other than pressure build-up tests. Additionally, some proposed amendments reword existing subsections without changing any substantive provisions in order to better clarify the requirements and the person(s) required to comply.

The proposed amendments to §3.41 add revised paragraph (3) to subsection (a) requiring bottom-hole pressure data for oil wells to be included on the application for new oil field designation and/or allowable. The bottom-hole pressure test requirement, currently in §3.42, is being moved to §3.41 to better facilitate applications for new oil or gas designation and/or allowable. Moving the bottom-hole test requirement to §3.41, and thus requiring that the bottom-hole pressure data be

included on the application for new oil or gas field designation and/or allowable, will ensure that bottom-hole pressure data are available to the commission staff when reviewing new field discovery applications.

In addition, the proposed amendments to §3.41(a)(3) give operators of discovery oil wells the option to determine bottom-hole pressures by methods which are generally less costly than pressure build-up tests.

The remaining proposed amendments to §3.41 renumber paragraphs (3) through (5) of subsection (a) and reword them, without changing the substantive provisions, in order to clarify the regulations.

The proposed amendments to §3.42 reword subsection (a), without changing any substantive provisions, to clarify the rule. In addition, the proposed amendments to §3.42 delete subsection (c), which contained the subsurface pressure test requirement, and redesignate §3.42(d) as §3.42(c).

Rita E. Percival, Oil and Gas Division planner, has determined that for each year of the first five years the rules as proposed will be in effect, the fiscal implications as a result of enforcing or administering the rules will be a net savings to the state of \$3,192 in fiscal year 1998 and an annual estimated savings of \$4,438 in fiscal years 1999 through 2001. In the first year, the bottom-hole pressure report form will require revision at a one-time cost of \$1,246. The anticipated annual savings of \$4,438 will result from operators clearly knowing when to file bottom-hole pressure information. By requiring operators to file the information with the new field discovery application rather than later in the allowable process, commission staff should be able to eliminate an estimated one hour of work on each of approximately 175 new oil field applications received annually. This time has been spent contacting the operator, explaining the need for filing the bottom-hole information with the application, and, in most cases, receiving, granting, and following up on extensions of the information filing. There will be no effect on local government.

There will be no increase in cost of compliance for individuals or small businesses. In fact, the revision of the rules may result in a savings for the small producer: the proposed amendments include alternatives to the more costly pressure build-up bottom-hole pressure test, and operators submitting the information in the more timely manner will reduce the paperwork required when requesting extension applications. Well servicing companies that perform only pressure build-up tests may experience a negative fiscal impact if the demand for such tests decreases due to some operators choosing alternate ways to obtain bottom-hole pressure information.

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

Comments may be submitted to Mickey R. Olmstead, Hearings Examiner, Office of General Counsel, P.O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*. Comments should include the docket number of this rulemaking proceeding, 20-0217578.

The commission proposes the amendments pursuant to Texas Natural Resources Code §§81.051, 81.052, 85.042, 85.201, 85.202, 86.041, and 86.042, which authorize the commission to prevent waste of oil and gas and to protect correlative rights.

The Texas Natural Resources Code, §§85.053, *et seq.*, and 88.051, are affected by the proposed amendments.

§3.41. Application for New Oil or Gas Field Designation and/or Allowable.

(a) The commission shall assign a new field designation and/or discovery allowable after an operator furnishes to the commission's Austin office proper evidence, other than horizontal distance, [Evidence] proving that a well is a new discovery. [must be received in the commission's Austin office prior to the assignment of a new field designation and/or discovery allowable. Evidence other than horizontal distance is required.] An operator shall [application must] include the following in the application:

(1) a legible area map, drawn to scale, preferably on white paper, which shows the following:

(A)-(E) (No change.)

(2) a [A] complete legible electric log of the well. However, an operator is not required to file a complete [The filing of an] electric log if the operator has filed [is not necessary provided that] all other required data, a portion of the log showing the top and bottom of the proposed reservoir interval, log headings, and applicable scales, [is submitted] and satisfactorily proves discovery as a new reservoir. Any electric log filed shall [will] be considered public information pursuant to §3.16 of this title (relating to Log and Completion or Plugging Report) (Statewide Rule 16).

(3) a bottom-hole pressure for oil wells, submitted on the appropriate form. This bottom-hole pressure may be determined by a pressure build-up test, drill stem test, or wire- line formation tester. Calculations based on fluid level surveys or calculations made on flowing wells using shut-in wellhead pressures may be used if no test data is available.

(4) a subsurface structure map and/or cross section(s), if separation is based on structural differences, including faulting and pinch-outs. The structure map shall show the contour of the top of the producing formation and the line(s) of cross section. The cross section(s) shall be prepared from comparable electric logs (not tracings) with the wells, producing formation, and hydrocarbon reservoir identified. The engineer or geologist who prepared the map and cross section shall sign them.

(5) reservoir pressure measurements or calculations, if separation is based on pressure differentials.

(6) core data, drillstem test data, cross sections of nearby wells, and/or production data estimating the fluid level, if separation is based on differences in fluid levels. The operator shall obtain the fluid level data within 10 days of the potential test date.

~~[(3) If separation is based on structural differences, including faulting and pinch outs, submit a subsurface structure map or cross section(s); or preferably both. The structure map should show the contour of the top of the producing formation and the line(s) of cross section. The cross section(s) must be prepared from comparable electric logs (not tracings) with the wells, producing formation, and hydrocarbon reservoir identified. Both the map and cross section must be signed by the engineer or geologist who prepared it.]~~

~~[(4) If separation is based on pressure differentials, submit reservoir pressure measurements or calculations.]~~

~~[(5) If separation is based on differences in fluid levels, submit core data, drillstem test data, cross sections of nearby wells, or production data estimating the fluid level. Fluid level data should be recently dated.]~~

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

(d) If the director of the Oil and Gas Division, or the director's delegate, [Director, Oil and Gas,] declines administratively to grant an application, the operator may request a hearing. If the commission receives the hearing request [an application is protested] within 10 days of the date of the notice of administrative denial of the application, the commission shall schedule a [it will be set for] hearing. After hearing, the examiner shall recommend final commission action.

§3.42. Oil Discovery Allowable.

(a) The commission shall determine the [The] discovery allowable rate for oil wells proven to be completed in a new and separate reservoir [shall be determined] from the following discovery allowable schedule.

Figure 3.42(a) (No change.)

(b) (No change.)

~~[(c) A subsurface pressure test shall be made on the discovery well in accordance with the instructions on the commission's appropriate form, and the results thereof reported to the commission within 60 days after completion of the discovery well.]~~

~~[(c) [(d)] The director or the director's delegate shall review the production performance of discovery wells to evaluate whether waste is occurring due to the discovery allowable. If the director or the director's delegate believes waste is or may be occurring, the director or the director's delegate may request any additional relevant information from the operator and may set the matter for hearing to allow the commission to determine if the discovery allowable should be lowered to prevent waste.~~

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.

Issued in Austin, Texas on October 13, 1998. Filed with the Office of the Secretary of State, on October 13, 1998.

TRD-9816002

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: November 29, 1998

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



Part II. Public Utility Commission of Texas

Chapter 23. Substantive

Subchapter B. Records and Reports

16 TAC §23.15

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

The Public Utility Commission of Texas (commission) proposes the repeal of §23.15 relating to Local Exchange Company Assessment. Project Number 17709 has been assigned to this proceeding. The Appropriation Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency

review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 TAC (Texas Administrative Code), Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.15 will be duplicative of proposed new §26.7 of this title (relating to Local Exchange Company Assessment) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Ms. Ericka Kelsaw, assistant general counsel, Office of Policy Development, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Kelsaw has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of a duplicative rule. There will be no effect on small businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

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

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.15.

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

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

§23.15. *Local Exchange Company Assessment.*

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 October 16, 1998.

TRD-9816288

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 29, 1998

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

Subchapter H. Telephone

16 TAC §23.108

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

The Public Utility Commission of Texas (commission) proposes the repeal of §23.108 relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs). Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency review and consider for re adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or re adopting the rule continues to exist. The commission held three workshops to conduct a preliminary review of its rules. As a result of these workshops, the commission is reorganizing its current substantive rules located in 16 TAC (Texas Administrative Code), Chapter 23 to: (1) satisfy the requirements of §167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.108 will be duplicative of proposed new §26.175 of this title (relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs)) in Chapter 26 (Substantive Rules Applicable to Telecommunications Service Providers).

Mr. Robert Rice, assistant general counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Rice has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be the elimination of a duplicative rule. There will be no effect on small businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

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

Comments on the proposed repeal (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.108.

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

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

§23.108. *Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs).*

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 October 16, 1998.

TRD-9816286

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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



Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

The Public Utility Commission of Texas (commission) proposes an amendment to §26.5, relating to Definitions and proposes new §26.175, relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs). The proposed amendment moves definitions currently found in §23.108 of this title to §26.5 and will modify a definition currently found in §26.5. The proposed new section will replace §23.108 of this title (relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs)). Proposed new §26.175 will establish standards for the reclassification of telecommunications services as directed by the Public Utility Regulatory Act, Texas Utilities Code Annotated §58.024 (Vernon 1998) (PURA). Project Number 17709 has been assigned to this proceeding.

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

The changes proposed in new §26.175 from corresponding §23.108 are to change the section number designation and move the section to Chapter 26, Subchapter I, relating to Alternative Regulation; changing the word "carriers" in the title to "companies"; deletion of the definitions in §23.108(b)

and moving the definitions to §26.5 of this title (relating to Definitions); clarification to the format of the notice language in existing §23.108(g)(1) (proposed new §26.175(f)(1)); and the addition of the commission's toll free number to the notice requirements in existing §23.108(g)(1).

The *Texas Register* will publish §26.175 as all new text. Persons desiring a redline comparison of proposed new §26.175 to existing §23.108 may obtain a redline from the commission's Central Records Division under Project Number 17709.

Mr. Robert Rice, assistant general counsel, Office of Regulatory Affairs has determined that for each year of the first five-year period the proposed 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. Rice has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the rule will be to assist in the transition of the local telecommunications market. Competition in the telecommunications markets is expected to have positive effects on small and large businesses and residential customers by providing choices in telecommunications providers and competitive prices. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Mr. Rice has also determined that for each year of the first five years the proposed sections are in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the sections.

Comments on the proposed new section and amendment (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. The commission also invites specific comments regarding the §167 requirement as to whether the reason for adopting or re-adopting the rule continues to exist. All comments should refer to Project Number 17709 - §26.175 relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).

Subchapter A. General Provisions

16 TAC §26.5

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

Cross Index to Statutes: Public Utility Regulatory Act §14.002, §58.024, §58.051, §58.101, and §58.151.

§26.5. *Definitions.*

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

(1)-(11) (No change.)

(12) Basic network services (BNS) - Those services as defined in PURA §58.051, and any other service the commission subsequently categorizes as a basic network service.

(13) [(12)] Baud - Unit of signaling speed reflecting the number of discrete conditions or signal elements transmitted per second.

(14) [(13)] Bellcore - Bell Communications Research, Inc.

(15) [(14)] Bit Error Ratio (BER) - The ratio of the number of bits received in error to the total number of bits transmitted in a given time interval.

(16) [(15)] Bit Rate - The rate at which data bits are transmitted over a communications path, normally expressed in bits per second.

(17) [(16)] Bona fide request - A written request to an incumbent local exchange company (ILEC) from a certificated telecommunications utility or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the Federal Communications Commission. A bona fide request indicates an intent to purchase the service subject to the purchaser being able to obtain acceptable rates, terms, and conditions.

(18) [(17)] Business service - A telecommunications service provided a customer where the use is primarily of a business, professional, institutional or otherwise occupational nature.

(19) [(18)] Busy hour - The clock hour each day during which the greatest usage occurs.

(20) [(19)] Busy season - That period of the year during which the greatest volume of traffic is handled in a switching office.

(21) [(20)] Call aggregator - Any person or entity that owns or otherwise controls telephones intended to be utilized by the public, which control is evidenced by the authority to post notices on and/or unblock access at the telephone.

(22) [(21)] Call splashing - Call transferring (whether caller-requested or operator service provider-initiated) that results in a call being rated and/or billed from a point different from that where the call originated.

(23) [(22)] Call transferring - Handing off a call from one operator service provider (OSP) to another OSP.

(24) [(23)] Caller identification materials (caller ID materials) - Any advertisements, educational materials, training materials, audio and video marketing devices, and any information disseminated about caller ID services.

(25) [(24)] Caller identification service (caller ID service) - A service offered by a telecommunications provider that provides calling party information to a device capable of displaying the information.

(26) [(25)] Calling area - The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A "local" calling area may include more than one exchange area.

(27) [(26)] Calling party information -

(A) the telephone listing number and/or name of the customer from whose telephone instrument a telephone number is dialed; or

(B) other information that may be used to identify the specific originating number or originating location of a wire or electronic communication transmitted by a telephone instrument.

(28) [(27)] Capitalization - Long-term debt plus total equity.

(29) [(28)] Carrier of choice - An option that allows an individual to choose an interexchange carrier for long distance calls made through Telecommunications Relay Service.

(30) [(29)] Carrier-initiated change - A change in the telecommunications utility serving a customer that was initiated by the telecommunications utility to which the customer is changed, whether the switch is made because a customer did or did not respond to direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(31) [(30)] Central office - A switching unit in a telecommunications system which provides service to the general public, having the necessary equipment and operating arrangements for terminating and interconnecting customer lines and trunks or trunks only.

(32) [(31)] Census block group (CBG) - A United States Census Bureau geographic designation that generally contains between 250 and 550 housing units.

(33) [(32)] Certificated service area - The geographic area within which a company has been authorized to provide basic local telecommunications services pursuant to a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) issued by the commission.

(34) [(33)] Certificated telecommunications utility - A telecommunications utility that has been granted either a certificate of convenience and necessity (CCN), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA).

(35) [(34)] Class of service or customer class - A description of utility service provided to a customer which denotes such characteristics as nature of use (business or residential) or type of rate (flat rate or message rate). Classes may be further subdivided into grades, denoting individual or multiparty line or denoting quality of service.

(36) [(35)] Commission - The Public Utility Commission of Texas.

(37) [(36)] Competitive exchange service - Any of the following services, when provided on an inter- or intrastate basis within an exchange area: central office based PBX-type services for systems of 75 stations or more; billing and collection services; (high speed private line services of 1.544 megabits or greater; customized services; private line and virtual private line services; resold or shared local exchange telephone services if permitted by tariff; dark fiber services; non-voice data transmission service when offered as a separate service and not as a component of basic local telecommunications service; dedicated or virtually dedicated access services; services for which a local exchange company has been granted authority to engage in pricing flexibility pursuant to §23.27 of this title (relating to Rate-Setting Flexibility); any service initially provided within an exchange after October 26, 1992, if first provided by an entity other than the incumbent local exchange company (companies) certificated to provide service within that exchange; and any other service the commission declares is not local exchange telephone service.

(38) Competitive services (CS) - Those services as defined in PURA §58.151, and any other service the commission subsequently categorizes as a competitive service.

(39) [(37)] Completed call - a call that is answered by the called party.

(40) [(38)] Complex service - The provision of a circuit requiring special treatment, special equipment, or special engineering design, including but not limited to private lines, WATS, PBX trunks, rotary lines, and special assemblies.

(41) [(39)] Consumer good or service -

(A) real property or tangible or intangible personal property that is normally used for personal, family, or household purposes, including personal property intended to be attached to or installed in any real property;

(B) a cemetery lot;

(C) a time-share estate; or

(D) a service related to real or personal property.

(42) [(40)] Consumer telephone call - An unsolicited call made to a residential telephone number to:

(A) solicit a sale of a consumer good or service;

(B) solicit an extension of credit for a consumer good or service; or

(C) obtain information that will or may be used to directly solicit a sale of a consumer good or service or to extend credit for the sale.

(43) [(41)] Cooperative - An incumbent local exchange company that is a cooperative corporation.

(44) [(42)] Cooperative corporation -

(A) An electric cooperative corporation organized and operating under the Electric Cooperative Corporation Act, Texas Utilities Code Annotated, Chapter 161, or a predecessor statute to Chapter 161 and operating under that chapter; or

(B) A telephone cooperative corporation organized under the Telephone Cooperative Act, Texas Utilities Code, Chapter 162, or a predecessor statute to Chapter 162 and operating under that chapter.

(45) [(43)] Corporate name - Has the meaning assigned by Texas Business Corporation Act, Article §2.05.

(46) [(44)] Corporation - A domestic or foreign corporation, joint-stock company, or association, and each lessee, assignee, trustee, receiver or other successor in interest of the corporation, company, or association, that has any of the powers or privileges of a corporation not possessed by an individual or partnership. The term does not include a municipal corporation, except as expressly provided by the Public Utility Regulatory Act.

(47) [(45)] Custom calling-type services - Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.

(48) [(46)] Customer access line - A unit of measurement representing a telecommunications circuit or, in the case of ISDN, a telecommunications channel designated for a particular customer. One customer access line shall be counted for each circuit which is capable of generating usage on the line side of the switched network or a private line circuit, regardless of the quantity or ownership of customer premises equipment connected to each circuit. In the case of multiparty lines, each party shall be counted as a separate customer access line.

(49) [(47)] Customer-initiated change - A change in the telecommunications utility serving a customer that is initiated by the customer and is not the result of direct mail solicitation, telemarketing, or other actions initiated by the carrier.

(50) [(48)] Customer premises equipment (CPE) - Telephone terminal equipment located at a customer's premises. This does not include overvoltage protection equipment, inside wiring, coin-operated (or pay) telephones, "company-official" equipment, mobile telephone equipment, "911" equipment, equipment necessary for provision of communications for national defense, or multiplexing equipment used to deliver multiple channels to the customer.

(51) [(49)] Customer proprietary network information (CPNI), customer-specific - Any information compiled about a customer by a telecommunications utility in the normal course of providing telephone service that identifies the customer by matching such information with the customer's name, address, or billing telephone number. This information includes, but is not limited to: line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.

(52) [(50)] Customer trouble report - Any oral or written report from a customer or user of telecommunications service received by any telecommunications utility relating to a physical defect, difficulty, or dissatisfaction with the service provided by the telecommunications utility's facilities. Each telephone or PBX switchHouse Billoard position reported in trouble shall be counted as a separate report when several items are reported by one customer at the same time, unless the group of troubles so reported is clearly related to a common cause.

(53) [(51)] dBrn - A unit used to express noise power relative to one Pico watt (-90 dBrn).

(54) [(52)] dBrnC - Noise power in dBrn, measured with C-message weighting.

(55) [(53)] dBrnCO - Noise power in dBrnC referred to or measured at a zero transmission level point.

(56) [(54)] D-Channel - The integrated-services-digital-network out-of-band signaling channel.

(57) [(55)] Dedicated signaling transport - Transmission of out-of-band signaling information between an access customer's common channel signaling network and a certificated telecommunications utility's signaling transport point on facilities dedicated to the use of a single customer. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(58) [(56)] Depreciation expenses - The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

(59) [(57)] Direct-trunked transport - Transmission of traffic between the serving wire center and another certificated telecommunications utility's office, without intermediate switching. It is charged on a flat-rate basis. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(60) [(58)] Disconnection of telephone service - The event after which a customer's telephone number is deleted from the central office switch and databases.

(61) [(59)] Discretionary services (DS) - Those services as defined in the Public Utility Regulatory Act §58.101, and any other service the commission subsequently categorizes as a discretionary service. [Services that may be added, at the user's option, to basic local telecommunications service, such as call waiting, call forwarding, and caller ID.]

(62) [(60)] Distance learning- Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by an educational institution predominantly for such instruction, learning, or training--including: video, data, voice, and electronic information.

(63) [(64)] Distribution lines - Those lines from which the end user may be provided direct service.

(64) [(62)] Dominant carrier- A provider of a communication service provided wholly or partly over a telephone system who the commission determines has sufficient market power in a telecommunications market to control prices for that service in that market in a manner adverse to the public interest. The term includes a provider who provided local exchange telephone service within certificated exchange areas on September 1, 1995, as to that service and as to any other service for which a competitive alternative is not available in a particular geographic market. In addition with respect to:

(A) intraLATA long distance message telecommunications service originated by dialing the access code "1-plus," the term includes a provider of local exchange telephone service in a certificated exchange area for whom the use of that access code for the origination of "1-plus" intraLATA calls in the exchange area is exclusive; and

(B) interexchange services, the term does not include an interexchange carrier that is not a certificated local exchange company.

(65) [(63)] Dominant certificated telecommunications utility (DCTU) - A certificated telecommunications utility that is also a dominant carrier. Unless clearly indicated otherwise, the rules applicable to a DCTU apply specifically to only those services for which the DCTU is dominant.

(66) [(64)] Dual-party relay service - A service using oral and printed translations, by either a person or an automated device, between hearing- or speech-impaired individuals who use telecommunications devices for the deaf, computers, or similar automated devices, and others who do not have such equipment.

(67) [(65)] Educational institution - Accredited primary or secondary schools owned or operated by state and local government entities or by private entities; institutions of higher education as defined by the Education Code, §61.003(13); the Texas Education Agency, its successors and assigns; regional education service centers established and operated pursuant to the Education Code, Chapter 8; and the Texas Higher Education Coordinating Board, its successors and assigns.

(68) [(66)] Electing local exchange company (LEC) - A certificated telecommunications utility electing to be regulated under the terms of the Public Utility Regulatory Act, Chapter 58.

(69) [(67)] Electric utility -

(A) A person or river authority that owns or operates for compensation in this state equipment or facilities to produce, generate, transmit, distribute, sell, or furnish electricity in this state. The term includes a lessee, trustee, or receiver of an electric utility and a recreational vehicle park owner who does not comply with

Texas Utilities Code, Chapter 184, Subchapter C, with regard to the metered sale of electricity at the recreational vehicle park. The term does not include:

(i) a municipal corporation;

(ii) a qualifying facility;

(iii) an exempt wholesale generator;

(iv) a power marketer;

(v) a corporation described by Public Utility Regulatory Act §32.053 to the extent the corporation sells electricity exclusively at wholesale and not to the ultimate consumer; or

(vi) a person not otherwise an electric utility who:

(I) furnishes an electric service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others;

(II) owns or operates in this state equipment or facilities to produce, generate, transmit, distribute, sell or furnish electric energy to an electric utility, if the equipment or facilities are used primarily to produce and generate electric energy for consumption by that person; or

(III) owns or operates in this state a recreational vehicle park that provides metered electric service in accordance with Texas Utilities Code, Chapter 184, Subchapter C.

(B) With respect to transmission service and ancillary service, the term includes municipally owned utilities and river authorities that are not otherwise subject to the commission's ratesetting authority.

(70) [(68)] Element - Unbundled network elements, including: interconnection, physical-collocation, and virtual-collocation elements.

(71) [(69)] Eligible telecommunications provider (ETP) service area - The geographic area, determined by the commission, containing high cost rural areas which are eligible for Texas Universal Service Funds support under §23.133 or §23.134 of this title (relating to Texas High Cost Universal Service Plan (THCUSP) and Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(72) [(70)] Embedded customer premises equipment - All customer premises equipment owned by a telecommunications utility, including inventory, which was tariffed or subject to the separations process of January 1, 1983.

(73) [(71)] End user choice - A system that allows the automatic routing of interexchange, operator-assisted calls to the billed party's chosen carrier without the use of access codes.

(74) [(72)] Enhanced service provider - A company that offers computer-based services over transmission facilities to provide the customer with value-added telephone services.

(75) [(73)] Entrance facilities - The transmission path between the access customer's (such as an interexchange carrier's) point of demarcation and the serving wire center.

(76) [(74)] Equal access - Access which is equal in type, quality and price to Feature Group C, and which has unbundled rates. From an end user's perspective, equal access is characterized by the availability of "1- plus" dialing with the end user's carrier of choice.

(77) [(75)] Equipment distribution program (EDP) - Program to assist individuals who are deaf or hard of hearing or who have an impairment of speech to purchase specialized telecommunications devices for telephone service access, authorized by 1997 Texas General Laws Chapter 149, to be jointly administered by the commission and the Texas Commission for the Deaf and Hard of Hearing.

(78) [(76)] Equipment distribution program (EDP) voucher - a voucher issued by Texas Commission for the Deaf and Hard of Hearing under the equipment distribution program, in accordance with its rules, that an eligible individual may use to acquire eligible specialized telecommunications devices from a vendor of such equipment.

(79) [(77)] Exchange area - The geographic territory delineated as an exchange area by official commission boundary maps. An exchange area usually embraces a city or town and its environs. There is usually a uniform set of charges for telecommunications service within the exchange area. An exchange area may be served by more than one central office and/or one certificated telephone utility. An exchange area may also be referred to as an exchange.

(80) [(78)] Expenses - Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.

(81) [(79)] Experimental service - A new service that is proposed to be offered on a temporary basis for a specified period not to exceed one year from the date the service is first provided to any customer.

(82) [(80)] Extended area service (EAS) - A telephone switching and trunking arrangement which provides for optional calling service by dominant certificated telecommunications utilities within a local access and transport area and between two contiguous exchanges or between an exchange and a contiguous metropolitan exchange local calling area. For purposes of this definition, a metropolitan exchange local calling area shall include all exchanges having local or mandatory EAS calling throughout all portions of any of the following exchanges: Austin metropolitan exchange, Corpus Christi metropolitan exchange, Dallas metropolitan exchange, Fort Worth metropolitan exchange, Houston metropolitan exchange, San Antonio metropolitan exchange, or Waco metropolitan exchange. EAS is provided at rate increments in addition to local exchange rates, rather than at toll message charges.

(83) [(81)] Extended local calling service (ELCS) - Service provided pursuant to §23.49(c) of this title (relating to Telephone Extended Area Service and Expanded Toll-free Local Calling Areas).

(84) [(82)] Facilities - All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility, including any construction work in progress allowed by the commission.

(85) Facilities-based provider - A telecommunications provider that provides telecommunications services using facilities that it owns or leases or a combination of facilities that it owns and leases, including unbundled network elements.

(86) [(83)] Foreign exchange (FX) - exchange service furnished by means of a circuit connecting a customer's station to a primary serving office of another exchange.

(87) [(84)] Foreign serving office (FSO) - Exchange service furnished by means of a circuit connecting a customer's station to a serving office of the same exchange but outside of the serving office area in which the station is located.

(88) [(85)] Forward-looking common costs - Economic costs efficiently incurred in providing a group of elements or services that cannot be attributed directly to individual elements or services.

(89) [(86)] Forward-looking economic cost - The sum of the total element long-run incremental cost of an element and a reasonable allocation of its forward-looking common costs.

(90) [(87)] Forward-looking economic cost per unit - The forward-looking economic cost of the element as defined in this section, divided by a reasonable projection of the sum of the total number of units of the element that the dominant certificated telephone utility (DCTU) is likely to provide to requesting telecommunications carriers and the total number of units of the element that the DCTU is likely to use in offering its own services, during a reasonable time period.

(91) [(88)] Geographic scope - The geographic area in which the holder of a Certificate of Operating Authority or of a Service Provider Certificate of Operating Authority is authorized to provide service.

(92) [(89)] Grade of service - The number of customers a line is designated to serve.

(93) [(90)] Hearing - Any proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

(94) [(91)] Hearing carryover - A technology that allows an individual who is speech-impaired to hear the other party in a telephone conversation and to use specialized telecommunications devices to send communications through the telecommunications relay service operator.

(95) [(92)] High cost area - A geographic area for which the costs established using a forward-looking economic cost methodology exceed the benchmark levels established by the commission.

(96) [(93)] High cost assistance (HCA) - A program administered by the commission in accordance with the provisions of §23.133 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)).

(97) [(94)] Identity - The name, address, telephone number, and/or facsimile number of a person, whether natural, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or state agency and the relationship of the person to the entity being represented.

(98) [(95)] Impulse noise - Any momentary occurrence of the noise on a channel significantly exceeding the normal noise peaks. It is evaluated by counting the number of occurrences that exceed a threshold. This noise degrades voice and data transmission.

(99) [(96)] Incumbent local exchange company (ILEC) - A local exchange company that had a certificate of convenience and necessity on September 1, 1995.

(100) [(97)] Information sharing program - Instruction, learning, and training that is transmitted from one site to one or more sites by telecommunications services that are used by a library

predominantly for such instruction, learning, or training, including video, data, voice, and electronic information.

(101) [(98)] Integrated services digital network (ISDN) - a digital network architecture that provides a wide variety of communications services, a standard set of user-network messages, and integrated access to the network. Access methods to the ISDN are the Basic Rate Interface (BRI) and the Primary Rate Interface (PRI).

(102) [(99)] Interactive multimedia communications - Real-time, two-way, interactive voice, video, and data communications conducted over networks that link geographically dispersed locations. This definition includes interactive communications within or between buildings on the same campus or library site.

(103) [(100)] Intercept service - A service arrangement provided by the local exchange carrier whereby calls placed to a disconnected or discontinued telephone number are intercepted and the calling party is informed by an operator or by a recording that the called telephone number has been disconnected, discontinued, changed to another number, or otherwise is not in service.

(104) [(101)] Interconnection - Generally means: The point in a network where a customer's transmission facilities interface with the dominant carrier's network under the provisions of this section. More particularly it means: The termination of local traffic (including basic telecommunications service as delineated in §24.32 of this title (Relating to Universal Service) or integrated services digital network (ISDN) as defined in this section and/or extended area service/extended local calling service traffic of a certificated telephone utility (CTU) using the local access lines of another CTU, as described in section §23.97(d)(4)(A)(i) of this title (relating to Interconnection). Interconnection shall include non-discriminatory access to signaling systems, databases, facilities and information as required to ensure interoperability of networks and efficient, timely provision of services to customers without permitting access to network proprietary information or customer proprietary network information, as defined in §23.57 of this title (relating to Telecommunications Privacy), unless otherwise permitted in §23.97 of this title.

(105) [(102)] Interconnector - A customer that interfaces with the dominant carrier's network under the provisions of §23.92 of this title (relating to Expanded Interconnection).

(106) [(103)] Interexchange carrier (IXC) - A carrier providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. The term may include a certificated telecommunications utility (CTU) or CTU affiliate to the extent that it is providing such service. An entity is not an IXC solely because of:

- (A) the furnishing, or furnishing and maintenance of a private system;
- (B) the manufacture, distribution, installation, or maintenance of customer premises equipment;
- (C) the provision of services authorized under the FCC's Public Mobile Radio Service and Rural Radio Service rules; or
- (D) the provision of shared tenant service.

(107) [(104)] Interoffice trunks - Those communications circuits which connect central offices.

(108) [(105)] IntraLATA equal access - The ability of a caller to complete a toll call in a local access and transport area (LATA) using his or her provider of choice by dialing "1" or "0" plus an area code and telephone number.

(109) [(106)] Intrastate - Refers to communications which both originate and terminate within Texas state boundaries.

(110) [(107)] Least cost technology - The technology, or mix of technologies, that would be chosen in the long run as the most economically efficient choice. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained;

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the basic network function in question; and

(C) be consistent with overall network design and topology requirements.

(111) [(108)] License - The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

(112) [(109)] Licensing - The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(113) [(110)] Lifeline Service - A program certified by the Federal Communications Commission to provide for the reduction or waiver of the federal subscriber line charge for residential consumers.

(114) [(111)] Line - A circuit or channel extending from a central office to the customer's location to provide telecommunications service. One line may serve one customer, or all customers served by a multiparty line.

(115) [(112)] Local access and transport area (LATA) - A geographic area established for the provision and administration of communications service. It encompasses one or more designated exchanges, which are grouped to serve common social, economic and other purposes. For purposes of these rules, market areas, as used and defined in the Modified Final Judgment and the GTE Final Judgment, are encompassed in the term local access and transport area.

(116) [(113)] Local call - A call within the certificated telephone utility's toll-free calling area including calls which are made toll-free through a mandatory extended area service (EAS) or expanded local calling (ELC) proceeding.

(117) [(114)] Local calling area - The area within which telecommunications service is furnished to customers under a specific schedule of exchange rates. A local calling area may include more than one exchange area.

(118) [(115)] Local exchange company (LEC) - A telecommunications utility that has been granted either a certificate of convenience and necessity or a certificate of operating authority to provide local exchange telephone service, basic local telecommunications service, or switched access service within the state. A local exchange company is also referred to as a local exchange carrier.

(119) [(116)] Local exchange telephone service or local exchange service - A telecommunications service provided within an exchange to establish connections between customer premises within the exchange, including connections between a customer premises and a long distance provider serving the exchange. The

term includes tone dialing service, service connection charges, and directory assistance services offered in connection with basic local telecommunications service and interconnection with other service providers. The term does not include the following services, whether offered on an intraexchange or interexchange basis:

- (A) central office based PBX-type services for systems of 75 stations or more;
- (B) billing and collection services;
- (C) high-speed private line services of 1.544 megabits or greater;
- (D) customized services;
- (E) private line or virtual private line services;
- (F) resold or shared local exchange telephone services if permitted by tariff;
- (G) dark fiber services;
- (H) non-voice data transmission service offered as a separate service and not as a component of basic local telecommunications service;
- (I) dedicated or virtually dedicated access services;
- (J) a competitive exchange service; or
- (K) any other service the commission determines is not a "local exchange telephone service."

(120) [(417)] Local message - A completed call between customer access lines located within the same local calling area.

(121) [(418)] Local message charge - The charge that applies for a completed telephone call that is made when the calling customer access line and the customer access line to which the connection is established are both within the same local calling area, and a local message charge is applicable.

(122) [(419)] Local service charge - The charge for furnishing facilities to enable a customer to send or receive telecommunications within the local calling area. This local calling area may include more than one exchange area.

(123) [(420)] Local telecommunications traffic -

(A) Telecommunications traffic between a dominant certificated telecommunications utility (DCTU) and a telecommunications carrier other than a commercial mobile radio service (CMRS) provider that originates and terminates within the mandatory single or multi-exchange local calling area of a DCTU including the mandatory extended area service (EAS) areas served by the DCTU; or

(B) Telecommunications traffic between a DCTU and a CMRS provider that, at the beginning of the call, originates and terminates within the same major trading area.

(124) [(421)] Long distance telecommunications service - That part of the total communication service rendered by a telecommunications utility which is furnished between customers in different local calling areas in accordance with the rates and regulations specified in the utility's tariff.

(125) [(422)] Long run - A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(126) [(423)] Long run incremental cost (LRIC) - The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology.

The LRIC should exclude any costs that, in the long run, are not brought into existence as a direct result of the increment of output.

(127) [(424)] Mandatory minimum standards - The standards established by the Federal Communications Commission, outlining basic mandatory telecommunication relay services.

(128) [(425)] Meet point billing - An access billing arrangement for services to access customers when local transport is jointly provided by more than one certificated telecommunications utility. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(129) [(426)] Message - A completed customer telephone call.

(130) [(427)] Message rate service - A form of local exchange service under which all originated local messages are measured and charged for in accordance with the utility's tariff.

(131) [(428)] Minor change - A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the small local exchange company (SLEC) or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than 5.0%. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 10%.

(132) [(429)] Municipality - A city, incorporated village, or town, existing, created, or organized under the general, home rule, or special laws of the state.

(133) [(430)] National integrated services digital network (ISDN) - the standards and services promulgated for integrated services digital network by Bellcore.

(134) [(431)] Negotiating party - A certificated telecommunications utility (CTU) or other entity with which a requesting CTU seeks to interconnect in order to complete all telephone calls made by or placed to a customer of the requesting CTU.

(135) [(432)] New service - Any service not offered on a tariffed basis prior to the date of the application relating to such service and specifically excludes basic local telecommunications service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to the date of the new-service application and does not provide significant improvements (other than price) over, or significant additional services not available under, a service offered prior to the date of such application, it shall not be considered a new service.

(136) [(433)] Non-discriminatory - Type of treatment that is not less favorable than that an interconnecting certificated telecommunications utility (CTU) provides to itself or its affiliates or other CTUs.

(137) [(434)] Non-dominant certificated telecommunications utility (NCTU) - A certificated telecommunications utility (CTU) that is not a dominant certificated telecommunications utility (DCTU) and has been granted a certificate of convenience and necessity (CCN) (after September 1, 1995, in an area already certificated to a DCTU), a certificate of operating authority (COA), or a service provider certificate of operating authority (SPCOA) to provide local exchange service.

(138) [(435)] Nondominant carrier -

(A) An interexchange telecommunications carrier (including a reseller of interexchange telecommunications services).

(B) Any of the following that is not a dominant carrier:

(i) a specialized communications common carrier;

(ii) any other reseller of communications;

(iii) any other communications carrier that conveys, transmits, or receives communications in whole or in part over a telephone system; or

(iv) a provider of operator services that is not also a subscriber.

(139) [(436)] Open network architecture - The overall design of an incumbent local exchange company's (ILEC's) network facilities and services to permit all users of the network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(140) [(437)] Operator service - Any service using live operator or automated operator functions for the handling of telephone service, such as local collect, toll calling via collect, third number billing, credit card, and calling card services. The transmission of "1-800" and "1-888" numbers, where the called party has arranged to be billed, is not operator service.

(141) [(438)] Operator service provider (OSP) - Any person or entity that provides operator services by using either live or automated operator functions. When more than one entity is involved in processing an operator service call, the party setting the rates shall be considered to be the OSP. However, subscribers to customer-owned pay telephone service shall not be deemed to be OSPs.

(142) [(439)] Originating line screening (OLS) - A two digit code passed by the local switching system with the automatic number identification (ANI) at the beginning of a call that provides information about the originating line.

(143) [(440)] Out-of-service trouble report - An initial customer trouble report in which there is complete interruption of incoming or outgoing local exchange service. On multiple line services a failure of one central office line or a failure in common equipment affecting all lines is considered out of service. If an extension line failure does not result in the complete inability to receive or initiate calls, the report is not considered to be out of service.

(144) [(441)] Partial deregulation - The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Public Utility Regulatory Act, §§53.351 - 53.359.

(145) [(442)] Pay-per-call-information services - Services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a pre-recorded or live message or interactive program. Usually a telecommunications utility will transport the call and bill the end-user on behalf of the information provider.

(146) [(443)] Pay telephone access service (PTAS) - A service offered by a certificated telecommunications utility which provides a two-way, or optionally, a one-way originating-only business access line composed of the serving central office line equipment, all

outside plant facilities needed to connect the serving central office with the customer premises, and the network interface; this service is sold to pay telephone service providers.

(147) [(444)] Pay telephone service (PTS) - A telecommunications service utilizing any coin, coinless, credit card reader, or cordless instrument that can be used by members of the general public, or business patrons, employees, and/or visitors of the premise's owner, provided that the end user pays for local or toll calls from such instrument on a per call basis. Pay per call telephone service provided to inmates of confinement facilities is PTS. For purposes of this section, coinless telephones provided in guest rooms by a hotel/motel are not pay telephones. A telephone that is primarily used by business patrons, employees, and/or visitors of the premise's owner is not a pay telephone if all local calls and "1-800" and "1-888" type calls from such telephone are free to the end user.

(148) [(445)] Per-call blocking - A telecommunications service provided by a telecommunications provider that prevents the transmission of calling party information to a called party on a call-by-call basis.

(149) [(446)] Per-line blocking - A telecommunications service provided by a telecommunications utility that prevents the transmission of calling party information to a called party on every call, unless the calling party acts affirmatively to release calling party information.

(150) [(447)] Percent interstate usage (PIU) - An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the certificated telecommunications utility (CTU) unless the CTU's network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by CTUs between the interstate and intrastate jurisdictions. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(151) [(448)] Person - Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(152) [(449)] Pleading - A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a proceeding.

(153) [(450)] Prepaid local telephone service (PLTS) - Prepaid local telephone service means:

(A) voice grade dial tone residential service consisting of flat rate service or local measured service, if chosen by the customer and offered by the dominant certificated telecommunications utility (DCTU);

(B) if applicable, mandatory services, including extended area service, extended metropolitan service, or expanded local calling service;

(C) tone dialing service;

(D) access to 911 service;

(E) access to dual party relay service;

- (F) the ability to report service problems seven days a week;
- (G) access to business office;
- (H) primary directory listing;
- (I) toll blocking service; and
- (J) non-published service and non-listed service at the customer's option.

(154) [(451)] Premises - A tract of land or real estate including buildings and other appurtenances thereon.

(155) [(452)] Pricing flexibility - Discounts and other forms of pricing flexibility may not be preferential, prejudicial, or discriminatory. Pricing flexibility includes:

- (A) customer specific contracts;
- (B) volume, term, and discount pricing;
- (C) zone density pricing;
- (D) packaging of services; and
- (E) other promotional pricing flexibility.

(156) [(453)] Primary interexchange carrier (PIC) - The provider chosen by a customer to carry that customer's toll calls.

(157) [(454)] Primary interexchange carrier (PIC) freeze indicator - An indicator that the end user has directed the certificated telecommunications utility to make no changes in the end user's PIC.

(158) [(455)] Primary rate interface (PRI) integrated services digital network (ISDN) - One of the access methods to ISDN, the 1.544- Mbps PRI comprises either twenty-three 64 Kbps B-channels and one 64 Kbps D-channel (23B+D) or twenty-four 64 Kbps B-channels (24B) when the associated call signaling is provided by another PRI in the group.

(159) [(456)] Primary service - The initial provision of voice grade access between the customer's premises and the switched telecommunications network. This includes the initial connection to a new customer or the move of an existing customer to a new premises but does not include complex services.

(160) [(457)] Print translations - The temporary storage of a message in an operator's screen during the actual process of relaying a conversation.

(161) [(458)] Privacy issue - An issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:

- (A) the type of information about a customer that is released;
 - (B) the customers about whom information is released;
 - (C) the entity or entities to whom the information about a customer is released;
 - (D) the technology used to convey the information;
 - (E) the time at which the information is conveyed;
- and

(F) any other change in the collection, use, storage, or release of information.

(162) [(459)] Private line - A transmission path that is dedicated to a customer and that is not connected to a switching facility of a telecommunications utility, except that a dedicated transmission path between switching facilities of interexchange carriers shall be considered a private line.

(163) [(460)] Proceeding - A hearing, investigation, inquiry, or other procedure for finding facts or making a decision. The term includes a denial of relief or dismissal of a complaint. It may be rulemaking or nonrulemaking; rate setting or non-rate setting.

(164) [(461)] Promotional rate - A temporary tariff, fare, toll, rental or other compensation charged by a certificated telecommunications utility (DCTU) to new or new and existing customers and designed to induce customers to test a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local telecommunications service, including local measured service.

(165) [(462)] Provider of pay telephone service - The entity that purchases pay telephone access service (PTAS) from a certificated telecommunications utility (CTU) and registers with the Public Utility Commission as a provider of pay telephone service (PTS) to end users.

(166) [(463)] Public utility or utility - A person or river authority that owns or operates for compensation in this state equipment or facilities to convey, transmit, or receive communications over a telephone system as a dominant carrier. The term includes a lessee, trustee, or receiver of any of those entities, or a combination of those entities. The term does not include a municipal corporation. A person is not a public utility solely because the person:

- (A) furnishes or furnishes and maintains a private system;
- (B) manufactures, distributes, installs, or maintains customer premise communications equipment and accessories; or
- (C) furnishes a telecommunications service or commodity only to itself, its employees, or its tenants as an incident of employment or tenancy, if that service or commodity is not resold to or used by others.

(167) [(464)] Public Utility Regulatory Act (PURA) - The enabling statute for the Public Utility Commission of Texas, located in the Texas Utilities Code Annotated, §§11.001 - 63.063, (Vernon 1998).

(168) [(465)] Qualifying low-income consumer - A consumer that participates in one of the following programs: Medicaid, food stamps, Supplemental Security Income, federal public housing assistance, or Low- Income Home Energy Assistance Program.

(169) [(466)] Qualifying services -

- (A) residential flat rate basic local exchange service;
- (B) residential local exchange access service; and
- (C) residential local area calling usage.

(170) [(467)] Rate - Includes:

- (A) any compensation, tariff, charge, fare, toll, rental, or classification that is directly or indirectly demanded, observed,

charged, or collected by a public utility for a service, product, or commodity, described in the definition of utility in the Public Utility Regulatory Act §31.002 or §51.002; and

(B) a rule, practice, or contract affecting the compensation, tariff, charge, fare, toll, rental, or classification.

(171) [(468)] Reciprocal compensation - An arrangement between two carriers in which each of the two carriers receives compensation from the other carrier for the transport and termination on each carrier's network facilities of local telecommunications traffic that originates on the network facilities of the other carrier.

(172) Reclassification area - The geographic area within the electing ILEC's territory, consisting of one or more exchange areas, for which it seeks reclassification of a service.

(173) [(469)] Redirect the call - A procedure used by operator service providers (OSPs) that transmits a signal back to the originating telephone instrument that causes the instrument to disconnect the OSP's connection and to redial the digits originally dialed by the caller directly to the local exchange carrier's network.

(174) [(470)] Regulatory authority - In accordance with the context where it is found, either the commission or the governing body of a municipality.

(175) [(471)] Relay Texas Advisory Committee (RTAC) - The committee authorized by the Public Utility Regulatory Act, §56.110 and 1997 Texas General Laws Chapter 149.

(176) [(472)] Relay Texas - The name by which telecommunications relay service in Texas is known.

(177) [(473)] Relay Texas administrator - The individual employed by the commission to oversee the administration of statewide telecommunications relay service.

(178) [(474)] Repeated trouble report - A customer trouble report regarding a specific line or circuit occurring within 30 days or one calendar month of a previously cleared trouble report on the same line or circuit.

(179) [(475)] Residual charge - The per-minute charge designed to account for historical contribution to joint and common costs made by switched transport services.

(180) [(476)] Retail service - A telecommunications service is considered a retail service when it is provided to residential or business end users and the use of the service is other than resale. Each tariffed or contract offering which a customer may purchase to the exclusion of other offerings shall be considered a service. For example: the various mileage bands for standard toll services are rate elements, not services; however, individual optional calling plans that can be purchased individually and which are offered as alternatives to each other are services, not rate elements.

(181) [(477)] Return-on-assets - After-tax net operating income divided by total assets.

(182) [(478)] Reversal of partial deregulation - The ability of a minimum of 10% of the members of a partially deregulated cooperative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

(183) [(479)] Rule - A statement of general applicability that implements, interprets, or prescribes law or policy, or describes

the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

(184) [(480)] Rulemaking proceeding - A proceeding conducted pursuant to the Administrative Procedure Act, Texas Government Code, §§2001.021 - 2001.037 to adopt, amend, or repeal a commission rule.

(185) [(481)] Rural incumbent local exchange company (ILEC) - An ILEC that qualifies as a "rural telephone company" as defined in 47 United States Code §3(37) and/or 47 United States Code §251(f)(2).

(186) [(482)] Separation - The division of plant, revenues, expenses, taxes, and reserves applicable to exchange or local service if these items are used in common to provide public utility service to both local exchange telephone service and other service, such as interstate or intrastate toll service.

(187) [(483)] Service - Has its broadest and most inclusive meaning. The term includes any act performed, anything supplied, and any facilities used or supplied by a public utility in the performance of the utility's duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities, and the public. The term also includes the interchange or facilities between two or more public utilities. The term does not include the printing, distribution, or sale of advertising in a telephone directory.

(188) [(484)] Service connection charge - A charge designed to recover the costs of non-recurring activities associated with connection of local exchange telephone service.

(189) [(485)] Service provider certificate of operating authority (SPCOA) reseller - A holder of a service provider certificate of operating authority that uses only resold telecommunications services provided by an incumbent local exchange company (ILEC) or by a certificate of operating authority (COA) holder or by a service provider certificate of operating authority (SPCOA) holder.

(190) [(486)] Service restoral charge - A charge applied by the DCTU to restore service to a customer's telephone line after it has been suspended by the DCTU.

(191) [(487)] Serving wire center (SWC) - The certificated telecommunications utility designated central office which serves the access customer's point of demarcation. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(192) [(488)] Signaling for tandem switching - The carrier identification code (CIC) and the OZZ code or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identify the call type and thus the interexchange carrier trunk to which traffic should be routed.

(193) [(489)] Small certificated telecommunications utility (CTU) - A CTU with fewer than 2.0% of the nation's subscriber lines installed in the aggregate nationwide.

(194) [(490)] Small local exchange company (SLEC) - Any incumbent certificated telecommunications utility as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to the Telephone Cooperative Act, Texas Utilities Code Annotated, Chapter 162.

(195) [(191)] Small incumbent local exchange company (Small ILEC) - An incumbent local exchange company that is a cooperative corporation or has, together with all affiliated incumbent local exchange companies, fewer than 31,000 access lines in service in Texas.

(196) [(192)] Spanish speaking person - a person who speaks any dialect of the Spanish language exclusively or as their primary language.

(197) [(193)] Special access - A transmission path connecting customer designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the dominant carrier's end office switches.

(198) [(194)] Stand-alone costs - The stand-alone costs of an element or service are defined as the forward-looking costs that an efficient entrant would incur in providing only that element or service.

(199) [(195)] Station - A telephone instrument or other terminal device.

(200) [(196)] Study area - An incumbent local exchange company's (ILEC's) existing service area in a given state.

(201) [(197)] Supplemental services - Telecommunications features or services offered by a certificated telecommunications utility for which analogous services or products may be available to the customer from a source other than a dominant certificated telecommunications utility. Supplemental services shall not be construed to include optional extended area calling plans that a dominant certificated telecommunications utility may offer pursuant to §23.49 of this title (relating to Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Area), or pursuant to a final order of the commission in a proceeding pursuant to the Public Utility Regulatory Act, Chapter 53. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(202) [(198)] Suspension of service - That period during which the customer's telephone line does not have dial tone but the customer's telephone number is not deleted from the central office switch and databases.

(203) [(199)] Switched access - Access service that is provided by certificated telecommunications utilities (CTUs) to access customers and that requires the use of CTU network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the CTU over which switched access traffic is delivered. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(204) [(200)] Switched access demand - Switched access minutes of use, or other appropriate measure where not billed on a minute of use basis, for each switched access rate element, normalized for out of period billings. For the purposes of this section, switched access demand shall include minutes of use billed for the local switching rate element.

(205) [(201)] Switched access minutes - The measured or assumed duration of time that a certificated telecommunications utility's network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers. In Chapter 23 of this title, this term is

applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(206) [(202)] Switched transport - Transmission between a certificated telecommunications utility's central office (including tandem-switching offices) and an interexchange carrier's point of presence.

(207) [(203)] Tandem-switched transport - Transmission of traffic between the serving wire center and another certificated telecommunications utility office that is switched at a tandem switch and charged on a usage basis. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(208) [(204)] Tariff - The schedule of a utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the utility stated separately by type or kind of service and the customer class.

(209) [(205)] Tel-assistance service - A program providing eligible consumers with a 65% reduction in the applicable tariff rate for qualifying services.

(210) [(206)] Texas Universal Service Fund (TUSF) - The fund authorized by the Public Utility Regulatory Act, §56.021 and 1997 Texas General Laws Chapter 149.

(211) [(207)] Telecommunications relay service (TRS) - A service using oral and print translations by either live or automated means between individuals who are hearing-impaired or speech-impaired who use specialized telecommunications devices and others who do not have such devices. Unless specified in the text, this term shall refer to intrastate telecommunications relay service only.

(212) [(208)] Telecommunications relay service (TRS) carrier - The telecommunications carrier selected by the commission to provide statewide telecommunications relay service.

(213) [(209)] Telecommunications utility -

- (A) a public utility;
- (B) an interexchange telecommunications carrier, including a reseller of interexchange telecommunications services;
- (C) a specialized communications common carrier;
- (D) a reseller of communications;
- (E) a communications carrier who conveys, transmits, or receives communications wholly or partly over a telephone system;
- (F) a provider of operator services as defined by §55.081, unless the provider is a subscriber to customer-owned pay telephone service; and
- (G) a separated affiliate or an electronic publishing joint venture as defined in the Public Utility Regulatory Act, Chapter 63.

(214) [(210)] Telephones intended to be utilized by the public - Telephones that are accessible to the public, including, but not limited to, pay telephones, telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(215) [(211)] Telephone solicitation - An unsolicited telephone call.

(216) [(212)] Telephone solicitor - A person who makes or causes to be made a consumer telephone call, including a call made by an automatic dialing/announcing device.

(217) [(213)] Test year - The most recent 12 months, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a public utility are available.

(218) [(214)] Tier 1 local exchange company - A local exchange company with annual regulated operating revenues exceeding \$100 million.

(219) [(215)] Title IV-D Agency - The office of the attorney general for the state of Texas.

(220) [(216)] Toll blocking - A service provided by telecommunications carriers that lets consumers elect not to allow the completion of outgoing toll calls from their telecommunications channel.

(221) [(217)] Toll control - A service provided by telecommunications carriers that allows consumers to specify a certain amount of toll usage that may be incurred on their telecommunications channel per month or per billing cycle.

(222) [(218)] Toll limitation - Denotes both toll blocking and toll control.

(223) [(219)] Total element long-run incremental cost (TELRIC) - The forward-looking cost over the long run of the total quantity of the facilities and functions that are directly attributable to, or reasonably identifiable as incremental to, such element, calculated taking as a given the certificated telecommunications utility's (CTU's) provision of other elements. In Chapter 23 of this title, this term is applicable only to dominant certificated telecommunications utilities when the context clearly indicates.

(224) [(220)] Transport - The transmission and/or any necessary tandem and/or switching of local telecommunications traffic from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than a dominant certificated telecommunications utility.

(225) [(221)] Trunk - A circuit facility connecting two switching systems.

(226) [(222)] Two-primary interexchange carrier (Two-PIC) equal access - A method that allows a telephone subscriber to select one carrier for all 1+ and 0+ interLATA calls and the same or a different carrier for all 1+ and 0+ intraLATA calls.

(227) [(223)] Unbundling - The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(228) [(224)] Unit cost - A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(229) [(225)] Usage sensitive blocking - Blocking of a customer's access to services which are charged on a usage sensitive basis for completed calls. Such calls shall include, but not be limited to, call return, call trace, and auto redial.

(230) [(226)] Virtual private line - Circuits or bandwidths, between fixed locations, that are available on demand and that can be dynamically allocated.

(231) [(227)] Voice carryover - A technology that allows an individual who is hearing-impaired to speak directly to the other party in a telephone conversation and to use specialized telecommunications devices to receive communications through the telecommunications relay service operator.

(232) [(228)] Volume insensitive costs - The costs of providing a basic network function (BNF) that do not vary with the volume of output of the services that use the BNF.

(233) [(229)] Volume sensitive costs - The costs of providing a basic network function (BNF) that vary with the volume of output of the services that use the BNF.

(234) [(230)] Wholesale service - A telecommunications service is considered a wholesale service when it is provided to a telecommunications utility and the use of the service is to provide a retail service to residence or business end-user customers.

(235) [(231)] Working capital requirements - The additional capital required to fund the increased level of accounts receivable necessary to provide telecommunications service.

(236) [(232)] "0-" call - A call made by the caller dialing the digit "0" and no other digits within five seconds. A "0-" call may be made after a digit (or digits) to access the local network is (are) dialed.

(237) [(233)] "0+" call - A call made by the caller dialing the digit "0" followed by the terminating telephone number. On some automated call equipment, a digit or digits may be dialed between the "0" and the terminating telephone number.

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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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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



Subchapter I. Alternative Regulation

16 TAC §26.175

The new section is proposed under the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §58.024, which requires the commission to establish standards for the reclassification of telecommunications services.

Cross Index to Statutes: Public Utility Regulatory Act §14.002, §58.024, §58.051, §58.101, and §58.151.

§26.175. *Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Companies (ILECs).*

(a) Purpose. The provisions of this section:

(1) establish the minimum criteria and standards for reclassifying a basic network service as a discretionary service or competitive service; or a discretionary service as a competitive service, pursuant to the Public Utility Regulatory Act (PURA) §58.024; and

(2) to establish the procedures to be followed in petitioning for reclassification.

(b) Application. This section applies to electing ILECs.

(c) General standards for reclassification of a service. The following conditions must be satisfied in order to reclassify a service.

(1) Prerequisite for reclassification of a service. The commission may not reclassify a service until each competitive safeguard prescribed by PURA Chapter 60, Subchapters B through H, is fully implemented.

(2) Designation of reclassification area. An electing ILEC must designate the exchange areas for which it is seeking to reclassify each service. A reclassification area must contain the entire territory of each exchange area designated.

(3) Identification of services to be reclassified. An electing ILEC must identify each service which it is seeking to reclassify and specify, for each service, whether the service is for residential lines, business lines, or both.

(4) Public interest standard. The reclassification of the service is just and reasonable, is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive, and is in the public interest.

(5) Rate changes. Rate changes shall be contemplated by the commission, in a separate proceeding, after reclassification has occurred.

(d) Standards for reclassification of a basic network service as a discretionary service. In addition to meeting the requirements in subsection (c), the following conditions must be satisfied in order to reclassify a basic network service as a discretionary service:

(1) The service is not necessary to complete a telephone call; and

(2) Public policy determines that the service does not need to remain in a basic network service classification.

(e) Standards for reclassification of a basic network service or discretionary service as a competitive service. In addition to meeting the requirements in subsection (c) of this section, the following conditions must be satisfied in order to reclassify a basic network service as a competitive service or to reclassify a discretionary service as a competitive service:

(1) There is an alternative facilities-based provider offering the same, equivalent, or substitutable service at comparable rates, terms, and conditions in the reclassification area;

(2) At least 60% of access lines of the type, either residential, business, or both, for which the service is provided that are located in the reclassification area have access to alternative, facilities-based providers;

(3) Substantial barriers to entry do not exist for the relevant market;

(4) The existing competitors have or can easily obtain additional capacity, or new competitors may easily enter the market in response to an increase in price of the electing ILEC's rates; and

(5) The electing ILEC does not have market power sufficient to control, in a manner that is adverse to the public interest, the price of the service in the reclassification area.

(f) Requirements for notice and contents of the application in compliance with this section.

(1) Notice of Application. The electing ILEC shall provide direct notice to all Certificate of Convenience and Necessity,

Service Provider Certificate of Operating Authority and Certificate of Operating Authority holders offering service in the reclassification area and direct notice to all the ILEC's customers in the reclassification area. The notice shall include a description of the requested reclassification, the service, the proposed rates, the reclassification area, other terms of the service, the types of customers likely to be affected if the application is approved, the proposed effective date for the application, the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date), and (any other item required by the presiding officer). Requests for further information should be mailed to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Office of Customer Protection at (512) 936-7120 or toll free at (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136."

(2) Contents of application for each electing ILEC seeking a service reclassification. In addition to the commission's filing requirements, one copy of the application shall be delivered to the Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) A showing by the electing ILEC that the competitive safeguards in PURA, Chapter 60, Subchapters B through H have been met;

(B) For each exchange in the reclassification area, a description of the reclassification sought, the service(s) and the rates, terms, and conditions under which the service(s) is currently provided and how the proposed reclassification of the service(s) is just and reasonable and is not unreasonably preferential, prejudicial, or discriminatory, or predatory or anti-competitive;

(C) A description of the reclassification area, specifying the exchange area or areas, for which the reclassification is requested;

(D) The proposed effective date of the reclassification;

(E) A statement detailing the method and content of the notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the electing ILEC's notice proposal is reasonable and that the electing ILEC's notice proposal complies with applicable law;

(F) A copy of the text of the notice, if any;

(G) A showing that the relevant standards required under subsection (d) or (e) of this section, whichever is applicable, have been satisfied for each exchange in the reclassification area;

(i) An estimate of the number and size of alternative facilities- based providers offering the service to be reclassified for each exchange in the reclassification area;

(ii) The total number and percentage of the electing ILEC's subscribers of the service in the reclassification area, for each exchange, measured by number of customers and access lines;

(iii) An estimate of the electing ILEC's market share for the service, for each exchange, measured by number of customers and access lines; and

(H) An explanation of how the reclassification of the service advances the public interest for each exchange in the reclassification area.

(g) Commission processing of application.

(1) Administrative review. An application considered under this section may be reviewed administratively unless the electing ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the electing ILEC. Six copies of all answers to such requests for information shall be filed with central records and one copy shall be provided the Office of Public Utility Counsel within ten days after receipt of the request by the electing ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the electing ILEC's application.

(2) Approval or denial of application. The application shall be approved by the presiding officer if the proposed reclassification complies with each requirement of this section. If, based on the administrative review, the presiding officer determines that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) Standards for docketing. The application may be docketed pursuant to the commission's Procedural Rules §22.33(b) of this title (relating to Tariff Filings).

(4) Review of the application after docketing. If the application is docketed, the deadline is automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

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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Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas

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



Subchapter A. General Provisions

16 TAC §26.7

The Public Utility Commission of Texas (commission) proposes new §26.7 relating to Local Exchange Company Assessment. The proposed section will replace §23.15 of this title (relating to Local Exchange Company Assessment). The proposed section sets out the calculation and payment of an annual assessment by each local exchange company subject to the commission's jurisdiction. Project Number 17709 has been assigned to this proceeding.

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

General changes to rule language:

The proposed new section reflects a different section designation due to the reorganization of the rules. Citations to Senate Bill 444 have been updated to reflect the current statute. In addition, the reference to January 6, 1988, the date reflecting the first date that assessments were due and payable, has been deleted. The *Texas Register* will publish this section as all new text. Persons who desire a copy of the proposed new section as it reflects changes to the existing section in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 17709.

Ms. Ericka Kelsaw, assistant general counsel, Office of Regulatory Affairs, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect, an estimated increase in revenue, follows the same principal as when this section was first proposed in 1988. There are no fiscal implications for local

government for the first five-year period the section will be in effect.

Ms. Kelsaw has determined that for each year of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the section will be the provision of funding to carry out the activities and services provided by the commission and referenced in Public Utility Regulatory Act §52.060 and §53.308. The proposed section relating to local exchange companies is not likely to have an additional effect on the costs to these utilities, as they have complied with §23.15 since 1988. The anticipated economic costs of complying with the proposed regulations are difficult to estimate and are likely to vary from utility to utility. The benefits of the rule exceed the costs.

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

Comments on the proposed new section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the §167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to Project Number 17709, §26.7 relating to (Local Exchange Company Assessment).

The new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §52.060 and §53.308, which grant the commission the authority to prescribe and collect fees or assessments from local exchange companies to recover the commission's and the Office of Public Utility Counsel's costs of activities and services carried out and referenced in §52.060 and §53.308.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 52.060, and 53.308.

§26.7. Local Exchange Company Assessment.

(a) Amount of assessment. Each local exchange company subject to the jurisdiction of the commission shall pay an annual per-access-line assessment. The commission shall establish the assessment rate annually according to projected Public Utility Commission and Office of Public Utility Counsel expenditures for the current fiscal year related to implementation of the provisions of the Public Utility Regulatory Act (PURA) §52.060 and §53.308, divided by total industry access lines. The assessment shall be based upon access lines in existence during the preceding calendar year.

(b) Notice of assessment. Each year the commission shall calculate the assessment due from each local exchange company and so advise each company. The commission shall also advise companies of the address to which payments should be made and any identification or markings necessary for the payment to be properly credited.

(c) Payment of assessment. All assessments required by this section shall be due and payable to the State of Texas on or before December 10th of each year.

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

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Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

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



Part IV. Texas Department of Licensing and Regulation

Chapter 62. Career Counseling Services

16 TAC §62.80

The Texas Department of Licensing and Regulation proposes amendments to §62.80 concerning the career counseling services fees. The amended section proposes raising the fees for an original certificate of authority to cover the cost of administration and enforcement of the career counseling services program. The department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are below the amount required by the department to cover costs.

Jimmy G. Martin, Manager of the Consumer Protection Section, Enforcement Division, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. State government revenue would increase approximately \$1,800 each year. There will be no effect on local government.

Mr. Martin also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced public welfare and consumer protection. There will be an economic effect on small businesses and persons who are required to comply with the section as proposed. The cost of compliance will be an additional \$75 for an initial certificate of authority and an additional \$75 for annual renewal.

Comments on the proposal may be submitted, in writing, to the Texas Department of Licensing and Regulation, Jimmy G. Martin, Manager, Consumer Protection Section, P. O. Box 12157, Austin, Texas 78711, or by facsimile (512) 475-2872, or by e-mail to jimmy.martin@license.state.tx.us. The deadline for comments will be two weeks from the date the proposed rules are published in the *Texas Register*.

The amended section is proposed under Texas Revised Civil Statutes Annotated, Article 5221a-8 (Vernon 1997) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Articles affected by the amended section are Texas Revised Civil Statutes, Article 5221a-8 (Vernon 1997) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

§62.80. Fees-Original Certificate of Authority

- (a) The fee for an initial certificate of authority is \$650 [~~\$575~~].
- (b) The annual fee for a renewal is \$650 [~~\$575~~].
- (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.

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TRD-9816221
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348



Chapter 63. Personnel Employment Services

16 TAC §63.80, §63.81

The Texas Department of Licensing and Regulation proposes amendments to §63.80 and §63.81 concerning the personnel employment services fee. The amended sections propose to decrease the fees for an initial certificate of authority and the annual renewal for a certificate of authority. The department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are above the amount required by the department to cover costs. The decrease would not adversely affect the administration or enforcement of the personnel employment services program.

Jimmy G. Martin, Manager of the Consumer Protection Section, Enforcement Division, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications for state government as a result of enforcing or administering the section. State government revenue would decrease approximately \$12,050 each year. There will be no effect on local government.

Mr. Martin also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be enhanced public welfare and consumer protection. There will be an economic effect on small businesses and persons who are required to comply with the sections as proposed. The cost of compliance will be a decrease of \$25 for an initial certificate of authority and a \$25 decrease of the annual renewal fee for a certificate of authority.

Comments on the proposal may be submitted, in writing, to the Texas Department of Licensing and Regulation, Jimmy G. Martin, Manager, Consumer Protection Section, P. O. Box 12157, Austin, Texas 78711, or by facsimile (512) 475-2872, or by e-mail at jimmy.martin@license.state.tx.us. The deadline for comments will be two weeks from the date the proposed rules are published in the *Texas Register*.

The amended sections are proposed under Texas Revised Civil Statutes Annotated, Article 5221a-7 (Vernon 1989) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Articles affected by the amended sections are Texas Revised Civil Statutes, Article 5221a-7 (Vernon 1989) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

§63.80. Fees-Original Certificate of Authority.

The fee for an initial certificate of authority is \$75 [~~\$100~~].

§63.81. Fees-Renewal Certificate of Authority.

(a) The annual fee for a renewal certificate of authority is \$75 [~~\$100~~].

(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.

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Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7348



Chapter 64. Employers of Certain Temporary Common Workers

16 TAC §64.80

The Texas Department of Licensing and Regulation proposes amendments to §64.80, concerning the employers of temporary common workers licensing fees. The amended section proposes to decrease the fees for an initial license and for a renewal license. The department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are above the amount required by the department to cover costs. The decrease would not adversely affect the administration or enforcement of the employers of temporary common workers program.

Jimmy G. Martin, Manager of the Consumer Protection Section, Enforcement Division, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. State government revenue would decrease approximately \$11,900 each year. There will be no effect on local government.

Mr. Martin also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced public welfare and consumer protection. There will be an economic effect on small businesses and persons who are required to comply with the section as proposed. The cost of compliance will be a decrease of \$125 for the initial license and a decrease of \$175 for a renewal license.

Comments on the proposal may be submitted, in writing, to the Texas Department of Licensing and Regulation, Jimmy G. Martin, Manager, Consumer Protection Section, P. O. Box 12157, Austin, Texas 78711, or by facsimile (512) 475-2872, or by e-mail at jimmy.martin@license.state.tx.us. The deadline for comments will be two weeks from the date the proposed rules are published in the *Texas Register*.

The amended section is proposed under the Texas Labor Code Annotated, Chapter 92 (Vernon 1995) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Code.

The Code and Article affected by the amended section are Texas Labor Code Annotated, Chapter 92 (Vernon 1995) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

§64.80. *Fees-License*

- (a) The fee for the initial license is \$550 [~~\$675~~].
- (b) The fee for a renewal license is \$550 [~~\$725~~].
- (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 October 16, 1998.

TRD-9816220

Rachelle A. Martin
Executive Director

Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 29, 1998
For further information, please call: (512) 463-7348



Chapter 70. Industrialized Housing and Buildings

16 TAC §70.80

The Texas Department of Licensing and Regulation proposes amendments to §70.80 concerning the industrialized housing and buildings fees. The amended sections propose to decrease the fees for a manufacturer's registration and an industrialized builder's registration. The department is required to structure fees for each statute to pay for its own regulation and the fees currently in place are above the amount required by the department to cover costs. The decrease would not adversely affect the administration or enforcement of the industrialized housing and buildings program.

Jimmy G. Martin, Manager of the Consumer Protection Section, Enforcement Division, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. State government revenue would decrease approximately \$24,000 each year. There will be no effect on local government.

Mr. Martin also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced public welfare and consumer protection. There will be an economic effect on small businesses and persons

who are required to comply with the section as proposed. The cost of compliance will be a decrease of \$250 for a manufacturer's registration and a decrease of \$125 for an industrialized builder's registration.

Comments on the proposal may be submitted, in writing, to the Texas Department of Licensing and Regulation, Jimmy G. Martin, Manager, Consumer Protection Section, P. O. Box 12157, Austin, Texas 78711, or by facsimile (512) 475-2872, or by e-mail at jimmy.martin@license.state.tx.us. The deadline for comments will be two weeks from the date the proposed rules are published in the *Texas Register*.

The amendments are proposed under Texas Revised Civil Statutes Annotated, Article 5221f-1 (Vernon 1989) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Article.

The Articles affected by the amendments are Texas Revised Civil Statutes, Article 5221f-1 (Vernon 1989) and Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991).

§70.80. *Commission Fees.*

- (a) The manufacturer's registration fee is \$750 [~~\$1,000~~].
- (b) The industrialized builder's registration fee is \$375 [~~\$500~~].
- (c)-(k) (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 October 16, 1998.

TRD-9816223

Rachelle A. Martin
Executive Director

Texas Department of Licensing and Regulation
Earliest possible date of adoption: November 29, 1998
For further information, please call: (512) 463-7348



Part VI. Texas Motor Vehicle Board

Chapter 103. General Rules

16 TAC §§103.1, 103.3, 103.4-103.8, 103.12, 103.13

The Texas Motor Vehicle Board of the Texas Department of Transportation proposes amendments to §§103.1, 103.3, 103.4-103.8, 103.12, and 103.13, General Rules, concerning licensing. The Texas Motor Vehicle Commission was renamed the Texas Motor Vehicle Board in 1992. The amendments change all references from "commission" to "Board" in §§103.3, 103.4, 103.5, 103.6, 103.8 and 103.12. Proposed amendments to §103.1 correct a typographical error and clarify how the Board licenses employees of corporate representative licensees. Amendments to §103.3 more clearly reflect the licensing process for dealers that sell and/or assign an interest in franchises or franchised entities and allow written notice to the Board of certain changes, instead of requiring an application for amended license. The amendment to §103.4 clarifies whether a protest is applicable to the purchase or transfer of

an existing dealership. The amendment to §103.5 defines the time restrictions on the filing of protests. The amendment to §103.7 clarifies that the rule is applicable to relocations of line-makes as well as to additions of line-makes. The amendments to §103.8 and §103.12 correct the statutory reference to renumbered Texas Motor Vehicle Commission Code §5.02(b)(3)(Tex. Rev. Civ. Stat., art. 4413(36)). The amendment to §103.13 requires that more than one line-make must be represented to qualify for approval as a motor home show.

Brett Bray, Director, Motor Vehicle Division, 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 will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

Mr. Bray also has determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of the amended rules will be to provide licensing guidelines that are more clear and understandable to the regulated entities. There will be no effect on small businesses. There is no anticipated additional cost to persons required to comply with these sections as proposed.

Comments on the proposed rules may be submitted to Brett Bray, Director, Motor Vehicle Division, P.O. Box 2293, Austin, Texas 78768. Please submit 15 copies. The Texas Motor Vehicle Board will consider the final adoption of the proposed rules at its meeting on January 14, 1999. The deadline for proposed amendments is 5:00 p.m., November 23, 1998.

The amendments are proposed under the Texas Motor Vehicle Commission Code, §3.06, which provides the Board with authority to adopt rules necessary and convenient to effectuate the provisions of this act.

Texas Motor Vehicle Commission Code §§1.03(31), 4.01(a), 4.02, 4.03, 5.04(a) are affected by the proposed amendments.

§103.1. Representative Defined.

(a) To effectuate the Texas Motor Vehicle Commission Code, §1.03, the Board construes the definition of the term "representative" to be sufficiently broad to include regional, zone, or district executive personnel whose area of responsibility includes Texas, and whose duties include contacting ~~contracting~~ motor vehicle dealers or dealership personnel, and every other person employed by a motor vehicle manufacturer, ~~or~~ distributor or converter, directly or indirectly, to call upon or contact motor vehicle dealers or dealership employees concerning new motor vehicle sales, advertising, service, parts, business management, used motor vehicle sales, and for any other purpose.

(b) The statutory definition is construed to not include office or clerical personnel, production personnel, etc., whose duties do not include contacting motor vehicle dealers or dealership employees.

(c) A "person" who meets the definition of representative can also be other than a natural person such as a corporation. Employees of an entity licensed as a representative that perform representative functions in the scope of their employment for the licensed representative are required to obtain a representative's license in their individual capacity, except for the president/chief executive officer of the corporation. A licensed representative may identify and perform representative functions for more than one manufacturer, distributor, or converter.

§103.3. Amended License.

(a) To effectuate the Texas Motor Vehicle Commission Code, §4.02(d), every licensed dealer who proposes to conduct business under a franchise which is additional to or which differs from the franchise or franchises on which the license is then based shall file an application to amend the license on the form prescribed by the Board ~~commission~~, attaching a copy of the franchise agreement. The amended application will be considered as if it were an original application to operate under the additional franchise as to all matters except those reflected by the license as issued.

(b) Every licensed dealer who proposes to sell and/or assign to another an interest in one or more franchises for which the license is issued, or an interest in the franchised entity, whether a corporation or otherwise, so long as the physical location of the franchise remains the same, shall notify the Board and the franchisor of the identity and ownership interest of the purchaser/assignee in writing. If the sale or assignment of the business results in the franchise(s) being held by an entity different from the existing licensee, then the purchasing/assignee entity must apply for and obtain a new license. [equivalent to 10% or more in one or more franchises on which the license is then based or an equivalent interest in the business of the dealership, whether the same is a corporation, partnership, sole proprietorship, or otherwise, shall file an application to amend the license providing the requested information as to the proposed assignee. If the interest involved exceeds 50%, the amended license may be issued in the name of such assignee.]

(c) In the event of a change in management reflected by a change of the general manager or other person who is in charge of a licensee's business activities, whether a managing partner, officer, or director of a corporation, or otherwise, the licensee shall notify the Board and the franchisor in writing with 10 days of the change. [commission shall be advised by means of an application for an amended license.]

§103.4. Notification of License Application; Protest Requirements.

(a) (No change.)

(b) The provisions of this section shall not be applicable to any application filed with the Board ~~commission~~ for a dealer license as a result of the purchase or transfer of an existing entity holding a current franchise license which does not involve any physical relocation of the purchased or transferred line-makes. [dealership.]

§103.5. Time for Filing Protest.

Notices of protest must be received in the Board's ~~commission's~~ offices in Austin not later than 5:00 p.m. on the date 15 days from the date of mailing of the Board's ~~commission's~~ notification to the licensees of the filing of the application. Any notice of protest received after such date shall be deemed not timely filed and shall not be considered by the Board ~~commission~~. A notice of protest may be filed by telegram, mailgram, telephonic document transfer, or other similar means of communication, provided that a notice of protest in conformance with §103.4(a)(1)-(3) of this title (relating to Notification of License Application; Protest Requirements) is filed with the Board ~~commission~~ not later than 5:00 p.m. on the date five days following the filing of the notice by telegram, mailgram, or telephonic document transfer, and is accompanied by the statutory protest filing fee. Failure to file a formal notice of protest within the specified time period shall result in the disallowance of the protest.

§103.6. Hearing.

Upon receipt of a notice of protest, timely filed in accordance with the provisions of §103.5 of this title (relating to Time for Filing Protest), the Board ~~commission~~ shall promptly set a public hearing for the taking of evidence and for the consideration of the matters set forth in the Texas Motor Vehicle Commission Code, §4.06(c).

§103.7. *Addition or Relocation of Line-Make.*

An application for the amendment of an existing new motor vehicle dealer's license by the addition of another line-make at the existing dealership or for the relocation of a line-make to the existing dealership shall be deemed to be an "application to establish a dealership" insofar as the line-make to be added is concerned, and shall be subject to the provisions of §§103.4-103.6 of this title (relating to Notification of License Application; Protest Requirements; Time for Filing Protest; and Hearing).

§103.8. *Replacement Dealership.*

An application for a new motor vehicle dealer's license for a dealership intended as a replacement for a previously existing dealership shall be deemed to be an application for "replacement dealership" required to be established pursuant to the code, §5.02(b)(3) [~~§5.02(3)~~], and shall not be subject to protest under the provisions of §103.4 of this title (relating to Notification of License Application; Protest Requirements), provided that:

(1) the application states that the applicant is intended as a replacement dealership and identifies the prior dealership to be replaced;

(2) the franchisor of the line-make vehicle to be sold shall have given notice to the Board [~~commission~~] and to its other dealers in the area within 60 days following the closing of the prior dealership, that it intends to replace the prior dealership;

(3) the application is filed with the Board [~~commission~~] not later than one year following the closing of the prior dealership; and

(4) the location of the applicant's proposed dealership is not greater than one mile from the location of the prior dealership.

§103.12. *Notice of Termination or Noncontinuance of Franchise and Time for Filing Protest.*

A notice of termination or [~~of~~] noncontinuance of a dealer's franchise shall be given by a manufacturer or distributor in accordance with the requirements of the Code, §5.02(b)(3) [~~§5.02(3)~~], not less than 60 days prior to the effective date thereof. A notice of protest of the franchise termination or noncontinuance by a dealer pursuant to §5.02(b)(3) [~~§5.02(3)~~] shall be in writing and shall be filed in the Board's [~~commissioner's~~] office in Austin, prior to the effective date of franchise termination or noncontinuance as stated in the notice from the manufacturer or distributor.

§103.13. *Motor Home Show Limitations and Restrictions.*

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

(d) There must be at least three dealers participating in the show, representing at least 3 different line-makes at the show, for the show to qualify for approval. Each participating new motor vehicle dealer must have a current, valid, Texas new motor vehicle dealer's license to sell the particular line of motor home to be shown.

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

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

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

TRD-9816151

Brett Bray

Director, Motor Vehicle Division

Texas Motor Vehicle Board

Proposed date of adoption: January 14, 1999

For further information, please call: (512) 416-4899

◆ ◆ ◆
TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 157. Hearings and Appeals

Subchapter B. Hearings Held Under the Texas Proprietary School Act

19 TAC §157.21

(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 Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Workforce Commission (Commission) proposes the repeal of 19 TAC §157.21, concerning Hearings Held under the Texas Proprietary School Act.

The purpose of the repeal is to remove an obsolete rule from the Texas Administrative Code.

The Proprietary School program was transferred to the Commission from the Texas Education Agency pursuant to the 74th Legislature, Regular Session, Chapter 655, §11.03. The Commission has adopted 40 TAC Chapter 823 regarding General Hearings as the procedure applicable to proprietary school hearings, which made the older Texas Education Agency rule, §157.21, obsolete.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the repeal will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the repeal;

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

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

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

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

John Moore, Assistant General Counsel, has determined that:

There is no anticipated adverse impact on small businesses as a result of enforcing or administering the repeal; and

For each year of the first five years that the repeal is in effect, the public benefit expected as a result of the adoption of the proposed repeal is to remove an obsolete rule from the Texas Administrative Code and clarify the applicable procedure for hearings on appeals regarding proprietary schools as defined in the Proprietary Schools Act contained in the Texas Education Code, Chapter 132.

Comments on the proposed repeal of the rule may be submitted to John Moore, Assistant General Counsel, Texas Workforce Commission, 101 East 15th Street, Room 614, Austin, Texas, 78778-0001; telephone number (512) 463-3041. Comments may also be submitted via facsimile to (512) 463-2220 or e-mail at john.moore@twc.state.tx.us. Comments must be received by the Commission no later than thirty days from the date this proposal is published in the *Texas Register*.

The repeal of the rule is proposed under Texas Labor Code, §301.061 and §302.021, which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the Commission's programs.

The proposal affects Texas Labor Code Title 4, and Texas Education Code, Chapter 132, relating to appeals regarding proprietary schools.

§157.21. *Hearings Held under the Texas Proprietary School Act.*

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

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

TRD-9815990

J. Randel (Jerry) Hill

General Counsel

Texas Education Agency

Earliest possible date of adoption: November 29, 1998

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



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Subchapter P. Surveillance and Control of Birth Defects

25 TAC §37.307

The Texas Department of Health (department) proposes an amendment to §37.307 concerning the Scientific Advisory Committee on Birth Defects in Texas (committee). The committee provides advice to the board in the area of implementing an effective birth defects registry and related research, referral, and educational activities.

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

In 1995, the board established a rule relating to the Scientific Advisory Committee on Birth Defects in Texas. The rule states that the committee will automatically be abolished on

March 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until March 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Government Code; to address appointments to the committee by the board rather than the commissioner; to require that the presiding officer and the assistant presiding officer of the committee will be selected by the chairman of the board for a term of two years; to allow a temporary vacancy in an office to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; and to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Martin Powel, Chief of Staff, Associateship for Disease Control and Prevention, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Powell also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Mark A. Canfield, Ph.D., Director, Texas Birth Defects Monitoring Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/458-7232. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§37.307. *Scientific Advisory Committee on Birth Defects in Texas.*

(a) The committee. The Scientific Advisory Committee on Birth Defects in Texas shall be appointed under and governed by this section.

(1) (No change.)

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

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

(c) (No change.)

(d) Tasks.

(1) (No change.)

(2) The committee shall:

(A) provide practical and scientific advice to the Texas Department of Health (department) in implementing an effective birth defects registry and related research through:

(i) (No change.)

(ii) review and advice to [advise] the department on all proposed projects and programs prior to and during implementation;

(B) (No change.)

(C) make recommendations to the department [~~of the legislature~~], as appropriate.

(3) (No change.)

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

(f) Composition. The committee shall be composed of 11 members appointed by the board.

(1) The composition of the committee shall include scientific experts in the field of birth defects, genetics, epidemiology, and medicine.

(A) Four members [~~At least one member~~] shall be from the general public.

(B) If the board implements a pilot birth defects registry in selected regions of the state, membership of the [~~scientific advisory~~] committee must include persons who work or live in the areas where the pilot birth defects registry activity is implemented.

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

~~[(2) The members of the committee shall be appointed by the commissioner.]~~

(g) (No change.)

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

(1) Each officer shall serve until February 27th of each odd-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board [the next regular election of officers].

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is

appointed [elected] to complete the unexpired portion of the term of the office of presiding officer.

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

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

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

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

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

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

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

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

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

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

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

(n) Statement by members.

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

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

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

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

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

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110 [Texas Civil Statutes, Article 6252-33], a committee member may receive reimbursement for the member's expenses incurred for each day the

member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

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

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 October 19, 1998.

TRD-9816340

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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



Chapter 61. Chronic Diseases

Subchapter A. Kidney Health Care Program

25 TAC §61.12

The Texas Department of Health (department) proposes an amendment to §61.12 concerning the Kidney Health Care Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of end-stage renal disease (ESRD) and on current state-of-the-art treatment modalities, medication therapies, and prioritization of the needs of ESRD patients in Texas.

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

In 1994, the board established a rule relating to the Kidney Health Care Advisory Council. The rule states that the committee will automatically be abolished on March 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until March 1, 2003.

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

for the committee and emphasize the advisory nature of the committee.

Phillip W. Walker, Chief, Bureau of Kidney Health Care, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Walker also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will be no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Phillip W. Walker, Chief, Bureau of Kidney Health Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/458-7796. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§61.12. *Kidney Health Care Advisory Committee.*

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

(1) (No change.)

(2) The committee is established under the [Texas] Health and Safety Code, [~~Chapter 11;~~] §11.016[~~;~~] which allows the [Texas] Board of Health (board) to establish advisory committees [~~the committee~~].

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

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

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

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include three [~~two~~] consumer representatives and six [~~seven~~] nonconsumer representatives.

(1) The six nonconsumer representatives shall be as follows:

(A) three physicians who are nephrologists or renal transplant surgeons; and

(B) three persons who are renal social workers, renal nurses, renal dietitians, dialysis technicians, renal administrators or pharmacists.

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

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

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

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

(1) Each officer shall serve until February 27th of each odd-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board [the next regular election of officers].

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed [elected] to complete the unexpired portion of the term of the office of presiding officer.

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

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

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

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

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

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

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

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

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

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

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

(n) Statement by members.

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

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

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

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

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each March [September]. It shall be signed by the presiding officer and appropriate department staff.

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

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

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 October 19, 1998.

TRD-9816341

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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



Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program Advisory Committee

25 TAC §98.121

The Texas Department of Health (department) proposes an amendment to §98.121 concerning the Texas HIV Medication Advisory Committee (committee). The committee provides assistance to the Texas Board of Health (board) and the department in the development of procedures and guidelines for the HIV Medication Program (program).

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

In 1995, the board established a rule relating to the Texas HIV Medication Advisory Council. The rule states that the committee will automatically be abolished on March 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until March 1, 2003.

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

Martin Powel, Chief of Staff, Associateship for Disease Control and Prevention, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

Mr. Powell also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the board and the department on the issues addressed by the advisory committee and clarification of the role and procedures of the committee. There will no effect on small businesses. There are no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Sharilyn K. Stanley, MD, Acting Chief, Bureau of HIV and STD Prevention, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/490-2505. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§98.121. Texas HIV Medication Advisory Committee.

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

(1) (No change.)

(2) The committee is established under the [Texas] Health and Safety Code, §85.066, which allows the [Texas] Board of Health (board) to establish an HIV medication [the] committee and Health and Safety Code, §11.016 which allows the board to establish advisory committees.

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

(c) (No change.)

(d) Tasks. The committee shall:

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

(5) develop criteria and standards for the program [HIV Medication Program]; and

(6) (No change.)

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

(f) Composition.

(1) The committee shall be composed of 11 members appointed as follows:

(A) [(4)] three [four] physicians actively engaged in the treatment of adults with HIV infection;

(B) [(2)] one pediatrician actively engaged in the treatment of infants and children with HIV infection;

(C) [(3)] four [three] persons [with AIDS] who must be diagnosed as HIV positive [having AIDS, ARC, or an HIV-related condition];

(D) [(4)] one member who is an administrator of a public, nonprofit hospital [two members representing public, nonprofit hospitals that are currently] involved in the delivery of services to persons with HIV infection;

(E) [(5)] one social worker currently working with persons with HIV infection; and

(F) one pharmacist who participates in the HIV Medication Program.

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

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

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of [four] members will expire on December 31st of each even-numbered year [31, 1996,

the terms of four members will expire on December 31, 1998, and the terms of three members will expire on December 31, 2000].

(2) (No change.)

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

(1) Each officer shall serve until February 27th of each odd-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board ~~[the next regular election of officers]~~.

(2) (No change.)

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is appointed ~~[elected]~~ to complete the unexpired portion of the term of the office of presiding officer.

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

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

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

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

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

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

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

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

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

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

(k) (No change.)

(l) Procedures. Robert's Rules of Order, Newly Revised ~~[(1990)]~~ shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

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

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

(5) (No change.)

(m) (No change.)

(n) Statements by members.

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

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

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

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

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each March ~~[October]~~. It shall be signed by the presiding officer and appropriate department staff.

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

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

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

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

Filed with the Office of the Secretary of State on October 19, 1998.

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Susan K. Steeg

General Counsel

Texas Department of Health

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



Chapter 101. Tobacco

25 TAC §101.3, §101.7

The Texas Department of Health (department) proposes an amendment to §101.3 and new §101.7 concerning general requirements for annual reports by manufacturers of tobacco products, and the security of proprietary tobacco information.

The department was required to adopt rules concerning the reporting of ingredients and nicotine content of cigarette and tobacco products by Chapter 1216 (House Bill 119) 75th Legislature 1997, Health and Safety Code Chapter 161, Subchapter N. These rules were adopted by the Texas Board of Health on May 15, 1998, and published in the May 29, 1998 issue of the *Texas Register* (23 TexReg 5687) as Title 25, Texas Administrative Code, Chapter 101, and became effective on June 4, 1998. In response to the concern of representatives of the tobacco industry, the department committed, in response to a comment on the proposed rules, to adopt a rule establishing the security and confidentiality of information submitted to the department which has not been determined to be open under the Texas Open Records Act. The comment and response were published in the May 29, 1998 issue of the *Texas Register* (23 TexReg 5691). Proposed new §101.7 fulfills that commitment.

The proposed amendment to §101.3 supplies an address to which the reports required of tobacco manufacturers will be mailed. The existing rule requires the first report on or after December 1, 1998 and sets no firm deadline for the report. The reporting date proposed to be on or before March 1, 1999 for the first report. This will give tobacco manufacturers additional time to prepare and file their annual report with the department. The reporting dates for cigar manufacturers will be the same as those for other tobacco manufacturers. The reference to §101.4 has been corrected.

Dr. Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control, has determined that for the first five-year period the new section and amendment 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.

Dr. Huang has also determined that for each year of the first five years the new section and amendment are in effect, the public benefit anticipated as a result of enforcing the sections will be increased assurance of security and convenience to the affected industry, a reduced chance that information they consider proprietary will be subjected to accidental disclosure, and increased compliance with the underlying policy of Health and Safety Code Chapter 161, Subchapter N. 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 may be submitted to Dr. Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7234. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendment and new section are proposed under Health and Safety Code §161.252, Chapter 161, Subchapter N, which requires the board to adopt rules on the disclosure of ingredients in cigarettes and tobacco products, and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

The amendment and new section affect the Health and Safety Code Chapter 161.

§101.3. General Requirements for Annual Reports by Manufacturers.

(a) On or before March 1, 1999 [after December 1, 1998 and every December 1 thereafter], the manufacturer of any cigarettes or tobacco product, excluding cigars, distributed in the state of Texas shall report to the department, in accordance with these regulations, the ingredients and nicotine yield rating of any such cigarette or tobacco product, excluding cigars. Subsequent reports shall be due on or before December 1, 1999 and every December 1 thereafter. Manufacturers of cigars shall report on the above dates in accordance with §101.4 of this title (relating to Ingredient Reporting Requirements) [§101.04]. The report should be sent to: Bureau Chief, Bureau of Chronic Disease Prevention and Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756.

(b) (No change.)

§101.7. Security of Report Information.

Information submitted to the department shall be kept in a locked cabinet or drawer, with the key to the cabinet or drawer in the possession of the Bureau Chief of the Bureau of Chronic Disease Prevention and Control. Only personnel necessary to implement the statute and rules shall have access to the material and a log for those accessing the information shall be maintained with the reports. The door to the room in which the material is kept shall be locked during non-business hours. All employees of the bureau shall sign a confidentiality statement emphasizing the law and their obligations to keep sensitive information confidential.

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

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Susan K. Steeg

General Counsel

Texas Department of Health

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



Chapter 117. End Stage Renal Disease Facilities

Texas Department of Health (department) proposes amendments to §§117.1 - 117.3, 117.32 - 117.34, 117.41, 117.43 - 117.45, 117.65, and 117.81; the repeal of §§117.11 - 117.16 and 117.82 - 117.85; and new §§117.11 - 117.17, 117.46, and 117.82-117.86 concerning the licensing of end stage renal disease (ESRD) facilities. The sections cover the general provisions; application and issuance of a license; minimum standards for design and space, equipment, water treatment, reuse, and sanitary and hygienic conditions; minimum standards for patient care and treatment; provisions for dialysis technicians; and corrective action plan and enforcement provisions.

The proposed sections represent the development of new language to address problems and areas of concern identified by the ESRD Task Force which was established in accordance with the General Appropriations Act, Rider 53, 1997. Rider 53 mandated the 12-member task force to review the implementation of ESRD facility licensing rules in order to identify problems and recommend changes; review survey outcomes and costs associated with administering the ESRD licensing program; and clarify the function of a licensed vocational nurse in an ESRD facility. Serving on the ESRD Task Force are two patient representatives and one representative from each of the following

constituencies: ESRD Network of Texas, Inc.; renal dietitians; registered nurses; physicians; social workers; licensed vocational nurses; ESRD facility administrators; mechanical technicians; patient care technicians; and the department.

Subchapter A, §§117.1 - 117.3, establishes the general provisions for ESRD facilities. Section 117.1 states the purpose of the rules. The amendment to §117.1 adds subsection (d) to clarify that a license is required for an ESRD facility which is not exempt from licensure under the Health and Safety Code, §251.012. Section 117.2 defines words and terms used throughout the rules. The definitions are numbered in compliance with *Texas Register* format requirements (1 TAC §91.1, effective February 17, 1998). New definitions are added for "administrator," "affiliate," "change of ownership," "corrective action plan," "health care facility," "hospital," "manager," "monitor," "notarized copy(ies)," "patient," "quality," "quality assurance," "quality management," and "working day." The definition of "applicant" was amended to clarify that this is the person in whose name the license is issued. The definitions of "licensed vocational nurse" and "registered nurse" were amended to specify the statutes under which these nurses are licensed. Section 117.3 clarifies the calculation of a renewal license fee and increases the change of ownership license fee for certain facilities from \$1,000 to \$1,500 and decreases the fee from \$2,000 to \$1,500 for other facilities. Currently, a new facility owner is required to pay a \$1,000 license fee if no survey is required prior to issuing a license to the new owner or a \$2,000 license fee if a survey is required. The amendment to the rule eliminates the \$1,000 and \$2,000 license fees and proposes a flat \$1,500 fee for all applications for a change of ownership regardless of the need for a survey. In 1997 and 1998, approximately 16 facilities per year filed for a change of ownership. Approximately one-half of these facilities required a survey prior to receiving a new license in the new owner's name.

New subchapter B, §§117.11 - 117.17, will replace existing §§117.11 - 117.16 and establishes the application procedures and provisions for issuance of a license. The sections were amended to provide clarity and consistency with requirements for other facilities licensed by the department. The following is a summary of changes.

New §117.11 contains language in existing §§117.11 and 117.12 while defining requirements for the various types of licenses issued by the department. This section contains provisions applicable to any applicant for any type of license.

New §117.12 concerning application and issuance of temporary initial license and first annual license contains language currently in §§117.11 and 117.12 to describe the requirements for applications for a temporary initial license and the first annual license. The new section requires additional information to be included on the license application to be consistent with requirements for other facilities licensed by the department and reorganizes the application requirements to clarify the steps of the review process.

New §117.13 concerning application and issuance of annual renewal license will replace existing §117.12 and retains much of the requirements in existing §117.12. Some of these requirements were reorganized to provide the reader with a better understanding of the renewal process and the department's expectations.

New §117.14 concerning change of ownership or services will replace existing §117.13 and was expanded to include

requirements for a change in services provided by a facility. For the purpose of this section, a change in service includes a facility closure; construction, renovation, or modification of a facility's physical plant; a change in a facility's telephone number or mailing address; an increase in the number of dialysis stations in a facility; and the provision of a new service (e.g., peritoneal dialysis). In addition, the new section contains requirements for the department in responding to a facility's request for an increase in dialysis stations or services.

New §117.15 concerning time periods for processing and issuing a license replaces existing §117.14. The text in the new section is unchanged from current §117.14.

New §117.16 concerning inspections will replace existing §117.15. The new section reorganizes existing inspection provisions; describes in more detail the department's expectations from a facility before and during an inspection; outlines the different types of inspections by the department; outlines in detail the inspection procedure and the department's evaluation of compliance; and provides a facility with procedures for challenging a deficiency cited by the department, including time frames imposed upon the department in responding to such a challenge.

New §117.17 covers optional plan review and inspection will replace existing 117.16. The text in the new section is unchanged from existing §117.16, except that the text in subsection (b) was changed for better readability.

Subchapter C, §§117.32 - 117.34, establishes the minimum standards for equipment, water treatment, reuse, and sanitary and hygienic conditions. The sections were amended as follows.

Section 117.32 covers the minimum standards for equipment. The amendment adds a requirement that all equipment be operated in conformance to manufacturer's specifications and a requirement that at least one back-up dialysis machine be completely operational during a facility's hours of treatment.

Section 117.33 covers the minimum standards for water treatment and reuse. The amendment clarifies that water treatment components that could effect the quality of the product water must not be located after the quality monitor sensing cell, and require the appointment of a medical director for a centralized reprocessing facility.

Section 117.34 covers the minimum standards for sanitary conditions and hygienic practices. The amendment clarifies provisions relating to the hepatitis B screening of patients. The amendments include new language applicable to a patient new to dialysis or returning to a facility after extended hospitalization or absence of 30 days or longer. The current provisions require patients to be screened for hepatitis B surface antigen (HBsAG) one month prior to or at the time of admission. New language in subsection (d)(2)(B)(i) allows for a facility to admit a patient who has a known anti-HBs status of at least 10 millinternational units per milliliter no more than 12 months prior to admission. New language in subsection (d)(2)(C)(iv) conforms to the new language in subsection (d)(2)(B)(i). This language recognizes the increase in provision of the hepatitis vaccine to dialysis patients and the resultant reduced need for hepatitis screening and is consistent with current federal Centers for Disease Control guidelines.

Subchapter D, §§117.41 and 117.43 - 117.46, establishes the minimum standards for patient care and treatment. The sections were amended as follows.

Section 117.41 covers minimum standards for quality assurance for patient care by establishing specific quality assurance system requirements for facilities. Currently, the department requires a facility to adopt, implement, and enforce a quality assurance program based on the May 8, 1996, edition of the Criteria and Standards, Dialysis Facility Quality Management Program as published by the ESRD Network of Texas, Inc. The ESRD Task Force and the department chose to incorporate the criteria and standards in the rules for the convenience of the renal community. The criteria and standards text in the rule was modified from the ESRD Network of Texas, Inc. document to conform to *Texas Register* form and style and to integrate with current rule requirements not included in the ESRD Network of Texas, Inc. document and with the organization of the section. Subsections (e) and (f) will be deleted and the language from these subsections was moved to new §117.46.

Section 117.43 covers minimum standards for the provision and coordination of treatment and services. The amendments add new language relating to patient rights; emergency preparedness; medication storage and administration; nursing services; medical services; temporary admissions; audits of billing; student health care professionals; and complaint resolution. The amendment to subsection (a) relating to patient rights provides for a patient's protection from abuse, neglect, or exploitation. The amendment to subsection (c) relating to emergency preparedness adds a requirement that each facility staff member be able to demonstrate their role or responsibility to implement the facility's disaster preparedness plan; for each facility to have an emergency lighting system which provides enough lighting to safely discontinue treatments and safe evacuation; to maintain and test battery pack systems quarterly; to post a phone number listing specific to the facility equipment and locale to assist staff in contacting mechanical and technical support in the event of an emergency; and to install, test, and maintain back-up generators (if used by a facility) in accordance with the National Fire Protection Association 110, Standard for Emergency Standby Power Systems. The amendment to subsection (c) relating to medication storage and administration allows a health care professional to receive a physician's verbal or telephone orders for the care or treatment provided by the health care professional (e.g., a dietitian may receive verbal orders for dietary services). The amendment to subsection (e) prohibits the charge nurse from being included in the staff to patient ratio during treatment of eight or more patients; reorganizes the subsection; and allows a registered nurse who is not the charge nurse to initiate the initial nursing assessment. The amendment to subsection (j) clarifies that physician visits must occur at the facility during a patient's treatment time; that home patients must be seen by a physician at the facility and what the record for these visits must reflect; and to specify the information which must accompany orders for peritoneal dialysis treatment. New subsection (l) provides for temporary admissions of patients who are normally treated in another local facility and describes the exchange of treatment information between the referring and receiving facilities. Current subsections (l) - (n) are renumbered as new subsections (m) - (o). New subsection (p) requires facilities to develop, implement, and enforce a policy for monitoring state or federal funds. New subsection (q) provides conditions under which student health care professionals may provide care in a facility. New subsection (r) requires a fa-

cility to adopt, implement, and enforce procedures for resolving complaints regarding facility care or services.

Section 117.44 covers minimum standards for qualifications of staff. The amendment adds new language to subsection (c) relating to nursing staff and to subsection (e) relating to social services staff and adds new subsection (f) relating to technical staff. The amendment to subsection (c) adds language to paragraph (3)(A) to allow licensed vocational nurses to obtain certification by a nationally recognized board to perform charge nurse responsibilities as a substitute for the two years experience as a charge nurse; and deletes paragraph (3)(D) relating to the expiration of the paragraph. The amendment to subsection (e) adds one year of experience in social services to the existing qualifications of a social worker. New subsection (f) describes the required qualifications for all technical staff, technical supervisory staff, water treatment staff, equipment maintenance and repair staff, and reprocessing staff.

Section 117.45 covers minimum standards for clinical records. The amendment reorganizes subsection (e) into paragraphs (1) - (6); clarifies that a facility must obtain and include the information listed in paragraphs (1) - (6) prior to dialyzing a transient patient; adds a requirement for a list of medications and allergies; clarifies that laboratory reports must include screening for hepatitis status (not just antigen status); and clarifies that the treatment records provided must be the most current.

New §117.46 concerning reports to the director contains the deleted language in §117.41(e) and (f); changes the time frame for reporting certain occurrences from three working days to ten working days; and requires the use of a department form to report such occurrences.

Subchapter E, §§117.61- 117.65, establishes the minimum standards for dialysis technicians. Section 117.65 was amended to prohibit a dialysis technician from discontinuing dialysis via a central catheter, manipulating a central catheter, or performing dressing changes for a central catheter. The amendment to subsection (b)(4) was deleted to allow a dialysis technician to perform non-access site venipuncture.

Subchapter F, §§117.81 - 117.86 establishes enforcement provisions. Section 117.81 concerning corrective action plans was amended to add language to conform to new §§117.82 and 117.83.

New §117.82 - 117.86 is a reorganization of existing §§117.82 - 117.85. New §117.82 concerning voluntary appointment of a temporary manager contains the provisions in existing §117.82(a). New §117.83 concerning involuntary appointment of a temporary manager contains the provisions in existing §117.82(b). New §117.84 concerning disciplinary action contains the provisions in existing §117.83. New §117.85 concerning administrative penalties contains the provisions in existing §117.85. New §117.86 concerning recovery of costs contains the provisions in current §117.85.

Bernie Underwood, Chief of Staff, Health Care Quality and Standards, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state government as a result of enforcing or administering the sections as proposed. The department will experience an increase in revenue of \$500 per facility from facilities that do not receive an inspection, and a decrease in revenue of \$500 per facility from facilities that do receive an

inspection, resulting in a net zero impact to revenue. There will be no fiscal implications to local government.

Ms. Underwood has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be more specific screening of a patient's hepatitis B status; specified criteria and standards relating to quality assurance for patient care; greater protection of a patient's right from abuse, neglect, or exploitation; better nursing care during treatment of eight or more patients; and specific qualifications and competency requirements for technical staff. The anticipated economic costs to persons required to comply with the sections will be the costs to new owners of facilities not requiring a survey prior to the issuance of the new license and to facilities which, during any treatment time, have eight or more patients on dialysis and the charge nurse is counted in the staff-to-patient ratio. The change of ownership fee increase will impose an additional \$500 to approximately eight new owners each year. The effect the proposed rules have on the staff-to-patient ratio will depend on whether a facility currently includes the charge nurse in the ratio; such a decision is facility-specific. The department anticipates the increased cost to facilities will range from 5% to 25%. A reduction in staffing costs will occur for some facilities due to the proposed change in the qualifications for a charge nurse. The department believes that the public benefit for the change outweighs the additional costs incurred to facilities affected by the proposed rules. The effect to large or small businesses is the same as the effect to persons required to comply with the proposed rules. The change in the staff-to-patient ratio during treatment of eight or more patients may have a positive impact on local employment. Because the impact depends on current policies or practices of each facility and the location of the facility, the department is unable to determine the extent of the impact.

Comments on the proposal may be submitted in writing by mail to Nora Saldivar, M.S., M.T. (ASCP), Interim Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, or by fax at 512-834-4514. Comments will be accepted for 30 days following publication in the *Texas Register*. A public hearing on the proposal is scheduled for November 18, 1998, at 10:00 a.m., Texas Department of Human Services, Region 7, Building 2, Room 353, 7901 Cameron Road, Austin, Texas.

Subchapter A. General Provisions

25 TAC §§117.1-117.3

The amendments are proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 251.

§117.1. Purpose.

(a) The purpose of this chapter is to implement the Health and Safety Code, Chapter 251, which requires an end stage renal disease facility providing routine, repetitive, outpatient dialysis [facilities] to be licensed by the Texas Department of Health.

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

(d) Except as provided by the Health and Safety Code, §251.012, a person may not operate an end stage renal disease facility without a license issued under this chapter.

§117.2. Definitions.

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

(1) Advanced practice nurse - A registered nurse approved by the Board of Nurse Examiners for the State of Texas to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist.

(2) Administrator - A person who is delegated the responsibility for the implementation and proper application of policies, programs, and services established for the end stage renal disease facility.

(3) Affiliate - An applicant or owner which is:

(A) a corporation - includes each officer, consultant, stockholder with a direct ownership of at least 5.0%, subsidiary, and parent company;

(B) a limited liability company - includes each officer, member, and parent company;

(C) an individual - includes:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, consultant, or stockholder with a direct ownership of at least 5.0%;

(D) a partnership - includes each partner and any parent company; and

(E) a group of co-owners under any other business arrangement - includes each officer, consultant, or the equivalent under the specific business arrangement and each parent company.

(4) Applicant - The owner of an end stage renal disease facility which is applying for a license under the statute. This is the person in whose name the license is issued.

(5) Board - The Texas Board of Health.

(6) Change of ownership - A sole proprietor who transfers all or part of the facility's ownership to another person or persons; the removal, addition, or substitution of a person or persons as a partner in a facility owned by a partnership; or a corporate sale, transfer, reorganization, or merger of the corporation which owns the facility if sale, transfer, reorganization, or merger causes a change in the facility's ownership to another person or persons.

(7) Charge nurse - A person who has the qualifications described in §117.44(c)(2) and (3) of this title (relating to Qualifications of Staff).

(8) Chief technician - The facility-based supervisor of the facility's mechanical, reuse and water treatment systems.

(9) Commissioner - The commissioner of health.

(10) Competency - The demonstrated ability to carry out specified tasks or activities with reasonable skill and safety that adheres to the prevailing standard of practice.

(11) Core staff members - The facility's medical director, supervising nurse, dietitian, social worker, administrator, and chief technician.

(12) Corrective action plan - A written strategy for correcting a licensing violation. The corrective action plan is developed by the facility and addresses the system(s) operation(s) of the facility as the system(s) operation(s) applies to the deficiency.

(13) Delegation - The transfer to a qualified and properly trained individual of the authority to perform a selected task or activity in a selected situation.

(14) Department - The Texas Department of Health.

(15) Dialysis - A process by which dissolved substances are removed from a patient's body by diffusion, osmosis and convection (ultrafiltration) from one fluid compartment to another across a semipermeable membrane.

(16) Dialysis technician - An individual who is not a registered nurse or physician and who provides dialysis care under the direct supervision of a registered nurse or physician. If unlicensed, this individual may also be known as a patient care technician.

(17) Dietitian - A person who is currently licensed under the laws of this state to use the title of licensed dietitian, is eligible to be a registered dietitian, and has one year of experience in clinical dietetics after becoming eligible to be a registered dietitian.

(18) Director - The director of the Health Facility Licensing Division of the department or his or her designee.

(19) End stage renal disease - That stage of renal impairment that appears irreversible and permanent and that requires a regular course of dialysis or kidney transplantation to maintain life.

(20) End stage renal disease facility - A facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease.

(21) Full-time - The time period established by a facility as a full working week, as defined and specified in the facility's policies and procedures.

(22) Full-time equivalent - Work time equivalent to 2,080 hours per 12 consecutive months.

(23) Health care facility - Any type of facility or home and community support services agency licensed to provide health care in any state or is certified for Medicare (Title XVIII) or Medicaid (Title XIX) participation in any state.

(24) Hospital - A facility that is licensed under the Texas Hospital Licensing Law, Health and Safety Code, Chapter 241, or if exempt from licensure, certified by the United States Department of Health and Human Services as in compliance with conditions of participation for hospitals in Title XVIII, Social Security Act (42 United States Code, §1395 et. seq.).

(25) Interdisciplinary team - A group composed of the patient and the primary physician, the registered nurse, the dietitian

and the social worker who are responsible for planning care for the patient.

(26) Intermediate level disinfection - A surface treatment using chemical germicides or disinfectants which are capable of inactivating various classes of microorganisms including, but not limited to, viruses (primarily medium to large viruses and lipid-containing viruses), fungi, and actively growing bacteria (including tubercle bacteria) when such chemical germicides or disinfectants are used in accordance with the manufacturer's instructions or per established guidelines. Intermediate level disinfection is generally not effective in inactivating or eliminating bacterial endospores. Examples of intermediate level disinfectants include bleach, 70-90% ethanol or isopropanol, and certain phenolic or iodophor preparations.

(27) Inspection - An investigation or survey conducted by a representative of the department to determine if an applicant or licensee is in compliance with this chapter.

(28) Licensed nurse - A registered nurse or licensed vocational nurse.

(29) Licensed vocational nurse (LVN) - A person who is currently licensed under Texas Civil Statutes, Article 4528c [the laws of this state] to use the title licensed vocational nurse and who may provide dialysis treatment after meeting the competency requirements specified for dialysis technicians.

(30) Manager - An individual approved or selected by the department who assumes overall management of an end stage renal disease facility to ensure adequate and safe services are provided to patients.

(31) Medical director - A physician who:

(A) is board eligible or board certified in nephrology or pediatric nephrology by a professional board; or

(B) during the five-year period prior to September 1, 1996, has served for at least 12 months as director of a dialysis program.

(32) Medical review board - A medical review board that is appointed by a renal disease network organization which includes this state, with the network having a contract with the Health Care Financing Administration of the United States Department of Health and Human Services under 42 United States Code §1395rr.

(33) Monitor - An individual approved or selected by the department who observes, supervises, consults, and educates a facility to correct identified violations of the statute or this chapter.

(34) Notarized copy(ies)- A sworn affidavit stating that attached copy(ies) is a true and correct copy(ies) of the original documents.

(35) Owner - One of the following which holds or will hold a license issued under the statute in the person's name or the person's assumed name:

(A) a corporation;

(B) a limited liability company;

(C) an individual;

(D) a partnership if a partnership name is stated in a written partnership agreement or an assumed name certificate;

(E) all partners in a partnership if a partnership name is not stated in a written partnership agreement or an assumed name certificate; or

(F) all co-owners under any other business arrangement.

(36) Patient - An individual receiving dialysis treatment or training from an end stage renal disease facility.

(37) Patient care plan - A written document prepared by the interdisciplinary team for a patient receiving end stage renal disease services.

(38) Pediatric patient - An individual 18 years of age or younger under the care of a facility.

(39) Person - An individual, corporation, or other legal entity.

(40) Physician - An individual who is licensed to practice medicine under the Medical Practice Act, Texas Civil Statutes, Article 4495b.

(41) Physician assistant - A person who is licensed as a physician assistant under the Physician Assistant Licensing Act, Texas Civil Statutes, Article 4495b-1.

(42) Presurvey conference - A conference held with department staff and the applicant or his or her representatives to review licensure standards and survey documents and provide consultation prior to the on-site licensure inspection. The applicant's representatives shall include an individual who will be responsible for the day-to-day supervision of care by the facility.

(43) Product water - The effluent water from the last component of the facility's water treatment system.

(44) Progress note - A dated and signed written notation by a facility staff member summarizing facts about care and a patient's response during a given period of time.

(45) Quality - The degree to which health services for individuals and populations increase the likelihood of desired outcomes that are consistent with current professional knowledge.

(46) Quality assurance - An ongoing, objective, and systematic process of monitoring, evaluating, and improving the quality, appropriateness, and effectiveness of care. The term includes the quality management and quality improvement processes.

(47) Quality management - A management philosophy used to plan and achieve desired processes and outcomes based upon a quality plan, which establishes quality objectives and the means to achieve; quality control, which is a process to evaluate actual performance against expected performance; and quality improvement, which is a process to identify, plan, and implement change for improvement.

(48) Registered nurse (RN) - A person who is currently licensed under the Nursing Practice Act, Texas Civil Statutes, Article 4513 et seq. [the laws of this state] as a registered nurse.

(49) Social worker - A person who:

(A) is currently licensed as a social worker under the Human Resources Code, Chapter 50, and holds a masters degree from a graduate school of social work accredited by the Council on Social Work Education; or

(B) has worked for at least two years as a social worker, one year of which was in a dialysis facility or transplantation program prior to September 1, 1976, and has established a consultative relationship with a social worker who has a masters degree from a graduate school of social work accredited by the Council on Social Work Education.

(50) Supervising nurse (also may be known as the director of nursing) - An RN who:

(A) has at least 18 months experience as an RN, which includes at least 12 months experience in dialysis which has been obtained within the last 24 months; or

(B) has at least 18 months experience as an RN and holds a current certification from a nationally recognized board in nephrology nursing or hemodialysis.

(51) Supervision - Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity. Immediate supervision means the supervisor is actually observing the task or activity as it is performed. Direct supervision means the supervisor is on the premises but not necessarily immediately physically present where the task or activity is being performed. Indirect supervision means the supervisor is not on the premises but is accessible by two-way communication and able to respond to an inquiry when made, and is readily available for consultation.

(52) Statute - The Health and Safety Code, Chapter 251.

(53) Training - The learning of tasks through on-the-job experience or instruction by an individual who has the capacity through education or experience to perform the task or activity to be delegated.

(54) Working day - Any day of the calendar week excluding Saturday or Sunday.

§117.3. Licensing Fees.

(a) The schedule of fees for licensure of a facility is as follows:

(1) (No change.)

(2) renewal license fee -

(A) if the total number of treatments during the preceding 12 months multiplied by \$.25 is less than or equal to \$1,000, then the license fee is \$1,000;

(B) if the total number of treatments for the preceding 12 months multiplied by \$.25 is greater than \$1,000 and less than \$2,500, then the license fee is the number of treatments multiplied by \$.25; or

(C) if the total number of treatments for the preceding 12 months multiplied by \$.25 is greater than or equal to \$2,500, then the license fee is \$2,500 [\$.25 per treatment, with a minimum renewal fee of \$1,000 and a maximum renewal fee of \$2,500]; and

(3) change of ownership license fee - \$1,500.

~~{(A) \$1,000 if the inspections described in §117.11(h) of this title (relating to Application and Issuance of Temporary Initial License) and §117.12(a) of this title (relating to Issuance and Renewal of Annual License) are waived by the Texas Department of Health (department); or}~~

~~{(B) \$2,000 if the department conducts the inspections described in §117.11(h) of this title (relating to Application and Issuance of Temporary Initial License) and §117.12(a) of this title (relating to Issuance and Renewal of Annual License).}~~

(b)-(e) (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 October 19, 1998.

TRD-9816346

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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



Subchapter B. Application and Issuance of a License

25 TAC §§117.11-117.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of 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, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 251.

§117.11. Application and Issuance of Temporary Initial License.

§117.12. Issuance and Renewal of Annual License.

§117.13. Change of Ownership.

§117.14. Time Periods for Processing and Issuing a License.

§117.15. Inspections.

§117.16. Optional Plan Review and Inspection.

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 October 19, 1998.

TRD-9816347

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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



25 TAC §§117.11-117.17

The new sections are proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board)

with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect the Health and Safety Code, Chapter 251.

§117.11. General Requirements for a License.

(a) Purpose. This subchapter establishes the application procedures that a person must follow to obtain a license to operate an end stage renal disease facility (facility) in Texas.

(b) Definitions. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.

(1) Temporary initial license - The license which is issued by the Texas Department of Health (department) to a first-time applicant for a facility license that meets the requirements of the statute and this chapter and has successfully completed the application procedures for a temporary initial license as described in §117.12 of this title (relating to Application and Issuance of Temporary Initial License and First Annual License). This term includes a licensed facility for which a change of ownership or a facility relocation is anticipated. The temporary initial license expires on the earlier of:

(A) the date the department issues or denies the first annual license; or

(B) the date six months after the date the temporary initial license was issued.

(2) First annual license - A license issued by the department which supersedes the temporary initial license and will expire 12 months from the date of issuance of the temporary initial license. This license is issued to the holder of a temporary initial license that demonstrates continuing compliance with the requirements of the statute and this chapter during the initial on-site inspection described in §117.16(b) of this title (relating to Inspections).

(3) Annual renewal license - A license issued annually by the department for the second and subsequent years of licensure to a licensed facility that continues to meet the requirements of the statute and this chapter and has completed the application procedures for obtaining an annual renewal license as described in §117.13 of this title (relating to Application and Issuance of Annual Renewal License).

(c) Requirements. An applicant for a facility license must meet the requirements in this subsection.

(1) The facility shall not materially alter any license issued by the department.

(2) If the applicant for a license is an individual, the applicant must be at least 18 years of age.

(3) A facility is required to apply for a separate license for each place of business.

(A) A license is issued to the applicant to operate a facility at the physical location listed on the license application. A change in the physical location of a facility requires the submission of an application and related fee and the issuance of a temporary initial license for the new location.

(B) The facility location must be in Texas.

(4) A facility may not admit a patient for dialysis treatment until it has received a temporary initial license.

(5) The licensee of the facility is responsible for ensuring the facility's compliance with the statute and this chapter.

(6) A facility license shall be renewed annually.

(7) A facility shall prominently and conspicuously post the license issued under the statute for display in a public area of the facility that is readily accessible to patients, employees, and visitors.

(8) A facility license may not be transferred or assigned from one person to another person.

(9) A facility shall have the financial ability to carry out its functions under the statute and this chapter.

§117.12. Application and Issuance of Temporary Initial License and First Annual License.

(a) Application procedures. This section establishes the application procedures for obtaining a temporary initial license. All first-time applications for a license are applications for a temporary initial license. The application for a temporary initial license is also an application for the first annual license issued under the requirements in §117.13 of this title (relating to Application and Issuance of Annual Renewal License).

(b) Request for an application. Upon written request, the Texas Department of Health (department) shall furnish a person with an application packet and a copy of the statute and this chapter.

(c) Application requirements. The applicant shall submit the information listed in paragraph (3) of this subsection to the department within six months from the date the department mails the application packet to the applicant.

(1) If the department does not receive the information listed in paragraph (3) of this subsection to the within six months from the mailing date, the applicant must request a new application packet.

(2) An applicant shall not misstate a material fact on any documents required to be submitted under this section.

(3) The following items shall be submitted with the original application form and shall be originals or notarized copies:

(A) an accurate and complete application which contains original signatures;

(B) the initial license fee;

(C) information on the applicant including name, street address, mailing address, social security number or franchise tax identification number, date of birth, and driver's license number;

(D) the name, mailing address, and street address of the facility. The address provided on the application must be the address from which the facility will be operating and providing services;

(E) the telephone number of the facility, the telephone number where the administrator can usually be reached when the facility is closed, and if the facility has a fax machine, the fax number;

(F) a list of names and business addresses of all persons who own any percentage interest in the applicant including:

(i) each limited partner and general partner if the applicant is a partnership; and

(ii) each shareholder, member, director, and officer if the applicant is a corporation, limited liability company or other business entity;

(G) a list of any businesses with which the applicant subcontracts and in which the persons listed under subparagraph (F) of this paragraph hold any percentage of the ownership;

(H) if the applicant has held or holds a facility license or has been or is an affiliate of another licensed facility, the relationship, including the name and current or last address of the other facility and the date such relationship commenced and, if applicable, the date it was terminated;

(I) if the facility is operated by or proposed to be operated under a management contract, the names and addresses of any person and organization having an ownership interest of any percentage in the management company;

(J) a list of management and supervisory personnel, and a job description for each administrative and supervisory position;

(K) a notarized statement attesting that the applicant is capable of meeting the requirements of this chapter;

(L) a notarized attestation that each dialysis technician on staff has completed the training and competency evaluation programs. This attestation may be consolidated with the attestation described in subparagraph (K) of this paragraph;

(M) a written plan for the orderly transfer of care of the applicant's patients and clinical records if the applicant is unable to maintain services under the license;

(N) a copy of an approved fire safety inspection report from the local fire authority in whose jurisdiction the facility is based that is dated no earlier than 12 months prior to the date of the application;

(O) an organizational structure of the staffing for the facility;

(P) if an applicant is a corporation, a current letter from the state comptroller's office stating the corporation is in good standing or a notarized certification that the tax owed to the state under the Tax Code, Chapter 171, is not delinquent or that the corporation is exempt from the payment of the tax and is not subject to the Tax Code, Chapter 171;

(Q) the organizational structure of the applicant which includes written full disclosure of the names and addresses of all owners and persons controlling any ownership interest in the facility. In the case of corporations, holding companies, partnerships, and similar organizations, the names and addresses of officers, directors, and stockholders, both beneficial and of record, when holding any percent, shall be disclosed;

(R) the name(s) and credentials of:

(i) the medical director or at least one physician on staff at the facility who is qualified to serve as the medical director;

(ii) the license number(s) of the physician(s); and

(iii) if applicable, all physician assistants and advanced practice nurses who will provide services at the facility;

(S) the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(i) denial, suspension, or revocation of an end stage renal disease facility license in any state; a license for any health care facility or a license for a home and community support services agency (agency) in any state; or any other enforcement action, such as (but not limited to) civil or criminal court action in any state;

(ii) denial, suspension, or revocation of or other enforcement action against a facility license in any state, a license for any health care facility in any state, or a license for an agency in any state which is or was proposed by the licensing agency and the status of the proposal;

(iii) surrender of a license before expiration of the license or allowing a license to expire in lieu of the department proceeding with enforcement action;

(iv) federal or state (any state) criminal felony arrests or convictions;

(v) federal or state Medicaid or Medicare sanctions or penalties relating to the operation of a health care facility or agency;

(vi) operation of a health care facility or agency that has been decertified or terminated from participation in any state under Medicare or Medicaid; or

(vii) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid; and

(T) for the two-year period preceding the application date, the following data concerning the applicant, the applicant's affiliates, and the managers of the applicant:

(i) federal or state (any state) criminal misdemeanor arrests or convictions;

(ii) federal or state (any state) tax liens;

(iii) unsatisfied final judgement(s);

(iv) eviction involving any property or space used as a facility or health care facility in any state;

(v) injunctive orders from any court; or

(vi) unresolved final federal or state (any state) Medicare or Medicaid audit exceptions.

(4) The applicant shall retain a copy of all documentation that is submitted to the department.

(d) Application processing. Upon receipt of the application, including the required documentation described in paragraph (2) of this subsection and the initial license fee from the applicant, the department shall review the material to determine whether it is complete and correct.

(1) The time periods for processing an application shall be in accordance with §117.15 of this title (relating to Time Periods for Processing and Issuing a License).

(2) If a facility receives a notice from the department that some or all of the information required under subsection (c)(3) of this section is deficient, the facility shall submit the required information no later than six months from the date of the notice.

(A) A facility which fails to submit the required information within six months from the notice date is considered to have withdrawn its application for a temporary initial license. The license fee will not be refunded.

(B) A facility which has withdrawn its application must reapply for a license in accordance with this section, if it wishes to continue the application process. A new license fee is required.

(e) Issuance of a temporary initial license.

(1) Presurvey conference. Once the department has determined that the application form, the information required to accompany the application form, and the initial license fee are complete and correct, the department shall schedule a presurvey conference with the applicant in order to inform the applicant or his or her designee of the licensing standards for the facility. The presurvey conference will be held at the office designated by the department. All applicants are required to attend a presurvey conference unless the designated survey office waives the requirement.

(2) Design and space inspection. The department shall conduct the design and space inspection described in §117.16(b)(1) of this title (relating to Inspections) prior to issuance of the temporary initial license, unless the department waives the requirement.

(3) Issuance of license. After completion of the presurvey conference and the design and space inspection described in paragraph (2) of this subsection, the department:

(A) will issue a temporary initial license; or

(B) may deny the temporary initial license if the facility does not meet the requirements described in this section. The procedures for denying a temporary initial license shall be in accordance with §117.84 of this title (relating to Disciplinary Action).

(f) Compliance required. Continuing compliance with the statute and this chapter is required during the temporary initial license period in order for a first annual license to be issued.

(g) Withdrawal from the application process. An applicant may withdraw its application for a temporary initial license at any time.

(1) An applicant who decides to withdraw its application for a temporary initial license during the application review process, shall submit to the department its written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(2) An applicant who decides to withdraw its application after the department issues the temporary initial license shall return the license certificate to the department with a written request to withdraw. The department shall acknowledge receipt of the request to withdraw. The license fee will not be refunded.

(h) Issuance of first annual license. The department shall issue a first annual license to a facility if, after inspection and investigation during the temporary initial license period, it finds the applicant meets the requirements of this chapter. An inspection for the purposes of issuing a first annual license shall be completed in accordance with §117.16(c) of this title. The first annual license supersedes the temporary initial license and shall expire one year from the date of issuance of the temporary initial license.

(1) If the temporary initial license is issued on the first day of a month, the first annual license expires on the last day of the preceding month of the next year.

(2) If the temporary initial license is issued on the second or any subsequent day of a month, the first annual license expires on the last day of the month of issuance of the next year.

(i) Noncompliance. The department may propose to deny the first annual license if, after inspection and investigation during the

temporary license period, the department determines that the facility does not comply with the requirements of the statute or this chapter. Denial of a first annual license shall be in accordance with §117.84 of this title.

§117.13. Application and Issuance of Annual Renewal License.

(a) The Texas Department of Health (department) shall send notice of expiration to an end stage renal disease facility (facility) 60 working days before the expiration date of a first annual or an annual renewal license. If the facility has not received notice of expiration from the department 45 calendar days prior to the expiration date, it is the duty of the facility to notify the department and request a renewal application for a license.

(b) A licensee shall make timely and sufficient application for annual renewal of a license.

(1) The licensee shall submit the following items to the department postmarked no later than 30 calendar days prior to the expiration date of the license:

(A) an accurate and complete renewal application form which contains original signatures;

(B) current, updated documents containing all the information required in §117.12(c)(3) of this title (relating to Application and Issuance of Temporary Initial License and First Annual License);

(C) the renewal license fee; and

(D) verification that the facility submitted the annual report required by §117.42 of this title (relating to Indicators of Quality of Care).

(2) A facility is considered to have made timely and sufficient application for annual renewal of a license if the department receives the information required in this subsection prior to the expiration date of the license. If a facility makes timely and sufficient application for annual renewal of a license, the license will not expire until the department issues the annual renewal license or until the department denies renewal of the license.

(c) A facility shall not misstate a material fact on any documents required to be submitted to the department or required to be maintained by the facility.

(d) At the discretion of the department, an on-site inspection may be conducted for renewal of a license in accordance with §117.16(c) of this title (relating to Inspections).

(e) The department shall issue an annual renewal license to a licensee who meets the minimum standards for a license in accordance with the provisions of the statute and this chapter.

(f) The department may propose to deny the issuance of an annual renewal license if:

(1) based on the inspection report, the department determines that the facility does not meet or is in violation of any provision of the statute or this chapter;

(2) renewal is prohibited by the Texas Education Code, §57.491 relating to defaults on guaranteed student loans; or

(3) a facility discloses any of the information in §117.12(c)(3)(S) and (T) of this title.

(g) If a licensee makes a timely application for renewal of a license, and action to revoke, suspend, or deny renewal of the license is pending, the license does not expire but does extend until the application for renewal is granted or denied after the opportunity for

a formal hearing. A renewal license will not be issued unless the department has determined the reason for the proposed action no longer exists.

(h) A facility that fails to make timely and sufficient application for annual renewal of a license must cease operation upon expiration of the facility's license.

(1) The department will notify a licensee that fails to timely renew a license that the facility must cease operation upon expiration of the license.

(2) In order to resume operations, the facility must apply for a new temporary initial license in accordance with §117.12 of this title.

(3) If a licensee fails to timely renew his or her license on or after August 1, 1990, because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the licensee may renew the license pursuant to this paragraph.

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

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

(C) A copy of the official orders or other official military documentation showing that the licensee is or was on active military duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(D) A copy of the power of attorney from the licensee shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this section.

(E) A licensee renewing under this paragraph shall pay the applicable renewal fee.

(F) A licensee is not authorized to operate the facility for which the license was obtained after the expiration of the license unless and until the licensee actually renews the license.

(G) This paragraph applies to a licensee who is a sole practitioner or a partnership with only individuals as partners where all of the partners were on active duty with the armed forces of the United States serving outside the State of Texas.

(i) If a suspension of a license overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this section; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(j) If the department revokes or does not renew a license, a person may apply for a temporary initial license by complying with the requirements of the statute and this chapter at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(k) Upon revocation or nonrenewal, a license holder shall return the original license certificate to the department.

(l) The procedures for revocation, suspension, or denial of a license shall be in accordance with §117.84 of this title (relating to Disciplinary Action).

§117.14. Change of Ownership or Services.

(a) Change of ownership. The following provisions apply to change of ownership of an end stage renal disease facility (facility) and affect the condition of a license.

(1) A licensee shall not transfer or assign its license from one person to another person.

(2) The sale of stock of a corporate licensee does not cause this section to apply.

(3) The provisions of this section are in addition to applicable federal law or regulation relating to change of ownership or control.

(4) A person who desires to receive a license in its name for a facility licensed under the name of another person or to change the ownership of any facility shall submit a license application and the change of ownership license fee at least 60 calendar days prior to the desired date of the change of ownership.

(A) The application shall be in accordance with §117.12 of this title (relating to Application and Issuance of Temporary Initial License and First Annual License).

(B) In addition to the documents required in §117.12(c)(3) of this title, a person desiring a license under this subsection shall submit an affidavit signed by the previous owner acknowledging agreement with the change of ownership.

(C) If the applicant is a corporation, an application submitted under this subsection shall include a copy of the applicant's articles of incorporation. If the applicant is a business entity other than a corporation, an application submitted under this subsection shall include a copy of the sales agreement.

(5) The department shall issue a temporary initial license effective the date of the change of ownership when the person has complied with the provisions of §117.12 of this title.

(6) If the presurvey conference and design and space inspection described in §117.12(e)(1) and (2) of this title, and the inspection described in §117.12(h) of this title are waived by the department, the department shall issue a first annual license in lieu of the temporary initial license to the new owner of the facility. The new owner's license is effective the date of the change of ownership and expires as described in §117.12(h) of this title.

(7) The previous owner's license shall be void on the effective date of the change of ownership.

(b) Change in services.

(1) A person shall notify the department in writing no later than 30 calendar days prior to ceasing operation of a facility. The person shall return the original license certificate to the department by mailing or returning the original license certificate to the Health Facility Licensing Division, End Stage Renal Disease Facility Licensing Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199.

(2) A facility shall notify the department in writing 30 days prior to construction, renovation or modification of the facility's physical plant.

(3) A facility shall notify the department in writing of any change in the facility's main telephone number or mailing address (if different from the physical address) no later than 15 days after the change is effective.

(4) A facility shall obtain written approval by the department in order to add a service or increase the number of stations which appear on the facility license.

(A) A facility shall submit a written request for approval 30 days prior to the anticipated date of the change.

(i) For a change in service, the written request shall be accompanied by evidence that the facility has reviewed staffing availability and added staff positions if indicated to accommodate the change.

(ii) For an increase in stations, the written request shall be accompanied by the evidence required in clause (i) of this subparagraph and evidence that the water treatment system is of sufficient size to produce safe water to accommodate the increase.

(B) The department may conduct an on-site inspection prior to taking action on the requested change.

(C) The department shall send the facility notice of approval or disapproval of the change. If the requested increase is disapproved, the department shall state the reasons for disapproval and the information needed in order to approve the request.

(D) No later than three weeks after initiating use of new stations, the facility shall submit to the department laboratory reports of chemical analysis and bacteriologic cultures of the product water demonstrating compliance with §§3.2.1 (relating to Water Bacteriology) and 3.2.2 (relating to Level of Chemical Contaminants) of the American National Standard, Hemodialysis Systems, March 1992 Edition, published by the Association for the Advancement of Medical Instrumentation, 3330 Washington Boulevard, Suite 400, Arlington, Virginia 22201, 1-800-703-525-4890.

§117.15. Time Periods for Processing and Issuing a License.

(a) General.

(1) The date a license application is received is the date the application reaches the Texas Department of Health (department).

(2) An application for a temporary initial license and first annual license is complete when the department has received, reviewed, and found acceptable the information described in §117.12 of this title (relating to Application and Issuance of Temporary Initial License and First Annual License).

(3) An application for an annual renewal license is complete when the department has received, reviewed and found acceptable the information described in §117.13 of this title (relating to Application and Issuance of Annual Renewal License).

(4) An application for a change of ownership license is complete when the department has received, reviewed, and found acceptable the information described in §117.14 of this title (relating to Change of Ownership or Services).

(b) Time Periods. An application from a facility for a temporary initial license and first annual license or an annual renewal license shall be processed in accordance with the following time periods.

(1) The first time period begins on the date the department receives the application and ends on the date the license is issued, or if the application is received incomplete, the period ends on the date the facility is issued a written notice that the application is incomplete. The written notice shall describe the specific information that is required before the application is considered complete. The first time period is 45 calendar days.

(2) The second time period begins on the date the last item necessary to complete the application is received and ends on the date the license is issued. The second time period is 45 calendar days.

(c) Reimbursement of fees.

(1) In the event the application is not processed in the time periods stated in subsection (b) of this section, the applicant has the right to request that the department reimburse in full the fee paid in that particular application process. If the department does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(d) Appeal. If the request for reimbursement as authorized by subsection (c) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner requesting reimbursement of the fee paid because the application was not processed within the established time period. The department shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of the decision to the applicant and the director.

(e) Hearings. If a hearing is proposed during the processing of the application, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings) are applicable.

§117.16. Inspections.

(a) General. The Texas Department of Health (department) may conduct an inspection at any time to verify compliance with the statute or this chapter. By applying for or holding a license, the facility consents to entry and inspection of the facility by the department or representative of the department in accordance with the statute and this chapter.

(1) An authorized representative of the department (surveyor) may enter the premises of a license applicant or license holder at reasonable times during business hours to conduct an on-site inspection incidental to the issuance of a license, and at other times as the department considers necessary to ensure compliance with:

(A) the statute or this chapter;

(B) an order of the commissioner of health (commissioner);

(C) a court order granting injunctive relief;

(D) a corrective action plan; or

(E) other enforcement action(s).

(2) The surveyor is entitled to access all books, records, or other documents maintained by or on behalf of the facility to the extent necessary to ensure compliance with the statute, this chapter,

an order of the commissioner, a court order granting injunctive relief, a corrective action plan, or other enforcement action. The department shall maintain the confidentiality of facility records as applicable under federal or state law. Ensuring compliance includes permitting photocopying by the department or providing photocopies to a department surveyor of any records or other information by or on behalf of the department as necessary to determine or verify compliance with the statute or this chapter.

(3) An inspection conducted by the department shall be in accordance with the procedures set out in subsection (i) of this section.

(b) Types of inspections.

(1) Design and space inspection.

(A) The department shall conduct an inspection to determine compliance with the design and space requirements described in §117.31 of this title (relating to Design and Space Requirements), the requirements in §117.32(a), (c), (e), and (g) of this title (relating to Equipment), and §117.33(b)(1) and (3) - (10) of this title (relating to Water Treatment and Reuse) prior to issuance of the temporary initial license, unless the department waives the requirement.

(B) During any license period, the department may conduct a design and space inspection to determine whether modifications or renovations comply with §117.31 of this title.

(2) Initial inspection for the issuance of the first annual license. A department surveyor shall conduct an initial inspection after the date of issuance of the temporary initial license to determine if the facility meets the requirements of the statute and this chapter for licensing. The initial inspection is an evaluation of compliance with all requirements of the statute and this chapter.

(3) Renewal inspection. At the department's discretion, a department surveyor may perform an on-site inspection prior to renewal of a facility license to verify compliance with the statute and this chapter. The renewal inspection may include an evaluation of compliance with all requirements of the statute and this chapter.

(4) Inspection to investigate a complaint. The department surveyor shall perform an inspection of a facility on-site or by mail if the facility has demonstrated noncompliance with the statute or this chapter, or to investigate a complaint received by the department.

(5) Inspection based on annual report. After review of a facility's annual report, the department may request additional information or conduct an inspection by mail or on-site to determine compliance with the statute and this chapter.

(6) Inspection related to a report(s) to the director. The department may conduct an inspection incidental to a report to the director described in §117.46 of this title (relating to Reports to the Director).

(7) Follow-up inspection. A department surveyor shall perform an inspection on-site or by mail to verify completion of a corrective action plan(s) for deficiencies cited during any of the inspections described in paragraphs (1) - (6) of this subsection.

(c) Inspection procedures.

(1) Entrance conference. The department's surveyor shall hold a conference with the person who is in charge of the facility prior to commencing the inspection for the purpose of explaining the nature and scope of the inspection.

(2) Evaluation of compliance. Except for the purposes of conducting an inspection under subsection (b)(1), (4), (6), or (7)

of this section, an onsite inspection will include an evaluation to determine compliance with, at a minimum, each of the requirements in:

- (A) §117.32 of this title (relating to Equipment);
- (B) §117.33 of this title (relating to Water Treatment and Reuse);
- (C) §117.34 of this title (relating to Sanitary Conditions and Hygienic Practices);
- (D) §117.41 of this title (relating to Quality Assurance for Patient Care);
- (E) §117.43 of this title (relating to Provision and Coordination of Treatment and Services);
- (F) §117.44 of this title (relating to Qualifications of Staff);
- (G) §117.45 of this title (relating to Clinical Records);
- (H) §117.46 of this title (relating to Reports to the Director);
- (I) §117.61 of this title (relating to General Requirements);
- (J) §117.62 of this title (relating to Training Curricula and Instructors);
- (K) §117.63 of this title (relating to Competency Evaluation);
- (L) §117.64 of this title (relating to Documentation of Competency); and
- (M) §117.65 of this title (relating to Prohibited Acts).

(3) Exit conference. After an inspection of a facility the surveyor shall hold an exit conference with the facility administrator or his or her designee. During the exit conference, the surveyor shall:

- (A) fully inform the facility representative of the preliminary finding(s) of the inspection;
- (B) give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings; and
- (C) identify any records that were duplicated.

(4) Written notice of findings.

(A) The surveyor shall:

(i) prepare and provide the facility administrator or his or her designee specific and timely written notice of the findings in accordance with subparagraphs (B) and (C) of this paragraph; or

(ii) if the findings result in a referral described in §117.81(a)(1) of this title (relating to Corrective Action Plan), submit a written summary of the findings to the medical review board for its review and recommendation for appropriate action by the department.

(B) If no deficiencies are found during an inspection, the department shall provide a statement indicating this fact.

(C) If the written notice of findings includes deficiencies, the department and the facility shall comply with the procedure set out in this subparagraph.

(i) The department shall provide the facility with a statement of the deficiencies at the time of the exit conference or within 10 working days after the exit conference.

(ii) The facility administrator or administrator's designee shall sign the written statement of deficiencies and return it to the department with a corrective action plan(s) for each deficiency no later than 10 working days of its receipt of the statement of deficiencies. The signature does not indicate the administrator's or designee's agreement with deficiencies stated on the form.

(iii) The facility shall come into compliance 60 calendar days prior to the expiration date of the license or no later than the dates designated in the corrective action plan(s), whichever comes first.

(iv) The requirements in clause (i) of this subparagraph do not apply if the surveyor's written notice of findings results in a referral to the medical review board as described in subparagraph (A)(ii) of this paragraph.

(v) A corrective action plan completion date shall not exceed 45 days from the date the deficiency(ies) is cited (exit date of the survey).

(vi) The facility may challenge any deficiency cited after receipt of the statement of deficiencies. A challenge to a deficiency(ies) shall be in accordance with this subparagraph.

(I) The facility shall comply with clause (ii) of this subparagraph regardless of its intent to challenge the deficiency(ies).

(II) An initial challenge to a deficiency(ies) shall be submitted in writing no later than five days from the facility's receipt of the statement of deficiencies to the Program Director, End Stage Renal Disease Licensing Section or his or her designee, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, 512/834-6646.

(III) If the initial challenge is favorable to the department, the facility may request a review of the initial challenge by submitting a written request to the Director or his or her designee, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. The facility shall submit its written request for review of the initial challenge no later than five days of its receipt of the department's response to the initial challenge. The department will not accept or review any documents that were not submitted with the initial challenge. A determination by the Director of the Health Facility Licensing Division relating to a challenge to a deficiency(ies) is the department's final determination concerning the challenge.

(IV) The department shall respond to any written challenge submitted under clause (ii) or (iii) of this subparagraph no later than 15 working days from its receipt.

(V) The department shall determine if a written corrective action plan(s) is acceptable. If the corrective action plan(s) is not acceptable to the department, the department shall notify the facility by telephone and request that the corrective action plan(s) be modified and resubmitted no later than 10 calendar days from the facility's receipt of such request.

(VI) If the facility does not come into compliance by the required date of correction reflected on the corrective action plan(s), the department may:

(-a-) appoint a monitor as described in §117.81 of this title;

(-b-) appoint a temporary manager as described in §117.83 of this title (relating to Involuntary Appointment of Temporary Manager);

(-c-) propose to deny, suspend, or revoke the license in accordance with §117.84 of this title (relating to Disciplinary Action).

(-d-) assess an administrative penalty(ies) in accordance with §117.85 of this title (relating to Administrative Penalties); or

(-e-) take all of the actions described in items (-a-) - (-d-) of this subclause.

(VII) The department shall verify the correction of deficiencies by mail or on-site inspection.

(VIII) Acceptance of a corrective action plan does not preclude the department from taking enforcement action as appropriate under §§117.83, 117.84, or 117.85 of this title.

(IX) The department shall refer issues and complaints relating to the conduct of or action(s) by licensed health care professionals to the appropriate licensing board(s).

§117.17. Optional Plan Review and Inspection.

(a) Request for plan review. Plans and specifications covering the construction of new buildings or alterations, additions, conversions, modernizations or renovations to existing buildings may be submitted to the Texas Department of Health (department) for review to determine compliance with this chapter. Submission of plans and specifications is not mandatory.

(1) If a plan review is requested by the facility, plans and specifications shall be submitted in accordance with this section.

(2) A review of minor alterations or remodeling changes which do not include alterations to load-bearing members of partitions, change functional operation, affect fire safety, or add additional stations may be requested. The request for review shall be in writing to the department with a brief description of the proposed changes.

(3) If review of preliminary plans and outline specifications is requested, the submittal shall contain sufficient information to establish the scope of the project and compliance with the design and space requirements in this chapter.

(4) If review of final drawings and specifications is requested, one complete set of drawings shall be submitted. All working drawings shall be well-prepared so that clear and distinct prints may be obtained, be accurately dimensioned, and include all necessary explanatory notes, schedules, and legends. Final drawings shall be complete and adequate for construction contract purposes. All final plans and specifications shall be appropriately sealed and signed by a registered architect and professional engineer licensed by the State of Texas. Drawings and specifications shall comply with the design and space requirements in this chapter.

(b) Inspection. At 100% completion of construction and prior to occupancy, the department may schedule a construction inspection at the department's convenience for the purpose of verifying compliance with design and space requirements in this chapter.

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

Filed with the Office of the Secretary of State on October 19, 1998.

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Susan K. Steeg
General Counsel
Texas Department of Health

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

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Subchapter C. Minimum Standards for Design and Space, Equipment, Water Treatment and Reuse, and Sanitary and Hygienic Conditions
25 TAC §§117.32-117.34

The amendments are proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 251.

§117.32. Equipment.

(a) All equipment used by a facility, including backup equipment, shall be operated within manufacturer's specifications, and maintained free of defects which could be a potential hazard to patients, staff, or visitors. Maintenance and repair of all equipment shall be performed by qualified staff or contract personnel.

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

(b) (No change.)

(c) At least one complete dialysis machine shall be available on-site as backup for every ten dialysis machines in use. At least one of these backup machines must be completely operational during hours of treatment.

(d)-(h) (No change.)

§117.33. Water Treatment and Reuse.

(a) (No change.)

(b) Water treatment.

(1)-(9) (No change.)

(10) The water treatment system must be continuously monitored during patient treatment and be guarded by audible and visual alarms which can be seen and heard in the dialysis treatment area should water quality drop below specific parameters. Quality monitor sensing cells shall be located as the last component of the water treatment system and at the beginning of the distribution system. No water treatment components that could affect the quality of the product water as measured by this device shall be located after the sensing cell.

(11)-(15) (No change.)

(16) Only persons qualified by the education or experience described in §117.44(f) of this title (relating to Qualifications of Staff) may operate, repair, or replace components of the water

treatment system. ~~[Documentation of education or training which qualifies these persons must be maintained on file in the facility.]~~

(c) (No change.)

(d) Centralized dialyzer reprocessing. If a facility participates in centralized reprocessing in which dialyzers from multiple facilities are reprocessed at one site, the facility shall:

(1) appoint a medical director for the centralized reprocessing facility;

(2) [(4)] require the use of automated reprocessing equipment;

(3) [(2)] maintain responsibility and accountability for the entire reuse process;

(4) [(3)] adopt, implement, and enforce policies to ensure that the transfer and transport of used and reprocessed dialyzers to and from the off-site location does not increase contamination of the dialyzers, staff, or the environment; and

(5) [(4)] provide department staff access to the off-site reprocessing site as part of a facility inspection.

§117.34. Sanitary Conditions and Hygienic Practices.

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

(d) Hepatitis B prevention.

(1) (No change.)

(2) Prevention requirements concerning patients.

(A) (No change.)

(B) Serologic screening of patients.

(i) A patient new to dialysis or returning to a facility after extended hospitalization or absence of 30 days or longer shall have been [Candidates for dialysis shall be] screened for HBsAg within one month before or at the time of admission to the facility or have a known anti-HBs status of at least 10 milli-international units per milliliter no more than 12 months prior to admission. The facility shall document how this screening requirement is met.

(ii) (No change.)

(C) Isolation procedures for the HBsAg-positive patient.

(i)-(iii) (No change.)

(iv) A patient new to dialysis or returning to a facility after extended hospitalization or absence of 30 days or longer and who is admitted for treatment before results of HBsAg or anti-HBs testing are known shall undergo treatment as if the HBsAg test results were potentially positive, except that such a patient shall not be treated in the HBsAg isolation room, area, or machine.

(I)-(III) (No change.)

(e) (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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General Counsel

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◆ ◆ ◆
Subchapter D. Minimum Standards for Patient Care and Treatment

25 TAC §§117.41, 117.43-117.45

The amendments are proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect the Health and Safety Code, Chapter 251.

§117.41. Quality Assurance for Patient Care.

(a) A facility shall perform a systematic, ongoing, concurrent and comprehensive review of the care provided. The review shall be specific to the facility. A facility shall adopt, implement, and enforce a quality assurance system which meets the criteria and standards described in this section ~~[program based on the May 8, 1996 edition of the Criteria and Standards, Dialysis Facility Specific Quality Management Program, §J, Pages 1-2 as published by the End Stage Renal Disease Network of Texas, Inc., 1755 North Collins Boulevard, Suite 221, Richardson, Texas 75080; 214-669-3311].~~

(b) The quality assurance system shall include a quality management program which is planned with the participation of the facility's governing body; a quality control mechanism for data management and analysis; and a quality improvement mechanism to identify opportunities for improvement, develop improvement plan(s), and evaluate the implementation of the improvement plan(s).

(c) The governing body is responsible for:

(1) establishing the facility's quality mission;

(2) conducting quality planning;

(3) providing guidance and revising goals to achieve the quality mission;

(4) assuring allocation of sufficient time and resources to support the quality management program; and

(5) reviewing and monitoring the quality management activities at least quarterly.

(d) [(b)] Quality management activities shall demonstrate that facility staff evaluate the provision of dialysis care and patient services, set treatment goals, identify opportunities for improvement, develop and implement improvement plans, and evaluate the implementation until resolution is achieved. Evidence shall support that aggregate patient data including identification and tracking of patient infections, is continuously reviewed for trends.

(e) ~~[(e)]~~ Core staff members shall actively participate in the quality management activities.

(f) ~~[(f)]~~ A facility shall conduct quality management meetings monthly or more often as necessary to identify or correct problems. At a minimum, the facility's medical director, supervising nurse, and the technical supervisor described in §117.44(f)(2) of this title (relating to Qualifications of Staff) shall participate in the quality management meetings. The quality management meetings shall be conducted separately from a patient care conference and the meetings shall be documented. ~~[The meetings shall be documented in written minutes which are maintained in the facility.]~~

(g) The facility's quality control and quality improvement mechanisms shall include:

(1) an ongoing review of key elements of care using comparative and trend data to include aggregate patient data;

(2) identification of areas where performance measures or outcomes indicate an opportunity for improvement;

(3) appointment of interdisciplinary improvement team(s) to:

(A) identify variation from desired outcomes;

(B) create and implement improvement plan(s);

(C) evaluate the implementation of the improvement plan(s); and

(D) continue monitoring and improvement activities until goals are achieved and data demonstrates that improvement(s) have been made and maintained; and

(4) establishment and monitoring of quality assurance indicators for key aspects of care. For each quality assurance indicator, the facility shall establish and monitor a level of performance consistent with current professional knowledge. At a minimum, the following indicators shall be monitored on an ongoing basis:

(A) water quality (chemical, bacteriological analysis, and other indicators specific to the facility's water treatment system);

(B) equipment preventive maintenance and repair;

(C) reprocessing of hemodialyzers (dialyzer performance measures, labeling, and disinfection);

(D) infection control (staff and patient screening; standard precautions; bacteriological monitoring of dialyzer(s), water, machine(s), and dialysate; pyrogen reactions; sepsis episodes; and peritonitis rate);

(E) incidents and rate of occurrence (accidents, medication errors, adverse drug reactions, and other occurrences affecting patient(s), patient(s) family member(s), visitor(s), or staff). These occurrences shall include incidents required to be reported to the director under §117.46 of this title (relating to Reports to the Director);

(F) mortality (review of each death and monitoring mortality rate);

(G) complaints and suggestions (from patients, family, or staff);

(H) staffing (orientation, training, licensing and certification, and workload);

(I) safety (fire and disaster preparedness and disposal of special waste);

(J) medical records;

(K) clinical outcomes (laboratory indicators, hospitalizations, vascular access complications, and transplantation; and

(L) patient's quality of life to include rehabilitation.

(h) The department may review a facility's quality assurance activities to determine compliance with this section.

(1) A department surveyor shall verify that the facility has a quality management program which addresses concerns relating to quality of care provided to its patients and that facility staff know how to access the program's process.

(2) The department may not require disclosure of quality management program records except when disclosure is necessary to determine compliance with this section.

(3) The department will not use good faith efforts by the quality management program to identify and correct deficiencies relating to quality as a basis for a deficiency(ies) cited under this chapter.

~~{(e) A record of each accident or incident occurring in a facility, including medication errors and adverse drug reactions, shall be prepared immediately.}~~

~~{(f) The facility shall report the following to the director within three working days of the occurrence:}~~

~~{(1) an accident or incident resulting in death or hospitalization of a patient;}~~

~~{(2) conversion of staff or a patient to HBsAg positive; or}~~

~~{(3) fire.}~~

§117.43. *Provision and Coordination of Treatment and Services.*

(a) Patient rights. Each facility shall adopt, implement, and enforce policies and procedures appropriate to the patient population served which ensure each patient is:

(1)-(11) (No change.)

(12) transferred only for medical reasons, for the patient's welfare or that of other patients or staff members, or for nonpayment of fees. A patient shall be given 30 calendar days advance notice to ensure orderly transfer or discharge, except in cases where the patient presents an immediate risk to others;

(13) provided protection from abuse, neglect, or exploitation as those terms are defined in §1.204 of this title (relating to Abuse, Neglect, and Exploitation Defined);

(14) ~~[(14)]~~ provided information regarding advance directives and allowed to formulate such directives to the extent permitted by law. This includes documents executed under the Natural Death Act, Health and Safety Code, Chapter 672; Civil Practice and Remedies Code, Chapter 135 concerning durable power of attorney for health care; and Health and Safety Code, Chapter 674 concerning out-of-hospital do-not-resuscitate;

(15) ~~[(15)]~~ aware of the mechanisms and agencies to express a complaint against the facility without fear of reprisal or denial of services. A facility shall provide to each individual who is admitted to the facility a written statement that informs the individual that a complaint against the facility may be directed to the department. The statement shall be provided at the time of admission and shall advise the patient that registration of complaints may be filed with the director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, 1-800-228-1570; and

(16) [(15)] fully informed of the rights listed in this subsection, the responsibilities established by the facility, and all rules and regulations governing patient conduct and responsibilities. A written copy of the patient's rights and responsibilities shall be provided to each patient or the patient's legal representative upon admission and a copy shall be posted with the facility license certificate.

(b) (No change.)

(c) Emergency preparedness.

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

(6) A written disaster preparedness plan specific to each facility shall be developed and in place. The plan shall be based on an assessment of the probability and type of disaster in each region and the local resources available to the facility. The plan shall include procedures designed to minimize harm to patients and staff along with ensuring safe facility operations. The plan and in-service programs for patients and staff shall include provisions or procedures for responsibility of direction and control, communications, alerting and warning systems, evacuation, and closure. Each staff member employed by or under contract with the facility shall be able to demonstrate their role or responsibility to implement the facility's disaster preparedness plan.

(7) A facility shall have an emergency lighting system capable of providing sufficient illumination to allow safe discontinuation of treatments and safe evacuation from the building. Battery pack systems shall be maintained and tested quarterly. If a facility maintains a back-up generator, the generator must be installed, tested and maintained in accordance with the National Fire Protection Association 110, Standard for Emergency and Standby Power Systems, 1993 Edition (NFPA 110), published by the National Fire Protection Association.

(8) A facility shall develop and post a telephone number listing specific to the facility equipment and locale to assist staff in contacting mechanical and technical support in the event of an emergency.

(d) Medication storage and administration.

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

(3) All verbal or telephone orders shall be received by a licensed nurse or physician assistant or, for orders relating to a specific service (e.g. dietary services), by the licensed professional responsible for providing the service (e.g. dietitian) and countersigned by the physician within 15 days.

(4)-(8) (No change.)

(e) Nursing services.

(1)-(6) (No change.)

(7) Sufficient direct care staff shall be on-site to meet the needs of the patients.

(A) The staffing level for a facility shall not exceed four patients per licensed nurse or patient care technician per patient shift. During treatment of eight or more patients, the charge nurse shall not be included in this ratio.

(B) For pediatric dialysis patients, one licensed nurse shall be provided on-site for each patient weighing less than ten kilograms and one licensed nurse provided on-site for every two patients weighing from ten to 20 kilograms.

(8)-(9) (No change.)

(10) The initial nursing assessment shall be initiated by a charge nurse or a registered nurse at the time of the first treatment in the facility and completed by a registered nurse within the first three treatments.

(f)-(i) (No change.)

(j) Medical services.

(1) (No change.)

(2) Medical staff.

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

(C) At a minimum, each patient receiving dialysis in the facility shall be seen by a physician on the medical staff once every two weeks during the patient's treatment time; home patients shall be seen by a physician at least every three months at the facility. The record of these contacts shall include [There shall be] evidence of [monthly] assessment for new and recurrent problems and review of dialysis adequacy, monthly for in-facility patients and quarterly for home patients.

(D) (No change.)

(E) Orders for treatment shall be in writing and signed by the prescribing physician. Routine orders for treatment shall be updated at least annually.

(i) Orders for hemodialysis treatment shall include treatment time, dialyzer, blood flow rate, target weight, medications including heparin, and, as needed, specific infection control measures [as needed].

(ii) Orders for peritoneal dialysis treatment shall include fill volume(s), number of exchanges, dialysate concentrations, catheter care, medications, and, as needed, specific infection control measures.

(F) (No change.)

(k) (No change.)

(l) Temporary admissions. If a facility dialyzes a patient who is normally dialyzed in another local facility, the referring and receiving facilities shall meet the requirements in this subsection.

(1) The individual to be treated by the receiving facility must be a patient of a physician who is a member of the medical staffs of the referring and receiving facilities.

(2) The referring and receiving facilities shall establish, implement, and enforce written policies and procedures for communication of medical information and transfer of clinical records between facilities.

(3) The receiving facility shall continuously evaluate staffing levels and utilize this information in determining whether to accept a temporary admission for treatment.

(4) The receiving facility shall obtain the information described in §117.45(e) of this title (relating to Clinical Records) prior to providing dialysis. However, if the referring facility is closed when the patient's need for dialysis treatment is identified, the receiving facility may provide dialysis with, at a minimum, the following information:

(A) orders for treatment;

(B) hepatitis B status; and

(C) medical justification by the physician ordering treatment that the patient's need for dialysis outweighs the need for the additional clinical information set out in §117.45(e) of this title.

(m) [(H)] Laboratory services. A facility that provides laboratory services shall comply with the requirements of Federal Public Law 100-578, Clinical Laboratory Improvement Amendments of 1988 (CLIA 1988). CLIA 1988 applies to all facilities that examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment of, or the assessment of the health of, human beings.

(n) [(M)] Illegal remuneration prohibited. A facility shall not violate the Health and Safety Code, §161.191, et seq. concerning the prohibition on illegal remuneration for the purpose of securing or soliciting patients or patronage.

(o) [(N)] Do-not-resuscitate orders. The facility shall comply with the Health and Safety Code, Chapter 674 concerning out-of-hospital do-not-resuscitate orders.

(p) Audits of billing. A facility shall develop, implement, and enforce a policy for monitoring its receipt and expenditure of state or federal funds.

(q) Student health care professionals. If the facility has a contract or agreement with an accredited school of health care to use their facility for a portion of the students' clinical experience, those students may provide care under the following conditions.

(1) Students may be used in facilities, provided the instructor gives class supervision and assumes responsibility for all student activities occurring within the facility. If the student is licensed (e.g., a licensed vocational nurse attending a registered nurse program for licensure as a registered nurse) the facility shall ensure that the administration of any medication(s) is within the student's licensed scope of practice.

(2) All instruction must be provided by the school's instructor or his or her designee.

(3) A student may administer medications only if:

(A) on assignment as a student of his or her school of health care; and

(B) the instructor is on the premises and immediately supervises the administration of medication by an unlicensed student and the administration of such medication is within the instructor's licensed scope of practice.

(4) Students shall not be used to fulfill the requirement for administration of medications by licensed personnel.

(5) Students shall not be considered when determining staffing levels required by the facility.

(r) Complaint resolution. A facility shall adopt, implement, and enforce procedures for the resolution of complaints regarding quality of care or services rendered by licensed health care professionals and other members of the facility staff, including contract services or staff. The facility shall document the receipt and the disposition of the complaint. The investigation and documentation must be completed within 30 calendar days after the facility receives the complaint, unless the facility has and documents reasonable cause for a delay.

§117.44. Qualifications of Staff.

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

(c) Nursing staff.

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

(3) The following provisions create an exception to the requirement that the charge nurse be a registered nurse.

(A) A licensed vocational nurse employed in a facility as of September 1, 1996, and who has two years full time experience as a charge nurse in a facility prior to September 1, 1996, or is certified to perform charge nurse responsibilities by a nationally recognized board (e.g. Board of Nephrology Nurse and Technician Examination) may [continue to] function as a charge nurse for a facility.

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

~~[(D) This paragraph expires on September 1, 1999.]~~

(4) (No change.)

(d) (No change.)

(e) Social services staff. Each social worker shall:

(1) be licensed as a social worker under the Human Resources Code, Chapter 50, and hold a masters degree in social work from a graduate school of social work accredited by the Council on Social Work Education and have one year experience in social services; or

(2) (No change.)

(f) Technical staff. A facility shall have the technical staff as described in this subsection. The facility's technical staff may be one or more individuals (including nursing staff) employed by or under contract with the facility as long as the individual(s) meets the minimum qualifications for each required level of responsibility as described in this subsection.

(1) All technical staff. Only individuals qualified by training, education, or experience may operate, repair, or replace components of the systems utilized in providing dialysis treatment.

(A) Technical staff shall have the following minimum education, training and experience and documentation of such education, training, and experience shall be maintained on file in the facility:

(i) high school diploma or equivalent; and

(ii) training or experience as follows:

(I) completion of a college based technical dialysis program;

(II) completion of the didactic training and education requirement for patient care technicians set out in §117.62(a) and (b) of this title (relating to Training Curricula and Instructors);

(III) current certification in technical aspects of dialysis by a nationally recognized testing organization; or

(IV) 12 months experience in dialysis within the last two years.

(B) The technical staff trainee(s) shall pass a written competency examination, demonstrate skills related to the required level of responsibility and be certified by the medical director as competent to perform their duties.

(C) The technical staff shall demonstrate competency for the required level of responsibility through written and skills testing annually. Evidence of competency shall be documented in writing and maintained in the personnel file.

(D) The technical staff shall complete a minimum of five hours of continuing education with a technical or end stage renal disease focus annually. The continuing education may be obtained through informal or formal education programs and shall be documented in facility files.

(2) Technical supervisory staff. The technical supervisor is responsible for the supervision of technical services. The technical supervisor shall meet the education, training, and experience requirements described in this paragraph.

(A) The technical supervisor shall meet the requirements in paragraph (1) of this subsection.

(B) At a minimum, the technical supervisor shall demonstrate competency in equipment maintenance and repair; mechanical service; water treatment systems; and reprocessing of hemodialyzers (if applicable).

(i) Prior to initially assuming technical supervisory responsibility, a technical supervisor trainee shall successfully complete the facility's orientation and training course(s) as established for each technical area.

(ii) The training course(s) shall be approved by the medical director and follow a written curriculum with stated objectives. The curriculum shall include all items noted in paragraphs (3)(B)(ii), (4)(B), and (5)(A) of this subsection.

(3) [(f)] Water [Staff responsible for the water] treatment system staff.

(A) [(4)] Facility staff responsible for the water treatment system shall demonstrate understanding of the risks to patients of exposure to water which has not been treated so as to remove contaminants and impurities. Documentation of training to assure safe operation of the water treatment system shall be maintained for each individual who operates (regularly or intermittently) [responsible for the operation of] the system.

(B) [(2)] The staff responsible for the water treatment system shall meet the education, training, and experience requirements described in paragraph (1) of this subsection and shall demonstrate competency by: [Only individuals qualified by training, education, or experience may repair or replace components of the water treatment system. Documentation of such training to qualify these persons shall be maintained on file in the facility.]

(i) successful completion of the facility training course specific to water treatment and related tasks. The training course shall be approved by the medical director and follow a written curriculum with stated objectives;

(ii) completion of a training curriculum which includes the following minimum components:

(I) introduction to end stage renal disease;

(II) principles of hemodialysis;

(III) principles of infection control and basic microbiology for water treatment systems, machines, and sampling techniques;

(IV) rationale for water treatment for dialysis;

(V) risks and hazards of the use of unsafe water for dialysis;

(VI) current water standards;

(VII) source water characteristics;

(VIII) communication with source water agencies and water treatment vendors;

(IX) selection of water treatment equipment;

(X) water purification equipment to include filtration, carbon adsorption and reverse osmosis;

(XI) ion exchange to include softeners and deionizers;

(XII) water distribution system and other equipment specific to the facility;

(XIII) monitoring system performance to include on-line and off-line monitoring, aseptic sample collection, incubation of samples and interpretation of results;

(XIV) evaluation of water treatment component performance to include filters, activated carbon adsorption beds, reverse osmosis, and ion exchange; and

(XV) evaluation of system performance to include monitoring schedules and review of system failures;

(iii) confirmation of the ability to distinguish all primary colors; and

(iv) successful completion of the facility's orientation and training course as established for the water treatment system technician trainee prior to the trainee's initial assumption of responsibility.

(4) [(g)] Equipment maintenance and repair staff. [Staff responsible for equipment maintenance and repair.] The staff responsible for equipment maintenance and repair shall meet the education, training, and experience requirements described in paragraph (1) of this subsection and shall demonstrate competency by: [Staff providing equipment maintenance and repair shall have successfully completed a training course and demonstrated competency in providing maintenance and repair for the equipment being serviced. The training course shall include at least the following components:]

(A) successful completion of the facility training course outlined in paragraph (3) of this subsection, relating to water treatment systems;

(B) successful completion of a training curriculum which includes the following minimum components:

(i) [(4)] prevention of transmission of hepatitis through dialysis equipment;

(ii) [(2)] safety requirements of dialysate delivery systems;

[(3) bacteriologic control;]

[(4) water quality standards; and]

(iii) [(5)] repair and maintenance of dialysis and other equipment specific to the facility; [in use]

(iv) electrical safety, including lockout or tagout;

(v) emergency equipment maintenance;

(vi) building maintenance;

(vii) fire safety and prevention requirements; and

(viii) emergency response procedures; and

(C) successful completion of a written competency exam and demonstration of skills specific to the facility's mechanical and equipment service and water treatment and distribution systems.

(5) Reprocessing staff. The staff responsible for reprocessing hemodialyzers and other supplies shall meet the education, training, and experience requirements described in paragraph (1) of this subsection and shall demonstrate competency by:

(A) successful completion of a training curriculum which includes the components in the American National Standard, Reuse of Hemodialyzers, 1993 Edition, §5.2.1 published by the Association for the Advancement of Medical Instrumentation, 3330 Washington Boulevard, Suite 400, Arlington, Virginia 22201; and

(B) successful completion of a written competency exam which includes return demonstration of skills specific to reprocessing of hemodialyzers and other dialysis supplies.

§117.45. *Clinical Records.*

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

(e) Prior to providing dialysis treatment of a [Clinical records of] transient patient, a facility [patients] shall obtain and include, at a minimum:[;]

(1) orders for treatment in this facility:[;]

(2) list of medications and allergies;

(3) laboratory reports. Such reports shall indicate laboratory work was performed no later than one [within a] month prior to [of] treatment at the [this] facility and include [including] screening for hepatitis B [antigen] status:[;]

(4) the most current patient care plan; [and]

(5) the most current treatment records from the home facility:[;] and

(6) records of care and treatment at this facility.

(f)-(j) (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 October 19, 1998.

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Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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

25 TAC §117.46

The new section is proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the

board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new section affect the Health and Safety Code, Chapter 251.

§117.46. *Reports to the Director.*

(a) A facility shall report the following occurrence(s) to the department within ten working days of the occurrence(s):

(1) an accident or incident resulting in the death or hospitalization of a patient;

(2) conversion of staff or a patient to HBsAg positive;

(3) fire; or

(4) natural disaster.

(b) An occurrence listed in subsection (a) of this section shall be reported to the Director, Health Facility Licensing Division, 1100 West 49th Street, Austin, Texas, 78756-3199, telephone number 512-834-6646, fax number 512-834-4514. The report to the director shall be on a form provided by the department and include the information requested on the form. The facility may reproduce the form as needed to maintain an adequate supply.

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 29, 1998

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

Subchapter E. Dialysis Technicians

25 TAC §117.65

The amendment is proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment affects the Health and Safety Code, Chapter 251.

§117.65. *Prohibited Acts.*

(a) (No change.)

(b) Performance of the following acts by a dialysis technician who is not a licensed vocational nurse is prohibited:

(1) initiation or discontinuation of dialysis via a central catheter, manipulation of a central catheter, or dressing changes for a central catheter;

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

~~[(4) performance of non-access site venipuncture;]~~

(4) ~~[(5)]~~ performance of arterial puncture;

(5) ~~[(6)]~~ acceptance of physician orders; or

(6) ~~[(7)]~~ provision of hemodialysis treatment to pediatric patients under 14 years of age or under 35 kilograms.

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

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Texas Department of Health

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



Subchapter F. Corrective Action Plan and Enforcement

25 TAC §§117.81-117.86

The amendment and new sections are proposed under the Health and Safety Code, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment and new sections affect the Health and Safety Code, Chapter 251.

§117.81. Corrective Action Plan.

(a) (No change.)

(b) Corrective action plan. A corrective action plan may be used in accordance with §251.061 of the statute. This subsection is consistent with §251.061 of the statute.

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

(6) A level three corrective action plan is appropriate if the department finds that the facility is not in compliance with the statute or this chapter and the circumstances are serious or life-threatening or if the department finds that the facility failed to comply with a level two corrective action plan or to cooperate with the department in connection with that plan. The department may require the appointment of a monitor to supervise the implementation of the plan. ~~[In connection with requiring a level three corrective action plan, the~~

~~department may seek] the appointment of a temporary manager, or the appointment of a monitor and temporary manager. Appointment of a temporary manager by agreement shall be in accordance with §117.82 of this title (relating to Voluntary Appointment of a Temporary Manager). Involuntary appointment of a temporary manager shall be in accordance with §117.83 [under §117.82] of this title (relating to Involuntary Appointment of a Temporary Manager).~~

(7)-(8) (No change.)

§117.82. Voluntary Appointment of a Temporary Manager.

(a) A person holding a controlling interest in a facility may, at any time, request the department to assume the management of the facility through the appointment of a temporary manager in accordance with §251.091 of the statute.

(b) After receiving the request, the department may enter into an agreement providing for the appointment of a temporary manager to manage the facility under conditions considered appropriate by both parties if the department considers the appointment desirable.

(c) An agreement under this section shall:

(1) specify all terms and conditions of the temporary manager's appointment and authority; and

(2) preserve all rights of the individuals served by the facility granted by law.

(d) The primary duty of the temporary manager is to ensure that adequate and safe services are provided to patients until temporary management ceases.

(e) The appointment terminates at the time specified by the agreement.

§117.83. Involuntary Appointment of a Temporary Manager.

(a) Under §251.092 of the statute, the Texas Department of Health (department) may request the attorney general to bring an action in the name and on behalf of the state for the appointment of a temporary manager to manage a facility if:

(1) the facility is operating without a license;

(2) the department has denied, suspended or revoked the facility's license but the facility continues to operate;

(3) the license denial, suspension or revocation proceedings against the facility are pending and the department determines that an imminent or reasonably foreseeable threat to the health and safety of a patient of the facility exists;

(4) the department determines that an emergency exists that presents an immediate threat to the health and safety of a patient of the facility;

(5) the facility is closing and arrangements for the care of patients by other licensed facilities have not been made before closure; or

(6) the department determines a level three corrective action plan under §117.81(b)(6) of this title (relating to Corrective Action Plan) that includes appointment of an involuntary temporary manager is necessary to address serious or life-threatening conditions at the facility.

(b) After a hearing, a court shall appoint a temporary manager to manage a facility if the court finds that the appointment of the manager is necessary.

(1) The court order shall address the duties and authority of the temporary manager, which may include management of the

facility and the provision of dialysis services to facility patients until specified circumstances occur, such as new ownership of the facility, compliance with the statute or this chapter, or closure of the facility.

(2) If possible the court shall appoint as temporary manager an individual whose background includes administration of end stage renal disease facilities or similar facilities.

(3) Venue for an action under this section is in Travis County.

(c) A temporary manager appointed under this section is entitled to a reasonable fee as determined by the court in accordance with §251.093 of the statute.

(1) The fee shall be paid by the facility.

(2) The temporary manager may petition the court to order the release to the manager of any payment owed the manager for care and services provided to patients of the facility if the payment has been withheld.

(3) Withheld payments that may be released may include payments withheld by a governmental agency or other entity before or during the appointment of the temporary manager, including:

(A) Medicaid, Medicare, or insurance payment; or

(B) payments from another third party.

§117.84. *Disciplinary Action.*

(a) The Texas Department of Health (department) may deny, suspend, or revoke a license if the applicant or facility:

(1) fails to comply with any provision of the statute;

(2) fails to comply with any provision of this chapter;

(3) commits fraud, misrepresentation, or concealment of a material fact on any documents required to be submitted to the department or required to be maintained by the facility pursuant to this chapter;

(4) aids, abets, or permits the commission of an illegal act; or

(5) fails to comply with an order of the commissioner of health or another enforcement procedure under the statute.

(b) The department may deny a license if the applicant or licensee fails to provide the required license fee, application or renewal information.

(c) The department may suspend or revoke an existing valid license or disqualify a person from receiving a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensed facility.

(1) In determining whether a criminal conviction directly relates, the department shall consider the provisions of Texas Civil Statutes, Article 6252-13c.

(2) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or a tendency for the person to be unable to own or operate a facility:

(A) a misdemeanor violation of the statute;

(B) a conviction relating to deceptive business practices;

(C) a misdemeanor or felony involving moral turpitude;

(D) a misdemeanor of practicing any health-related profession without a required license;

(E) a conviction under any federal or state law relating to drugs, dangerous drugs, or controlled substances;

(F) an offense under the Texas Penal Code, Title 5, involving a patient or a patient of any health care facility, a home and community support services agency, or a health care professional; or

(G) other misdemeanors and felonies which indicate an inability or tendency for the person to be unable to own or operate a facility if action by the department will promote the intent of the statute, this chapter, or Texas Civil Statutes, Article 6252-13c.

(3) Upon a licensee's felony conviction, felony probation revocation, revocation or parole, or revocation of mandatory supervision, the license shall be revoked.

(d) If the department proposes to deny, suspend, or revoke a license, the department shall notify the facility by certified mail, return receipt requested, or personal delivery of the reasons for the proposed action and offer the facility an opportunity for a hearing.

(1) The facility shall request a hearing within 30 calendar days of receipt of the notice. Receipt of the notice is presumed to occur on the tenth day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(2) The request for a hearing shall be in writing and submitted to the Director, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

(3) A hearing shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health).

(4) If the facility does not request a hearing in writing within 30 calendar days of receipt of the notice, the facility is deemed to have waived the opportunity for hearing and the proposed action shall be taken.

(5) If the facility fails to appear or be represented at the scheduled hearing, the facility has waived the right to a hearing and the proposed action shall be taken.

(e) If the department suspends a license, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists. An authorized representative of the department shall investigate prior to making a determination.

(1) During the time of suspension, the suspended license holder shall return the license to the department.

(2) If a suspension overlaps a renewal date, the suspended license holder shall comply with the renewal procedures in this chapter; however, the department may not renew the license until the department determines that the reason for suspension no longer exists.

(f) If the department revokes or does not renew a license, a person may reapply for a license by complying with the requirements and procedures in this chapter at the time of reapplication. The department may refuse to issue a license if the reason for revocation or nonrenewal continues to exist.

(g) Upon revocation or nonrenewal, a license holder shall return the license to the department.

§117.85. Administrative Penalties.

(a) Under §§251.066 - 251.070 of the statute, the Texas Department of Health (department) may assess an administrative penalty against a person who violates the statute or this chapter.

(b) The penalty may not exceed \$1,000 for each violation. Each day of a continuing violation constitutes a separate violation.

(c) In determining the amount of an administrative penalty assessed under this section, the department shall consider:

- (1) the seriousness of the violation;
- (2) the history of previous violations;
- (3) the amount necessary to deter future violations;
- (4) efforts made to correct the violation; and
- (5) any other matters that justice may require.

(d) All proceedings for the assessment of an administrative penalty are subject to the Administrative Procedure Act, Government Code, Chapter 2001.

(e) If after investigation of a possible violation and the facts surrounding that possible violation the department determines that a violation has occurred, the department shall give written notice of the violation to the person alleged to have committed the violation. The notice shall include:

- (1) a brief summary of the alleged violation;
- (2) a statement of the amount of the proposed penalty, based on the factors listed in subsection (c)(2) of this section. This statement shall be mailed to the facility no later than 90 working days after the investigation is completed (exit date); and

(3) a statement of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Not later than the 20th day after the date the notice is received, the person notified may accept the determination of the department made under this section, including the recommended penalty, or make a written request for a hearing on that determination.

(g) If the person notified of the violation accepts the determination of the department, the commissioner shall issue an order approving the determination and ordering that the person pay the recommended penalty.

(h) If the person notified fails to respond in a timely manner to the notice or if the person requests a hearing, the commissioner's designee shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the person; and
- (3) designate a hearings examiner to conduct the hearing.

The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner a proposal for decision as to the occurrence of the violation and a recommendation as to the amount of the proposed penalty if a penalty is determined to be warranted.

(i) Based upon the findings of fact and conclusions of law and the recommendation of the hearings examiner, the commissioner by order may find that a violation has occurred and may assess a penalty, or may find that no violation has occurred. The commissioner or the commissioner's designee shall give notice of the commissioner's order to the person notified. The notice shall include:

(1) separate statements of the findings of fact and conclusions of law;

(2) the amount of any penalty assessed; and

(3) a statement of the right of the person to judicial review of the commissioner's order.

(j) Not later than the 30th day after the date the decision is final, the person shall:

(1) pay the penalty in full;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty. Within the 30-day period, a person who acts under this paragraph may:

(A) stay enforcement of the penalty by:

(i) paying the amount of the penalty to the court for placement in an escrow account; or

(ii) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(B) request the court to stay enforcement of the penalty by:

(i) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(ii) giving a copy of the affidavit to the department by certified mail.

(k) If the department receives a copy of an affidavit under subsection (j)(3)(B) of this section, the department may file with the court, within five days after the date the copy is received, a contest to the affidavit.

§117.86. Recovery of Costs.

(a) The Texas Department of Health (department) may assess reasonable expenses and costs against a person in a administrative hearing if, as a result of the hearing, the person's license is denied, suspended, or revoked or if administrative penalties are assessed against the person.

(b) The person shall pay expenses and costs assessed under this section not later than the 30th day after the date of a board order requiring the payment of expenses and costs is final.

(c) The department may refer the matter to the attorney general for collection of the expenses and costs.

(d) If the attorney general brings an action against a person under §251.063 or §251.065 of the statute or to enforce an administrative penalty assessed, and an injunction is granted against the person or the person is found liable for a civil or administrative penalty, the attorney general may recover, on behalf of the attorney general and the department, reasonable expenses and costs.

(e) For purposes of this section, "reasonable expenses and costs" include expenses incurred by the department and the attorney general in the investigation, initiation, or prosecution of an action,

including reasonable investigative costs, court costs, attorney's fees, witness fees, and deposition expenses.

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 October 19, 1998.

TRD-9816352

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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



25 TAC §§117.82-117.85

(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, §251.002, which provides the Board of Health (board) with the authority to adopt fees in amounts reasonable and necessary to defray the cost of administering the Health and Safety Code, Chapter 251; §251.003 which provides the board with the authority to adopt rules to implement the statute, including requirements for the issuance, renewal, denial, suspension, and revocation of a license to operate an ESRD facility; §251.014 which provides the board with the authority to adopt rules to contain minimum standards to protect the health and safety of a patient in an ESRD facility; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, Chapter 251.

§117.82. *Appointment of Temporary Manager.*

§117.83. *Disciplinary Action.*

§117.84. *Administrative Penalties.*

§117.85. *Recovery of Costs.*

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

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816351

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Chapter 295. Occupational Health

The Texas Department of Health (department) proposes the repeal of §§295.4 - 295.5 and §§295.7 - 295.8; amendments to §§295.1-295.3; and new §§295.4 - 295.9 and §§295.11-295.13, concerning the requirements for public employers to take actions to protect their employees from hazardous chemicals.

The General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 295.1-295.8 have been reviewed and the department has determined that reasons for re-adopting the sections continue to exist.

Specifically, the repealed sections cover labeling of hazardous chemicals, posting of the workplace notice, training, and assessment of administrative penalties. Repeal of these sections is necessary to provide substantial revisions and to move the sections into an order that follows the section order of the Health and Safety Code, Chapter 502.

The amendment to §295.1 limits the scope of the rules to worker right-to-know issues. The amendment to §295.2 adds new definitions and amends six others to clarify the intent of the rules. All the definitions are being numbered in new Texas Register format to comply with 1 TAC, §91.1 effective February 17, 1998. The amendment to §295.3 reflects a change in the division name. New §295.4 clarifies how threshold amounts for the workplace chemical list shall be applied for multiple work areas and announces the availability of a model form for the workplace chemical list. New §295.5 establishes standards for employers, chemical manufacturers, and distributors to provide material safety data sheets for hazardous chemicals. New §295.6 clarifies the standards for primary and secondary hazardous chemical container labels and establishes labeling standards for stationary process containers. New §295.7 clarifies the scope of the written hazard communication program and establishes standards for this document, the employee education and training program, and training records. New §295.8 establishes standards for employers and the department related to complaint investigations and random compliance inspections. New §295.9 clarifies reporting requirements regarding employee fatalities and injuries related to chemical accidents. New §295.11 clarifies the procedures for employers to respond to written notices of violation and summary letters related to informal conferences, the conditions under which administrative penalties will be assessed, and the department's options in assessing administrative penalties. Four severity levels for violations and a penalty matrix are established and examples of violations for each severity level are provided. New §295.12 establishes standards for the workplace notice and clarifies employee rights. New §295.13 corrects an existing legal citation error in the Hazard Communication Act, Health and Safety Code, Chapter 502, concerning standards for physician treatment.

The department published a Notice of Intention to Review §§295.1-295.8, as required by Rider 167, in the *Texas Register* on September 4, 1998 (23 TexReg 9079). No comments were received by the department on these sections.

Claren Kotrla, Director, Toxic Substances Control Division, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Kotrla 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 be decreased hazardous chemical exposures for public employees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to

comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Mr. Claren Kotrla, Director, Toxic Substances Control Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6603, or (800) 452-2791. Comments will be accepted for 60 days following publication of this proposal in the *Texas Register*. In addition, a public hearing on the proposed sections will be held at 9:00 a.m., Monday, November 23, 1998, in the Texas Department of Health Auditorium, Room K-100, 1100 West 49th Street, Austin, Texas.

Subchapter A. Hazard Communication

25 TAC §§295.1-295.9, 295.11-295.13

The amendments and new sections are proposed under the Health and Safety Code, §502.019, which provides the department with the authority to adopt necessary rules to administer and enforce Chapter 502; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments and new sections affect the Health and Safety Code, §502.019, the Health and Safety Code, Chapter 12; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§295.1. Purpose and Scope.

(a) The purpose of these sections is to provide employers and employees ~~[and the public]~~ with specific criteria needed to comply with the Texas Hazard Communication Act. [access to information relating to hazardous chemicals to which they may be exposed during their employment, to provide hazard information to emergency service personnel and the commissioner of health, and to provide persons with a mechanism to gain access to information relating to hazardous chemicals.]

(b) ~~The [In order to avoid confusion among employers and the public, the] board shall implement the Hazard Communication Act, Health and Safety Code, Chapter 502 [Texas Civil Statutes, Article 5182b,] consistently [compatibly] with the Hazard Communication Standard [(OSHA Standard)] of the United States Department of Labor, Occupational Safety and Health Administration (OSHA), Title 29 Code of Federal Regulations (CFR), 1910.1200 (OSHA Standard), [and the federal Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III, Public Law 99-499, and related regulations promulgated by the United States Environmental Protection Agency in 40 Code of Federal Regulations.] Whenever there is a difference between the wording of the Act and the OSHA Standard, the Act shall take precedence.~~

§295.2. Definitions.

~~[In addition to the statutory definition, the] The following words and terms, when used in these sections, shall have the following meanings [.] unless the context clearly indicates otherwise.~~

(1) Act - The Hazard Communication Act, the Health and Safety Code, Chapter 502 ~~[Texas Civil Statutes, Article 5182b].~~

(2) Appropriate hazard warning - Any words, pictures, symbols, or combination thereof appearing on a label or other appropriate form of warning which convey the health and physical hazards, including the organs that would be affected, of the chemical(s) in the container(s).

(3) Appropriate personal protective equipment (PPE) or protective equipment - Equipment that is worn by an individual and provides a level of protection to chemicals to which the employee may be exposed that will be adequate to ensure their health and safety based on current industry standards. In determining the selection of PPE, the employer shall consider all routes of entry, permeability of PPE materials, the duties being performed by the employee, the hazardous chemicals present, and such other factors as may affect the performance of the equipment. The employer must ensure that the provided equipment fits the individual employee and is functional for its intended use as described by the manufacturer's specifications.

(4) Asphyxiation - A death or injury caused by a chemical that directly or indirectly deprives the body tissues of oxygen, other than drowning.

(5) Categories of hazardous chemicals - A grouping of hazardous chemicals according to their type of physical and/or health hazards.

(6) Container - Any bag, barrel, bottle, box, can, cylinder, drum, reaction vessel, storage tank, or the like that contains a hazardous chemical. The term "container" does not mean pipes or piping systems, nor does it mean engines, fuel tanks, or other operating systems in a vehicle. A primary container is the one in which the hazardous chemical is received from the supplier. A secondary container is one to which the hazardous chemical is transferred after receipt from the supplier.

(7) Department - The Texas Department of Health.

(8) Director - The commissioner of the department.

(9) Emergency service organization - Any organization established to provide the following services for the general public: fire prevention and suppression, hazardous materials response operations, or emergency medical services. An emergency service organization may consist of volunteer members or be a unit of a political subdivision of the state with compensated employees.

(10) Employee education and training program - The training provided by the employer to instruct employees regarding the training topics required by the Act, §502.009. This program is the actual instruction of employees and records of the training sessions, as opposed to a written lesson plan for training.

(11) Employer - The overall organizational entity rather than individual facilities or workplaces. Examples of public employers are an entire state agency, a county, a city, a school district, a university, a college or community college, a river authority, a hospital, or a volunteer emergency service organization.

(12) Handle - to touch, move, or manipulate hazardous chemicals.

(13) Health hazard - A chemical for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur in exposed employees. The term "health hazard" includes chemicals which are carcinogens, toxic or highly toxic agents, reproductive toxins, irritants, corrosives, sensitizers, hepatotoxins, nephrotoxins, neurotoxins, agents which act on the hematopoietic system, and agents which damage the lungs, skin, eyes, or mucous membranes.

(14) Label - Any written, printed, or graphic material displayed on or affixed to containers of hazardous chemicals, which includes ~~[a common]~~ the same name ~~[referenceable to a]~~ as on the material safety data sheet and workplace chemical list.

(15) Material safety data sheet (MSDS) - A document which consists of a manufacturer-specific MSDS which conforms to the OSHA Standard. A "current" MSDS is either the most recent MSDS from the manufacturer at the time of the last shipment of the product into the workplace or the most recently issued MSDS from the manufacturer. MSDSs provided to employees must be manufacturer-specific, legible, and complete.

(16) Stationary Process Container - A tank, vat, or other such container which holds different hazardous chemicals at different times.

(17) Workplace - A contiguous facility that is staffed 20 hours or more per week, unless such a facility is subdivided by the employer [An establishment at one geographical location containing one or more work areas]. Normally this subdivision would be a building or cluster of buildings or other structure, but it could be a complex of buildings if the work activities and hazardous chemicals within these buildings are similar, [-] but could be for a portion of a building if the employer chooses. If an employer chooses to subdivide a contiguous facility into separate workplaces, this action may establish a requirement for the employer to prepare multiple workplace chemical lists for the facility. Subdivision of a contiguous facility into separate workplaces will also establish a requirement for the employer to make MSDSs readily available, post the Notice to Employees, and develop a written hazard communication program for each workplace. Noncontiguous properties are always separate workplaces unless they are temporary workplaces, in which case they can be either work areas of a headquarters workplace or separate workplaces, at the discretion of the employer.

(18) Written hazard communication program - A document which describes an employer's program developed for compliance with all aspects of the Act.

~~[Board - The Texas Board of Health.]~~

~~[Commissioner - The Texas Commissioner of Health.]~~

~~[Identity - Any chemical or common name which is indicated on the material safety data sheet (MSDS) for this chemical. The identity used shall permit cross-references to be made among the required list of hazardous chemicals, the label and the MSDS.]~~

~~[Physical hazard - A chemical for which there is scientifically valid evidence that it is a combustible liquid, a compressed gas, explosive, flammable, an organic peroxide, an oxidizer, pyrophoric, unstable (reactive) or water-reactive.]~~

~~[Temporary workplace - A stationary workplace that is inhabited less than 20 hours per week and which contains fewer than 25 items on the workplace chemical list. A temporary workplace may be considered to be a work area of the headquarters workplace from which employees are routinely dispatched. Temporary workplaces may include pumping stations, switching stations, electrical substations, utility structures, and the like, provided that the requirements of the Texas Hazard Communications Act, Texas Civil Statutes, Article 5182b, §§6, 7, 9, 10, and 15, and are met and employees have ready access to the appropriate workplace chemical lists at the headquarters and the temporary workplace.]~~

~~[Work area - A room or defined space in a workplace where hazardous chemicals are produced or used and where employees are present. A temporary workplace may be considered a work area.]~~

§295.3. Responsibility for Implementation of Program.

The ~~director's~~ ~~Commissioner's~~ responsibilities under the Act are carried out through the Texas Department of Health, Toxic Substances

Control Division, Hazard Communication Branch. [Division of Occupational Safety and Health, Texas Department of Health. Compliance documents and routine]. Routine inquiries regarding this Act shall be addressed [- until further notice by the Commissioner,] to: Texas Department of Health, Toxic Substances Control Division, Hazard Communication Branch, [Division of Occupational Safety and Health, Texas Department of Health] 1100 West 49th Street, Austin, Texas 78756.

§295.4. Workplace Chemical List.

(a) An employer may choose to develop workplace chemical lists by work areas, pursuant to the Act, §502.005(c). However, the workplace chemical list threshold of 55 gallons or 500 pounds must be applied to the aggregate amount of the hazardous chemical in the entire workplace, even though such chemicals may be present below these thresholds in each work area, in determining whether a workplace chemical list must be developed.

(b) The department shall make available a model form to assist employers in developing workplace chemical lists. This form will provide a recommended format for the workplace chemical list, but is not required.

§295.5. Material Safety Data Sheets.

(a) The employer shall maintain a current and appropriate MSDS for each hazardous chemical purchased. Except as described in subsection (b) of this section, MSDSs, whether in printed or electronic form, are considered "readily available" if they can be accessed for review at the workplace during the same workshift in which they are requested.

(b) An employer shall provide MSDSs to emergency responders immediately upon request.

(c) An employer shall request or obtain a missing MSDS within seven business days of receipt of the hazardous chemical. An employer shall not permit the use of any hazardous chemical for which a current MSDS is not available.

(d) A chemical manufacturer or distributor must provide an appropriate MSDS to an employer within seven business days of receipt of the employer's written request.

(e) The employer shall maintain a current MSDS, based on the date that each hazardous chemical was last received in the workplace. If the hazardous chemical was last received prior to the original effective date of the Act, January 1, 1986, an MSDS is not required.

§295.6. Labeling of Containers.

(a) Each primary container label must include:

(1) the identity of the chemical appearing on the MSDS;

(2) the pertinent physical and health hazards, including the organs that would be affected; and

(3) the chemical manufacturer's name and address.

(b) Except as provided in the Act, §502.007(b), each secondary container label must include:

(1) the identity of the chemical appearing on the MSDS; and

(2) the pertinent physical and health hazards, including the organs that would be affected.

(c) The employer shall ensure that labels or other forms of warning are legible, in English, and prominently displayed on the container in the workplace, work area, or temporary workplace

throughout each work shift. The employer may add label information in another language to hazardous chemical containers.

(d) Signs, placards, process sheets, batch tickets, operating procedures, or other such written materials may be used in lieu of affixing labels to individual stationary process containers, as long as the alternative method identifies the containers to which it is applicable and conveys the label information required by the Act.

(e) In providing the health hazard warning information on primary or secondary labels, the employer shall provide, at a minimum, the target organs that may be affected and any or a combination of the appropriate health hazard terms from the following list: carcinogens; toxic or highly toxic agents; reproductive toxins; irritants; corrosives; sensitizers; hepatotoxins; nephrotoxins; neurotoxins; agents which act on the hematopoietic system; and agents which damage the lungs, skin, eyes, and mucous membranes.

(f) In providing the physical hazard warning information on primary or secondary labels, the employer shall provide, at a minimum, any or a combination of the appropriate physical hazard terms from the following list: combustible liquid; compressed gas; explosive; flammable; an organic peroxide; an oxidizer; pyrophoric; unstable (reactive); and water-reactive.

(g) In order to communicate the information in the most efficient manner, the hazard warning information on labels must be written concisely, but must be complete.

(h) While certain alternative labeling systems may be used to enhance the required label information, such systems by themselves do not meet the requirements of the Act. Examples of such labeling systems are the National Fire Protection Association (NFPA) 704m Standard; the Hazardous Materials Information Systems (HMIS) Standard; and the U.S. Department of Transportation shipping label system.

(i) Containers of hazardous chemicals which were received prior to the original effective date of the Act, January 1, 1986, must be labeled in accordance with the current labeling requirements of the Act.

§295.7. Written Hazard Communication Program and Employee Education and Training Program.

(a) An employer is required to develop a written hazard communication program which will describe how the employer will comply with all requirements of the Act. The written hazard communication program must include a description of the required action; the procedures for accomplishing the action; and the locations where any required documents or equipment will be stored. Employers must ensure that the above information is specific to each separate workplace.

(b) An employer shall maintain a copy of the written hazard communication program at each separate workplace, including each workplace on contiguous properties which are subdivided into separate workplaces.

(c) The written hazard communication program shall describe how the following requirements of the Act shall be met:

- (1) workplace chemical lists;
- (2) material safety data sheets;
- (3) labels;
- (4) employee education and training programs, including the following subjects:

(A) the use of the information provided in material safety data sheets and labels, and how they are related; and

(B) the following subjects which relate to hazardous chemicals:

- (i) locations;
- (ii) the physical effects and short-term and long-term health effects of exposure;
- (iii) safe handling with respect to the physical and health hazards;
- (iv) the proper use of personal protective equipment;
- (v) first aid treatment for exposures; and
- (vi) safety instructions on handling, cleanup, and disposal;

(5) revisions to and maintenance of the written hazard communication program;

- (6) reporting employee deaths and injuries;
- (7) posting employee notice;
- (8) selecting, providing, and maintaining personal protective equipment; and
- (9) maintaining employee rights.

(d) The employee education and training program shall include training sessions for employees and the record of each training session. The training subjects listed in subsection (c)(4) of this section shall be conducted in the following manner:

(1) the instruction may be provided by categories of chemicals under the Act, §502.009(d); or

(2) the instruction may be provided for specific chemicals known to be present and to which the employee may be exposed.

(e) Training records must be for each session and contain all of the following information:

- (1) the date of the training session;
- (2) a list of legible names of all the employees who attended the training session;

(3) any of the subjects listed in subsection (c)(4) of this section which were included in the training session, and the names of the categories of chemicals that were covered in the training session, if training is conducted by such categories; and

(4) a list of legible names of all instructors who provided the training for that session.

(f) When training is conducted by categories of hazardous chemicals under the Act, §502.009(d), the employer shall ensure that all the categories used are adequate to cover all hazardous chemicals to which the employees may be exposed. Such training need only cover those categories of chemicals which are appropriate, based on the hazards presented by the chemicals to which the employees may be exposed.

(g) For the purposes of training by categories of hazardous chemicals, the categories of chemicals that shall be considered for inclusion in training sessions, based on the requirements of subsection (f) of this section, shall be:

(1) the same specific categories shown as hazards in the definition of "physical hazard" provided in the Act and in the definition of "health hazard" provided in §295.2 of this title (relating to Definitions); or

(2) other broad chemical hazard categories which incorporate the specific categories referenced in paragraph (1) of this subsection.

(h) If training is performed as described in subsection (g)(2) of this section, then the employer shall list each of the specific categories referenced in subsection (g)(1) of this section under the name of the appropriate broad category which covered that specific category in the training. This list shall appear in either the employee training records or the written hazard communication program for the workplace.

(i) Training for new or newly assigned employees must be completed prior to assigning any duties that may result in exposure to hazardous chemicals.

(j) Emergency service organizations shall provide to their members or employees the following information:

(1) for any hazardous chemicals which the members or employees use or handle, the emergency service organization shall provide the training required by the Act, §502.009(c);

(2) for any hazardous chemicals to which the members or employees may be exposed during emergency responses, the emergency service organization shall provide information on the recognition, evaluation, and control of exposures to such chemicals.

(k) The information referenced in subsection (j)(2) of this section may be in the form of training sessions, written materials, or any other form of communication which provides this information. Training which meets the requirements of the Hazardous Waste Operations and Emergency Response Rule which was promulgated by the U.S. Environmental Protection Agency in Title 40 CFR, Part 311 shall meet the requirements for the Act, §502.009(h), and subsection (j)(2) of this section.

§295.8. Complaints and Investigations.

(a) The director or his representative shall investigate in a timely manner any complaint relating to an alleged violation of the Act. Such complaints do not have to be submitted to the department in writing and may be anonymous. An inspection based on a complaint is not limited to the specific allegations of the complaint. An employer who refuses to allow such an investigation shall be in violation of the Act.

(b) The director or his designated representatives may enter a workplace at all reasonable times to conduct random compliance inspections. An employer who refuses to allow such an inspection shall be in violation of the Act.

(c) The department may find multiple violations by an employer during an inspection.

(d) Upon request from a representative of the director, an employer shall make or allow photocopies of documents to be made and permit the representative to take photographs required to verify the compliance status of the employer. Such requests may be made during a compliance inspection or in a written Notice of Violation issued by the department.

§295.9. Reporting Fatalities and Injuries.

(a) Employers are required to report to the department the occurrence of any employee accident, including asphyxiation, resulting from a chemical exposure and that is fatal to one or more

employees or that results in the hospitalization of five or more employees.

(b) Such employee accidents may be reported to the Texas Department of Health, Toxic Substances Control Division, Hazard Communication Branch at toll free telephone number 1-800-452-2791. Reports shall be submitted either orally or in writing no later than 48 hours after the occurrence of the accident. Written reports may be transmitted via facsimile or electronic means.

§295.11. Administrative Penalties.

(a) Inspections may be conducted by the director or his representative to determine if an employer is in violation of the Act or the rules adopted by the board to enforce the Act. An employer will be notified in writing of any alleged violations. When an employer receives written notification alleging violations of the Act, a written response shall be sent by the employer to the department within 15 business days of receipt of the notification. The employer's response must conform to one or more of the options provided in the Act, §§502.014(d), (e) and/or (f).

(b) Employers who do not respond to the written notice from the department in accordance with subsection (a) of this section shall be subject to administrative penalties. Each violation of the Act may be cited separately in the written notice and a separate penalty may be proposed for each citation. Each day a violation continues may be considered a separate violation.

(c) Penalties shall be due after an order is issued by the director. An order may be issued on or after the 16th business day following the date that a written notification of violations is received by the employer, unless the department receives an acceptable written response which documents that each violation has been corrected or that a formal hearing has been requested. If an informal settlement conference is requested, the employer must respond within 11 business days after the employer receives a summary letter about the informal conference.

(d) The written response from the employer must address each violation separately and must provide the documentation requested by the department or an acceptable alternative agreed to by the department. An inappropriate or unacceptable response may result in a penalty being assessed for the underlying violations.

(e) Violations will be classified in one of four severity levels:

(1) a minor violation is related to a minor records keeping deficiency;

(2) a serious violation is related to failure to take an action that poses a threat of harm to any employee or a substantial records keeping deficiency;

(3) a severe violation is related to failure to take an action that poses a substantial threat of harm to any employee or a major records keeping deficiency; or

(4) a critical violation is related to failure to take an action that has caused harm or is likely to cause significant harm to any employee, or is a violation of any employee's rights under the Act.

(f) Penalty amounts will be assessed based on the following schedule:

Figure: 25 TAC §295.11(f)

(g) Proposed penalties for individual violations may be reduced or enhanced by the department based on consideration of the history of previous violations, good faith efforts made to correct violations, duration of the violation, or any other considerations that justice may require. A maximum reduction or enhancement of 50%

per individual proposed penalty may be considered, based on the facts presented to the department.

(h) Follow-up inspections may be made to confirm the status of violations. In cases where the department determines that one or more specific violations of the Act are ongoing, the department may issue a written notice to the employer proposing a per day penalty for each violation.

(i) Examples of violations for the various severity levels include, but are not limited to:

(1) Minor violation:

(A) failure to update the workplace chemical list as needed; failure to maintain previous workplace chemical lists for 30 years; or failure to develop the current workplace chemical list;

(B) failure to include one to five required elements in employee training records for one or more training sessions. Each employee name, training subject, instructor's name, and the date of the training session is a separate element;

(C) having a written hazard communication program which fails to describe how one to three of the criteria specified in §295.7(c) of this title (relating to Written Hazard Communication Program and Employee Education and Training) will be met;

(D) failure to post the workplace notice specified in §295.12 of this title (relating to Employee Notice; Rights of Employees) in 25% of the locations where notices are normally posted in the workplaces covered by an inspection;

(E) failure to maintain consistent names for hazardous chemicals on MSDSs, labels, and the workplace chemical list;

(F) maintaining up to five MSDSs which are not current if the hazard information on the MSDSs is substantially the same as the current MSDSs; or

(G) failure to maintain a current MSDS for one hazardous chemical in one workplace.

(2) Serious violation:

(A) failure to provide the proper identity or required health and physical hazard information on labels for up to three containers of hazardous chemicals;

(B) failure to provide any label on a hazardous chemical container;

(C) failure to maintain five or more required elements in employee training records for one or more training sessions. Each employee name, training subject, instructor's name, and the date of the training session is considered a separate element;

(D) failure to post the workplace notice specified in §295.12 of this title in 26% to 99% of the locations where notices are normally posted in the workplaces covered by an inspection;

(E) failure to provide up to 10% of employees in the workplaces covered during an inspection the training required under the Act, §502.009(c);

(F) having a written hazard communication program which fails to describe how four to six of the criteria specified in §295.7(c) of this title will be met;

(G) failure to maintain current MSDSs for more than one and less than 6.0% of the hazardous chemicals in one workplace which are surveyed during an inspection; or

(H) maintaining six or more MSDSs which are not current if the hazard information on the MSDSs is substantially the same as the current MSDSs.

(3) Severe violation:

(A) failure to post the notice to employees specified in §295.12 of this title in any of the locations where employee notices are normally posted in any workplace;

(B) failure to provide the proper identity or required health and physical hazard information on labels of up to ten containers of hazardous chemicals;

(C) failure to provide labels on up to five hazardous chemical containers;

(D) failure to provide up to 25% of employees in the workplaces covered during an inspection the training required under the Act, §502.009(c);

(E) having a written hazard communication program which fails to describe how more than six of the criteria specified in §295.7(c) of this title will be met;

(F) failure to maintain current MSDSs for 6.0% to 10% of the hazardous chemicals in one workplace which are surveyed during an inspection;

(G) failure by a chemical manufacturer or distributor to provide an MSDS to an employer within seven business days of receipt of the employer's written request; or

(H) failure to report an incident to the department as required under the Act, §502.012.

(4) Critical violation:

(A) intentionally removing or defacing a label on a primary container of a hazardous chemical or maintaining another product's label on a hazardous chemical container;

(B) failure to provide the proper identity or required health and physical hazard information on labels of more than ten containers of hazardous chemicals;

(C) failure to provide labels on more than five hazardous chemical containers;

(D) failure to provide more than 25% of employees in the workplaces covered during an inspection the training required under the Act, §502.009(c);

(E) denial by an employer to allow a representative of the department to conduct a compliance inspection;

(F) failure to maintain current MSDSs for greater than 10% of the hazardous chemicals in one workplace which are surveyed during an inspection;

(G) violating any employee rights guaranteed under the Act, §502.017;

(H) failure to provide, at the request of an employee, a copy of an MSDS for a hazardous chemical to a physician or emergency responder for purposes of treating any employee who may have suffered a chemical exposure; or

(I) a request or a requirement for an employee to waive any rights provided by the Act, §502.107.

§295.12. *Employee Notice; Rights of Employees.*

(a) Employers covered by the Act must post and maintain workplace notices specified in this section. The wording of the required workplace notice may be changed by the director as needed. Figure: 25 TAC §295.12(a)

(b) The workplace notice shall measure at least 8-1/2 by 11 inches and be typed, typeset, or mechanically produced with lettering that is clearly legible. The letters shall not be smaller than 12 characters per inch. The words "NOTICE TO EMPLOYEES" shall be in bold capital letters at least 1/2 inch high. Other words spelled in capital letters in the sample notice shall be reproduced in capital letters.

(c) A current version of the workplace notice shall be clearly posted and unobstructed at all locations in the workplace where notices are normally posted, and at least one location in each workplace.

(d) An employer may add information to the workplace notice as long as the wording required by this section is included. Employers may add the name and telephone number of the employer's safety or environmental health officer to the bottom of the workplace notice in order to facilitate communication within the workplace.

(e) To assist employers in providing the workplace notice information, the department shall make original copies of the workplace notice available for photocopying by employers. A Spanish translation of the workplace notice may be made available by the department.

(f) Employees have guaranteed rights to accessing the workplace chemical list and MSDSs and to receive training under the Act.

(g) Employees have a guaranteed right to receive appropriate personal protective equipment (PPE) from their employer. Employers shall provide appropriate PPE to employees who may be exposed to hazardous chemicals in their workplace. The employer shall maintain and store PPE appropriately to ensure that contamination does not occur.

(h) An employee shall not be disciplined, harassed, or discriminated against by an employer for filing complaints, assisting inspectors of the department, participating in proceedings related to the Act, or exercising any rights under the Act.

(i) Employees cannot waive their rights under the Act. A request or requirement for such a waiver by an employer violates the Act.

§295.13. Standard for Physician Treatment.

The citation of the OSHA Standard for physicians treating employees that is provided in the Act, §502.018, is in error. The correct citation for this standard is 29 CFR, 1910.1200(i)(2).

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 October 19, 1998.

TRD-9816337

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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

◆ ◆ ◆
25 TAC §§295.4, 295.5, 295.7, 295.8

(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, §502.019, which provides the department with the authority to adopt necessary rules to administer and enforce Chapter 502; and the Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects the Health and Safety Code, §502.019, the Health and Safety Code, Chapter 12; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§295.4. *Labeling.*

§295.5. *Posting of Workplace Notice.*

§295.7. *Training.*

§295.8. *Assessment of Administrative 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 October 19, 1998.

TRD-9816336

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: November 29, 1998

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

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 216. Water Quality Performance Standards for Urban Development

Subchapter B. Municipal Water Pollution Control and Abatement

30 TAC §§216.21–216.30

The Texas Natural Resource Conservation Commission (commission) proposes new §§216.21-216.30, concerning municipal water pollution control and abatement. These sections will form a new Subchapter B under Chapter 216 concerning Municipal Water Pollution Control and Abatement Plans.

EXPLANATION OF RULE

The proposed rules will implement revisions to Texas Water Code, §26.177 made by House Bill 1190 (1997) passed during the 75th Texas Legislature (1997). The bill revised Texas Water Code §26.177 and made the section permissive for any community regardless of population, and required only for communities with populations of 10,000 or greater where the Clean Rivers Regional Assessment of Water Quality or

other commission assessments or studies demonstrate a water pollution impact not associated with permitted sources. The proposed rulemaking provides flexibility in allowing affected cities the opportunity to correct the problems using those resources available to them within a reasonable time, but not to exceed five years.

Representatives of potentially impacted municipalities participated in the development of the rule providing suggested language and comment on the requirements of the rule.

In developing the rule, program staff has also considered other related matters such as: federal permitting under Phase II of the storm water permitting program; delegation of the National Pollutant Discharge Elimination System permitting program to the state; revision of state and federal water quality standards to address wet weather conditions; evolving federal policy on Total Maximum Daily Loads; and the development of a state coastal nonpoint source management program in compliance with Section 6217 of the Coastal Zone Management Act.

Proposed new §216.21, relating to Purpose and Policy, explains that the purpose of these rules is to establish procedures and measures to address water pollution, identified in cities of 10,000 or more, that is not attributable to a permitted source. This section also establishes that this subchapter is not intended to prevent the commission from abating or preventing the pollution of water through permits, orders or other actions.

Proposed new §216.22, relating to Applicability, explains that the proposed rule applies to cities with populations of 10,000 or more in which a water quality assessment report has identified a water pollution problem that is not attributable to a permitted source.

Proposed new §216.23, relating to Definitions, includes definitions that apply to this subchapter and are not included in 30 TAC, Chapter 3.

Proposed new §216.24, relating to Water Quality Assessments and Studies, specifically identifies the related water quality assessments and studies which may be used by the executive director to identify water pollution that is not attributable to permitted sources. Water quality assessments and studies which may be used by the executive director to identify water pollution that is not attributable to permitted sources include, but are not limited to, the Commission's program to develop Total Maximum Daily Loads (TMDLs) in accordance with §303(d) of the federal Clean Water Act. In this scenario, cities and other stakeholders located in watersheds of waterbodies that do not meet applicable water quality standards would be encouraged and given an opportunity to work with the Commission in the development of TMDLs for the segment. TMDLs are technical analyses performed to determine how much pollution a waterbody can receive without violating its water quality standards. If, during the development of a TMDL, sources, other than permitted, in a city are determined to be contributing to the violation of water quality standards, the city will be notified by the executive director and given a reasonable amount of time to correct the problem. Actions undertaken by the city to correct the problem will need to be coordinated with the TMDL Implementation Plan adopted for the waterbody.

Proposed new §216.25, relating to Notice, explains that the executive director will notify a city if it is determined that an assessment or study has identified water pollution that is not attributable to with permitted sources.

Proposed new §216.26, relating to Public Meeting Held by the Commission, explains that unless the executive director and the city agree that the city should be required to develop and implement a water pollution control and abatement program after expiration of a specified time period, the commission at a commission meeting shall evaluate and take action on the executive director's recommendation. The subsection further explains that the commission may find that the city continues to meet the criteria and needs to implement a program, refer the matter to SOAH, determine that the city is not required to develop a Water Pollution Control and Abatement Program, or issue any other order the commission deems appropriate.

Proposed new §216.27, relating to Water Pollution Control and Abatement Program, explains that a water pollution control and abatement program under this subchapter shall encompass areas within the city's municipal boundaries and its extra-territorial jurisdiction and explains the elements of such a program.

Proposed new §216.28, relating to Submittal of Water Pollution Control and Abatement Programs, details the process for a city submitting a water pollution control and abatement program to the commission.

Proposed new §216.29, relating to Amendment Procedures for Water Pollution Control and Abatement Programs, details the process for the city to submit an amendment to the program for commission review and approval. The proposed rule also provides that the commission may, on its own motion or in response to a petition by the executive director, require the city to amend its program.

Proposed new §216.30, relating to Appeals, explains that any person affected by any ruling by a city related to waste pollution control and abatement outside of the corporate limits, may appeal such an action to the commission or the appropriate state district court.

FISCAL NOTE

Mr. Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed sections are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be an increase in cost associated with the development and administration of a program that will include the review of water quality assessment data, processing notifications, preparing for public meetings and contested hearings, and processing appeals and amendments to water pollution control and abatement plans. The cost to state government is estimated to be approximately \$65,000 per year for the first five years the rules are in effect. The net effect of the provisions of House Bill 1190 and these proposed rules will be to reduce the potential costs to local governments of compliance with Water Code §26.177 because of the repeal of the mandatory provisions for development of a pollution abatement plan. The effect on local government will be the costs to those cities of greater than 10,000 population that demonstrate a water pollution impact not attributable to permitted sources. The costs to any one city that makes such demonstration will vary according to the plan the city develops to resolve the problem and will also vary according to the level and extent of problem, size of city, and complexity of the plan. The actual costs to any affected city can only be determined on a site-specific basis. No additional fees will be imposed on any affected city to implement this program.

PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years these proposed new sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be improvements in the control and abatement of water pollution coming from non-point sources in the areas and municipalities where water quality assessments have identified water pollution problems. Another public benefit expected is the improvement of the quality of surface water resources in the State. The provisions of House Bill 1190 and these rules as proposed impose costs only on certain cities with demonstrated water quality problems. Other than those costs that have been described for affected cities under this rule, there are no economic costs to any person, including any small business, anticipated as a result of compliance with the rule as proposed.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirement of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because the rule is not a "major environmental rule" as defined in that section of the code and does not exceed any standard, requirement or authority set by federal or state law or delegated agreement. Although the proposed rule is intended to protect the environment, it does not meet the other of the two separate requirements that must be met for the definition to apply. The proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, even if the proposed rule met the definition of a "major environmental rule": (1) the proposed rule does not exceed a standard set by federal law; (2) the proposed rule does not exceed any expressed requirement of state law; (3) there is no delegation agreement or contract directly applicable to the proposed rule, and (4) the rule is not adopted solely under the general powers of the commission, but is adopted under the specific authority of Texas Water Code §26.177.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to implement requirements of §26.177 of the Texas Water Code. The proposed rule will substantially advance this specific purpose by establishing procedures to address water pollution that is not attributable to permitted sources in cities with populations of 10,000 or more. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the rule governs actions a city must take to abate and/or prevent water pollution occurring within its jurisdiction. The rule requires cities to identify and regulate discharges into waters in the state which are non-permitted and may be contributing to the pollution of a water body. To the extent a municipality must enact an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure to address the issue of non-permitted discharges which might have an effect on real private property, §2007.003(b)(4) of the Texas Government Code exempts a municipality from application of the Private Real Property Act.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the rule does not govern air pollution emissions, on site sewage disposal systems, or underground storage tanks or other specific nonpoint source control related actions expressly identified under Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor does it govern or authorize actions listed in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the CMP. However, the development and implementation of water pollution control and abatement plans, where appropriate, will provide significant protection for coastal natural resources and will be an integral part of the state's coastal non-point source pollution control program.

PUBLIC HEARING A public hearing on the proposal will be held on November 10, 1998 at 10:00 a.m. in Room 2210 of the TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion within the audience will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments on the proposal should refer to Rule Log No. 97164-216-WT and may be mailed to Lutrecia Oshoko, MC 204, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Written comments must be received by 5:00 p.m., November 30, 1998. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For more information, please contact Arthur Talley of the Data Collection Section at (512) 239-4546.

STATUTORY AUTHORITY

The new sections are proposed under the Texas Water Code, §5.103 and §26.011 which provides the commission authority to adopt rules necessary to carry out its powers and duties under the provisions of the Texas Water Code, and under §26.177 which provides the Commission with the authority to establish rules providing the criteria for the establishment of water pollution control and abatement programs and the review and approval of those programs.

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

§216.21. Purpose and Policy.

(a) The purpose of this subchapter is to establish procedures and measures in accordance with Texas Water Code, §26.177(a) to address water pollution that is not attributable to permitted sources in cities that have a population of 10,000 or more persons.

(b) An unauthorized discharge is a violation of Texas Water Code, §26.121. Nothing in this subchapter is intended to limit or prevent the commission from abating or preventing the pollution of water in the state through permits, orders, or other enforcement actions authorized under the Texas Water Code, Chapter 26, or other applicable state or federal law.

§216.22. Applicability.

(a) This rule applies to any city with a population of at least 10,000 persons, based on the most recent federal decennial census, and in which a water quality assessment report required by Texas Water Code, §26.0135 or other commission assessment or study, as described in §216.24 of this title (relating to Water Quality Assessments and Studies), has identified water pollution that is not attributable to permitted sources. Cities meeting applicability shall be required to satisfy applicable provisions of this subchapter upon receipt of notice issued by the executive director pursuant to §216.25 of this title (relating to Notice).

(b) A city whose population falls below 10,000, based on the most recent federal decennial census, will no longer have a duty to satisfy the applicable provisions of this subchapter upon the executive director's receipt from the city of the most recent federal decennial census indicating that the population has fallen below 10,000.

(c) A Water Pollution Control and Abatement Program submitted under this subchapter is not a Water Pollution and Abatement Plan as provided by Texas Water Code, §26.121(a)(2)(B).

§216.23. Definitions.

Terms defined in Chapter 3 of this title (relating to Definitions) will have the same meaning when used in this subchapter unless the definition is specifically modified in this section.

(1) City - A municipality or city existing, created, or organized under the general, home rule, or special laws of this state.

(2) Extra Territorial Jurisdiction - An area outside the corporate limits of a municipality as defined in Local Government Code, §42.021.

(3) Permitted Sources - A source that discharges or is required to discharge pollution into or adjacent to waters in the state as authorized by a valid permit, general permit, or rule pursuant to the Texas Water Code, the federal Clean Water Act, or other applicable state or federal law.

(4) Pollution - The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose. This definition includes, but is not limited to, nonpoint sources of pollution as those sources are defined and identified pursuant to Chapter 220 of this title (relating to Regional Assessments of Water Quality), the federal Clean Water Act, the Coastal Management Act, Chapter 6217, and other applicable state and federal statutes, regulations, policies, and guidance.

(5) Significant Waste Discharge - The discharge of waste to waters in the state which causes or threatens to cause pollution.

(6) Water Pollution Control and Abatement Program - A program developed pursuant to this Chapter that includes personnel, services, functions, schedules, and reports developed by a city to prevent or correct water pollution problems within its jurisdiction.

§216.24. Water Quality Assessments and Studies.

Water quality assessments and studies that may be used by the executive director to identify water pollution that is not attributable to permitted sources shall consist of one or more of the following:

(1) State Water Quality Inventory. The state program which assesses the quality of surface and ground waters resulting in a report describing the status of water quality in the state in accordance with the Federal Clean Water Act, §305(b);

(2) Clean Rivers Program. Watershed water quality assessments conducted in accordance with Texas Water Code, §26.0135;

(3) State Nonpoint Source Assessment. The state program implemented in compliance with Federal Clean Water Act, §319(a) which identifies surface and ground waters in the state which cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the federal Clean Water Act without additional controls for nonpoint sources of pollution;

(4) Total Maximum Daily Load. Pursuant to Clean Water Act §303(d), the identification and prioritization of waters within the state for which the effluent limitations required by §301(b)(1)(A) and (B) of the Clean Water Act are not stringent enough to implement any water quality standard applicable to such waters; or,

(5) Other. Special studies, pilot projects, reports, or other quality assured assessments of water quality in the state prepared, approved, or accepted by the executive director that identify non-permitted sources of water pollution within cities, including information used by the executive director for the purpose of updating the state's list of impaired waters prepared in accordance with the federal Clean Water Act, §303(d).

§216.25. Notice.

(a) If it is determined by the executive director that a city has met the criteria set forth in §216.22(a) of this title (relating to Applicability) or the executive director is requiring the city to amend an existing water pollution control and abatement program, the executive director shall notify the city. This notice shall specify the following:

(1) the basis for the executive director's determination;

(A) That the city meets the criteria set forth in §216.22(a) of this title; or,

(B) That the city's existing Water Pollution Control and Abatement Program should be amended;

(2) that the executive director may undertake additional water quality assessments and studies in the impacted area as set out in §216.24 of this title (relating to Water Quality Assessments and Studies);

(3) that the city may undertake additional water quality assessments and studies in the impacted area within its jurisdiction which comply with quality assurance requirements of the executive director; and,

(4) the time period (not to exceed five years) within which the city may try to correct the problem. The executive director may amend this time period when new or additional information or circumstances warrant such an amendment.

§216.26. Public Meeting Held by the Commission.

(a) After expiration of the time period specified in §216.25(a)(4) of this title (relating to Notice), the executive director shall determine whether a city still meets the criteria set forth in §216.22(a) of this title (relating to Applicability) based on water quality assessments and studies set out in §216.24 of this title (relating to Water Quality Assessments and Studies) performed subsequent to the initial determination, taking into consideration any measures taken by the city to correct the problem.

(b) If the executive director determines that a city continues to meet the criteria set forth in §216.22(a) of this title, the executive director at a public meeting held by the commission shall recommend that the city be required to submit a Water Pollution Control and

Abatement Program or, when appropriate, amend an existing Water Pollution Control and Abatement Program.

(c) No public meeting shall be required if the executive director and the city agree that the city should be required to develop and implement a Water Pollution Control and Abatement Program, or amend an existing Program. In lieu of a public meeting, the city, based on an agreement with the executive director, may request that the commission issue an agreed order to submit a Program as described in §216.27 of this title (relating to Water Pollution Control and Abatement Program) or an amendment to an existing Program as described in §216.29 of this title (relating to Amendment Procedures for Water Pollution Control and Abatement Programs).

(d) The city shall cause notice of the public meeting to be published in accordance with §39.5 and §39.7 of this title (relating to Public Notice, General Provisions and Text of Public Notice) informing the public of the meeting and that the public has thirty (30) days prior to the public meeting to provide written comment to the commission on whether the city should be required to develop and implement a Water Pollution Control and Abatement Program or amend an existing Water Pollution Control and Abatement Program.

(e) After consideration of the matter at the public meeting, the commission may:

(1) refer the matter to SOAH for a contested case hearing conducted pursuant to the Administrative Procedure Act (APA) to determine whether the city continues to meet the criteria set forth in §216.22(a) of this title;

(2) determine that the city is not required to submit a Water Pollution Control and Abatement Program;

(3) determine that the city continues to meet the criteria set forth in §216.22(a) of this title and approve the executive director's recommendation that the city be required to develop, or where appropriate amend, and implement a Water Pollution Control and Abatement Program ; or

(4) issue any other order the commission deems appropriate.

(f) The public meeting held by the commission pursuant to this section shall satisfy the requirement of the public hearing mandated by Texas Water Code §26.177.

(g) A commission order issued pursuant to subsection (e) of this section is a final and appealable order under Texas Water Code §5.351. As a prerequisite to appeal, a motion for rehearing under §80.271 of this title (relating to Motion for Rehearing) must be filed within 20 days after the date the city or the city's attorney of record is notified of the commission's final decision or order under this subchapter.

§216.27. Water Pollution Control and Abatement Programs.

(a) The Water Pollution Control and Abatement Program of a city shall encompass the area within a city's municipal boundaries and, subject to Texas Water Code, §26.179 (relating to Designation of Water Quality Protection Zones in Certain Areas), may include areas within its extra-territorial jurisdiction which in the judgment of the city should be included to enable the city to achieve its objectives for the area within its territorial jurisdiction.

(b) The city shall include in the Program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to paragraph (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the commission, and whether they should be covered by a permit from the commission;

(4) a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings;

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater; and

(6) any additional services, functions, or other requirements as may be prescribed by commission rule to effectuate the purposes of this subchapter.

§216.28. Submittal of Water Pollution Control and Abatement Programs.

A Water Pollution Control and Abatement Program shall be submitted to the executive director of the commission in accordance with the order issued pursuant to §216.26 of this title (relating to Public Meeting Held by the Commission). The Water Pollution Control and Abatement Program for the city shall be signed and sealed by a professional engineer licensed in the State of Texas who shall certify that the city's Program is designed to abate and prevent water pollution not attributable to permitted sources located within the city.

§216.29. Amendment Procedures for Water Pollution Control and Abatement Programs.

(a) A city may amend the Water Pollution Control and Abatement Program for that city at any time by submitting an amended Water Pollution Control and Abatement Program to the executive director of the commission. The amended Water Pollution Control and Abatement Program for the city shall be signed and sealed by a professional engineer licensed in the State of Texas who shall certify that the city's Program is designed to abate and prevent water pollution not attributable to permitted sources located within the city.

(b) The executive director may require a city to amend a Water Pollution Control and Abatement Program for that city when new or additional information or circumstances warrant such changes to effectuate the purposes of this subchapter.

(c) The notice, public meeting, and hearing requirements provided under §216.25(a) of this title (relating to Notice) and §216.26 of this title (relating to Public Meeting Held by the Commission) shall apply to an amendment of a Water Pollution Control and Abatement Program.

§216.30. Appeals.

Pursuant to Texas Water Code §26.177(d), any person affected by any ruling, order, decision, ordinance, program, resolution, or other

act of a city relating to water pollution control and abatement outside the corporate limits of such city adopted pursuant to this subchapter or any other statutory authorization may appeal such action to the commission or district court. An appeal must be filed with the commission's chief clerk within 60 days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city. The issue on appeal is whether the action or program is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality, and the commission's order on the appeal will be based on whether the city's actions or programs meet these criteria. The commission or district court may overturn or modify the action of the city. If an appeal is taken from a commission ruling, the commission ruling shall be in effect for all purposes until final disposition is made by a court of competent jurisdiction so as not to delay any permit approvals.

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 October 16, 1998.

TRD-9816273

Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 239-4640



Chapter 238. Water Well Drillers Rules

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of 30 Texas Administrative Code (TAC) §§238.1-238.2, 238.31-238.32, 238.41-238.51, 238.60-238.61, 238.70, and 238.80-238.83, concerning Water Well Drillers Rules.

This action also constitutes the commission's review of the rules contained in 30 TAC Chapter 238. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed notice of review can be found in the Review of Agency Rules section of this edition of the *Texas Register*.

EXPLANATION OF PROPOSED RULE

The proposed repeal would remove current Chapter 238, as part of the commission's implementation of SB 1955, 75th Legislature, 1997. The legislative action amended Chapters 32 and 33, Texas Water Code (TWC), requiring the transfer of the water well drillers programs previously administered by the TNRCC to the Texas Department of Licensing and Regulation (TDLR). TDLR is also authorized to adopt rules under Chapters 32 and 33, and TNRCC proposes the repeal of this chapter in response to the TDLR's proposal to adopt 16 TAC Chapter 76, which proposes rules for well standards and well driller and pump installer licensing.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the repeal.

PUBLIC BENEFIT

Mr. Minick also has determined that, for the first five years the repeal of the rule is in effect, public benefit would result from anticipated administrative efficiencies realized from the consolidation of water well drillers and water well pump installers occupational certification and licensing programs in an agency which specializes in occupational certification and licensing programs. There is no anticipated economic cost to persons, including any small business, subject to the rule proposed for repeal.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that have at least one of four results. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule does not meet the definition of a "major environmental rule" and does not meet any of the four results that would trigger applicability of §2001.0225.

First, the proposal does not exceed a standard set by federal law. There are no specific federal laws that require or provide for the licensing of water well drillers or for the establishment of water well construction standards for wells which are not used for public drinking water supply. Therefore, the proposal does not exceed a standard set by federal law. Moreover, even if the rule did exceed a standard set by federal law, this proposal is specifically required by state law, which required the TNRCC, and now requires TDLR to license drillers and establish standards for the drilling of water wells (Chapter 32 of the TWC) and is exempt from §2001.0025's applicability.

Second, this proposal does not exceed an express requirement of state law. The proposal is designed to carry out the commission's statutory responsibility to control the quality of water in the state, including groundwater, pursuant to §§26.011, 26.046, and 28.011 of the TWC. The proposal is intended to comply with the stated requirements of state law and not exceed them in any way.

Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This proposal is not covered by any delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Finally, this proposal does not adopt a rule solely under the general powers of the agency instead of under a specific state law. While this proposal repeals a rule under general powers of the agency, it was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers under Chapter 32 and §28.011 of the TWC.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. Promulgation

of the repeal of Chapter 238 will not burden private real property which is the subject of the rules. The specific purpose of the rule is to repeal Chapter 238 of the commission's rules to implement the transfer of the licensing requirements for water well drillers and pump installers program to the TDLR. TNRCC proposes the repeal of Chapter 238 in response to a TDLR proposal to adopt 16 TAC Chapter 76. The TDLR's proposed rules will take the place of Chapters 238 and 340 to provide for well standards and well driller and pump installer licensing pursuant to Chapters 32 and 33 of the Texas Water Code as amended by SB 1955, 75th Legislature, 1997. Chapter 238 defines well completion, plugging, and capping standards. Because these rules will no longer be effective, the repeal of these rules does not impose a burden on private real property, and does not cause any takings to occur.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARINGS

A public hearing on the proposal will be held in Austin on November 23, 1998, at 10:00 a.m. in Room 2210 of the TNRCC complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log Number 97144-238-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640; or faxed to (512) 239-5687. All comments sent by fax must be followed by an original, signed hard copy for the agency's records. Written comments must be received by 5:00 p.m., November 30, 1998.

For further information concerning this proposal or the rule review, please contact Steve Musick of the Ground-Water Management Section at (512) 239-4455.

Subchapter A. General Provisions

30 TAC §238.1, §238.2

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

STATUTORY AUTHORITY

These sections are proposed for repeal under TWC, §5.103 which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas, and §5.105 which provides the commission to establish and approve all general policy of the commission by rule. Section 26.011 of the TWC provides that the commission will administer the provisions of Chapter 26 of the TWC and establish the level of quality to be maintained in and control the quality of the water in the state. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers under Chapter 32 TWC.

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

§238.1. *Purpose of Rules.*

§238.2. *Definitions.*

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 October 16, 1998.

TRD-9816244

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter B. State Well Reports and Reporting Undesirable Water

30 TAC §238.31, §238.32

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§238.31. *State Well Reports.*

§238.32. *Reporting Undesirable Water of Constituents.*

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

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Margaret Hoffman

Director, Environmental Law Division

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Subchapter C. Well Drilling, Completions, Capping and Plugging

30 TAC §§238.41-238.51

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§238.41. *Responsibility.*

§238.42. *Standards of Completion for Public Water System Wells.*

§238.43. *Location of New Wells.*

§238.44. *Standards of Completion for Wells.*

§238.45. *Standards of Completion for Water Wells Encountering Undesirable Water or Constituents.*

§238.46. *Standards for Wells Producing Undesirable Water or Constituents.*

§238.47. *Recompletions.*

§238.48. *Well Plugging and Capping.*

§238.49. *Standards for Plugging Wells.*

§238.50. *Standards for Plugging Wells That Penetrate Undesirable Water of Constituent Zones.*

§238.51. *Standards for All Water Wells (drilled before June 1, 1983).*

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

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Margaret Hoffman

Director, Environmental Law Division

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For further information, please call: (512) 239-4640



Subchapter D. Water Distribution and Delivery Systems and Chemical Injection, Chemigation, and Foreign Substance System

30 TAC §238.60, §238.61

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§238.60. *Water Distribution and Delivery Systems.*

§238.61. *Chemical Injection, Chemigation, and Foreign Substance Systems.*

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

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Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter E. Pump Installation and Temporary Well Protection

30 TAC §238.70

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§238.70. *Pump Installation.*

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

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Margaret Hoffman

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For further information, please call: (512) 239-4640



Subchapter F. Miscellaneous Provisions

30 TAC §§238.80-238.83

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§238.80. *Minimum Standards.*

§238.81. *Field Inspection.*

§238.82. *Plugging Responsibility.*

§238.83. *Complaints.*

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

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Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Chapter 340. Licensing Requirements and Complaint Procedures for Water Well Drillers and Pump Installers

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of 30 Texas Administrative Code (TAC) §§340.1-340.3, §340.31, §340.33, §340.35, §340.37, §340.39, §340.41, §340.43, §340.45, §340.49, §340.51, §340.53, §340.71, §340.73, §340.75, §340.77, §§340.81-340.86, §§340.88-340.93, §340.101, §340.103, §340.105, §340.107, §340.109, §340.111, §340.131, §340.133, §340.135, §340.137, concerning Licensing Requirements and Complaint Procedures for Water Well Drillers and Pump Installers.

This action also constitutes the commission's review of the rules contained in 30 TAC 340. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed notice of review can be found in the Review of Agency Rules section of this edition of the *Texas Register*.

EXPLANATION OF PROPOSED RULE

The proposed repeal would remove current Chapter 340 as part of the commission's implementation of SB 1955, 75th Legislature, 1997. The legislative action amended Chapters 32 and 33, Texas Water Code (TWC), requiring the transfer of the water well drillers and pump installers certification and licensing programs previously administered by the TNRCC to the Texas Department of Licensing and Regulation (TDLR). TDLR is also authorized to adopt rules under TWC Chapters 32 and 33, and TNRCC proposes the repeal of this chapter in response to the TDLR's proposal to adopt 16 TAC Chapter 76, which proposes rules for well standards and well driller and pump installer licensing.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the repeal is in effect there will be no significant fiscal implications for state or local government as a result of administration or enforcement of the repeal.

PUBLIC BENEFIT

Mr. Minick has also determined that, for the first five years the repeal of the rule is in effect, public benefit would result from anticipated administrative efficiencies realized from the consolidation of water well drillers and water well pump installers occupational certification and licensing programs in an agency which specializes in occupational certification and licensing programs. There is no anticipated economic cost to persons, including any small business, subject to the rule proposed for repeal.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code §2001.0225 and has determined that the

rulemaking is not subject to §2001.0225, which applies only to certain major environmental rules that have at least one of four results. "Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rule does not meet the definition of a "major environmental rule" and does not meet any of the four results that would trigger applicability of §2001.0225.

First, the proposal does not exceed a standard set by federal law. There are no specific federal laws that require or provide for the licensing of water well drillers or for the establishment of water well construction standards for wells which are not used for public drinking water supply. Therefore, the proposal does not exceed a standard set by federal law. Moreover, even if the rule did exceed a standard set by federal law, this proposal is specifically required by state law which required the TNRCC and now requires TDLR to license drillers and pump installers (Chapter 32 of the TWC) and is exempt from §2001.0025's applicability.

Second, this proposal does not exceed an express requirement of state law. The proposal is designed to carry out the commission's statutory responsibility to control the quality of water in the state, including groundwater, pursuant to §§26.011, and 26.046, and 28.011 of the TWC. The proposal is intended to comply with the stated requirements of state law and not exceed them in any way.

Third, this proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. This proposal is not covered by any delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program.

Finally, this proposal does not adopt a rule solely under the general powers of the agency instead of under a specific state law. While this proposal repeals a rule under general powers of the agency, it was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 and §28.011 of the TWC.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code §2007.043. The following is a summary of that assessment. Promulgation of the repeal of Chapter 340 will not burden private real property which is the subject of the rules. The specific purpose of the rule is to repeal Chapter 340 of the commission's rules to implement the transfer of the licensing requirements for water well drillers and pump installers program to the TDLR. TNRCC proposes the repeal of Chapter 340 in response to a TDLR proposal to adopt 16 TAC Chapter 76. The TDLR's proposed rules will take the place of Chapters 238 and 340 to provide for well standards and well driller and pump installer licensing pursuant to Chapters 32 and 33 of the Texas Water Code as amended by SB 1955, 75th Legislature, 1997. Chapter 340 defines licensing requirements and duties of licensed water well drillers and pump installers. Because these rules will no longer be effective, the repeal of

these rules does not impose a burden on private real property, and does not cause any takings to occur.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the proposed rulemaking and found that the rule is neither identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARINGS

A public hearing on the proposal will be held in Austin on November 23, 1998, at 10:00 a.m. in Room 2210 of the TNRCC complex, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Written comments on the proposal should reference Rule Log No. 97144-238-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640; or faxed to (512) 239-5687. All comments sent by fax must be followed by an original, signed hard copy for the agency's records. Written comments must be received by 5:00 p.m., November 30, 1998.

For further information concerning this proposal or the rule review, please contact Steve Musick of the Ground-Water Management Section at (512) 239-4455.

Subchapter A. Introductory Provisions

30 TAC §§340.1-340.3

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

STATUTORY AUTHORITY

These sections are proposed for repeal under TWC, §5.103 which provides the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws of Texas, and §5.105 which provides the commission to establish and approve all general policy of the commission by rule. Section 26.011 of the TWC provides that the commission will administer the provisions of Chapter 26 of the TWC and establish the level of quality to be maintained in and control the quality of the water in the state. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the

quality of underground water. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC.

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

§340.1. *Purpose of Rules.*

§340.2. *Definitions.*

§340.3. *Council 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.

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Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter B. Licensing Procedures

30 TAC §§340.31, 340.33, 340.35, 340.37, 340.39, 340.41, 340.43, 340.45, 340.49, 340.51, 340.53

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§340.31. *License Required.*

§340.33. *Exceptions.*

§340.35. *Requirements for Issuance of a License.*

§340.37. *Applications for Licenses and Renewals.*

§340.39. *Establishing Texas Residency.*

§340.41. *Examination Fee.*

§340.43. *Certification by the Executive Director.*

§340.45. *Disposition of Application.*

§340.49. *Examinations.*

§340.51. *Licenses.*

§340.53. *License Renewal.*

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 October 16, 1998.

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Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter C. Duties of Licensed Water Well Drillers and Pump Installers

30 TAC §§340.71, 340.73, 340.75, 340.77

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§340.71. *Marking Vehicles and Equipment.*

§340.73. *Well Logs.*

§340.75. *Plugging and Completion of Water Wells.*

§340.77. *Supervising Drillers or Pump Installers.*

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

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Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter D. Driller Trainee Registration

30 TAC §§340.81-340.86

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§340.81. *Registration for Driller Trainees.*

§340.82. *Registration Forms.*

§340.83. *Commencement of Registration.*

§340.84. *Termination of Driller Trainee Status.*

§340.85. *Required Activities of Driller Trainees.*

§340.86. *Prohibited Activities of Driller Trainees.*

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

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Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter E. Pump Installer Apprentices

30 TAC §§340.88-340.93

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§340.88. *Training Program.*

§340.89. *Requirements for Obtaining Pump Installer Apprentice Status.*

§340.90. *Commencement of Registration.*

§340.91. *Termination of Pump Installer Apprentice Status.*

§340.92. *Required Activities of Pump Installer Apprentices.*

§340.93. *Prohibited Activities of Pump Installer Apprentices.*

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 October 16, 1998.

TRD-9816254

Margaret Hoffman

Director, Environmental Law Division

Texas National Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter F. Standards of Conduct

30 TAC §§340.101, 340.103, 340.105, 340.107, 340.109, 340.111

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code, (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§340.101. *Ethical Standards.*

§340.103. *Intent.*

§340.105. *Offer to Perform Services.*

§340.107. *Representations.*

§340.109. *Unauthorized Practice.*

§340.111. *Adherence to Statutes and Codes.*

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 October 16, 1998.

TRD-9816255
Margaret Hoffman
Director, Environmental Law Division
Texas National Resource Conservation Commission
Earliest possible date of adoption: November 29, 1998
For further information, please call: (512) 239-4640



Subchapter G. Disposition of Violations

30 TAC §§340.131, 340.133, 340.135, 341.137

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

STATUTORY AUTHORITY

These repeals are proposed under Texas Water Code (TWC), §§5.103, 5.105, and 26.011, which provide the commission with the authority to promulgate rules necessary for the exercise of its jurisdiction and powers provided by the TWC and other laws. The rule was also adopted and now proposed for repeal under specific state laws regarding the licensing and standards for water well drillers and pump installers under Chapters 32 and 33 of the TWC. Section 28.011 of the TWC allows the commission to make and enforce rules and regulations for protecting and preserving the quality of underground water.

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

§340.131. *Disciplinary Actions.*

§340.133. *Commission Investigations.*

§340.135. *Notice of Agency Proceedings.*

§341.137. *Reinstatement After Disciplinary Action.*

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 October 16, 1998.

TRD-9816256
Margaret Hoffman
Director, Environmental Law Division
Texas National Resource Conservation Commission
Earliest possible date of adoption: November 29, 1998
For further information, please call: (512) 239-4640



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office (GLO) proposes an amendment to §15.11, concerning certification of local government dune protection and beach access plan (plans). The amendment is being proposed to certify the Nueces County Palms at Waters Edge master plan.

On December 27, 1996, the Nueces County Commissioners Court adopted by order the Palms at Waters Edge master plan, which is an amendment to the county's dune protection plan. In the amendment to §15.11(a)(12), the GLO certifies that the dune protection portion of the Palms at Waters Edge master plan is consistent with state law.

Ms. Caryn K. Cospers, deputy commissioner for the Resource Management Program, has determined that for the first five-year period the rule is in effect the fiscal implications for state or local government as a result of enforcing or administering the rule will be a decrease in cost because all impacts to dunes and dune vegetation are considered at once, with no additional permit-by-permit review required.

Ms. Cospers also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing or administering the rule will be predictable, effective and economical administration of the development of the geographic area encompassed in the Palms at Waters Edge master plan. Ms. Cospers has further determined that there will be a decrease in cost to small and large businesses and individuals affected by the Palms at Waters Edge master plan because there will be no individual dune protection permits required for impacts to dune and dune vegetation. The state and Nueces County will benefit from the certification of the Palms at Waters Edge master plan because all impacts within the geographic scope of the master plan are considered at once, with no individual permits required.

The proposed amendment to certify the Nueces County Palms at Waters Edge master plan is subject to the Texas Coastal Management Program (CMP), 31 TAC §505.11(a)(1)(J), and must be consistent with the applicable CMP goals and policies under 31 TAC §501.14(k), relating to Construction in the Beach/Dune System. The GLO has reviewed this proposed action for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council (Council). The proposed action is consistent with the GLO's beach/dune regulations, which the Council determined to be consistent with the CMP. Consequently, the GLO has determined that the proposed action is consistent with the applicable CMP goals and policies.

Comments may be submitted in writing to Ms. Carol Milner, Texas Register Liaison, General Land Office, 1700 North Congress Avenue, Room 626, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). Comments must be received no later than 5:00 p.m., November 13, 1998.

The amendment is proposed under Texas Natural Resources Code, §63.121, 61.011, and §61.015(b), which provides the GLO with the authority to identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas' public beaches; protect the public easement from erosion and reduction caused by development or other activities on adjacent land; and other minimum measures needed to mitigate for any adverse effect on public access and dune areas.

The amendment is also proposed pursuant to Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

Texas Natural Resources Code, Chapter 61, Subchapter B, §61.011, and §61.015(b), and Texas Natural Resources Code, Chapter 63, Subchapter E, §63.121, are affected by the proposed amendment.

§15.11. Certification of Local Government Dune Protection and Beach Access Plans

(a) Certification of local government plans. The following local governments have submitted plans to the General Land Office which are consistent with state law:

(1)-(11) (No change.)

(12) Nueces County

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

(C) Palms at Waters Edge master plan: The General Land Office certifies that the dune protection portion of the Palms at Waters Edge master plan adopted by the Nueces County commissioners court on December 27, 1996, is consistent with state law.

(b)-(e) (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 October 19, 1998.

TRD-9816316

Garry Mauro

Commissioner, General Land Office
General Land Office

Earliest possible date of adoption: November 29, 1998

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



Part X. Texas Water Development Board

Chapter 355. Research and Planning Grants

Subchapter C. Regional Water Planning Grants

31 TAC §355.93, §355.99

The Texas Water Development Board proposes amendments to §355.93 and §355.99, Research and Planning Fund. The amendments are proposed to reflect a change in the funding limits for regional water planning, with the board's share of necessary and direct costs of development of the regional water plans increasing from 75% to 100%. The proposed amendments would make administrative costs ineligible for Board funding, with participants in the regional water planning process expected to cover these administrative expenses.

Proposed amendments to §355.93(b) would remove language that currently allows the board to fund administrative costs, and specifically adds administrative costs to the list of ineligible costs in subsection (b). Examples of the types of items that are considered ineligible as administrative costs are included in §355.93(b)(5).

Proposed amendments to §355.99 remove language that limits board funding of the development of regional water plans to 75% and specify that the board may fund regional water plans at 100% of the necessary and direct costs of development or revision of regional water plans within the funding limits of the board. The proposed amendments are written to provide the Board with the flexibility to examine the costs of grant applications, and to determine that some costs are either not directly related to the development of regional water plans, or are not necessary for the development of the plans. Related changes in subsection (b) would remove language relating to the previously required 25% local match. Subsection (c) would be deleted as its terms relating to the substitution of in-kind services for local match would no longer be needed.

Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect the fiscal implications on state government as a result of enforcement and administration of the sections will be an estimated additional cost of \$1.5 million for 1999, and \$2.2 million for 2000, subject to legislative appropriation. This estimate is based on the state funding regional water planning at 100% of the non-administrative costs of submitted grant applications that staff consider reasonable – a total cost for regional planning of \$20.5 million through August 2000. Assuming the \$20.5 million is funded at 100% rather than at 75% of the total \$22.4 million of both direct and administrative costs (or \$16.8 million), the cost to the state will be \$3.7 million divided as follows: \$1.5 million in 1999 and \$2.2 million in 2000. While the exact cost of the regional water planning effort for the years 2001, 2002 and 2003 cannot now be accurately estimated, the fiscal impact of the rule on the state will be to increase the state's opportunity for funding by approximately 16%. This 16% is based on the state's increase in funding direct costs, but with the elimination of the state's funding of administrative costs. This impact on the state will be dependent on legislative appropriation. The effect on local government as a result of enforcement and administration of the section will be an estimated reduction in costs of \$1.6 million for 1999, and \$2.6 million for 2000. While the exact cost of the rule to local governments cannot now be accurately estimated for the years 2001, 2002 and 2003, there is a savings to local government. The savings to local governments are based on the additional 25% state funding for regional water planning, less the expected administrative costs the local governments will be assumed to voluntarily provide. The estimated savings to local governments also include reduced administrative expenses due to the local entities not having to report to the board on administrative expenses and in-kind services.

Ms. Todd also has determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide more certainty that regional water plans will be timely developed, provide financial relief to local planning groups, and provide incentives to administer the planning process as efficiently as possible. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Suzanne Schwartz 512/473-7981, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231. A public hearing on the proposed rules will be held beginning @ 10:00 a.m. on Monday,

November 9, Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701.

The sections are proposed under the authority granted in: Texas Water Code, §6.101, which directs the board to adopt rules necessary to carry out the powers and duties of the board provided by the Texas Water Code and other laws of Texas; Texas Water Code, §15.403, which directs the board to adopt rules to carry out Texas Water Code, Chapter 15, under which the board provides the funding for regional water plans; and Texas Water Code, §15.4061, which requires to board to adopt rules establishing criteria for eligibility for regional water planning money.

The statutory provisions impacted by the proposed sections are Texas Water Code, §15.4061, which allows the board to provide funding for regional water plans to political subdivisions, and Texas Water Code, §16.053(g), which directs the board to provide financial assistance to regional water planning groups in the development of their regional water plans.

§355.93. *Eligibility.*

(a) (No change.)

(b) Activities. Those activities directly related and necessary to the development or revision of regional water plans [including public notices required under §355.97 of this title (relating to Notice Requirements) and Chapter 357 of this title (relating to Regional Water Planning Guidelines), public meetings and hearings] are eligible for funding within the limits established in §355.99 of this title (relating to Funding Limitations), with the exception of:

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

(5) costs associated with administration of the plan's development, including but not limited to:

(A) compensation for the time or expenses of regional water planning groups members' service on or for the regional water planning group;

(B) costs of administering the regional water planning groups;

(C) costs of public notice and meetings, including time and expenses for attendance at such meetings;

(D) costs for training;

(E) costs of reviewing products developed due to this grant; and

(F) costs of administering the regional water planning grant and associated contracts.

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

§355.99. *Funding Limitations.*

(a) Grants for developing an initial scope of work may include 100% of the costs, but shall not exceed \$20,000 per regional water planning area.

(b) The board may provide up to 100% of the necessary and direct costs of development or revision of regional water plans within the funding limits of the board. [Grants for development of an initial scope of work in combination with grants for regional water plan development or revision shall not exceed 75% of the total cost of the planning per regional water planning area.]

[(c) In-kind services may be substituted for any part of the local share, if such services are directly in support of the planning

effort, are properly documented, and are approved in advance 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 October 15, 1998.

TRD-9816177

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: December 17, 1998

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



Chapter 363. Financial Assistance Programs

Subchapter B. State Water Pollution Control Revolving Fund

Division 1. Introductory Provisions

31 TAC §363.202, §363.209

The Texas Water Development Board (board) proposes amendments to §363.202 and §363.209, concerning Financial Assistance Programs. The amendments provide borrowers of Clean Water State Revolving Fund (CWSRF) loans with a method of financing administrative cost recovery fees by including the fees in the principal of the loan. This change is proposed in anticipation of Congressional action which will exclude loan origination fees financed in the loan from the limitation that is placed on the amounts of CWSRF program funds that may be used to administer the fund.

Proposed amendment to §363.202, relating to Definitions, would delete the definition for "repayment schedule" as a clean up item since repayment schedules are used only in conjunction with a lending method that is being discontinued. The amendments also renumber the remaining definitions. The proposed amendment to §363.209, relating to Administrative Cost Recovery, provides that the loan origination fee is a one-time charge of 1.85% of the SRF loan amount that is due at loan closing.

Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections over and above those associated with the adoption of the original rule.

Ms. Todd also has determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide political subdivisions that lack the means to pay a loan origination fee at closing with a means of including the fee in the principal of a low interest loan. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Gail L. Allan, 512/463-7804, Texas Water Development Board, P.O.

Box 13231, Austin, Texas, 78711-3231, or by fax at 512/463-5580.

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 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.

The statutory provision affected by the proposed amendments are Texas Water Code, Chapter 15, Subchapter J, §15.609.

§363.202. *Definitions.*

The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise. Words defined in the Texas Water Code Chapters 15, 16 or 17, and not defined here shall have the meanings provided by the appropriate Texas Water Code chapter.

(1)-(13) (No change.)

~~[(14) Repayment schedule - The schedule of repayment of principal and/or interest due and payable from the recipients of SRF financial assistance.]~~

(14) ~~[(15)]~~ Rural hardship community - A community consisting of not more than 3,000 residents that is not a remote area within the corporate boundaries of a larger city and that:

(A) is lacking centralized wastewater treatment or collection systems or is in need of improvements to onsite wastewater treatment systems;

(B) has an average annual per capita income equal to or less than 80% of the national annual per capita income as determined by the latest decennial census; and

(C) has an unemployment rate that exceeds by at least one percentage point the most recently reported average yearly national unemployment rate.

(15) ~~[(16)]~~ SRF - The state water pollution control revolving fund, created pursuant to the Texas Water Code, Subchapter J, Chapter 15.

(16) ~~[(17)]~~ SRF program account - The program account is an account in the SRF created pursuant to a resolution of the board in issuing SRF bonds and is used, pursuant to such bond resolution(s), for the purpose of providing financial assistance to political subdivisions for construction of treatment works and, if needed, to pay rebate amounts to the federal government.

(17) ~~[(18)]~~ "State of Texas 303(d) Report" - The report, prepared biennially by the commission, required by the Act, §303(d).

(18) ~~[(19)]~~ Treatment works - The meaning established in the Act, §212, shall apply for projects funded from the state water pollution control revolving fund.

§363.209. *Administrative Cost Recovery.*

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

(c) Loan Origination Charge. A loan origination charge will be assessed ~~[on]of 1.85% of the SRF loan amount, excluding the amount of the origination charge.~~ The loan origination charge is a one-time charge that is due at the time of loan closing~~[- subject to the terms of the repayment schedule. An applicant may pay the loan origination charge at closing at which time the charge assessed on the loan will be 1.85% of the SRF loan amount, or an applicant may pay the loan origination charge on the first interest payment date at which time the charge assessed on the loan will be 1.95% of the SRF loan~~

~~amount. For new systems only where capitalized interest is required during construction, a loan origination charge of 1.95% of the SRF loan amount is due on the last interest payment date scheduled to be paid from capitalized interest.]~~ The loan origination charge may ~~[not]~~ be financed as a part of the SRF loan.

(d)-(g) (No change.)

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

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

TRD-9816178

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: December 17, 1998

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



Chapter 371. Drinking Water State Revolving Fund

Subchapter B. Program Requirements

31 TAC §§371.13, 371.19-371.21, 371.25

The Texas Water Development Board (board) proposes amendments to §§371.13, 371.19, 371.20, 371.21, and 371.25, concerning the Drinking Water State Revolving Fund (Drinking Water SRF). The amendments provide correction, add definitions, add detail to clarify the rating criteria and procedures of the Drinking Water SRF program, and eliminate the use of separate lists for large and small communities with projects designated to receive funding in the intended use plan.

Section 371.13, relating to Projects Eligible for Assistance, is proposed for amendment to reflect the language of the federal Safe Drinking Water Act with respect to systems which do not have the technical, managerial, and financial capacity to ensure compliance with the federal act.

Section 371.19, relating to the Rating Process, is proposed for amendment to define the "principal project" and how a principal project will be rated. The section further defines "affordability factor," "combined rating factor," "physical deficiency rating criteria" and clarifies the method for assigning points based on these factors. The section also clarifies the definition of "consolidation" and defines "tie breaker" to provide a method for ranking projects with tied rating scores. The section is further proposed for amendment to renumber tables as a result of the addition of new terms.

Section 371.20, relating to the Intended Use Plan, is proposed for amendment to eliminate an unnecessary deadline for soliciting project information. The section further provides more detail on a written notice procedure by the board to potential funding applicants. The amendments further provide that a deadline will be established, after which rating information will not be accepted.

Section 371.21, relating to Criteria and Methods for Distribution of Funds for Water System Improvements, is proposed for amendment to eliminate the practice of maintaining two separate lists for large and small communities. The section also sets

out a method of funding from one priority list that includes the use of a bypass system, when needed, to ensure a minimum of 15% of total funds available being offered to small communities. These amendments are proposed in response to comments from the U.S. Environmental Protection Agency.

Section 371.25, relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities, is proposed for amendment in subsections (a) and (e) for clarification and to remove a phrase which is no longer needed.

Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Todd also has determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide more detailed information to potential applicants on the criteria that the board will be applying in rating projects for the project priority list of the Intended Use Plan. Further, the proposed amendments bring the program into compliance with the requirements of the EPA. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Gail L. Allan, 512/463-7804, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

The statutory provisions affected by the amendments are Texas Water Code, Chapter 15, Subchapter J.

§371.13. *Projects Eligible for Assistance.*

(a) Projects are eligible for assistance if they will facilitate compliance with the primary or secondary drinking water regulations applicable to the public water system or otherwise significantly further the health protection objectives of the Act. Such projects include:

(1) capital investments to upgrade or replace infrastructure in order to continue providing the public with safe drinking water, including projects to replace aging infrastructure;

(2) projects to correct exceedances of the health standards established by the Act;

(3) projects to consolidate water supplies where the water supply is contaminated or the system is unable to maintain compliance with the national primary drinking water regulations for financial or managerial reasons and the consolidation will achieve compliance; and

(4) purchase of capacity in another system if the purchase is part of a consolidation plan and is cost-effective considering buy-in fees and user fees.

~~{(5) projects to restructure a system if the system is not in compliance with the primary drinking regulations or the applicant lacks the technical, managerial and financial capability to maintain the system; if the restructuring will return and maintain the system in compliance with the Act, §1452 (a)(3)(B) provided however, that a~~

~~project to restructure a system under this subsection is only eligible for assistance when such assistance is provided in conjunction with another project identified in this section.]~~

(b) Projects proposed for public water systems for which applicants do not have the technical, managerial, and financial capacity to maintain the system are not eligible for assistance unless the use of the assistance will ensure compliance and the owner or operator of the system to be funded agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures) that are necessary to ensure that the system has the technical, managerial, and financial capacity to comply with national primary or secondary drinking water regulations over the long term[the requirements of subsection (a) (5) of this section are met].

(c) Projects are not eligible to receive DWSRF funds if the primary purpose of the project is to supply or attract growth. If the primary purpose is to solve a compliance or public health problem, the entire project, including the portion necessary to accommodate a reasonable amount of growth over its useful life, is eligible.

§371.19. *Rating Process.*

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

(1) Acute chemical violation - A violation of the maximum contaminant level established for nitrate or nitrite as defined in 30 TAC Chapter 290 (relating to Water Hygiene).

(2) Acute coliform bacteria violation - A violation of the maximum contaminant level for coliform which is defined as an acute risk to health, as specified in 30 TAC Chapter 290 (relating to Water Hygiene).

(3) Carcinogen violation - A violation of the maximum contaminant level established for any carcinogenic contaminant listed in the following table:
Figure: 31 TAC 371.19(a)(3).

(4) Chronic chemical violation - A violation of the maximum contaminant level established for any of the contaminants listed in the following table:
Figure: 31 TAC 371.19(a)(4).

(5) Chronic coliform bacteria violation - A violation of the maximum contaminant level for total coliform as specified in 30 TAC Chapter 290 (relating to Water Hygiene).

(6) Compliance period - A three-year period for assessing compliance as defined in 30 TAC §290.102 relating to (Definitions).

(7) Geologic protection - The presence of one layer of clay 30 feet thick or thicker or the presence of thinner clay layers whose cumulative thickness is 100 feet thick or thicker between the ground surface and the top of a water producing aquifer.

(8) Maximum contaminant level - The maximum allowable level for any bacteriological chemical or radiological contaminant specified in 30 TAC Chapter 290 relating to (Water Hygiene).

(9) Ninetieth percentile copper/lead level - The level of lead or copper in a water system determined by the method specified in 30 TAC Chapter 290 relating to (Water Hygiene).

(10) Principal project - A project or group of projects included in an application which are intended to address specific system conditions which received priority points, the cost of correction of

which comprises greater than 50% of the cost of all projects included in an application.

~~(11) [(40)]~~ Secondary chemical constituent exceedance—An exceedance of the constituent level established for any secondary chemical constituent listed in the following table:

~~Figure: 31 TAC §371.19(a)(11)~~

~~[Figure: 34 TAC §371.19(a)(9)]~~

~~(12) [(44)]~~ Treatment technique violation—A violation of any surface water treatment technique as specified in 30 TAC Chapter 290 (Water Hygiene). For the purposes of this rating, these will include all 5.0% exceedances of the 0.5 NTU standard.

~~(13) [(42)]~~ Selected vulnerable aquifer—Aquifers identified by the Commission at the time of preparation of the annual intended use plan and included by list in the letter soliciting project information as described in §371.20(b)(1) of this title (relating to Intended Use Plan) with criteria including, but not limited to: high transmissivity, rapid recharge (e.g., karst), unconfined aquifers with shallow water tables.

~~(14) [(43)]~~ Watershed—The contributing area of water to a surface water body such as a river or reservoir.

(b) Rating of Principal Project. Proposals for inclusion of projects in an intended use plan will be rated based upon the principal project. Additional projects which are integral to the integrity of the system may be included in a proposal and receive funding, so long as their costs comprise 50% or less of the total project costs.

(c) [(b)] Health and Compliance Factors. Health and compliance factors for rating purposes will be calculated as follows.

(1) The microbiological factor will be equal to the sum of: the total number of coliform bacteria violations occurring within the preceding 12 months; the total number of acute coliform bacteria violations occurring within the preceding 12 months; and the total number of treatment technique violations occurring within the preceding 12 months, minus one.

(2) The filtration factor of 12 points will be awarded to any system with one or more sources of water identified as surface water, or groundwater under the direct influence of surface water for which no filtration is provided as identified by records maintained by the TNRCC.

(3) The chronic chemical factor for each contaminant listed in the following table will be equal to the average value of chronic chemical violations occurring within the most recent compliance period for which data exist, divided by the maximum contaminant level listed.

~~Figure: 31 TAC §371.19(c)(3)~~

~~[Figure: 34 TAC §371.19(b)(3)]~~

(4) The acute chemical factor will be equal to three times the quotient of the average value of nitrate or nitrite violations occurring within the most recent compliance period for which data exist, divided by the maximum contaminant level for nitrate or nitrite established by 30 TAC Chapter 290 (Water Hygiene).

(5) The carcinogen factor for each contaminant listed in the following table will be equal to twice the quotient of the average value of carcinogen violations occurring within the most recent compliance period for which data exist, divided by the maximum contaminant level listed.

~~Figure: 31 TAC §371.19(c)(5)~~

~~[Figure: 34 TAC §371.19(b)(5)]~~

(6) The lead/copper factor will be equal to the product of two times the greater of: the 90th percentile lead level divided by 0.015, or the 90th percentile copper level divided by 1.3, as established in 30 TAC Chapter 290 (Water Hygiene).

(7) The population factor shall be based on the current population served by the system in accordance with the following table: Population...Factor: Zero to 100—0; 101 to 1,000—1; 1,001 to 10,000—2; 10,001 to 100,000—3; Greater than 100,000—4. Current population will be based on population data maintained by the Commission. The population factor will be used only when the sum of the factors listed in this paragraph and paragraphs (1)-(6) of this subsection is greater than zero. In that event, the population factor will be added to the sum of the factors listed in this paragraph and paragraphs (1)-(6) of this subsection.

(8) The secondary chemical factor for each constituent so designated in the following table will be equal to one-half the quotient of the average of the secondary chemical constituent exceedances occurring during the most recent compliance period for which data exists, divided by the secondary chemical constituent level listed in this section. A maximum of two points may be assigned to this factor.

~~Figure: 31 TAC §371.19(c)(8)~~

~~[Figure: 34 TAC §371.19(b)(8)]~~

(9) The total health and compliance factor for each applicant shall be the sum of all individual factors calculated according to this paragraph and paragraphs (1)-(8) of this subsection.

(10) The health and compliance factors for chronic coliform, acute coliform and treatment technique will be calculated based on data maintained by the commission from the most recent consecutive 12 months for which data are maintained by the commission, resulting from monitoring conducted by the commission or from public water system monitoring required by 30 TAC Chapter 290 (Water Hygiene).

(11) The health and compliance factors for chronic chemical, acute chemical, secondary chemical and carcinogen will be calculated based on data maintained by the commission from the current compliance period, resulting from monitoring conducted by the commission or from public water system monitoring required by 30 TAC Chapter 290 (Water Hygiene).

(12) The health and compliance factor for lead/copper will be calculated based on data maintained by the commission from the most recent complete compliance period, as defined in 30 TAC Chapter 290 (Water Hygiene), resulting from monitoring by the commission or from public water system monitoring required by 30 TAC Chapter 290 (Water Hygiene).

(d) [(e)] Affordability Factor. A project which qualifies as a disadvantaged community as defined in §371.24 of this title (relating to Disadvantaged Community Program through Loan Subsidies) [having a service area in which the per capita income averaged 25% or more below the state average based upon the most recent census data available] shall have an affordability rating factor of 1.

~~[(d)] Combined Rating Factor. The combined rating factor for a project shall be the sum of the affordability factor and the total health and compliance factor. Projects which did not receive either a health and compliance factor or an affordability factor shall have a combined rating factor of zero.~~

(e) Consolidation. In the event a project proposed for funding is to benefit [further consolidation of] two or more water systems, the combined rating factor will be the sum of the combined rating factors for each of the systems [to be consolidated if the resulting

~~consolidated water system] if the applicant will be wholly responsible for the ownership, operation and maintenance of the consolidated [entire] system; or will be the combined rating factor of the applicant system plus one-half the sum of the combined rating factors of each system to be consolidated if the applicant [consolidated system] will be responsible only for supplying wholesale water to the individual system(s) and not be responsible for the ownership operation and maintenance of the individual system(s). To receive the consolidation points, the applicant must provide documentation of agreement by the system(s) to be consolidated.~~

(f) ~~Physical Deficiency Rating Criteria. All projects[which receive a combined rating factor of zero] will be evaluated for the existence of physical deficiencies based on information submitted by the applicant [maintained by the commission. If the existence of physical deficiencies is confirmed,] The projects will receive physical deficiency rating scores based on the following criteria.~~

(1) If the system has experienced documented instances of water distribution outages or water distribution pressures of less than 20 pounds per square inch the project will receive a rating score of 1 [3].

(2) If the system is not providing disinfection the project will receive a rating score of 1 [3].

(3) If the documented water production capability is less than 85% of the minimum required by the commission the project will receive a rating score of 0.25 [4].

(4) If the documented treated water storage capacity is less than 85% of the minimum required by the commission the project will receive a rating score of 0.25 [4].

(5) If the system has experienced documented instances of water distribution pressures between 20 and 35 pounds per square inch the project will receive a rating score of 0.25 [4].

(6) If the water system is experiencing documented water distribution system losses of greater than 25% the project will receive a rating score of 0.25 [4].

(7) If the water system exceeds any secondary constituent listed in the following table and is not designated as a secondary chemical factor, the project shall receive a rating score of 0.25 [4].

Figure: 31 TAC §371.19(f)(7)

(8) The total physical deficiency rating score for a project will be the sum of all of the individual deficiency rating scores for that project.

~~(9) The physical deficiency rating scores will be used only for rating and ranking of projects with a combined rating factor equal to zero. In no instance will a project which receives a physical deficiency rating score be ranked higher than a project with a combined rating factor greater than zero.]~~

(g) Combined Rating Factor. The combined rating factor for a project shall be the sum of the affordability factor, the total health and compliance factor and the total physical deficiency rating. Projects which did not receive either a health and compliance factor, a physical deficiency rating or an affordability factor shall have a combined rating factor of zero. [Combination of Funding Sources Factor. If an eligible applicant for project funding, at the time of the yearly solicitation for intended use plan project information, documents access to other funds equaling not less than 10% of the total project cost that will be applied to the total cost of the project, that project will have added to its combined rating factor or in the event the combined rating factor is not greater than zero, its physical

~~deficiency rating criteria score, a combination of funding sources factor of 1.]~~

(h) Assignment of Points. Projects will be awarded points only if the proposed projects address the health and compliance, physical deficiency or affordability factors of the applicant system and/or system(s) to be consolidated.

(i) Tie Breaker. In the event of ties in the ratings, priority will be given to the project serving the smaller total population based on information maintained by TNRCC.

(j) ~~(h)~~ Source Water Protection Priority Rating. Eligible entities that seek consideration for source water protection funding will be rated according to the following criteria.

(1) Ground Water System Vulnerability Factor.

(A) Ground water systems without the necessary water well geologic protection will receive 4 points.

(B) Ground water systems with documented Nitrate (N) concentrations of greater than two mg/l will receive 1 point.

(C) Ground water systems obtaining water from selected vulnerable aquifers will receive 1 point.

(D) Ground water systems with confirmed detections of organic chemical contamination identified in the following table will receive 2 points.

Figure: 31 TAC §371.19(j)(1)(D)

~~[Figure: 31 TAC §371.19(h)(1)(D)]~~

(E) No ground water system may receive more than 6 system vulnerability points. Ground water systems that receive no system vulnerability points will not be considered for source water protection funding.

(2) Surface Water System Vulnerability Factor.

(A) Surface water systems with contributing watersheds of 20 square miles or less as determined by the Commission will receive 3 points.

(B) Surface water systems with confirmed detections of organic chemical contamination identified in the following table will receive 3 points.

Figure: 31 TAC §371.19(j)(2)(B)

~~[Figure: 31 TAC §371.19(h)(2)(B)]~~

(C) No surface water system may receive more than 6 system vulnerability points. Surface water systems that receive no system vulnerability points will not be considered for source water protection funding.

(3) No combination ground and surface water system may receive more than 6 system vulnerability points.

(4) Ability to Implement Best Management Practices Factor.

(A) Systems that receive system vulnerability points and that possess the ability and authority to implement land use controls including but not limited to zoning or ordinances, will receive 2 points.

(B) Systems that receive system vulnerability points and that possess the ability to implement other non-land use controls such as public education, contingency planning, or conducting toxic/hazardous waste collection events will receive 1 point.

(C) Systems that receive system vulnerability points and that propose to plug abandoned wells within the delineated source water protection area will receive 1 point.

(D) Systems that receive system vulnerability points and that have confirmed siting or well construction problems listed on the most recent Commission sanitary survey will receive 1 point for proposals which will correct these problems.

(E) Systems that receive no Ability to Implement Best Management Practices points will not be considered for source water protection funding.

(5) Affordability Factor. A system having a service area in which the per capita income averaged 25% or more below the state average based upon the most recent census data available shall have an affordability rating factor of 1.

(6) The total source water protection rating score will be the sum of points generated from ground and surface water system vulnerability, ability to implement best management practices and affordability factors.

§371.20. *Intended Use Plan.*

(a) Each fiscal year the board shall prepare an intended use plan to meet the requirements of the Act and to assist the board in its financial planning. The intended use plan will identify projects anticipated to receive assistance from that year's available funds. The list of projects by priority ranking included in the intended use plan may also serve as the comprehensive project priority list required by the Act.

(b) The process for listing projects in the intended use plan will be as follows.

(1) ~~On or before 4 April of~~ Each year the executive administrator will provide written notice and solicit project information from eligible applicants desiring to have their projects placed on the subsequent year's intended use plan. The notice will include forms to be used to submit rating information and the deadline by which rating information must be submitted in order for projects to be rated and included in the intended use plan. The required information will include~~consist of~~:

- (A) a description of the proposed project;
- (B) county map showing location of service area;
- (C) an estimated total project cost which:

(i) for an estimated loan amount greater than \$100,000, shall be certified by a registered professional engineer; or

(ii) for an estimated loan amount less than \$100,000, shall be accompanied by a statement signed by the system operator establishing the basis for the estimate;

- (D) estimated project schedule; and
- (E) population currently served by the applicant.

(F) Additional information as necessary to establish the priority rating score for source water protection projects.

(2) To be included in the draft intended use plan, the applicant must submit the required information signed by a representative of the applicant not later than the deadline included in the notice. Rating information submitted after the deadline will not be accepted. Incomplete rating information forms may prevent projects from being rated for inclusion in the intended use plan. ~~[June 4 of each year.]~~

(3) After a public hearing, the intended use plan and project priority list will be presented to the board for consideration at a regularly scheduled meeting.

(4) Public notice shall be given 30 days prior to the hearing and the comment period shall remain open 30 days following the hearing.

§371.21. *Criteria and Methods for Distribution of Funds for Water System Improvements.*

(a) After the executive administrator determines the amount of funds available for water system improvements for a fiscal year and assigns all reserves, the remaining funds will be applied to the list of projects designated to receive funding in the intended use plan. ~~[The list will be divided into population classes of systems that serve fewer than 10,000 persons and systems that serve 10,000 and over persons.]~~ Projects will be listed in priority ranking order with funds required and totaled~~[by class]~~. Except for projects for disadvantaged communities, projects having either identical combined rating factor scores, ~~[or identical physical deficiency rating scores, or]~~ including rating scores of zero, will be listed in ~~[alphabetical]~~ order of population, with projects for systems serving smaller populations listed above projects for systems serving larger populations. ~~Funds required by all projects with combined rating factors greater than zero in all classes shall then be totaled. A percentage of the total funds required by each class shall be computed based upon the ratio of funds required by all classes. The portion of the available funds will be assigned to the classes based on this computed percentage. However,]~~To the extent eligible applicants are available, a minimum of 15% of the funds will be made available to small communities (systems serving populations less than 10,000~~[or less]~~).

(b) After projects are ranked and project costs totaled ~~[After population class percentages have been assigned and available funds distributed among the classes],~~ a line will be drawn~~[within each class]~~ not to exceed the available funds~~[to each class]~~. Project costs will be based on cost estimates, acceptable to the executive administrator, contained in the intended use plan solicitation described in §371.20 of this title (relating to Intended Use Plan) used to establish the project list.~~[The executive administrator may adjust the location of the funding line upward or downward to avoid placing the line within a group of applicants having identical rating scores.]~~

(c) In the event that the small community projects above the funding line do not equal 15% of the funds available, the executive administrator may bypass projects for systems serving populations of 10,000 or greater to include additional small community projects above the funding line. Bypass of large community systems is used only to ensure that a minimum of 15% of total funds available is made available to small community systems.

(d) ~~[(e)]~~ ~~[Projects above the line shall be eligible for assistance.]~~ 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.

(e) ~~[(d)]~~ Applicants must submit complete applications within four months of being invited to submit.

(f) ~~[(e)]~~ If, after six months from the date of invitation to submit applications, all available funds are not committed, the executive administrator will return any applications which have not received a commitment and move all projects for which no applications, incomplete applications or complete applications were submitted to the bottom of the prioritized list, where they will be placed in priority order.

(g) ~~[(f)]~~ Following the re-ranking of the list a line will again be drawn not to exceed the amount of remaining funds available in accordance with subsections (b) and (c) ~~[subsection (b)]~~ of this section.

(h) ~~[(g)]~~ ~~[Projects above the line shall be eligible for assistance.]~~After the funding line is re-drawn, the executive administrator shall notify, in writing, all potential applicants of the availability of funds and will invite the submittal of applications.

(i) ~~[(h)]~~ Applicants must submit complete applications within four months of being invited to submit.

(j) ~~[(i)]~~ If, after six months from the second date of invitation to submit applications, the remaining funds are not committed the executive administrator will return any applications which have not received a commitment. Except for funds for disadvantaged communities projects, any funds remaining that exceed the amount needed to fund complete applications will be made available for the next fiscal year. Funds for disadvantaged communities projects shall remain available for commitment in accordance with §371.25 of this title, (relating to Criteria and Methods for Distribution of Funds for Disadvantaged Communities).

(k) ~~[(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 line may be moved downward in priority order to accommodate projects which would utilize the funds that would otherwise not be committed during the particular six month period. The executive administrator will notify such additional potential applicants in writing and will invite the submittal of applications. Potential applicants receiving such notice will be given four months to submit an application and six months from the date of notification to receive a loan commitment.

(l) ~~[(k)]~~ Applications for assistance may be submitted at any time within four months after notification by the executive administrator of the availability of funds and will be funded on a first come, first served basis. Funds shall be committed to a project designated to receive assistance upon board approval of the application.

~~[(l) If funds are available after the executive administrator is able to make a determination that all applicants in a population class have had the opportunity to be funded, the remaining funds will be made available to the other population classes.]~~

§371.25. *Criteria and Methods for Distribution of Funds for Disadvantaged Communities.*

(a) The board will determine annually the 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)-(d) (No change.)

(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)-(j) (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 October 15, 1998.

TRD-9816179

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: December 17, 1998

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Prepaid Higher Education Tuition Program

Subchapter E. Application, Enrollment, Payment, and Fees

34 TAC §7.42, §7.43

The Comptroller of Public Accounts proposes amendments to §§7.42, 7.43, 7.51, and 7.84, concerning the administration of the Prepaid Higher Education Tuition Program.

These changes are proposed to make existing rules more specific as well as allow the board to establish extended enrollment periods for newborn beneficiaries.

Section 7.42 is proposed to be amended to allow the Board to establish an extended enrollment period on an annual basis for the purchase of prepaid tuition contracts for newborn beneficiaries.

Section 7.43 is proposed to be amended to specify the amounts of administrative fees charged by the Board to cover the costs of administering the program.

Section 7.51 is proposed to be amended to clarify the method for converting out-of-plan tuition and required fees payments made to Texas Colleges and universities for prepaid tuition contracts issued under the junior college, junior/senior college, or senior college plan.

Section 7.84 is proposed to be amended to clarify the amount of benefits to be transferred to out-of-state colleges and universities.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rules 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 rules are in effect the public benefit anticipated as a result of enforcing the rules will be in providing new information regarding tax responsibilities. The rules are adopted under the Tax Code, Title 2, and do 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 rules.

Comments on the proposal may be submitted to Todd Morgan, Director, Texas Tomorrow Fund, P.O. Box 13407, Austin, Texas 78711-3407.

The amendments are proposed under the Education Code, Chapter 54, Subchapter F, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program. No other code, article, or statute is affected by these amendments.

The amended rules implement the Education Code, §§54.618, 54.619, and 54.621.

§7.42. *Enrollment Period.*

(a) Except as provided in subsection (c) of this section, each [Each] enrollment period shall begin and end on dates set annually by the board and published in the Texas Register with the initial enrollment period beginning January 2, 1996, and ending March 31, 1996. The official postmark date affixed by the United States Postal Service or date stamp evidencing actual receipt of the application at the address specified as follows, whichever is earlier, shall be considered the date of receipt of an application for purposes of the enrollment period. Applications may be mailed to the following address: Prepaid Higher Education Tuition Program, Office of the Comptroller of Public Accounts, P.O. Box 13407, Austin, Texas 78711-3407. In the alternative applications may be delivered to the following address: 111 East 17th Street, Room 1114, Austin, Texas 78774- 0001.

(b) The board reserves the right to limit enrollment as necessary to ensure the actuarial soundness of the fund.

(c) An extended enrollment period for beneficiaries classified as "newborns" may be established by the Board on an annual basis.

§7.43. *Administrative Fees.*

(a) (No change.)

(b) Fees adopted by the board shall reflect the intent to make the program self-supporting and to maintain the actuarial soundness of the fund. The fees may include the following:

(1) a nonrefundable application fee of \$50 collected at the time the application is submitted;

(2) a termination fee of \$25 assessed upon the termination of a contract by the purchaser [~~which fee shall be in an amount determined by the board~~] to allow reimbursement of the board's estimated expenses in terminating the contract;

(3) a change of beneficiary fee of \$50 assessed in connection with a request to substitute beneficiaries under the plan;

(4) a change in purchaser fee of \$20 assessed for assignment of contract rights and obligations to another purchaser;

(5) a benefits transfer fee of \$25 deducted from payments when funds are used for out- of-state tuition;

(6) an account maintenance fee of \$3.00 on monthly installment accounts and \$20 on lump sum accounts for servicing accounts;

(7) a fee of \$15 for changes in the mode of payment or payment schedule requested by a purchaser;

(8) a late fee of \$10 assessed for payments made past the due date;

(9) an insufficient funds fee of \$20 assessed for all payments returned for insufficient funds;

(10) an improper notice fee of \$25 assessed for failure to provide timely notice of the intent to use contract benefits;

(11) (No change.)

(c) (No change.)

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

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

TRD-9816270

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-4062



Subchapter F. Tuition

34 TAC §7.51

The amendment is proposed under the Education Code, Chapter 54, Subchapter F, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program.

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

§7.51. *Tuition Paid.*

(a) For prepaid tuition contracts issued under the junior college plan, junior/senior college plan, or senior college plan, the tuition and required fees paid pursuant to such prepaid tuition contracts shall be paid in accordance with the rates charged to Texas residents.

(b) For prepaid tuition contracts issued under the private college plan, tuition and required fees paid pursuant to the prepaid tuition contract shall be limited to the estimated average private tuition and required fees as determined by the board on an annual basis.

(c) For prepaid tuition contracts issued under the senior college, junior/senior college, or junior college plan, where tuition and required fee payments are made to Texas higher education institutions not of the plan selected, payments to the institution shall be based on a calculation of the average tuition rate of the plan selected. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt. Issued in Austin, Texas, on MARTIN E. CHERRY Chief, General Law Section Comptroller of Public Accounts

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 October 16, 1998.

TRD-9816271

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-4062



Subchapter I. Refunds, Termination

34 TAC §7.84

The amendment is proposed under the Education Code, Chapter 54, Subchapter F, §54.618 which authorizes the board to adopt rules necessary for the implementation of the Prepaid Higher Education Tuition Program.

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

§7.84. *Transfer of Benefits.*

The purchaser may transfer benefits to an out-of-state college or university accredited by a regional accrediting association which is an "eligible educational institution" within the meaning of the Internal Revenue Code, §135(c)(3). The amount of the transfer shall not exceed the average amount of tuition and required fees for the previous academic year under the plan selected, or the estimated average private tuition and required fees for the previous academic year, as applicable, less a cancellation fee and any other applicable fees. Payments may be transferred each academic term to the out-of-state college or university as necessary to pay for tuition and required fees up to the credit hours limit identified in the prepaid tuition contract. A statement from the out-of-state college or university shall be submitted to the board during each academic term, in a form acceptable to 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 October 16, 1998.

TRD-9816272

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-4062

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 145. Parole

Subchapter A. Parole Process

37 TAC §145.12

The Policy Board of the Texas Board of Pardons and Paroles proposes an amendment to §145.12, concerning action upon review. The amendment is proposed to clarify the procedures on new voting options for use by parole panels when considering inmates for release on parole. The Policy Board's purpose in creating and refining these new voting options is to ensure that the inmate completes the rehabilitation program before release to parole by establishing the earliest program start date and determining the minimum number of months the inmate is to participate in the program before release to parole.

A previous amendment published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10625) is being withdrawn

simultaneously with this new proposal in order to better clarify the section.

Victor Rodriguez, Chair of the Policy Board, has determined that for the first five-year period the proposed amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Chairman Rodriguez also has determined that for each year of the first five years the amended rule as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be the establishment of procedures to ensure that the inmate is given the opportunity to complete a treatment program as close as possible to the time of the inmate's release to parole. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, P.O. Box 13401, Austin, Texas 78711. Written comments from the general public should be received within 30 days of the publication of this amendment.

The amended rule is proposed under the Code of Criminal Procedure, Article 42.18, §8(g) and §508.044(d)(1), Government Code, which provide the Policy Board with the authority to promulgate rules with respect to the release of inmates on parole and §§508.045 - 508.047 and §508.150, Government Code, which provide the Board with the authority to release inmates eligible for parole.

There is no cross-reference to the proposed amended rule.

§145.12. *Action Upon Review*

A case reviewed by a parole panel for parole consideration may be:

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

(4) determined that the totality of the circumstances favor the inmate's release on parole, further investigation (FI) is ordered in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed:

(A) FI-1 - ~~Release~~[release] when eligible;

(B) FI-2 (Month/Year) - ~~Release~~[release] on a specified future date within the three year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed;

(C) FI-3 R (Month/Year) - ~~Transfer~~[transfer] to a TDCJ rehabilitation [tier] program [of not less than three months in length and not earlier than the specified date]. Release to parole only after [upon] program completion and no earlier than three months from specified date. Such TDCJ program may include the Pre-Release Substance Abuse Program (PRSAP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(D) FI-4 (Month/Year) - ~~Transfer~~[transfer] to Pre-parole Transfer facility prior to presumptive parole date set by board panel and release to parole supervision on presumptive parole date, but in no event shall the specified date be set more than three years from either initial eligibility date, current docket date or date of panel decision, if the aforementioned dates have passed;

(E) FI-5 - Transfer[transfer] to Inpatient Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(F) FI-6 R (Month/Year) - Transfer[transfer] to a TDCJ rehabilitation [tier] program [of not less than six months in length and not earlier than the specified date]. Release to parole only after [upon] program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(G) FI-9 R (Month/Year) - Transfer[transfer] to a TDCJ rehabilitation [tier] program [of not less than nine months in length and not earlier than the specified date]. Release to parole only after [upon] program completion and no earlier than nine months from specified date. Such TDCJ program may include the In-Prison Therapeutic Community (IPTC). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(H) FI-18 R (Month/Year) - Transfer[transfer] to a TDCJ rehabilitation [tier] program [of not less than eighteen months in length and not earlier than the specified date]. Release to parole only after [upon] program completion and no earlier than 18 months from specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed;

(5) any person released to parole or mandatory supervision after completing a TDCJ treatment program must participate in and complete any required aftercare program [if in special review or group review status; a case may be ordered to remain set or placed in further investigation (FI) 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 October 19, 1998.

TRD-9816305

Laura McElroy

General Counsel

Texas Board of Pardons and Paroles

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 463-1883

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 18. Nursing Facility Administrators

The Texas Department of Human Services (DHS) proposes the repeal of §§18.2-18.5 and §§18.7-18.8 and simultaneously proposes new §§18.2-18.5 and §§18.7-18.8, concerning the nursing facility administrators advisory committee, application and licensure fees, applicant requirements for examination and licensure, academic requirements for examination and licensure,

successful completion of examination, and provisional licensure in its Nursing Facilities Administrators chapter. The purpose of the repeals and proposed new sections is to establish the organization, terms, and functions of the Nursing Facility Administrators Advisory Committee, alter the academic requirements for licensure by replacing the current 200-clock hour nursing facility administrator's course with 15 academic credit hours in long-term care administration which encompasses the five domains of the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB), and place a limit on the number of times an applicant may fail the licensure examination before being required to obtain additional training.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed 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 proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to assure that applicants seeking licensure as nursing facility administrators receive adequate preparatory training before obtaining a license to practice as a nursing facility administrator which will improve the quality of care provided to nursing facility residents. There will be no effect on small businesses because these rules relate to procedural and operational changes regulating the licensure of nursing facility administrators that will have no adverse impact on small 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 Renee Clack at (512) 231-5821 in DHS's Credentialing Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-028, 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 §§18.2-18.5, 18.7-18.8

(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 Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nursing facility administrators.

The repeals implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01.

§18.2. *The Board.*

§18.3. *Application Procedures.*

§18.4. *Criteria for Determining Fitness of Applicants for Examination and Licensure.*

§18.5. *Academic Regulations for Examination and Licensure.*

§18.7. *Successful Completion of Examination.*

§18.8. *Provisional License by Endorsement.*

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 October 19, 1998.

TRD-9816324

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 15, 1999

For further information, please call: (512) 438-3765



The new sections are proposed under the Texas Health and Safety Code, Chapter 242, Subchapter I, (Nursing Facility Administration, §§242.301, added by Acts 1997, 75th Legislature, Chapter 1280, §1.01), which authorizes the department to license nursing facility administrators.

The new sections implement the Texas Health and Safety Code, Chapter 242.302, as added by Acts 1997, 75th Legislature, Chapter 1280, §1.01.

§18.2. The Nursing Facility Administrators Advisory Committee.

This section clarifies the organization, terms, and functions of the Nursing Facility Administrators Advisory Committee (NFAAC).

(1) The NFAAC shall be composed of nine members that are appointed by the Governor.

(A) Three members shall be licensed nursing facility administrators, at least one of whom represents a not-for-profit nursing facility.

(B) One member shall be a physician with experience in geriatrics.

(C) One member shall be a registered nurse with experience in geriatrics.

(D) One member shall be a social worker with experience in geriatrics.

(E) Three members shall be selected from the general public.

(2) The NFAAC members shall serve for staggered terms of six years. Three of the members terms shall expire February 1 of each odd-numbered year.

(3) The NFAAC shall advise the Texas Department of Human Services (DHS) regarding the licensing of nursing facility administrators, including the content of application for licensure and examination administered to licensure applicants; review and recommend rules and minimum standards of conduct for the practice of nursing facility administration; review complaints against administrators; and make recommendations to DHS regarding disciplinary actions.

(4) NFAAC members shall receive no compensation. NFAAC members shall be reimbursed for actual and necessary expenses incurred in performing duties.

(5) NFAAC vacant positions shall be filled in the same manner in which the position was originally filled and shall be filled by a person who meets the qualifications of the vacated position.

§18.3. Application and Licensure Fees.

The Texas Department of Human Services (DHS) shall charge the following fees for a license, license renewal, examination, and administrative fees. The fees shall be as follows:

(1) Application Fee - \$100;

(2) National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) Examination Fee - \$125;

(3) NAB Re-examination Fee - \$125;

(4) Initial Licensure Fee - \$250;

(5) State Examination Fee - \$150;

(6) Exam Re-test Fee - \$50 per examination;

(7) Licensure Renewal Fee - \$250 (biennially);

(8) Formal Inactive Status Fee - \$250;

(9) Late Renewal Fee - an additional \$75 for renewals made within 90 days of the license expiration date and an additional \$150 for renewals made between 91 and 365 days of the license expiration date;

(10) Duplicate License Fee - \$25; and

(11) Provisional License Fee - \$100.

§18.4. Applicant Requirements for Examination and Licensure.

(a) An applicant seeking licensure as a nursing facility administrator shall submit the required documentation of credentials on official Texas Department of Human Services (DHS) forms.

(b) DHS shall not consider an application as officially submitted until the applicant pays the required fee and accurately completes required forms. An applicant shall not take the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) examination or the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification unless completed application form(s) and fees are received at least 30 calendar days prior to the date of the examination.

(c) An application that is submitted to DHS is valid for only one year after the date of receipt. An applicant that fails to meet all requirements for licensure, including successfully passing the NAB examination and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification during a one-year period, shall be required to submit another application and application fee to DHS.

(d) DHS shall not be responsible for lost, misrouted, or undelivered applications, forms, or correspondence.

(e) An applicant shall submit the following documentation and evidence to DHS:

(1) a completed application that is sworn and notarized before a public notary which contains specific information regarding U.S. citizenship or legal resident status, personal data, employment history, and licensure in other states;

(2) a statement that the applicant has read and agrees to abide by the rules set forth in the Nursing Facility Administrators Licensure Rules Handbook;

(3) an official college transcript that provides evidence of the minimum education requirements of a Bachelor's degree;

(4) proof of completion of a minimum of 15 academic credit hours in long-term care administration which encompass the five domains of the NAB that is approved by the Credentialing Department or proof of completion of a 200-clock hour nursing facility administrator's course or its equivalent through September 1, 1999, that is approved by the Credentialing Department;

(5) proof of completion of 1,000 hours in an Administrator-In-Training Internship with a DHS-approved preceptor in a licensed nursing facility with a minimum of 60 beds; and

(6) a completed "Texas Criminal Conviction" report that is performed by the Texas Department of Public Safety with accompanying fingerprint card.

(f) An applicant may submit a curriculum vitae, resume, and/or other documentation of credentials to DHS in addition to the completed application.

(g) DHS shall review any adverse disciplinary action implemented by a state licensing board or authority in the health care profession and/or official court and hearing findings to determine applicant eligibility for licensure.

(h) DHS shall not issue a license to an applicant that has had a nursing facility administrator's license revoked by this or another nursing facility administrator licensure authority, board, or its equivalent.

§18.5. Academic Requirements for Examination and Licensure.

(a) An applicant seeking licensure as an administrator shall have a minimum of a Bachelor's degree in any subject from an accredited college approved by an accrediting association recognized by the Texas Higher Education Coordinating Board.

(b) An applicant shall complete a minimum of 15 academic credit hours in long-term care administration that are approved by the Texas Department of Human Services (DHS) Credentialing Department and encompass the five domains of the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) as follows:

- (1) Resident Care Management;
- (2) Personnel Management;
- (3) Financial Management;
- (4) Environmental Management; and
- (5) Governance and Management.

(c) An applicant shall complete a minimum of 1,000 hours in an Administrator-in-Training (AIT) Internship with a DHS-approved preceptor in a licensed nursing facility with a minimum of 60 beds.

(d) Degrees and coursework received at foreign universities shall be accepted by DHS only if such coursework is counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. Degrees or coursework that can not be documented because the foreign university refuses to issue a transcript, degree, or other evidence which indicates the attainment of the minimum educational requirements by the foreign applicant shall result in the forfeiture of the original application. The applicant shall submit a new application to DHS with the proper transcripts or transcript evaluation.

(e) DHS staff shall review any evidence submitted by an applicant for purposes of waiving academic or AIT internship requirements to determine compliance with subsections (a), (b), and (c) of this section.

(f) DHS shall provide an applicant prior notice of eligibility to take the NAB examination and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification. Applicants shall not be allowed to take the examination(s) unless prior notice of eligibility is provided by DHS.

(g) An applicant that fails the NAB examination three times shall be required to repeat the 1,000 hours AIT Internship before being allowed to re-test.

(h) An applicant previously licensed as a nursing facility administrator by passing the comprehensive examination shall be required to pass the NAB examination and state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification in order to obtain a current license.

§18.7. Successful Completion of Examination.

(a) The Texas Department of Human Services (DHS) shall send the examination results to each applicant that satisfactorily fulfilled the licensure requirements.

(b) DHS shall issue a license to an applicant who successfully passes the required examination(s) upon receipt of the required form and licensure fee.

(1) A license shall be effective for a period of two years from the date of issuance.

(2) DHS shall not issue temporary licenses.

(3) DHS shall replace a lost, damaged, or destroyed license certificate upon receipt of a written request from a licensee and payment of the duplicate license fee. A request for a duplicate license shall be submitted on the required DHS form and notarized by a public notary.

(c) DHS shall be informed of a licensee's current home and employment address if the licensee is employed by a nursing facility. A change of address shall be reported to DHS within 30 calendar days. Failure of the licensee to provide timely notice to DHS may result in the imposition of a sanction as specified in §18.13 of this title (relating to Schedule of Sanctions).

§18.8. Provisional Licensure.

(a) The Texas Department of Human Services (DHS) shall grant a provisional license to an individual that provides evidence of the following:

(1) licensure or registration as a nursing facility administrator by another state or other jurisdiction that has equivalent or substantially equivalent requirements for licensure or registration to the requirements established in this chapter; and

(2) a Bachelor's degree in any subject from an accredited college approved by an accrediting association recognized by the Texas Higher Education Coordinating Board; and

(3) a passing score on the National Association of Boards of Examiners of Long Term Care Administrators, Inc. (NAB) examination; and

(4) employment as administrator of record of a nursing facility for a period of two years; or

(5) employment in an equivalent capacity in a nursing facility or health care setting for a period of two years; or

(6) completion of a 1,000 hour Administrator-in-Training (AIT) program.

(b) An individual that seeks a provisional license shall provide proof of completion of the requirements established in subsection (a)(1)-(6) of this section before taking the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification.

(c) DHS shall grant a license to a provisional license holder that passes the state examination on the Nursing Facility Requirements for Licensure and Medicaid Certification.

(d) A provisional license that is granted by DHS shall expire 180 days from the date of issuance. DHS may extend the expiration date of a provisional license at its discretion.

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 October 19, 1998.

TRD-9816325

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 15, 1999

For further information, please call: (512) 438-3765



Part XII. Texas Board of Occupational Therapy Examiners

Chapter 367. Continuing Education

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §367.1, concerning Continuing Education. This amended section, will strengthen the requirements for occupational therapy licensees to maintain current skills. Licensees must obtain 15 hours of continuing education every two years in skills related to practice with persons. The proposed rules restrict the use of certain types of continuing education. The proposal eliminates obsolete language concerning the transition to 2-year renewals.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state/local government.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be assurance that occupational therapy licensees have obtained additional education concerning direct practice of their profession. There will be no effect on small business and no anticipated cost for persons having to comply.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942.

The amended section is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

§367.1. *Continuing Education.*

(a) The Act, §5(A), mandates licensee participation in a continuing education program for license renewal. All continuing

education must be directly relevant to the profession of occupational therapy.

~~(b)} Licensees must complete 15 contact hours of continuing education each renewal year. Fifteen contact hours of continuing education must be obtained in the 12 months immediately preceding the renewal month. For example, if the next renewal month is August 1, 1996, the continuing education must be earned between August 1, 1995, and July 31, 1996. This requirement becomes effective January 1, 1995, for renewals due beginning January 1, 1996.~~

~~(b){(e)} Licensees must complete 30 contact hours of continuing education each biennial renewal. Thirty contact hours of continuing education must be obtained in the 24 months immediately preceding the renewal month.~~

~~(c) A minimum of 15 hours of continuing education must be in skills relevant to occupational therapy practice with patients or clients. This requirement is effective with licenses due for renewal in January 2000.~~

(d) Record of attendance/verification for all continuing education must be submitted to the board, on the board approved Continuing Education Record Card, with the annual application for license renewal.

(e) Continuing education hours may be earned in the following manner:

(1) Attendance at workshops, refresher courses, professional conferences, seminars, or facility based continuing education programs. Hour for hour credit on program content only. No maximum;

(2) Presentations by Licensee:

(A) Professional presentations, e.g., in-services, workshops, institutes (any presentation counted only one time). Hour for hour credit. No maximum;

(B) Community/service organization presentations (any presentation counted only one time). Hour for hour credit. Four hours maximum;

(3) Formal academic coursework:

(A) one-two credit hour class - 7.5 contact hours;

(B) three-four credit hour class - 15 contact hours;

(4) AOTA Self Study Series: Hour for hour credit based on the number of hours awarded by AOTA for each course. A copy of the self study completion certificate must accompany the Continuing Education Record Card at renewal;

(5) Other continuing education: Publications/Media; or research/grant activities. A request to receive credit for this category must be submitted in writing for approval to the Coordinator of Occupational Therapy a minimum of 60 days prior to the expiration of the license. If warranted, the request may be reviewed by the Continuing Education Committee for final approval.

(6) First Aid and cardiopulmonary resuscitation training can only be submitted for continuing education once per licensee. Journal reading is not acceptable for continuing education credit.

(f) Any deviation from the above continuing education categories will be reviewed on a case by case basis by the Coordinator of Occupational Therapy or by the Continuing Education Committee. A request for special consideration must be submitted in writing a minimum of 60 days prior to expiration of the license.

(g) Definitions for continuing education rules.

(1) Record of Attendance/Verification - actual proof of participation in the continuing education activity(ies) shall be by submission of a Continuing Education Record Card.

(A) The Continuing Education Record Card must contain the title of the presentation, the presenter(s), the dates attended, the number of contact hours received, and a signature by the presenter, workshop coordinator, supervisor, or training coordinator verifying attendance at the stated continuing education activity(ies) for the renewal year.

(B) A licensee listing himself/herself as the presenter of a continuing education program must obtain the signature of the workshop coordinator, supervisor, or training coordinator.

(C) For formal academic coursework, an official transcript or grade report must be submitted at renewal.

(2) Contact hour - equals one clock hour of attendance.

(3) CEU - formal Continuing Education Unit. Usually one (1.0) CEU equals ten contact hours.

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 October 16, 1998.

TRD-9816302

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: November 29, 1998

For further information, please call: (512) 305-6900



Part XX. Texas Workforce Commission

Chapter 803. Skills Development Fund

Subchapter B. Program Administration

40 TAC §803.13

The Texas Workforce Commission proposes amendments to §803.13, concerning program objectives regarding the operation of the Skills Development Fund.

The purpose of the amendment is to create a new, heightened emphasis on serving local workforce development areas (workforce areas) possessed of higher than average unemployment rates.

Training for jobs that are known to exist is an important goal in areas with high unemployment rates. The Skills Development Fund can help meet that need.

The Commission, while maintaining efficient statewide distribution for the program's resources, is committed to timely service of these high-need areas.

The amendments allow the Director of the fund to emphasize service to areas with high unemployment rates.

Under the amendments, applications for grant money available to a workforce area with a high unemployment rate would be processed on a priority basis.

Expedited processing will encourage grant applications from eligible areas. Applications can be expected to arrive earlier in the fiscal year and in greater quantity. This will help assure that the Skills Development Fund is helping workers in eligible areas as fast as possible and help assure the most effective use of dollars available to eligible areas.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments will be in effect the following statements will apply:

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

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

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

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

There are no anticipated economic costs to persons required to comply with the rule.

Richard Hall, Director of Business Services, has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be the placement of emphasis on timely services within areas of higher unemployment insurance rates to stimulate the quantity and quality of applications from such areas.

Mr. Townsend also has determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by or required to do anything by this rule.

Comments on the proposal may be submitted to Richard Hall, Director of Business Services, Texas Workforce Commission Building, 101 East 15th Street, Room 504DT, Austin, Texas 78778 (512)463-8844. Comments may also be submitted via fax to (512) 463-2799 or e-mailed to: Richard.Hall@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the *Texas Register*.

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

The amendments affect Texas Labor Code, Chapter 302 and Chapter 303.

§803.13. *Program Objectives.*

(a) The following are the program objectives in administering the Skills Development Fund:

(1) to ensure that funds from the program are spent in all areas of this state;

(2) to develop projects that will create jobs in local workforce development areas (workforce areas) where the unemployment rate is above the state's annual average unemployment rate;

(3) to prioritize the processing of grant requests from workforce areas where the unemployment rate is higher than the state's annual average unemployment rate;

(4) [(2)] to respond to the training needs of consortiums consisting of at least two micro-, small or medium-sized businesses; [- The priority shall be for micro businesses which employ not more than 20 employees as defined under Government Code, Section 481.151, small businesses that have fewer than 100 employees or less than \$1 million in annual gross receipts as defined under Government Code, Section 481.101(3), and medium-sized businesses which employ not more than 500 employees;]

[(3) to develop projects that will create jobs in Local Workforce Development Areas where the unemployment rate is above the state's annual average unemployment rate;]

(5) [(4)] to facilitate projects eligible for the Self-Sufficiency Fund, by working with employers and training organizations to provide training for targeted employment for recipients of Temporary Assistance to Needy Families (TANF formerly referred to as Aid For Dependent Children AFDC) and to facilitate other projects which assist in the employment of former welfare recipients;

(6) [(5)] to sponsor pilot programs in allied health professions for certain recipients of financial assistance under Human Resources Code, Chapter 31;

(7) [(6)] to develop projects that at completion of the training will result in wages greater than the prevailing wage for that occupation in the local labor market for the participants in the customized training program;

(8) [(7)] to develop projects that at the completion of training will result in employment benefits, including medical insurance, for the participants in the customized training program;

(9) [(8)] to facilitate the growth of industry and emerging occupations;

(10) [(9)] to sponsor creation and attraction of high value, high skill jobs for the state;

(11) [(10)] to ensure retention of jobs by providing retraining in response to new or changing technology;

(12) [(11)] to develop projects which include contributions from other resources, including the private partners, that are being committed to the customized training program; and

(13) [(12)] to ensure expansion of the state's capacity to respond to workforce training needs.

(b) In processing requests referenced in paragraph (3) of subsection (a), the director shall give priority in processing to grant requests from workforce areas where the unemployment rate is higher than the state's annual average unemployment rate. Notwithstanding the priority in processing, the other objectives within this section apply.

(c) The priority referenced in paragraph (4) of subsection (a) shall be for micro-businesses which employ not more than 20 employees as defined under Government Code, Section 481.151, small businesses that have fewer than 100 employees or less than \$1 million in annual gross receipts as defined under Government Code, Section 481.101(3), and medium-sized businesses which employ not more than 500 employees.

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 October 16, 1998.

TRD-9816212

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: November 29, 1998

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



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.41, §3.42

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed amendment §3.41 and §3.42, which appeared in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5544).

Issued in Austin, Texas, on October 13, 1998.

TRD-9816001

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Effective date: October 13, 1998

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IV. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office has withdrawn from consideration for permanent adoption the proposed amendment §15.11, which appeared in the October 9, 1998, issue of the *Texas Register* (23 TexReg 10359).

Issued in Austin, Texas, on October 16, 1998.

TRD-9816259

Garry Mauro

Commissioner, General Land Office

General Land Office

Effective date: October 16, 1998

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 145. Parole

Subchapter A. Parole Process

37 TAC §145.12

The Texas Board of Pardons and Paroles has withdrawn from consideration for permanent adoption the proposed amendment §145.12, which appeared in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10625).

Issued in Austin, Texas, on October 19, 1998.

TRD-9816304

Laura McElroy

General Counsel

Texas Board of Pardons

Effective date: October 19, 1998

For further information, please call: (512) 463-1883



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XX. Texas Workforce Commission

Chapter 821. Texas Payday Rules

Subchapter B. Payment of Wages

40 TAC §821.23, §821.24

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new sections, submitted by the Texas Workforce Commission have been automatically withdrawn. The new sections as proposed appeared in the January 23, 1998, issue of the *Texas Register* (23 TexReg 537).

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

TRD-9816429



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 16. ECONOMIC REGULATION

Part IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

The Texas Department of Licensing and Regulation adopts the repeal of §§60.1, 60.21-60.26, 60.80-60.82, 60.100-60.109, 60.120-60.124, 60.150-60.159, 60.170-60.177, 60.190-60.195 and new §§60.1, 60.10, 60.60-60.65, 60.80-60.82, 60.100-60.108, 60.120-60.124, 60.150-60.160, 60.170-60.174, and 60.190-60.192 concerning the Texas Commission of Licensing and Regulation without changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9227) and will not be republished.

The new rules replace existing rules which are simultaneously repealed. The new rules rearrange, consolidate and revise existing language for clarification, along with deleting several items already stated in the Department's enabling legislation, Texas Revised Civil Statutes Annotated, Article 9100 (Vernon 1991). The sections clarify responsibilities of the Commission and Commissioner, and the practice and procedure for hearing proceedings.

No comments were received on the proposed repeal or new sections.

Subchapter A. Authority

16 TAC §60.1

The repeal is adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The repeal affects Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated 91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas

Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency 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 October 16, 1998.

TRD-9816278

Rachelle A. Martin

Executive Director

Texas Department of Licensing and Regulation

Effective date: November 5, 1998

Proposal publication date: September 11, 1998

For further information, please call: (512) 463-7357

Subchapter A. Authority and Responsibilities

16 TAC §60.1, §60.10

The new rules are adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The new rules affect Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency 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 October 16, 1998.

TRD-9816282
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Effective date: November 5, 1998
Proposal publication date: September 11, 1998
For further information, please call: (512) 463-7357

◆ ◆ ◆
**Subchapter B. Organization of the Commission
of Licensing and Regulation**

16 TAC §§60.21-60.26

The repeal is adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The repeal affects Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency 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-9816279
Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
Effective date: November 5, 1998
Proposal publication date: September 11, 1998
For further information, please call: (512) 463-7357

◆ ◆ ◆
Subchapter B. Organization

16 TAC §§60.60-60.65

The new rules are adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The new rules affect Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated,

§755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency 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 October 16, 1998.

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Rachelle A. Martin
Executive Director
Texas Department of Licensing and Regulation
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For further information, please call: (512) 463-7357

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Subchapter C. Fees

16 TAC §§60.80-60.82

The repeal is adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The repeal affects Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency 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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The new rules are adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The new rules affect Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Practice and Procedure

16 TAC §§60.100-60.109, 60.120-60.124, 60.150-60.159, 60.170-60.177, 60.190-60.195

The repeal is adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The repeal affects Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil

Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

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16 TAC §§60.100-60.108, 60.120-60.124, 60.150-60.160, 60.170-60.174, 60.190-60.192

The new rules are adopted under Texas Revised Civil Statutes Annotated, article 9100 (Vernon 1991) which authorizes the Texas Department of Licensing and Regulation to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purpose of the Act.

The new rules affect Texas Civil Statutes Annotated, article 8861 (Vernon 1997); Texas Civil Statutes Annotated, article 9102 (Vernon 1997); Texas Civil Statutes Annotated, article 8700 (Vernon 1991); Texas Health and Safety Code Annotated, §755 (1997); Texas Revised Civil Statutes Annotated, article 8501-1 (Vernon 1995); article 5221a-8 (Vernon 1993); Texas Health and Safety Code Annotated §754 (1995); Texas Revised Civil Statutes Annotated, article 5221f-1 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 5221a-7 (Vernon 1989); Texas Revised Civil Statutes Annotated, article 8886 (Vernon 1995); Texas Labor Code Annotated §91 (1997); Texas Revised Civil Statutes Annotated, article 5221a-9 (Vernon 1989); Texas Labor Code Annotated §92 (Vernon 1995); Texas Revised Civil Statutes Annotated, article 6675(e) (Vernon 1997), Texas Water Code, Chapters 32 and 33 (1997).

This agency 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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Executive Director

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For further information, please call: (512) 463-7357



TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 233. Education

General Provisions

22 TAC §233.1

The Board of Vocational Nurse Examiners adopts the repeal of §233.1 relative to definitions without changes to the proposed text published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9241).

On September 14, 1998, the Board reviewed Chapter 233 relating to Education as outlined in the Boards Rule Review Plan and determined that rule 233.1 be repealed in order to add new definitions and to establish a numbering system for all definitions.

No comments were received relative to repeal of this rule.

This repeal is adopted under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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TRD-9816169

Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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For further information, please call: (512) 305-8100



Subchapter A. Definitions

22 TAC §233.1

The Board of Vocational Nurse Examiners adopts new §233.1 relative to definitions without changes to the proposed text published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9241).

On September 14, 1998, the Board reviewed Chapter 233 relating to Education as outlined in the Boards Rule Review Plan and determined that §233.1 needed to be repealed and a new rule needed to be proposed to add definitions of Adjunct Faculty and Inactive Programs to provide definition for language and terminology used in the rules. The definition for Special Student is for consistency with §233.73 related to Special Students. The new rule is also being amended for establishing numbers for each definition.

No comments were received relative to the adoption of this rule.

The new rule is adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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For further information, please call: (512) 305-8100



Subchapter B. Operation of a Vocational Nursing Program

22 TAC §§233.12, 233.14, 233.16, 233.18, 233.19, 233.21, 233.23, 233.24, 233.26, 233.28

The Board of Vocational Nurse Examiners adopts the amendments to §233.12, 233.14, 233.16, 233.18, 233.19, 233.21, 233.23, 233.24, 233.26 and 233.28 without changes to the text published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9243).

Section 233.12 is amended because responsibility for approval of proprietary schools was transferred to the Texas Workforce Commission. Section 233.14 is amended to clarify intent of requirement for board staff approval of student clinical practice affiliations. Section 233.16 is amended to change language to reflect Actual agency practice as the Board approves all new program regardless of the physical location. Section 233.18 is amended to differentiate between requirements for enrollment of students by a closed and an inactive program and to reflect agency practice, to remove from rule the time period of notification which is agency procedure and to clarify that reactivation of inactivation of an inactive program with full approval does not require Board approval. Section 233.19 is amended to clarify language without changing intent. Section 233.21 is amended to delete repetitious language that is repeated in §233.21(C)(1) of this rule. Section 233.23 is amended to improve sentence structure. Section 233.24 is amended to clarify the intent of the utilization of part time faculty. Section 233.26 is amended to provide flexibility for board staff to distinguish between facilities that are small or have low patient census and major medical centers that can easily affiliate with multiple nursing programs. Section 233.28 is amended to clarify language.

No comments were received relative to the adoption of these amendments.

These amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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Subchapter C. Approval of Programs

22 TAC §233.41

The Board of Vocational Nurse Examiners adopts the amendments to §233.41 relating to approval of programs without changes to the proposed text published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9244).

On September 14, 1998, the Board reviewed Chapter 233 relating to Education as outlined in the Boards Rule Review Plan and determined that §233.41 relating to approval of programs needed to be amended. The rule is amended to reflect actual practice.

No comments were received relative to the adoption of these amendments.

These amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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For further information, please call: (512) 305-8100



Subchapter D. Vocational Nursing Education Standards

22 TAC §§233.72-233.74

The Board of Vocational Nurse Examiners adopts the amendments to §§233.72-233.74 without changes to the text published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9245).

On September 14, 1998, the Board reviewed Chapter 233 relating to Education as outlined in the Boards Rule Review Plan and determined that §§233.72-233.74 required amendments. Section 233.72 is being amended for clarification of definition incorporating language commonly used by schools and for clarification that the requirements that must be met are the school's requirements for graduation. Section 233.73 is being amended to clarify language. Section 233.74 is being amended to simplify language and to separate into two sentences.

No comments were received relative to adoption of these amendments.

These amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational

Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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Subchapter E. Vocational Nurse Education Records

22 TAC §233.84, §233.85

The Board of Vocational Nurse Examiners adopts the amendments to §233.84 and §233.85 relating to vocational nurse education records without changes to the text published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9245).

On September 14, 1998, the Board reviewed Chapter 233 relating to Education as outlined in the Boards Rule Review Plan and determined that §233.84 and §233.85 needed amendments. §233.84 is amended to simplify language. §233.85 is amended to reflect actual agency practice.

No comments were received relative to the adoption of these amendments.

These amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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For further information, please call: (512) 305-8100



Chapter 235. Licensing

Subchapter D. Issuance of Licenses

22 TAC §235.48

The Board of Vocational Nurse Examiners adopts amendments to §235.48 relative to Reactivation of a License without changes to the proposed text published in the August 14, 1998 issue of the *Texas Register* (23 TexReg 8335).

The amendments are adopted to include the required for proof of 20 hours of continuing education of individuals whose license has been delinquent for more than one renewal period, but less than five years.

No comments were received relative to the adoption of these amendments.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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Proposal publication date: August 14, 1998

For further information, please call: (512) 305-8100



Chapter 237. Continuing Education

Subchapter B. Continuing Education

22 TAC §237.19

The Board of Vocational Nurse Examiners adopts the amendments to §237.19 relative to Relicensure Process without changes to the proposed text published in the August 14, 1998 issue of the *Texas Register* (23 TexReg 8336).

This rule is amended for consistency with §235.48 and to include the requirement for proof of twenty hours of continuing education of individuals whose license has been delinquent for more than one renewal period, but less than five years.

No comments were received relative to the adoption of these amendments.

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary 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.

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Joy Fleming

Director of Education

Board of Vocational Nurse Examiners

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Part XXXVII. Texas Board of Orthotics and Prosthetics

Chapter 821. Orthotics and Prosthetics

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

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

Sections 821.2 - 821.7, 821.9, 821.11, 821.13, 821.15, 821.17, 821.19, 821.21, 821.23, 821.25, 821.27, 821.29, 821.31, 821.33, 821.35, 821.39, and 821.41 are adopted with changes to the proposed text as published in the July 24, 1998, issue of the *Texas Register* (23 TexReg 7489). Sections 821.1, 821.37, 821.43, 821.45, 821.47, 821.49, 821.51, 821.53, 821.55, and 821.57 are adopted without changes, and therefore the sections will not be republished.

The new sections implement Texas Civil Statutes, Article 8920, Senate Bill (SB) 291, 75th Legislature, 1997, which established the Texas Board of Orthotics and Prosthetics and delineated its duties and powers.

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

The adopted rules are new rules implementing a new licensing and regulatory program. This new program involves many categories of licensees, assistant licensees, registered technicians, and accredited facilities. Multiple "grandfather" provisions and alternative pathways to licensure that expire on January 1, 2005,

further complicate the new program. These new rules necessarily reflect the judgment of the Texas Board of Orthotics and Prosthetics (board) on many matters, including: the education, experience, testing, and other requirements necessary to gain licensure, registration or accreditation; the continuing education and other requirements for renewal of licensure; the acts or omissions that may lead to revocation or suspension of licensure; and the fees necessary to cover the cost of implementing and administering this new program. In each of these matters of judgment the board has done its best to fairly consider competing and sometimes conflicting interests while keeping foremost in mind that its primary duty is the protection of consumers in the manner and to the extent authorized by Article 8920, Texas Civil Statutes, and other laws of this state.

Changes made to the proposed text result from comments received during the comment period. The details of the changes are described in the summary of comments that follow.

Comment: Regarding §821.2(2) ancillary patient care service; seven commenters recommended redefining the term as follows: "Ancillary patient care service - Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events."

Response: The board agrees with the comment and has made changes to §821.2(2) as a result of the comments.

Comment: Regarding §821.2(5) clinical residency for an assistant; six commenters recommended increasing the clinical residency requirement to not less than 1900 hours. The commenters felt that since an assistant will be performing important patient care services at a professional level, which will include complicated physiological, biomechanical, pathomechanical, kinesiological, psychological skills and the specialized application of material sciences, the clinical residency requirement should be set at no less than that required of a practitioner.

Response: The board agrees with the comment, but disagrees with the recommendation of 1900 hours. The board increased the clinical residency requirement to 1000 hours as a result of the comment, and believes this is sufficient to ensure assistant competency.

Comment: Regarding §821.2(8) comprehensive orthotic care; eight commenters stated the proposed definition did not take into consideration the unique body of knowledge many practitioners have or will be required to have after the alternative educational pathway expires on January 1, 2005. The commenters stated this body of knowledge gives the practitioner the ability to deal with clinical situations that are outside the "normal." The commenters believed requiring an individual to have performed two-thirds of all possible types of orthotic services did not fairly equate to an individual's ability to perform these services. The commenters recommended changing the definition for comprehensive orthotic care - The ability of a practitioner to apply his or her unique and expanding body of orthotic knowledge to patients with lower limb, upper limb, spinal, and any combination of lower limb, upper limb and spinal pathomechanical conditions including: the evaluation of an individual's neuromuscular and/or musculoskeletal conditions, appropriate prescription development, the taking of measurements and/or impressions of the involved body segments, the synthesis of observations and measurements into a custom orthotic design, the selection of materials and components, the rectification of schema or positive models, the fabrication of therapeutic or functional orthoses, the fitting and critique of orthoses, the initiation of gait and/or

activities of daily living training, appropriate follow-up, adjustments, modifications and revisions, the instructing of patients in the use and care of orthoses, and the maintaining of current encounter notes and patient records.

Response: The board disagrees with the comment. The board must retain the ability and judgment to determine whether a person has comprehensive experience, and the definition must be worded in a way so that it can be applied to applicants who will apply under the "experience only" requirements that expire in 1999. The board will keep this comment in mind and will consider adopting a definition more in line with that suggested by the commenters once grandfathering has ceased. No changes were made as a result of the comment.

Comment: Regarding §§821.2(8), 821.2(9), 821.2(18), 821.2(20), 821.2(22), 821.19(c)(2)(A), 821.29(e)(2), 821.29(f)(1); two commenters had concerns about the terms, "prosthetic/orthotic facility" and "prosthetist/orthotist in charge" not being defined. The commenters also expressed concerns that the combined disciplines were not specifically mentioned in §§821.19(c)(2)(A), 821.29(e)(2), and 821.29(f)(1).

Response: The board agrees with the comments and has added these definitions to §821.2 and made changes to §§821.19(c)(2)(A), and 821.29(e)(2) and (f)(1) as a result of the comments.

Comment: Regarding §821.2(8)-(9) definitions of comprehensive orthotic care and comprehensive prosthetic care; five commenters 1) felt that restricting care to an orthotic and/or prosthetic facility would prohibit the consumer from receiving care in a hospital or out patient setting such as such as a nursing home or rehabilitation facility, 2) had concerns regarding the overall definitions requiring skills and not knowledge, 3) wanted the term "upholstering" changed to "cosmetic covers," 4) suggested "custom-fitted" orthoses and prostheses be added to both definitions, and 5) wanted a complete listing of orthoses and prostheses in the definitions.

Response: 1) The board disagrees with the comment. The facilities mentioned are exempt from the regulations. 2) The board disagrees with the comment and believes the definitions require both skills and knowledge. 3) The board agrees and disagrees. The term "cosmetic covering," was added to §821.2(8)-(9). The board determined that "upholstery" should be left in the definitions of both comprehensive prosthetic care and comprehensive orthotic care. 4) The board disagrees because "custom-fitted" does not constitute a significant amount of skill or knowledge required to provide comprehensive care, and no changes were made. 5) The board disagrees that a complete listing is needed, and no changes were made.

Comment: Regarding §821.2(8)-(9) definitions of comprehensive orthotic care and comprehensive prosthetic care; five commenters recommended changing the "and" between upper limb and spinal pathomechanical to "and/or."

Response: The board agrees with the comment, but not the recommendation. The board changed the phrasing in §821.2(8)-(9) as a result of the comment.

Comment: Regarding §821.2(8)-(9) definition of comprehensive prosthetic care and comprehensive orthotic care; five commenters noted that not all prostheses and orthoses were listed and recommended all prostheses and orthoses be included in the definitions.

Response: The board disagrees with the comment and no changes were made. The board believes the list is representative, and would not exclude a device simply because it was not on the list.

Comment: Regarding §821.2(9) comprehensive prosthetic care; nine commenters stated the proposed definition did not take into consideration the unique body of knowledge many practitioners have or will be required to have after the alternative educational pathway expires on January 1, 2005. The commenters stated this body of knowledge gives the practitioner the ability to deal with clinical situations that are outside the "normal." The commenters believed requiring an individual to have performed two-thirds of all possible types of orthotic services did not fairly equate to an individual's ability to perform these services.

The commenters recommended an alternative definition for comprehensive prosthetic care: The ability of a practitioner to apply his or her unique and expanding body of prosthetic knowledge to patients with lower limb, upper limb and any combination of lower and upper limb deficiencies, including: the evaluation of an individual's neuromuscular and/or musculoskeletal conditions; appropriate prescription development; the taking of measurements and/or impressions of the involved body segments; the synthesis of observations and measurements into a custom prosthetic design; the selection of materials and components; the rectification of schema or positive models; the fabrication of cosmetic and/or functional prostheses; the fitting and critique of prostheses; the initiation of gait and/or activities of daily living training; appropriate follow-up, adjustments, modifications and revisions; the instructing of patients in the use and care of prostheses; and the maintaining of current encounter notes and patient records.

Response: The board disagrees with the comment. The board must retain the ability and judgment to determine whether a person has comprehensive experience. The definition must be worded in a way so that it can be applied to applicants who will apply under the "experience only" requirements that expire in 1999. The board will keep this comment in mind, and will consider adopting a definition more in line with that suggested by the commenters once grandfathering has ceased. No changes were made as a result of the comment.

Comment: Regarding §821.2(9) definition of comprehensive prosthetic care; four commenters recommended replacing the phrase, "the selection of materials and components" with "recommend materials and components."

Response: The board disagrees with the comment and no changes were made. The board believes the term "selection" is appropriate.

Comment: Regarding the definition of critical care events §821.2(10); two commenters suggested changing "or final evaluation" to "and final evaluation" and adding the phrase "of the orthosis or prosthesis" to the end of the definition to make this definition consistent with the definition of ancillary patient care service.

Response: The board agrees with the comment and has made changes to §821.2(10) as a result of the comment.

Comment: Regarding §821.2(10) critical care events; nine commenters stated that this term as defined effectively limited the scope of practice of an assistant, in §821.19(b)(1)&(2), and supervision of a clinical resident, §821.31(f)(3). The term should

be further differentiated for the multiple levels of providers. The commenters recommended the following definition for critical care events - Initial patient assessment, prescription development and recommendation, and final evaluation and critique of fit and function.

Response: The board agrees with the comment and has made changes to §821.2(10) as a result of the comment.

Comment: Regarding §821.2(10) definition of critical care events; two commenters wanted the phrase "function, or final" to read "function, and/or final."

Response: The board disagrees with the comment. The definition was changed due to a different comment and the phrase "function, or final" no longer exists in the definition. No changes were made as a result of the comment.

Comment: Regarding §821.2(10) critical care events; four commenters recommended that each critical care event have individual definitions that refer to them as critical care events.

Response: The board agrees that further definitions may become necessary and will address the subject as it becomes required. No changes were made at this time as a result of the comment.

Comment: Regarding §821.2(11) where the term custom-fabricated is defined; seven commenters noted that the proposed definition included the term "prescribed." The commenters explained that a prescription for an orthosis or prosthesis does not usually indicate that it be "custom fitted" or "custom fabricated." The inclusion of the term "prescribed" in the definition could ultimately require the prescription to specifically include that term. The commenters recommended the word "prescribed" be removed from the definition.

Response: The board disagrees with the comment and no changes were made to §821.2(11) as a result of the comments. The term "prescribed" is used in the statutory definition; its inclusion does not require a written prescription to specify that a prosthesis or orthosis be custom-fabricated.

Comment: Regarding §821.2(11) the definition of custom-fabricated; a commenter suggested alphabetizing the terms orthosis and prosthesis as it appears in the law.

Response: The board disagrees with the comment. The order in which the terms appear varies throughout the Act and the rules. No changes were made as a result of the comment.

Comment: Regarding §821.2(11) definition of custom-fabricated; a commenter noted the definition is different from the definition in the Act and suggested using the wording in the Act.

Response: The board agrees with the comment and has changed §821.2(11) to the verbatim language in the Act as a result of the comment.

Comment: Regarding §821.2(12) definition of custom-fitted; seven commenters noted that the proposed definition included the term "prescribed," yet a prescription for an orthosis or prosthesis, the vast majority of the time, does not indicate custom fitted or custom fabricated. The commenters were concerned that the inclusion of the term "prescribed" in the definition could ultimately require a prescription to specifically include the term "custom-fitted." The commenters recommended the word "prescribed" be removed from the definition.

Response: The board disagrees with the comment and no changes were made to §821.2(12) as a result of the comments. The term "prescribed" is used in the statutory definition; its inclusion does not require a written prescription to specify that a prosthesis or orthosis be custom-fitted.

Comment: Regarding §821.2(14) definition of direct supervision; a commenter asked for clarification in the rules of the phrase "before dismissal of the patient."

Response: The board agrees that the phrase was confusing and has deleted the phrase as a result of the comment.

Comment: Regarding §821.2(14) definition of direct supervision; a commenter asked to change the definition to: "A licensed orthotist or licensed prosthetist must be physically present while supervising a clinical resident during critical care events. The supervisor must be available for consultation throughout the patient care process. The supervisor is responsible for countersigning all entries by the clinical resident in the patient's clinical record within seven working days following the delivery of care. This definition does not apply to the supervision of a resident assistant or licensed assistant as they are not allowed, by law, to perform critical care events."

Response: The board disagrees with the comment and no changes were made. The board believes the proposed definition is sufficient to provide an appropriate level of supervision.

Comment: Regarding §821.2(14) direct supervision; ten commenters stated the definition was unclear as to what the Board was attempting to accomplish. The commenters felt the requirement of the supervising practitioner to formally sign-off on all aspects of fitting before the dismissal of the patient was impractical in today's environment. It would require the clinical resident to write the encounter notes, submit them to the supervising practitioner, have him or her review and sign-off on them before the dismissal of the patient. It would be impossible for this requirement to be met in offices where encounter notes are dictated, transcribed and later reviewed by the treating individual. The commenters stated that the use of the terms "signing-off" and "countersign" in the definition was confusing.

Response: The board agrees with the comment and has made changes to §821.2(14) as a result of the comment.

Comment: Regarding §821.2(14) definition of direct supervision; seven commenters felt that the requirement for a supervisor to edit patient care notes was inappropriate and improper. The commenters suggested deleting the word "edit" from the definition.

Response: The board agrees with the comment and has made changes to §821.2(14) as a result of the comment.

Comment: Regarding §821.2(14) definition of direct supervision; a commenter suggested adding the word "to" between "provided" and "a" for ease of reading and to conform with the definition for indirect supervision. The commenter also suggested changing the focus of the definition from whom is being supervised to what supervision is.

Response: The board agrees and has added the word "to" as a result of the comment, but disagrees with the recommendation to change the focus as the present wording fairly delineates both whom and what is being supervised.

Comment: Regarding §821.2(15) definition of indirect supervision; four commenters felt that a degree of supervision is lost

without a requirement for the supervisor to countersign the clinical records. The commenters were concerned that with a decreased level of supervision, the clinical resident has, in effect, received a degree of inappropriate independence, and recommended that the supervisor be required to countersign the resident's clinical records in a timely manner.

Response: The board agrees with the comment and has made changes to §821.2(15) as a result of the comment.

Comment: Regarding §821.2(15) definition of indirect supervision; two commenters wanted clarification in the rules whether the oversight was by telephone or in person.

Response: The board agrees with the comment as has made changes to §821.2(15) as a result of the comment.

Comment: Regarding §821.2(15) definition of indirect supervision; a commenter suggested adding a requirement for the supervisor to countersign charts within a limited time.

Response: The board disagrees with the comment. Requiring the countersigning of charts for an indirectly supervised patient care encounter is not necessary for public protection. No changes were made as a result of the comment.

Comment: Regarding §821.2(17) definition of licensed orthotist; a commenter suggested changing the wording to the way it appears in the Act and removing the comma from between the words "orthotics" and "and."

Response: The board agrees with the comment and has made changes to §821.2(17) as a result of the comment.

Comment: Regarding §821.2(18) definition of licensed orthotist assistant; four commenters stated that a licensed orthotist assistant is required to practice in a "prosthetic and orthotic" facility, yet not all facilities will get accreditation in both orthotics and prosthetics. It was unreasonable to limit the ability of a licensed orthotist assistant to working only in a "prosthetic and orthotic" facility. The commenters suggest replacing "and" with "and/or."

Response: The board agrees with the comment and has made changes to §821.2(18) as a result of the comment.

Comment: Regarding §821.2(18) definition of licensed orthotist assistant; a commenter suggested using the exact wording of the Act.

Response: The board disagrees with the comment, in this instance, and believes the definition in the rules is more comprehensive while not changing the meaning of the Act. No changes were made as a result of the comment.

Comment: Regarding §821.2(19) definition of licensed prosthetist; a commenter noted the term, "prosthetics" was omitted from the definition.

Response: The board agrees with the comment and has made changes to §821.2(19) as a result of the comment.

Comment: Regarding §821.2(20) definition of licensed prosthetist assistant; five commenters noted that a licensed prosthetist assistant was required to be in a "prosthetic and orthotic" facility, yet not all facilities will get accreditation in both prosthetics and orthotics. The commenters felt it was unreasonable to limit the ability of a licensed prosthetist assistant to working only in a "prosthetic and orthotic" facility. The commenters suggest replacing "and" with "and/or."

Response: The board agrees with the comment and has made changes to §821.2(20) as a result of the comment.

Comment: Regarding §821.2(22) definition of licensed prosthetist/orthotist assistant; a commenter wanted the word "helps" changed to "assists."

Response: The board agrees with the comment and has made the change.

Comment: Regarding §§821.2(22), 821.2(37), and 821.9(i)(3)(B); the term "licensed prosthetist/orthotist" includes a "/" between "prosthetist" and "orthotist" in the term, as defined in §821.2(21). However, in some areas of the proposed rules the "/" is left out. This could conceivably impact the rules if they are adopted as proposed. One commenter wanted the terms orthotist and prosthetist to be alphabetical.

Response: The board agrees with the comments and has made changes to §§821.2(22), 821.2(37) and 821.9(i)(3)(B) as a result of the comments. The board disagrees with the comment concerning the alphabetical order of the terms prosthetist and orthotist and no changes were made.

Comment: Regarding the definition of orthosis in §821.2(24); five commenters noted that some terms were singular and others plural. The commenters recommended using either singular or plural terms throughout this definition.

Response: The board agrees with the comment and has made changes to the definition as a result of the comment.

Comment: Regarding §§821.2(25) and (33) defining orthotic facility and prosthetic facility; a commenter noted the definition was combined in the Act and suggested the rules match the Act.

Response: The board disagrees with the comment, in this instance, and believes separating the definitions makes the rules clearer. No changes were made as a result of the comment.

Comment: Regarding §821.2(29) definition of practitioner; a commenter recommended changing the date from October 1, 1998, to January 1, 1999, to accommodate the transition period when unlicensed practitioners will be needed to attest to another person's comprehensive experience.

Response: The board agrees and has changed the date accordingly.

Comment: Regarding §§821.2(29), 821.2(30), 821.2(31), 821.2(37) which is now renumbered as §821.1(39), and §821.9; a commenter wanted the terms "orthotist" and "prosthetist" alphabetized.

Response: The board disagrees with the comment because the board decided the term "prosthetist" should precede "orthotist" to correspond to the licensing credential "LPO" in the Act. No changes were made as a result of the comment.

Comment: Regarding §821.2(31) definition of prosthesis; a commenter wants the term "replaces" changed to the phrase "is used to replace" to match the wording in the Act.

Response: The board agrees with the comment and has made the change.

Comment: Regarding prosthesis as defined in §821.2(32); eight commenters noted an apparent typographical error. The

commenters recommended inserting a comma between the words, "physician" and "chiropractor."

Response: The board agrees with the comment and added a comma to §821.2(32).

Comment: Regarding §821.2(33) definition of prosthetic facility; a commenter suggested the phrase, "the profession and practice of prosthetics" be changed to, "the prosthetic profession and practice" to match the orthotic facility definition.

Response: The board agrees with the comment and made changes to §821.2(33) as a result of the comment.

Comment: Regarding the definition of registered orthotic technician in §821.2(35) which is now renumbered §821.2(37); two commenters remarked that the recognition of a licensed prosthetist/orthotist or a licensed prosthetist/orthotist assistant in providing supervision and direction to a registered orthotic technician was omitted. Commenters recommended adding licensed prosthetist/orthotists and licensed prosthetist/orthotist assistant to the definition of those able to provide direction to a licensed orthotic technician.

Response: The board agrees with the comment and has made changes to the definition as a result of the comment.

Comment: Regarding §821.2(35)-(37) which is now renumbered as §821.2(37)-(39), definitions of registered orthotic technician, registered prosthetic technician, and registered prosthetic/orthotic technician; two commenters wanted clarification in the rule whether the technicians in these three definitions are under direct or indirect supervision.

Response: The board disagrees with the comment. The board used the term "direction" and believes this is sufficient to reflect the required level of oversight of technicians. No changes were made as a result of the comment.

Comment: Regarding §821.2(36)-(37) which is now renumbered as §821.2(38)-(39), definitions of registered prosthetic technician and registered prosthetic/orthotic technician; a commenter recommended changing the word, "or" between "assembles," and "services" to match the definition of registered orthotic technician.

Response: The board agrees and has made the changes.

Comment: Regarding the definition of registered prosthetic technician in §821.2(36); two commenters recommended adding licensed prosthetist/orthotists and licensed prosthetist/orthotist assistant to the definition of those able to provide direction to a licensed prosthetic technician.

Response: The board agrees with the comment and has made changes to renumbered §821.2(38) as a result of the comment.

Comment: Regarding the definition of registered prosthetic/orthotic technician in §821.2(37) which is renumbered as §821.2(38); two commenters noted that the term "licensed" had been left off the specification of an orthotist supervising and directing a registered prosthetic/orthotic technician.

Response: The board agrees with the comment and has made changes to the definition as a result of the comment.

Comment: Regarding §821.3 consumer information; two commenters requested to see a database started so any consumer can obtain a list of practitioners in their area, and determine if complaints have been filed against a practitioner and how they were resolved.

Response: The board disagrees that rules are necessary to address this service. The board plans to have this information available for consumers, including a registry of licensed practitioners and a Texas Board of Orthotics & Prosthetics website containing the information the commenters requested. No changes were made as a result of the comment.

Comment: In §821.3(b)(1)(B) regarding board's operations; nine commenters recommended listing the specific minor day-to-day decisions that the presiding officer was authorized to make.

Response: The board disagrees with the comment. Listing each duty would reduce the flexibility needed to ensure efficient board operations. However, the rule was amended to indicate that the presiding officer's decisions may be subject to board review.

Comment: Regarding §821.3(b)(1)(C) board's operations; a commenter recommended removing the phrases, "an ex officio" and "except the Complaint Liaison Group" from the subparagraph because the presiding officer should be a voting member of all committees and the Complaint Liaison Group is not a committee.

Response: The board agrees with the comment and has made the recommended changes.

Comment: Regarding §821.3(b)(2) board's operations; a commenter suggested giving the board's secretary duties such as countersigning specific records or correspondence. The commenter felt the board's procedures seemed to lack a system of checks and balances.

Response: The board disagrees with the comment. A previous change in §821.3(b)(1)(B) underscores the checks and balances from the whole board. No changes were made as a result of the comment.

Comment: Regarding §821.3(b)(2)(A) board's operations; four commenters remarked that a disability does not preclude one from performing their duties and recommended changing the word "disability" to "inability."

Response: The board agrees with the comment and has made changes to §821.3(b)(2)(A) as a result of the comment.

Comment: Regarding §821.3(c) board operations; four commenters noted the proposed rules did not include the ability of a majority of board members to call a special meeting, and recommended creating a new subsection.

Response: The board agrees with the comment and has added §821.3(c)(3) as a result of the comment.

Comment: Regarding board's operations in §821.3(i)(1)-(4); fourteen commenters stated that nonboard members were denied lodging and meals per diem payment. The number of individuals willing to serve would be significantly diminished if reasonable travel expenses were not paid.

Response: The board agrees with the comment, however, no changes were made. The rules are intended to address reimbursement of only board members because the board does not have the authority to allow payment of travel expenses for nonboard members. The Texas Legislature must authorize such reimbursement.

Comment: Regarding board's operations in §821.3(i)(6); two commenters recommended rewording the paragraph so board

members attending meetings or conventions must show value to persons regulated under the Act.

Response: The board disagrees with the comment and believes the wording is sufficient. A mechanism is already in place that requires board members to show benefit. No changes were made as a result of the comment.

Comment: Regarding §821.3(n)(2), §821.3(n)(4), and §821.3(n)(6) board's operations - committees; two commenters pointed out that §821.3(n)(2) uses the term "committee presiding officer," §821.3(n)(4) uses the term "committee chairs," and §821.3(n)(6) uses the term "presiding officer of the committee." The term "chair" and "presiding officer" are interchangeable in §821.3 and are confusing. The term "chair" should be considered as the only reference to the leader of a committee. This should alleviate any confusion that may arise as it relates to the presiding officer of the board.

Response: The board agrees with the comments and has made changes to §821.3(n)(2) and (6) as a result of the comments. The term "committee chair" will be used.

Comment: Regarding §821.3(n)(3) committees; four commenters noted that no qualifications are set out for non-board members that may serve on committees.

Response: The board agrees with the comment, but does not accept the comment for a rule change. There are no specific qualifications for non-board members of committees because the board believes this allows the maximum flexibility for committee appointments, and believes it is in the best interest of the public to allow this wide variety. No changes were made as a result of the comment.

Comment: Regarding §821.3(n)(7)(A)-(C) board operations; four commenters recommended listing the qualifications of the public member in these subparagraphs.

Response: The board disagrees with the comment. There are no specific qualifications for non-board members of committees because the board believes this allows the maximum flexibility for committee appointments, and believes it is in the best interest of the public to allow this wide variety. No changes were made as a result of the comment.

Comment: Regarding §821.3(n)(7)(A)-(C); twelve commenters believed too much control and oversight of the committees came from the board, and that non-board members on the committees should be mandated in the rules.

Response: The board agrees with the comment, however, no changes were made. Section 821.3(n)(3) already states that non-board members may be appointed to committees and §821.3(n)(7) describes the minimum appointments the presiding officer shall make to the committees.

Comment: Regarding §821.3(n)(7)(A)-(C) board's operations - committees; two commenters believed these subparagraphs as written would allow the committee members to be all of one discipline, and wanted the rules to ensure an even distribution of orthotist and prosthetists. The commenters also wanted a public member who is a user of an orthotic and/or prosthetic device be on the committee.

Response: The board disagrees with the comment. The presiding officer must be able to choose from those available to serve. Also, one public board member, by law, must use an orthosis and the other must use a prosthesis. Furthermore, af-

ter the initial appointments expire, an additional public member who does not use a prosthesis or orthosis must be appointed. No changes were made as a result of the comment.

Comment: Regarding §821.3(n)(7)(B) education and facility standards committee; six commenters recommended dividing the committee into two committees. One commenter suggested the education committee could aid in reviewing the education standards in the rules and assess the continuing education audits, while the facility standards committee could review the related rules and organize site visits. One commenter suggested a committee composition.

Response: The board disagrees with the comment and believes one committee can perform the duties relating to education and facilities. If it is later determined the committee cannot perform the duties, the board will consider creating two committees. No changes were made as a result of the comment.

Comment: Regarding §821.3(n)(7)(C) board's operations - committees; seven commenters noted this section conflicted with §821.4, as both relate to similar committee responsibilities, duties and authorities. This section required the presiding officer to appoint a standing committee named the "consumer information committee." Then §821.4(a) established a "public information committee" which appeared to have similar duties, functions and responsibilities as the consumer information committee. The commenters believed the committees might be duplicative. One commenter suggested a committee composition.

Response: The board agrees with the comments and has made changes to §821.3(n)(7)(C) as a result of the comments. The committee names now match. The committee composition suggestion will be revisited in future rulemaking.

Comment: Regarding §821.3(p) board operations; a commenter stated that this subsection conflicts with §821.4 and should be deleted and incorporated into §821.4.

Response: The board agrees with the comment and has deleted §821.3(p) and made changes to §821.4(a) as a result of the comment.

Comment: Regarding §821.3(p) board operations; two commenters suggested a committee be appointed to help the executive director handle all aspects of consumer information.

Response: The board agrees with the comment and has established a Public Information Committee in §821.3(n)(7)(C) and §821.4. Also, §821.3(p) was deleted due to another comment. No changes were made as a result of the comment.

Comment: Regarding §821.3(p) consumer information; four commenters stated there was no definition of consumer information.

Response: The board disagrees with the comment. The committee name was changed to public information committee as a result of a previous comment. Section 821.4 describes the general information for which the public information committee is responsible. No change was made as a result of the comment.

Comment: Regarding public information in §821.4; two commenters remarked that membership composition of the committee was not identified.

Response: The board agrees with the comment. However, changes to §821.3(n)(7)(C) in response to a previous comment should address the concern. No changes were made as a result of the comment.

Comment: Regarding §821.4 public information; four commenters stated there was no definition of public information.

Response: The board disagrees with the comment. The committee name was changed to public information committee as a result of a previous comment. Section 821.4 describes the general information for which the public information committee is responsible. No change was made as a result of the comment.

Comment: Regarding §821.4 public information; four commenters recommended adding the following to the rules in this section: a list of licensed orthotists or licensed prosthetists in the state; complaints filed against a practitioner and how it was settled; support groups and their contact numbers.

Response: The board disagrees and does not accept the comment for a rule change. The board believes rules are not needed to implement the recommendation. The public/consumer information committee will recommend types and forms of information. The first two items will be available through the future Web page, a registry, newsletters, and inquiries to the department. The third item could be available through the same means if support groups contact the department with their information. No changes were made as a result of the comment.

Comment: Regarding §821.4(a) public information; a commenter noted the membership composition of the committee was not identified.

Response: The board agrees with the comment but does not accept it for a rule change. Section 821.3(n)(3) already states that non-board members may be appointed to committees and §821.3(n)(7) describes the minimum appointments that the presiding officer shall make to the committees. Committee assignments are subject to board approval. No changes were made as a result of the comment.

Comment: Regarding §821.4(a)(1) public information; four commenters noted that this paragraph did not list examples of what type of information the brochures should contain, and recommended listing them.

Response: The board disagrees with the comment. The types of information will be determined by the committee and not dictated by the board. The committee will be open to suggestions that may be sent to the committee via the department, or directly to the committee members. No changes were made as a result of the comment.

Comment: In §821.4(a)(3) regarding public information; two commenters noted there were no guidelines restricting the display of an exhibit at conventions. The commenters suggested that rules be adopted to restrict the display of the public information exhibit.

Response: The board disagrees with the comment. This comment applies to all board activities. Good stewardship requires board members and committees to be responsible in discharging their duties. The board believes it is not necessary to adopt a rule to cover every possible situation. No changes were made as a result of the comment.

Comment: Regarding §821.5 fees; a commenter recommended a new fee be added for providing written license/registration verifications. This would help encourage the use of other means, such as telephone verification or accessing a roster on the future Web page, to verify the license status.

Response: The board agrees with the comment and has made changes to §821.5(b)(18-19) and added §821.5(b)(20) as a result of the comment.

Comment: Regarding §821.5(b) fees; a commenter noted the phrase "non-refundable" was not used in the schedule of fees.

Response: The board agrees with the commenter, however, the sentence, "Fees are non-refundable" appears in the previous subsection. No changes were made as a result of the comment.

Comment: Regarding §821.5(b)(5), (7), and (13); three commenters stated "prosthetic and orthotic" and should read, "prosthetic or orthotic."

Response: The board agrees with the comment and has made changes to §821.5(b)(5), (7), and (13) as a result of the comment.

Comment: Regarding §821.5(b)(5)-(8) fees; a commenter suggested charging technicians a higher registration and renewal fee than students.

Response: The board agrees with the comment. Technician fees were increased and student fees were decreased as a result of the comment.

Comment: Regarding §821.5(b)(13)-(14) fees; a commenter believed the facility application and renewal fee for primary and satellite offices be listed in the fees.

Response: The board disagrees with the comment. The fees for both primary and satellite offices are the same and are implicit in the rules. There is no differentiation between primary and satellite offices. No changes were made as a result of the comment.

Comment: Regarding §821.5(c)(4) fees; two commenters stated it was inappropriate for the board to rely on an employer to communicate with the applicant concerning a returned check.

Response: The board agrees and disagrees with the comment. Changes were made to §821.5(c)(4) to include both the applicant and the applicant's employer since the employer needs to know if an employee is not licensed.

Comment: Regarding §821.6(b)(3) general application procedures; a commenter noted that the term "application fee" is used and refers the reader to §821.5 relating to Fees; however, nowhere in §821.5 is the term "application fee" used.

Response: The board agrees with the comment and has made changes to §821.6(b)(3) as a result of the comment.

Comment: In §821.6(c)(1)(C) pertaining to general application procedures; two commenters stated they understood the intent of this subsection, but the wording created confusion.

Response: The board disagrees with the comment. The wording on the application forms will further explain what is required. No changes were made as a result of the comment.

Comment: Regarding §821.6(c)(1)(C)(i) general application procedures; a commenter wanted clarification in the rules concerning what is acceptable as verifiable information.

Response: The board disagrees with the comment because the board has listed examples at §821.13(d), which should be sufficient. No changes were made as a result of the comment.

Comment: Regarding §821.6(c)(1)(C)(iii) general application procedures; a commenter recommended adding the phrase, "experience providing" between the words "applicant's" and "comprehensive" to clarify the meaning of the sentence.

Response: The board agrees with the comment and has added the phrase.

Comment: Regarding §821.6(c)(1)(C)(iii) and §821.6(c)(3) general application procedures; two commenters wanted orthopedic physicians to be specified and to change the rule to mandate that one reference be from an orthopedic physician.

Response: The board disagrees with the comment. The Texas State Board of Medical Examiners does not issue specialty licenses in orthopedics. Thus, the board would have to rely on medical practice specialty boards to determine if a physician were an orthopedic physician. The board is concerned that board eligible physicians and family or general practitioners, who have a keen interest in orthopedics, would be excluded if the rules were changed as recommended by the commenters. Also, other types of physicians have patients needing orthoses and/or prostheses. No changes were made as a result of the comment.

Comment: Regarding §821.6(c)(1)(C)(iii) general application procedures, §821.11(e) licensing by exemption from the license requirements, and §821.13(d) licensing by examination under special considerations; a commenter suggested removing the term "practitioner" from this clause to prevent co-workers or family members from attesting.

Response: The board disagrees with the comment but agrees that an applicant's relatives should not be allowed to attest. Changes were made concerning family members as a result of the comment.

Comment: Regarding §821.6(c)(1)(C)(iii) and §821.6(c)(3) general application procedures; four commenters recommended specifying the practitioners be prosthetic or orthotic practitioners and the physician, "be knowledgeable in the use of a variety of prosthetic and orthotic devices." The commenters also felt the term "care" at the end of §821.6(c)(1)(C)(iii) did not indicate the practitioner's abilities.

Response: The board agrees with the comment about practitioners and refers the commenters to §821.2(29). The board disagrees with the comment concerning the word "care," but has changed the clause to emphasize experience. The clause refers to comprehensive prosthetic and/or orthotic care.

Comment: Regarding §821.6(c)(1)(F) general application procedures; four commenters recommended changing the word, "may" to "shall."

Response: The board disagrees with the comment. The board needs the flexibility to decide if the provision of false or misleading information was intentional or unintentional or warrants denial of licensure. No changes were made as a result of the comment.

Comment: Regarding §821.6(c)(6) general application procedures; two commenters stated this paragraph introduced a new term of "clinical supervision" which also appeared in §821.6(c)(7). The commenters requested further clarification of the term so the rules would reflect the exact level of supervision the board intended or suggested the board use the generalized term "supervision" as used in §821.6(c)(8).

Response: The board agrees with the comment to use the generalized term, "supervision" described in §821.19.

Comment: Regarding §821.6(c)(7) general application procedures for a technician; a commenter pointed out that this paragraph mentioned the technician's "scope of practice," but the commenter was unable to find an explanation or definition in the rules as proposed. The commenter noted the definitions of technician in proposed §821.2(35)-(37) which is now renumbered as §821.2(37)-(39) could suffice for a "scope of practice."

Response: The board agrees with the comment and has made changes to §821.6(c)(7) as a result of the comment.

Comment: Regarding §821.6(c)(8) general application procedures; a commenter noted this subsection asked each applicant initially to supply the names of any assistants, technicians, and clinical residents who provided prosthetic and orthotic services under the applicant's supervision or direction. This subsection also required each licensee provide written documentation of any staffing changes within 30 days of such changes. The commenter's employer had five technicians and two residents working under the direction of seven orthotists. The commenter stated the proposed rule would require each orthotist to notify the board about each technician and resident regarding each staffing change, causing a great deal of duplication and unnecessary paperwork for the board to sort through. The commenter requested clarification of the purpose of this subsection. The commenter noted that if the purpose was to keep an updated directory of orthotic and/or prosthetic practitioners, assistants, and technicians, the commenter suggested requiring each facility provide directory information regularly. If the purpose was to track supervision of assistants, technicians, and clinical residents, the commenter suggested: 1) requiring all Texas licensed or registered Orthotics and Prosthetics (O&P) workers to provide employment information and update it when changed, and 2) requiring new applicants for licensure or registration to provide details of their previous O&P experience.

Response: The board disagrees with the comment. The board acknowledges a possible increase in paper processing. However, the purpose of the rule is for the licensees to provide acknowledgment of responsibilities, to clearly fix responsibilities of licensees, and hold practitioners accountable. No changes were made as a result of the comment.

Comment: Regarding §821.6(c)(8) general application procedures; two commenters suggested the phrase, "clinical residents who provide prosthetic and orthotic care" be changed to read "clinical residents who provide prosthetic and/or orthotic care."

Response: The board agrees with the comment and has made changes to §821.6(c)(8) as a result of the comment.

Comment: Regarding §821.6(e) general application procedures; five commenters believed the subsection regarding disapproved applications should be stronger and suggested the word "may" in the last sentence be changed to "shall."

Response: The board disagrees with the comment. The board believes it needs to use discretion on a case-by-case basis. No changes were made as a result of the comment.

Comment: Regarding §821.6(e) general application procedures; four commenters recommended separating those violations that "may" result in disapproval from those that "shall."

Response: The board disagrees with the comment. Flexibility is necessary to handle each situation on a case-by-case basis. No changes were made as a result of the comment.

Comment: Regarding §821.6(e)(6), §821.9(i)(3)(B), §821.27(b)(3), §821.27(d)(1), §821.27(e), and §821.35(i)(1); three commenters stated that the terms "orthotics," "prosthetics," "orthosis," "prosthesis," "orthotist and prosthetist" do not follow a standardized order in the proposed rules. Sometimes orthotics precedes prosthetics and in others it follows. The commenters recommended that the term orthotics should always appear before the term prosthetics.

Response: The board agrees with the comment and has made changes to §821.2(37), §821.6(e)(6), §821.9(i)(3)(B), §821.27(b)(3), §821.27(d)(1), §821.27(e), and §821.35(i)(1) as a result of this comment. Since the majority of the times the term prosthetics preceded the term orthotic in the rules, the change was made to have the term prosthetics consistently appear before the term orthotic.

Comment: Regarding §821.6(e)(6) general application procedures; two commenters stated there had been a misuse of terms because "technician" related to orthotics and/or prosthetics, not to an orthotist and/or prosthetist.

Response: The board agrees with the comment and has made changes to §821.6(e)(6) as a result of the comment.

Comment: Regarding §821.6(e)(11) general application procedures; seven commenters pointed out that an individual cannot be held responsible for unknown events. The use of the term "the," as it relates to violations of the Act, would potentially hold licensees responsible for acts of another person, unknown to the person being held responsible for the alleged event. The commenters recommended changing "the" to "a known."

Response: The board agrees with the comment as has made changes to §821.6(e)(11) as a result of the comment.

Comment: Two commenters noted that the term "crime" appeared in §821.6(e)(14) and §821.43(b). Section 821.43(b) related to felonies and misdemeanors, but §821.6(e)(14) related to "crimes directly related to prosthetic and/or orthotic practices." The commenters noted that "crimes directly relating to prosthetic and/or orthotic practices" have not been identified. The commenters felt that "crimes directly related to prosthetic and/or orthotic practices" should either be identified or be deleted.

Response: The board disagrees with the comment. The board requires the flexibility to determine whether a crime relates to the profession, and requires application disapproval on a case-by-case basis. No changes were made as a result of the comment.

Comment: Regarding §821.6(e)(15) general application procedures; two commenters recommended that the rules provide that exclusion from any federal or state programs should prevent a provider from being approved by the board.

Response: The board disagrees with the comment. The requested change could require the board to deny a license to an otherwise qualified person if he or she did not have the appropriate professional affiliation to participate in a federal or state program that only recognizes a specific professional affiliation. No changes were made as a result of the comment.

Comment: Regarding §821.6(e)(15) general application procedures; a commenter recommended adding the phrase, "due to fraudulent activities" to the end of this subsection. Otherwise the board must deny a license to an otherwise qualified person who is certified by a certifying agency that was not recognized by a federal or state program.

Response: The board agrees with the comment and has made changes to §821.6(e)(15) as a result of the comment.

Comment: Regarding §821.6(e)(16) general application procedures; five commenters recommended changing the reference to §23 of the Act to §22 due to an apparent typographical error.

Response: The board agrees with the comment and has made changes to §821.6(e)(16) as a result of the comment.

Comment: Regarding §821.6(g) general application procedures; six commenters stated this subsection did not appear to provide sufficient public protection if an individual were allowed to reapply after one year if his or her initial or renewal application was disapproved. Depending on the severity of an offense, an individual should never be allowed to reapply for his or her initial license or renew a current license.

Response: The board disagrees with the comment. The subsection allows someone to reapply for licensure, but it does not guarantee approval, which will only be granted when appropriate. No changes were made as a result of the comment.

Comment: Regarding §821.6(h) general application procedures; two commenters believed a repayment schedule should be set up prior to issuing the initial license to defaulters on Texas guaranteed student loans.

Response: The board agrees with the comment, but does not have the authority to adopt a rule more stringent than the Texas Education Code, which establishes denial of renewal of licensure only. No changes were made as a result of the comment.

Comment: Regarding §821.7(b)(3) general licensing procedures; a commenter noted the word "review" in the last sentence should be "renew."

Response: The board agrees with the comment and has made changes to §821.7(b)(3) as a result of the comment.

Comment: Regarding §821.7(c)(4) general licensing procedures; a commenter believed this subsection was unduly restrictive in regards to displaying or carrying a license. The license is an important document that should be carefully protected from loss, fire, theft, etc. Displaying and carrying the original documents could put them at risk of catastrophic loss. The commenter wanted certified true copies to suffice for the intent of this subsection.

Response: The board disagrees with the commenter and did not accept the comment as a basis for a rule change. The risk of counterfeiting and altering certificates is increased drastically if the carrying or displaying of copies is allowed, and outweighs the risk of catastrophic loss. Destroyed, lost, or mislaid licenses will be reissued upon request.

Comment: Regarding §821.9 examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; three commenters suggested that since the board has contracted with the American Board for Certification in Orthotics and Prosthetics (ABC) to administer a subset of ABC's examination as the Texas exam,

individuals who have successfully completed the ABC exam be exempted from taking the Texas exam now and in the future.

Response: The board disagrees with the comment. The board believes that all applicants who must take the examination should sit for the examination approved by the board. A person who passed the ABC exam years ago may have passed an examination that substantially differs from the current written examination. It is the intent of the board that all applicants be measured equally according to current test standards. No changes were made as a result of the comment.

Comment: Regarding §821.9(c) examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; a commenter suggested using the plural "examinations" throughout the subsection.

Response: The board agrees with the comment. To accommodate this, the catch title was changed to read, "Form of examinations," and the word "examination" was changed to "examinations" in this subsection.

Comment: Regarding §821.9(i)(1), (i)(3), and (i)(3)(A)-(B) examinations for licensure as a prosthetist, orthotist, or prosthetist/orthotist; six commenters recommended disqualifying an individual from further testing as an orthotist, prosthetist or prosthetist/orthotist after the third or fourth examination.

Response: The board disagrees with the comment. The board will monitor test results and consider a limit on testing in future rulemaking. No changes were made as a result of the comment.

Comment: Regarding §821.9(i)(3)(B) examination for licensure as a prosthetist, orthotist, or prosthetist/orthotist; six commenters stated that when a candidate fails the prescribed examination three times, a 40 hour tutorial would not necessarily provide them the means to pass the examination. The commenters felt an individual qualified for the examination under §821.13 who fails three times should have to qualify for reexamination by meeting the educational and clinical requirements established in §821.17(c)(1), (d)(1) or (e)(1). The commenters recommended increasing the number of hours required for a tutorial program from 40 to 120, requiring the individual to obtain a student's registration and participate in clinical application and patient care in his or her tutorial program, and requiring the individual to obtain classroom instruction, reading, research, continuing education activities, and test material review in his or her tutorial program. The commenters suggest an applicant who fails the examination three times be disqualified from further testing as a practitioner in that discipline.

Response: The board both agrees and disagrees with the comment. The board increased the tutorial hours from 40 to 80 and has made changes to the rules. However, the board disagrees with the comment concerning disqualifying an applicant from further testing after three attempts and requiring the person to obtain a student registration during the tutorial. No changes were made as a result of the suggestions.

Comment: Regarding §821.11 licensing by exemption from the license requirements; a commenter wanted a rule added to this section, similar to the rule in §821.33(g) allowing persons who missed the three year and one year comprehensive orthotic care and comprehensive prosthetic care requirements because of active military service to be allowed to apply under the §821.11 provisions.

Response: The board agrees with the comment and believes the situation described by the commenter may be considered under §821.15. No changes were made as a result of the comment.

Comment: Regarding §821.11(c)(3)(A) licensing by exemption from the licensing requirements; a commenter wanted the wording changed to the way it appears in the Act §23(d)(2)(A).

Response: The board agrees and changes were made.

Comment: Regarding §821.11(c)(3)(A)-(B) licensing by exemption from the licensing requirements; five commenters noted an apparent typographical error and recommended changing "and" to "or" in §821.11(c)(3)(A). Two commenters recommended changing the "and" to "and/or" in both subparagraphs

Response: The board agrees and disagrees with the comments and has changed the "and" to "or" in §821.11(c)(3)(A). No changes were made to §821.11(c)(3)(B).

Comment: Regarding §821.11(e) licensing by exemption from license requirements; two commenters believed the reference to licensed physician should be changed to licensed orthopedic physician. The commenters asked that the rules be changed to mandate one affidavit be from an orthopedic physician.

Response: The board disagrees with the comment. The Texas State Board of Medical Examiners does not issue specialty licenses in orthopedics. Thus, the board would have to rely on medical practice specialty boards to determine if a physician were an orthopedic physician. The board is concerned that board eligible physicians, and family or general practitioners, who have a keen interest in orthopedics, would be excluded if the rules were changed as recommended by the commenters. Also, other types of physicians have patients needing orthoses and/or prostheses. No changes were made as a result of the comment.

Comment: Regarding §821.13(b) license by examination under special conditions requiring application by the 181st day after rules are adopted and §821.15(b) acquiring licensure as a uniquely qualified person; seven commenters suggested that any individual who had successfully passed the ABC examination be recognized as possessing the unique qualifications necessary for licensure as a prosthetist, orthotist, or prosthetist/orthotist.

Response: The board understands the concerns of the commenters but disagrees with the comment. The board's goal is to have its own unique exam for the State of Texas, and is attempting to set a standard in the rules that will reflect that philosophy. Although the board is using a test that could be equated to be the ABC test, the cut score may be different and as time goes by there will be significant differences. Though the commenter's suggestions might be reasonable now, the board does not want to create a rule that is certain to change in the future. No changes were made as a result of the comment.

Comment: Regarding §821.13(c) license by examination under special conditions requiring application by the 181st day after rules are adopted; two commenters stated the wording was confusing and contradictory. The second sentence requires the board to issue a license to anyone who applies and meets the qualifications which conflicts with §821.13(b), which requires an applicant to pass the examination before receiving a license. The commenters recommended deleting the sentence "The board shall issue a license to an applicant who applies for

examination on or before the 181st day after rules are adopted." The commenters also recommended adding language, "who applies on or before the 181st day after rules are adopted" to the end of the last sentence of §821.13(a).

Response: The board agrees with the comments and has made changes to §821.13(a) and §821.13(c) as a result of the comments.

Comment: Regarding §821.13(c) license by examination under special considerations; a commenter suggested changing the word "shall" to "may."

Response: The board agrees however this has been addressed by a previous comment; the sentence was deleted. No changes were made as a result of the comment.

Comment: Regarding §821.13(c)(1) license by examination under special conditions requiring application by the 181st day after rules are adopted; two commenters suggested changing the requirement for one year of comprehensive care in Texas to three years. The commenter stated this would bring the rules in accordance with the Orthotics & Prosthetics Act §23(d)(2)(A).

Response: The board disagrees with the comment. Section 23(d) of the Act concerns provisions expiring January 1, 2005. Section 821.13 of the rules deals with the grandfathering provisions and are not subject to §23(d) of the Act. No changes were made as a result of the comment.

Comment: Regarding §821.13(c)(1) license by examination under special conditions requiring application by the 181st day after rules are adopted; three commenters noted a typographical error. The commenters noted that §821.13(c)(1) should reference a prosthetic or orthotic license, and comprehensive prosthetic care or comprehensive orthotic care.

Response: The board agrees with the comment and has made changes to §821.13(c)(1) as a result of the comment.

Comment: Regarding §821.13(c)(1)-(2) license by examination under special conditions - qualifications; two commenters believed that individuals should be given the opportunity to sit for the Texas examination if they do not meet the proposed one year limit thus allowing the examination process weed out those who do not possess the ability to pass.

Response: The board disagrees with the comment. The board determined that a minimum of one year for previous experience as a reasonable requirement to ensure competency. No changes were made as a result of the comment.

Comment: Regarding §821.15(b) acquiring licensure as a uniquely qualified person; two commenters recommend replacing the term "procedures" with the term "care."

Response: The board agrees with the comment and has made changes to §821.15(b) as a result of the comment.

Comment: Regarding §821.15(b)(2) acquiring licensure as a uniquely qualified person; two commenters noted a typographical error. The purpose of §821.15 is to set forth the unique qualifications for licensure as an orthotist, prosthetist or prosthetist/orthotist. However, §821.15(b)(2) only identifies "comprehensive orthotic care or comprehensive prosthetic care" and does not include comprehensive orthotic and/or prosthetic care. The commenters recommend replacing the term "or" with the term "and/or."

Response: The board agrees with the comment and has made changes to §821.15(b)(2) as a result of the comment.

Comment: Regarding §821.17 licensing by examination; a commenter noted the board has decided to use the ABC written examination as the board's exam. The commenter recommended adoption of the entire ABC exam process, including the 150 multiple choice questions, the written simulation, and the clinical patient management section.

Response: The board disagrees with the comment. The board will be temporarily contracting with an examination provider until the board develops its own unique examinations. The board will consider more comprehensive examinations for the Texas prosthetics and orthotics licensing exam. No changes were made as a result of the comment.

Comment: Regarding §821.17(c)(2), (d)(2), and (e)(2) licensing by examination; four commenters suggested adding a new subsection (D) to each of the above named paragraphs requiring, "not less than 4500 hours of post graduate clinical experience under the direct supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist in the discipline for which licensure is sought."

Response: The board agrees with the comment. However, clinical residency is addressed in §821.17(f)-(h), and has been changed there.

Comment: Regarding §821.17(c)(2), (d)(2), and (e)(2) licensing by examination; a commenter pointed out that a person may obtain an associate degree in prosthetics, orthotics, or both. Some of these programs, however, do not match the education requirements listed. Although these degrees are substantial, accredited, and pertinent to the goal of licensure, the degrees would not qualify the candidate under the rules as proposed. The commenter recommended adding additional wording to the paragraphs to accept an associate degree in prosthetics and/or orthotics from a school accredited by the National Commission on Orthotic and Prosthetic Education (NCOPE) or a school accepted by the board as having educational standards equal to or exceeding NCOPE standards.

Response: The board agrees with the comment and has made changes to §821.17(c)(2), (d)(2), and (e)(2). However, the board disagrees with using NCOPE standards having chosen CAAHEP as the standard.

Comment: Regarding §821.17(c)(2), (d)(2), and (e)(2) licensing by examination; a commenter wanted the board to increase and expand the educational requirements for an associate degree "to include engineering, nursing, physical therapy, etc."

Response: The board disagrees with the comment because the language in the Act §23(c) reflects language agreed upon during the legislative process, and the board must remain consistent with that language. However, the requirements have been upgraded to include mathematical requirements. No changes were made as a result of the comment.

Comment: Regarding §821.17, §821.17(c)(2), (d)(2), and (e)(2) licensing by examination; a commenter recommended changing the word, "including" to "and" in each paragraph to accept an associate degree in a subject that does not require the additional courses required by the rules.

Response: The board agrees and has made the changes.

Comment: Regarding §821.17(f)-(j) licensing by examination; three commenters stated the wording was not in compliance with the Act §23(c) which allows an individual to pursue an alternative educational pathway until January 1, 2005, and requires those individuals to obtain 4500 hours of postgraduate clinical experience under the direct supervision of a practitioner licensed in the discipline for which the applicants seek licensure. The commenters noted that this requirement was to supplement the decreased educational requirements with an increased number of clinical experience hours. Commenters recommended adding the requirement to §821.17(f), §821.17(g), §821.17(h), §821.17(i) and §821.17(j).

Response: The board agrees with the comment and has made changes to §821.17(f)-(j) as a result of the comment.

Comment: Regarding §821.17(f),(g),(h),(i),(j) licensing by examination; a commenter suggested changing the phrase, "clinical residency" to "post-graduate" to clarify the requirements that must be fulfilled following completion of the academic requirements for a license.

Response: The board agrees with the comment and the suggested changes were made.

Comment: Regarding §821.19 licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; two commenters felt the intent of the Act was to require examination of assistants and should be incorporated into the rules.

Response: The board disagrees with the comment. The board does not have the authority under the Act to examine assistants. No changes were made as a result of the comment.

Comment: Regarding §821.19(b)(1)-(2) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; eleven commenters stated that disciplinary actions against a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist should not be based upon the acts, errors or omissions of a licensed prosthetist assistant, orthotist assistant, or licensed prosthetist/orthotist assistant. The commenters felt the board was exceeding the intent of the Act §2(8). In addition, the commenters felt the board was exceeding the intent of the Act §24(c) by allowing the assistant to provide ancillary patient care under the supervision of a licensed practitioner.

Response: The board disagrees with the comments. The board will determine the consequences of improper supervision of assistants on a case-by-case basis. The rule requires a supervisor to know what the assistants under his or her direction are doing to avoid potential disciplinary action, and ensure public protection. Supervisors need to be proactive, prudent, and diligent. Finally, both the Act and rules allow an assistant to perform ancillary care services. No changes were made as a result of the comment.

Comment: Regarding §821.19(b)(2) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; two commenters noted the last sentence appears to be a duplication of the first sentence.

Response: The board agrees with the comment and has made changes to §821.19(b)(2) as a result of the comment.

Comment: Regarding the scope of practice for licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant §821.19(b)(1)-(2); a commenter asked

that the sentences beginning, "The orthotist assistant may conduct critical care events . . ." in (b)(1), and "The prosthetist assistant may conduct critical care events . . ." in (b)(2) be deleted. The commenter stated the wording was not in accordance with the Orthotics & Prosthetics Act §24(c) which stated, "An assistant licensed under this section may provide only ancillary patient care services, . . ."

Response: The board agrees with the comment and has made changes to §821.19(b)(1)-(2) as a result of the comment.

Comment: Regarding §821.19(c)(1) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; a commenter noted that the proposed rules did not have any consideration for foreign education for assistants.

Response: The board acknowledges the comments but does not believe a rule change is required. The board recommends that an applicant who has completed college-level academic credits apply to an American college or university that is regionally accredited for possible transfer of the foreign academic credits. If the hours are accepted as transfer credits in the categories required by the board, the applicant may apply to the board for a license and submit a transcript from the American college or university that accepted the transfer credits. No changes were made as a result of this comment.

Comment: Regarding §821.19(c)(2) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; five commenters opined that not enough clinical training for an assistant was required. The commenters further noted that to qualify for the practitioner examination a practitioner will be required to have not less than 1900 hours of clinical residency if they obtain a baccalaureate degree, or not less than 4500 hours of postgraduate clinical experience if the practitioner obtains an associate degree. Because an assistant will perform important patient care services, at a professional level, including complicated physiological, biomechanical, pathomechanical, kinesiological, psychological skills and the specialized application of material sciences, the clinical residency requirement should be set at no less than that required of a practitioner. The commenters recommended increasing the clinical residency requirement to not less than 1900 hours.

Response: The board agrees with the comment but not the recommended number of hours. Clinical residency requirements were increased from 500 hours to 1000 hours as a result of the comment.

Comment: Regarding §821.19(c)(2)(B) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; three commenters recommend placing a comma between "fitting" and "adjusting."

Response: The board agrees with the comment and has made changes to §821.19(c)(2)(B) as a result of the comment.

Comment: Regarding §821.19(c)(2)(C) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; two commenters opined that there will be differences in clinical residency programs if the responsibility of comparing and contrasting the duties of an assistant and a practitioner was left up to the supervisor of the resident. The board has made a strong and diligent effort in specifically defining terms and setting forth extensive rules to regulate the profession of orthotics and prosthetics. The commenters suggested that the board develop language specifically out-lining the differences between assistants and practitioners and incorporate the

wording into the assistant application form which the assistant is required to sign. This would provide irrefutable evidence that the applicant is fully aware of what the board defines as the differences between assistants and practitioners. The commenters recommended deleting subsection §821.19(c)(2)(C). Also, the commenters recommended adding a new subsection to §821.6 to require an attestation statement from the assistant indicating he or she understands the difference between a practitioner and an assistant.

Response: The board disagrees with the recommendation, however, the concern will be addressed in the application materials. No changes were made as a result of the comment.

Comment: Regarding §821.19(d)(2) licensed prosthetist assistant, licensed orthotist assistant, or licensed prosthetist/orthotist assistant; two commenters remarked that the middle sentence appeared to be a duplication of the first sentence.

Response: The board agrees with the comment and has deleted the second sentence as a result of the comment.

Comment: Regarding §821.21 technician registration; two commenters stated that the intent of the Act was to mandate technician registration. The commenters wanted the rule changed from voluntary compliance to mandatory compliance.

Response: The board does not accept the comment for a rule change at this time. The board determined that the rule as proposed is sufficient to protect the public. The board will consider this comment for future rulemaking.

Comment: Regarding §821.21(a) technician registration; commenters recommend changing the phrase "prosthetist or an orthotist technician" to "prosthetic or an orthotic technician." The commenters claimed this was a violation of the Act §25.

Response: The board agrees with the comment and has made changes to §821.21(a) as a result of the comment.

Comment: Four commenters noted the board used the word "consider" in §821.21(b), §821.23(f) and §821.25(f), relating to the responsibilities of the supervisor, employer or director in assessing the individual "strengths and weaknesses" of the technician, temporary licensee or provisional licensee, respectfully. Yet no direction is given about what is expected of the supervisor, employer or director when they do consider strengths and weaknesses of the individuals. The commenters requested clarification regarding the consideration of strengths and weaknesses.

Response: The board disagrees with the comment. Each employer is expected to and urged to exercise professional and ethical judgment so as not to allow anyone to do anything that might harm the public, and thus protect their business. No changes were made as a result of the comment. The board may consider the comment for future rulemaking.

Comment: Regarding §821.21(d)(2) technician registration; a commenter noted the phrase "and intend to remain in Texas" appears to be a requirement for technicians only, not practitioners, assistants, or students. The commenter suggests deleting that phrase from the paragraph.

Response: The board agrees with the comment and has made changes to §821.21(d)(2) as a result of the comment.

Comment: Regarding §821.23(b)(3) temporary license; three commenters recommended replacing the word "and," which occurs in the middle of the sentence, with the word "or."

Response: The board agrees with the comment and has made changes to §821.23(b)(3) as a result of the comment.

Comment: Regarding §821.23(b)(4)(A) temporary license; five commenters noted the specialty of prosthetics was left out.

Response: The board agrees with the comment. However, §29(a)(3)(A) of the Orthotics & Prosthetics Act limits a temporary license to those who have "practiced the profession of orthotics regularly since January 1, 1996." The rules may not be changed unless the legislation is changed. No changes were made as a result of the comment.

Comment: Regarding §821.23(c) temporary license; two commenters recommended replacing the word "or" with the word "and/or."

Response: The board agrees with the comments and has made changes to §821.23(c) as a result of the rules.

Comment: Regarding §821.25(b)(1) provisional license; two commenters recommended replacing the word "or" with the word "and/or."

Response: The board agrees with the comments and has made changes to §821.25(b)(1) as a result of the comment.

Comment: Regarding §821.25(b)(4) provisional license; three commenters remarked that an individual cannot be involved in completing educational requirements while completing clinical residency requirements. The commenters suggested changing the "and" to an "or."

Response: The board agrees with the comment and has made changes to §821.25(b)(4) as a result of the comment.

Comment: Regarding §821.25(g) provisional license; two commenters recommended replacing the word "or" with "and/or."

Response: The board agrees with the comment and has made changes to §821.25(g) as a result of the comment.

Comment: Regarding §821.27(c) student registration; two commenters recommend adding "is applying for or awaiting the results of" between "or" and "the" at the end of the sentence.

Response: The board agrees with the comment and has made changes to §821.27(c) as a result of the comment.

Comment: Regarding §821.27(g) student registration; two commenters recommend deleting "or by December 31, 1998, whichever comes first." at the end of the third sentence. The commenters felt that if the board does not meet its October 1, 1998, deadline and adopts rules after December 31, 1998, a student would not be aware that he or she was subject to rules which have not been adopted.

Response: The board agrees with the comment and has made changes to §821.27(g) as a result of the comment.

Comment: Regarding §821.27(i) student registration; three commenters stated the board should not stress one rule over another. All rules should hold equal importance.

Response: The board agrees with the comment and has made changes to §821.27(i) as a result of the comment.

Comment: Regarding §821.29 accreditation of prosthetic and orthotic facilities; a commenter noted that the rule in §821.29(e)(1) mandates facilities to meet applicable federal, state, and local laws, codes, and other applicable requirements, and questioned the necessity of subsections (l) facility

cleanliness, (o) safety, and (q) general. Additionally, if these subsections are retained, the commenter recommended removing the reference to antibacterial soap as recent reports have shown it as actually causing bacteria to mutate, making disinfection more difficult. The commenter believed the proposed rules regarding facility accreditation were not in agreement with the Act §26, nor did they protect the public. The commenter urged the board to reconsider §821.29 in ways that regulate organizational structure, professional qualifications, patient care, quality assessment, and facility safety standards.

Response: The board agrees and disagrees with the comment. The board deleted the word "antibacterial" because the board believes it should not mandate the type of soap to be used. The board acknowledges that the rules concerning facility accreditation are minimal. However, requiring rigorous facility standards to be effective immediately may cause hardships and adversely effect patient care. The board will consider increasing the standards in the future. The board disagrees that §821.29(l),(o), and (q) are not necessary and no changes were made. Also, the board disagrees that §821.29 is not in agreement with the Act §26 and disagrees that the rules do not provide adequate protection for the public.

Comment: Regarding §821.29 accreditation of prosthetic and orthotic facilities; five commenters recommended that by January 1, 2005, the board require accredited facilities meet or exceed the standards established by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

Response: The board agrees with the commenter that it may be prudent to recognize the JCAHO accreditation standards. More time is needed to review and consider the standards before adopting them by reference. The comment will be considered for future rulemaking. No changes were made as a result of the comment.

Comment: Regarding §821.29 facility accreditation; a commenter requested clarification of the regulations governing part-time satellite offices and mobile units.

Response: The board disagrees with the comment and no changes were made. The rules apply to all facilities, unless exempt, where orthotic or prosthetic services are provided within the geographical boundaries of Texas. The commenter is encouraged to provide more information to the board for its consideration in future rulemaking.

Comment: Regarding §821.29(a)(2) accreditation of prosthetic and orthotic facilities; two commenters recommended replacing the last occurrence of the word "or" with the word "and/or."

Response: The board agrees with the comment and has made changes to §821.29(a)(2) as a result of the comment.

Comment: Regarding §821.29(b) accreditation of prosthetic and orthotic facilities; four commenters recommended replacing the last occurrence of the word "and" with the word "and/or."

Response: The board agrees with the comment and has made changes to §821.29(b) as a result of the comment.

Comment: Regarding §821.29(e)(4) accreditation of prosthetic and orthotic facilities; two commenters recommended mandatory reinspection prior to renewing a facility's accreditation status.

Response: The board disagrees with the comment. The board will consider the comment for future rulemaking based

on the number of complaints, the budget, personnel, and other resources. The board believes it can effectively use random inspections to ensure compliance. No changes were made as a result of the comment.

Comment: Regarding §821.29(e)(5) accreditation of prosthetic and orthotic facilities; two commenters stated the rules do not consider satellite offices and it was impractical for a satellite office, otherwise eligible for accreditation in orthotics and/or prosthetics, to have a full time on-site orthotist, prosthetist, and/or prosthetist/orthotist in charge. Commenters recommended deleting the last sentence of this subsection.

Response: The board disagrees with the comment. The board does not require full-time on-site direction. No changes were made as a result of the comment.

Comment: Regarding §821.29(e)(7) accreditation of prosthetic and orthotic facilities; two commenters recommend the board prescribe the specific sign they want posted with a figure or sample sign.

Response: The board disagrees with the comment and believes the existing rule is sufficiently specific. No changes were made as a result of the comment.

Comment: Regarding §821.29(e)(9) accreditation of prosthetic and orthotic facilities; four commenters remarked that allowing a facility to advertise as a "Prosthetic or Orthotic Facility Accredited by the Texas Board of Orthotics and Prosthetics" does not allow a facility accredited in orthotics and prosthetics to advertise their unique qualifications.

Response: The board agrees with the comment and changed the "or" to "and/or."

Comment: Regarding §821.29(f) accreditation of prosthetic and orthotic facilities - change of ownership; a commenter suggested defining what constitutes a change of ownership.

Response: The board agrees and has added language to §821.29(f) defining change of ownership.

Comment: Regarding §821.29(f)(1)-(2) accreditation of prosthetic and orthotic facilities; two commenters remarked the rules provided an excessive interim period and subjects practitioners to a violation of the rules. The commenters questioned if the previous owner must relinquish the accreditation certificate within 30 days and the new owner has 90 days to apply for accreditation, what would happen to the ability of practitioners in the facility to provide care? The commenters recommended providing clarification to provide for the continuation of patient care until the new owner of a facility had applied for accreditation.

Response: The board agrees with the comment and has made changes to §821.29(f)(1)-(2) as a result of the comment.

Comment: Regarding §821.29(g) accreditation of prosthetic and orthotic facilities; two commenters stated the use of the term "abortion" in this subsection was either inappropriate or a typographical error.

Response: The board agrees with the comment and has added the word "center" after "abortion" as a result of the comment.

Comment: Regarding §821.29(h)(4) accreditation of prosthetic and orthotic facilities; four commenters felt the rules did not allow the person in charge to make corrections of violations of the rules. The commenters noted the board had the ability to

suspend the accreditation pending corrections of the violations, but stated there should be no instances where the board would refuse the renewal of an accreditation without a reinspection which would identify violations of the Act or rules.

The commenters felt the rule refusing to renew an accreditation of a facility which has violated the Act or rules is an inappropriate authority of the board. The commenters stated the intent of accreditation was to ensure the safety and health of the public and employees. The commenters stated the board should not have the authority to always-and-forever-after refuse to renew an accreditation of a facility who has, by intent or otherwise, violated the Act or rules.

Commenters also recommended deleting "or has" from this subsection and adding "until the facility has corrected the violation through inspection" at the end of the proposed rule.

Response: The board agrees with the comment and changes were made to §821.29(h)(4) as a result of the comment.

Comment: Regarding §821.29(h)(5) accreditation of prosthetic and orthotic facilities; two commenters felt the board's reliance upon the regular postal system presented an excessive burden on facilities. The commenters recommended the board send the notice by certified mail to ensure that mailed communications reach the intended recipient.

Response: The board disagrees with the comment. The use of certified mail in every instance is neither cost-effective nor efficient. The board plans to limit the use of certified mail to matters concerning disciplinary action and as otherwise deemed necessary. No changes were made as a result of the comment.

Comment: Regarding §821.29(i) accreditation of prosthetic and orthotic facilities; two commenters recommended deleting the words "with the board" from this subsection because a facility is not required to obtain accreditation "with the board" but, instead, through compliance with the Act and rules.

Response: The board agrees and deleted the phrase, "with the board" as a result of the comment.

Comment: Regarding §821.29(i) accreditation of prosthetic and orthotic facilities; two commenters suggested that this subsection states that a facility which fails to achieve accreditation may be subject to "disciplinary actions by the board," which conflicts with §821.29(k)(1) which states the "executive director may propose disciplinary actions" against a facility for non-compliance. The commenters recommended providing clarification.

Response: The board agrees with the comment and has made changes to §821.29(i) and §821.29(k)(1) as a result of the comment.

Comment: Regarding §821.29(j) accreditation of prosthetic and orthotic facilities; two commenters recommended providing no-fault protection for practitioners practicing in an accredited facility when the facility has failed to renew its accreditation.

Response: The board disagrees with the comment. The board does not intend to hold the practitioner(s) who are not in charge responsible for accreditation. No changes were made as a result of the comment.

Comment: Regarding §821.29(k)(1) accreditation of prosthetic and orthotic facilities; two commenters stated the executive director was an inappropriate person to propose disciplinary actions. The commenters recommended replacing the term

"executive director" with "board" in the first part of the first sentence of this subsection.

Response: The board agrees and disagrees with the comment. Clarification of this paragraph was made due to a previous comment. That clarification addresses the commenters concerns about this comment. The intent of the rule is to allow only a minimum of board members to know the details of a complaint so that the maximum number of board members are available to deliberate and vote on the complaint's final outcome. Board members who have knowledge of the specifics of a complaint must recuse themselves and may not participate in the final decision.

Comment: Regarding §821.29(k)(2) accreditation of prosthetic and orthotic facilities; two commenters remarked that the use of the phrase "accredited facilities, or accredited facilities" makes no sense. The commenters recommended clarifying this subsection.

Response: The board agrees with the comment and has made changes to the order of the wording in §821.29(k)(2) as a result of the comment.

Comment: Regarding §821.29(m)(3) accreditation of prosthetic and orthotic facilities; two commenters recommended rewording the rule as follows, "A telephone must be made available for patient's non-toll use."

Response: The board disagrees with the comment. The rule does not state unlimited use and the board expects facilities to use common sense when allowing a patient to use a telephone. No changes were made as a result of the comment.

Comment: Regarding §821.29(n) accreditation of prosthetic and orthotic facilities; four commenters recommended adding new language requiring chairs with armrests in examination/treatment areas.

Response: The board agrees and has added the wording suggested as a result of the comment.

Comment: Regarding §821.29(n)(1) accreditation of prosthetic and orthotic facilities; two commenters recommended alternative language as follows: "Rooms in which patients are seen must maintain privacy and have permanent, floor-to-ceiling walls or dividers and rigid doors. Windows must assure privacy."

Response: The board agrees with the comment and has made changes to §821.29(n)(1) as a result of the comment.

Comment: Regarding §821.29(n)(2) accreditation of prosthetic and orthotic facilities; two commenters recommended redefining as follows: "Supported ambulation of at least twelve feet and a full length mirror must be provided in a private patient area."

Response: The board disagrees with the comment. Creative ways to maximize limited space may be needed at some facilities. No changes were made as a result of the comment.

Comment: Regarding §821.29(o)(4) accreditation of prosthetic and orthotic facilities; two commenters opined that the wording could be construed to require that all laboratory and fabrication areas of a facility be separated by doors and walls. The commenters recommended replacing "and" with "and/or" to establish reasonable requirements.

Response: The board agrees with the comment and has made changes to §821.29(o)(4) as a result of the comment.

Comment: Regarding §821.29(q)(2) accreditation of prosthetic and orthotic facilities; two commenters felt the wording was unclear regarding the meaning of "equipment to provide casting, measuring, fitting." The commenters recommended alternative language as follows: "Facility must have the capabilities to provide casting, measuring, fitting, repairs, and adjustments."

Response: The board agrees with the comment and has made changes to §821.29(q)(2) as a result of the comment.

Comment: Regarding §821.31(d) standards, guidelines, and procedures for a professional clinical residency; two commenters noted the rule appeared to require that a professional clinical residency must have an agreement with other facilities. This would not be necessary when facilities provide comprehensive orthotic and/or prosthetic patient care services on-site. The commenters recommend clarifying the intent of this subsection.

Response: The board agrees with the comment and has made changes to §821.31(d) as a result of the comment.

Comment: Regarding §821.31(f) and §821.31(f)(2)-(3) standards, guidelines, and procedures for a professional clinical residency; three commenters recommended changing the term "staff" to read "The program director, or his or her designee, ..." to clarify the intent of this subsection.

Response: The board agrees with the comments and has made changes to §821.31(f) and §821.31(f)(2)-(3) as a result of the comment.

Comment: Regarding §821.31(f)(3) standards, guidelines, and procedures for a professional clinical residency; two commenters noted the use of the term "liability" occurred for the first time in the proposed rules and is confusing as used in this context. The commenters asked, "What was the board's intent to extend liability' to the supervising practitioner?" The commenters recommended deleting the phrase "and liability" from the last sentence of this subsection.

Response: The board agrees with the comment and has made changes to §821.31(f)(3) as a result of the comment.

Comment: Regarding §821.31(f)(4) standards, guidelines, and procedures for a professional clinical residency; two commenters noted the term "facility administration" did not specifically identify an individual having the responsibility for the assurance of a clinical residency program. The commenters recommended providing clarification.

Response: The board disagrees with the comment. The board believes the wording as proposed is sufficient. No changes were made as a result of the comment.

Comment: Regarding §821.31(h)(1) standards, guidelines, and procedures for a professional clinical residency; two commenters found the use of the term "prosthetic and/or orthotic patient" to be offensive. The commenters recommended replacing the term with "an individual requiring prosthetic and/or orthotic services."

Response: The board agrees with the comment and has made changes to §821.31(h)(1) as a result of the comment.

Comment: Regarding §821.31(h)(1)(A) standards, guidelines, and procedures for a professional clinical residency; two commenters believed the requirement for a clinical resident to obtain a complete history by "interviewing the patient and others and reviewing available records" was excessive. The commenters

agreed that a resident should be able to demonstrate proficiency and recommended changing the wording or providing appropriate clarification to this subsection.

Response: The board agrees with the comment and has changed the wording and format of §821.31(h)(1)(A).

Comment: Regarding §821.31(h)(1)(E) standards, guidelines and procedures for a professional clinical residency; four commenters found the wording of the subparagraph offensive.

Response: The board agrees with the comment and has eliminated the word "perceived."

Comment: Regarding §821.31(h)(1)(F) standards, guidelines, and procedures for a professional clinical residency; two commenters felt the requirements were excessive, since the requirement for a clinical resident to provide information to the "patient, family and involved health professionals" inappropriately assumed that a clinical resident will be able to ascertain the identity of all of these individuals from interviews with the patient and/or family. The commenters felt the language mandated that the clinical resident develop proficiency in the "understanding" and "cooperation" of any individual involved in a patient's treatment. The commenters agreed that a clinical resident must be able to explain the goals and objectives of his or her treatment plan, but felt it was unreasonable to require that they obtain "understanding" and "cooperation" of all of those individuals. The commenters recommended providing clarification for the expectations of a clinical resident.

Response: The board disagrees with the comment. The board believes it is important for the clinical resident to be able to communicate with all persons involved in patient care. No changes were made as a result of the comment.

Comment: Regarding §821.31(h)(2)(C),(F), and (H) standards, guidelines, and procedures for a professional clinical residency; a commenter recommended changing "prosthetic and orthotic device" to "prosthesis and orthosis."

Response: The board agrees and has made the changes.

Comment: Regarding §821.31(h)(2)(E) standards, guidelines, and procedures for a professional clinical residency; two commenters recommended replacing "and" with "and/or."

Response: The board agrees with the comment and has made changes to §821.31(h)(2)(E) as a result of the comment.

Comment: Regarding §821.31(h)(2)(F) standards, guidelines, and procedures for a professional clinical residency; two commenters recommended changing "prosthetic/orthotic" to "prosthetic and/or orthotic."

Response: The board agrees with the comment but has changed the phrase due to a previous comment. No changes were made as a result of the comment.

Comment: Regarding §821.33 license renewal; a commenter requested clarification of the regulations governing practitioners and registrants who move out of state and return to Texas.

Response: The board disagrees with the comment. If the practitioner's or registrant's license had not expired, he or she could practice. If the license or registration had expired, he or she would have to reapply for licensure or registration under the regulations in force at the time of reapplication. Persons who qualified based on experience only and those who were required to pass an examination should be aware of this and

consider keeping the Texas license current while they are out of state. A practitioner may keep their license current while absent from the state of Texas. Texas residency is not a requirement of renewal. Also, a practitioner may renew the license if the license has been expired less than a year. There is no provision to place a license on inactive status. No changes were made as a result of the comment.

Comment: Regarding §821.33(c)(1) license renewal; three commenters stated the renewal period of two years was too short. Commenters recommended extending the renewal period to five years to significantly reduce administrative overhead as well as government and practitioner expenses. Two commenters felt the paragraph was confusing because it indicates a license is valid until the licensee's next birth month and felt the intent of the paragraph was referring to an initial license and not a regular license.

Response: The board disagrees with extending the renewal period because the Act §27(a) mandates a license is valid for two years. No changes were made as a result of the comment. The board agrees with the comment concerning the paragraph referring to an initial license and has made changes.

Comment: Regarding §821.33(d)(1) license renewal; two commenters felt that the board's reliance upon the regular postal system presented an excessive burden on practitioners. The commenters recommended adding the requirement that the executive director send the notice "certified" to the last recorded address of the licensee.

Response: The board disagrees with the comment. The use of certified mail will be limited to disciplinary matters and as otherwise deemed necessary due to the expense of this service. No changes were made as a result of the comment.

Comment: Regarding §821.33(f)(1) license renewal; two commenters pointed out the term "licensed prosthetist/orthotist assistant" had been omitted, certain typographical inconsistencies, and that the definition of the acronym "LPOA" was not mentioned in the text of the proposed rule. The commenters recommended alternative language as follows: "A person whose license has expired may not use the title or represent or imply that he or she has the title of licensed orthotist,' licensed prosthetist,' licensed prosthetist/orthotist,' licensed orthotist assistant,' licensed prosthetist assistant,' or licensed prosthetist/orthotist assistant,' or use the letters LO,' LP,' LPO,' LOA,' LPA,' or LPOA.' and may not use facsimiles of those titles."

Response: The board agrees with the comments and has made changes to §821.33(f)(1) as a result of the comment. The acronym "LPOA" was identified in the definitions, §821.2(22).

Comment: Regarding §821.33(g) license renewal; a commenter felt that a person serving on active duty with the armed forces of the United States of America within the State of Texas should be treated the same as a person serving outside the State of Texas.

Response: The board disagrees with the comment. There is a statutory requirement concerning those serving on active duty in the military outside the State of Texas, but none concerning those serving in the State of Texas. No changes were made as a result of the comment.

Comment: Regarding §821.35(f)(2) continuing education; a commenter wanted clarification in the rules as to what consti-

tuted acceptable proof of completion of continuing education activities.

Response: The board disagrees with the comment and no changes were made. The rules at §821.35(j)(2)(B) clarify what is acceptable documentation. The board anticipates the continuing education providers will develop or provide sufficient documentation to participants.

Comment: Regarding §821.35(h) continuing education; two commenters recommended changing "prosthetics or orthotics" to "prosthetic and orthotic."

Response: The board agrees with the comment and has made changes as a result of the comment.

Comment: Regarding §821.35(i)(1) continuing education; a commenter noted the phrase "allied health organization" was missing from §821.35(o)(9) (unacceptable activities), so the two paragraphs were in conflict. The commenter also stated that there are no state, regional or national orthotic or prosthetic organizations; each are combined specialty organizations. The commenter recommended changing the word "or" to the word "and."

Response: The board agrees with the comment and has made the following changes: the phrase "or allied health organization" was added to §821.35(o)(9), and the phrase "and/or" has been added between prosthetic and orthotic in §821.35(i)(1) as a result of the comment.

Comment: Regarding §821.35(i)(2)(E) continuing education; eight commenters stated that on-site supervision of participants seemed to circumvent the purpose of distance learning activities. The commenters asked how on-site supervision would be verified. The commenters felt that documentation of a post-test seemed more appropriate.

Response: The board agrees with the comment and has made changes to §821.35(i)(2)(E) as a result of the comment.

Comment: Regarding §821.35(i)(2)(G) continuing education; a commenter noted a possible typographical error and asked why the word "Four" was capitalized. The commenter also recommended changing the word "and" to "and/or" between prosthetics and orthotics.

Response: The board agrees with both comments and has made changes to §821.35(i)(2)(G).

Comment: Regarding §821.35(i)(2)(G) continuing education; a commenter recommended giving credit for the number of words published in a book or article instead of a set amount of credit for a book or article.

Response: The board disagrees with the comment. The number of words in a related book or article would not necessarily conform to the credit to be given. No changes have been made as a result of the comment.

Comment: Regarding §821.35(j)(2) continuing education; a commenter felt the public would be better protected if each licensee's continuing education file were reviewed rather than a random sample.

Response: The board agrees with the comment; however, no changes were made as a result of the comment. The use of random samples has been used for years in other programs and has been found to be very efficient and effective in ensuring

compliance. The board may revisit this comment in future rulemaking.

Comment: Regarding §821.35(j)(2)(B) continuing education; a commenter felt it excessive to require a licensee to attend, participate and complete any continuing education program. The commenter also felt this subparagraph conflicted with §821.35(o)(5).

Response: The board agrees with the comment that a licensee should not be required to complete a CE program. The Act and the rules require the completion of the CE requirements. No changes were made as a result of the comment.

Comment: Regarding §821.35(k)(1) continuing education; a commenter felt the board's reliance upon the regular postal system presented an excessive burden on facilities. The commenter recommended the board send the notice by certified mail to ensure that mailed communications reach the intended recipient.

Response: The board disagrees with the comment and plans to limit the use of certified mail to matters concerning disciplinary action and as otherwise deemed necessary. No changes were made as a result of the comment.

Comment: Regarding §821.35(k)(1) continuing education; a commenter recommended changing the phrase, "given by first-class mail" to "sent" so the method of notification will not be mandated and the department will have flexibility in notifying licensees.

Response: The board agrees and made the change.

Comment: Regarding §821.39 complaints; two commenters felt the executive director was not the appropriate person to work on complaint resolution. The commenters presented a complaint process to be considered by the board.

Response: The board disagrees with the comment. A Complaint Liaison Group has been set forth in the rules consisting of the executive director, one board member (appointed by the presiding officer), and at least one consultant (who is a licensed practitioner in the discipline needed). The board believes this group should be able to handle complaints effectively. No changes were made as a result of the comment.

Comment: Regarding §821.39(c)(3) complaints; a commenter noted that the term, "department" should be replaced with the term, "board."

Response: The board agrees with the comment and has made changes to §821.39(c)(3) as a result of the comment.

Comment: Regarding §821.39(d)(1) complaints; six commenters recommended the presiding officer appoint a public/consumer board member to assist the executive director in processing complaints.

Response: The board disagrees with the comment. This rule was established because the practitioners have technical expertise to be able to advise the executive director. Once the complaint has been determined to be actionable, the full board, minus the specific advising practitioner, will hear and decide the outcome. The board believes this is the best time for the public members to hear the complaint. No changes were made as a result of the comment.

Comment: Regarding §821.39(d)(1)-(2) complaints; a commenter felt the executive director was not qualified to thoroughly

process complaints. The commenter felt the presiding officer should appoint a board member and non-board member to assist the executive director to assist in the adjudication of complaints. The commenter felt the non-board members should be reimbursed for travel and per diem expenses.

Response: The board disagrees with the comment. The executive director processes a complaint by preparing the complaint for final disposition by the board. The executive director does not make the final decision but may make suggestions. In addition, the Complaint Liaison Group assists the executive director in processing complaints. After the executive director processes the complaint, the board will decide the final disposition in any matter involving a hearing. No changes were made as a result of the comment.

Comment: Regarding §821.39(d)(1)-(2) complaints; six commenters stated that greater board and/or public interaction should be required in the complaint process. The commenters recommended that the presiding officer be required to appoint a panel to process complaints that were not dismissed by the executive director for lack of jurisdiction or insufficient grounds. The commenters also recommended in the first sentence of each of these subsections, change the word "may" to "will."

Response: The board disagrees with the comment. No changes were made as a result of the comments. The board may consider changing the complaint procedures in the future. The board members as a whole should participate in the complaint process because if a hearing is conducted, the board must act on the proposal for decision. Board members who have been involved in the complaint process or who have personal knowledge of the complaint must recuse themselves and cannot participate in the final decision. Under the rules as proposed, at least one board member will be involved in any proposed disciplinary action.

Comment: Regarding §821.39(d)(3) complaints; a commenter felt the executive director must receive assistance in processing complaints. The commenter recommended changing the word "may" to "will."

Response: The board disagrees with the comment. The executive director has the option of requesting help as needed. The board foresees complaints being filed that may not require the executive director to request assistance. The executive director does not make the final decision but may make suggestions. After the executive director processes the complaint the board will decide the final disposition. No changes were made as a result of the comment.

Comment: Regarding §821.39(d)(5) complaints; a commenter recommended deleting this paragraph if the recommendations for §821.39(d)(2) and (3) are adopted.

Response: The board disagrees with the comment and did not accept the recommendations for §821.39(d)(2) and (3). The board believes this paragraph should remain because the executive director may not always need to consult with the appointed board member or consultant before action is proposed. No changes were made as a result of this comment.

Comment: Regarding §821.39(e)(3) complaints; a commenter noticed that this paragraph mandated the board to approve the executive director's report. The commenter recommended changing the word "will" to "may."

Response: The board agrees with the comment but not the recommendation. Changes were made to §821.39(e)(3) as a result of the comment.

Comment: Regarding §821.39(g)(2) complaints; a commenter wants the paragraph to mandate the attendance of assigned board members and consultants at informal hearings.

Response: The board disagrees with the comment and believes that the executive director needs flexibility at an informal hearing. If a consultant is required, the informal hearing will be scheduled to allow the consultant to attend. No changes were made as a result of the comment.

Comment: Regarding §821.39(g)(4) complaints; a commenter wanted the phrase, "and consistent with informal hearings of other professional licensing boards" added to the end of the first sentence of this paragraph.

Response: The board agrees with the comment but not the recommendation. The phrase, "and consistent with department procedures" has been added as a result of the comment since these departmental procedures have been developed, and are consistent with the procedures of other professional licensing boards.

Comment: Regarding §821.41 professional standards and disciplinary provisions; a commenter suggested adding two subsection stating the disciplinary consequences of 1) interfering with a board investigation by misrepresenting facts and/or by using threats or harassment, and 2) filing frivolous complaints.

Response: The board agrees with the comment and has added new §821.41(f)-(g) and renumbered proposed subsection (f) to subsection (h).

Comment: Regarding §821.41(b) professional standards and disciplinary provisions; a commenter suggested adding a paragraph stating that providing false or misleading information to the board during a board investigation could lead to disciplinary action.

Response: The board agrees with the comment and has made changes to §821.41(b).

Comment: Regarding §821.41(c)(5) professional standards and disciplinary provisions; two commenters suggested the wording of the paragraph could penalize a practitioner who was unaware of the wrongdoing of someone else.

Response: The board agrees with the comment and has made changes to §821.41(c)(5) as a result of the comment.

Comment: Regarding §821.41(c)(7) professional standards and disciplinary provisions; two commenters believed the word "and" should be changed to "and/or."

Response: The board agrees with the comment and has made changes to §821.41(c)(7) as a result of the comment.

Comment: Regarding §821.41(d)(11) professional standards and disciplinary provisions; two commenters suggested changing the wording since the commenter believed the rules relating to educational requirements in §821.17 and §821.19 do not thoroughly educate a licensee, and the rules relating to clinical residency in §821.17 do not provide thorough clinical training. The commenters believed the rules as written would allow an untrained individual to qualify for a license.

Response: The board disagrees with the comment. The board believes the rules are consistent with the intent and wording of

the Act, and will sufficiently ensure education and training. No changes were made as a result of the comment.

Comment: Regarding §821.41(d)(18) professional standards and disciplinary provisions; a commenter suggested a definition of "sexual contact" be added to this paragraph.

Response: The board agrees with the comment and has added verbiage to define "sexual contact" to this paragraph.

Comment: Regarding §821.41(d)(22) unprofessional or unethical conduct; a commenter suggested adding a provision to this paragraph stating that failing to cooperate during an investigation of a complaint could lead to disciplinary action.

Response: The board agrees and has made changes to §821.41(d)(22).

Comment: Regarding §821.41(d)(24) professional standards and disciplinary provisions; a commenter suggested this paragraph be deleted as redundant because the commenter claimed that all third party payors already require prescriptions. The commenter also described emergency circumstances that preclude the necessity for a prescription.

Response: The board disagrees with the comment regarding redundancy and no changes were made to the rules as a result of the comment. The board believes that emergency services may be rendered and that prescriptions can follow in a reasonable amount of time. The board recognizes that there will be emergencies where a practitioner will have to make humanitarian decisions. Situations will be dealt with on a case-by-case basis. The board refers the commenter to §821.41(d), the last sentence, "Other actions which may cause..." which allows the board discretion.

Comment: Regarding §821.43 licensing persons with criminal backgrounds; the commenter stated that the board should deny a license or registration to anyone ever convicted of a felony and revoke a license or registration from anyone ever convicted of a felony.

Response: The board disagrees with the comment. The board must comply with Texas Civil Statutes, Article 6252-13c, which requires the board to consider many factors in determining whether a person with a criminal background should be disqualified. No changes were made as a result of the comment.

Comment: A comment was received regarding the Orthotics & Prosthetics Act §21(e) Exemptions; no rule was mentioned by the commenter who expressed concern that exempting pharmacists licensed by the Texas State Board of Pharmacy, and those directly supervised by those pharmacists, from licensure by the Texas Board of Orthotics & Prosthetics would undermine the intent of licensing orthotic professionals.

Response: The board understands the commenter's concerns but is unable to address those concerns in the rules. The Act exempts pharmacists licensed and regulated by the Texas State Board of Pharmacy. The board has no authority to address this subject. No changes were made as a result of this comment.

Comment: Regarding the rules in general, a commenter noted the rules did not cover services provided through a physician's office or physical therapy clinic.

Response: The Act exempts physician offices (§26(e)) and physical therapists (§21(c)(4)) from regulation by the Texas Board of Orthotics & Prosthetics. The board does not regulate physician offices or physical therapists. Section 21 of the

Act applies to prosthetics and/or orthotic facilities and persons who work therein. No changes were made as a result of the comment.

Comment: A commenter wanted to know what rules govern practitioners living in adjoining states who practice in Texas.

Response: The Act and rules apply to persons practicing in Texas, no matter where they reside. Persons who work in Texas and who live elsewhere may apply under §821.13. No changes were made as a result of the comment.

Comment: A commenter wanted to know what rules govern practitioners serving in humanitarian organizations (as opposed to active military service).

Response: No special provisions were made for persons who work in humanitarian organizations. No changes were made as a result of the comment.

Comment: A commenter wanted to know what rules govern the provision of incidental services in the "other" discipline by a single discipline practitioner.

Response: A person providing prosthetic and/or orthotic services must be licensed in the discipline they are practicing. If a licensed orthotist (LO) provides prosthetic services, the LO must hold a prosthetist license and vice-versa. Some incidental services may be exempt by the Act §2(13) and (18). No changes were made as a result of this comment.

Comment: Four commenters noted that a "representative of the public" is defined for board members in the Act §3(d), there is no definition or qualification in the rules for a "public member" who will sit on a committee.

Response: The board agrees that "representative of the public" is not defined in the rules, but does not want to preclude the non-user public board member from serving on a committee. Since 50% of the board members will be public members, the board needs flexibility to appoint all public members, users and non-users, to committees. The Act §3(d) refers to public members as both users and non-users. The board disagrees with the recommendation and no changes were made.

Comment: Regarding the fiscal implications section of the preamble; a commenter noted the projected expenses and fiscal note were different from those written when Senate Bill (SB) 291 was introduced and asked why. The commenter also wanted to know if the details of the fiscal projections were available to the public, and if the public will be able to access the functional accounting information of the board to monitor fiscal responsiveness.

Response: The fiscal note for SB 291 appears to be an educated guess of expenses required to operate a regulatory program with less than 200 licensees anticipated. This was the best information available to the department at the time and was based on the proposed language in SB 291. The bill was subsequently amended to include facilities, assistants, and technicians, which significantly changed the fiscal requirements of the program. The fiscal note for the rules as proposed was prepared based on the rules and the Orthotics and Prosthetics Act. The public will be allowed access to all documentation in accordance with the law relating to public information.

In addition to the comments received on the proposed rules during the comment period, the staff has made minor editorial

changes to clarify the intent and improve the accuracy of the following sections.

Change: Concerning §821.2(15) parentheses were changed to commas;

Change: Concerning §821.3(b)(1)(B) the phrase, "day-to-day minor" was changed to "minor day-to-day";

Change: Concerning §821.19(d)(2) the phrase, "of practice" was added after the word, "scope" in the first sentence;

Change: Concerning §821.29(i) the word, "rule" was changed to the phrase, "the rules" and the word, "the" was added before the first occurrence of the word, "Act";

Change: Concerning §821.29(k)(1) the phrase, "an accredited facility" was changed to "a facility";

Change: Concerning §821.35(h) the phrase, "prosthetics or orthotics topics" was changed to "prosthetic and orthotic topic";

Change: Concerning §821.39(d)(3) the phrase, "one consultant" was changed to "one or more consultants."

The comments on the proposed rules received by the board during the comment period were submitted by Allen Orthotics and Prosthetics, American Academy of Orthotists and Prosthetists, Edward Barker & Associates, Haywood Orthotics & Prosthetics, Kim Doolan Consulting, Prescott's Orthotics & Prosthetics, Rehab Designs of America, Sun City Amputee Support Group, Texas Chapter of the American Academy of Orthotists and Prosthetists, Texas Scottish Rite Hospital for Children, UT Southwestern Medical Center, and department staff. The commenters were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes, and suggested clarifying language concerning specific provisions in the rules.

The new sections are adopted under Texas Civil Statutes, Article 8920, §5(b), which provides the Texas Board of Orthotics & Prosthetics (board) with the authority to establish fees in amounts reasonable and necessary for the administration and implementation of the Act, §5(f), which provides the board with the authority to adopt rules consistent with the Act and §§23-32 which provide the board with the authority to adopt rules concerning the licensing requirements and procedures pertaining to the practice of orthotics and prosthetics in Texas.

The new sections implement Texas Civil Statutes, Article 8920, Senate Bill (SB) 291, 75th Legislature, 1997, which established the Texas Board of Orthotics and Prosthetics and delineated its duties and powers.

§821.2. Definitions.

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

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

(2) Ancillary patient care service - Includes the clinical and technical activities associated with the provision of prosthetic and orthotic services except critical care events.

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

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

(5) Clinical residency for an assistant - An assistant-level experience of at least 1000 hours directly supervised by a practitioner or a licensed assistant.

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

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

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

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

(10) Critical care events - Initial patient assessment, prescription development and recommendation, and final evaluation and critique of fit and function of the prosthesis or orthosis.

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

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

(13) Department - Texas Department of Health.

(14) Direct supervision - Supervision provided to a clinical resident throughout the fitting and delivery process (which includes ancillary patient care services), including oversight of results and signing-off on all aspects of fitting and delivery. The supervisor must review, and sign-off patient care notes made by the clinical resident.

(15) Indirect supervision - Supervision provided to a clinical resident by a practitioner or licensed assistant, if the clinical residency is for an assistant who is available to provide on-site supervision within sixty minutes during the fitting and delivery process, and who will sign-off the resident's clinical records within ten working days. Indirect supervision is not appropriate for critical care events.

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

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

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

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

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

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

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

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

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

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

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

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

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

(29) Practitioner - Until January 1, 1999, a person who is eligible for licensure under the Act as a prosthetist, orthotist, or prosthetist/orthotist. After January 1, 1999, a person licensed under the Act as a prosthetist, orthotist, or prosthetist/orthotist.

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

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

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

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

(34) Prosthetic/Orthotic facility - A physical site, including a building or office, where the prosthetic and orthotic professions and practices normally take place.

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

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

(37) Registered orthotic technician - A person registered under this Act who fabricates, assembles, and services orthoses under the direction of a licensed orthotist, licensed prosthetist/orthotist,

licensed orthotist assistant, or licensed prosthetist/orthotist assistant responsible for the acts of the technician.

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

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

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

§821.3. *Board's Operation.*

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

(b) Officers.

(1) Presiding officer.

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

(B) The board authorizes the presiding officer to make minor day-to-day decisions regarding board activities to aid the responsiveness and effectiveness of the board. All decisions made by the presiding officer are subject to review by the full board.

(C) The presiding officer shall serve as a member of all committees.

(2) Secretary.

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

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

(c) Meetings.

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

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

(3) A majority of board members may call special board meetings upon separate or combined notice to the executive director.

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

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

(e) Transaction of official business.

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

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

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

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

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

(h) Attendance.

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

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

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

(i) Reimbursement for expense.

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

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

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

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

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

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

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

(k) Agendas.

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

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

(l) Minutes.

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

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

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

(m) Elections.

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

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

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

(n) Committees.

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

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

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

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

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

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

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

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

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

(C) The public information committee shall be composed of two board members who are licensed prosthetists or licensed orthotists and one public member of the board. The committee shall recommend to the board for approval, action regarding proposed publications. The committee shall recommend to the executive director the publication of board approved public information related to the board and shall guide the preparation of consumer information related publications.

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

§821.4. *Public Information.*

(a) Public Information Committee. The board shall maintain the Public Information Committee as a standing and permanent committee of the board. The executive director with the approval of the board shall publish information of public interest, which describes the regulatory functions of the board, board procedures to consider and resolve consumer complaints, and the prosthetic and orthotic professions. The responsibilities and authority of the Public Information Committee include those duties and powers set forth in the following, and other responsibilities and authority that the board from time to time may delegate:

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

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

(3) exhibit display booths at conventions;

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

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

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

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

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

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

(A) the Orthotics and Prosthetics Act;

(B) board rules;

(C) board meeting agendas;

(D) board meeting minutes; or

(E) files of individual licensees.

(4) Upon written request, the executive director will certify public records of the board. The cost for certifying copies of public records provided pursuant to the Open Records Act shall be \$5.00 per record or document. This cost shall be in addition to other costs charged for providing the requested document or record, including, but not limited to, copying, retrieving, or mailing of the document or record.

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

(c) Official records.

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

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

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

§821.5. Fees.

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

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

- (1) prosthetist or orthotist license or license renewal - \$300;
- (2) prosthetist/orthotist license or license renewal - \$400;
- (3) prosthetist or orthotist assistant license or license renewal - \$200;
- (4) prosthetist/orthotist assistant license or license renewal - \$250;
- (5) prosthetic or orthotic technician registration or registration renewal - \$100;
- (6) prosthetic/orthotic technician registration or registration renewal - \$150;
- (7) prosthetic or orthotic student registration or registration renewal - \$75;
- (8) prosthetic/orthotic student registration or registration renewal - \$100;
- (9) prosthetist or orthotist temporary license or temporary license renewal - \$150;
- (10) prosthetist/orthotist temporary license or temporary license renewal - \$200;

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

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

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

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

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

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

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

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

(19) returned check - \$25; and

(20) written license/certification verification - \$10 each.

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

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

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

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

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

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

§821.6. General Application Procedures.

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

(b) General.

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

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

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

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

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

(c) Required application materials.

(1) The application form shall contain:

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

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

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

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

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

(iii) names and addresses of two persons who are not relatives and who are either a licensed physician familiar with prostheses and/or orthoses, or a practitioner, as set out in §821.2 of this title, who will attest to the applicant's experience providing comprehensive prosthetic and/or orthotic care.

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

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

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

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

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

(I) a statement that the applicant understands that fees submitted in the licensure process are not refundable, unless the processing time is exceeded without good cause as set out in subsection (i)(2)(A-B) of this section;

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

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

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

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

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

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

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

(7) The technician applicant must sign a statement acknowledging that he or she may only practice in accordance with the definition for registered orthotic technician, registered prosthetic technician, or registered prosthetic/orthotic technician, as set out in §821.2(37)-(39) of this title (relating to Definitions), under the supervision of a licensed prosthetist, licensed orthotist, or licensed prosthetist/orthotist whose license is current, otherwise the technician is subject to disciplinary action as set forth in §821.39 of this title. This statement must include the names and signatures of the clinical supervisors and must have been executed within 30 days of the date the applicant submitted the application to the board.

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

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

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

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

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

(3) has failed to remit required fees;

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

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

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

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

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

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

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

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness.

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

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

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

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

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

(16) has committed a prohibited act under the Act §22, on or after October 1, 1998.

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

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

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

(i) Application processing.

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

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

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

(ii) letter of application deficiency - 21 days.

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

(i) letter of approval - 42 days; and

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

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

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

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

delay, or another condition exists giving the board good cause for exceeding the time.

(3) If the executive director denies a request for reimbursement under paragraph

(2) of this subsection the applicant may appeal to the board for a timely resolution of a dispute arising from a violation of the times. The applicant shall give the board written notice, at the board's address, that the applicant requests full reimbursement of fees paid because his or her application was not processed within the applicable time. The executive director shall submit a written report of the facts related to the processing of the application and of good cause for exceeding the applicable time. The board shall provide written notice of the decision to the applicant and the executive director. The board shall decide an appeal in favor of the applicant if the applicable time was exceeded and good cause was not established. If the board decides the appeal in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

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

§821.7. *General Licensing Procedures.*

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

(b) Issuance of licenses.

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

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

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

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

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

(c) License and license display.

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

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

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

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

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

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

(d) Copying the license.

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

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

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

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

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

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

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

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

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

(d) Applications for examination.

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

(2) An applicant who wishes to take a scheduled examination must complete the registration form and return it with the

appropriate fee to the board or its designee by the established deadline.

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

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

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

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

(h) Results.

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

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

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

(i) Failures.

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

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

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

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

(B) furnished the board with evidence that the applicant completed an 80-hour planned, structured and personalized tutorial in each area of weakness directed and supervised by a licensed prosthetist(s), orthotist(s), or prosthetist/orthotist(s). The area of licensure for the supervisor(s) shall match the type of examination taken by the applicant. The tutorial may include classroom instruction, reading, research, continuing education activities, and test material review. The tutorial may include the clinical application and patient care if the applicant holds a current student registration, or if the applicant undertakes the tutorial outside the state of Texas. Acceptable evidence shall include a letter from the tutor describing the tutorial completed by the student, including details such as the number of hours completed, the dates attended, subject matter covered, and the type of tutorials employed.

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

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

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

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

(3) be within 700 hours of completing the clinical residency requirements as described in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency). The entire clinical residency must be completed before the applicant may be issued a license.

§821.11. *Licensing by Exemption from the License Requirements.*

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Applicant responsibility. The applicant is responsible for submitting to the board documentation of having provided com-

prehensive prosthetic and orthotic care in Texas during the qualifying period. Evidence may include, but is not limited to, affidavits from supervisors, employers, referring physicians, and patients, W-2 forms, information relating to professional accreditations or certifications held by the applicant, and affidavits from a total of two licensed physicians or practitioners who are not relatives of the applicant and who are familiar with the applicant's practice.

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

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

(a) General. The provisions of this section apply to applicants for a license by examination who applies on or before the 181st day after rules are adopted.

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

(c) Qualifications for licensing by examination. The applicant must provide evidence, satisfactory to the board, that the person:

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

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

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

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

§821.15. Acquiring Licensure as a Uniquely Qualified Person.

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

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

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

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

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

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

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

§821.17. Licensing by Examination.

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

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

- (1) the academic requirements for the requested license;
- (2) the clinical residency requirements for the requested license; and
- (3) the examination, as set out in §821.9 of this title (relating to Examinations for Licensure as a Prosthetist, Orthotist, or Prosthetist/Orthotist) specific to the requested license.

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

- (1) a bachelor's degree in:
 - (A) prosthetics and orthotics from a college or university educational program accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP) while the applicant attended the program or a college or university educational program accepted by the board as having educational standards equal to or exceeding CAAHEP standards; or
 - (B) any subject and an orthotic certificate from a practitioner educational program accredited by CAAHEP while the applicant attended the program or a practitioner education program accepted by the board as having educational standards equal to or exceeding CAAHEP standards;

(2) until January 1, 2005, an associates degree in prosthetics and/or orthotics or an associates degree in any subject and a minimum:

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

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

- (1) a bachelor's degree in:

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

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

(2) until January 1, 2005, an associates degree in prosthetics and/or orthotics or an associates degree in any subject and a minimum:

(A) six semester hours of anatomy and physiology;

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

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

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

(1) a bachelor's degree in;

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

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

(2) until January 1, 2005, an associates degree in prosthetics and orthotics or an associates degree in any subject and a minimum:

(A) six semester hours of anatomy and physiology;

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

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

(f) Post-graduate requirements for the orthotist license.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical orthotic residency, or 4500 hours of post graduate clinical experience if applying with an associates degree before January 1, 2005, as described in §821.31 of this title (relating to Standards, Guidelines, and Procedures for a Professional Clinical Residency).

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

(g) Post-graduate requirements for the prosthetist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical prosthetic residency, or 4500 hours

of post graduate clinical experience if applying with an associates degree before January 1, 2005, as described in §821.31 of this title.

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

(h) Post-graduate requirements for the prosthetist/orthotist license.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) and orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical orthotic residency and not less than 1900 hours of clinical prosthetic residency, or 4500 hours of post graduate clinical experience in each discipline if applying with an associates degree before January 1, 2005, as described in §821.31 of this title.

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

(i) Additional post-graduate requirements in prosthetics for an applicant licensed as an orthotist.

(1) The applicant must submit an affidavit, signed by the prosthetist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical prosthetic residency, or 4500 hours of post graduate clinical experience if applying with an associates degree before January 1, 2005, as described in §821.31 of this title.

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

(j) Additional post-graduate requirements in orthotics for an applicant licensed as a prosthetist.

(1) The applicant must submit an affidavit, signed by the orthotist(s) or prosthetist/orthotist(s) who directly supervised the applicant, attesting to the applicant's successful completion of not less than 1900 hours of clinical orthotic residency, or 4500 hours of post graduate clinical experience if applying with an associates degree before January 1, 2005, as described in §821.31 of this title.

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

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

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

(b) Scope of practice.

(1) A licensed orthotist assistant provides ancillary patient care services under the supervision of a licensed orthotist or licensed prosthetist/orthotist. The supervising licensed orthotist or supervising licensed prosthetist/orthotist is responsible to the board and the public for the acts or omissions of the licensed orthotist assistant. Other than as set forth in this subsection, the supervising licensed orthotist or supervising licensed prosthetist/orthotist may su-

perverse and direct the licensed orthotist assistant as the supervisor determines. However, the responsibility of the supervisor always specifically extends to having disciplinary action taken against the license of the supervising licensed orthotist or supervising licensed prosthetist/orthotist for violations of the Act or these rules committed by the licensed assistant.

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

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

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

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

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

(2) a clinical residency for assistants of not less than 1000 hours, completed in a period of not more than six consecutive months, in a prosthetic and orthotic facility that meets §821.29 of this title (relating to Accreditation of Prosthetic and Orthotic Facilities) under the direct supervision of a licensed prosthetist, licensed orthotist or licensed prosthetist/orthotist, depending on the type of residency. A licensed assistant may supervise a clinical resident, provided a licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist assumes responsibility for the acts of the licensed assistant and the clinical resident. The supervisor's license must be in the same discipline being completed by the clinical resident.

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

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

(C) The clinical residency shall include an orientation comparing and contrasting the duties of a licensed assistant with

the duties of the licensed orthotist, licensed prosthetist or licensed prosthetist/orthotist.

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

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

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

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

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

§821.21. Technician Registration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§821.23. *Temporary License.*

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

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

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

(2) intend to remain in Texas;

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

(4) have either:

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

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

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

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

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

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

(2) took or is scheduled to take an examination under §821.9 of this title (relating to Examinations for Licensure as

a Prosthetist, Orthotist, or Prosthetist/Orthotist) during the year immediately preceding the date of the application for temporary license renewal; or

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

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

§821.25. *Provisional License.*

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

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

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

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

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

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

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

(A) six semester hours of anatomy and physiology;

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

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

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

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

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

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

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

(e) Renewal requirements.

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

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

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

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

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

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

§821.27. *Student Registration.*

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

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

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

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

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

(4) is actively engaged in either:

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

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

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

(d) Issuance.

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

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

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

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

(f) Special provisions expiring January 1, 2005.

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

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

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

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

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

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

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

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

§821.29. *Accreditation of Prosthetic and Orthotic Facilities.*

(a) Requirement for practice setting of licensees.

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

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

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

(c) Accreditation application.

(1) Accreditation applications must include the following information:

- (A) name of the facility;
- (B) street address of the facility (must be in Texas);
- (C) mailing address, if different from the street address;
- (D) if a corporation:
 - (i) the name, address, social security number and percentage of ownership of persons who directly or indirectly own or control 5.0 % or more of the outstanding shares of stock in the facility in a privately held corporation; or
 - (ii) the name and address of the director(s); or
- (E) the name, address, telephone number, and social security number of the sole proprietor or partners;
- (F) if another type of organization, the type of organization, the name, address, and telephone number of the owner(s);
- (G) the total square feet of the facility;
- (H) the name and Texas license number of the prosthetist, orthotist, or prosthetist/orthotist in charge and his or her notarized signature;
- (I) the name and Texas license number of other licensees of this Act who practice in the facility; and
- (J) the signature of the person who submits the accreditation application that has been notarized.

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

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

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

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

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

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

- (1) nonpayment of an accreditation fee;
 - (2) failure to submit the required information on the application form;
 - (3) falsification of information on the application form;
- or
- (4) violation of the Act or rules.
- (e) Requirements for accredited facilities.

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

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

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

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

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

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

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

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

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

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

(f) Change in ownership. A change of ownership of a facility occurs when there is a change in the person(s) legally responsible for the operation of the facility, whether by lease or by ownership.

(1) The new owner of a prosthetic and/or orthotic facility must receive accreditation within 90 days of the change in ownership.

(2) The former owner of the facility must return the accreditation certificate to the board within 90 days of the sale or transfer of the facility to a new owner.

(g) Exemptions to accreditation. A facility licensed under the Health and Safety Code, Title 4, Subtitle B, is exempt from this accreditation. This includes hospitals, convalescent and nursing homes, ambulatory surgical centers, birthing centers, abortion centers, continuing care facilities, personal care facilities, special care facilities,

maternity homes, and end-stage renal disease facilities. These types of facilities are automatically exempt and are not required to obtain a formal exemption from the board.

(h) Renewal of accreditation.

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

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

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

(4) The board shall not renew the accreditation of a facility that is violating or has violated the Act or these rules until the facility has corrected the violation(s) to the satisfaction of the board.

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

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

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

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

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

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

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

(k) Disciplinary actions.

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

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

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

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

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

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

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

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

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

(m) Patient waiting area.

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

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

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

(n) Examination/treatment rooms.

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

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

(3) Chairs with armrests must be provided in examination/treatment rooms.

(o) Safety.

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

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

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

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

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

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

(p) Business office area.

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

(2) Patient records must be kept private.

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

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

(q) General.

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

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

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

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

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

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

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

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

(e) Facility requirements. A facility must:

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

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

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

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

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

(f) The program director or his or her designee responsibilities.

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

(2) The program director or his or her designee shall maintain documentation of residents' agreements.

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

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

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

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

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

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

(g) Resident responsibilities and qualifications.

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

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

(h) Residency objectives.

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

(A) obtain a history of the patient to determine the need for a specific device by;

(i) interviewing the patient,

(ii) interviewing others, if necessary, and/or

(iii) reviewing available records;

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) achieve optimum alignment and function of a patient's prosthesis and/or orthosis by evaluating the sagittal, transverse and coronal planes;

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

(H) provide ongoing patient care to assure continued proper fit and function of the prosthesis and orthosis;

§821.33. License Renewal.

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

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

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

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

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

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

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

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

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

(d) License renewal requirements.

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

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

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

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

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

(e) Late renewal requirements.

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

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

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

(f) Expiration of license.

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

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

(g) Active duty. If a licensee fails to timely renew his or her license because the licensee is or was on active duty with the armed forces of the United States of America serving outside the State of Texas on the license expiration date, the licensee may renew the license in accordance with this subsection.

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

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

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

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

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

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

§821.35. Continuing Education.

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

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

This section does not apply to a provisional or temporary license, or a student registration.

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

(d) Continuing education periods.

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

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

(e) Determination of continuing education credits.

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

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

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

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

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

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

- (A) prosthetist or orthotist license - 24;
- (B) prosthetist and orthotist license - 40;
- (C) prosthetist or orthotist assistant - 12;
- (D) prosthetist and orthotist assistant - 20;
- (E) prosthetic or orthotic technician - 6; and
- (F) prosthetic and orthotic technician - 10.

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

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

(i) Acceptable types of continuing education.

(1) Credits must be offered or approved by a state, regional or national prosthetic and/or orthotic, or allied health organization or offered by a regional accredited college or university.

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

- (A) academic courses;
- (B) clinical courses;
- (C) in service educational programs, training programs, institutes, seminars, workshops, and conferences; or

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

(i) a post-test is required; and

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

(E) distance learning activities, audiovisual teleconferences, and interactive computer generated learning activities provided a documented post-test is completed and passed;

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

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

(j) Reporting of continuing education credit.

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) Qualifying exemptions from the continuing education requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§821.39. *Complaints.*

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

(b) Filing of complaints.

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

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

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

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

(c) Investigation of complaints.

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

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

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

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

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

(6) If the executive director determines insufficient grounds exist to support the complaint, the executive director shall

dismiss the complaint and give written notice of the dismissal to the complainant, respondent, and other interested parties.

(7) The executive director may issue letters of warning or advisory letters for minor violations of the Act or these rules. These letters may be used as evidence at a disciplinary hearing held concerning conduct of a person committed after receipt of the letter.

(d) Board assistance in processing complaints.

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

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

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

(4) Board members who participate in processing a complaint will not participate in the decision concerning a final order in that matter.

(5) An appointed board member or consultant will review the complaint and the proposed action by the executive director when revocation, suspension, or denial of licensure is proposed.

(e) Board oversight of processing complaints.

(1) The executive director will prepare and present a report reflecting the status of the complaints received to the board at each board meeting.

(2) The report will include the number of complaints received, the nature of the complaints made, action taken on the complaint, and the extent to which appointed board members or consultants have helped in processing complaints.

(3) The board will either approve or not approve the executive director's report and provide guidance to help the executive director in processing complaints as appropriate.

(f) Formal disciplinary actions.

(1) The board may take the following formal disciplinary action for a violation of the Act or these rules: deny a license, registration, or facility accreditation; suspend or revoke a license, registration, or facility accreditation; probate the suspension of a license, registration, or facility accreditation; issue a reprimand to a licensee, registrant, or accredited facility, or impose a civil penalty pursuant to the Act §34.

(2) Before institution of formal disciplinary action the department shall give written notice by certified mail, return receipt requested, and regular mail, of the facts or conduct alleged to warrant the proposed action, and the licensee, registrant, or accredited facility shall be given an opportunity to show compliance with the requirements of the Act and these rules.

(3) The written notice will be sent to the last reported address on record for the licensee, registrant, or accredited facility, and state that a request for a formal hearing must be received, in writing, within 14 days of the date of the notice, or the right to a hearing shall be waived and the action shall be taken by default.

Notice sent to the last reported address is deemed received by the licensee, registrant, or accredited facility, and a default order may be entered upon failure to timely request a hearing whether or not the notice was received.

(g) Informal hearings.

(1) A licensee, registrant, or accredited facility may request that the executive director consider holding an informal hearing. The executive director has the discretion to grant or deny this request, and will grant the request only if it appears that an informal hearing may resolve the disciplinary matter.

(2) An assigned board member or consultant may attend the informal hearing if requested to do so by the executive director.

(3) The complainant and other interested parties with knowledge of relevant facts will be notified if an informal hearing is to be held, and may attend.

(4) The informal hearing will be conducted in the manner established by the executive director and consistent with department procedures. Parties will be afforded a reasonable opportunity to present their position regarding the matter at issue.

(h) Formal hearings.

(1) A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, and 25 Texas Administrative Code, Chapter 1 (relating to Texas Board of Health).

(2) Copies of the formal hearing procedures are indexed and filed in the executive director's office, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas 78756-3183, and are available for public inspection during regular working hours.

(i) Agreed orders.

(1) Disciplinary actions may be resolved by agreed order anytime.

(2) The executive director may negotiate the terms of an agreed order with the licensee, registrant, or accredited facility, however, the agreed order is not effective until accepted by the board.

(j) Probation. Any reasonable term or condition of probation may be included in an order.

§821.41. Professional Standards and Disciplinary Provisions.

(a) Purpose. The purpose of this section is to set forth the bases for which a license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or for which a civil penalty may be imposed.

(b) Fraud, misrepresentation, or concealment of a material fact. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed when a license is obtained by fraud, misrepresentation, or concealment of a material fact, which includes, but is not limited to, the following:

(1) committing fraud, misrepresentation, or concealment of a material fact submitted with an application or renewal for licensure, registration, or facility accreditation;

(2) committing fraud, misrepresentation, or concealment of a material fact submitted with continuing education requirements;

(3) impersonating or acting as a proxy for an examination candidate or at a continuing education activity;

(4) providing false or misleading information to the board regarding an inquiry by the board; or

(5) committing other fraud, misrepresentation, or concealment of a material fact submitted to the board or department.

(c) Fraud or deceit concerning services provided. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for fraud or deceit concerning services provided, which includes, but is not limited to, the following:

(1) placing or causing to be placed, false, misleading, or deceptive advertising;

(2) making or allowing false, misleading, or deceptive representations concerning the services or products provided or which have been provided;

(3) making or allowing false, misleading, or deceptive representations on an application for employment;

(4) using or allowing a person to use a license or registration for any fraudulent, misleading, or deceptive purpose;

(5) knowingly employing or professionally associating with a person or entity, who is providing prosthetic or orthotic services, and is not licensed or accredited as required by the Act or these rules;

(6) forging, altering, or falsifying a physician's order;

(7) delivering prosthetic and/or orthotic services or products through means of misrepresentation, deception, or subterfuge;

(8) accepting or paying, or agreeing to pay or accept illegal remuneration for the securing or soliciting of patients as prohibited by Health and Safety Code §161.091;

(9) making or filing, or causing another person to make or file, a report or record that the licensee knows to be inaccurate, incomplete, false, or illegal;

(10) practicing with an expired, suspended, or revoked license or registration, or in a nonexempt facility with an expired, suspended, or revoked accreditation;

(11) persistently or flagrantly overcharging a client or third party;

(12) persistently or flagrantly over treating a client;

(13) willful violation of a board order;

(14) taking without authorization medication, supplies, equipment, or personal items belonging to a patient; and

(15) other fraud or deceit concerning services provided.

(d) Unprofessional or unethical conduct. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for unprofessional or unethical conduct, as defined in subsections (b) and (c) of this section. Other action which may cause the board to deny a license, registration, or facility accreditation include, but are not limited to:

(1) discriminating based on race, color, disability, sex, religion, age, or national origin in the practice of prosthetics or orthotics;

(2) having surrendered a license to the board or the licensing authority of another state, territory, or country to avoid disciplinary action or prosecution;

(3) having a license revoked or suspended, having had other disciplinary action taken against the applicant, or having had the application for a license refused, revoked, or suspended by the board or the licensing authority of another state, territory, or country;

(4) engaging in conduct that state, federal, or local law prohibits;

(5) failing to maintain acceptable standards of prosthetics or orthotics practices as set forth by the board in rules adopted pursuant to these rules;

(6) being unable to practice prosthetics or orthotics with reasonable skill, and safety to patients, due to illness or use of alcohol, drugs, narcotics, chemicals or other types of material or from mental or physical conditions;

(7) having treated or undertook to treat human ailments by means other than prosthetic and orthotic treatments appropriate to or within the scope permitted by law of the issued license, as defined in §821.2 (relating to Definitions);

(8) intentionally or negligently failing to supervise and maintain supervision of support personnel, licensed or unlicensed, in compliance with the Act and these rules;

(9) providing prosthetic and orthotic services or products in a way that the person knows, or with the exercise of reasonable diligence should know violates the Act or these rules;

(10) failing to assess and evaluate a patient's status;

(11) providing or attempting to provide services in which the licensee is untrained by education or experience;

(12) delegating functions or responsibilities to an individual lacking the ability, knowledge, or license/registration to perform the function or responsibility;

(13) revealing confidential information concerning a patient or client except where required or allowed by law;

(14) failing to obtain accreditation for a facility that is not exempt or failing to renew the accreditation of a facility that is not exempt;

(15) practicing in an unaccredited facility that is not exempt;

(16) assaulting or causing, permitting or allowing physical or emotional injury or impairment of dignity or safety to the patient or client;

(17) making abusive, harassing, or seductive remarks to a patient, client, or co-worker in the workplace;

(18) engaging in sexual contact as defined by the Penal Code §21.01 with a patient or client as the result of the patient or client relationship;

(19) failing to follow universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(20) submitting false documentation or information to the board relating to continuing education;

(21) failing or refusing to provide acceptable documentation of continuing education reported to the board for renewal if selected for an audit, or if specifically requested by the board;

(22) failing to cooperate with the board or the department during an investigation of a complaint filed under the provisions set

out in §821.39 (relating to Complaints) by not furnishing required documentation or responding to a request for information or a subpoena issued by the board, its authorized representative, the department, or the department's authorized representative;

(23) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts or by use of threats, retaliation or harassment against anyone;

(24) fitting a prosthesis or orthosis without prescription;

(25) fitting a prosthesis or orthosis inaccurately or modifying the prescription without authorization from the prescribing physician; and

(26) other unprofessional or unethical conduct.

(e) Gross negligence or malpractice. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for gross negligence or malpractice, which includes, but is not limited to, the following.

(1) Performing an act or omission constituting gross neglect, such as conduct involving malice, willfulness or wanton and reckless disregard of the rights of others.

(2) Performing an act or omission constituting malpractice, such as:

(A) failing to perform services or provide products with reasonable care, skill, expedience, and faithfulness; or

(B) failing to do that which a person of ordinary prudence would have done under the same or similar circumstances, or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

(f) Interference with an investigation. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for interference with a board investigation by the willful misrepresentation of facts to the board or its authorized representative or by the use of threats or harassment against any person.

(g) Frivolous complaints. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for filing a complaint with the board that is frivolous or made in bad faith.

(h) Violations. A license, registration, or facility accreditation may be denied, revoked, suspended, probated, reprimanded, or a civil penalty may be imposed for violations of this Act or these rules.

This agency 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 October 19, 1998.

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Scott B. Atha

Presiding Officer

Texas Board of Orthotics and Prosthetics

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



TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 417. Agency and Facility Responsibilities

Subchapter K. Abuse, Neglect, and Exploitation in TDMHMR Facilities

25 TAC §§417.503, 417.508, 417.509, 417.510, 417.516, and 417.518

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts amendments to §§417.503, 417.508, 417.509, 417.510, 417.516, and 417.518, of Chapter 417, Subchapter K, concerning abuse, neglect, and exploitation in TDMHMR facilities. Sections 417.508 - 417.510 and 417.516 are adopted with changes to the proposed text as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8630-8632). Sections 417.503 and 417.518 are adopted without changes and will not be republished.

The sections describe the procedures for reporting allegations; ensuring the safety and protection of persons served involved in allegations; facilitating proper investigations/peer reviews; notifying appropriate licensing authorities and other individuals of issues relating to an allegation; and contesting the finding of an investigation.

The proposed language in §417.508(b)(3) is deleted. The pharmacy director is added to §417.509(a)(2). Language is added to §417.510(f) and (g) allowing a request for review to be filed after 14 calendar days, *but not more than 30 calendar days*, if information crucial to the investigation becomes available. Language is added to §417.510(n) which makes the head of the facility responsible for ensuring appropriate reconciliation actions are *considered, offered, and taken* in accordance with Exhibit J. The title of Exhibit J, referenced in §417.510(n) and §417.516(10), is changed to "Therapeutic Reconciliation." The language in Exhibit J is modified for clarity.

Written public comment was received from the Parent Association for the Retarded of Texas (PART), Austin; the parent of a state school resident, Garland; Advocacy, Inc., Austin; and a mental health consumer advocate, Houston.

Regarding the definition of "review authority" in §417.503(25), two commenters stated that the committee should never be just one individual. The commenters also stated that at least one member should be a legally authorized representative. Regarding the permissive language in §417.510(b) concerning the use of a review authority, the same two commenters requested that the use of a review authority be mandatory. The department responds by noting that the review authority's purpose is to assist the head of the facility in identifying all pertinent and relevant information involving a specific allegation. The head of the facility does not require this assistance for every allegation; therefore, the use of a review authority should be optional and the department declines to make it mandatory. Additionally, the department does not believe that mandating the inclusion of a legally authorized representative on each review authority will ensure a more thorough or more objective review.

Regarding §417.508(b)(2)(B), two commenters asked that before the alleged perpetrator is allowed to remain in his/her current position pending investigation that the head of the facility give serious consideration to the consequences of such action. The department responds that such action is indeed given serious consideration. The department notes that allowing an employee to remain in his/her current position does not necessarily mean the alleged perpetrator and alleged victim are not separated, i.e., it may mean that the employee is performing the same job duties in another area of the facility or while on a different shift. Further, allowing the employee to remain in his/her current position while on the same shift and at the same location may be appropriate if the allegation is obviously spurious or patently without factual basis—one that defies logic or is delusional in origin.

Regarding §417.510(n) and Exhibit J, two commenters objected to the implication that a perpetrator in a confirmed case of abuse, neglect, or exploitation, would ever again be in close proximity with the victim. The two commenters also questioned the wisdom in allowing an alleged perpetrator in an inconclusive case of abuse, neglect, or exploitation to again be in close proximity with the alleged victim because the inconclusive finding might have been due to the alleged victim being unable to communicate and there were no witnesses. The commenters stated that the rules needed to add more protection for the consumer and include an explanation of how and when allowing close proximity (between the (alleged) perpetrator and (alleged) victim) would be appropriate. The department responds by noting that the definitions of abuse, neglect, and exploitation are so broad that they include actions or omissions that *may have caused* physical or emotional harm. The department believes that providing an explanation of how and when close proximity would be appropriate which encompasses all types of allegations is impossible. The department notes, however, that responsible staff have access to information that aid in determining if close proximity is appropriate. Such information would include the class of abuse, (i.e., the seriousness of the allegation); the employee's work history, including involvement in past allegations; and the treatment team familiarity with the (alleged) victim's personality, needs, and responses to certain individuals and situations.

One commenter expressed agreement with the proposal.

One commenter stated that he has no faith in the system because it seems the rules concerning abuse serve only the interests of the system. The commenter cited an instance in which the commenter alleged abuse involving himself. The commenter stated that the investigative report was a "fairy tale." The commenter further stated that he declines to be a part of the charade by commenting on the rules. The department responds that it disagrees that the rules serve only the interests of the system by noting that the rules prohibit abuse, neglect, and exploitation; require immediate reports of allegations; require cooperation with investigators; ensure appropriate medical and psychological attention, and so forth. The department notes that an (alleged) victim is entitled to appeal the finding of the investigation to the Texas Department of Protective and Regulatory Services (TDPRS) in accordance with its rules, which are 40 TAC §710.11(a) (for facility investigations) or 40 TAC §710.51(b) (for community MHMR center investigations).

The sections are adopted under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking powers;

§161.132, which requires the board to adopt rules that prescribe procedures for the investigation and referral of reports of abuse and neglect or illegal, unprofessional, or unethical conduct toward a person served in a health care facility; §533.006, which requires the department to report to the Texas State Board of Medical Examiners any allegation received by the department that a physician employed by or under contract with the department has committed an action that constitutes a ground for the denial or revocation of the physician's license; Texas Human Resources Code, Chapter 48, which requires the reporting and investigations of abuse, neglect, and exploitation of elderly and disabled persons; Texas Family Code, Chapter 261, which requires the reporting and investigations of abuse or neglect of a child; and Civil Practice and Remedies Code, §81.006, which requires the reporting of alleged sexual exploitation by a mental health services provider to the county prosecuting attorney.

§417.508. *Responsibilities of the Head of the Facility.*

(a) All allegations are investigated in accordance with Texas Administrative Code, Chapter 710, Subchapter A, Title 40 (Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities). Upon receiving a report of an allegation the APS investigator immediately notifies the head of the facility of the allegation and whether or not the allegation will be reported to a law enforcement agency.

(b) Immediately upon notification of an allegation the head of the facility takes measures to ensure the safety of the alleged victim(s), including the following actions:

(1) As necessary, the head of the facility ensures immediate and on-going medical attention is provided to the alleged victim and any other person served involved in the incident (e.g., treatment for injuries, physician's exam, screening and treatment for sexually transmitted diseases). The physician's exam and treatment of abuse/neglect-related injuries is documented on the Client Injury/Incident Report form (referenced as Exhibit D in §417.516 of this title (relating to Exhibits)), with a copy submitted to the APS investigator. The physician's documentation during or following the examination should address the injury's cause, age, and treatment, to the extent that the information can be determined, as well as the timing of the medical exam with regard to the date the injury was received. All issues relating to clinical practice are referred to the medical/clinical director for consultation.

(2) The head of the facility ensures the protection of the alleged victim in keeping with "Guidelines for Separation of Alleged Victim and Alleged Perpetrator During Abuse/Neglect Investigations" (referenced as Exhibit E in §417.516 of this title), which may include, but is not limited to, the following actions:

- (A) reassignment of the employee/ agent to a non-direct care area;
- (B) allowing the employee/agent to remain in his or her current position pending investigation;
- (C) granting the employee emergency leave; or
- (D) suspending the agent pending investigation.

(3) As necessary, the head of the facility ensures psychological attention is provided to the alleged victim and any other person served who may have witnessed or been affected by the incident. The psychological attention shall be provided in a timely manner while preserving the integrity of the investigation.

(4) If the alleged perpetrator is known but is not an employee/agent (e.g., family member, friend, guest), the head of the

facility imposes a restriction on the alleged perpetrator's access to the alleged victim pending investigation. The restriction should be documented in the record of the alleged victim.

(5) Immediately, but in no case later than 24 hours after notification of an allegation, the head of the facility notifies the following individuals of the allegation:

- (A) the alleged victim (if appropriate);
- (B) the guardian; and

(C) in cases in which the alleged victim is an adult who is unable to give consent to the disclosure of client-identifying information and who does not have a guardian, any other person designated as the alleged victim's correspondent who receives all other information about the alleged victim (e.g., spouse, parent).

(c) The head of the facility designates a contact staff person to coordinate with the APS investigator to ensure private interview space, private telephones, and employees/agents are available to the APS investigator. The head of the facility shall require employees/agents to cooperate with APS investigators so that the investigators are afforded immediate access to all records and evidence and provided keys as are necessary to conduct an investigation in a timely manner. The head of the facility shall assist in whatever way possible to make employees/agents who are relevant to the investigation available in an expeditious manner. Employees/agents who fail to cooperate with an investigation are subject to disciplinary action.

(d) Reports regarding alleged sexual exploitation committed by a mental health services provider are made by the head of the facility to the prosecuting attorney in the county in which the alleged sexual exploitation occurred and any state licensing board that has responsibility for the mental health services provider's licensing in accordance with the Texas Civil Practice and Remedies Code, §81.006. A copy of the Texas Civil Practice and Remedies Code, §81.001 and §81.006 is referenced as Exhibit I in §517.516 of this title.

(e) The head of the facility at state schools, state centers, and state-operated community services with intermediate care facilities for the mentally retarded (ICF/MR) must report those allegations that are considered reportable incidents to the Texas Department of Human Services (TDHS), ICF/MR/RC Department in accordance with the memorandum of understanding, referenced as Exhibit K in §417.516 of this title, between the department, TDHS, and Texas Department of Protective and Regulatory Services.

§417.509. *Peer Review.*

(a) If the allegation involves the actions of a physician, dentist, pharmacist, registered nurse, or licensed vocational nurse, then a determination of whether the allegation involves the clinical practice, as defined in §417.503 of this title (relating to Definitions), of the physician, dentist, pharmacist, registered nurse, or licensed vocational nurse is made by the head of the facility, the APS investigator, and the facility medical\dental\nursing\pharmacy director, as appropriate to the discipline involved.

(1) If the allegation does not involve clinical practice the APS investigator pursues an investigation.

(2) If the allegation does involve clinical practice the APS investigator refers the allegation to the head of the facility, who immediately refers the allegation to the facility medical\dental\nursing\pharmacy director, as appropriate to the discipline involved, for review for possible peer review as follows:

(A) for allegations involving physicians, pharmacists, and dentists, Investigative Medical Peer Review Operating Instruction 408-2; and

(B) for allegations involving registered nurses and licensed vocational nurses, Investigative Nursing Peer Review Operating Instruction 417-19.

(3) If the allegation involves clinical practice and non-clinical issues, then the allegation is referred to peer review in accordance with paragraph (2) of this subsection and is investigated by the APS investigator.

(4) If a determination of whether the allegation involves clinical practice cannot be made, then:

(A) the allegation is referred to peer review in accordance with paragraph (2) of this subsection and is investigated by the APS investigator; or

(B) the regional APS program administrator and the head of the facility jointly agree to use a previously mutually agreed-upon physician/dental/nursing/pharmacy consultant, as appropriate to the discipline involved, to make the final determination within 24 hours. The facility is responsible for the costs of the consultant's services.

(b) If the allegation involves the facility medical\dental\nursing\pharmacy director, the head of the facility refers the allegation to the TDMHMR medical\dental\nursing\pharmacy director, as appropriate to the discipline involved, for review for possible peer review in accordance with subsection (a)(2)(A) or (B) of this section. If the allegation involves the TDMHMR pharmacy director, then the head of the facility refers the allegation to the TDMHMR medical director for review for possible peer review in accordance with subsection (a)(2)(A) of this section.

(c) All allegations involving physicians, pharmacists, nurses (RN or LVN), and dentists, regardless of type or clinical/non-clinical practice, are reported by the head of the facility to the TDMHMR medical\nursing\dental\pharmacy director, as appropriate to the discipline, within five working days of the allegation. The report may be brief, but will include:

- (1) the date of the alleged incident;
- (2) name of the alleged victim and alleged perpetrator;
- (3) a brief description of the incident; and
- (4) a brief description of the investigation planned.

(d) The TDMHMR medical\dental\nursing\pharmacy director, as appropriate to the discipline involved, ensures that reports of allegations of abuse and neglect are made, if required by law, to the licensing authority for the discipline under review, i.e., the Texas Board of Medical Examiners for physicians, the State Board of Dental Examiners for dentists, the Texas State Board of Pharmacy, the Board of Nurse Examiners for the State of Texas for registered nurses, or the Board of Vocational Nurse Examiners for licensed vocational nurses.

(e) Upon receipt of an allegation involving physician misconduct or malpractice, the TDMHMR medical director reports the allegation to the Texas Board of Medical Examiners in accordance with §533.006 of the Texas Health and Safety Code and the memorandum of understanding, referenced as Exhibit L in §417.516 of this title (relating to Exhibits), between the department, TDPRS, and the Texas Board of Medical Examiners.

(f) When an allegation is determined to involve the clinical practice of a physician, nurse (RN or LVN), pharmacist, or dentist,

then the head of the facility ensures that the alleged victim and/or guardian or parent (if the alleged victim is a child) are informed that the allegation has been referred for peer review.

§417.510. Completion of the Investigation.

(a) Upon completion of the investigation in accordance with Chapter 710, Subchapter A, Title 40 (Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities), the APS investigator submits to the head of the facility a copy of the complete investigative report, with any information that would reveal the identity of the reporter concealed, including:

- (1) a statement of the allegation;
- (2) a summary of the investigation;
- (3) an analysis of the evidence, including factual information related to what occurred, how the evidence was weighed, and what testimony was considered credible;
- (4) the investigator's finding that the allegation is confirmed, unconfirmed, inconclusive, or unfounded;
- (5) a recommendation of how the allegation should be classified in accordance with the classification system outlined in §417.512(a) of this title (relating to Classifications and Disciplinary Actions);
- (6) the name of the (alleged) perpetrator, if known;
- (7) the physician's exam and treatment of abuse/neglect-related injuries documented on the department's client injury/incident report;
- (8) photographs relevant to the investigation, including photographs depicting the existence of injuries or the non-existence of injuries, when appropriate;
- (9) all witness statements and supporting documents;
- (10) any recommendations resulting from the investigation; and
- (11) a signed and dated Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit G in §417.516 of this title (relating to Exhibits), reflecting the information contained in paragraphs (4)-(6) of this subsection.

(b) Upon receiving the written investigative report from the APS investigator, the head of the facility may submit the report and concerns articulated by the APS investigator to a review authority for review.

(1) The review authority may interview witnesses in the course of its review.

(2) If the review authority is reviewing a case determined by the APS investigator to be unfounded, it may consult with the APS investigator if appropriate. If the review authority determines that there is good cause to reopen the investigation (e.g., new evidence or information that was not previously available during the investigation), the head of the facility may contact the local APS supervisor to request that the case be re-opened.

(3) The review authority submits a report of its review to the head of the facility.

(c) The head of the facility:

- (1) reviews the APS investigator's report;
 - (2) reviews the review authority's report, if applicable;
- and

(3) interviews witnesses, if necessary.

(d) The rights of employees who appear before the review authority or the head of the facility are outlined in "Procedures in Facility Abuse, Neglect, and Exploitation Investigations and *Thurston* Rebuttal Proceedings," referenced as Exhibit H in §417.516 of this title.

(e) A confirmed finding can not be changed by the head of the facility. However, if the head of the facility disagrees with the APS investigator's unconfirmed, inconclusive, or unfounded finding, the head of the facility may elect to confirm the finding. If the head of the facility elects to confirm the finding, then the finding can not be appealed.

(f) If the head of the facility believes that the methodology used in conducting the investigation was flawed (e.g., failure to collect or consider evidence, such as witnesses' statement, progress notes, test results), the head of the facility may request a review by submitting a completed Request by Head of Facility/SOCS/Center for Review of Finding form to the regional APS program administrator. (The Request by Head of Facility/SOCS/Center for Review of Finding form is referenced as Exhibit F in §417.516 of this title.) The request for review must be filed within 14 calendar days after receiving the investigative report. A request for review may be filed after 14 calendar days, but not more than 30 calendar days, if information crucial to the investigation becomes available.

(1) The regional APS program administrator reviews the case within 14 calendar days of receipt.

(2) The regional APS program administrator notifies the head of the facility in writing of the results of the review.

(3) If methodological concerns cannot be resolved at the regional level, the head of the facility sends the request to the APS Director, TDPRS, P.O. Box 149030, E-561, Austin, TX 78714-9030, along with a copy of the written investigative report and the regional APS program administrator's review, for review by APS.

(4) A review is completed by APS within 14 calendar days of receipt.

(5) APS notifies the head of the facility in writing of the results of the review.

(g) If the head the facility disagrees with:

(1) the APS investigator's finding, the head of the facility may contest the finding by submitting a copy of the written investigative report and a completed Request by Head of Facility/SOCS/Center for Review of Finding form to the APS Director, TDPRS, P.O. Box 149030, E-561, Austin, Texas, 78714-9030. (The Request by Head of Facility/SOCS/Center for Review of Finding form is referenced as Exhibit F in §417.516 of this title.) When filing the request for review, the head of the facility will include a copy of the report by the review authority, if applicable and relevant. The request for review must be filed within 14 calendar days after receiving the investigative report. A request for review may be filed after 14 calendar days, but not more than 30 calendar days, if additional information crucial to the investigation becomes available.

(A) A review is completed by APS within 14 calendar days of receipt.

(B) APS notifies the head of the facility in writing of the results of the review.

(2) the APS review as described in paragraph (1)(A) of this subsection, the head of the facility may contest the review by

apprising the TDMHMR director of mental health facilities/mental retardation facilities/state-operated community MHMR services, as appropriate. If the TDMHMR director also disagrees with the APS review, the TDMHMR director may request a decision by the TDMHMR commissioner and the TDPRS executive director. The decision of the TDMHMR commissioner and the TDPRS executive director can not be contested.

(h) The final finding is the last uncontested finding, which may be:

(1) the APS investigator's finding in accordance with subsection (a)(4) of this section;

(2) the head of the facility's confirmed finding in accordance with subsection (e) of this section;

(3) the APS finding in accordance with subsection (g)(1) of this section; or

(4) the TDMHMR commissioner and the TDPRS executive director's decision in accordance with subsection (g)(2) of this section.

(i) Within 30 calendar days of receipt of the investigative report or the final finding, the head of the facility is responsible for completing the Client Abuse and Neglect Report (AN-1-A) form, referenced as Exhibit G in §417.516 of this title, and ensuring the information is entered into the Client Abuse and Neglect Reporting System (CANRS).

(j) The APS investigator promptly notifies the reporter in writing of the final finding and the method of appealing the final finding if the final finding was not made by the head of the facility as provided by subsection (e) of this section.

(k) The head of the facility ensures that the (alleged) victim or guardian is promptly notified of:

(1) the final finding and if any previous findings were contested;

(2) the method of appealing the final finding as described in §710.11 of Title 40 (Request for Appeal; Filing a Complaint), if the final finding was not made by the head of the facility as provided by subsection (e) of this section; and

(3) the right to receive a copy of the investigative report in accordance with §417.511(b) of this title (relating to Confidentiality of Investigative Process and Report) upon request.

(l) The head of the facility ensures that any other person who was previously notified of the allegation (as provided for in §417.508(b)(5)(C) of this title (relating to Responsibilities of the Head of the Facility)) is promptly notified of the final finding.

(m) The head of the facility informs the alleged perpetrator of the final finding.

(n) If the (alleged) perpetrator and (alleged) victim will again be in close proximity following an investigation, the head of the facility is responsible for ensuring appropriate reconciliation efforts are considered, offered, and provided in accordance with "Therapeutic Reconciliation," referenced as Exhibit J in §417.516 of this title.

(o) The head of the facility shall establish a mechanism for evaluating any recommendations concerning problematic patterns or trends identified during the investigation by the APS investigator and the review authority, if applicable.

§417.516. *Exhibits.*

The following exhibits referenced in this subchapter are available from the Texas Department of Mental Health and Mental Retardation, Office of Policy Development, P.O. Box 12668, Austin, Texas 78711-2668.

- (1) Exhibit A - "Sexual assault" as defined the Texas Penal Code, §22.011;
- (2) Exhibit B - Adult Protective Services Referral Form;
- (3) Exhibit C - "Guidelines for Securing Evidence";
- (4) Exhibit D - Client Injury/Incident Report form (PORS 5/16R);
- (5) Exhibit E - "Guidelines for Separation of Alleged Victim and Alleged Perpetrator During Abuse/Neglect Investigations";
- (6) Exhibit F - Request by Head of Facility/SOCS/Center for Review of Finding form;
- (7) Exhibit G - Client Abuse and Neglect Report (AN-1-A) form;
- (8) Exhibit H - "Procedures in Facility Abuse, Neglect, and Exploitation Investigations and Thurston Rebuttal Proceedings";
- (9) Exhibit I - Texas Civil Practice and Remedies Code, §81.001 and §81.006;
- (10) Exhibit J - "Therapeutic Reconciliation";
- (11) Exhibit K - Memorandum of Understanding between TDMHMR, TDHS, and TDPRS concerning Reportable Incidents in State Schools, State Centers, State Operated Community-based MHMR Services, and Community MHMR Centers with Intermediate Care Facilities for the Mentally Retarded (ICF/MR); and
- (12) Exhibit L - Memorandum of Understanding between TDPRS, Texas Board of Medical Examiners, and TDMHMR concerning Mandatory Reporting of Physician Misconduct or Malpractice.

This agency 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 October 19, 1998.

TRD-9816323
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes and Fees

28 TAC §1.406, §1.407

The Commissioner of Insurance adopts the repeal of §1.406 and §1.407 with no changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8812).

The repeal of these sections is necessary to eliminate provisions which have become obsolete.

Sections 1.406 and 1.407 concern the assessment of maintenance taxes and fees. Section 1.406 adopted the maintenance tax rates for 1988 and §1.407 adopted the maintenance tax rates for 1989. Those taxes have been assessed and the sections are no longer necessary.

No comments were received on the proposed repeal.

The repeal is adopted under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 20A.33, 21.07-6, §21, and 1.03A, which authorizes the commissioner of insurance to assess maintenance taxes and fees on lines of insurance and related activities. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 20A.33 establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Article 21.07-6, §21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9816188
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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Chapter 7. Corporate and Financial Regulation

The Commissioner of Insurance adopts the repeal of §§7.14, 7.63, 7.64, 7.301-7.309, and 7.631-7.636 with no changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8816).

The repeal of these sections is necessary to eliminate provisions which have become obsolete, unnecessary or redundant of other statutes or rules.

Section 7.14 concerns the annual credit insurance privilege fee. Insurance Code, Article 4.09, which authorized the fee has been repealed. Sections 7.63 and 7.64 concern the adoption by reference of annual statement blanks, instructions,

and other forms used by insurers and certain other entities regulated by the Texas Department of Insurance to report their financial condition and business operations and activities. Those documents have been filed with the department and the sections are no longer necessary. Sections 7.301-7.309 concern the regulation and reporting of securities lending transactions. Insurance Code, Article 3.33 now governs these transactions. Sections 7.631-7.636 concern the withdrawal from the state by the use of reinsurance agreements. Insurance Code, Article 21.49-2C now governs this activity.

No comments were received on the repeal of the sections.

Subchapter A. Examination and Financial Analysis

28 TAC §§7.14, 7.63, 7.64

The repeal of the sections is adopted under the Insurance Code, Articles 1.11, 3.33, 3.53, 21.49-1, 21.49-2C and 1.03A. Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Article 3.33 governs investments for life insurance companies, including securities lending transactions, and authorizes the commissioner to adopt rules to implement the article. Article 3.53 authorizes the commissioner to adopt rules to regulate credit life insurance. Article 21.49-1 authorizes the commissioner to adopt rules to implement the provisions of this article (The Insurance Holding Company System Regulatory Act). Article 21.49-2C now governs the withdrawal of an insurer from the state, by reinsurance or otherwise. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

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For further information, please call: (512) 463-6327



Subchapter C. Transfer of Securities under Certain Agreements

28 TAC §§7.301-7.309

The repeal of the sections is adopted under the Insurance Code, Articles 1.11, 3.33, 3.53, 21.49-1, 21.49-2C and 1.03A. Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Article 3.33 governs investments for life insurance companies, including securities lending transactions, and authorizes the commissioner to adopt rules to implement the article. Article 3.53

authorizes the commissioner to adopt rules to regulate credit life insurance. Article 21.49-1 authorizes the commissioner to adopt rules to implement the provisions of this article (The Insurance Holding Company System Regulatory Act). Article 21.49-2C now governs the withdrawal of an insurer from the state, by reinsurance or otherwise. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. Reinsurance

Foreign Insurers' Withdrawal from State by Virtue of Reinsurance Agreements

28 TAC §§7.631-7.636

The repeal of the sections is adopted under the Insurance Code, Articles 1.11, 3.33, 3.53, 21.49-1, 21.49-2C and 1.03A. Article 1.11 authorizes the commissioner to make changes in the forms of the annual statements required of insurance companies of any kind, as shall seem best adapted to elicit a true exhibit of their condition and methods of transacting business. Article 3.33 governs investments for life insurance companies, including securities lending transactions, and authorizes the commissioner to adopt rules to implement the article. Article 3.53 authorizes the commissioner to adopt rules to regulate credit life insurance. Article 21.49-1 authorizes the commissioner to adopt rules to implement the provisions of this article (The Insurance Holding Company System Regulatory Act). Article 21.49-2C now governs the withdrawal of an insurer from the state, by reinsurance or otherwise. Article 1.03A authorizes the commissioner to adopt rules for the conduct and execution of the duties of the department as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas

28 TAC §9.30

The Commissioner of Insurance adopts new §9.30 concerning a new procedural rule and form for a supplemental coverage equity loan mortgage endorsement (T-42.1). New §9.30 incorporates by reference amendments to the Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the Basic Manual), which add the new procedural rule (P-47) and form (T-42.1) that provide for a supplemental coverage equity loan mortgage endorsement to the basic mortgagee policy of title insurance and the existing promulgated endorsement (T-42) for home equity loans secured by Texas homestead property pursuant to Section 50, Article XVI, Texas Constitution. New §9.30 also incorporates by reference a new rate rule (R-28) for the Equity Loan Mortgage Endorsement (T-42) and for the Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) which is considered under Docket Number 2362 and is the subject of a separate Commissioner's Order No. 98-1160. Section 9.30 is adopted with two changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5933) and with changes to the proposed amendments to the Basic Manual which the section adopts by reference, all of which are more particularly described below.

The new section concerns the adoption by reference of certain amendments to the Basic Manual. These amendments to the Basic Manual are necessary to facilitate the administration and regulation of title insurance by clarifying and standardizing the rules and forms which regulate title insurance. By voter approval on November 4, 1997, the Texas Constitution was amended to permit an encumbrance against homestead property for certain extensions of equity credit. Article XVI, Section 50(a)(6), Texas Constitution, states the requirements for an extension of equity credit. The new procedural rule and form address certain of these requirements as they relate to title insurance.

Procedural Rule P-47, Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1), concerns supplemental coverage to the basic mortgagee policy of title insurance and the existing promulgated endorsement (T-42). This rule provides the general requirements and limitations for the issuance of supplemental coverage in insuring a lien that secures an extension of credit made pursuant to subsection (a)(6) of Section 50, Article XVI, Texas Constitution.

Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) outlines the scope of the supplemental coverage in insuring a lien that secures an extension of credit made pursuant to subsection (a)(6) of Section 50, Article XVI, Texas Constitution and also states the exceptions and limitations of the coverage, including among other things, no insurance against invalidity or unenforceability of the lien of the insured mortgage arising out of usury or truth in lending laws or any consumer credit protection law.

Texas Land Title Association ("TLTA") petitioned the department to consider its proposed procedural rule and form and proposed rate rule. Stewart Title Guaranty Company ("Stewart") proposed amendments on May 15, 1998, to the procedural rule and form. Stewart's amendments were referenced in the proposal and

attached to the new proposed section. Further amendments were proposed by Stewart and TLTA to the procedural rule. The initial amendments by Stewart added three coverages that insure against invalidity or unenforceability of liens where: part of the land is not homestead; another home equity loan exists on other land that is in the same county and owned by the same owner; and another home equity loan was closed within one year prior to the date of the policy secured by land owned by that owner in the same county. Subsequently, Stewart proposed a correction to the procedural rule on June 9, 1998, with regard to lettering of the subparagraphs of the procedural rule. Further proposed amendments by TLTA to the procedural rule provided that the endorsement form T-42.1 would not be attached to the Mortgagee Policy of Title Insurance (T-2) in certain circumstances rather than providing that certain paragraphs of form T-42.1 would be deleted in certain circumstances and other language added to evidence the deletion. This change was not contained in Stewart's proposed amendments.

Changes to the procedural rule P-47 and form T-42.1 proposed by Stewart are accepted and are adopted herein. The department additionally made a technical change to form T-42.1 to note that the form is issued by "Blank Title Insurance Company" and not "Blank Title Insurance Agency" since a title insurance agency does not issue endorsement forms. The mail code and the name of the Title Insurance Section as published in the proposal have been changed to Mail Code "106-2T" and to "Title Division" to reflect the new mail code and the new name of the Title Division.

New §9.30 incorporates by reference certain amendments to the Basic Manual which facilitate the issuance of mortgagee title policies insuring home equity liens on homestead property. The section adopts by reference and amends the Basic Manual, Section IV, Procedural Rules, to add new Procedural Rule P-47, Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1). The new procedural rule provides the general requirements and limitations for the issuance of supplemental coverage in insuring a lien that secures an extension of credit made pursuant to subsection (a)(6) of Section 50, Article XVI, Texas Constitution. The section also adopts by reference and amends the Basic Manual, Section II, Insuring Forms, to add the new Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1). The new form states the scope of the supplemental coverage in insuring a lien that secures an extension of credit made pursuant to subsection (a)(6) of Section 50, Article XVI, Texas Constitution and also states the exceptions and limitations of the coverage, including among other things, no insurance against invalidity or unenforceability of the lien of the insured mortgage arising out of usury or truth in lending laws or any consumer credit protection law. The new form can be endorsed onto the mortgagee title policy to insure against invalidity of a lien as to eleven stated requirements contained in the constitutional amendment regarding the extension of equity credit. Those eleven requirements concern: dates of execution of documents; disbursement of funds before three-day right of rescission; date of exercise of right of rescission; delivering copies of documents to borrower; disbursement of fees prior to execution of documents; no blanks in documents; appraisal attached to acknowledgment of fair market value; same date execution of acknowledgment of fair market value and mortgage and promissory note; part of the land is not homestead; no other home equity loan on other land that is in the same county and owned by the same owner; and no home equity loan that

was closed in the last year that is on the land owned by that owner in the same county. The section also adopts by reference and amends the Basic Manual, Section III, Rate Rules, to add rate rule R-28 Premium for Equity Loan Mortgage Endorsement (T-42) and Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) which is considered under Docket Number 2362 and is the subject of a separate Commissioner's Order No. 98-1160.

Comment: Three individual commenters expressed support for the TLTA petition as involving coverage of risks that title insurance companies are capable of underwriting. The commenters also expressed concerns that the additional coverages proposed by Stewart are more of a casualty risk, rather than true title insurance underwriting. The commenters referred to potential difficulties in ascertaining homestead identity and calculation of actual acreage of land. The commenters were especially concerned given what they referred to as the punitive nature of the Texas home equity law if there is a failure to abide by the constitutional requirements because of the non-recourse nature of the loan in the event of a borrower's default.

Agency Response: The department agrees with and appreciates the concern regarding the potential for losses from home equity loans; however, the department notes that Federal National Mortgage Association ("Fannie Mae") has indicated it would stop buying home equity loans originating in Texas without the proposed coverages. The proposed coverages attempt to address the concerns of lenders regarding home equity loans and title insurance coverage. The adopted section will facilitate home equity lending in Texas. The department agrees with other comments received and the evidence presented by Stewart that the risks covered by the procedural rule and form are within the realm of title insurance and that the title industry is in a position to assess matters concerning homestead and acreage calculation and indeed does so currently.

Comment: Three commenters expressed support for the proposal as amended by Stewart and commented that the additional coverages concern analyses that title companies engage in every day in dealing with homestead and acreage issues. One of the commenters expressed appreciation for the cooperative effort among staff, industry partners, TLTA, and Fannie Mae in working toward a sharing of the risk elements involved in the home equity process.

Agency Response: The department agrees and notes the cooperation exhibited in this rulemaking process and also expresses appreciation. Regarding the additional coverages, the department agrees with the responsive comments made by Stewart that the title business is a risk reduction business, not a risk elimination business, and the department further notes the comments by Stewart that while there are risks involved, these coverages are within the realm of title insurance, and they can be underwritten.

Comment: One commenter expressed support for the proposal and the additional coverages suggested by Stewart, particularly in light of the position of the lending community that these items are necessary. However, the commenter expressed concerns as to the breadth of the exclusions and stated that a title company could exclude coverages under certain circumstances, which the commenter felt were not well-defined.

Agency Response: The department disagrees. The procedural rule specifies the circumstances in which certain paragraphs of

the endorsement form can be deleted, and those are contained in Procedural Rule P-47.A.(4).

For the section as originally proposed: Texas Land Title Association

For the section as amended by Stewart Title Guaranty Company: Stewart Title Guaranty Company, Office of Public Insurance Counsel, Texas Mortgage Bankers Association, Federal Home Loan Mortgage Corporation ("Freddie Mac"), Federal National Mortgage Association ("Fannie Mae"), and Old Republic National Title Insurance Company.

The new section is adopted pursuant to the Insurance Code, Articles 9.07, 9.21, and 1.03A and Section 50, Article XVI, Texas Constitution. Article 9.07 authorizes and requires the commissioner to promulgate or approve rules and policy forms of title insurance and otherwise to provide for the regulation of the business of title insurance. Article 9.21 authorizes the commissioner to promulgate and enforce rules and regulations prescribing underwriting standards and practices, and to promulgate and enforce all other rules and regulations necessary to accomplish the purposes of Insurance Code, Chapter 9, concerning regulation of title insurance. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. By voter approval on November 4, 1997, Section 50, Article XVI, Texas Constitution was amended to permit an encumbrance against homestead property for certain extensions of equity credit.

§9.30. Procedural Rule, Rate, and Form for Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) and Rate for Equity Loan Mortgage Endorsement (T-42).

In addition to material adopted by reference under §9.1 of this title (relating to Basic Manual of Rules, Rates and Forms for the Writing of Title Insurance in the State of Texas (the manual)), the Texas Department of Insurance adopts by reference, as part of the manual, Procedural Rule P-47 and endorsement form T-42.1 for Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1) and Rate Rule 28 Premium for Equity Loan Mortgage Endorsement (T-42) and Supplemental Coverage Equity Loan Mortgage Endorsement (T-42.1). This document is available from and on file at the Texas Department of Insurance, Title Division, Mail Code 106-2T, William P. Hobby State Office Building, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

This agency 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 October 15, 1998.

TRD-9816189

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: November 4, 1998

Proposal publication date: June 5, 1998

For further information, please call: (512) 463-6327



Chapter 15. Surplus Lines Insurance

Subchapter A. General Regulation of Surplus Lines Insurance

28 TAC §15.15, §15.28

The Commissioner of Insurance adopts the repeal of §15.15 and §15.28 with no changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8818).

These sections duplicate and/or conflict with the provisions of Insurance Code, Article 1.14-2, the surplus lines law.

Section 15.15 concerns reports of unauthorized insurance. Section 15.28 concerns the use of surplus lines insurance under the Private Investigators and Private Security Agencies Act. These sections duplicate and/or conflict with the provisions of Insurance Code, Article 1.14-2, the surplus lines law.

No comments were received on the proposed repeals.

The repeal of the sections is adopted under the Insurance Code, Article 1.14-2. Article 1.14-2 governs surplus lines insurance and authorizes the commissioner to adopt rules to enforce the article.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance

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Proposal publication date: August 28, 1998

For further information, please call: (512) 463-6327



Chapter 21. Trade Practices

Subchapter J. Prohibited Trade Practices

28 TAC §21.1000, §21.1003

The Commissioner of Insurance adopts the repeal of §21.1000, relating to the prohibition against an insurer's refusal to insure based on the underwriting decision of another company, and §21.1003, relating to the prohibition against using the number of vehicles insured or number of policies purchased in the issuing or pricing of automobile insurance. Repeal of §21.1000 and §21.1003 is made without changes to the proposed repeal of the sections as published in the *Texas Register* August 28, 1998, at 23 TexReg 8820, and the text will not be republished.

Repeal of these sections is necessary because the department may not enforce the current adoption of either, as a result of their invalidation by the Texas Supreme Court on July 12, 1996. Section 21.1000 prohibits an insurer from using the fact that another insurer canceled, nonrenewed, or refused to insure an applicant as its own reason to refuse to insure such applicant for personal automobile or residential property coverages. The Supreme Court invalidated the rule because it found the department failed to explain in its reasoned justification why an insurer's consideration of previous denial of insurance as

one of perhaps several factors determining refusal to insure is unacceptable. Section 21.1003 prohibits an insurer from conditioning issuance, price, and limits of coverage of personal automobile insurance on the number of vehicles to be insured or the purchase of another policy or policies. The Supreme Court invalidated the rule because it found the department failed to provide a rationale explaining why such practices are unfairly discriminatory or what effect the rule will have on consumers and the insurance market.

Repeal of the sections will result in greater clarity in Chapter 21 of this title by removing unenforceable provisions that may otherwise result in confusion to the public.

No comments were received on the proposed repeal as published.

The repeal is proposed pursuant to the Insurance Code, Articles 21.21 and 1.03A, and the Government Code, §2001.004. The Insurance Code, Article 21.21, §13, provides that the department is authorized to promulgate and enforce reasonable rules and regulations and order such provision as is necessary in the accomplishment of the purposes of Article 21.21, relating to unfair competition and unfair practices. Article 1.03A provides that the commissioner may adopt rules for the conduct and execution of the duties and function of the department only as authorized by a statute. The Government Code, §2001.004 authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribes the procedure for adoption of rules by a state administrative agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance

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For further information, please call: (512) 463-6327



TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation

Chapter 37. Financial Assurance

Subchapter A. General Financial Assurance Requirements

30 TAC §37.11, §37.52

The Texas Natural Resource Conservation Commission (commission) adopts an amendment to §37.11 and new §37.52, concerning Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas without changes to the proposed text as published in the June 5, 1998, issue of the *Texas Register* (23 TexReg 5937) and will not be republished.

EXPLANATION OF ADOPTED RULE The new rule in §37.52 will allow the adoption of a financial assurance option that will cross commission program lines by allowing a permittee, licensee or registrant to demonstrate financial assurance obligations through one mechanism. The rule will give the regulated community another option when complying with financial responsibility. A universal mechanism reduces the number of financial assurance mechanisms required to comply with financial responsibility. However, it is not intended to reduce the total dollar amount of financial assurance required to be demonstrated for any commission program area that requires a permitted, licensed or registered facility to demonstrate financial assurance. A definition of program area is added to §37.11. For the purpose of the new section, program area means the specific commission area under which the facility is permitted, licensed or registered to operate. Program areas include, but are not limited to, Industrial and Hazardous Waste, Underground Injection Control, Municipal Solid Waste, or Petroleum Storage Tanks.

The new §37.52 concerning Use of a Universal Financial Assurance Mechanism for Multiple Facilities and Program Areas, adds the option of a universal financial assurance mechanism for owners or operators of facilities which are authorized by rules from more than one program area of the commission. The anniversary date of the universal mechanism as specified in new §37.52 is the date on which owners or operators shall adjust the financial assurance for inflation for all facilities demonstrating through the universal mechanism.

FINAL REGULATORY IMPACT ANALYSIS The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act inasmuch as the rule will merely offer an additional option for financial assurance, and it does not meet any of the four applicability requirements listed in §2001.0225(a). This adopted rule will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This adoption does not exceed an express requirement of state law that is not specifically required by federal law nor does it exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning this universal mechanism for financial assurance. This adoption falls within the commission's authority under Texas Health and Safety Code, §361.085 and Texas Water Code, §26.352, which authorize the commission to adopt requirements by which permittees, licensees, or registrants demonstrate financial assurance.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for this rule proposal pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The purpose of this rulemaking is to modify Chapter §37 to reflect the addition of a universal financial assurance option to cross multiple program areas and facilities allowing a permittee, licensee, or registrant to demonstrate financial assurance obligations through one mechanism. The promulgation and enforcement of these rules will not burden private real property nor adversely affect property values because the proposed rule will not reduce or increase the amount

of financial assurance required to be demonstrated by any one facility or in any one program area.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW Title 31 Texas Administrative Code §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), requires the commission to evaluate proposed rules to ensure consistency with the CMP. The commission has reviewed this rulemaking for consistency with the CMP goals and policies. The rulemaking does not consist of actions or rules subject to the CMP which apply to the Texas Natural Resource Conservation Commission and which are identified in §505.11(a)(6) and §505.11(b)(2); therefore, the proposed rule is not subject to the CMP.

HEARINGS AND COMMENTERS The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rule closed at 5:00 p.m., July 6, 1998. Safety Kleen Corp. (Safety Kleen), Texas Utility Services, Inc. (TU), and BFI Waste Systems of North America, Inc. (BFI) submitted comments on the proposed rule, and the three commenters generally supported the proposed changes.

ANALYSIS OF TESTIMONY

GENERAL COMMENTS Safety Kleen, TU, and BFI all supported the rules as proposed. TU specifically commented that the universal mechanism would require the regulated community to continue providing appropriate liability coverage while reducing paperwork and allowing the regulated community direct management of the costs of financial assurance requirements. Safety Kleen suggested a language change for clarification. BFI suggested adding language that was recently published in federal regulations.

Regarding proposed §37.52, Safety Kleen suggested a language modification to clearly indicate that the amount of funds demonstrated by the universal mechanism will not be the sum of funds that would be available if separate mechanisms were established and maintained for units utilized for the management of wastes under multiple program areas. Safety Kleen expressed concerns that in some cases duplicate financial assurance may be required for units utilized for the management of wastes under multiple program areas.

The commission recognizes there may be cases due to the addition of programs or changes to rules where cost estimates may be duplicated between waste programs. However, without first obtaining commission confirmation that the cost estimate is duplicated, the financial assurance amount demonstrated through the Universal Mechanism must be the sum of funds that would be available if separate mechanisms were established and maintained for units utilized for the management of waste under multiple program areas. Consequently, the commission has not added language to the rule as suggested by the commenter.

Regarding proposed §37.52, BFI suggested that this rulemaking process be used for incorporating the federal financial mechanisms which were published in the April 10, 1998, issue of the *Federal Register* (63 FedReg 17706). These new federal regulations adopt the financial test / corporate guarantee for use by privately owned municipal solid waste (MSW) landfills.

The new federal financial mechanism relating to MSW landfills is not pertinent to the subject of this rulemaking regarding a universal mechanism for financial assurance. The commission is in the process of making a determination whether to propose

changes to the current State test. The commission appreciates BFI's comments, however, their suggestion does not appear relative to the universal mechanism proposal, and no additional language will be added to this rule. The commission will consider the federal financial mechanisms in a future rulemaking.

STATUTORY AUTHORITY The new and amended sections are adopted under Texas Water Code, §5.103 and §5.105, and Texas Health and Safety Code, §§361.011, 361.017, and 361.024, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new and amended sections implement Texas Health and Safety Code, §361.085 and Texas Water Code, §26.352.

This agency 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 October 13, 1998.

TRD-9816014

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Proposal publication date: June 5, 1998

For further information, please call: (512) 239-6087

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part IV. General Land Office

Chapter 201. General Rules

31 TAC §§201.1-201.16

The General Land Office, the Texas Department of Parks and Wildlife, and the Texas Department of Criminal Justice Boards for Lease, adopt the repeal of Chapter 201, §§201.1-201.16, relating to General Rules, without changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (24 TexReg 7719).

The repeal of Chapter 201 and the ultimate adoption of the new Chapter 201 has been undertaken as part of the comprehensive review of the agency's rules mandated by the 1997 General Appropriations Act, Article X, §167.

No comments were received regarding the repeal of this chapter.

This chapter is repealed under Texas Natural Resources Code §34.065, which grants rulemaking authority to the Texas Department of Parks and Wildlife and Texas Department of Criminal Justice Boards for Lease.

This agency 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 October 19, 1998.

TRD-9816333

Garry Mauro

Commissioner, General Land Office

General Land office

Effective date: November 8, 1998

Proposal publication date: July 31, 1998

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

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Chapter 201. Operations of the Texas Parks and Wildlife Department and Texas Department of Criminal Justice Board for Lease

31 TAC §§201.1-201.7

The General Land Office (GLO), the Texas Parks and Wildlife Department (TPWD), and the Texas Department of Criminal Justice (TDCJ), adopt new Chapter 201, §§201.1-201.7, concerning Operations of the Texas Parks and Wildlife Department and Texas Department of Criminal Justice Boards for Lease, with changes to the proposed text as published in the July 31, 1998, issue of the *Texas Register* (24 TexReg 7720).

The new chapter is being adopted in order to ensure that these boards operate according to administrative rules that are clear, necessary and up-to-date.

The new chapter establishes that 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. Also, the new chapter requires nominators of tracts for special lease sales to share in the costs of any required advertising for those sales. Finally, §201.6 of the new chapter clearly organizes and establishes a lessee's responsibilities with respect to the operation and maintenance of the lease.

For purposes of clarification §201.1, relating to Boards for Lease Meeting Administration, was changed to more clearly define that status of persons appearing before the boards. Accordingly, §201.1(d) now states that only those persons requesting a formal action by a Board for Lease are to be considered parties to a Board for Lease meeting.

Section 201.7 has been modified so that it correctly refers to the Texas Department of Criminal Justice Board for Lease rather than the Texas Department of Corrections Board.

The new chapter is adopted under Texas Natural Resources Code, §34.065, which grants rulemaking authority to the Texas Parks and Wildlife Department and Texas Department of Criminal Justice Boards for Lease.

§201.1. Boards for Lease Meeting Administration

(a) The secretary of a Board for Lease (Board) shall keep as records at the General Land Office, the minutes and the docket of each meeting.

(b) The secretary of the Board shall prepare the docket for the meeting and file and post notice of the meeting in compliance with the Open Meetings Act. Notice of the board meeting will include:

- (1) the time, date, and location of the meeting; and
- (2) those items to be considered by the Board.

(c) Members of the public may make personal statements of their views on a matter before the Board provided that they identify

themselves for the record. Members of the public making only such statements will not be considered parties to the meeting.

(d) Any person requesting a formal action by the Board must notify the secretary prior to the meeting, providing in writing the person's name, address, and interest in the meeting. Any such participant will be considered a party to the meeting.

(e) All persons appearing before the Board, and any evidence they present, will be subject to full examination by the members of the Board.

(f) Parties may be represented by an attorney. Upon notification of the secretary, the attorney will receive all correspondence directed to the party on behalf of the Board.

(g) Any applicant before the Board and any other person filing their name, address, and a request for notification with the secretary, will be notified in writing of the date, time, and place of the board meeting at which the application will be considered. However, failure to mail the notice does not invalidate any action taken by the Board.

(h) An applicant and those persons who have properly requested notification will be informed in writing of any action taken by the Board concerning that person's application as expeditiously as possible following the meeting.

(i) The Board shall adopt, amend, and repeal rules in accordance with the *Texas Register* and Administrative Code, Government Code, Chapter 2002. Any interested person may petition the Board in writing to request adoption of a rule. The Board shall consider the request at the next scheduled meeting and shall either grant or deny the request. Rulemaking procedures shall be initiated within 60 days of the receipt of the request if granted. If denied, the Board shall state its reasons in writing and mail them to the petitioner within 60 days of the request.

(j) The Board's policy is to encourage and ensure maximum public participation in all matters it considers. The Board shall conduct all meetings in accordance with the Open Meetings Act.

§201.2. *Lease Sale*

(a) A Board for Lease (Board) may schedule a lease sale at any time. Leases of land owned by the Texas Parks and Wildlife Department or the Texas Department of Corrections shall be advertised and sold in the same manner as leases issued by the School Land Board (SLB) under Texas Natural Resources Code, Chapter 32. The procedures, fees, and cost sharing set out in Chapter 151 of this title, (relating to Operations of the School Land Board) shall also apply to the Board's lease sales.

(b) The lease shall contain the same terms and conditions as leases issued by the SLB under Texas Natural Resources Code, Chapter 32 and Chapter 151. However, a Board may place any other terms and conditions in the lease it determines to be in the best interest of the state.

§201.3. *Filing in General Land Office.*

Records pertaining to leases by a Board for Lease are to be filed in the records of the General Land Office accompanied by any filing fee prescribed by §1.3 of this title, (relating to Fees).

§201.4. *Deposits*

Payments received by a Board for Lease are payable to the commissioner of the General Land Office, who will deposit receipts with the state treasurer to the credit of the appropriate special mineral fund for the agency involved.

§201.5. *Provisions*

The provisions of Texas Natural Resources Code, Chapters 32 and 52, and §9.7 of this title, (relating to Royalty and Reporting Obligation to the State), and §9.8 of this title, (relating to Discontinuing the Leasehold Relationship) shall apply to leases issued by a Board for Lease.

§201.6. *Lessee Responsibility.*

(a) **Applicable Laws.** All drilling, producing, gathering, transporting, processing and other operations on state lands shall be subject to applicable state and federal laws.

(b) **Conflict between this chapter and other rules and statutes.** Operations on state lands are subject to all valid applicable state and federal regulatory authorities. This chapter supplements the regulatory powers of such authorities.

(c) **General policy.** These rules are not intended to unlawfully impair any existing contract.

(d) **Exceptions to this chapter.** A Board for Lease (Board) may if authorized by law and upon proper written request, grant exceptions to the provisions of this chapter if the Board deems the exceptions to be in the best interest of the state. No such exception shall be effective until a written request by the lessee and a written explanation, approved by the Board and signed by the commissioner, as chairman of the Board, is placed in the appropriate mineral file or other General Land Office file.

(e) **Compliance.** Lessee shall comply with the provisions of the lease. Nothing in this chapter shall be construed as relieving a lessee of this duty or as impairing any remedies available to the state. If a lessee or operator fails to comply with this chapter, the Board may seek any remedy allowed by law, including forfeiture of the lease. Lessee shall be liable for the damages caused by such failure and any costs and expenses incurred while enforcing this chapter and cleaning areas affected by any pollution or discharged waste. A lessee is also responsible for the actions or omissions of its operator as well as for the actions or omissions of lessee's employees, agents, servants, contractors, subcontractors, trustees, receivers, and any other agent in control of any or all of the leasehold interest.

(f) **Identification.** All well locations and other structures shall be marked so as to identify the state tract number, well number, and the company operating the lease. Additionally, any well drilled on property leased under this chapter must be identified as a state well in Railroad Commission records by using "state" as the first word in its designated Railroad Commission name.

(g) **Inspections.** The commissioner of the GLO, the attorney general, the governor, and their representatives, shall at all times have access to the premises upon which wells are being drilled or produced for oil, gas, or other minerals to make inspections of all drilling, producing, gathering, and processing operations, or for any other reason deemed necessary.

(h) **Records.** The General Land Office may from time to time require any records not otherwise required relating to any aspect of lease operations and accounting. Such records shall be provided to the General Land Office within 30 days of the agency's request for their production.

(i) **Commingling production.** Requests to commingle production from state leases should be sent with supporting data to the following address: Commissioner of the General Land Office, Attention: Mineral Leasing Division, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701-1495.

(j) **Surface Use and Hole Abandonment.** Any hole or holes drilled by an exploration party under the terms of a lease issued

by the state under this chapter shall be drilled in such manner as to interfere as little as possible with the current use of the surface. Upon the abandonment of such holes, all of the rigging and material shall be removed, and the surface where said hole was drilled shall be restored to its former condition as nearly as possible. Upon abandonment of a well site, all wells shall be plugged and all structures removed in compliance with Railroad Commission and United States Army Corps of Engineer regulations. All fills for roads and drill sites shall be removed if requested by the commissioner.

(k) Degree of care. Lessee shall use the highest degree of care in conducting operations on tracts leased under this chapter and shall take all proper safeguards to prevent the discharge of any pollutant, including solid waste, and of any hazardous substances. To satisfy these requirements, lessee, at a minimum, must conduct operations as a reasonably prudent operator using standard industry practices and procedures, must satisfy express lease provisions, and must comply with all valid, applicable federal and state regulations.

(l) Reporting Pollution. In the event that any pollution, whether cumulative or the result of an isolated event, occurring on a leased tract reaches a level at which it becomes a violation of state and/or federal law, notice of all relevant facts related to such pollution shall be filed by lessee with the General Land Office within 10 business days of lessee's receipt of notification of the violation from the appropriate state and/or federal authorities.

(m) Separator required. All wells producing liquids must be produced through an oil and gas separator of ample capacity and in good working order.

§201.7. Consistency with Coastal Management Program.

Except as otherwise provided in §16.1(c) of this title, (relating to Definitions and Scope), an action listed in §16.1(b) taken or authorized by the Texas Parks and Wildlife Department or Texas Department of Criminal Justice Board for Lease pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 is subject to and must be consistent with the goals and policies identified in Chapter 16 in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16, such conflicting provisions of Chapter 16 will control.

This agency hereby certifies that the 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 October 19, 1998.

TRD-9816342

Garry Mauro

Commissioner, General Land Office

General Land office

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Proposal publication date: July 31, 1998

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



Part X. Texas Water Development Board

Chapter 357. Regional Water Planning Guidelines

31 TAC §357.7

The Texas Water Development Board (board) adopts amendments to 31 TAC §357.7 relating to Regional Water Plan Development without change to the proposed text as published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9263) and will not be republished.

The amendments clarify that the data for current and projected population and water demands, for evaluation of adequacy of current supplies, and for water supply and demand analysis are to be tabulated by cities, major providers of municipal and manufacturing water, and specified categories of use for each county or portion of a county in the regional water planning area. If a county or portion of a county is in more than one river basin, data shall be reported for each river basin. The tabulation of data in this manner has been anticipated from the initial adoption of the rule; however some conflicting interpretations of the rules have been made. The amendments are intended to clarify the board's interpretation. The tabulation of data in the manner proposed will allow a full assessment by river basins and counties of population and water demands, water supply adequacy, and supply and demand analysis. It will allow the board to determine that data is not omitted in the final state water plan and provide data to allow the Texas Natural Resource Conservation Commission and the board to make statutorily required finding of consistency of applications with approved regional water plan. The tabulations will further allow for the impacts of interbasin transfers to be studied by regions, local entities and state agencies.

The board received one comment from Texas Utilities Services, Inc., which strongly supported the proposed amendment.

The amendments are adopted under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, and under the authority of Texas Water Code, §16.053, which requires the board to develop rules and guidelines: to provide procedures for adoption of regional water plans by regional water planning groups and approval of regional water plans by the board; to govern procedures to be followed in carrying out the responsibilities in Texas Water Code, §16.053; and for the format in which information is to be presented in the regional water plans.

This agency 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 October 15, 1998.

TRD-9816175

Suzanne Schwartz

General Counsel

Texas Water Development Board

Effective date: November 4, 1998

Proposal publication date: September 11, 1998

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



Chapter 367. Agricultural Water Conservation Program

Subchapter A. Grants for Equipment Purchases

31 TAC §367.24, §367.29

The Texas Water Development Board (the board) adopts amendments to 31 TAC §367.24 and §367.29 concerning grants for purchase of agricultural water conservation equipment without change to the proposed text as published in the September 11, 1998 issue of the *Texas Register* (23 TexReg 9264) and will not be republished.

The amendments will allow grants in excess of 75% if appropriation language provides for a greater amount. This amendment is adopted in recognition that drought or other conditions could lead the legislature to want to place funds into the agricultural soil and water conservation fund to provide grants in excess of the current limits in the rules of 75% of equipment costs. The amendments will allow such flexibility, while still providing a limit on the amount of grants under ordinary situations. The need for this flexibility has become particularly apparent when legislative committees began exploring methods to respond to the drought in Texas. The amendment to §367.29 will require reports made for equipment that measures and evaluates irrigation systems to identify the amount of water saved from use of the equipment.

No comments were received on the proposed amendments.

The amendments 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, and Chapter 15, Subchapter H, which relates to the provision of grants for equipment purchases from the agricultural soil and water conservation fund and §15.403 which directs the board to adopt rules to carry out Texas Water Code, Chapter 15.

This agency 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 October 15, 1998.

TRD-9816176
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: November 4, 1998
Proposal publication date: September 11, 1998
For further information, please call: (512) 463-7981



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety
Chapter 13. Controlled Substances and Precursor/
Apparatus Rules and Regulations
Subchapter B. Registration

37 TAC §13.22

The Texas Department of Public Safety adopts the repeal of §13.22, concerning Controlled Substances Registration, without

changes to the proposed text as published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9005).

The justification for the repeal will be to reduce the opportunity for abuse or illegal diversion of controlled substances.

The section is repealed with simultaneous adoption of new §13.22 which will increase the application fee to \$25.00 in order to provide adequate funding of the department's efforts to administer and enforce its regulation of highly abusable substances, thereby reducing the opportunity for abuse or illegal diversion.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.064(a) and §481.003, which provides the director may adopt rules to administer and enforce this chapter.

This agency 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 October 12, 1998.

TRD-9815964
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: November 1, 1998
Proposal publication date: September 4, 1998
For further information, please call: (512) 424-2890



The Texas Department of Public Safety adopts new §13.22, concerning Controlled Substances Registration Fee, without changes to the proposed text as published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9005).

The justification for this section will be adequate funding of the department's efforts to administer and enforce its regulation of highly abusable substances, thereby reducing the opportunity for abuse or illegal diversion.

The 75th Texas Legislature authorized an annual fee of not more than \$25 to cover the cost of administering and enforcing the Texas Controlled Substances Act, Subchapter C. This subchapter regulates the manufacture, distribution, and dispensation of controlled substances, chemical precursors, and chemical laboratory apparatus.

No comments were received regarding adoption of the new section.

The new section is adopted pursuant to the Health and Safety Code, Chapter 481, Texas Controlled Substances Act, §481.064(a) and §481.003, which provides the director may adopt rules to administer and enforce this chapter.

This agency 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 October 12, 1998.

TRD-9815965
Dudley M. Thomas

Director
Texas Department of Public Safety
Effective date: November 1, 1998
Proposal publication date: September 4, 1998
For further information, please call: (512) 424-2890



Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

The Commission on Jail Standards adopts amendments to §259.115 and §259.216, concerning New Construction Rules, without changes to the proposed text as published in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9535) and will not be republished.

The sections were amended to delete the requirement for a designated line-up space.

No comments were received regarding adoption of the amendments.

Subchapter B. New Maximum Security Design, Construction and Furnishing Requirements

37 TAC §259.115

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency 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 October 19, 1998.

TRD-9816327
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: November 8, 1998
Proposal publication date: September 18, 1998
For further information, please call: (512) 463-5505



Subchapter C. New Lockup Design, Construction and Furnishing Requirements

37 TAC §259.216

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency 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 October 19, 1998.

TRD-9816328
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: November 8, 1998
Proposal publication date: September 18, 1998
For further information, please call: (512) 463-5505



Chapter 261. Existing Construction Rules

The Commission on Jail Standards adopts amendments to §261.115 and §261.215, concerning Existing Construction Rules, without changes to the proposed text as published in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9536) and will not be republished.

The sections were amended to delete the requirement for a designated line-up space.

No comments were received regarding adoption of the amendments.

Subchapter A. Existing Maximum Security

37 TAC §261.115

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency 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 October 19, 1998.

TRD-9816329
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: November 8, 1998
Proposal publication date: September 18, 1998
For further information, please call: (512) 463-5505



Subchapter B. Existing Lockup Design, Construction and Furnishing Requirements

37 TAC §261.215

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency 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 October 19, 1998.

TRD-9816330
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: November 8, 1998
Proposal publication date: September 18, 1998
For further information, please call: (512) 463-5505

◆ ◆ ◆
Chapter 300. Fees

Subchapter A. Fees for Designated Services

37 TAC §300.6

The Texas Commission on Jail Standards adopts the repeal of §300.6, concerning Fees, without changes to the proposed text as published in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9537) and will not be republished.

The section was repealed due to §300.2(4) having been previously added to include performance of technical assistance as designated services which are fee recoverable when provided for applicable facilities.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

This agency 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 October 19, 1998.

TRD-9816331
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: November 8, 1998
Proposal publication date: September 18, 1998
For further information, please call: (512) 463-5505

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XII. Texas Board of Occupational Therapy Examiners

Chapter 366. Application for License

40 TAC §366.1

The Texas Board of Occupational Therapy Examiners adopts amended §366.1., concerning Application for License, with changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8372).

The amended section is being adopted to ensure that licensees are aware of the rules under which they practice.

This amended section describes procedures for handling the jurisprudence exam as completed by applicants for licensure.

Comments were received regarding amendment of this section: comments supported the Jurisprudence Examination requirement, as improving licensee understanding and awareness of the rules.

Comments for the rule were made by individuals.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§366.1. Application for License.

(a) Individuals wishing to obtain an application for licensure can phone, fax, write or e-mail the board.

(b) Upon receipt of a request for application, the applicant will be sent a complete application packet containing an instruction sheet, application form, and any other information required by the board.

(c) An individual who makes application to the board in excess of 12 months after passing the NBCOT certification examination may need to meet additional continuing education requirements during the first year of licensure.

(d) A license may be issued upon receipt of a complete application (refer to §362.1 or this title (relating to Definitions)) and payment of the prescribed fee (refer to §375.1 of this title (relating to Fees) and §651.1 of the rules of the Executive Council of Physical Therapy and Occupational Therapy Examiners, Title 22, Part XXVIII (relating to fees) and upon meeting applicable requirements (refer to §364.1 of this title (relating to Requirements for Licensure)).

(e) Licensees are responsible for knowledge of Texas Civil Statutes, Article 8851, the Occupational Therapy Practice Act, and the Texas Board of Occupational Therapy Examiners' rules.

(f) All applicants must complete and return a board prepared jurisprudence examination (as defined in §362.1 of this title (relating to Definitions)). The test will be scored by TBOTE staff. At least 70% of questions must be answered correctly.

(1) A passing score on the jurisprudence examination will be noted in the application file, and the test will be returned to the applicant upon issuance of a license.

(2) A failing score on the jurisprudence examination will be noted in the application file and a new test will be sent to the applicant to complete. Once a passing score on the jurisprudence examination is achieved, that will be noted in the application file and the test will be returned to the applicant upon issuance of a license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 1998.

TRD-9815532
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Effective date: October 25, 1998
Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



Chapter 371. Inactive/Retiree Status

40 TAC §371.1

The Texas Board of Occupational Therapy Examiners adopts amended §371.1, concerning Inactive/Retiree Status, with changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8374). The description of the "jurisprudence examination" was changed to be consistent with other chapters. Language was added to clarify that board staff will score the examination.

This amended section, is being adopted to ensure that inactive licensees remain aware of the rules under which they practice.

This amended section describes how the requirement for a jurisprudence examination will be implemented for inactive licensees.

Comments, were received regarding amendment of this section: comments supported the Jurisprudence Examination requirement, as improving licensee understanding and awareness of the rules.

Comments for the rule were made by individuals.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§371.1. Inactive Status.

A request for a change to inactive status, in accordance with §25A of the Act, may only be made at renewal date.

(1) A written request to change a regular license in good standing from active to inactive status must be postmarked prior to the expiration date of the license. The request must include the appropriate fee and proof of having met the continuing education renewal requirements for that renewal cycle.

(2) A licensee may remain on inactive status for a period of no more than six consecutive years. A licensee must submit a written petition to the board requesting an extension of inactive status for more than six years.

(3) A licensee requesting to re-enter active status after more than six consecutive years without the prior approval of the board may not renew his/her license. In order to obtain licensure, the individual must again pass the Examination and comply with the requirements and procedures for obtaining an extended temporary license.

(4) A licensee on inactive status shall be required to complete the continuing education.

(5) A licensee on inactive status must complete and return a board prepared jurisprudence examination (as defined in §362.1 (relating to Definitions)) at the time of renewal for either inactive or active status. The test will be scored by TBOTE staff. At least 70% of questions must be answered correctly.

(6) A licensee on inactive status will not have to pay a renewal fee but will have to pay an appropriate late fee if he/she does not notify the board prior to the expiration of the license of his/her intent to remain on inactive status. A licensee will have to pay a fee to change to active status.

(7) A licensee may not represent himself/herself as an OTR, LOT, COTA or LOTA while on inactive status.

This agency 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 October 5, 1998.

TRD-9815530

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: October 25, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



Chapter 373. Supervision

40 TAC §373.1

The Texas Board of Occupational Therapy Examiners adopts amended §373.1, concerning Supervision, with changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8375). The changes provide consistent capitalization for aides or orderlies and consistent reference to COTAs, LOTAs and provisional licensees.

This amended section, is being adopted to clarify the roles for various persons delivering OT services, and to ensure that decisions requiring professional judgment are made by persons with appropriate training.

This amended section does the following:

Concerning COTAs:

Clarifies the requirements for recording supervision on the supervisory log.

Makes a blanket statement that tasks delegated must be those that the OTR or LOT and COTA or LOTA agree are within the competency of the COTA or LOTA.

Limits the role of the COTA or LOTA in evaluation to the collection of data and information.

Requires that the OTR or LOT have face-to-face interaction with the patient during evaluation.

Clarifies that the OTR or LOT is responsible for the evaluation, including tasks delegated to COTAs or LOTAs.

Requires that only the OTR or LOT can modify the plan of care.

Clarifies requirements for the co-signature of case notes and for discharge of patients.

Concerning aides:

Requires that a licensee interact substantively with the patient during each treatment session with an aide.

Concerning temporary licensees:

A temporary licensee may not supervise a COTA or LOTA. This was implied but not explicit in the existing language.

The supervisory log requirements are structured parallel to the requirements for COTAs.

Concerning provisional licensees:

This language is put at a higher level in the outline, without substantive change.

Comments were received regarding amendment of this section: Some individuals commented that the changes would help ensure that tasks were not inappropriately delegated to COTAs, LOTAs or Aides. Some individuals commented that the requirement for face-to-face contact between patient and OTR or LOT during evaluation would be an unnecessary hardship in certain MHMR settings. While these individuals supported face-to-face interaction during the initial evaluation, they felt that there were re-evaluations that did not require such interaction.

Similarly, some individuals commented that the requirement for interaction between a licensee and the patient during each treatment session was an unnecessary hardship in certain MHMR settings. Those individuals felt that not all patients would require such interaction in all treatment sessions. If they did require such interaction, they should be treated by a licensee, not an aide.

Comments were also received from THA, the Texas Association of Hospitals and Health Care Organizations, after the end of the comment period and after the board had voted to adopt the rules. This organization also commented that the requirement for interaction between patient and licensee would be a hardship. The organization noted that patients varied in their need for licensee interaction, so that a blanket statement was inappropriate. They also stated that the requirement would make care inefficient, since the licensee would be required to move from one floor of a hospital to another to make contact, or interrupt a planning session with one patient to make contact with another. The organization also stated that OT personnel could not be used in the same way as other professionals, since OT aides could not be used as care extenders in the same way that physician assistants or nurse assistants are used as care extenders. The organization recommend that a licensee be required to interact with the patient on a daily basis, not at each treatment session.

Comments for and against the rule were made by individuals, as indicated above. Comments against the rule were also made by THA, as indicated above.

This agency responds that it finds the proposed rules provide for appropriate limits on the delegation of tasks that require professional judgement. Although practitioners in some settings may experience a slight lessening of efficiency, the board's priority is the benefit to the consumer that will result from appropriate professional supervision of non-skilled care extenders.

Concerning evaluation, note that the board defines evaluation as "a process of determining an individual's status for the purpose of determining the need for occupational therapy services...". Only an OTR or LOT is trained to make such a determination. If a patient is receiving interim status updates that are not full evaluations, the updates could be delegated to COTAs or LOTAs. On the other hand, a full scale re-evaluation requires a level of judgement for which a COTA or LOTA is not trained.

Concerning direct interaction between a licensee and the patient or client during treatment by an aide, note that only a licensee is trained to identify changes in the patient's condition that may require professional intervention.

Concerning the other comments of the Texas Hospital Association, note that the rules have for several years required that

aides work under "close personal supervision" which "Implies direct, on-site contact whereby the supervising OTR, LOT, COTA or LOTA is able to respond immediately to the needs of the patient." (In the definitions chapter, §362.1(8)) This standard cannot be met if the therapist is a floor away from the aide and patient during treatment. We presume, therefore, that OT licensees are near enough to the patient to have interaction without serious inefficiency. The proposed changes do not require that the interaction between patient and licensee be extensive, merely that it occur each time and make note of the patient's condition or progress.

The proposed rules set standards for the interaction of OT professionals with patients being treated by aides that are identical to the standards applied to Physical Therapy professionals. This does not appear to "place OT personnel in a different class than other care extenders" as noted by THA. The comparison to physician assistants and nursing assistants is not accurate. PAs and CNAs have extensive education and training in their respective fields, and are professionals in their own right. OT aides and orderlies have no education in the field of occupational therapy. They are non-skilled employees, trained at each job site only to carry out tasks appropriate to the work done at that site.

Finally, THA suggests alternative language that would require daily interaction. Daily interaction would, however, be seriously inefficient in a number of other settings where patients or clients receive services on a less than daily basis.

The rule is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§373.1. *Supervision.*

(a) Occupational Therapists, Registered or Licensed Occupational Therapists (OTRs or LOTs) are fully responsible for the planning and delivery of occupational therapy services.

(1) The supervising OTR or LOT is responsible for providing the supervision necessary to protect the health and welfare of the consumer receiving OT services from a COTA, LOTA, temporary licensee or OT Aide or Orderly.

(2) OTRs or LOTs must ensure that tasks appropriate for a COTA, LOTA or temporary licensee are not delegated to persons without current licenses.

(3) The COTA, LOTA or temporary licensee is responsible for the execution of his or her professional duties.

(b) Supervision of a COTA or an LOTA.

(1) The OTR or LOT shall delegate responsibilities to the COTA or LOTA that are within the scope of his or her training.

(2) A COTA or LOTA shall provide occupational therapy services only under the general supervision of a licensed OTR or LOT. (See Chapter 362 of this title (relating to Definitions))

(A) General supervision (See Chapter 362 of this title (relating to Definitions)) of COTAs or LOTAs must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. COTAs and LOTAs employed part time or with more than one employer shall pro rate the required documented supervision.

(i) The "Occupational Therapy Supervision Log" must be kept by the COTA or LOTA and a copy of this form must be maintained by each employer.

(ii) The "Occupational Therapy Supervision Log" must be submitted to TBOTE with the COTA's or LOTA's renewal application.

(B) The supervising OTR or LOT need not be physically present or on the premises at all times.

(3) Except where otherwise restricted by rule, the supervising OTR or LOT may only delegate tasks to a COTA or LOTA that the OTR or LOT and COTA or LOTA agree are within the competency level of that COTA or LOTA.

(A) A COTA or LOTA may initiate and perform the screening process and collect information for the OTR's or LOT's review. The OTR or LOT is responsible for determining if intervention is needed and if a physician's referral is required for evaluation and/or occupational therapy intervention.

(B) An OTR or LOT is responsible for the patient's evaluation/assessment. The supervising OTR or LOT may delegate to a COTA or LOTA the collection of data or information for the evaluation.

(i) The OTR or LOT is responsible for the accuracy of evaluative information collected by the COTA or LOTA.

(ii) The OTR or LOT must have face-to-face interaction with the patient or client during the evaluation process.

(C) Only an OTR or LOT may develop or modify an Occupational Therapy plan of care (refer to §362.1 of this title (relating to Definitions)).

(D) The OTR or LOT is responsible for the content and validity of the discharge summary and must sign the discharge summary.

(4) It is the responsibility of the OTR or LOT and the COTA or LOTA to ensure that all documentation prepared by the COTA or LOTA which becomes part of the patient's/client's permanent record is approved and co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initialed by the OTR or LOT and signed at the bottom of each page.

(5) These rules shall not preclude the COTA or LOTA from responding to emergency situations in the patient's condition which require immediate action.

(c) Supervision of an OT Aide or OT Orderly.

(1) When an OTR, LOT, COTA and/or LOTA delegates OT tasks to an aide or orderly, the OTR, LOT, COTA and/or LOTA is responsible for the aide's actions during patient contact on the delegated tasks. The licensee is responsible for ensuring that the aide is adequately trained in the tasks delegated.

(2) The OTR, LOT, COTA or LOTA must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.

(3) An OTR, LOT, COTA and/or LOTA using OT Aide or OT Orderly personnel to assist with the provision of occupational therapy services must provide close personal supervision in order to protect the health and welfare of the consumer. (See Chapter 362 of this title (relating to Definitions))

(4) Delegation of tasks to OT Aides or OT Orderlies.

(A) The primary function of an OT Aide or OT Orderly functioning in an occupational therapy setting is to perform designated routine tasks related to the operation of an occupational therapy service. An OTR, LOT, COTA and/or LOTA may delegate to an OT Aide or OT Orderly only specific tasks which are not evaluative or recommending in nature, and only after insuring that the OT Aide or OT Orderly has been properly trained for the performance of the tasks. Such tasks include, but are not limited to:

(i) routine department maintenance;

(ii) transportation of patients/clients;

(iii) preparation or setting up of treatment equipment and work area;

(iv) assisting patients/clients with their personal needs during treatment;

(v) assisting in the construction of adaptive equipment and splints;

(vi) clerical, secretarial, administrative activities;

(vii) carrying out a predetermined segment or task in the patient's care.

(B) The OTR, LOT, COTA and/or LOTA shall not delegate to an OT Aide or OT Orderly:

(i) performance of occupational therapy evaluative procedures;

(ii) initiation, planning, adjustment, modification, or performance of occupational therapy procedures requiring the skills or judgment of an OTR, LOT, COTA or LOTA;

(iii) making occupational therapy entries directly in patients' or clients' official records;

(iv) acting on behalf of the occupational therapist in any matter related to occupational therapy which requires decision making or professional judgment.

(d) Supervision of an occupational therapist or an occupational therapy assistant with a temporary license.

(1) A person issued a temporary occupational therapy license must practice occupational therapy under the continuing supervision of an OTR or LOT. (See Chapter 362 of this title (relating to Definitions))

(2) A minimum of 16 hours of supervision per month for full time OTAs must be documented on an "Occupational Therapy Supervision Log" prescribed by the board. OTAs employed part time or with more than one employer shall prorate the required documented supervision. If the OTA is employed less than 20 hours per week, a minimum of eight hours of supervision is required per month.

(A) The "Occupational Therapy Supervision Log" must be kept by the OTA and a copy of this form must be maintained by each employer.

(B) The "Occupational Therapy Supervision Log" must be submitted to TBOTE with the COTA's first renewal application after regular licensure.

(3) The temporary licensee must certify to the board the name, license number, and address of his or her supervisor on a form provided by the board during the application process.

(4) The temporary licensee must notify the board within 15 days of a change in the OTR or LOT supervisor.

(5) The temporary licensee shall not supervise an occupational therapy student, a COTA or LOTA, an occupational therapy assistant or an OT Aide or OT Orderly.

(6) All documentation completed by an individual holding a temporary license which becomes part of the patient's/client's permanent file must be approved and co-signed by the supervising OTR or LOT. Occupational Therapy notes must be initialed by the OTR or LOT and signed at the bottom of each page.

(e) Supervision of Provisional Licensees.

(1) OTRs and LOTs with provisional licenses are excluded from supervision requirements.

(2) COTAs and LOTAs with provisional licenses will require general supervision by a licensed OTR or LOT.

This agency 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 October 5, 1998.

TRD-9815546

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: October 25, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Actions on Rules

The Commissioner of Insurance, at a public hearing under Docket Number 2374 held at 9:00 a.m., September 23, 1998 in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1995, 1997, 1998, and 1999 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0798-18-I) was published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7853).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 1995, 1997, 1998, and 1999 model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0798-18-I, which are incorporated by reference into Commissioner's Order Number 98-1198.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on December 1, 1998.

This agency hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9816335

Lynda H. Nesenholtz
General Counsel

Texas Department of Insurance

Filed: October 19, 1998



The Commissioner of Insurance, at a public hearing under Docket Number 2377 held at 9:00 a.m., September 23, 1998 in Room 102 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual), Endorsement 523B, Rental Reimbursement Coverage. Staff's petition (Reference Number A-0798-21-I) was published in the July 31, 1998 issue of the *Texas Register* (23 TexReg 7854).

The Manual's Personal Auto Policy Endorsement 523B (to be redesignated 523C), Rental Reimbursement Coverage, is amended to remove the provision that excludes coverage when there is a total theft of the auto. New language is substituted as follows:

"When there is a total theft of the auto, the limit of \$20 per day (maximum of \$600) provided under Coverage For Damage To Your Auto will be supplemented to the extent the limits in the above Schedule exceed that \$20 per day limit."

Since August 1, 1996, insureds under the Personal Auto Policy have had the option of purchasing variable limits of rental reimbursement coverage, up to \$35 per day (maximum of \$1,050) through attachment of Endorsement 523B. However, that endorsement has not applied to total theft of the auto, which is covered up to \$20 per day (maximum of \$600) by the policy's Part D - Coverage For Damage To Your Auto. The adopted amendment gives a more logical result than the current endorsement's language, because an insured who wants \$35 per day coverage will need it just as much for a total theft loss as for any other loss that puts the auto out of service.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0798-21-I, which are incorporated by reference into Commissioner's Order Number 98-1200.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.06, 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on December 1, 1998.

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TRD-9816334
Lynda H. Neseholtz
General Counsel
Texas Department of Insurance
Filed: October 19, 1998

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== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the review of 30 TAC Chapter 238, concerning Water Well Drillers Rules, and 30 TAC Chapter 340, concerning Licensing Requirements and Complaint Procedures for Water Well Drillers and Pump Installers.

This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. Section 167 requires state agencies to review, and consider for re-adoption, rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist.

The commission has reviewed the rules in Chapter 238 and 340, and determined that the reasons for adopting these rules no longer exist. The rules govern the licensing and occupational certification programs for water well drillers and pump installers. These programs were transferred from the commission to the Texas Department of Licensing and Regulation (TDLR), due to legislative changes to Chapters 32 and 33 of the Texas Water Code. The rules are no longer necessary because TDLR is in the process of adopting rules under Chapters 32 and 33 of the Texas Water Code.

The commission concurrently proposes the repeal of these chapters in the Proposed Rules section of this issue of the *Texas Register*.

Comments on the commission's review of the rules contained in Chapter 238 and 340, may be mailed to Lutrecia Oshoko, TNRCC, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97144-238-WT. Written comments must be received by 5:00 p.m., 30 days from the date of publication in the *Texas Register*. For further information or questions concerning this proposal, please contact Carol Kim, Water Policy Division, at (512) 239-3670.

TRD-9816436

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: October 21, 1998

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Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review §23.15 relating to Local Exchange Company Assessment and §23.108 relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs) pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167). Project Number 17709 has been assigned to the review of these sections.

As part of this review process, the commission is proposing the repeal of §23.15 and §23.108 and is proposing new §26.7 relating to Local Exchange Company Assessment and new §26.175 relating to Reclassification of Telecommunications Services for Electing Incumbent Local Exchange Carriers (ILECs) to replace these sections. The proposed repeals and new sections may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the commission will accept comments regarding whether the reason for adopting the rules continues to exist in the comments filed on the proposed new sections.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas, 78711-3326 or at voice telephone (512) 936-7308.

TRD-9816289

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 16, 1998

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Texas Workers' Compensation Commission

Title 28, Part II

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 126 concerning

General Provisions Applicable to All Benefits and Chapter 104 concerning Rule-making. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, 1997.

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt these rules.

Comments regarding the §167 requirement as to whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on November 30, 1998, and submitted to Donna Davila, Office of General Counsel, Mailstop number 4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas, 78704-7491.

- §104.1. Contents of Rule-Making Petitions.
- §126.2. Payment of Benefits to Minors.
- §126.3. Payment of Benefits to Legally Incompetent Persons.
- §126.4. Advance of Benefits Based on Financial Hardship.
- §126.5. Procedure for Requesting Required Medical Examinations.
- §126.6. Order for Required Medical Examinations.
- §126.8. Commission-Approved Doctor List.
- §126.9. Choice of Treating Doctor and Liability for Payment.
- §126.10. Commission Approved List of Designated Doctors.
- §126.11. Extension of the Date of Maximum Medical Improvement for Spinal Surgery.

TRD-9816326
Susan M. Cory
General Counsel
Texas Workers' Compensation Commission
Filed: October 19, 1998



Adopted Rule Reviews

Texas Credit Union Department

Title 7, Part VI

The Credit Union Commission readopts, without changes, 7 TAC §97.101 Meetings, 7 TAC §97.102 Delegation of Duties, 7 TAC

§97.105 Frequency of Examination, and 7 TAC §97.114 Charges for Public Records, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. The proposed review was published in the July 31, 1998, issue of the *Texas Register* (23 TexReg 7855).

The Credit Union Commission received no comments related to the rule review requirement as to whether the reason for adopting each rule continues to exist. The Commission finds that the reasons for adopting 7 TAC §§97.101, 97.102, 97.105 and 97.114 continue to exist.

TRD-9816433
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: October 21, 1998



Board of Vocational Nurse Examiners

Title 22, Part XII

In accordance with the Appropriations Act 167, the Board of Vocational Nurse Examiners reviewed Chapter 239 of the Rules and Regulations Relating to Vocational Nursing Education, Licensure, and Practice in the State of Texas for re-adoption or amendment at the September 14-15, 1998, Board Meeting.

The Board readopted all rules in Chapter 239 with the exception of the following rules which will published in a future issue of the *Texas Register* for amendment: §§239.1, 239.11, 239.12, 239.16 and 239.18.

Comments on the review may be submitted to Linda Rae Kent, Executive Assistant, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

TRD-9816168
Joy Fleming, RN, MSN
Director of Education
Board of Vocational Nurse Examiners
Filed: October 15, 1998



TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 4 TAC §20.22(a)

Pest Mgmt Zone	Planting Dates	Destruction deadline	Destruction Method (also see footnotes)
1	Feb. 1 - March 31	September 1	Shred and plow a,b
2 - Area 1	No dates set	September 15	Shred and plow a,b
2 - Area 2	No dates set	September 15	Shred and plow a,b
2 - Area 3	No dates set	September 25	Shred and plow a,b
2 - Area 4 <u>Calhoun</u> <u>and</u> <u>Refugio</u> <u>Counties</u> <u>only</u>	No dates set	October <u>25</u> {11}	Shred and plow a,b
2 - Area 4 <u>Goliad,</u> <u>LaSalle,</u> <u>McMullen,</u> <u>Victoria,</u> <u>north and</u> <u>west of</u> <u>U.S.</u> <u>Highway 59</u> <u>in Bee and</u> <u>Live Oak</u> <u>counties</u>	<u>No dates set</u>	<u>October 1</u>	<u>Shred and plow a,b</u>
3 - Area 1	March 5 - May 15	October 1	shred and plow a,b
3 - Area 2	March 5 - May 15	October 15	shred and plow a,b
4	No dates set	October 10	shred and plow a,b
5	No dates set	October 20	shred and/or plow a,c
6	No dates set	October 31	shred and/or plow a,c
7	March 20 - May 31	November 30	shred and/or plow a,c
8	March 20 - May 31	November 30	shred and/or plow a,c
9	No dates set	February 1	shred and plow b,d
10	No dates set	February 1	shred and plow b,d

a/ Alternative destruction methods are allowed (see paragraph (b)).

b/ Destruction shall be performed in a manner to prohibit the presence of live cotton plants.

Figure: 4 TAC §20.22(a)

c/ Destruction shall periodically be performed to prevent presence of fruiting structures.

d/ Soil shall be tilled to a depth of 2 or more inches in Zone 9, and to a depth of 6 or more inches in Zone 10.

Figure: 25 TAC §295.11(f)

Severity Level of Violation	First Occurrence	Second Occurrence	Subsequent Occurrence
Minor	\$50	\$ 75	\$100
Serious	\$100	\$150	\$200
Severe	\$200	\$250	\$300
Critical	\$300	\$400	\$500

NOTICE TO EMPLOYEES

The Texas Hazard Communication Act (revised 1993), codified as Chapter 502 of the Texas Health and Safety Code, requires public employers to provide employees with specific information on the hazards of chemicals to which employees may be exposed in the workplace. As required by law, your employer must provide you with certain information and training. A brief summary of the law follows.

HAZARDOUS CHEMICALS

Hazardous chemicals are any products or materials that present any physical or health hazards when used, unless they are exempted under the law. Some examples of more commonly used hazardous chemicals are fuels, cleaning products, solvents, many types of oils, compressed gases, many types of paints, pesticides, herbicides, refrigerants, laboratory chemicals, cement, welding rods, etc.

WORKPLACE CHEMICAL LIST

Employers must develop a list of hazardous chemicals used or stored in the workplace in excess of 55 gallons or 500 pounds. This list shall be updated by the employer as necessary, but at least annually, and be made readily available for employees and their representatives on request.

EMPLOYEE EDUCATION PROGRAM

Employers shall provide training to newly assigned employees before the employees work in a work area containing a hazardous chemical. Covered employees shall receive training from the employer on the hazards of the chemicals and on measures they can take to protect themselves from those hazards. This training shall be repeated as needed, but at least whenever new hazards are introduced into the workplace or new information is received on the chemicals which are already present.

MATERIAL SAFETY DATA SHEETS

Employees who may be exposed to hazardous chemicals shall be informed of the exposure by the employer and shall have ready access to the most current material safety data sheets (MSDSs), which detail physical and health hazards and other pertinent information on those chemicals.

LABELS

Employees shall not be required to work with hazardous chemicals from unlabeled containers, except portable containers for immediate use, the contents of which are known to the user.

EMPLOYEE RIGHTS

Employees have rights to:

- access copies of MSDSs
- information on their chemical exposures
- receive training on chemical hazards
- receive appropriate protective equipment
- file complaints, assist inspectors, or testify against their employer

Employees may not be discharged or discriminated against in any manner for the exercise of any rights provided by this Act. A waiver of employee rights is void; an employer's request for such a waiver is a violation of the Act. Employees may file complaints with the Texas Department of Health at the toll free number provided below.

EMPLOYERS MAY BE SUBJECT TO ADMINISTRATIVE PENALTIES AND CIVIL OR CRIMINAL FINES RANGING FROM \$50 TO \$100,000 FOR EACH VIOLATION OF THIS ACT.

Further information may be obtained from:

Texas Department of Health
Toxic Substances Control Division
Hazard Communication Branch
1100 West 49th Street
Austin, Texas 78756

1-800-452-2791
(512) 834-6603
Fax: (512) 834-6644



Texas Water Development Board
Figure: 31 TAC §371.19(a)(3)

Carcinogenic Contaminants

CONTAMINANT	MCL(mg/l except where otherwise stated)
Alachlor	0.002
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004
Carbon tetrachloride	0.005
Chlordane	0.002
Dibromochloropropane	0.0002
Di(ethylhexyl)phthalate	0.006
Dichloroethane 1,2-	0.005
Dichloromethane	0.005
Dichloropropane 1,2-	0.005
Ethylene dibromide	0.00005
Gross alpha adjusted	15 pCi/l
Hephlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001
Radium 226 & 228	5 pCi/l
Tetrachloroethylene	0.005
Total Trihalomethane	0.1
Toxaphene	0.003
Trichloroethylene	0.005
2,3,7,8-TCDD (Dioxin)	0.00000003
Vinyl Chloride	0.002

Texas Water Development Board
 Figure: 31 TAC §371.19(a)(4)

Chronic Chemical Contaminants

CONTAMINANT	MCL (mg/l)*	CONTAMINANT	MCL (mg/l)*
Aldicarb	0.003	Picloram	0.5
Aldicarb sulfone	0.003	Selenium	0.05
Aldicarb sulfoxide	0.003	Simazine	0.004
Antimony	0.006	Styrene	0.1
Arsenic	0.05	Thallium	0.002
Asbestos	7 million fibers/liter	Toluene	1
Atrazine	0.003	Trichlorobenzene 1,2,4-	0.07
Barium	2	Trichloroethane 1,1,1-	0.2
Cadmium	0.005	Trichloroethane 1,1,2-	0.005
Carbofuran	0.04	Xylene	10
Chromium	0.1	2,4,5-TP	0.05
Copper	1.3	2,4-D	0.07
Cyanide	0.2		
Dalapon	0.2	*except where otherwise stated	
Di(ethylhexyl)adipate	0.4		
Dichlorobenzene ortho-	0.6		
Dichlorobenzene para-	0.075		
Dichloroethylene 1,1-	0.007		
Dichloroethylene cis-1,2-	0.07		
Dichloroethylene tran-1,2	0.1		
Dinoseb	0.007		
Diquat	0.02		
Endothall	0.1		
Endrin	0.002		
Ethylbenzene	0.7		
Fluoride	4		
Glyphosate	0.7		
Hexachlorocyclopentadiene	0.05		
Lindane	0.0002		
Mercury	0.002		
Methoxychlor	0.04		
Monochlorobenzene	0.1		
Nickel	0.1		
Oxamyl (vydate)	0.2		

Texas Water Development Board
Figure: 31 TAC §371.19(a)(11)

Secondary Chemical Constituents

CONSTITUENT	LEVEL (mg/l except where otherwise stated)	SECONDARY CHEMICAL FACTOR
Aluminum	0.05 to 0.2	Yes
Chloride	300	No
Color	15 color units	No
Copper	1.0	No
Corrosivity	Non-corrosive	No
Fluoride	2.0	No
Foaming agents	0.5	No
Hydrogen sulfide	0.05	No
Iron	0.3	No
Manganese	0.05	No
Odor	3 Threshold Odor Number	No
pH	≥ 7.0 pH units	No
Silver	0.10	No
Sulfate	300	Yes
Total Dissolved Solids	1,000	Yes
Zinc	5.0	No

Texas Water Development Board
 Figure: 31 TAC §371.19(c)(3)

Chronic Chemical Contaminants

CONTAMINANT	MCL (mg/l)*	CONTAMINANT	MCL (mg/l)*
Aldicarb	0.003	Picloram	0.5
Aldicarb sulfone	0.003	Selenium	0.05
Aldicarb sulfoxide	0.003	Simazine	0.004
Antimony	0.006	Styrene	0.1
Arsenic	0.05	Thallium	0.002
Asbestos	7 million fibers/liter	Toluene	1
Atrazine	0.003	Trichlorobenzene 1,2,4-	0.07
Barium	2	Trichloroethane 1,1,1-	0.2
Cadmium	0.005	Trichloroethane 1,1,2-	0.005
Carbofuran	0.04	Xylene	10
Chromium	0.1	2,4,5-TP	0.05
Copper	1.3	2,4-D	0.07
Cyanide	0.2		
Dalapon	0.2	*except where otherwise stated	
Di(ethylhexyl)adipate	0.4		
Dichlorobenzene ortho-	0.6		
Dichlorobenzene para-	0.075		
Dichloroethylene 1,1-	0.007		
Dichloroethylene cis-1,2-	0.07		
Dichloroethylene tran-1,2	0.1		
Dinoseb	0.007		
Diquat	0.02		
Endothall	0.1		
Endrin	0.002		
Ethylbenzene	0.7		
Fluoride	4		
Glyphosate	0.7		
Hexachlorocyclopentadiene	0.05		
Lindane	0.0002		
Mercury	0.002		
Methoxychlor	0.04		
Monochlorobenzene	0.1		
Nickel	0.1		
Oxamyl (vydate)	0.2		

Texas Water Development Board
Figure: 31 TAC §371.19(c)(5)

Carcinogenic Contaminants

CONTAMINANT	MCL(mg/l except where otherwise stated)
Alachlor	0.002
Benzene	0.005
Benzo(a)pyrene	0.0002
Beryllium	0.004
Carbon tetrachloride	0.005
Chlordane	0.002
Dibromochloropropane	0.0002
Di(ethylhexyl)phthalate	0.006
Dichloroethane 1,2-	0.005
Dichloromethane	0.005
Dichloropropane 1,2-	0.005
Ethylene dibromide	0.00005
Gross alpha adjusted	15 pCi/l
Hephlor	0.0004
Heptachlor epoxide	0.0002
Hexachlorobenzene	0.001
Polychlorinated biphenyls	0.0005
Pentachlorophenol	0.001
Radium 226 & 228	5 pCi/l
Tetrachloroethylene	0.005
Total Trihalomethane	0.1
Toxaphene	0.003
Trichloroethylene	0.005
2,3,7,8-TCDD (Dioxin)	0.00000003
Vinyl Chloride	0.002

Texas Water Development Board
Figure: 31 TAC §371.19(c)(8)

Secondary Chemical Constituents

CONSTITUENT	LEVEL (mg/l except where otherwise stated)	SECONDARY CHEMICAL FACTOR
Aluminum	0.05 to 0.2	Yes
Chloride	300	No
Color	15 color units	No
Copper	1.0	No
Corrosivity	Non-corrosive	No
Fluoride	2.0	No
Foaming agents	0.5	No
Hydrogen sulfide	0.05	No
Iron	0.3	No
Manganese	0.05	No
Odor	3 Threshold Odor Number	No
pH	≥7.0 pH units	No
Silver	0.10	No
Sulfate	300	Yes
Total Dissolved Solids	1,000	Yes
Zinc	5.0	No

Texas Water Development Board
Figure: 31 TAC §371.19(f)(7)

Secondary Chemical Constituents

CONSTITUENT	LEVEL (mg/l except where otherwise stated)	SECONDARY CHEMICAL FACTOR
Aluminum	0.05 to 0.2	Yes
Chloride	300	No
Color	15 color units	No
Copper	1.0	No
Corrosivity	Non-corrosive	No
Fluoride	2.0	No
Foaming agents	0.5	No
Hydrogen sulfide	0.05	No
Iron	0.3	No
Manganese	0.05	No
Odor	3 Threshold Odor Number	No
pH	≥ 7.0 pH units	No
Silver	0.10	No
Sulfate	300	Yes
Total Dissolved Solids	1,000	Yes
Zinc	5.0	No

Texas Water Development Board
 Figure: 31 TAC §371.19(j)(1)(D)

Organic Chemical Contaminants

CONTAMINANT	CONTAMINANT
2,4,5-TP	Lindane
2,4-D	Methoxychlor
Acrylamide	Monochlorobenzene
Alachlor	Oxamyl (vydate)
Aldicarb	PAHs[Benzo(a)pyrene]
Aldicarb sulfone	PCBs
Aldicarb sulfoxide	Pentachlorophenol
Atrazine	Picloram
Benzene	Simazine
Carbofuran	Styrene
Carbon tetrachloride	TCDD-2,3,7,8 (Dioxin)
Chlordane	Tetrachloroethylene
Cyanide	Toluene
DBCP	Toxaphene
Dalapon	Trichlorobenzene 1,2,4-
Di(ethylhexyl)adipate	Trichloroethane 1,1,1-
Di(ethylhexyl)phthalate	Trichloroethane 1,1,2-
Dichlorobenzene ortho-	Trichloroethylene
Dichlorobenzene para-	Vinyl chloride
Dichloroethane 1,2-	Xylene
Dichloroethylene 1,1-	
Dichloroethylene cis-1,2-	
Dichloroethylene tran-1,2-	
Dichloromethane	
Dichloropropane 1,2-	
Dinoseb	
Diquat	
EDB	
Endothall	
Endrin	
Epichlorohydrin	
Ethylbenzene	
Glyphosate	
Heptachlor	
Heptachlor epoxide	
Hexachlorobenzene	
Hexachlorocyclopentadiene	

Texas Water Development Board
Figure: 31 TAC §371.19(j)(2)(B)

Organic Chemical Contaminants

CONTAMINANT	CONTAMINANT
2,4,5-TP	Lindane
2,4-D	Methoxychlor
Acrylamide	Monochlorobenzene
Alachlor	Oxamyl (vydate)
Aldicarb	PAHs[Benzo(a)pyrene]
Aldicarb sulfone	PCBs
Aldicarb sulfoxide	Pentachlorophenol
Atrazine	Picloram
Benzene	Simazine
Carbofuran	Styrene
Carbon tetrachloride	TCDD-2,3,7,8 (Dioxin)
Chlordane	Tetrachloroethylene
Cyanide	Toluene
DBCP	Toxaphene
Dalapon	Trichlorobenzene 1,2,4-
Di(ethylhexyl)adipate	Trichloroethane 1,1,1-
Di(ethylhexyl)phthalate	Trichloroethane 1,1,2-
Dichlorobenzene ortho-	Trichloroethylene
Dichlorobenzene para-	Vinyl chloride
Dichloroethane 1,2-	Xylene
Dichloroethylene 1,1-	
Dichloroethylene cis-1,2-	
Dichloroethylene tran-1,2	
Dichloromethane	
Dichloropropane 1,2-	
Dinoseb	
Diquat	
EDB	
Endothall	
Endrin	
Epichlorohydrin	
Ethylbenzene	
Glyphosate	
Heptachlor	
Heptachlor epoxide	
Hexachlorobenzene	
Hexachlorocyclopentadiene	

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Thursday, October 29, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

AGENDA:

Information Conferences

1. 97-09-29L

2. 98-04-04L

3. 97-07-18L

Discussion Item

1. Kenneth Skrabanck Contract

Reapplications

1. James D. Ryington

2. Dolores L. Stuckey

Investigations

1. 98-01-58L

2. 98-01-59L

3. 98-07-01L

4. 98-07-02L

5. 98-08-08L

6. 98-08-41L

7. 98-07-11L

8. 98-08-05L

9. 98-07-10L

10. 98-03-04L

All discussion of investigative files will be in Executive Session.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 16, 1998, 10:47 a.m.

TRD-9816224



Thursday, October 29, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Technical Standards Review Committee

REVISED AGENDA:

Investigations

11. 98-08-09L

All discussion of investigative files will be in Executive Session.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 16, 1998, 4:20 p.m.

TRD-9816298



Friday, October 30, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Behavioral Enforcement Committee

AGENDA:

A. Investigations

1. File No. 98-07-07L
2. File No. 96-12-05L
3. File No. 98-07-06L
4. File No. 98-07-14L
5. File No. 98-03-21L
6. File No. 98-07-03L
7. File No. 98-02-03L
8. File No. 98-06-05L
9. File No. 97-12-14L
10. File No. 98-06-07L
11. File No. 98-07-13L
12. File No. 98-03-19L

B. Discussion Items

1. Horne CPA Group 501.47
2. Kennemer, Masters, Koester and Wallace, LLC

C. Informal Conferences

1. File No. 98-03-27L
2. File No. 97-10-25L

All discussion of investigative files will be in Executive Session.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: October 14, 1998, 2:58 p.m.

TRD-9816108



State Office of Administrative Hearings

Monday, November 2, 1998, 10:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

A Prehearing Conference is scheduled for the above data and time in SOAH Docket No. 473-98-1916-Application or Corpus Christi Power and Light Company for a Certificate of Convenience and Necessity in Nueces and San Patricio Counties (PUC Docket No. 19950).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: October 20, 1998, 2:40 p.m.

TRD-9816399



Tuesday, December 15, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

Hearing on the Merits is scheduled for the above data and time in SOAH Docket No. 473-98-1457; PUC Docket No. 19461; Application of Southwest Bell Telephone Company to Introduce a New Optional Service, Nationwide Listing Service, Pursuant to PUC Substantive Rule 23.25.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: October 19, 1998, 9:32 a.m.

TRD-9816318



Texas Aerospace Commission

Wednesday, October 21, 1998, 9:00 a.m.

1700 N. Congress Avenue, Ste. B-60

Austin

Commissioners Bi-Monthly Meeting

AGENDA:

1. Welcome and Call to Order by the Chairman
2. Approval of the Minutes of the August 21, 1998 Bi-Monthly Meeting
3. Staff Reports and Discussion
4. Old Business
5. New Business
6. Summary of Votes, Orders, Decisions, or Other Actions Taken at This Meeting
7. Adjournment

Contact: Tom Moser, Texas Aerospace Commission, PO Box 12088, Austin, Texas, 78711-2088, 512/936-4822

Filed: October 16, 1998, 12:58 p.m.

TRD-9816243



Texas Commission on Alcohol and Drug Abuse

Tuesday, October 27, 1998, 10:00 a.m.

9001 North IH35, Suite 105, Whitney Jordan Plaza at North IH35 and Rundberg

Austin

Board of Commissioners

AGENDA:

Action items: criteria for fiscal year 2000 request for proposals, criteria for request for proposals on Texas Prevention Collaborative, and internal audit plan.

Contact: Terry F. Bleier, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, 512/349-6602.

Filed: October 16, 1998, 10:47 a.m.

TRD-9816225



Tuesday, October 27, 1998, 10:00 a.m.

9001 North IH35, Suite 105, Whitney Jordan Plaza at North IH35 and Rundberg

Austin

Board of Commissioners

AGENDA:

Call to order; approval of August 4, 1998 minutes; chairman's report executive director's report; public comment; information items: compliance coordination audit plan, NorthSTAR update, briefing on unit rate studies, budget update, and prevention/managed care task force; action item: approval of RAC membership in Region 10; action items: agreed final orders in the matters of Teen Connection Alcohol Education Program for Minors, Leadership Development Alcohol Education Program for Minors, Starlite Village Hospital, and John S. Tartaro, and voluntary surrender and final order in the matter so South Texas DWI Education Program and Shirl Frazier Alcohol Education Program for Minors; action items: proposed amendments to §141.21 and Chapter 144; next meeting date; adjournment.

Contact: Terry F. Bleier, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, 512/349-6602.

Filed: October 15, 1998, 11:16 a.m.

TRD-9816160



Wednesday, October 28, 1998, Noon

501 West Sanford, Conference Room A, Health and Human Services Building

Arlington

Regional Advisory Consortium (RAC) Region 3

AGENDA:

Call to order; welcome and introductions of guest; approval of minutes; old business: update on NorthStar Project; business: election of new officers and update on statewide meeting of RAC convenors; public comment and adjournment.

Contact: Albert Ruiz, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, 512/349-6607 or 1/800/832-9623.

Filed: October 14, 1998, 1:34 p.m.

TRD-9816103



State Board of Barber Examiners

Wednesday, November 3, 1998, 9:00 a.m.

William P. Hobby State Office Building, 333 Guadalupe, Tower 2, Room 400A

Austin

Board of Directors

AGENDA:

Open of Meeting

Roll call

Open Session:

1. Read and possible approve Board Minutes of August 4, 1998
2. Discussion and possible action regarding Southeast Barber College with expired Texas Barber College Permits No. 28 and No. 29.

3. Discussion and possible action regarding Proposed Amendment to 22 Texas Administration Code Section 51.51; 51.52; 51.57; 51.58; 51.60; 51.62; 51.63; 51.84.

4. Discussion and possible action regarding Proposed Repeal of 22 Texas Administration Code Section 51.65; 51.66; 51.67; 51.68; 51.69; 51.70; 51.71; 51.72; 51.73; 51.74; 51.75; 51.76; 51.77; 51.78; 51.79; 51.81; 51.86.

5. Discussion and possible action regarding Proposed New Rule to 22 Texas Administration Code Section 51.3 concerning Definitions.

6. Discussion and possible action on State Board of Barber Examiners 1999 Examination Schedule.

7. Discussion and possible action on State Board of Barber Examiners for a Six-Month Performance Evaluation of the Executive Director/Compensation.

8. Discussion and possible action on SBBE filing of Amended Rule Review Plan.

9. Executive Director's Report.

Contact: Will K. Brown, Executive Director, 333 Guadalupe, Ste. 2-110, Austin, Texas, 78701, 512/305-8475

Filed: October 21, 1998, 12:03 p.m.

TRD-9816474



Texas Bond Review Board

Thursday, October 22, 1998, 10:00 a.m.

Capitol Extension, Room E1.012

Austin

Board Meeting

AGENDA:

I. Call to Order

II. Consideration of Proposed Issues

A. Board of Regents of Texas Southern University/Texas Public Finance Authority Revenue Bonds

B. Texas Department of Housing and Community Affairs Residential Mortgage Revenue Bonds, Series 1998A (New Money); Texas Department of Housing and Community Affairs Residential Mortgage Revenue Refunding bonds, Series 1998B (Refunding of Series A Commercial Paper Notes); Texas Department of Housing and Community Affairs Residential Mortgage Revenue Refunding Bonds, Series 1999A (Redemption of Series 1987A and 1987D Bonds)

C. Texas Department of Housing and Community Affairs Commercial Paper Program (reauthorization)

D. Texas State Affordable Housing Corporation—A servicing Release Premium Line of Credit for use with the Texas Department of Housing and Community Affairs Residential Mortgage Revenue Bonds, Series 1998A

E. Texas Department of Public Safety—Lease Purchase of Telecommunication system

F. Other Business

Report on private activity bond application program

IV. Adjourn

Contact: Jose Hernandez, 300 West 15th Street, Suite 409, Austin, Texas 78701, 512/463-1741.
Filed: October 14, 1998, 4:27 p.m.

TRD-9816127



Wednesday, October 28, 1998, 10:30 a.m.

300 West 15th Street, committee Room #5, Clements building, 5th Floor

Austin

1999 Lottery for Allocation of State Ceiling

AGENDA:

I. Welcome and Opening Remarks

II. Explanation of Lottery Process

III. First Lottery-to determine placement of applications in line for reservation

IV. Break (15 minutes)

V. Second Lottery-to determine reservation dates for initial allocation reservations

Contact: Jeanne Talerico, 300 West 15th Street, Suite 409, Austin, Texas 78701, 512/475-4803.

Filed: October 19, 1998, 9:54 a.m.

TRD-9816322



Texas Cancer Council

Thursday, November 5, 1998 at 6:00 p.m.

211 E. 7th Street, Suite 701, Conference Room

Austin

Contract Management Committee

AGENDA:

The Committee will discuss and possibly take action on : minutes of the August 4, 1998, meeting; an update of FY 1998 performance measures; project funding issues such as the Cancer Funding Directory, a technology upgrade by the Texas Cancer Data Center, and future project initiatives; and then project income policy. The Committee will then adjourn

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contract Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Mickey Jacobs, P.O. Box 12097, Austin, Texas 78711, 512/463-3190

Filed: October 21, 1998, 11:12 a.m.

TRD-9816465



Friday, November 6, 1998 at 8:30 a.m.

401 West 15th Street, Texas Medical Association Bldg., Durham Room

Austin

Executive Committee

AGENDA:

The Committee will discuss and possibly take action on : minutes of the August 5, 1998, meeting; review Council meeting agenda and action items; and the Executive Director's report. The Committee will then adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contract Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Mickey Jacobs, P.O. Box 12097, Austin, Texas 78711, 512/463-3190

Filed: October 21, 1998, 11:12 a.m.

TRD-9816467



Friday, November 6, 1998 at 9:30 a.m.

401 West 15th Street, Texas Medical Association Bldg., Durham Room

Austin

Board of Directors

AGENDA:

The Committee will discuss and possibly take action on : minutes of the August 5, 1998, meeting; the Executive Director's report which will include an update on the Sunset process, the project directors meeting, the travel audit, and on program initiatives; a recap of the FY 1998 budget and performance reports; an update on the agency rules review to re-adopt, propose changes, and repeal of Council rules located in 25 TAC Chapters 701, 702, and 703; funding issues regarding the funding directory and a presentation by Lyle Green of the Texas Cancer Data Center project; and programmatic issues which will include a report from the Contract Management Committee and requests on project equipments. The Committee will then adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contract Lisa Nelson at 512/463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Mickey Jacobs, P.O. Box 12097, Austin, Texas 78711, 512/463-3190

Filed: October 21, 1998, 11:12 a.m.

TRD-9816466



Office of Court Administration

Friday, November 13, 1998, 9:00 a.m.

Senate Hearing Room #1, Room E1.012 State Capitol

Austin

Judicial Committee on Information Technology

AGENDA:

9:00 a.m. Call Meeting to Order

1. Minutes from September 25, 1998 meeting

2. Discussion of Rural Courts report
 3. National Task Force on Court Automation and Integration
 4. Report of the Judicial Committee on Information Technology
 5. OCA update
 6. Subcommittee Reports
 7. Statutory Duties
 8. New Business
 9. Public Comment
- 12:00 p.m. Adjourn

Contact: Gareth Knowles, P.O. Box 12066, Austin, Texas 78711-2066
 or gareth.knowles@courts.state.tx.us
 Filed: October 22, 1998, 9:05 a.m.
 TRD-9816520



Texas Department of Criminal Justice

Wednesday, October 21, 1998, 1:30 p.m.

Sam Houston State University, Criminal Justice Conference Room
 Ctr., Criminal Justice Courtroom

Austin

Judicial Advisory Council

AGENDA:

Legislative Committee:

- I. Minimum Term of Misdemeanor Community Supervision
- II. Full Misdemeanor Funding
- III. Position on the TDCJ Board for JAC Chairman
- IV. Proposal Re: Felony Offense if CSO has Sex with Offender on Community Supervision
- V. Residential Furloughs

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Capitol Station, Austin,
 Texas 78711, 512/305-9323
 Filed: October 21, 1998, 8:43 a.m.
 TRD-9816431



State Board of Dental Examiners

Thursday, November 5, 1998, 10:00 a.m.

SBDE Offices, 333 Guadalupe, Tower 3, Suite 800

Austin

Legislative Committee Meeting

AGENDA:

- I. Call to order
- II. Roll call

- III. Discuss, review and consider proposing amendments to the Dental Practice Act for presentation to the Board
 - IV. Announcements
 - V. Public comments
 - VI. Adjourn
- Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800,
 Austin, Texas 78701, 512/463-6400.
 Filed: October 20, 1998, 3:14 p.m.
 TRD-9816411



Thursday, November 5, 1998, 11:30 a.m.

SBDE office, 333 Guadalupe, Tower 3, Suite 800

Austin

Continuing Education Committee

AGENDA:

- I. Call to order
- II. Roll call
- III. Review and approval of past minutes
- IV. Discuss, review and consider Dental Laboratory Association of Texas' request to become a continuing education provider pursuant to rule 104.2(12) and make recommendation to the board.
- V. Discuss, review and consider GSC Home Study Courses request to become a continuing education provider pursuant to rule 104.2(12) and make recommendation to the board.
- VI. Discuss, review and consider requests for approval of alternative courses for continuing education pursuant to rule 104.1(3)
 - A. Keith Robinson, DDS
 - B. Timothy, McKenzie, DDS
 - C. Ron Knight, DDS
 - D. Nancy Massey, RDH
 - E. Lisa McCarriston, RDH
 - F. Nadine Young, RDH
- VII. Discuss, review and consider Dr. Ronald Auvenshine's request to allow judicial and jurisprudence type courses as part of continuing education requirements
- VIII. Discuss, review and consider audit procedures pursuant to rule 104.5

IX. Announcements

X. Public comments

XI. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800,
 Austin, Texas 78701, 512/463-6400.
 Filed: October 20, 1998, 3:14 p.m.
 TRD-9816410



Thursday, November 5, 1998, 1:30 p.m.

SBDE office, 333 Guadalupe, Tower 3, Suite 800

Austin

Continuing Review Committee

AGENDA:

I. Call to order

II. Roll call

III. Review and approval of past minutes

IV. Review dental applications for licensure by credentials and make recommendations to the board for approval or denial of said applications.

V. Review dental hygiene applications for licensure by credentials and make recommendations to the board for approval or denial of said applications.

VI. Announcements

VII. Public comments

VIII. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: October 20, 1998, 3:14 p.m.

TRD-9816409



Thursday, November 5, 1998, 2:30 p.m.

SBDE office, 333 Guadalupe, Tower 3, Suite 800

Austin

Enforcement Committee Meeting

AGENDA:

I. Call to order

II. Roll call

III. Review and approval of past minutes

IV. Report on new developments in the Enforcement Division

A. Short form ISR

B. Second opinion request letter

C. Records request letter

D. Advertising letter

E. Dental class

F. CLEAR training

G. Administrative Law seminar

H. Legislative Communications seminar

V. Status report on requirements for fingerprinting of applicants for licensure as dentists or dental hygienists

VI. Discuss, review and consider requests for expungements of records pursuant to rule 107.400

A. Dr. Donald M Mintz

B. Dr. Burt Bryan

C. Dr. David Hennington

VII. Report on unregistered dental laboratories

VIII. Public comments

IX. Announcements

X. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: October 21, 1998, 8:42 a.m.

TRD-9816430



Friday, November 6, Saturday, November 7, 1998, 8:00 a.m.

333 Guadalupe, William Hobby Bldg., Tower 2, 2nd Floor, HPC Room II-225

Austin

Board Meeting

AGENDA:

I. Call to order

II. Roll call

III. Review and approval of past minutes

IV. Appearances before the Board

V. Licensing and Examination Reports: Dental Laboratory Certification Council; Continuing Education; Approval of sedation/anesthesia permits; Credentials; Dental Hygiene Advisory Committee recommendations; WREB activity

VI. Enforcement Report

VII. Administration Report

VIII. General Counsel's Report: approval of settlement conference orders; discuss Madsen #504-97-1043; discuss Little #504-98-1320; AADE report; discuss Galloway #504-96-1748.

IX. Executive Director's Report: HPC; TDH; TLC activity; AADE; discuss agency matters

X. President's Report: DISC; Dental Educators meeting report; Legislative Committee report; discuss process to elect board officers

XI. Rules; discuss proposed rules 107.101, 107.102, 109.132; discuss adoption of 109.145; Public hearing for comment on 109.171, 109.173, 109.174, 109.175, 109.400, 109.401, 109.402, 109.403

XII. Public Comments

XIII. Announcements

XIV. Adjourn

Contact: Mei Ling Clendennen, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, 512/463-6400.

Filed: October 21, 1998, 11:45 a.m.

TRD-9816471



Texas Planning Council for Developmental Disabilities

Thursday, November 5, 1998, 9:30 a.m.

6505 IH-35 North, Doubletree Hotel, Fourth Floor Board Room

Austin

Executive Committee

AGENDA:

9:30 a.m. Call to order

I. Introductions of Committee Members, Staff and Guests

II. Public Comments

III. Approval of Minutes of August 6, 1998 Meeting

IV. Chair's Report

V. Management Agreement Revisions Report

VI. Executive Director's Report

VII. Update on Sunset Review of the Council

VIII. TPCDD Budget Report

IX. Review of Stipends Applications

X. Other Discussion Items

12:30 p.m. Adjourn

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Susan Maxwell at 512/424-4087.

Contact: Roger Webb, 4900 North Lamar, Austin, Texas 78751, 512/424-4081.

Filed: October 21, 1998, 9:48 a.m.

TRD-9816452



Thursday, November 5, 1998, 1:30 p.m.

6505 IH-35 North, Doubletree Hotel, DeZavala Room

Austin

Advocacy and Public Information Committee

AGENDA:

1:30 p.m. Call to order

I. Introductions of Committee Members, Staff and Guests

II. Public Comments

III. Approval of Minutes of August 6, 1998 Meeting

IV. Consideration of TPCDD Legislative Platform

V. Discussion and update of State Policy Issues

VI. Discussion and update of Federal Policy Issues

VII. Public Information Report

VIII. Nominating Committee Representative

5:30 p.m. Adjourn

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Susan Maxwell at 512/424-4087.

Contact: Roger Webb, 4900 North Lamar, Austin, Texas 78751, 512/424-4081.

Filed: October 21, 1998, 9:48 a.m.

TRD-9816451



Thursday, November 5, 1998, 1:30 p.m.

6505 IH-35 North, Doubletree Hotel, DeWitt Room

Austin

Planning Committee

AGENDA:

1:30 p.m. Call to order

I. Introductions of Committee Members, Staff and Guests

II. Public Comments

III. Approval of Minutes of August 6, 1998 Meeting

IV. Grantee Presentations

V. Overview of Planning Committee Responsibilities

VI. Status of Grant Activities

VII. Nominating Committee Representative

VIII. Other Discussion Items

5:30 p.m. Adjourn

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Susan Maxwell at 512/424-4087.

Contact: Roger Webb, 4900 North Lamar, Austin, Texas 78751, 512/424-4081.

Filed: October 21, 1998, 9:48 a.m.

TRD-9816453



Friday, November 6, 1998, 9:00 a.m.

6505 IH-35 North, Doubletree Hotel, Austin Room

Austin

Full Council

AGENDA:

9:00 a.m. Call to order

I. Introductions of Committee Members, Staff and Guests

II. Public Comments

III. Approval of Minutes of August 7, 1998 Meeting

IV. Chair's Report

V. Management Agreement Revisions Report

VI. Executive Director's Report

VII. Executive Committee Report

A. TPCDD Sunset Review Update

B. TPCDD Budget Report

C. Other Discussion Items

VIII. Advocacy and Public Information Committee Report

A. Consideration of TPCDD Legislative Platform

B. State Policy Issues

C. Federal Policy Issues

D. Public Information Report

- E. Other Discussion Items
- IX. Planning Committee Report
 - A. Future Grant Project Ideas
 - B. Council Public Input Ideas
 - C. Other Discussion Items
- X. Other Discussion Items

2:30 p.m. Adjourn

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Susan Maxwell at 512/424-4087.

Contact: Roger Webb, 4900 North Lamar, Austin, Texas 78751, 512/424-4081.

Filed: October 21, 1998, 9:48 a.m.

TRD-9816450



Texas Department of Economic Development

Thursday, October 22, 1998, 10:00 a.m.

Camino Real Hotel, Manning Room, 101 South El Paso Street

El Paso

Texas Manufacturing Institute Board

AGENDA:

Call to order; adopt minutes from April 23, 1998, Board Meeting, August 18, 1998 Special Board Meeting and September 23, 1998 Workshop; Discussion and possible action on structure of TMI organization; Discussion and possible action on strategic issues regarding how the TMI Board will help Texas manufacturers; Discussion of new business; Public comments; Board comments; Adjourn.

Person with disabilities who plan to attend this meeting who may need auxiliary aids or services, or who need assistance in having English translated into Spanish, should contact Lena Chiu 512/936-0234, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Gary Rosenquest, P.O. Box 12728, Austin, Texas 78711-2788, 512/936-0179.

Filed: October 14, 1998, 3:22 p.m.

TRD-9816110



Office of the Governor

Friday, October 23, 1998, 9:00 a.m.

State Capitol Extension, Room E.1014

Austin

Texas Strategic Economic Development Planning Commission

AGENDA:

1. Call to order and opening remarks, Chairman Stephens
2. Commission member comment on final draft of report.
3. Discussion on implementation of report recommendations

4. Formal adoption of Strategic Economic Development Planning Commission Report by Commission.

Contact: Terry Karow or Stuart Holliday, P.O. Box 12428, Austin, Texas 78711, 512/463-2198.

Filed: October 14, 1998, 2:07 p.m.

TRD-9816105



Texas Growth Fund

Monday, October 26, 1998, 11:15 a.m.

1000 Red River

Austin

Board of Trustees

AGENDA:

1. Review and approve minutes of the Special Meeting of the Board of Trustees held on September 1, 1998.
2. Review and approve Treasurer's Report.
3. Review and approve invoices from Vinson and Elkins L.L.P.
4. Review and approve Transfer Notices to reconcile deferred revenue accounts.
5. Review and approve Transfer Notices to commencement of the 1998 Trust.
6. Review and approve 1999 budgets for the 1991 and 1995 Trusts.
7. Such other matters as may come before the Board of Trustees.

Contact: Janet Waldeier, 100 Congress Avenue, Suite 980, Austin, Texas 78701, 512/322-3100.

Filed: October 16, 1998, 3:31 p.m.

TRD-9816294



Texas Health Care Information Council

Monday, October 26, 1998, 8:00 a.m.

1100 West 49th Street, Room 739

Austin

Hospital Discharge Data Committee

AGENDA:

The Texas Health Care Information Council's Hospital Discharge Data Committee will convene in open session, deliberate, and possibly take formal action on the following items: (1) Minutes of August 28, 1998; (2) proposal of administrative rule changes relating to "substance abuse" data reporting requirements (25 TAC §§1301.11-1301.19); (3) data warehouse progress report-process flow, training, help desk, compliance violations; (4) discussion and recommendation concerning cases in which reporting entities are deemed to be out of compliance with Chapter 108, Texas Health and Safety Code, and associated rules (25 TAC §§1301.11-1301.19); (5) legislative recommendations concerning Chapter 108, Texas Health and Safety code and other statutes; (6) TAC reports-Health Information systems TAC, Peer Review and Provider Quality TAC; (7) report for Data Security and Confidentiality Task Force; (8) discussion about future reports; (9) public comments; (10) set dates for future meetings; and (11) adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.
Filed: October 16, 1998, 11:24 a.m.

TRD-9816236



Monday, October 26, 1998, 9:00 a.m.

1100 West 49th Street, Room 652

Austin

Consumer Education Committee

AGENDA:

The Texas Health Care Information Council's Consumer Education Committee will convene in open session, deliberate, and possibly take formal action on the following items: (1) approval of minutes from previous meetings; (2) TAC report-quality Methods and Consumer Education TAC; (3) staff report: development of consumer education materials and media plan, including plans involving hospital and HMO/HEDIS data; (4) legislative recommendations concerning Chapter 108, Texas Health and Safety Code and other statutes; (5) discussion about future reports; (6) public comments; (7) set dates for future meetings; and (8) adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.
Filed: October 16, 1998, 11:23 a.m.

TRD-9816234



Monday, October 26, 1998, 9:00 a.m.

1100 West 49th Street, Room 653

Austin

Non-Hospital Discharge Data And Expanded Information Plan Committee

AGENDA:

The Texas Health Care Information Council's Hospital Discharge Data Committee will convene in open session, deliberate, and possibly take formal action on the following items: (1) Minutes of August 28, 1998; (2) update: HEDIS data collection, analysis, and report; (3) discussion about future reports; (4) TAC reports: Health Maintenance Organization TAC reports, Medical Education Reimbursement TAC report; (5) discussion and recommendations to Council concerning required HEDIS data elements and other information for calendar year 1998 ((i) adoption of same policy as NCQA for dates for data submission or at the discretion the Executive Director should NCQA's submission dates be incompatible for the State of Texas, (ii) change of HEDIS data submission tool to allow use of a single tool for submission to NCQA and to the State (iii) modification of verification steps where a health plan's HEDIS data is modified/update, to require Auditor's submission of approval of sign-off of any updates to original submission, (v) modification of HMO reporting requirements to allow aggregation of HEDIS data for services areas with fewer than 5,000 enrollees as of December 31, 1998, to the next closet regional services area, (v) modification of HMO reporting requirements to allow exemption from reporting requirements for single health plans or service areas with enrollment of less that 5,000, as of December 31, 1998, (vi) adoption of same Medicaid reporting measures for the 1998 HEDIS report as in the report for 1997); (6) discussion and recommendations concerning reporting of data from HMOs; (7) legislative recommendations

concerning Chapter 108, Texas Health and Safety Code and other statutes; (8) public comments; (9) set dates for future meetings; and (10) adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.
Filed: October 16, 1998, 11:24 a.m.

TRD-9816235



Monday, October 26, 1998, 10:00 a.m.

1100 West 49th Street, Room 739

Austin

Council

AGENDA:

The Texas Health Care Information Council will convene in open session, deliberate, and possibly take formal action on the following items: (1) introductions; (2) approval of minutes from previous meetings; (3) comments by Bill Hammond, President, Texas Association of Business and Chambers of Commerce; (4) committee reports-(A) Executive Committee, (B) Consumer Education Committee, (C) Non-Hospital Data and Extended Information Plan Committee ((i) adoption of required HEDIS data elements and other information for calendar year 1998; (ii) discussion and recommendations concerning reporting of data from HMOs concerning (a) adoption of same policy as NCQA for data of data submission or at the discretion the Executive Director should NCQA's submission dates be incompatible for the State of Texas, (b) change of HEDIS data submission tool to allow use of a single tool for submission to NCQA and to the State, (c) modification of verification steps where a health plan's HEDIS data is modified/updated, to require Auditor's submission of approval of sign-off of any updates to original submission, (d) modification of HMO reporting requirements to allow aggregation of HEDIS data for services areas with fewer than 5,000 enrollees as of December 31, 1998, to the next closest regional service area, (e) modification of HMO reporting requirements to allow exemption from reporting requirements for single health plans or services areas with enrollment of less than 5,000, as of December 31, 1998, and (f) adoption of same Medicaid reporting measurers for the 1998 HEDIS report as in the report for 1997), (D) Appointments Committee, (E) Data Security and Confidentiality Task Force, (F) Hospital Discharge Data Committee (i) appeals to Councils for exemption from rules by hospitals, (ii) discussion and recommendation concerning cases in which reporting entities are deemed to be out of compliance with Chapter 108, Texas Health and Safety Code, and associated rule (25 TAC §§1301.11-1301.19), (iii) proposal of administrative rule changes relating to "substance abuse" data reporting requirements (25 TAC §§1301.11-1301.19); (5) proposal of administrative rule changes relating to by-laws for technical advisory committees (25 TAC §§1301.61-1301.66); (6) legislative recommendations concerning Chapter 108, Texas Health and Safety Code and other statutes; (7) authorization of expenditures relating to consumer education program activities; (8) adoption of administrative rule changes relating to Council's acceptance gifts/donations (25 TAC §§1304.51-1301.54); (9) authorization of Web sponsorship; (10) Executive Director's report on budget, personnel, general administration, and external developments; (11) adoption of operating budget; (12) comments from Office of the Attorney General concerning lobbying by Council members; (13) public comments; (14) set dates for future meetings; and (15) adjourn.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.

Filed: October 16, 1998, 11:23 a.m.

TRD-9816233

◆ ◆ ◆
Texas Department of Health

Tuesday, October 27, 1998, 9:30 a.m.

Tower Building, Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Drug Use Review Board

AGENDA:

The board will meet to discuss and possibly act on: approval of the minutes of the August 11, 1998, meeting; revisions to existing criteria on appropriate usage of prescription drugs; review of profiles and intervention letters on sedative hypnotics; review of the Drug Use Review Board's (DUR) profiles on targeted drugs Cisapride and Benzodiazepines; on-line prospective DUR reports; drug evaluation studies; selection of targeted drugs for next profiles; and the scheduling of the next board meeting.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Curtis Burch or Sandra Knight, 1100 West 49th Street, Austin, Texas 78756, 512/388-6922 or 512/338-6947.

Filed: October 19, 1998, 3:59 p.m.

TRD-9816363

◆ ◆ ◆
Wednesday, October 28, 1998, 10:00 a.m.

Moreton Building, Room M739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health

AGENDA:

The board will introduce guests, and will have a briefing by the Commissioner on current activities of the Texas Department of Health; and a discussion concerning procedural and/or administrative issues of the Board of Health.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 20, 1998, 1:57 p.m.

TRD-9816397

◆ ◆ ◆
Thursday, October 29, 1998, 10:00 a.m.

1100 West 49th Street, Tower Building, Room T-607

Austin

County Indigent Health Care Program (CIHCP) Advisory Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the August 27, 1998, meeting; election of officers; interim report of the Subcommittee on Indigent Health Care; tobacco settlement update; supplemental security insurance (SSI) Medicaid reimbursement process; public comment; and the setting of future meeting dates and suggested agenda items.

Contact: Bonnie Magers, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 512/338-6470

Filed: October 21, 1998, 1:03 p.m.

TRD-9816484

◆ ◆ ◆
Monday, November 9, 1998, 1:00 p.m.

4900 North Lamar, Brown-Heatly Building, Room 1420, First Floor

Austin

Medicaid Managed Care Regional 7 Advisory Committee

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.

Contact: Jackie McLaughlin, Region Medicaid Managed Care Coordinator, 2408 South 37th Street, Temple, Texas, 254/778-6744.

Filed: October 21, 1998, 1:03 p.m.

TRD-9816483

◆ ◆ ◆
Friday, November 10, 1998, 12:00 p.m.

New York Avenue and Tarrant County Junior College parkway, Tarrant County Junior College-Southeast, Room C-109

Arlington

Medicaid Managed Care Regional Advisory Committee for Tarrant Service Area

AGENDA:

The committee will introduce guests and will discuss and possibly act on: Texas Department of Health Bureau of Managed Care's Response to committee questions from last meeting; Maximus report; round table discussion of issues/concerns and recommendations for new topics; and setting the date, time and proposed agenda for the next committee meeting.

Contact: Charles D. Johnson, Texas Health and Human Services Center, 1351 East Bardin Road, Arlington, Texas, 817/264-4438.

Filed: October 21, 1998, 1:03 p.m.

TRD-9816482

◆ ◆ ◆
Friday, November 13, 1998, 1:00 p.m.

1306 North Street, Mahon Public Library, Community Room

Lubbock

Medicaid Managed Care Regional Advisory Committee Lubbock Service Delivery Area

AGENDA:

The committee will meet to discuss and possibly act on: the committee's mission/roles; STAR Managed Care Program overview; enrollment process/update by maximus; managed care organization update; discussion of issues and concerns; planning for the future (establishment of subcommittees; and setting the next committee meeting date and agenda); and other business not requiring action

Contact: Tim Hayes, Texas Department of Health, 1109 Kemper Street, Lubbock, Texas, 806/767-0445

Filed: October 21, 1998, 1:03 p.m.

TRD-9816481



Health Professions Council

Wednesday, October 28, 1998, 9:00 a.m.

333 Guadalupe Street, Suite 2-225

Austin

Health Professional Council

AGENDA:

1. Call to Order; 9:00 a.m.
2. Roll Call and Introductions
3. Minutes of August 17, 1998
4. Report of Committees
5. Other Reports
6. Old Business
7. New Business
8. Legislative Issues
9. Announcements
10. Comments from Audience
11. Next Meeting
12. Adjourn

Contact: Jane McFarland, 333 Guadalupe Street, Suite 2-229, Austin, Texas 78701, 512/305-8550.

Filed: October 20, 1998, 11:08

TRD-9816380



Texas Healthy Kids Corporation

Tuesday, October 20, 1998, 9:30 a.m.

333 Guadalupe, Hobby Tower I, Room 1264

Austin

Board of Directors

EMERGENCY REVISED AGENDA:

Call to order; approval of minutes of September 22, 1998. THKC staff presentation, possible recommendations, and possible THKC Board deliberation and action/approval, and public comments regarding:

Status update and briefing on enrollment, staffing, issuance of requests for proposals, other THKC activities;

Money to be donated to THKC by Blue Cross Shield (BCBS) in accordance with settlement agreement between BCBS and State, with first installment to THKC by December 31, 1998; borrowing from THKC private funds so that children may be covered before December 31, with repayment from BCBS money.

Report on new action plans for fundraising;

Creating/adjusting policies for use of funds designated for premium assistance, including time period for which each child will be awarded premium assistance, dividing unrestricted funds among population covered by each health plan, relating matters;

Creating/adjusting policies relating to Texas employers who do not offer coverage for children in their health benefit plans; report relating to research on "crowd out" issues.

Designation November meeting of the board as Annual Meeting, at which new officers will be elected to serve until September 1, 1999, which the terms of the six governor-appointed Board members expire.

Miscellaneous corporate issues, including timelines, general updates, other administrative, procedural matters.

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.

Contact: Tyrette Hamilton, P.O. Box 1506, Austin, Texas 78767-1506, 512/494-0061 or fax 512/494-0278.

Filed: October 19, 1998, 1:18 p.m.

TRD-9816354



Texas Higher Education Coordinating Board

Thursday, October 22, 1998, 2:00 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Campus Planning Committee

EMERGENCY REVISED AGENDA:

Campus Planning Committee Actions:

University of Houston System: University of Houston-Coogs Food Service renovation; and Satellite Facility Food Service renovation

University of Houston-Clear Lake-Food Service renovation

Reason for emergency: In accordance with Texas Government Code Section 551.045(b) the Commissioner has determined that an urgent public necessity exists requiring immediate action because of a reasonably unforeseeable situation.

Contact: Don W. Brown, P.O. Box 12788, Austin, Texas 78711, 512/483-6200.

Filed: October 21, 1998, 9:17 a.m.

TRD-9816439



Friday, November 20, 1998, 9:30 a.m.

Chevy Chase Office Complex, Building 4, Room 4.100, 7715 Chevy Chase Drive

Austin

Advisory Committee on Distance Education

AGENDA:

Discussion of revisions to Chapter 5, Subchapter H and what effect they will have on the Committee's duties.

Contact: Paul Meyer, P.O. Box 12788, Austin, Texas 78711, 512/483-6200.

Filed: October 20, 1998, 11:44 a.m.

TRD-9816391



Texas Historical Commission

Wednesday, October 28, 1998, 8:00 a.m.

Clements Building, Committee Room #103, 300 West 15th Street

Austin

Texas Antiquities Advisory Board

AGENDA:

Approval of minutes from July 22, 1998, Antiquities Advisory Board (AAB) Meeting #11. A discussion and vote on adoption of proposed Chapter 24, Rules that will regulate access to restricted information. A discussion and vote on proposed changes to Chapter 26 Rules for defaulted permits to allow for extended ending dates under special circumstances. Designation of seven State Archeological Landmarks. Estham Site #1, 41H0183, Estham Site #2, 41H0184, and Estham Site #3, 41H0185, in Houston County (all owned by Texas Department of Criminal Justice). The Hartfield Shelter, 41KR493 in Kerr County (owned by Texas Parks and Wildlife Department). Fort Saint Louis, 41VT4 in Victoria County (owned by Victoria National Bank). The 3rd Espiritu Santa Mission, 41VT11, and the Schuhmacher Wholesale Grocery Company Building, 41VT134 in Victoria County (both owned by John and Judy Clegg). Nomination of five State Archeological Landmarks. McKinney-Roughs Park Sites: 41BP444; 41BP449; 41BP455; 41BP463 and 41BP535, Bastrop County (all owned by Lower Colorado River Authority). There will be general board discussion on several issues: a) Recommendations regarding State Archeological Landmark Districts; b) Status of the inventory of site collections curated under Texas Antiquities Permits; c) Status of the Texas Historical Commission's (THC) Section 106 committee; d) Appointment of a THC committee to assess the role of the Antiquities Advisory Board (AAB); e) Status of Accreditation and Review Council accreditation documents and program: (status of Held-In-Trust Agreements, Status of letter notifying repositories about ARC, and general discussion); f) Update on the Brochure of Professional Consultants; d) Attorney's response on ability to delegate responsibility for destructive tests on "Held-In-Trust" Collection; h) Presentation of plan to use the existing THC awards to award cultural resource consultant who are doing commendable work; and i) Twentieth Century shipwrecks under the Antiquities Code. We will then hear any public comments and staff reports. The adjournment of meeting.

Contact: Lillie Thompson, P.O. Box 12276, Austin, Texas 78711, 512/463-1858.

Filed: October 16, 1998, 4:20 p.m.

TRD-9816296



Thursday, October 29, 1998, 9:30 a.m.

Stephen F. Austin State Office Building, 17th and Congress, Room 119

Austin

State Marker Review Board Meeting

AGENDA:

The Committee may discuss and/or take action on any action on any of the following items:

A. Call to order

B. Review of Recorded Texas Historical Landmark designation for the following properties:

1. Greenbury Jenkins House, Cherokee County
2. Joseph Biegel House, Fayette County
3. Travis Street Methodist Church, Fayette County
4. Craig House, Grimes County
5. Ende-Gaillard House, Hunt County
6. Daugherty House, Terry County
7. Hendrick House, Trinity County
8. Wills Log Cabin, Van Zandt County
9. Steele Store-Makemson Hotel Building, Williamson County

C. Request for replacement historical marker:

1. Channing Methodist Church, Hartley County

D. Announcements

E. Adjourn.

Contact: Cynthia Beeman, P.O. Box 12276, Austin, Texas 78711, 512/463-5854.

Filed: October 19, 1998, 8:36 a.m.

TRD-9816307



Thursday, October 29, 1998, 9:30 a.m.

Stephen F. Austin Building, Room 119, 1700 North Congress Avenue

Austin

Executive Committee

AGENDA:

I. Call to Order

II. Announcements

III. Public Comments

IV. Election of members of nominating committee

V. Authorization to award up to \$5,000 to a Certified Local Government (CLG) for design/publication of the "popular" version of the economic impact study, and up to \$5,000 to selected CLGs to host public meetings associated with the historical preservation assessments initiative form FY '99 Historic Preservation Funds.

VI. Proposal on the Courthouse Restoration Project

VII. Report on status of Legislative Appropriations Request

VIII. Adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, 512/463-6100.

Filed: October 19, 1998, 8:37 a.m.

TRD-9816313



Thursday, October 29, 1998, 10:30 a.m.

108 West 16th, Elrose Building

Austin

Architecture Committee

AGENDA:

- 1) Texas Preservation Trust Fund
 - a) Review of FY 1999 Grand Applications
 - b) Possible changes to the Trust Fund Statute and Rules and Regulations
- 2) Report on the Texas Courthouse Preservation Working Group
- 3) Status of the Civil War in Texas Map and Guide
- 4) Architectural Aspects of the Texas Antiquities Code
- 5) Announcements

Contact: Stan Graves/Lisa Harvell, P.O. Box 12276, Austin, Texas 78711-2276, 512/463-6100.

Filed: October 19, 1998, 8:36 a.m.

TRD-9816308



Thursday, October 29, 1998, 1:30 p.m.

Elrose Building, Second Floor, Conference Room, 108 West 16th Street

Austin

Community Heritage Development Committee

AGENDA:

1. Call to order
2. Minutes of July 24, 1998 meeting.
3. Texas Main Street Program.
 - a. Report from Main Street Interagency Council on 1999 Texas Main Street Cities.
 - b. Report on Texas Main Street City selection process.
4. Certified Local Government Program.
 - a. Report on Economic Impacts of Historic Preservation Study
 - b. Report on regional workshops
5. Announcements
6. Adjourn

Contact: Terry Colley, P.O. Box 12276, Austin, Texas 78711-2276, 512/463-6100.

Filed: October 19, 1998, 8:37 a.m.

TRD-9816309



Thursday, October 29, 1998, 2:30 p.m.

Stephen F. Austin Building, Room 119, 1700 North Congress Avenue

Austin

History Committee Meeting

AGENDA:

1. Call to order
2. Heritage Tourism
3. Appointments
4. Appointments/reappointments to the State Board of Review
5. Review of actions taken by the State Marker Review Board
6. Historic Sites Assessment
7. Sam Rayburn House
8. Announcements
9. Adjourn

Contact: Frances Rickard, P.O. Box 12276, Austin, Texas 78711-2276, 512/463-5851.

Filed: October 19, 1998, 8:37 a.m.

TRD-9816310



Thursday, October 29, 1998, 4:00 p.m.

Elrose Building, Second Floor, Conference Room, 108 West 16th Street

Austin

Marketing Communication Committee

AGENDA:

- I. Approval of Minutes
- II. Staff Introductions/Update on Marketing Communications Staff
- III. Public Relations/T.R. Fehrenbach Book Award Update
- IV. Heritage Tourism Promotions.
- V. Update on Medallion
- VI. Standardization of Agency Publications.
- VII. Division Update/Current Projects

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711-2276, 512/463-6100.

Filed: October 19, 1998, 8:37 a.m.

TRD-9816311



Thursday, October 29, 1998, 4:00 p.m.

Elrose Building, Apartment Building, 108 West 16th Street, 1st Floor Conference Room

Austin

Archeology Committee Meeting

AGENDA:

There will be a discussion on the recently completed La Belle video. A review of the Archeology Division retreat work plan. A final report on the Cultural Resource Management (CRM) Award Plan. The Appointment of a Texas Historical Commission committee to assess the role of the Antiquities Advisory Board (AAB). Adjournment of Meeting

Contact: Curtis Tunnell, P.O. Box 12276, Austin, Texas 78711-2276, 512/463-6100.

Filed: October 19, 1998, 8:37 a.m.

TRD-9816312



Friday, October 30, 1998, 10:30 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress Avenue
Austin

Quarterly Board Meeting

AGENDA:

1. Call to order
2. Minutes #189 from July 24, 1998
3. Announcements
4. Public Comments
5. Action Items:
6. Information Items.
7. Chairman's Report
8. Committee Reports:
9. Adjournment

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, 512/463-6100.

Filed: October 19, 1998, 8:38 a.m.

TRD-9816314



Texas Incentive and Productivity Commission

Tuesday, October 27, 1998, 2:30 p.m.

300 West 15th Street, Clements Building, Committee Room 5

Austin

AGENDA:

- I. Call to order and roll call
- II. Approval of minutes of previous meeting
- III. Consideration of and possible action to approve employee suggestions submitted to the State Employee Incentive Program
- IV. Consideration of and possible action to Approve Productivity Bonus Applications Submitted to the Productivity Bonus Program
- V. Administrative matters
- VI. Adjournment

Contact: Ed Bloom, P.O. Box 12482, Austin, Texas 78711, 512/475-2393.

Filed: October 19, 1998, 12:33 p.m.

TRD-9816353



Tuesday, October 27, 1998, 2:30 p.m.

300 West 15th Street, Clements Building, Committee Room 5

Austin

REVISED AGENDA:

I. Call to order and roll call

II. Approval of minutes of previous meeting

III. Consideration of and possible action to approve employee suggestions submitted to the State Employee Incentive Program

IV. Consideration of and possible action to Approve Productivity Bonus Applications Submitted to the Productivity Bonus Program

V. Administrative matters

VI. Adjournment

Contact: Ed Bloom, P.O. Box 12482, Austin, Texas 78711, 512/475-2393.

Filed: October 20, 1998, 11:43 a.m.

TRD-9816389



Texas Judicial Council

Thursday, November 12, 1998, 10:00 a.m.

Capitol Extension Building, Room E2.020

Austin

Committee on Judicial Selection

AGENDA:

I. Commencement of Meeting

II. Attendance of Members

III. Overview of Background Resources

IV. Discuss Issues to be Addressed by Committee

V. Invited and Public Testimony

VI. Set Objectives for Future Committee Action

VII. Other Business

VIII. Date of Next Meeting (Calendar)

IX. Adjourn

Contact: Slade Cutter, Capitol Extension Building, Room E2.020, Austin, Texas 78701, 512/463-1461.

Filed: October 16, 1998, 3:30 a.m.

TRD-9816292



Texas Department of Licensing and Regulation

Tuesday, October 27, 1998, 9:30 a.m.

920 Colorado, E.O. Thompson Building, 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 engaged in the business of performing air conditioning and/or refrigeration contracting without obtaining the required license, in violation of Texas Administrative Code, §75.22(a); pursuant to Texas Revised Civil Statutes Annotated, Article 8861 and

9100, the Texas Government Code, Chapter 2001.902; and 16 TAC Chapter 60.1-60.95.

Contact: Jackie Sager, 902 Colorado, E. O. Thompson Building, Austin, Texas 78701, 512/463-3192.
Filed: October 19, 1998, 4:32 p.m.

TRD-9816365



Tuesday, October 27, 1998, 1:30 p.m.

920 Colorado, E.O. Thompson Building, 1st Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Joseph Lefkoski, for performing air conditioning and/or refrigeration contracting without obtaining the required license in violation Texas Revised Civil Statutes Article 8861, §3B, pursuant to Texas Revised Civil Statutes Annotated Articles 8861 and 9100, the Texas Government Code, Chapter 2001 and 16 TAC Chapter 60.

Contact: Jackie Sager, 902 Colorado, E. O. Thompson Building, Austin, Texas 78701, 512/463-3192.
Filed: October 19, 1998, 4:34 p.m.

TRD-9816366



Wednesday, October 28, 1998, 9:15 a.m.

920 Colorado, E.O. Thompson Building, 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 Alfaro Rodriguez, 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 the Texas Revised Civil Statutes Annotated, Article 8861 and 9100, the Texas Government Code, Chapter 2001 (APA) and 16 TAC Chapter 60.

Contact: Jackie Sager, 902 Colorado, E. O. Thompson Building, Austin, Texas 78701, 512/463-3192.
Filed: October 20, 1998, 9:00 a.m.

TRD-9816377



Wednesday, October 28, 1998, 9:30 a.m.

920 Colorado, E.O. Thompson Building, 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, Scott Edward Burger, for failing to provide proper installation, service, and mechanical integrity at two locations in violation of Texas Revised Civil Statutes Annotated, Article 8861 §5(a), pursuant to Texas Revised Civil Statutes, Annotated Article 9100, the Texas Government Code, Chapter 2001 and 16 TAC Chapter 60.

Contact: Jackie Sager, 902 Colorado, E. O. Thompson Building, Austin, Texas 78701, 512/463-3192.
Filed: October 20, 1998, 2:54 p.m.

TRD-9816407



Texas Lottery Commission

Wednesday October 28, 1998, 10:00 a.m.

611 East 6th Street, Grant Building, Commission Auditorium

Austin

Bingo Advisory Committee

AGENDA:

The Bingo Advisory Committee will call the meeting to order; comments by Commissioner Sadberry regarding the charitable bingo and/or the Bingo Advisory Committee; consideration of and possible action, including approval, on the minutes of the May 12, 1998 Bingo Advisory Committee meeting; report by the Acting Charitable Bingo Operations Director and possible discussion on the Charitable Bingo Operations Division's operations; report by the Security Director regarding the Security Division's activities; report and/or discussion on the organization of the Bingo Advisory Committee; report and possible discussion on state travel requirements concerning travel by advisory board members; report, possible discussion and/or action, including recommendations to the Texas Lottery Commission, on a proposed instant lottery ticket involving a bingo game theme; report, possible discussion and/or action on the training program for licensed authorized organization staff; consideration, possible discussion and/or action on items to be included in the agenda of future Bingo Advisory Committee meetings; and adjournment.

For ADA assistance call Michelle Bernal-Guerrero at 512/344-5113 at least two days prior to meeting.

Contact: Michelle Bernal-Guerrero, P.O. Box 16630, Austin, Texas 78761-6630, 512/344-5113.

Filed: October 16, 1998, 11:13 a.m.

TRD-9816338



Texas State Board of Medical Examiners

Thursday, October 22, 1998, 9:00 a.m. and Saturday, October 24, 1998, 8:30 a.m. (respectively)

333 Guadalupe, Tower 2, Suite 225

Austin

AGENDA:

Thursday, October 22, 1998:

9:00 a.m. Call to order and roll call; executive session under the authority of the Open Meeting Act, Section 551.071 of the Government Code to consult with counsel regarding pending or contemplated litigation; proposal for decision regarding Roy D. Mims. Sr., D.O.; public hearing and consideration of adoption

of proposed rule changes relating to Chapter 200, Standards for Physicians Participating Practicing Integrative and Complementary Medicine.

Saturday, October 24, 1998:

8:30 a.m. Public hearing and consideration of adoption of proposed rule changes: Chapter 161, General Provisions, Chapter 173, Applications, Chapter 175, Subchapter of Fees and Penalties, Chapter 181 Contract Lens Prescriptions, Chapter 183, Acupuncture, Chapter 197, Emergency Medical Service; consideration and approval of non-public rehabilitation orders and modification request/termination request of non-public rehabilitation orders; consideration and approval of agreed board orders; consideration and approval of reinstatement request orders; consideration and approval of modification request/termination request orders; consideration and approval of termination of suspension orders.

Other discussion items which may be considered at any time during the meeting; approval of August 20–22, 1998 board meeting minutes; approval September 3, 1998, Disciplinary Panel meeting minutes; approval of September 16, 1998 Disciplinary Panel meeting minutes; Executive Director's report; call for nominations for the Federation of State Medical Board's 1999 annual meeting; call for resolutions for the Federation of State Medical Board's 1999 annual meeting; approval of board meeting dates for 2000; committee reports and approval of minutes and actions items from committees meetings during the board meeting.

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Revised Civil Statutes, Sections 2.07(b) and 2.09(o) for private consultant and advice of counsel concerning litigation relative to possible disciplinary action.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, 512/305–7016 or fax 512/305–7008.
Filed: October 14, 1998, 4:27 p.m.

TRD-9816132



Thursday, October 22, 1998, 10:30 a.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Disciplinary Process Review Committee

AGENDA:

Call to order

Roll Call

Review, discussion, and possible action regarding the August and September 1998 Enforcement Reports

Discussion, recommendation and possible action concerning alternative dispute resolution

Discussion, recommendation and possible action concerning standard requirements for probationary practice monitoring of restricted licenses and other standard probationary terms of conditions

Discussion, recommendation and possible action regarding fees paid by the Board concerning requested documentation during investigation: i.e. medical records, court documents

Executive session to review selected filed and cases recommended for dismissal by Informal Settlement Conferences

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, as related to Article 4495b, 2.07(b) and 4.05(c), 5.06(s)(1) and Attorney General Opinion 1974, No. H-484.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, 512/305–7016 or fax 512/305–7008.

Filed: October 14, 1998, 4:27 p.m.

TRD-9816131



Thursday, October 22, 1998, 11:30 a.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Examination Committee

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult regarding pending or contemplated litigation

Review of licensure applicants

Review of examination applicants complete for consideration of licensure

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult regarding pending or contemplated litigation

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768–2018, 512/305–7016 or fax 512/305–7008.

Filed: October 14, 1998, 4:27 p.m.

TRD-9816129



Thursday, October 22, 1998, 11:30 a.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Endorsement Committee

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult regarding pending or contemplated litigation

Review of licensure applicants referred to the Endorsement Committee by the Executive Director for determinations of eligibility for licensure

Review of licensure applicants to be considered for permanent licensure by endorsement

Review of requests for reconsideration of applicants previously denied by the Endorsement Committee

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult regarding pending or contemplated litigation

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 14, 1998, 4:27 p.m.

TRD-9816130



Thursday-Friday, October 22-23, 1998, 10:30 a.m. and 3:00 p.m. (respectively)

333 Guadalupe, Tower 2, Suite 225

Austin

Joint Meeting Endorsement Committee and Examination Committee

AGENDA:

Call to order and roll call

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult regarding pending or contemplated litigation

Letters of eligibility, section 3.04(g)(3) of the Medical Practice Act

Review of applications for licensure for a determination of eligibility referred to the committee by the Executive Director

Discussion of policy regarding falsification/misleading issues

Review of proposed rules regarding NBOME/Complex and USMLE combinations

Discussion regarding training credit being given to out of state physicians

Discussion concerning sexual relations between a physician and patient

Letter from Texas Medical Association regarding questions on jurisprudence examination

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 14, 1998, 4:27 p.m.

TRD-9816128



Thursday-Friday, October 22-23, 1998, 10:30 a.m. and 3:00 p.m. (respectively)

333 Guadalupe, Tower 2, Suite 225

Austin

Joint Meeting: Endorsement Committee and Examination Committee

REVISED AGENDA:

In addition to previously posted agenda:

Friday, October 23, 1998, 3:00 p.m.

The committee will reconvene to discuss application questions pertaining to the Americans with Disabilities Act

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, to consult regarding pending or contemplated litigation

Review of licensure applicants

Review of examination applicants complete for consideration of licensure

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 15, 1998, 3:36 p.m.

TRD-9816205



Friday, October 23, 1998, 8:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Public Information Committee

AGENDA:

Call to Order

Roll Call

Report on exhibit staff by Megan S. Clair at HealthFind in Dallas August 22-23.

Discussion, recommendation and possible action on final layout of Fall 1998 Medical Board Report

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 15, 1998, 3:36 p.m.

TRD-9816200



Friday, October 23, 1998, 9:00 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Telemedicine Committee

AGENDA:

Call to Order

Roll Call

Discussion and possible action concerning procedures for disciplinary action of Texas physicians practicing telemedicine in other states

Discussion, recommendation and possible action regarding home health service order written by physicians not currently licensed in Texas

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 15, 1998, 3:36 p.m.

TRD-9816202



Friday, October 23, 1998, 9:00 a.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Ad Hoc Committee to Study Integrative and Complementary Medicine

AGENDA:

Call to Order

Roll Call

Discussion, recommendation, and possible action regarding comments received on proposed rule Chapter 200, Standards for Physicians Practicing Integrative and Complementary Medicine

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 15, 1998, 3:35 p.m.

TRD-9816199



Friday, October 23, 1998, 9:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Ad Hoc Committee to Physicians in Training

AGENDA:

Call to Order

Roll Call

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes to consult with counsel regarding pending or contemplated litigation.

Discussion, recommendation, and possible action regarding proposed changes to Chapter 171 of Board rules.

Adjourn

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 15, 1998, 3:36 p.m.

TRD-9816204



Friday, October 23, 1998, 10:30 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Non-Profit Health Organizations Committee

AGENDA:

Call to Order

Roll Call

Consideration and possible action on application for original certification of non-profit health organizations.

Consideration and action on biennial and compliance applications for recertification of non-profit health organizations.

Consideration and possible action on compliance applications for recertification of non-profit health organizations.

Consideration and possible action on decertification of non-profit entities.

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, to consultant with counsel regarding pending or contemplated litigation. Call to order

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.

Filed: October 15, 1998, 3:36 p.m.

TRD-9816203



Friday, October 23, 1998, 11:00 a.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Finance Committee

AGENDA:

Call to Order

Roll call

Discussion of the Board's September 1998, Financial Statement

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical

Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.
Filed: October 15, 1998, 3:35 p.m.

TRD-9816198



Friday, October 23, 1998, 1:30 p.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Executive Committee

AGENDA:

1. Call to Order
2. Roll Call
3. Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code, to discuss personnel matters
4. Discussion, recommendation and possible action regarding a previously cancelled license

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Revised Civil Statutes, Sections 2.07(b) and 2.09(o) for private consultation and advice of counsel concerning litigation relative to possible disciplinary action.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.
Filed: October 15, 1998, 3:36 p.m.

TRD-9816206



Friday, October 23, 1998, 2:00 p.m.

333 Guadalupe, Tower 2, Suite 610

Austin

Standing Order Committee

AGENDA:

Call to order and roll call

Discussion, recommendation and possible action regarding amendment to Chapter 183 relating to disciplinary action taken on Acudetox Specialists

Consideration and approval of applicant for Acudetox Specialist Certification referred by Executive Director: Robert David Radosta

Consideration and approval of applicants for Acudetox Specialist Certification

Discussion, recommendation and possible action regarding the request for an inactive status

Discussion, recommendation, and possible action regarding pronouncement of patient death by a physician over the phone to LVNs

Discussion, recommendation and possible action regarding a request for waiver of the log requirements for physician assistant and nurse practitioners who are under the supervision of physicians in a group of

nine family practice centers-Marc L. Anduss, M.D., Medical Director of Primary Health Physicians, P.A./PrimaCare

Discussion, recommendation and possible action regarding a request for an exception to the physician assistant supervision requirements for a network of school-based health centers-Duane L. Dowell, M.D. Associate Medical Director, Community Oriented Primary Care Unit Parkland Health and Hospital System

Discussion, recommendation possible action regarding the hiring of foreign medical graduates at a county jail health system for in-house after-hour first line medical care-Dallas County Jail Health System

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, and the Medical Practices Act, Article 4495b, Section 3.081 Texas Revised Civil Statutes

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.
Filed: October 15, 1998, 3:36 p.m.

TRD-9816201



Friday, October 23, 1998, 2:30 p.m.

333 Guadalupe, Tower 2, Suite 225

Austin

Legislative Committee

AGENDA:

Call to Order

Roll Call

Discussion, recommendation, and possible action regarding upcoming legislative issues

Adjourn

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.09(o), Texas Revised Civil Statutes, to counsel regarding pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018, 512/305-7016 or fax 512/305-7008.
Filed: October 15, 1998, 3:35 p.m.

TRD-9816197



Texas Military Facilities Commission

Thursday, October 29, 1998, 11:00 a.m.

2200 West 35th Street, Building 64

Austin

AGENDA:

1. Administrative Matters
2. Executive director's Updates
3. Property Updates
4. Executive Sessions
5. Public Comments

6. Set next meeting time/date/location

Persons with disabilities desiring to attend this meeting and who may require accommodation are required to contact Julie Wright at least three days prior to the meeting.

Contact: Julie Wright, 2200 West 35th Street, Building 64, Austin, Texas 512, 406-6971.

Filed: October 19, 1998, 8:13 a.m.

TRD-9816306

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Friday, October 23, 1998, 8:30 a.m.

Building E, Room 201 South, 12100 Park 35 Circle

Austin

AGENDA:

The commission will consider approving the following items on the attached agenda: Executive Sessions

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: October 14, 1998, 3:51 p.m.

TRD-9816113

◆ ◆ ◆
Friday, October 23, 1998, 9:30 a.m.

Building E, Room 201 South, 12100 Park 35 Circle

Austin

REVISED AGENDA:

The commission will consider approving the following items on the addendum to agenda: Rule

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: October 14, 1998, 3:51 p.m.

TRD-9816114

◆ ◆ ◆
Friday, October 23, 1998, 9:30 a.m.

Building E, Room 201 South, 12100 Park 35 Circle

Austin

REVISED AGENDA:

The commission will consider approving the following items on the third addendum to agenda: Rule.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: October 15, 1998, 12:01 p.m.

TRD-9816166

◆ ◆ ◆
Friday, October 23, 1998, 9:30 a.m.

Building E, Room 201 South, 12100 Park 35 Circle

Austin

REVISED AGENDA:

The commission will consider approving the following items on the fourth addendum to agenda: Emergency Order.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.

Filed: October 15, 1998, 3:51 p.m.

TRD-9816208

◆ ◆ ◆
Monday, October 26, 1998, 1:30 p.m.

TNRCC Park 35 Office Complex, Building B, Second Floor, Room 201A, 13100 North IH-35

Austin

AGENDA:

The Texas Groundwater Protection Committee will meet to discuss: subcommittee report from Agricultural Chemicals, Data Management, Nonpoint Source and Water Well Closure; Discussion and possible action on Texas Comprehensive State Ground Water Protection Program, Legislative Report and Recommendations to the 76th Legislature, and set future meeting dates; Public Comment and Adjourn.

Contact: Mary Ambrose, P.O. Box 13087, Austin, Texas 78701, 512/239-4800.

Filed: October 14, 1998, 12:17 p.m.

TRD-9816101

◆ ◆ ◆
Tuesday, November 3, 1998, 10:00 a.m.

12015 Park 35 Circle, Building E, Room S

Austin

EMERGENCY MEETING AGENDA:

The Municipal Solid Waste Management and Resource Recovery Advisory Council has rescheduled its October 22 meeting at the Texas Natural Resource Conservation Commission for November 3, 1998. The meeting will be held in building E, Room 201, 12015 Park 35 Circle, Austin, Texas.

Please request an updated agenda a few days to the meeting.

Reason for emergency: A large crown is expected at the October 22, 1998 Commissioner's agenda meeting. Attendance at the Commissioner's meeting will possibly cause parking problems and traffic congestion. For this reason, the meeting has been rescheduled.

Contact: Gary W. Trim, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6708 or fax 512/239-6717.

Filed: October 20, 1998, 4:15 p.m.

TRD-9816424

◆ ◆ ◆
Thursday, November 5, 1998, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing addressing two CCN applications. Liberty City Water Supply Corporation has applied to the

Texas Natural Resource Conservation Commission ("TNRCC") to amend its Water Certified of Convenience and Necessity No. 10408 in South County, Texas. Starrville Water supply Corporation has also applied to the TNRCC to obtain a Water Certificate of Convenience and Necessity in Smith County, Texas. The two water supply corporations have requested overlapping area and each has protested the application of the other. The matters will be heard jointly under Section 13.246 of the Texas Water Code.

This matter has been designated as SOAH Docket No. 582-98-1709.

Contact: Betty Goetz, P.O. Box 13025, Austin, 78711-3025, 512/475-3289.

Filed: October 20, 1998, 3:55 p.m.

TRD-9816417

◆ ◆ ◆

Friday, November 6, 1998, 9:00 a.m.

12015 Park 35 Circle, Building F, Room 2210

Austin

AGENDA:

Contact: Janice Robinson, 12015 Park 35 Circle, Austin, Texas 78753, 512/239-1139.

Filed: October 15, 1998, 8:58 a.m.

TRD-9816147

◆ ◆ ◆

Friday, November 6, 1998, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing to address an application by FMCC Corporation doing business as Southwest Gardens Water with the Texas Natural Resource Conservation Commission to obtain a water certificate of convenience and necessity and to decertify CCN No. 12735 issued to Don Hayes doing business as Southwest Gardens in Lubbock County, Texas.

This matter has been designated as SOAH Docket Number 585-98-1366.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: October 20, 1998, 11:30 a.m.

TRD-9816384

◆ ◆ ◆

Monday, November 9, 1998, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing to address a statement of change by Associates Utility Company with the Texas Natural Resource Conservation Commission (Commission) effective March 30, 1998, for its service area located in the following subdivisions: Calendar Lake, Hickory Hills, Camelot Forest, Governor's Point, Holiday Shore, and Ivanhoe subdivisions in Van Zandt, Trinity

Henderson, Brazoria, San Jacinto, and Tyler Counties, Texas. This matter has been designated as SOAH Docket No. 582-98-1364.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: October 14, 1998, 4:19 p.m.

TRD-9816121

◆ ◆ ◆

Tuesday, November 10, 1998, 10:00 a.m.

Stephen F. Austin, 1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing addressing the application filed by Summit Water Works with the Texas Natural Resource Conservation Commission (Commission) for a Certificate of Convenience and Necessity (CCN) and to decertify portions of Crest Water Company's CCN No. 12037 in Johnson County, Texas. Summit Water Works' application is being protested by Crest Water Company which is certificated to a portion of the requested area by Summit Water Works. Crest Water Company has also filed a request for a Cease and Desist Order, alleging Summit Water Works has encroached its CCN. The two applications have been consolidated for one hearing. This case has been assigned SOAH Docket Number 582-98-1889.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: October 14, 1998, 4:20 p.m.

TRD-9816122

◆ ◆ ◆

Thursday, November 12, 1998, 10:00 a.m.

City of Nederland Office Building, 1400 Boston Avenue

Nederland

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing to address an application filed by the City of Nederland with the Texas Natural Resource Conservation Commission (Commission) to amend water Certificate and Necessity (CCN) No. 10109, to decertify Portions of CCN No. 11036 Issued to Country Side Estates, and to amend sewer Certificate of Convenience and Necessity (CCN) No. 20045 in Jefferson County, Texas.

This matter has been designated as SOAH Docket No. 582-98-1678.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: October 20, 1998, 1:05 p.m.

TRD-9816393

◆ ◆ ◆

Thursday, November 12, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, 11th Floor, Suite 1100

Austin

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing to address a request by North Bosque Water Supply Corporation to amend the existing CCN No. 10023 with the Texas Natural Resources Conservation Commission (Commission to provide water utility service in McLennan County, Texas.

This matter has been designated as SOAH Docket No. 582-98-1767.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3289.

Filed: October 20, 1998, 4:28 p.m.

TRD-9816425



Texas Board of Occupational Therapy Examiners

Friday, October 30, 1998, 9:00 a.m.

Harris County Department of Education, 6300 Irvington Boulevard
Houston

Investigation Committee

AGENDA:

1. Call to Order
2. Review and possible action on cases: 98-31; 98-33, 98-50, 98-51, 98-53, 98-57, 98-58, 98-59, 98-60, 98-61, 98-66, 98-67, 98-68, 99-01, 99-03; 99-04; 99-06, 99-07, 99-08, 99-09.
3. Miscellaneous correspondence
4. Adjourn

Contact: Alicia Dimmick, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942.

Filed: October 21, 1998, 11:10 a.m.

TRD-9816468



Texas Council on Offenders with Mental Impairments

Thursday, October 29, 1998, 9:30 a.m.

Hilton Austin North and Towers, 6000 Middle Fiskville Road, Peach Room

Austin

Full Council Meeting

AGENDA:

- I. Call to order/roll call
- II. Public comments/instruction of guests
- III. Approval of minutes
- IV. Biennial Report
- V. Executive Committee Report
- VI. Director's Report: Year End Program Report; FY 99 Contracts; FY 2000-2001 LAR Request; Senate Committee on Criminal Justice Interim Report; Juvenile Offender Issues; MOU Status Report; TCOMI/TDCJ Conference; Travel Guidelines.
- VII. Adjournment

Contact: Carol Reagan, 8610 Shoal Creek boulevard, Austin, Texas 78758, 512/406-5406.

Filed: October 16, 1998, 2:46 p.m.

TRD-9816290



Texas Parks and Wildlife Department

Wednesday, November 4, 1998, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Park and Wildlife Commission Regulation Committee

AGENDA:

Approval of the Committee Minutes from the previous meeting; Briefing-Chairman's Charges; Briefing-Potential changes to the Statewide Hunter and Fishing Proclamation for 1999-2000; Action-Deer Management Update; Action-Possession and Sale of Deer Antlers; Action-Threatened and Endangered Species Proclamation; Briefing-Exotic Shrimp Aquaculture; Action-Migratory Gamebird Proclamation-Snow Goose; Briefing-Shrimp Management and Sea Turtle Conservation; Other Business.

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas 78744, 512/389-4651.

Filed: October 21, 1998, 9:40 a.m.

TRD-9816443



Wednesday, November 4, 1998, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Park and Wildlife Commission Finance Committee

AGENDA:

Approval of the Committee Minutes from the previous meeting; Briefing-Chairman's Charges; Briefing-First Quarter Financial Review; Briefing-State Park Management Audit; Action-State Parks Passport Regulations; Action-Vendor's Protest Rules; Other Business.

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas 78744, 512/389-4651.

Filed: October 21, 1998, 9:42 a.m.

TRD-9816444



Wednesday, November 4, 1998, 9:00 a.m.

Parks and Wildlife HQ, Executive Office Conference Room, 4200 Smith School Road

Austin

Park and Wildlife Commission Conservation Committee, Executive Session

AGENDA:

Notice of Closed Meeting

Approval of the Minutes from the previous Executive Session; Briefing-Land Exchange-Trarrant County/Travis County; Briefing-Pending Litigation-Jefferson County Other Business.

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas
78744, 512/389-4651.
Filed: October 21, 1998, 9:43 a.m.
TRD-9816445



Wednesday, November 4, 1998, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Park and Wildlife Commission Conservation Committee

AGENDA:

Approval of the Committee Minutes from the previous meeting; Briefing-Chairman's Charges; Briefing-Texas Historical Commission Assessment-Historic Sites; Action-Land Sale-Wood County; Action-Use of Metal Detectors on Department Lands; Briefing-Landowner Incentive Program; Other Business.

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas
78744, 512/389-4651.
Filed: October 21, 1998, 9:43 a.m.

TRD-9816446



Wednesday, November 4, 1998, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road

Austin

Park and Wildlife Commission Ad Hoc Infrastructure Committee

AGENDA:

Approval of the Committee Minutes from the previous meeting; Briefing-Chairman's Charges; Briefing-Bond Program Update; Other Business.

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas
78744, 512/389-4651.
Filed: October 21, 1998, 9:44 a.m.

TRD-9816447



Wednesday, November 4, 1998, 6:30 p.m.

Bright Leaf, 4400 Crestway

Austin

Park and Wildlife Commission Dinner Meeting

AGENDA:

Members of the Texas Parks and Wildlife Commission plan to have dinner at 6:30 p.m. November 4, 1998. Although this function is primarily a social event and no formal action is planned, the Commission may discuss items on the Public Hearing scheduled for 9:00 a.m., Thursday, November 5, 1998. (agenda attached)

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas
78744, 512/389-4651.
Filed: October 21, 1998, 9:45 a.m.

TRD-9816448



Thursday, November 5, 1998, 9:00 a.m.

Parks and Wildlife HQ, 4200 Smith School Road
Austin

Park and Wildlife Commission Public Hearing

AGENDA:

Approval of the Minutes from the previous meeting; Acceptance of Gifts; Presentation of Retirement Certificates and Service Awards; Recognition-Passport to Texas-Dow Chemical; Recognition-Shikar-Safari Officer of the Year; Approval of agenda; Action-Consent Agenda Items; Briefing-Expo VII; Action-Threatened and Endangered Species Proclamation; Briefing-Texas Outdoors: A Vision for the Future; Action-Artwork Approval; Action-Possession and Sale of Deer Antler; Briefing-Aquatic Vegetation; Action-State Park Passport Regulations; Action-Vendor's Protest Rules; Briefing-Mexico-Texas Border Fishing Issues; Action-Land Sale-Wood County; Other Business.

Contact: Gene McCarty, 4200 Smith School Road, Austin, Texas
78744, 512/389-4651.
Filed: October 21, 1998, 9:45 a.m.

TRD-9816449



Texas Board of Physical Therapy Examiners

Monday, October 26, 1998, 8:30 a.m.

333 Guadalupe, Suite 2-510

Austin

Application Review Committee

AGENDA:

I. Call to order

II. Public Comment

III. Discussion and possible action on the application for reinstatement of licensure by Arlene Patacsil

IV. Adjournment

Contact: Nina Hunter, 333 Guadalupe, Suite 2-510, Austin, Texas
78701, 512/305-6900.

Filed: October 15, 1998, 8:58 a.m.

TRD-9816145



Monday, October 26, 1998, 10:00 a.m.

333 Guadalupe, Suite 2-510

Austin

Rules Committee

AGENDA:

I. Call to order

II. Public Comment

III. Discussion and possible recommendations on proposing a rule establishing the Foreign Credentialing Commission on Physical Therapy (FCCPT) as the prescreening entity for Texas applicants

IV. Discussion and possible recommendations on proposing changes to Chapter 321, Definitions

V. Adjournment

Contact: Nina Hunter, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, 512/305-6900.
Filed: October 15, 1998, 8:58 a.m.
TRD-9816144



Monday, October 26, 1998, 1:00 p.m.

333 Guadalupe, Suite 2-510

Austin

Education Committee

AGENDA:

I. Call to order

II. Public Comment

III. Discussion and possible recommendations on proposing a rule establishing the Foreign Credentialing Commission on Physical Therapy (FCCPT) as the prescreening entity for Texas applicants

IV. Discussion and possible recommendations on §329.5, Licensure of Foreign-trained Applicants

V. Discussion and possible recommendations on making an ethics course a requirement for license renewal

VI. Discussion and possible recommendations regarding §341.5, waiver of Continuing Education Units

VII. Discussion and possible action on Coordinator's report on Continuing Education program changes

VIII. Adjournment

Contact: Nina Hunter, 333 Guadalupe, Suite 2-510, Austin, Texas 78701, 512/305-6900.

Filed: October 15, 1998, 8:58 a.m.

TRD-9816146



Texas State Board of Physician Assistance Exam

Thursday, October 29, 1998, 1:00 p.m.

333 Guadalupe, Tower 2, Room 225

Austin

Licensure Committee

AGENDA:

1. Call to order

2. Roll call

3. Review of licensure applicants referred to the Licensure Committee by the Executive Director for determination of eligibility for licensure

4. Review of Physician Assistant application for permanent licensure.

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(b).

For possible Rehabilitation Order

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, Sections 2.07(b) and 2.07(o) Texas Revised Civil Statutes and the Physician

Assistant Licensing Act, Article 4495b-1, Section 4(h) and 20, Texas Revised Civil Statutes.

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512/305-7023.

Filed: October 21, 1998, 10:42 a.m.

TRD-9816459



Friday, October 30, 1998, 9:00 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Disciplinary Committee Meeting

AGENDA:

Call to order

Roll call

Executive Session to review selected investigative files and cases recommended for dismissal by Informal Settlement Conference/Show Compliance Proceedings or staff.

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512/305-7023.

Filed: October 21, 1998, 10:42 a.m.

TRD-9816460



Friday, October 30, 1998, 10:00 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

Long Range Planning Committee

AGENDA:

1. Call to order

2. Roll call

3. Legislative Report

4. Financial Report

5. Consideration, discussion and possible action concerning items to present to the legislators for the upcoming legislative session.

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512/305-7023.

Filed: October 21, 1998, 10:43 a.m.

TRD-9816461



Friday, October 30, 1998, 1:00 p.m.

333 Guadalupe, Tower 2, Room 225

Austin

Full Board Meeting

AGENDA:

Call to order

Roll call

Executive Session

Discussion, consideration and possible action of a position paper regarding physician assistant protocols

Discussion, consideration and possible action of a position action concerning a letter from TAPA for recommendation on supervision of Physicians Assistant and Advanced Nurse Practitioners

Discussion, consideration and possible action concerning House Bill 1, rules review program and all rules concerning physician assistant to include but not limited to Rule 186, Supervision of Physician Assistant Students

Consideration and approval of Modification Request/Termination Request Orders

Consideration and approval of Agreed Board Orders

Consideration and approval of Non-Public Rehabilitation Orders

Approval of minutes from previous Board Meetings

Executive Director's Report

Approval of Board meeting dates for 2000

Report and recommendations from the Long Range Planning Committee

Report and recommendations from the Licensure Committee

Report and recommendations from the Disciplinary Committee

Executive session under the authority of the Open Meetings Act, Section 551.071 of the Government Code and Article 4495b, and Article 4495b-1, Section 4(h), Texas Revised Civil Statutes and Article 22 of the Texas Administrative Code, Chapter 185.3(h).

Contact: Bruce A. Levy, 333 Guadalupe, Tower 2, Room 225, Austin, Texas 78701, 512/305-7023.

Filed: October 21, 1998, 10:43 a.m.

TRD-9816462



Texas Public Finance Authority

Friday, October 23, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.

2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.

3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 15, 1998, 12:00 p.m.

TRD-9816165



Monday, October 26, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.

2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.

3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 16, 1998, 2:45 p.m.

TRD-9816283



Tuesday, October 27, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.

2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.

3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 15, 1998, 8:55 a.m.

TRD-9816315



Tuesday, October 27, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.
2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.

3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 19, 1998, 9:27 a.m.

TRD-9816317



Wednesday, October 28, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.
2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.

3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 20, 1998, 9:01 p.m.

TRD-9816378



Public Utility Commission of Texas

Thursday, October 22, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project No. 16251; Docket Numbers

19000, 15688, 14659, 19621, 18548; Project Numbers 18870, 19864, 19871; Docket Numbers 19745, 19777, 19790, 19801, 19161, 19687, 19688, 19726, 19738, 19739, 19743; Project Numbers 18702, 18515, 18516, 8290, 19655, 18072, 18438, 19699, 19698, 16901; Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission; Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreement approved by the Commission pursuant to PURA and FTA; Electric utility reliability and customer service; Project Numbers 19087, 19205; Docket Numbers 17751, 19715, 19545, 19651, 19615, 19791, 18436; Project No. 19809; Docket Number 18078; Project No. 19863; Electric utility restructuring; Project Number 17709; Customer service issues, including but not limited to correspondence and complaint issues; Operating budget, appropriations request, agency business plan, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Project No. 18491, Year 2000 Project the Public Utility Commission; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion of decisions on matters considered in closed session.

Contact: Lisa Cantu, 1701 North Congress Avenue, Austin, Texas 78711, 512/936-7209.

Filed: October 14, 1998, 4:29 p.m.

TRD-9816133



Wednesday, October 28, 1998, 9:30 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting/Public Hearing for discussion, consideration, and possible action regarding: Project No. 19516, Proposed new Substantive Rule 26.46 relating to Unauthorized Charges ("Cramming").

Contact: Lisa Cantu, 1701 North Congress Avenue, Austin, Texas 78711, 512/936-7209.

Filed: October 15, 1998, 12:00 p.m.

TRD-9816162



Texas Real Estate Commission

Monday, October 28, 1998, 9:00 a.m.

Conference Room 235, TREC Headquarters Office, 1101 Camino La Costa

Austin

AGENDA:

Call to order; minutes of September 14, 1998, Commission meeting; Staff reports; committee reports; Report on ARELLO Annual Conference; discussion and possible action on attendance at ARELLO meetings; Discussion and possible action to adopt amendment to 22 TAC §535.223, concerning standard inspection report forms: Discussion of proposed adoption of new §§533.31-533.39, and repeal of §§533.1-533.30, concerning practice and procedure; Discussion of proposed amendment to 22 TAC §§537.11, 537.26, and 537.27, concerning standard contract forms: Discussion and possible action to propose amendments to 22 TAC §§535.71, 535.72 and 535.92,

concerning MCE courses and license renewals; Discussion and possible action to readopt or propose amendment to repeal of 22 TAC Chapter 534, concerning general administration; Discussion only of comments on 22 TAC Chapter 537, concerning professional agreements and standards contract forms; Discussion and possible action to approve 1999 schedule for rule reviews; Executive session to discuss pending litigation pursuant to Texas Government Code, §551.071 and to conduct evaluation of administrator pursuant to Texas Government Code, §551.074; discussion and possible action to authorize payments from recovery funds; Discussion and possible action on evaluation of administrator; Discussion and possible action on legislative initiatives; Discussion and possible action on Internet advertising and transactions; Discussion and possible action on policy regarding participation of commissioners in courses regulated by the agency; Consideration of complaint information concerning: Leslie Norman Joelson; Johnnie Marcelle Cadenhead; Latricia R. Sells; John David Campagna; Diane D. Coleman; Darwin Lee Bohne, Jr., Olivia Howard; Felix H.T. Tsai; Entry of orders in contested cases

For ADA assistance, call Nancy Guevremont at 512/465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, 512/465-3900.

Filed: October 16, 1998, 2:10 p.m.

TRD-9816269



Records Management Interagency Coordinating Council

Friday, October 23, 1998, 10:00 a.m.

Texas State Capitol Extension, Room E1.012

Austin

Council

REVISED AGENDA:

1. Council member introductions.
2. Approve minutes of the September 23, 1998, meeting.
3. Discussion of Committee Reports.
 - A. Electronic Records Research Committee report.
 - B. Blue Pages Committee report.
4. Discussion and approval to submit Biennial Report.
5. Discussion and approval of RMICC liaison for Texas Register Open Meetings electronic filing.
6. Public Comments.

Contact: Michele Lam, P.O. Box 12927, Austin, Texas 78711, 512/463-5460, email michele.lamb@tsl.state.tx.us

Filed: October 14, 1998, 12:28 p.m.

TRD-9816102



Texas Savings and Loan Department

Monday, November 16, 1998, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from Liberty Bank, ssb, Austin, to operate a branch office at 1610 North Loop Boulevard, Austin, Texas, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, 512/475-1350.

Filed: October 20, 1998, 9:21 a.m.

TRD-9816379



Monday, November 16, 1998, 9:00 a.m.

Finance Commission Building, 2601 North Lamar, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from FirstCapital Bank, ssb, Victoria, to merge with Liberty Savings Associations, Houston, with FirstCapital Bank, ssb, surviving, from which record the Commissioner will determine whether to grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, 512/475-1350.

Filed: October 15, 1998, 4:47 p.m.

TRD-9816211



Texas Southern University

Monday, October 19, 1998, 8:30 a.m.

3100 Cleburne/Robert J. Terry Library, 5th Floor

Houston

Special Board Meeting

AGENDA:

Meeting to Consider: Texas Public Finance Authority Texas Authority Texas Southern University Revenue Finance System, Revenue Refunding and Improvement Bonds, Series 1998A, 1998B and 1998C Principal amount \$52,000,000 joint resolution.

Approval of a joint resolution between the Texas Public Finance Authority and Texas Southern University to issue revenue bonds for the purpose of major renovations, new construction and refunding of existing debt

Major renovation projects are: Gray Hall; Martin Luther King Building; Thermal Utilities replacement; Track and Field; School of Education. New construction projects are recreational facility medical services facility. Refund project is approximately \$19,000,000 to refund Series 1993 and Series 1993 A general fee and tuition fee bonds.

Contact: James M. Douglas, 3100 Cleburne, Houston, Texas 77004, 713/529-8911.

Filed: October 15, 1998, 8:54 a.m.

TRD-9816136



Stephen F. Austin State University

Tuesday, October 20, 1998, 9:00 a.m.
1936 North Street, Austin Building Room 307
Nacogdoches

Board of Regents

REVISED AGENDA:

Additional agenda Item:

III. Personnel

D. Holiday Schedule

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: October 15, 1998, 2:21 p.m.

TRD-9816180



Teacher Retirement System of Texas

Thursday, October 22, 1998, 8:30 a.m.

1000 Red River, Room 229E

Austin

Board of Trustees Audit Committee

AGENDA:

1. Approval of Minutes for the August 27, 1998 and September 23, 1998 Audit Committee Meetings
2. Review of Internal Audit Department Reports
 - a. Legal Department-January
 - b. TRS-Care Certification Process-January
3. Report on other Audit Activities
 - a. Security Review by Consultant-Oaks
 - b. BeSt Update-Morris
 - c. Year 2000 Update-Morris
4. Quarterly Report-Morris
 - a. Internal Audit Plan Status
 - b. Status of Audit Recommendations

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 512/397-6444 or 1/800/841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698 or 512/397-6400.

Filed: October 14, 1998, 4:26 p.m.

TRD-9816123



Thursday, October 22, 1998, 10:00 a.m.

1000 Red River, Room 514E

Austin

Board of Trustees Policy Committee

AGENDA:

1. Approval of Minutes of July 23, September 10, and October 1, 1998, Meetings
2. Consideration of Proposed Rules on:
 - a. Calculation for Alternate Payee Benefits Before a Member's Benefit Begins
 - b. Vendor Protests, Dispute Resolutions, and Hearing
 - c. Performance Pay

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 512/397-6444 or 1/800/841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698 or 512/397-6400.

Filed: October 14, 1998, 4:26 p.m.

TRD-9816124



Thursday, October 22, 1998, 1:00 p.m.

1000 Red River, 5th Floor Board Room

Austin

Board of Trustees Investment Committee

AGENDA:

1. Approval of Minutes of August 27, 1998 Meeting
2. Review of TRS FY98 and Custodial Relationship-Ms. Penrose, Northern Trust Corporation
3. Discussion and Consideration of Proposed Investment in Goldman Sachs Vintage Fund, L.P.-Mr. Cooper, Goldman Sachs
4. Discussion of Investment Summary and Consideration of Recommendation for Allocation of Funds Available for Investment-Mr. Walker
5. Consideration of Equity Approved Universe and Recommendations-Mr. Walker
6. Report on Asset Allocation, Policy Rangers, and Investment Performance-Mr. Walker
7. Review of Equity Portfolio-Staff
8. Review of Fixed Income Portfolio, Cash Equivalents Portfolio and Securities Lending-Staff
9. Review of Real Estate Portfolio-Staff
 - a. Review of Annual Real Estate Performance-Mr. Elmer, Deloitte and Touche
 - b. Status Report on Real Estate Plan-Ms. Hudson-Wilson, Property and Portfolio Research
10. Review of Alternative Assets Portfolio-Mr. Walker
11.
 - a. Review of Investment Outlook, Market Conditions and Portfolio Performance-Mr. Record, Wellington Management
 - b. Discussion and Consideration of Current World and Domestic Concerns as they Might Affect Investment Issues-Mr. Record
12. Report of Policy Exceptions, and Proxy Exceptions, Soft Dollar Expenditures, and Commissions-Mr. Walker
13. Report of the Policy Committee and Consideration of Proposed Changes to TRS Investments Policy with respect to:

- a. Equity Portfolio Strategies, Benchmarks and Characteristics, including Use of Passive Portfolios
- b. The Approve Universe of Equity Investments
- c. The Overall Portfolio Return Objectives in Light of Changed Inflation Assumptions-Dr. Stream

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 512/397-6444 or 1/800/841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698 or 512/397-6400.

Filed: October 14, 1998, 4:26 p.m.

TRD-9816125



Thursday, October 22, 1998, 3:00 p.m.

1000 Red River, 5th Floor Board Room

Austin

Board of Trustees Real Estate Committee

AGENDA:

1. Approval of Minutes of August 28, 1998 Meeting
2. Update on Portfolio, including Mortgage Risk Ratings, Issues Affecting Corporate-Owned Properties, and Issues Relating to Report on Performance
3. Discussion Regarding Strategic Planning and Optimal Allocations, Including Comments From Strategic Real Estate Consultant
4. consideration of Modification of Loan Secured by Evanston Place (Apartment Building located in Evanston, Illinois)
5. Consideration of Modification of Loan Secured by Southwest Plaza Mall (located in Denver Colorado)
6. Update on San Jacinto Tower Loan

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 512/397-6444 or 1/800/841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698 or 512/397-6400.

Filed: October 14, 1998, 4:27 p.m.

TRD-9816126



Friday, October 23, 1998, 9:00 a.m.

1000 Red River, 5th Floor Board Room

Austin

Board of Trustees

AGENDA:

1. Roll Call of Board Members
2. Public Comments
3. Approval of Minutes of August 28, 1998, and September 23, 1998, Meetings
4. Consideration of Excusing Board Member's Absence from August 28, 1998 and September 23, 1998, Meetings
5. Consideration of Board of Meeting Days for 1999

- 6. Consideration of Petition for a New Rule on a Lump Sum Payment in Lieu of Benefits Awarded by Domestic Relations Order
- 7. Report of Policy Committee

8. Report of Real Estate Committee

9. Report of Audit Committee

10. Consideration of Reinsurance for TRS-Care Active School Employees Group Health Benefits Plan

11. Report of Investment Committee

a. Consideration of Allocation of Funds Available for Investment

b. Consideration of Equity Approved Universe

c. Consideration of Additional Recommendations to the Equity Approved Universe

d. Consideration of Proposed Changes to TRS Investment Policy with Respect to Equity Portfolio Strategies, Benchmarks, and Characteristics, including Use of Passive Portfolios; to the Approved Universe of Equity investments; and to overall Portfolio Return Objectives in light of Changes to inflation Assumptions

e. Consideration of Proposed Investment in Goldman Sachs Vintage Fund, L.P.

12. Technology Report

13. Report of Chief Financial Officer

14. Report of Benefits Division

15. Report of Executive Director

16. Comments by Board Members

17. Report of General Counsel on Litigation

18. Consideration of Questions of Compliance by Employees and Contractors with TRS Ethics Policies

19. Discussion and Consideration of Proposal on Compensation of Investment Staff

For ADA assistance, contact John R. Mercer, 512/397-6400 or T.D.D. 512/397-6444 or 1/800/841-4497 at least two days prior to the meeting.

Contact: John R. Mercer, 1000 Red River, Austin, Texas 78701-2698 or 512/397-6400.

Filed: October 15, 1998, 3:51 p.m.

TRD-9816207



Texas A&M University, Board of Regents

Wednesday, October 21, 1998, 12:00 noon

2401 South 31st Street

Temple

Scott & White Memorial Hospital Committee/TAMU IACUC on the Temple Campus

AGENDA:

1. Approval of Draft Minutes from Previous Meeting
2. Ratification of Administrative Actions
3. Progress Reports from Ongoing and Completed Studies
4. Review of New Applications

5. Review of Miscellaneous Items and Operating Procedures

6. Discussion of Informational Reading Material

Contact: Thomas J. Kuehl, Ph.D., 254/724-5380.

Filed: October 16, 1998, 3:31 p.m.

TRD-9816293



Texas State Technical College System

Monday, October 19, 1998, 3:30 p.m.

3801 Campus Drive Chancellor's Office Building, Conference Room

Waco

Board of Regents Executive Committee

REVISED AGENDA:

Add agenda item for approval at Executive Committee Telephone Conference: Fiscal 1999 Capital Budget Authority for TSTC Harlingen.

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: October 15, 1998, 9:15 a.m.

TRD-9816150



Friday, October 30, 1998, 8:00 a.m.

TSTC Sweetwater, Sears Board Room, 300 College Drive

Sweetwater

Board of Regents Policy Committee

AGENDA:

Discussion and Review of the following TSTC Policy Committee Minute Orders and Reports:

Committee of the Whole

Policy Committee for Instruction and Student Services

Policy Committee for Fiscal Affairs

Policy Committee for Facilities

Policy Committee for Human Resources and Development

Reconvene Committee of the Whole

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: October 20, 1998, 11:17 a.m.

TRD-9816382



Friday, October 30, 1998, 11:00 a.m.

TSTC Sweetwater, Sears Board Room, 300 College Drive

Sweetwater

Board of Regents Policy Committee

AGENDA:

The Board of Regents of Texas State Technical College System will meeting and take action on the following agenda items: classes meeting with less than ten students; active student/employee organization

purpose statements; ratification of approval of depository banks; administrative computer acquisition; requests for budget change for FY 98 and 99; signature authorizations; signature authorizations for payee documents; amended student and family housing rental rates; service charges deposits schedule for FY99; amended emoluments for FY99; vending machine and pay telephone contracts at Waco and Marshall; FY99 capital expenditures for Harlingen, campus master plans; construct, receive bids and award contract for construction of pedestrian plaza at Waco; easement and right of way for Texas Utilities Electric Co. and Enserch Corp. for Computer Applications Center at Waco; approval of concept and approval to submit a project to the THECB and contingent approval of Labunski Associates for Fieldhouse Expansion at Harlingen; advertise and accept bids for construction of parking lot at block 72 in Harlingen; annual operating plan for the Texas State Technical College Foundation for FY 98-99; memorandum of understanding with Texas Association of Community Colleges; legislative plan; and semester conversion.

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: October 20, 1998, 11:16 a.m.

TRD-9816381



Friday, October 30, 1998, 11:05 a.m.

TSTC Sweetwater, Sears Board Room, 300 College Drive

Sweetwater

Board of Regents Closed Meeting

AGENDA:

The TSTC Board of Regents will have a closed meeting in accordance with Chapter 551 of the Texas Government Code of the specific purpose provided in sections 551.072, 551.074, and 551.075 to discuss possible sale or lease of TSTC rental property in Amarillo and discuss system organization and personnel.

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: October 20, 1998, 11:43 a.m.

TRD-9816390



Texas Tech University of Texas Tech University Health Sciences Center

Monday, October 26, 1998, 9:15 a.m.

Doubletree Hotel, 5410 LBJ Freeway, Lincoln Centre

Dallas

Board of Regents Workshop Retreat

AGENDA:

The Board of Regents of Texas Tech University will meet in informal workshop sessions with the Chancellor, the Deputy Chancellor, the President of Texas Tech University, and the President of Texas Tech University Health Sciences Center to review the overall governance structure of Texas Tech; to discuss the further development of strategic plans; to deliberate on issues relating to enrollment management, funding (public and private), staff development, academic and research programs and plans; and to discuss the development of operating efficiencies. Since there will be dialogue among board

members, the meeting will be posted and open to the public. However, it is not anticipated that any formal decisions will be made.

If necessary or appropriate, the Board may recess for brief executive sessions to discuss personnel matters relating to the evaluation, assignment, or duties of officers or employees (Texas Government Code, Section 551.074) or to confer with its employees (Texas Government Code, 551.075) as a part of these reviews. It is not anticipated that any formal action or decisions will result from these brief executive sessions, if indeed they do occur.

Contact: James L. Crowson, P. Box 42013, Lubbock, Texas 79409, 806/742-0012.

Filed: October 20, 1998, 3:38 p.m.

TRD-9816415



Texas Association of Counties County Government Risk Management Pool

Thursday-Friday, October 29-30, 1998, 3:00 p.m. and 9:00 a.m. (respectively)

1204 San Antonio

Austin

Board of Trustees

AGENDA:

Call to order-3:00 p.m. October 29, 1998

Deliberate And Take Action On The Following Items:

Program Administration Report

Update on Year 200 Plan

Status on recently completed claims audits

Membership, Loss and Statistical Update

Report of Surcharge and Credits

Ratify renewal and placement of PO/LE Reinsurance

Receive Report on County Reinsurance Limited

Cancellation (on expiration) of U.S. Risk contract effective 31 January, 1999

Engagement of actuarial firms for 1998 review

Required training for Program Manager

Claims Report

Field Service Report

Adjourn for the evening

Reconvene October 30, 1998, at 9:00 a.m.

Approve July 2 and 3, 1998 and September 3, 1998, Minutes

Ratify appointment of Executive Committee

Finance Report

Investment Report

Approve the 1999 Budget

Closed Session: Consultation with Attorneys on Pending Matagorda County Litigation with Pool to receive advice (Government Code 551.071)

Program Administration Report

Consider the following changes to program coverages

Consider revision to application forms for all coverages

Convert several AI endorsements from ISO to TAC Forms

Possible med-mal exclusion for LE Coverage

AL/GL-increase supplementary payment for expenses from \$25 to \$100 per day

Add mandatory arbitration provisions to PO/LE and AL/GL coverage documents

Consider amending exclusion relating to pollutants in PO/LE Coverage

Review/amend language of defense costs outside policy limited provisions-PO and LE

Review/amend special endorsements for CSCD's

Review/approve revised PO/LE coverage documents

Adjourn

Contact: James W. Jean, 1204 San Antonio, Austin, Texas 78701, 512/475-8753.

Filed: October 16, 1998, 9:39 a.m.

TRD-9816219



Texas Department of Transportation

Thursday, November 12, 1998, 9:30 a.m.

200 East Riverside, Building 150, 1st Floor

Austin

Texas Motor Vehicle Board

AGENDA:

Call to order. Roll call. Approval of Minutes of Motor Vehicle Board meeting held September 10, 1998. Consideration of Proposals for Decision. Consideration of Enforcement Default Proposals for Decision, Executive Session pursuant to Section 551.074, Government, Code, Discussion of the appointment, employment, evaluation, reassignment, duties, discipline and dismissal of division personnel. Agreed Orders, Orders of Dismissal-Enforcement. Public Hearing and Consideration of Proposed new Board Rule of Practice and Procedure 101.67. Public Hearing and Consideration of proposed amendments to Board Rule of Practice and Procedure 105.4 and new 105.32. Review Chapter 101 of Board Rules of Practice and Procedure. Consideration of publication of amendment proposal to Board Rule of Practice and Procedure 101.14, Cease and Desist Orders. Order. a. Review of Litigation Status Report. b. Division Operations Status Report. c. Licensing Activity Report. d. Review of Consumer Complaint Recap Report. e. Enforcement Status Report. Adjournment.

Contact: Brett Bray, 150 East Riverside, Second Floor South, Austin, Texas 78704, 512/416-4800.

Filed: October 16, 1998, 11:19 a.m.

TRD-9816232



University Interscholastic League

Sunday, October 18, 1998, 1:30 p.m.

Omni Southpark Hotel, 4140 Governors Row
Austin

Legislative Council Meeting, Music Standing Committee

AGENDA:

A-J Business Meeting

Contact: Bonnie Northcutt, 1701 Manor Road, Austin, Texas 512/471-5883.

Filed: October 14, 1998, 4:07 p.m.

TRD-9816118



Sunday, October 18, 1998, 1:30 p.m.

Omni Southpark Hotel, 4140 Governors Row

Austin

Legislative Council Meeting, Academic Standing Committee

AGENDA:

A-J Business Meeting

Contact: Bonnie Northcutt, 1701 Manor Road, Austin, Texas 512/471-5883.

Filed: October 14, 1998, 4:07 p.m.

TRD-9816119



Sunday, October 18, 1998, 3:00 p.m.

Omni Southpark Hotel, 4140 Governors Row

Austin

Legislative Council Meeting, Policy Standing Committee

AGENDA:

A-J Business Meeting

Contact: Bonnie Northcutt, 1701 Manor Road, Austin, Texas 512/471-5883.

Filed: October 14, 1998, 4:07 p.m.

TRD-9816116



Sunday-Monday, October 18-19, 1998, 8:00 a.m.

Omni Southpark Hotel, 4140 Governors Row

Austin

Legislative Council Meeting

AGENDA:

A-J Business Meeting

Contact: Bonnie Northcutt, 1701 Manor Road, Austin, Texas 512/471-5883.

Filed: October 14, 1998, 2:58 p.m.

TRD-9816109



Monday, October 19, 1998, 1:30 p.m.

Omni Southpark Hotel, 4140 Governors Row

Austin

Legislative Council Meeting, Athletic Standing Committee

AGENDA:

A-J Business Meeting

Contact: Bonnie Northcutt, 1701 Manor Road, Austin, Texas 512/471-5883.

Filed: October 14, 1998, 4:07 p.m.

TRD-9816117



University of Texas System

Tuesday, October 20, 1998, 9:00 a.m.

1515 Holcombe Boulevard, Room B8.4344

Houston

U.T. M.D Anderson Cancer Center, Institutional Animal Care and Use Committee

AGENDA:

Review of Protocols for Animal Care and Use and Modifications thereof.

Contact: Leonard Zwelling, 1515 Holcombe Boulevard, Box 307, Houston, Texas 78030, 713/792-3220.

Filed: October 14, 1998, 3:31 p.m.

TRD-9816111



Friday, October 23, 1998, 3:30 p.m.

21st and San Jacinto Streets, Belmont Hall 326

Austin

U.T. Austin-Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to Order

II. Approval of Minutes of Previous Meeting

III. New Business

IV. Announcements/Information Reports

V. Executive Session

Personnel Matters Relating to Appointment, Employment, Evaluation, Assignment, Duties, Discipline, or Dismissal of Officers or Employees-Section 551.074 of the Texas Government Code

VI. Adjournment

Contact: Jody Conradt, Women's Athletics, Belmont Hall 718, Austin, Texas 78712-1286, 512/499-4402.

Filed: October 19, 1998, 9:39 a.m.

TRD-9816321



Wednesday, October 28, 1998, 3:00 p.m.

7703 Floyd Curl Drive, Room 422A

San Antonio

U.T. Health Science Center-San Antonio, Animal Care and Use Committee

AGENDA:

1. Approval of Minutes
2. Protocols for Review (See Attached)
3. Subcommittee Reports
4. Other Business

Contact: Molly Greene, 7703 Floyd Curl Drive, San Antonio, Texas
78284-7822, 210/567-3717.

Filed: October 19, 1998, 2:34 p.m.

TRD-9816358



University of Texas, Health Center at Tyler

Thursday, November 5, 1998, Noon

Highway 271 and Highway 155, Room #116, Biomedical Research Building

Tyler

Animal Research Committee

AGENDA:

Approval of Minutes

Chairman Report

Veterinarian Report

Old Business

New Business

Adjournment

Contact: Lea Alegre, P.O. Box 2003, Tyler, Texas 75710, 903/877-7661.

Filed: October 19, 1998, 4:10 p.m.

TRD-9816364



Veterans Land Board

Wednesday, October 28, 1998, 10:00 a.m.

Doubletree, 15th and Lavaca, Houston Rooms 1 & 2, Second Floor (will recess and reconvene at approximately 2:30 p.m.) Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

Board

AGENDA:

Approval of previous board meeting minutes; Briefing on the progress of the Texas Veterans Homes. Presentation of Certificates of recognition to the BRAG members; consideration of request by Ernest Cerda to set aside any bids received on tract 8823, Leon County to allow reinstatement of Account #489-109998; consideration of request by Alberto Sales for reinstatement of eligibility to participate in the land program; consideration and approval of qualified bids received at the October 27, 1998, forfeited Land Sale; consideration and approval of all the steps necessary for the execution of a forward interest rate swap related to the proposed refunding of the State of Texas Veterans' Land Refunding Bonds, Series 1989, 1990 and 1991; consideration and approval of optional redemptions of December 1, 1998 in the Veterans Housing Assistance Program; Quarterly Investment Report for the period ending September 30, 1998; and staff reports.

Contact: Linda K. Fisher, 1700 North Congress, Austin, Texas 78701, Room 836, 512/463-5016.

Filed: October 20, 1998, 4:42 p.m.

TRD-9816428



Texas Water Development Board

Thursday, October 15, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

Board

EMERGENCY REVISED AGENDA:

Add new itemn 25: Consideration to amend or rescind the portion of the Board Resolution No. 97-70 regarding the commitment to purchase the \$2,775,000 City of Donna, Texas Combination Tax and Revenue Certificates of Obligation, proposed Series 1997A, from the State Water Pollution Control Revolving Fund.

Reason for emergency: The Board learned on October 14, 1998 that the City of Donna faces possible litigation that could impact its ability to repay the board's financial assistance necessitating the board's reassessment of the loan commitment and/or closing, which is scheduled for October 15, 1998.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/469-7847.

Filed: October 14, 1998, 4:56 p.m.

TRD-9816135



Texas Workforce Commission

Tuesday, October 27, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street

Austin

AGENDA:

Approval of prior meeting notes: vote on minutes dates September 8, 1998, September 15, 1998, September 16, 1998, September 22, 1998; 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 proposal of the Child Care Rules (40 TAC, Chapter 809), including repeals, amendments, and new rules; (4) concerning the proposal of the Child Care Allocation Rules for Fiscal Year 2000 and Forward (40 TAC, Chapter 800), including repeals, amendments, and new rules; (5) on the Communities in Schools Program replication; (6) on the PY97 JTPA Fourth Quarter Performance Report; (7) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Boards for Certification; (8) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; (9) regarding approval of Local Workforce Board or Private Industry Council Nominees; and (10) 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 AFL-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; Gene E. Merchant et al. v. TWC; and Holguin v. TWC et al; Elizabeth V. Neuman v. TWC and Macy's Dallas Galleria et al; and Midfirst Bank v. Reliance Healthcare et al. (Enforcement of Oklahoma Judgment) Government Code §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act, Actions, if any, resulting from executive session; Consideration, discussion, questions, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; and (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Dockets 42 and 43.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: October 19, 1998, 2:11 p.m.

TRD-9816356



Regional Meetings

Meetings filed October 14, 1998

Bexar Appraisal District, Board of Directors met at 535 South Main Street, San Antonio, October 19, 1998, 5:00 p.m. Information may be obtained from Ann Elizondo, P.O. Box 830248, San Antonio, Texas 78283-0248, 210/224-8511, Ext 263. TRD-9816120.

Cash Water Supply Corporation, Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, October 19, 1998, at 7:00 p.m. Information may be obtained from Clay Hodges, P.O. Box 8129, Greenville, Texas 75404-8129, 930/883-2695. TRD-9816107.

Golden Crescent Regional Planning Commission, Board of Directors met at GCRPC Board Room, 568 Big Bend Drive, Victoria, October 21, 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-9816134.

Trinity River Authority of Texas, Administration Committee met at 5300 South Collins Street, Arlington, October 21, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467-4343. TRD-9816104.

Wise County Appraisal District, Board of Directors met at 206 South State, Decatur, October 20, 1998, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State, Decatur, Texas 76234, 940/627-3081. TRD-9816115.

Meetings filed October 15, 1998

Austin-Travis County MHMR Center, Planning and Operations Committee Meeting met at 1430 Collier Street, Board Room, Austin, October 23, 1998, at Noon. Information may be obtained from Arvelle Dwyer, 1430 Collier Street, Austin, Texas 78704, 512/440-4031. TRD-9816209.

Bandera County Appraisal District, Board of Directors met at 1206 Main Street, Bandera, October 22, 1998, at 3:00 p.m. Information may be obtained from P.H. Coates, IV, P.O. Box 1119, Bandera, Texas 78003, 830/796-3039 or fax 830/460-3672. TRD-9816192.

Barton Springs/Edwards Aquifer Conservation District, Board of Directors-Called Meeting Public Hearing met at 1124A Regal Row, Austin, October 22, 1998, at 2:00 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, 512/282-8441 or fax 512/282-7016. TRD-9816163.

Burke Center, Board of Trustees met at 4101 South Medford Drive, Lufkin, October 27, 1998, at 1:00 p.m. Information may be obtained from Chauntel Moore, 4101 South Medford Drive, Lufkin, Texas 75901, 409/639-1141. TRD-9816154.

Central Counties Center for MHMR Services, Board of Trustees met at 304 South 22nd Street, 4th Floor Training Room, Temple, October 24, 1998, at 9:00 a.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, 254/298-7010. TRD-9816148.

Central Plains Center for MHMR and SA, Board of Trustees met at 208 South Columbia, Plainview, October 22, 1998, at 6:00 p.m. Information may be obtained from Ron Trusler, 2700 Yonkers, Plainview, Texas 79072, 806/293-2236. TRD-9816137.

Central Texas Council of Governments, Executive Committee met at 302 East Central Avenue, Belton, October 22, 1998, at 11:30 a.m. Information may be obtained from A.C. Johnson, 302 East Central Avenue, Belton, Texas 79072, 254/939-1801. TRD-9816210.

Dallas Central Appraisal District, Appraisal Review Board Meeting met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, October 28, 1998, at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, 214/631-0520. TRD-9816142.

Education Service Center, Region III, Board of Directors met in a revised agenda at 1905 Leary Lane, Victoria, October 19, 1998, at 1:00 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573-0731. TRD-9816161.

Education Service Center, Region XIII, Board of Directors met at 5701 Springdale Road, Room H, Austin, October 20, 1998, at 11:00 a.m. Information may be obtained from Dr. Roy C. Benevides, 5701 Springdale Road, Austin, Texas 78723, 512/919-5301. TRD-9816139.

Education Service Center, Region XIII, Board of Directors met at 5701 Springdale Road, Room H, Austin, October 20, 1998, at 12:30 p.m. Information may be obtained from Dr. Roy C. Benevides, 5701 Springdale Road, Austin, Texas 78723, 512/919-5301. TRD-9816138.

Harris County Appraisal District, Board of Directors met at 2800 North Loop West 8th Floor, Houston, September 9, 1998, at 9:30 a.m. Information may be obtained from Margy Taylor, P.O. Box 920975, Houston, Texas 77292-0975, 713/957-5291. TRD-9816140.

Jack County Appraisal District met in a revised agenda at 210 North Church Street, Jacksboro, October 20, 1998, at 7:05 p.m. Information may be obtained from Gary L. Zeitler or Tammie Morgan, P.O. Box 958, Jacksboro, Texas 76458, 940/567-6301. TRD-9816195.

Lower Neches Valley Authority, Board of Directors met at 7850 Eastex Freeway, Beaumont, October 20, 1998, at 10:00 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Box 5117, Beaumont, Texas 77726-5117, 409/892-4011. TRD-9816158.

LRGV Development Council, Board of Directors Mtg. met at Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, October 22, 1998, at 1:30 p.m. Information may be obtained from Kenneth N. Jones or Anna M. Hernandez, 311 North 15th Street, McAllen, Texas 78501-4705, 956/682-3481. TRD-9816141.

MHMR Authority of Brazos Valley, Board of Trustees met at 1504 Texas Avenue, Bryan, October 22, 1998, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, 409/822-6467. TRD-9816194.

North Central Texas Council of Governments, Executive Board met at Centerpoint Two, 616 Six Flags Drive, 2nd Floor, Arlington, October 22, 1998, at 12:45 p.m. Information may be obtained from Kristy Libotte Kenner, P.O. Box 5888, Arlington, Texas 76005-5888, 817/640-3300. TRD-9816159.

North Texas Local Workforce Development Board met at 4309 Jacksboro Highway, Suite 208, Wichita Falls, October 22, 1998, at Noon. Information may be obtained from Mona W. Statner, 4309 Jacksboro Highway, Suite 200, Wichita Falls, Texas 76302, 940/322-5291 or fax 940/322-2683. TRD-9816167.

Nueces SWCD met at 548 South Highway 77, #B, Robstown, October 20, 1998, at 10:30 a.m. Information may be obtained from Joan D. Rumfield, 548 South Highway 77, #B, Robstown, Texas 78380, 512/387-2533 Ext. 3. TRD-9816149.

Riceland Regional Mental Health Authority, Program of Services Committee Meeting met at 4910 Airport, Roseberg, October 22, 1998, at 8:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532-3098. TRD-9816156.

Riceland Regional Mental Health Authority, Finance/HR Committee Meeting met at 4910 Airport, Roseberg, October 22, 1998, at 9:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532-3098. TRD-9816157.

Region O Regional Water Planning Group, Scoping Committee/ Executive Committee met at 2930 Avenue Q, Board Room, Lubbock, October 22, 1998, at 9:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9816152.

Region O Regional Water Planning Group, General Membership Committee met at 2930 Avenue Q, Board Room, Lubbock, October 22, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9816153.

Rio Grande Council of Governments met at 1100 North Stanton, Suite 603, El Paso, October 16, 1998, at 1:00 p.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 915/533-0998. TRD-9816143.

Sabine Valley Center, Board of Trustees met at 107 Woodbine, Longview, October 22, 1998, at 7:00 p.m. Information may be obtained from Inman White, P.O. Box 6800, Longview, Texas 75608, 903/237-2393. TRD-9816191.

San Antonio River Authority, Board of Directors met at 100 Eats Guenther Street, Boardroom, San Antonio, October 21, 1998, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, 210/227-1373. TRD-9816182.

San Jacinto River Authority, Board of Directors met at 2301 North Millbend Drive, The Woodlands, October 22, 1998, at 7:30 a.m. Information may be obtained from James R. Adams/Ruby Shivers, P.O. Box 329, Conroe, Texas 77305, 409/588-1111. TRD-9816193.

Tarrant Appraisal District, Board of Directors met at 2301 Gravel Road, Fort Worth, October 23, 1998, 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, 817/284-0024. TRD-9816164.

West Central Texas Council of Governments, Regional Citizens Advisory Council met at 1025 EN 10th Street, Abilene, October 22, 1998, at 10:00 a.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9816181.

Meetings filed October 16, 1998

Central Texas Council of Governments, Executive Committee met at 302 East Central Avenue, Belton, October 22, 1998, at 11:30 a.m. Information may be obtained from A. C. Johnson, 302 East Central Avenue, Belton, Texas 79072, 254/939-1801. TRD-9816213.

Coastal Bend Workforce Development Board, Board of Directors Retreat met at Holiday Inn-Sunspreet (Kingfish Room), North Padre Island, 15202 Windward Drive, Corpus Christi, October 22-23, 1998, at 6:30 p.m and 7:30 a.m. (respectively.) Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, Third Floor, Corpus Christi, Texas 78401, 512/889-5330, Ext. 107. TRD-9816241.

Coastal Bend Workforce Development Board, Board of Directors Meeting met at Holiday Inn-Sunspreet (Kingfish Room), North Padre Island, 15202 Windward Drive, Corpus Christi, October 23, 1998, at 4:00 p.m. Information may be obtained from Shelley Franco, 1616 Martin Luther King Drive, Third Floor, Corpus Christi, Texas 78401, 512/889-5330, Ext. 107. TRD-9816242.

Concho Valley Workforce Development Board met at 133 West Beauegard, San Angelo, October 22, 1998, at 2:00 p.m. Information may be obtained from Mary Bessent, P.O. Box 1299, Robert Lee, Texas 76849, 915/453-2632 or fax 915/453-2277. TRD-9816217.

Hays County Appraisal District, Appraisal Review Board met at 21001 North IH35, Kyle, October 20, 1998, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH35, Kyle, Texas 78640, 512/288-2522. TRD-9816216.

Hockley County Appraisal District, Board of Directors met at 1103 Houston Street, Levelland, October 19, 1998, at 7:30 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336-1090, 806/894-9654 or fax 806/894-9671. TRD-9816218.

Johnson County Rural Water Supply Corporation, Regular Board Meeting met at the Corporate Office, 2849 Highway 171S, Cleburne, October 20, 1998, at 6:00 p.m. Information may be obtained from Dianna Jones, P.O. Box 509, Cleburne, Texas 76033, 817/645-6646. TRD-9816240.

Kleberg-Kenedy Soil and Water Conservation District, #356, Board of Directors Meeting met at 1017 South 14th Street, Kingsville, October 19, 1998, at 2:30 p.m. Information may be obtained from Joan D. Rumfield, 920 East Caesar, Suite #4, Kingsville, Texas 76363, 512/592-0309. TRD-9816291.

Lampasas County Appraisal District, Board of Directors met at 109 East 5th Street, Lampasas, October 22, 1998, at 7:00 p.m. Information may be obtained from Katrina S. Perry, P.O. Box 175, Lampasas, Texas 76550-0175, 512/556-8058. TRD-9816214.

Lower Colorado River Authority, Gentex Power Corporation met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, October 20, 1998, at 8:30 a.m. Information may be

obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816297.

Lower Colorado River Authority, Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 20, 1998, at 3:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816267.

Lower Colorado River Authority, Emerging Issues Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816266.

Lower Colorado River Authority, Audit Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816264.

Lower Colorado River Authority, Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816263.

Lower Colorado River Authority, Board of Directors met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816257.

Lower Colorado River Authority, Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816260.

Lower Colorado River Authority, Energy Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816261.

Lower Colorado River Authority, Land and Water Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816262.

Lower Colorado River Authority, Regional Development Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, October 21-22, 1998, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816265.

Lower Colorado River Authority, Llano Natural Science Laboratory Ad Hoc met at 3701 Lake Austin Boulevard, Hancock Building, Conference Room H303, Austin, October 22, 1998, at 8:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9816268.

Middle Rio Grande Development Council, Area Agency on Aging, Area Advisory Council on Aging met at 209 North Getty Street, Uvalde, October 21, 1998, at 10:00 a.m. Information may be obtained from Hector R. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, 830/876-3533. TRD-9816215.

Middle Rio Grande Development Council, Chief Elected Officials Board Meeting met at the Holiday, Sage Room, 920 East Main, Uvalde, October 28, 1998, at 11:30 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, 830/876-3533. TRD-9816299.

Middle Rio Grande Development Council, Board of Directors Meeting met at the Holiday, Sage Room, 920 East Main, Uvalde, October 28, 1998, at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, 830/876-3533. TRD-9816301.

North Central Texas Council of Governments, Workforce Program Committee met at 616 Six Flags Drive, Suite 300, Third Floor 911, Training Room, Arlington, October 20, 1998, at 9:30 a.m. Information may be obtained from Sharon Fletcher, P.O. Box 588, Arlington, Texas 76005-5888, 817/695-9176. TRD-9816237.

North Texas Regional Library System, Board Meeting met at 1111 Foch Street, Suite 100, Fort Worth, October 29, 1998, at 1:30 p.m. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, 817/335-6076. TRD-9816239.

North Texas Tollway Authority, Board of Directors met at DFW Airport Marriott Hotel, 8440 Freeway Parkway, Irving, October 21, 1998, at 9:30 a.m. Information may be obtained from Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, 214/522-6200. TRD-9816274.

Taylor County, Central Appraisal District, Board of Directors met at 1534 South Treadaway, Abilene, October 21, 1998, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, 915/676-9381 Ext. 24 or fax 915/676-7877. TRD-9816238.

Meetings filed October 19, 1998

Education Service Center, Region XII, Board of Directors met at 2101 West Loop 340, Waco, October 22, 1998, at 10:00 a.m. Information may be obtained from Tom Norris or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76700-3409, 817/666-0707. TRD-9816359.

Permian Basin Regional Planning Commission, Board of Director met at Highway 80 Holiday Inn Convention Center, Odessa, October 28, 1998, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, 915/563-1061. TRD-9816357.

Tech Prep of the Rio Grande Valley, Inc., Annual Members Meeting met at the Ballroom, Victoria Palms Resort, 602 North Victoria Road, Donna, October 22, 1998, at 9:30 a.m. Information may be obtained from Pat Bubb, 2424 Boxwood, Harlingen, Texas 78550-3697, 210/425-0779. TRD-9816303.

Meetings filed October 20, 1998

Austin Travis County MHMR Center, Community Forum #19 met in an emergency meeting at 505 Barton Springs, Training Room, Austin, October 20, 1998, at 5:45 p.m. Reason for emergency: This is the only time a quorum of the Trustees could meet. Information may be obtained from Arvelle Dwyer, 1430 Collier Street, Austin, Texas 78704, 512/440-4032. TRD-9816395.

Brazos River Authority, Board of Directors met at 4400 Cobbs Drive, Waco, October 26, 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-9816426.

Central Texas Council of Governments, Executive Committee met at 302 East Central Avenue, Belton, October 22, 1998, at 11:30 a.m.

Information may be obtained from A.C. Johnson, 302 East Central Avenue, Belton, Texas 79072, 254/939-1801. TRD-9816374.

Central Texas Council of Governments, K-TUTS Transportation Planning Policy Board met at 201 East Second Avenue, Belton, October 26, 1998, at 10:00 a.m. Information may be obtained from Jim Reed, P.O. Box 729, Belton, Texas 76513, 254/933-7075, Ext. 203. TRD-9816418.

Education Service Center, Region IX met at 301 Loop 11, Wichita Falls, October 28, 1998, at 12:30 p.m. Information may be obtained from Ron Preston, 301 Loop 11, Wichita Falls, Texas 76305, 940/322-6928. TRD-9816375.

Lee County Appraisal District, Board of Directors met at 218 East Richmond Street, Giddings, October 28, 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-9816398.

Middle Rio Grande Development Council, MRGDC Foundation, Inc. met at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, October 28, 1998, at 11:00 a.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, 830/876-3533. TRD-9816392.

Northeast Texas Municipal Water District, Board of Directors met at Highway 250 South, Hughes Springs, October 26, 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-9816408.

Red River Authority of Texas, Regional Water Planning Group-Area B met at Nortex Regional Planning Committee, Galaxy Center #2, Suite 200, Room 229, 4309 Jacksboro Highway, Wichita Falls, October 23, 1998, at 10:00 a.m. Information may be obtained from Ronald J. Glenn, 900 Eighth Street, Wichita Falls, Texas 76301-6894, 940/723-0855. TRD-9816383.

Region F Regional Water Planning Group, Region F RWPG Meeting met at Chevron USA Inc., Permian Basin, Training Center, 4200 North FM 1788, Midland, October 26, 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-9816414.

San Antonio-Bexar County, Metropolitan Planning Organization, Transportation Steering Committee met at the Executive Assembly Center of the Convention Center Complex, Corner of South Alamo and East Market, San Antonio, October 26, 1998, at 1:30 p.m. Information may be obtained from Janet A. Kennison, 603 Navarro, San Antonio, Texas 78205, 210/227-8651. TRD-9816416.

Southwest Milam Water Supply Corporation, Board met at 114 East Cameron, Rockdale, October 26, 1998, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, 512/4469-2604. TRD-9816394.

Meetings filed October 21, 1998

Bluebonnet Trails Community MHMR Center, Board of Trustees met at the Burnet County Mental Retardation Center, 701 Highway 281 (The Centre) Suite G, Marble Falls, October 26, 1998, at 4:00 p.m. Information may be obtained from Rosemary Wissinger, Bluebonnet Trails Community, MHMR Center, 512/244-8335. TRD-9816432.

Gulf Bend Center, Board of Trustees met at 1502 East Airline, Victoria, October 27, 1998, at Noon. Information may be obtained from Anges Moeller, 1502 East Airline, Suite 25, Victoria, Texas 77901, 512/582-2309. TRD-9816463.

North Texas Regional Library System, Board Meeting met at 1111 Foch, Street, Suite 100, Fort Worth, October 29, 1998, at 1:30 p.m. Information may be obtained from Marlin Anglin, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, 817/335-6076. TRD-9816440.

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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.

Alamo Area Council of Governments

Request for Proposals

This Request for Proposals (RFP) is issued under the authority of the Government Code, Chapter 2254, Subchapter B, that delineates the statutory requirements governing invitations for bids and request for offers by state agencies.

The Alamo Area Council of Governments (AACOG) is requesting proposals from qualified companies/organizations to conduct a conversion and enhancement of the San Antonio/Austin UAM photochemical modeling database to a CAMx photochemical model in support of a State Implementation Plan (SIP) for the San Antonio/Austin near attainment areas.

An announcement of this RFP was posted in the *Texas Register* on October 30, 1998. The announcement will be open for 14 days, and will close on the November 13, 1998. We request that responses to the RFP be prepared as soon as possible and sent to AACOG's office (see address below). Proposals received after 4:00 p.m. CST, November 13, 1998 will not be considered.

Because of the issuance of the enclosed RFP is part of a process that may result in award of contracts, contracts with AACOG concerning this matter, including all proposals, are to be in writing and directed to the AACOG Executive Director:

Al J. Notzon, III, Executive Director

Re: CAMx Conversion Contract

Mailing Address:

Alamo Area Council of Governments

118 Broadway, Suite 400

San Antonio, Texas 78205-1999

Telephone: (210) 362-5200

Fax: (210) 225-5937

Bids/offers should be sent through the mail or hand delivered. Telefax bids/offers will not be accepted, so contractors should consider mailing/delivery times in order to assure that bids/offers are received on time.

Proposal Content

Proposals should contain at least the following documentation:

1. Cover Letter-This should include a brief summary of the key points of the proposal and the approach to accomplishing the study. The name, address, and telephone number of the firm, as well as a contact person, should also be included.

2. Study Methodology-This should include the Consultant's approach and task to accomplish the work outlined in the Statement of Work.

3. Key Personnel-One paragraph summaries of qualifications and experience with CAMx should be submitted for all key personnel assigned to the project. The assignment of personnel must specifically contain the percent of time for each person for each task included in the Statement of Work.

4. Management Plan-The management plan must contain a schedule of work, a budget by task, and the means by which the project tasks would be coordinated with other related work. The purpose of the preliminary outline budget is not to solicit competitive bids, but rather, to specify the distribution of resources between tasks and between the Prime Consultant and each subconsultant for each task described in the Statement of Work. A preliminary total budget shall also be prepared specifying names of key personnel, number of hours, overhead, billables, and fee for the Prime Consultant and each subconsultant.

5. Related Work-Work closely related to that described in the Statement of Work which has been performed by the Proposer or specific personnel assigned to this project should be briefly outlined in the proposal. Specific emphasis on previous work with CAMx should be provided.

6. Consultant shall state that all input data and model software will be delivered to the Alamo Area Council of Governments and shall be installed on AACOG's computers.

AACOG intends to let a contract for the procedures described in the enclosed RFP; however, nothing in this RFP shall bind or limit AACOG in its discretion to let or not to let such contracts. Potential respondents are informed that the Texas statute authorizing contracts requires that copies of all documents related to the contract be made available to the Texas State Library for inclusion in its collection. Therefore, potential contracting parties shall not include confidential or proprietary information in either their bids/offer or work products produced during the contract period. AACOG shall be

held harmless regarding any unauthorized use of information provided by the contracting party since any and all documents produced shall be considered open records.

In delineating each deliverable and presenting it an entire package AACOG assumes no obligation to have each and every deliverable performed. AACOG reserves the right to discontinue the services of the contracting party at any time, regardless of the stage of completion of the work associated with each deliverable.

I. Introduction and Overview of Requirements

A. Background

The Federal Clean Air Act Amendments of 1990 (FCAA) requires Texas to submit a State Implementation Plan (SIP) for control of ozone pollution in affected areas. The San Antonio/Austin near attainment area may go non-attainment in the near future. A CAMx conversion is required to update the current UAM IV modeling procedures.

B. Purpose of the CAMx Conversion

The purpose of CAMx Conversion contract is to provide a CAMx nested-grid photochemical model suitable to address development of eight-hour ozone control parameters as well as other air quality attainment parameters in the AACOG region. This model is to be developed from an existing UAM database with some revisions. The resulting database will be used to determine a regional attainment plan for 8-hour NAAQS standards by the year 2000.

C. Contract Objectives

The central objectives guiding the conversion and refinement of the CAMx airshed model are:

- * Upgrade the existing model to a state-of-the-art nested grid model with fixed layers;
- * Enlarge the existing modeling grid domain to encompass Corpus Christi and other Texas counties to the south of San Antonio, with nested subgrids in urban regions (San Antonio, Austin, Victoria and Corpus Christi);
- * Extend the grid of this enlarged domain to allow simulation of the transportation of ozone and its precursors into the San Antonio/Austin area and to be compatible with data inputs and outputs of ozone control modeling strategies currently in use in other areas;
- * Extend the original modeling episode period (July 9th - 12th, 1995) to July 7th - 12th, to include more episode days;
- * Produce refined meteorological inputs for the extended domain;
- * Represent the San Antonio, Austin, Victoria, and Corpus Christi regions in a new 4 kilometer emissions modeling domain;
- * Merge geocoded link data into the modeling database produced by TNRCC and into the development of mobile sources emissions inputs within the 4 kilometer grid;
- * Integrate the latest emissions inventory information from local military bases into the 4 kilometer modeling database
- * Integrate suitable new emission inventory information as it becomes available
- * Integrate extant TNRCC regional-scale emissions modeling database to the nested 32 and 16 kilometer regional-scale modeling domains;
- * Create a simulation of the July 7-12, 1995 episode as the CAMx base case model; model performance evaluation; and

* Present CAMx modeling database, pre- and post-processor systems, display programs, and other data and programs developed to meet these objectives to AACOG;

* Provide hands-on training for AACOG staff modelers.

D. Implementation of Objectives

The contract objectives for AACOG's CAMx conversion shall be conducted by the Contractor following AACOG air quality staff approval of the final technical work plan that was developed from the task list found in the Statement of the Work.

II. Procedures for Bidding and Awards Process

A. Basis of the Award of the Contract

Any proposal received by AACOG is eligible for evaluation if it arrives by the deadline and it is completed and correct on all points. AACOG air quality staff shall evaluate eligible proposals according to three evaluation criteria. The evaluation criteria for awarding contacts are:

Demonstrated ability and qualification of the personnel assigned: 40%

Technical approach, including schedule for deliverables: 35%

Cost-effectiveness of the proposal: 25%

B. Evaluation Committee

An evaluation team comprised of AACOG's emissions modeling staff shall evaluate the proposals. Each staff member shall independently evaluate each proposal by assigning points to each of the three evaluation criteria explained above. Then, staff shall caucus on each proposal's ranking by comparing points. Staff shall review any evaluator's criteria that appear to be at variance with other members' evaluations to ensure that all differences are addressed.

III. Statement of Work

AACOG expects to receive proposals from established and knowledgeable entities with demonstrable expertise in both UAM and CAMx photochemical modeling. AACOG's statement of work is defined below. Proposers shall derive their proposal based upon the tasks listed and develop a draft Technical Work Plan (TWP). The draft TWP shall be included as a part of the proposal submitted to AACOG for evaluation and award of the CAMx Conversion contract.

Task 1: Development of a Modeling Protocol

The Modeling Protocol will address the Contract Objectives listed above and will meet the technical requirements they describe. The Modeling Protocol will utilize the data sources, modeling domains, and domain grid specified in the Contract Objectives. The Modeling Protocol will follow the guidance required by the EPA for photochemical modeling and be directed as necessary by AACOG for completion and finalization, in coordination with the Texas Natural Resources Conservation Commission (TNRCC). All further tasks completed will be compatible with this Modeling Protocol.

Task 2: Development of Meteorological Inputs

A complete set of meteorological inputs designed to be compatible with the CAMx vertical layer structure and the nested grid modeling domain defined in the Modeling Protocol will be produced. These inputs will be based upon existing Regional Atmospheric Modeling System (RAMS) data from the Ozone Transport Assessment Group (OTAG) episodes.

Task 3: Development of Emission Inputs

Emissions inputs for the July 7th-12th, 1995 episode will be created. This will require provisions for the details given in the Contract Objectives, including inputs for the nested, extended modeling domain and geocoded link data already described therein. In particular, Vehicle Miles Traveled (VMT) and local geocoded mobile source link data would be reformatted to the TNRCC VMT emissions modeling format required to produce 4 kilometer mobile source emissions inputs. Included in the emission input development: local military base emissions provided by AACOG; objective analysis field data input into the latest MOBILE model and refined VMT database for on-road mobile emissions; and objective analysis field data used with TNRCC biogenics emissions processor and TNRCC 16 kilometer resolution landuse database for biogenics emissions. A quality and reliability assessment of the emissions inventory will be developed. The entire input development must be compatible with the TNRCC grid.

Task 4: Base Case Modeling and Model Performance Evaluation

A CAMx base case simulation and model performance evaluation will be completed. This requires CAMx model inputs which must be developed, including the initial and boundary conditions, gridded ozone column, albedo, and turbidity files, cloud inputs, and model control input file specifying model options and configuration. A Base Case model simulation and a Model Performance Evaluation will be completed, with emphasis on the subregional evaluations, such as the subregions of Austin and San Antonio. Four emission sensitivity scenarios will follow the completion of the Base Case model. These sensitivity scenarios are for: 1) mobile, 2) biogenics, 3) wind speed and mixing, and 4) boundary and initial conditions elements. Compute statistics for each sensitivity test.

Task 5: More Detailed Biogenic Emissions for 32, 16, and 4 km Grids

Use the UT landuse database (where available) in conjunction with BEIS2 and meteorological data from Task 2 to improve the biogenics emission data.

Task 6: Management and Reporting

Monthly progress reports, current invoices, a final draft and a final report are required.

Task 7: Hands-on On-Site Training Seminar

Suitable hands-on training will be provided at AACOG's San Antonio location for the operation of the CAMx model.

Alamo Area Council of Governments

CAMx Conversion Contract

Attachment A

Additional Payment Terms

1. Payment Terms. The CAMx Conversion contract has 7 tasks. The Contractor will be paid for each task when AACOG has determined the task has been completed and its deliverable items have been received and approved. Task headings are:

Task 1: Development of a Modeling Protocol

Task 2: Development of Meteorological Inputs

Task 3: Development of Emission Inputs

Task 4: Base Case Modeling and Model Performance Evaluation

Task 5: More Detailed Biogenic Emissions for 32, 16, and 4 km Grids

Task 6: Management and Reporting

Task 7: Hands-on On-Site Training Seminar

2. For payment, the Contract shall submit an invoice to AACOG per each task. The Contractor shall send invoices for payment to:

Al J. Notzon, III, Executive Director

Re: CAMx Conversion Contract

Mailing Address:

Alamo Area Council of Governments

118 Broadway, Suite 400

SAN ANTONIO, TEXAS 78205-1999

TRD-9816419

Al J. Notzon, III

Executive Director

Alamo Area Council of Governments

Filed: October 20, 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 28, 1998, through October 20, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Ben Nelson; Location: The project site is located in the Anahuac-Liberty Channel, at Smith Point, in Chambers County, Texas; Project No. 98-0487-F1; Description of Proposed Action: The applicant proposes to maintenance dredge a designated portion of the Anahuac-Liberty Channel, approximately 1,500 feet long by 60 feet wide, for a period of 10 years. The existing water depth in this area of the channel is approximately -6 feet mean low tide (MLT). The applicant proposes to maintenance dredge the area to a depth of -8 feet MLT. A barge-mounted dragline will be used to perform the dredging. During the performance of the initial maintenance on the channel, approximately 25,000 cubic yards of material will be dredged. The dredge material will be placed on designated upland placement areas, Disposal Area 1 and/or Disposal Area 2, located south of the channel on Smith Point. The purpose of the proposed project is to maintain navigability in this portion of the Anahuac-Liberty Channel; Type of Application: U.S.A.C.E. permit application #21437 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Doucet & Associates, Inc.; Location: The project is located at 7075 FM 1960 West in Houston, Harris County, Texas; Project No. 98-0488-F1; Description of Proposed Action: The applicant proposes to fill 0.717 acres of isolated wetlands to expand an existing Wal-Mart. Both the building and parking area will be enlarged. In March of 1993, Department of the Army Permit No. SWG-93-26-002 authorized the filling of 3.8 acres of isolated wetlands to construct the Wal-Mart at this location. As compensation for these wetland impacts, the applicant created 4 acres of wetlands. Two ponds in front of the Wal-Mart and one pond behind the

Wal-Mart were created; Type of Application: U.S.A.C.E. permit application #21453 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Eddie Arnaud; Location: This mitigation Bank is located along the Neches River, north of the City of Beaumont, in Jefferson County, Texas; Project No. 98-0492-F1; Description of Proposed Action: The sponsor for this project proposes to establish a mitigation bank by preserving 541 acres of mature, high quality cypress-tupelo swamp. Attached is the Mitigation Bank Instrument and supporting documents. The wetland delineation report and Wildlife Habitat Appraisal, performed for this property, may be viewed at the Galveston District Regulatory Branch, 200 Fort Point Road, in Galveston, Texas. This proposal is also being reviewed by the following agencies on the Galveston District's Mitigation Bank Review Team: Environmental Protection Agency, U.S. Fish and Wildlife Service, Texas Parks and Wildlife Department, Texas General Land Office, Texas Natural Resource Conservation Commission; Type of Application: U.S.A.C.E. permit application #MB014 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: United States Environmental Protection Agency; Project No. 98-0465-F2; Description of Proposed Activity: On September 14, 1998, EPA Region 6 Administrator, Gregg A. Cooke, approved the State of Texas' Pollutant Discharge Elimination System (TPDES) Program pursuant to §402 of the Clean Water Act. As of September 14, 1998, the Texas Natural Resource Conservation Commission (TNRCC) will administer that program and EPA will cease new permitting actions under the National Pollutant Discharge Elimination System (NPDES) Program. All NPDES permits files under the jurisdiction of TNRCC will be transferred to the state within 30 days. The TPDES Program includes the regulation of wastewater and storm water point source discharges; the industrial pretreatment program; and sewage sludge disposal. NPDES permits under TNRCC's jurisdiction will become state-administered TPDES permits and will be reissued (upon expiration) or modified by the state agency.

In accordance with the signed Memorandum of Agreement, EPA will retain temporary authority for all proposed permits until final issuance; permits contested under evidentiary hearing proceedings until those are resolved; EPA-issued storm water general permits for industrial and construction activity; EPA-issued storm water discharges from municipal separate storm sewer systems; and compliance assistance & enforcement for contested permits, storm water permits, and those with outstanding compliance issues.

EPA also retains authority for discharges in Indian Country, and those associated with oil and gas exploration and production under the authority of the Texas Railroad Commission.

Applicant: U.S. Army Corps of Engineers, Galveston District; Project No. 98-0489-F2; Description of Proposed Activity: On July 1, 1998, the Corps published its proposal to issue 6 new Nationwide Permits (NWP) and modify 6 existing NWP in Part II of the Federal Register (63 FR 36040 - 36078), pursuant to §404(e) of the Clean Water Act (33 U.S.C. 1344) and §10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*). The Galveston District issued a public notice on July 1, 1998, to solicit comments on the proposed new and modified NWP, as well as proposed Corps regional conditions, for a 30-day comment period. In that public notice, the Galveston District requested comments and suggestions for additional Corps regional conditions, for the proposed new and modified NWP, to ensure that those NWP authorize only those activities with minimal adverse

effects on the aquatic environment, individually or cumulatively. The Galveston District also held a public meeting on August 18, 1998, to discuss the Corps regional conditioning process for the proposed new and modified NWP and received suggestions for additional Corps regional conditions.

The proposal of NWP regional conditions is to ensure that the NWP authorize only those activities that result in minimal adverse effects on the aquatic environment, individually or cumulatively.

Applicant: National Marine Fisheries Service; Project No. 98-0490-F2; Description of Proposed Activity: The applicant is proposing a rule that will ban the sale of undersized swordfish, extend dealer permitting and reporting requirements and require that all swordfish shipments be accompanied by a certificate of eligibility, pursuant to the Fishery Management Plan for Atlantic Swordfish and regulations at 50 CFR part 630 issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, and the Atlantic Tunas *seq.*

Applicant: National Marine Fisheries Service; Project No. 98-0491-F2; Description of Proposed Activity: On March 24, 1997, the NMFS published an interim rule (63 FR 14030) that increased the minimum size for Atlantic blue marlin (*Makaira nigricans*) from 86 inches lower jaw-fork length (LJFL) to 96 inches LJFL, and for Atlantic white marlin (*Tetrapturus albidus*) from 62 inches to 66 inches LJFL, pursuant to §305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The interim rule will expire on September 23, 1998. NMFS is issuing an amendment and extension of the interim rule that: (1) increases the minimum size for Atlantic blue marlin (BUM) from 96 to 99 inches lower jaw fork length (LJFL) and restates the minimum size for Atlantic white marlin (WHM) as 66 inches LJFL, respectively; (2) establishes a recreational bag limit of one Atlantic marlin (BUM or WHM) per vessel per trip; (3) grants the Assistant Administrator the authority to adjust the bag limit, with a three-day notice, including an adjustment to a zero bag limit, if necessary to meet international and domestic management objectives; and (4) specifies requirements to notify NMFS of tournaments involving any Atlantic billfish at least 4 weeks prior to commencement.

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 is, or is not consistent with the Texas Coastal Management Program goals and policies, and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas, 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at 512/475-0680.

TRD-9816456
Garry Mauro
Chairman
Coastal Coordination Council
Filed: October 21, 1998

◆ ◆ ◆ Comptroller of Public Accounts

Notice of Intent to Amend Consultant Contract

In accordance with the provisions of Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller), on behalf of the Texas Prepaid Higher Education Tuition Board (Board), announces this notice of consultant contract amendment.

The award of the original consultant contract was published in the November 8, 1996, issue of the *Texas Register* (21 TexReg 11013).

The amendment provides that the consultant will assist the Comptroller with marketing agent services in connection with the administration of the Prepaid Higher Education Tuition Program.

The consulting services sought by the Comptroller relate to services previously provided by Sherry Matthews Inc., 101 San Jacinto Boulevard, Austin, Texas, 78701. The Comptroller on behalf of the Board intends to amend Sherry Matthew's contract unless a better proposal is received. Award of the amendment will be based upon evaluation of proposals received pursuant to this notice.

Parties interested in submitting a proposal should contact Walter Muse, Legal Counsel, Comptroller of Public Accounts, either by telephone at (512) 475-0498 or in writing at 111 East 17th Street, Room G24, Austin, Texas, 78774. Proposals must be received no later than November 16, 1998 at 4:00 p.m. Central Zone Time.

The dollar value of the amendment shall not exceed \$1,250,000.

TRD-9816441
Walter Muse
Legal Counsel
Comptroller of Public Accounts
Filed: October 21, 1998



Texas Credit Union Department

Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Wichita Falls Postal Credit Union, Wichita Falls, Texas to expand its field of membership. The proposal would permit the employees of Reliable Well Service who work in or are paid out of the Wichita Falls, Texas office to be eligible for membership in the credit union.

An application was received from Galena Park Schools Credit Union, Galena Park, Texas to expand its field of membership. The proposal would permit persons who live or work in the Galena Park Independent School District, excluding persons primarily eligible for membership in any occupation or association based credit union with less than 20,000 membership as of the date of this amendment (September 22, 1998) having an office within this area to be eligible for membership in the credit union.

An application was received from Jefferson County Employees Credit Union, Beaumont, Texas to expand its field of membership. The proposal would permit the employees of Correctional Services Corporation, Beaumont, Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested

party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas, 78752-1699.

TRD-9816457
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: October 21, 1998



Notice of Final Action Taken

In accordance with the provisions of 7 TAC Section 91.103, the Texas Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership Approved

First Energy Credit Union, Houston, Texas-See *Texas Register* issue dated July 31, 1998.

Texans Credit Union, Richardson, Texas-See *Texas Register* issue dated July 31, 1998.

Witco Houston Employees Credit Union, Rosenberg, Texas-See *Texas Register* issue dated July 31, 1998.

Texaco Houston Credit Union, Bellaire, Texas-See *Texas Register* issue dated July 31, 1998.

Denton Area Teachers Credit Union, Denton, Texas-See *Texas Register* issue dated July 31, 1998.

Kraft America Credit Union, Garland, Texas-See *Texas Register* issue dated July 31, 1998.

Application to Amend Articles of Incorporation Approved

Tyler Pipe Employees Credit Union, Tyler, Texas-See *Texas Register* issue dated August 28, 1998.

Applications for a Merger or Consolidation Approved

Insurance Employees Credit Union and Fort Worth Telco Credit Union-See *Texas Register* issue dated May 29, 1998.

Toshiba/Houston Credit Union and First Community Credit Union of Houston-See *Texas Register* issue dated July 31, 1998.

SASF Credit Union and Trans Texas Southwest Credit Union-See *Texas Register* issue dated August 7, 1998.

TRD-9816458
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: October 21, 1998



Texas Education Agency

Request for Proposals Concerning Educator Industrial Internships

Eligible Proposers. The TEA is requesting proposals under RFP #701-98-021 from business, education, or labor organizations; institutions of higher education; private companies; non-profit organizations; regional education service centers; and local school districts to develop and implement educator industrial internships in urban,

suburban, and rural school districts to provide a diverse selection of math, science, English language arts, and social studies teachers and school counselors with opportunities for work-based learning experiences. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. Proposals must describe how the teachers and counselors described in the preceding paragraph will be provided with work-based learning experiences and must describe collaborative/partnership efforts with school districts. The selected contractor will ensure that each of the 25 interns receives a \$2,500 stipend. Interns will spend three weeks in high performance work places to gain direct related applications to lessons taught; to develop lessons that reflect related rigorous academics; and to provide professional development activities to other educators on the lessons, activities, and materials developed and how to incorporate them into the curriculum. Counselors would develop an understanding of the academic and technical skills required for career development and advancement and would develop activities for disseminating the knowledge to students, parents and educators. Internships would help science, math, English language arts, and social studies teachers and counselors develop an understanding of the application of their subject matter to actual work settings. The proposal must include strategies for involving urban, suburban, and rural teachers and counselors, strategies for involving a diversity of teachers representative of the general population, a follow-up plan for monitoring participants, and a plan for disseminating materials developed to interested school districts.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 1, 1999, and an ending date of no later than December 31, 1999.

Project Amount. Two proposals will be selected to receive a maximum of \$83,500 each during the contract period. This project is funded 100% from School-to-Work Opportunities federal funds (\$167,000) and 0% from nonfederal sources (\$0-).

Selection Criteria. Proposals will be selected based on the ability of the proposer to carry out all requirements contained in this RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and upon the reasonableness of the proposed fee. The TEA reserves the right to select from the highest ranking proposals that address all requirements in the RFP and that are most advantageous to the project.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-98-021 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about this RFP, contact Ann Pennington, Division of Programs and Instruction, Texas Education Agency, (512) 936-2224.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of TEA by 5:00 p.m. (Central Time), Monday, November 30, 1998, to be considered.

TRD-9816438

Criss Cloutd

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: October 21, 1998

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Texas Department of Health

Notice of Disposition of Tobacco Settlement Proceeds

Notice of Disposition of Tobacco Settlement Proceeds

The Texas Department of Health (TDH) has developed a list of political subdivisions which are eligible for a share of a lump sum payment in 1999 under the Agreement regarding Disposition of Settlement Proceeds in the lawsuit captioned The State of Texas vs. The American Tobacco Company, et. al. The agreement provides that the settling defendants shall make a lump sum payment on January 4, 1999, in the amount of three hundred million dollars (\$300,000,000) to be placed in a trust account with the Comptroller of Public Accounts. This lump sum payment shall then be distributed as soon as practical to political subdivisions on a per capita basis based upon the 1990 federal census. The term "political subdivisions" is defined as "all hospital districts, other local political subdivisions owning and maintaining public hospitals, and counties of the State of Texas responsible for providing indigent health care to the general public".

The agreement further provides that adjustments to the distributions shall be made in counties where two or more political subdivisions are separately obligated by law to provide indigent health care services. In such a case each political subdivision's share of the payment shall be apportioned in a manner based upon the number of persons within its territorial boundaries for which the political subdivision is statutorily obligated to provide indigent health care services. A political subdivision is not entitled to a share of the lump sum payment based on any person(s) for which another political subdivision is statutorily responsible for the provision of indigent health care services. Therefore, if a county contains one or more hospital districts or public hospitals within territorial boundaries different from those of the county, separate distribution shall be made to (1) each of these political subdivisions and (2) to the county government for any portion of the county that is outside the boundaries of these political subdivisions. If the county contains a hospital district or non-district public hospital with the same boundaries as the county, that district or public hospital will receive the entire share of the distribution.

The political subdivisions identified as being eligible for a share of the lump sum payment in 1999 are shown on the chart included as part of this notice. Correspondence requiring verification of eligible political subdivisions and applicable census numbers is being sent by TDH to county judges for the listed counties, administrators for the listed hospital districts, and governing bodies or administrators of the listed public hospitals.

If the information below is incorrect, TDH is requesting contact be directed to Joe Walton, Bureau of State Health Data and Policy Analysis, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512)458-7261, joe.walton@tdh.state.tx.us. Mr. Walton will provide instructions on submitting the correct information to TDH. The Texas Department of Health must receive verification of eligible political subdivisions and applicable census numbers on or before November 23, 1998. Payment can not be made to political subdivisions without completion of the appropriate documentation and receipt of that documentation by TDH.

The following political subdivisions have been identified as eligible for a share of the 1999 lump sum payment:

COUNTIES	ELIGIBLE POLITICAL SUBDIVISIONS
Anderson	Anderson County
Andrews	Andrews County
Angelina	Angelina County
Aransas	Aransas County
Archer	Archer County
Armstrong	Armstrong County
Atascosa	Atascosa County
Austin	Austin County
Bailey	Bailey County
	Muleshoe Area Hospital District
Bandera	Bandera County
Bastrop	Bastrop County
Baylor	Baylor County Hospital District
Bee	Bee County
Bell	Bell County
Bexar	University Health System
Blanco	Blanco County
Borden	Borden County
Bosque	Bosque County
Bowie	Bowie County
Brazoria	Brazoria County
	Angleton-Danbury Hospital District
	Sweeny Hospital District
Brazos	Brazos County
Brewster	Brewster County Hospital District
Briscoe	Briscoe County
Brooks	Brooks County
Brown	Brown County
Burleson	Burleson County Hospital District
Burnet	Burnet County
Caldwell	Caldwell County
	City of Luling (Edgar B. Davis Memorial Hospital)
Calhoun	Calhoun County
Callahan	Callahan County
Cameron	Cameron County
Camp	Camp County
	City of Pittsburg (East Texas Medical Center - Pittsburg)
Carson	Carson County
Cass	Cass County
Castro	Castro County Hospital District
Chambers	Chambers County
	Chambers County Public Health District
Cherokee	Cherokee County
Childress	Childress County Hospital District
Clay	Clay County
Cochran	Cochran Memorial Hospital District
Coke	East Coke County Hospital District
	West Coke County Hospital District

Coleman	Coleman Hospital District
Collin	Collin County
Collingsworth	Collingsworth County Hospital District
Colorado	Colorado County
	Rice Hospital District
Comal	Comal County
Comanche	Comanche County
	Comanche County Hospital District
	Deleon Hospital District
Concho	Concho County Hospital District
Cooke	Gainesville Hospital District
	Muenster Hospital District
Coryell	Coryell County
Cottle	Cottle County
Crane	Crane County
Crockett	Crockett County
Crosby	Crosby County
Culberson	Culberson County Hospital District
Dallam	Dallam County Hospital District
Dallas	Dallas County Hospital District
Dawson	Dawson County
Deaf Smith	Deaf Smith Hospital District
Delta	Delta County
Denton	Denton County
DeWitt	DeWitt County
	DeWitt Medical District
	Yoakum Hospital District
Dickens	Dickens County
Dimmitt	Dimmit County
Donley	Donley Hospital District
Duval	Duval County
Eastland	Eastland County
	Cisco Hospital District
	Eastland Memorial Hospital District
	Ranger Hospital District
Ector	Ector County Hospital District
Edwards	Edwards County
Ellis	Ellis County
El Paso	R.E. Thomason General Hospital District
Erath	Erath County
Falls	Falls County
Fannin	Fannin County
Fayette	Fayette County
Fisher	Fisher County Hospital District
Floyd	Caprock Hospital District
	Lockney General Hospital District
Foard	Foard County Hospital District
Fort Bend	Fort Bend County
Franklin	Franklin County
Freestone	Freestone County
	Fairfield Hospital District
	Teague Hospital District
Frio	Frio County

	Frio Hospital District
Gaines	Gaines County Seminole Memorial Hospital District
Galveston	Galveston County
Garza	Garza County
Gillespie	Gillespie County
Glasscock	Glasscock County
Goliad	Goliad County
Gonzales	Gonzales County Hospital District Nixon Hospital District Yoakum Hospital District
Gray	Gray County
Grayson	Grayson County
Gregg	Gregg County City of Kilgore (Roy H. Laird Memorial Hospital)
Grimes	Grimes County
Guadalupe	Guadalupe County City of Seguin (Guadalupe Valley Hospital)
Hale	Hale County
Hall	Hall County Hospital District
Hamilton	Hamilton County Hamilton Hospital District
Hansford	Hansford Hospital District
Hardeman	Chillicothe Hospital District Quanah Hospital District
Hardin	Hardin County
Harris	Harris County Hospital District
Harrison	Harrison County
Hartley	Dallam/Hartley Hospital District
Haskell	Haskell Memorial Hospital District
Hays	Hays County
Hemphill	Hemphill County Hospital District
Henderson	Henderson County
Hidalgo	Hidalgo County
Hill	Hill County
Hockley	Hockley County
Hood	Hood General Hospital District
Hopkins	Hopkins County Hospital District
Houston	Grapeland Hospital District Houston County Hospital District
Howard	Howard County
Hudspeth	Hudspeth County
Hunt	Hunt County Memorial Hospital District
Hutchinson	Hutchinson County Hospital District
Irion	Irion County
Jack	Jack County Hospital District
Jackson	Jackson County Hospital District
Jasper	Jasper County Jasper County Hospital District
Jeff Davis	Jeff Davis County
Jefferson	Jefferson County
Jim Hogg	Jim Hogg County
Jim Wells	Jim Wells County

Johnson	Johnson County
Jones	Jones County
	Hamlin Hospital District
	Stamford Hospital District
	City of Anson (Anson General Hospital)
Karnes	Karnes County Hospital District
Kaufman	Kaufman County
Kendall	Kendall County
Kenedy	Kenedy County
Kent	Kent County
Kerr	Kerr County
Kimble	Kimble County Hospital District
King	King County
Kinney	Kinney County
Kleberg	Kleberg County
Knox	Knox County Hospital District
Lamar	Lamar County
Lamb	Lamb County
Lampasas	Lampasas County
La Salle	La Salle County
Lavaca	Lavaca County
	Lavaca County Hospital District
	Yoakum Hospital District
Lee	Lee County
Leon	Leon County
Liberty	Liberty County
Limestone	Limestone County
	South Limestone County Hospital District
Lipscomb	Booker Hospital District
	Darrouzet Hospital District
	Follett Hospital District
	Higgins/Lipscomb Hospital District
Live Oak	Live Oak County
Llano	Llano County
Loving	Loving County
Lubbock	Lubbock County Hospital District
Lynn	Lynn County Hospital District
McCulloch	McCulloch Hospital District
McLennan	McLennan County
McMullen	McMullen County
Madison	Madison County
Marion	Marion County Hospital District
Martin	Martin County Hospital District
Mason	Mason County
Matagorda	Matagorda County Hospital District
Maverick	Maverick County Hospital District
Medina	Medina County
	City of Hondo (Medina Community Hospital)
Menard	Menard County Hospital District
Midland	Midland Hospital District
Milam	Milam County
	Richards Memorial Hospital District
Mills	Mills County

Mitchell	Mitchell County Hospital District
Montague	Montague County Nocona Hospital District
Montgomery	Montgomery County
Moore	Moore County Hospital District
Morris	Morris County
Motley	Motley County Hospital District
Nacogdoches	Nacogdoches County Memorial Hospital District
Navarro	Navarro County
Newton	Newton County
Nolan	Rolling Plains Memorial Hospital District
Nueces	Nueces County Hospital District
Ochiltree	Ochiltree County Hospital District
Oldham	Oldham County
Orange	Orange County
Palo Pinto	Palo Pinto Hospital District
Panola	Panola County
Parker	Parker County Hospital District
Parmer	Farwell Hospital District Muleshoe Area Hospital District Parmer County Hospital District
Pecos	Pecos County
Polk	Polk County
Potter	Potter County Randall County Hospital District
Presidio	Big Bend Regional Hospital District
Rains	Rains County
Randall	Randall County Randall County Hospital District
Reagan	Reagan Hospital District
Real	Real County
Red River	Red River County
Reeves	Reeves County Hospital District
Refugio	Refugio County Memorial Hospital District
Roberts	Roberts County
Robertson	Robertson County
Rockwall	Rockwall County
Runnels	Runnels County Ballinger Memorial Hospital District North Runnels Hospital District
Rusk	Rusk County
Sabine	Sabine County Hospital District
San Augustine	San Augustine County Hospital District
San Jacinto	San Jacinto County
San Patricio	San Patricio County
San Saba	San Saba County
Schleicher	Schleicher County Hospital District
Scurry	Scurry County
Shackelford	Shackelford County Hospital District
Shelby	Shelby County
Sherman	Stratford Hospital District Texhoma Hospital District

Smith	Smith County
Somervell	Somervell County
Starr	Starr County Hospital District
Stephens	Stephens County
Sterling	Sterling County
Stonewall	Stonewall County Hospital District
Sutton	Sutton County Hospital District
Swisher	Swisher Memorial Hospital District
Tarrant	Tarrant County Hospital District
Taylor	Taylor County
Terrell	Terrell County
Terry	Terry County Hospital District
Throckmorton	Throckmorton County
Titus	Titus County Memorial Hospital District
Tom Green	Tom Green County
Travis	Travis County City of Austin (Brackenridge Hospital)
Trinity	Trinity County Trinity Hospital District
Tyler	Tyler County Hospital District
Upshur	Upshur County
Upton	McCamey Hospital District Rankin Hospital District
Uvalde	Uvalde County
Val Verde	Val Verde County Hospital District
Van Zandt	Van Zandt County
Victoria	Victoria County
Walker	Walker County Hospital District
Waller	Waller County
Ward	Ward County
Washington	Washington County
Webb	Webb County
Wharton	Wharton County West Wharton County Hospital District
Wheeler	North Wheeler County Hospital District South Wheeler County Hospital District
Wichita	Wichita County City of Wichita Falls (United Regional Healthcare System) Electra Hospital District
Wilbarger	Wilbarger General Hospital District
Willacy	Willacy County Hospital District
Williamson	Williamson County
Wilson	Wilson County Hospital District
Winkler	Winkler County
Wise	Wise County
Wood	Wood County Wood County Central Hospital District
Yoakum	Yoakum County
Young	Young County Olney-Hamilton Hospital District City of Graham (Graham General Hospital)
Zapata	Zapata County
Zavala	Zavala County

TRD-9816469
Susan K. Steeg
General Counsel

Texas Department of Health
Filed: October 21, 1998

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Texas Higher Education Coordinating Board

Request For Proposals (RFP) 1999-2000 Grants Program Title II - Dwight D. Eisenhower Professional Development Program Act of 1994 (P.L. 103-382)

Approximately \$4.0 million will be available to support K-12 teachers and other staff in gaining access to professional development in mathematics, science, and reading during 1999-2000.

Funds will be competitively distributed in Texas under The Dwight D. Eisenhower Professional Development Program. The Eisenhower program was most recently reauthorized in 1994 as Title II of the Improving America's School Act of 1994. Proposals for funding must be submitted by February 10, 1999 to the Texas Higher Education Coordinating Board. Applications will be available October 26, 1998.

The Eisenhower Professional Development Program is designed to support training and retraining of elementary and secondary teachers and other staff in mathematics, science, and reading. Approximately 50-55 grants ranging from \$50,000-\$75,000 will be made to support collaborative programs between higher education institutions and local school districts in the areas of mathematics and science; approximately 4-5 grants ranging from \$50,000-\$75,000 will be made to support collaborative programs between higher education institutions and local school districts in the area of reading.

The Board will approve recommendations for 1999-2000 awards at its April 22-23, 1998 meeting. Projects are funded under this application for 17 months and must be completed by September 30, 2000.

All public and private colleges and universities and non-profit organizations of proven effectiveness in educating mathematics, science, and reading teachers are eligible to apply for grants under the Dwight D. Eisenhower Professional Development Program.

For information, contact the Eisenhower office at (512) 483-6318.

TRD-9816106

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

Filed: October 14, 1998



Texas Department of Housing and Community Affairs

Public Comment Period for 1999 State of Texas Consolidated Plan One-Year Action Plan and Schedule for Public Hearings

The Texas Department of Housing and Community Affairs (TDHCA) announces the scheduling of public hearings to receive comment on the 1999 State of Texas Consolidated Plan One Year Action Plan *Draft for Public Comment* (The Plan). The Plan is submitted in compliance with 24 CFR 91.320; the federal regulations governing the submission of the Plan.

The Plan describes the federal resources expected to be available for the following programs: The Community Development Block Grant Program (CDBG), the HOME Investment Partnerships program (HOME), The Emergency Shelter Grants program (ESG), and the Housing Opportunities for Persons with AIDS program (HOPWA). The Plan describes the State's method for distributing these funds to local governments, community housing development organizations, community development corporations, community based organizations, nonprofits, and for profit organizations.

Public comment hearings concerning the 1999 State of Texas Consolidated Plan One Year Action Plan *Draft for Public Comment* will take place at the following times and locations: **LUBBOCK** December 2, 1998, 10:30a.m., South Plains Association of Governments, 1323 58th Street 806/762-8721; **LUFKIN** December 3, 1998, 10:30a.m., City Hall, Room 102, 300 E. Shepherd Street, 409/633-0243; **DEL RIO** December 8, 1998, 7:00p.m., Del Rio Civic Center, 109 W. Broadway, 830/774-8558; **HARLINGEN** December, 9 1998, 11:00a.m., Harlingen Public Library, 410 76th Drive, 956/430-6650; **AUSTIN** December, 10 1998, 10:00a.m., Texas Department of Housing and Community Affairs Board Room, 507 Sabine, Suite 400, 512/475-4595.

The public comment period for the 1999 State of Texas Consolidated Plan One-Year Action Plan *Draft for Public Comment* will begin on November 18, 1998 and continue until December 17, 1998. The Plan is free to nonprofit organizations, but there will be a \$10.00 charge for profit organizations. To order, please contact the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas, 78711-3941, Phone: (512) 475-4595, Fax: (512) 475-3746, or email at clandry@tdhca.state.tx.us.

Copies of the 1999 State of Texas Consolidated Plan One-Year Action Plan *Draft for Public Comment* will be available after November 18, 1998 at the following locations: **ABILENE** Abilene Public Library, 915/677-2474; **ALPINE** Sul Ross State University, 915/837-8124; **AMARILLO** Amarillo Public Library, 806/378-3054; **ARLINGTON** University of Texas at Arlington, 817/273-3000; **AUSTIN** Legislative Reference Library, 512/463-1252, Texas State Library, 512/463-5455, University of Texas at Austin, 512/495-4515, University of Texas at Austin Tarlton Law Library, 512/471-7726; **BEAUMONT** Beaumont Public Library, 409/838-6606, Lamar University, 409/880-8118; **BROWNSVILLE** University of Texas at Brownsville, 210/544-8220; **CANYON** West Texas A&M University, 806/651-2205; **COLLEGE STATION** Texas A&M University, 409/845-8111; **COMMERCE** Texas A&M University - Commerce, 903/886-5716; **CORPUS CHRISTI** Corpus Christi Public Library, 512/880-7000; Texas A&M University - Corpus Christi, 512/994-2623; **DALLAS** Dallas Public Library, 214/670-1400, Southern Methodist University, 214-768-2331; **DENTON** Texas Woman's University, 940/898-2665, University of North Texas, 940/565-2870; **EDINBURG** University of Texas - Pan American, 210/381-3306; **EL PASO** El Paso Public Library, 915/543-5413, University of Texas at El Paso, 915/747-5683; **FORT WORTH** Fort Worth Public Library, 817/871-7706, Texas Christian University, 817/921-7669; **HOUSTON** Houston Public Library, 713/247-2700, Rice University, 713/527-4022, Texas Southern University, 713/527-7147, University of Houston, 713/743-9800, University of Houston - Clear Lake, 713/283-3930; **HUNTSVILLE** Sam Houston State University, 409/294-1613; **KINGSVILLE** Texas A&M University - Kingsville, 512/595-3416; **LAREDO** Texas A&M International University, 210/326-2400; **LUBBOCK** Texas Tech University, 806-742-2261; **NACOGDOCHES** Stephen F. Austin State University, 409/468-4101; **ODESSA** Ector County Library, 915/332-6502, University of Texas of the Permian Basin, 915/552-2371; **PRAIRIE VIEW** Prairie View A&M University, 409/857-2012; **RICHARDSON** University of Texas at Dallas, 214/883-2950; **SAN ANGELO** Angelo State University, 915/942-2222; **SAN ANTONIO** Saint Mary's University, 210/436-3441, San Antonio Central Library, 210/207-2500, Trinity University, 210/73 6-8121, University of Texas at San Antonio, 210/691-4570; **SAN MARCOS** Southwest Texas State University, 512/245-2133; **STEPHENVILLE** Tarleton State University, 817/968-9246; **TYLER** University of Texas at Tyler, 903/566-7340; **VICTORIA** University of Houston at Victoria, 512/572-6421; **WACO** Baylor University, 254/710-1268; **WI-**

CHITA FALLS Midwestern State University, 817/689-4165 **OUT-OF-STATE** Library of Congress, 202/707-5243.

Individuals who require auxiliary aids or services 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 public hearing so that appropriate arrangements can be made.

Written comment is encouraged and should be sent to the Texas Department of Housing and Community Affairs, Housing Resource Center, P.O. Box 13941, Austin, Texas, 78711-3941. For more information, please contact the Housing Resource Center at (512) 475-4595.

TRD-9816472
Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: October 21, 1998



HOME Investment Partnerships Program; 1999 Funding Cycle; Application Workshop

The Texas Department of Housing and Community Affairs (Department) HOME Investment Partnerships Program will conduct a final Application Workshop in Austin, Texas, on November 12, 1998. Applications are available on the Department's web page (<http://www.tdhca.state.tx.us/hp.htm>), or by written or telephone request (see below for information). Applications will also be available at the workshop. The Application Workshop will be begin at 9:00 AM and conclude no later than 4:00 PM. The morning session will cover the Tenant Based Rental Assistance, Owner-Occupied Housing Rehabilitation, and Homebuyer Assistance Applications. The afternoon session will cover the Homeownership Development and Rental Housing Development Applications. The Department's Underwriting process will also be discussed in the afternoon session.

The workshop will be held at the following location:

Office Building of the Texas Department of Housing and Community Affairs
507 Sabine, Suite 400
Austin, Texas

If you would like to register for a workshop, please notify the HOME Program by facsimile at 512-475-3287. Please include the following:

- Name of organization
- Organization address
- Telephone number
- Number of persons attending

Due to limited seating, registration is required. Individuals who require auxiliary aids or services for a workshop should contact Gina Arenas, ADA Responsible Employee, at 512-475-3800 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

For more information, please contact the HOME Program at (512)475-3109.

TRD-9816470
Daisy Stiner
Acting Executive Director
Texas Department of Housing and Community Affairs

Filed: October 21, 1998



Texas Department of Insurance

Notice

On October 19, 1998, in Order Number 98-1202, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan Association, Plan of Operation.

For copies of Commissioner's Order Number 98-1202 and the Texas Automobile Insurance Association Plan of Operation, contact Angie Arizpe at (512) 463-6326 (refer to file number A-0998-26).

TRD-9816455
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 21, 1998



Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Interstate Administrative Services, Inc., a foreign third party administrator. The home office is Danville, Illinois.

Application for admission to Texas of Westport Benefits, L.L.C., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas, 78714-9104.

TRD-9816388
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 20, 1998



Texas Department of Mental Health and Mental Retardation

Notice of Joint Public Hearing on Service Coordination and Rehabilitative Services Rates

The Health and Human Services Commission and the Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a joint public hearing to receive public comment on the proposed extension of current reimbursement rates for providing service coordination and rehabilitative services effective December 1, 1998 through March 31, 1999. The joint hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The public hearing will be held on Wednesday, November 11, 1998, at 9:00am in the auditorium of the TDMHMR Central Office building (Building 2) at 909 West 45th Street, Austin, Texas, 78751.

Written comments may be submitted to Reimbursement and Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas, 78711-2668, or faxed to (512) 206-5693. Hand deliveries will be accepted at 909 West 45th Street, Austin, Texas, 78751. Comments must be received by noon on Friday, November 13, 1998. Interested parties may obtain a copy of the reimbursement briefing package by calling the Reimbursement and Analysis Section at (512) 206-5753.

Persons requiring an interpreter for the deaf or hearing impaired or other accommodation should contact Tom Wooldridge by calling (512) 206-5753 or the TDY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

For More Information: (512) 206-4516

TRD-9816464

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Filed: October 21, 1998

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Texas Natural Resource Conservation Commission

Enforcement Orders, Week Ending October 21, 1998

An agreed order was entered regarding NICKI HICKS DOING BUSINESS AS HICKS DAIRY, Docket Number 96-1907-AGR-E; TNRCC Permit Number 03263; Enforcement ID Number 9550 on October 12, 1998, assessing \$8,120 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 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 TEXAS DEPARTMENT OF CRIMINAL JUSTICE, Docket Number 98-0018-MWD-E; Permit Number 11180-002; Enforcement ID Number 12079 on October 12, 1998.

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 LIVE OAK COUNTY, Docket Number 98-0050-MSW-E; MSW Transfer Station Facility Number 40002; Enforcement ID Number 12105 on October 12, 1998, assessing \$5000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting 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 MASIH CORPORATION, Docket Number 98-0194-PST-E; PST Facility ID Number 35240; Enforcement ID Number 12134 on October 12, 1998, assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Tim Haase, Enforcement Coordinator at (512) 239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding E-Z MART STORES, INC., Docket Number 98-0265-PST-E; Facility ID Number 0010478; Enforcement ID Number 12362 on October 12, 1998, assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Doug Reske, Enforcement Coordinator at (817) 469-6750 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 THE ZEPHYR STORE, Docket Number 98-0047-PST-E; PST Facility ID Number 70138; Enforcement ID Number 11990 on October 12, 1998, assessing \$1,250 in administrative penalties with \$250 deferred.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at (512) 239-2557, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding DON WAGNER DBA DON'S AUTO BODY, Docket Number 97-1174-AIR-E; Account Number DB-4206-U; Enforcement ID Number 11813 on October 12, 1998, assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Bill Jang, Staff Attorney at (512) 239-2269 or 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 OCCIDENTAL CHEMICAL CORPORATION, Docket Number 98-0296-AIR-E; Account Number HS-1451-S; Enforcement ID Number 10777 on October 12, 1998, assessing \$10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Atiq Sediqi, Enforcement Coordinator at (713) 767-3763 or Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JERRY VALLADE DBA NUVAL MACHINE COMPANY, Docket Number 98-0134-AIR-E; Account Number HX-1631-V; Enforcement ID Number 12140 on October 12, 1998, assessing \$2,000 in administrative penalties with \$400 deferred.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding REDMAN HOMES, INCORPORATED, Docket Number 98-0094-AIR-E; Account Number JH-0092-W; Enforcement ID Number 12182 on October 12, 1998, assessing \$9,000 in administrative penalties with \$1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RYDER TRANSPORTATION SERVICES, Docket Number 98-0159-AIR-E; Account Number EE-1046-M; Enforcement ID Number 309 on October 12, 1998, assessing \$2,500 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 DEL VALLE GRAIN, INC., Docket Number 98-0533-AIR-E; Account Number CD-0150-W; Enforcement ID Number 12361 on October 12, 1998, assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Martin Ramirez, Enforcement Coordinator at (956) 425-6010 or 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 ELECTRA RESOURCES, INC., Docket Number 98-0316-AIR-E; Account Number WI-0016-D; Enforcement ID Number 12100 on October 12, 1998, assessing \$6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Connie Basel, Enforcement Coordinator at (915) 698-9674 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 CONTINENTAL/TAURUS ENERGY CO., L.P., Docket Number 98-0324-AIR-E; Account Number FD-0003-I; Enforcement ID Number 12099 on October 12, 1998, assessing \$9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rodney Weeks, Enforcement Coordinator at (915) 698-9674 or Stacey Young, Enforcement Coordinator at (915) 698-9674, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CONTINENTAL/TAURUS ENERGY COMPANY, L.P., Docket Number 98-0323-AIR-E; Account Number SH-0015-C; Enforcement ID Number 12098 on October 12, 1998, assessing \$9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rodney Weeks, Enforcement Coordinator at (915) 698-9674 or Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding GIBSON RECYCLING, INCORPORATED, Docket Number 97-0254-MSW-E; SOAH Docket Number 582-97-1890 on October 9, 1998, assessing \$53,7600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney at (512) 239-1736 or John Mead, Enforcement Coordinator at (512) 239-6010, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9816423

LaDonna Castanuela

Acting Chief Clerk

Texas Natural Resource Conservation Commission

Filed: October 20, 1998



Notice of Intent to Delete

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of intent to delete a facility from the state registry (state Superfund list) of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site proposed for deletion is the South Texas Solvents state Superfund site that was originally placed on the state Superfund list on January 16, 1987 (12 TexReg 205).

The South Texas Solvents state Superfund site, including all land, structures, appurtenances, and other improvements, is located approximately four miles south of Banquete at the intersection of FM 666 and Nueces CR 32. In addition, the site includes any areas outside the site property boundary where hazardous substance(s) came to be located as a result, either directly or indirectly, of releases of hazardous substance(s) from the site property. The site is currently a vacant lot enclosed by a chain link fence with a locked gate.

The South Texas Solvents state Superfund site covers approximately five acres of commercial property and was a gasoline blending facility from 1939 until 1968. A waste oil and solvent recovery business was operated on the site from 1980 through 1983. Principal contaminants in soil and groundwater include lead, benzene, toluene, xylene, benzo(a)pyrene, benzo(b)fluoranthene, chrysene, ethylbenzene, 1, 2-dichloroethane, arsenic, and barium.

In February, 1988, the Texas Water Commission (TWC), the predecessor to the TNRCC, issued an administrative order to potentially responsible parties to conduct a Remedial Investigation/Feasibility Study (RI/FS) for the site. The objectives of the Remedial Investigation were to characterize and identify the contamination at the site. The studies and reports required under the administrative order were approved in November, 1995. The resulting baseline risk assessment indicated that further action was necessary to eliminate an imminent and substantial endangerment to human health and the environment from contamination at the site.

In December, 1997, the TNRCC issued an administrative order for the remedial action at the South Texas Solvents state Superfund site. This order required the responsible parties to plug and abandon monitor wells and two on-site water wells. In addition, a concrete sump area was to be filled with clean soil, and deed restrictions were to be placed on the property to prevent exposure to contaminated groundwater. The remedial action was completed by Caleb Brett .S.A., Inc, Corpus Christi Caller-Times, Freeport-McMoRan, Inc., OXY USA, Inc. and Cities Service Company, Saybolt, Inc., and SGS Control Services, Inc. on September 2, 1998.

The executive director has determined that this site no longer presents an imminent and substantial endangerment to public health and safety and the environment and is therefore eligible for deletion from the list of sites proposed for the state Superfund registry in accordance with 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), the TNRCC shall hold a public meeting to receive comment on this intended deletion if requests are filed with the executive director before 5:00 p.m., December 1, 1998. This meeting is not considered a contested case hearing within the meaning of Texas Government Code, Chapter 2001. At least 30 days prior to the date set for the meeting, notice shall be provided by first class mail to all Potentially Responsible Parties and other interested persons, and by publication in a newspaper of general circulation in the county where the facility

is located. The person submitting the request shall bear the cost of the publication of the notice.

If a public meeting challenging this determination of eligibility for deletion by the executive director is not requested by a Potentially Responsible Party or any interested person(s) before the designated date, the South Texas Solvents state Superfund site will be deleted from the state Superfund registry.

All inquiries regarding the South Texas Solvents state Superfund site or requests for a public meeting should be directed to Ashby McMullan, Remediation Division, MC-143, P. O. Box 13087, Austin, Texas 78711-3087; telephone (800) 633-9363 (within Texas only) or (512) 239- 2595. A portion of the record for this site, including documents pertinent to the executive director's determination, is available for review during regular business hours at the Nueces County Library, Robstown, Texas, telephone (512) 767-5228. Copies of the complete public file may be obtained during regular business hours at the TNRCC, Central Records, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9816412

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: October 20, 1998



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is November 29, 1998. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas, 78711-3087 and must be received by 5:00 p.m. on November 29, 1998. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) COMPANY: Accutech Wood Products Incorporated; DOCKET NUMBER: 98-0744-AIR-E; IDENTIFIER: Account Number ED-0309-V; LOCATION: Ennis, Ellis County, Texas; TYPE OF FACILITY: woodworking shop; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.085(b) and §382.0518(a), by operating without satisfying all of the conditions for exemption from permitting for woodworking facilities; PENALTY: \$1,440; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(2) COMPANY: Sulaiman Al-Haddad; DOCKET NUMBER: 98-0646-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 46216; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: retail gasoline sales; RULE VIOLATED: 30 TAC §115.242(3)(A) and the Act, §382.085(b), by failing to install an appropriate system monitor as required by the California Air Resources Board (CARB) executive order; 30 TAC §115.245, §115.246(5), and the Act, §382.085(b), by failing to conduct and provide records of initial and annual testing for the Stage II vapor recovery system; and 30 TAC §115.246(4), §115.248, and the Act, §382.085(b), by failing to ensure employee training and by failing to have records of employee training on site and available for review; PENALTY: \$13,750; ENFORCEMENT COORDINATOR: Gloria Stanford, (512) 239-1871; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(3) COMPANY: Altura Energy Ltd.; DOCKET NUMBER: 98-0680-AIR-E; IDENTIFIER: Account Number YA-0052-H; LOCATION: Denver City, Yoakum County, Texas; TYPE OF FACILITY: oil and gas plant; RULE VIOLATED: 30 TAC §116.115(a), §101.20(1), 40 Code of Federal Regulations Subparts A and KKK, Permit Number 16754, and the Act, §382.085(b), by failing to conduct the initial performance test on the flare stack; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas, 79414-3520, (806) 796-7092.

(4) COMPANY: Bar-B Management, Inc.; DOCKET NUMBER: 98-0483-MWD-E; IDENTIFIER: Enforcement Identification Number 12459; LOCATION: Gordon, Palo Pinto County, Texas; TYPE OF FACILITY: truck stop; RULE VIOLATED: Permit Number 02693-001 and the Code, §26.121, by allowing an unauthorized discharge of wastewater; and 30 TAC §305.125(2), by failing to submit a permit renewal application prior to the expiration date of the permit; PENALTY: \$7,500; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(5) COMPANY: Steven Carr dba Builders Marble Company; DOCKET NUMBER: 98-0247- AIR-E; IDENTIFIER: Account Number CP-0158-R; LOCATION: Princeton, Collin County, Texas; TYPE OF FACILITY: synthetic marble manufacturing plant; RULE VIOLATED: 30 TAC §116.110 and the Act, §382.0518(a) and §382.085(b), by failing to obtain permit authorization prior to construction of a mold fabrication and repair facility; and 30 TAC §116.115(a), Permit Number T-17208, and the Act, §382.085(b), by failing to construct the marble mixing and grinding areas as represented in the permit application; PENALTY: \$13,125; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(6) COMPANY: Diamond Shamrock Refining Company, L.P.; DOCKET NUMBER: 98-0601- IWD-E; IDENTIFIER: Permit Number 01353; LOCATION: Three Rivers, Live Oak County, Texas;

TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 01353 and the Code, §26.121, by allowing an unauthorized discharge of wastewater from the facility's tail water control pond; 30 TAC §305.503, by failing to pay wastewater treatment inspection and water quality assessment fees; and 30 TAC §335.323 and the THSC, §361.134, by failing to pay non-hazardous waste generation fees; PENALTY: \$6,875; ENFORCEMENT COORDINATOR: Mike Meyer, (512) 239-4492; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas, 78412-5503, (512) 980-3100.

(7) COMPANY: Dynamic Products, Inc.; DOCKET NUMBER: 98-0519-MWD-E; IDENTIFIER: Enforcement Identification Number 12488; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by failing to submit a permit renewal application prior to the expiration date of the permit; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(8) COMPANY: Henderson County; DOCKET NUMBER: 98-0346-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Numbers 17869, 17871, 17873, and 57285; LOCATION: Athens, Brownsboro, and Malakoff, Henderson County, Texas; TYPE OF FACILITY: county maintenance shop, county precinct, and county jail; RULE VIOLATED: 30 TAC §334.7(a)(1), by failing to register with the commission, on authorized commission forms, underground storage tanks (USTs) in existence on or after September 1, 1987; 30 TAC §334.50(b)(1)(B)(I), by failing to conduct a tank tightness test at least once each year when utilizing a combination of tank tightness testing and inventory control as a release detection method for ST systems prior to 1989; 30 TAC §334.50(b)(1)(B)(ii), by failing to conduct a tank tightness test at least once every five years when utilizing a combination of tank tightness testing and inventory control as a release detection method for UST systems installed 1989 to present; 30 TAC §334.50(b)(2), by failing to provide proper release detection for the piping associated with UST systems; 30 TAC §334.51(b)(2)(B) and (C), by failing to provide proper spill containment equipment and overfill prevention equipment for UST systems; and 30 TAC §334.50(d)(1)(B), by failing to conduct inventory control procedures in accordance with applicable requirements; PENALTY: \$22,000; ENFORCEMENT COORDINATOR: Sushil Modak, (512) 239-2142; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas, 75701-3756, (903) 535-5100.

(9) COMPANY: J.L. Riley Enterprises, Inc. and Michael Jamieson; DOCKET NUMBER: 98-0781-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 16897; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: retail gasoline facility; RULE VIOLATED: 30 TAC §115.246(1), §115.246(5), and the Act, §382.085(b), by failing to maintain a copy of the CARB executive order for the Stage II vapor recovery system and any related components installed at the facility and by failing to maintain a record of the results of testing conducted at the motor vehicle fuel dispensing facility; PENALTY: \$1,250; ENFORCEMENT COORDINATOR: Paula Spears, (512) 239-4575; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(10) COMPANY: Mr. Jack Pagan; DOCKET NUMBER: 98-0473-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 16785; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: vehicle dealership; RULE VIOLATED: 30 TAC §334.7(d)(3), by failing to provide amended registration; 30 TAC §334.50(b)(1)(A), by failing to perform release detection for

tanks; and 30 TAC §334.51(b)(2)(B) and (C), by failing to install spill containment and overfill prevention on the 10,000-gallon UST; PENALTY: \$8,077; ENFORCEMENT COORDINATOR: Julia Mc-Masters, (512) 239-5839; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas, 78412-5503, (512) 980-3100.

(11) COMPANY: Scan-Pac Manufacturing, Inc.; DOCKET NUMBER: 98-0966-AIR-E; IDENTIFIER: Account Number MQ-0106-G; LOCATION: Magnolia, Montgomery County, Texas; TYPE OF FACILITY: non-asbestos friction material manufacturing plant; RULE VIOLATED: 30 TAC §116.110(a) and the THSC, §382.0518(a) and §382.085(b), by operating the plant without a permit; PENALTY: \$4,000; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(12) COMPANY: Schumacher Company, Inc.; DOCKET NUMBER: 98-0368-IHW-E; IDENTIFIER: Solid Waste Registration Number 31579; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: metal plating, hard chrome plating, grinding, and electroless nickel plating; RULE VIOLATED: 30 TAC §335.62, by failing to conduct a hazardous waste determination on seven waste streams generated during closure of Tanks 007, 008, 010, and 014; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; 30 TAC §335.112(a)(9), by failing to conduct tank tightness tests on new Tanks 017 and 018 prior to placing the tanks into service; 30 TAC §335.4 and the Code, §26.121, by failing to properly remediate contaminated soil and groundwater at the facility; 30 TAC §335.69(a)(2) and (3), by failing to mark 27 miscellaneous containers of unknown wastes with the beginning date of accumulation and with the words "hazardous waste"; 30 TAC §335.69(b), by failing to store waste in Tank 010 for fewer than 90 days; and 30 TAC §335.474(1)(C) and (J), by failing to submit a complete Source Reduction and Waste Minimization Plan; PENALTY: \$26,500; ENFORCEMENT COORDINATOR: Anne Nyffenegger, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486, (713) 767-3500.

(13) COMPANY: Melvin Woods dba Sundance Motors; DOCKET NUMBER: 98-0855-AIR-E; IDENTIFIER: Account Number DB-4696-T; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale a motor vehicle with missing and tampered emission control systems; PENALTY: \$625; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas, 76010-6499, (817) 469-6750.

(14) COMPANY: Mr. Richard Taff dba Vintage Car Wash; DOCKET NUMBER: 98-0177-AIR-E; IDENTIFIER: Account Number EE-0989-C; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: car wash; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by dispensing motor vehicle fuel with an oxygen content below 2.7% by weight during the oxygenated fuel control period; PENALTY: \$600; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas, 79925-5633, (915) 778-9634.

TRD-9816396

Paul Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: October 20, 1998

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Notice of Proposed Selection of Remedy

The executive director of the Texas Natural Resource Conservation Commission (TNRCC or the Commission) is issuing this public notice of the selection of a proposed remedial action for the Land-based Operable Unit (LBOU) of the International Creosoting state Superfund site. In accordance with the Texas Health and Safety Code, Chapter 361.187 of the Solid Waste Disposal Act, concerning the proposed remedial action, a public meeting regarding the TNRCC's selection of a proposed remedial action for the International Creosoting LBOU state Superfund site shall be held. The statute requires that the Commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice will be published in the October 30, 1998, issue of the *Texas Register* and the *Beaumont Enterprise*.

The public meeting is scheduled at the Beaumont Independent School District Administration Building Board Room, located at 3395 Harrison Avenue in Beaumont on Tuesday, December 1, 1998, beginning at 7:00 p.m. The public meeting will be legislative in nature and is not a contested case hearing under the Texas Government Code 2001.

Contemporaneously with this notice, the executive director hereby makes available to all interested parties the public records the TNRCC has regarding the facility. A portion of the records for this site, including documents pertinent to the proposed remedy, is available for review during regular business hours at the Beaumont Public Library, 801 Pearl Street, Beaumont, Texas 77701. Copies of the complete public record file may be obtained during business hours at the TNRCC, Central Records Center, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas 78753, telephone (512) 239-2920. Photocopying of file information is subject to payment of a fee. A brief summary of those public records follows.

The site for which a remedy is being proposed, the LBOU of the International Creosoting state Superfund site, was proposed for listing on the state registry of Superfund sites in the November 15, 1988, edition of the *Texas Register* (13 TexReg 5791). After a public meeting at which the site was proposed for listing, it was added to the state Superfund registry on March 31, 1989. In 1996, the site was split into two operable units, one was the 14.7 acres of the Land-based Operable Unit (LBOU) and the other was comprised of Brakes Bayou in the vicinity of the site, the Bayou-based Operable Unit (BBOU). The operable units were created to expedite completion of the Remedial Investigation/Feasibility Study (RI/FS) process for the LBOU, the remedy for which is being proposed.

The International Creosoting state Superfund site is located at 1110 Pine Street in Beaumont, Texas at the intersection of Pine Street and Interstate Highway I-10. The site was used for wood-treatment operations from 1898 to 1973. The facility was purchased by Moss-American Corporation, a subsidiary of Kerr-McGee Chemical Corporation in 1969. Documentation exists that both creosote and creosote mixed with pentachlorophenol were used in wood treatment operations at the site. The wood-treatment operations ended in November 1973, when Moss-American sold the property to Keown Contracting Company.

Keown Contracting Company operated an asphaltic ready-mix concrete production facility on the LBOU. Keown Supply Company bought the property from Keown Contracting Company in 1979 and continued these operations. Asphalt and aggregate/granular materials (e.g., sand, rock, shell, cement) were used at the site until 1987.

In 1981, Moss-American notified the EPA, as required by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), that hazardous waste had been handled and disposed of in a surface impoundment (stabilization pond) used to separate creosote and wastewater. Moss-American estimated that this waste impoundment had been used to store/dispose of waste from 1920 to 1973. Subsequent investigations performed by the Texas Water Commission (predecessor agency of the TNRCC) and private entities established that surface soils, subsurface soils, and groundwater had been impacted by creosote and asphalt constituents.

In 1990, Kerr-McGee Chemical Company, now Kerr-McGee Chemical LLC (KMC), entered into an Agreed Order with the Texas Water Commission to complete the Remedial Investigation/ Feasibility Study (RI/FS) for the site. In 1992, KMC completed decommissioning/demolishing most of the remaining structures at the site, disposing of debris and some waste materials left at the surface, and consolidating other waste materials. From 1990 to 1998, KMC completed a Remedial Investigation, Baseline Risk Assessment, and Feasibility Study for the LBOU. The Remedial Investigation results indicate that the site is contaminated with free-phase creosote, semivolatile organic compounds (which are constituents of creosote and asphalt), volatile organic compounds, and several metals (arsenic, chromium, mercury, and lead). The Baseline Risk Assessment concluded that these contaminants are present at concentrations that pose an unacceptable risk to human health and the environment if no remedial actions are performed. Therefore, further action is needed to eliminate any imminent and substantial endangerment to human health and the environment from the contamination at the site.

KMC completed the Feasibility Study and a Capping Technical Memorandum for the LBOU in July and August 1998. These documents were approved by the TNRCC in August and September of 1998. The TNRCC prepared the Proposed Remedial Action Document in October 1998. This document presents the proposed remedy and justification for how this remedy demonstrates compliance with the relevant cleanup standards.

Based on the large calculated volume of contaminated soil and groundwater in the LBOU, the recommended remedial alternative from the TNRCC's Presumptive Remedies Guidance for Soils at Texas State Superfund Sites is on-site containment. This containment will be achieved by: (1) installing a slurry wall around the perimeter of most of the LBOU to a depth of approximately 50 feet below ground surface to prevent migration of contaminants; (2) recovering groundwater and creosote from behind the slurry wall barrier; and (3) installing a cap over surface soils that exceed acceptable risk levels to protect human and ecological receptors from unacceptable concentrations of contaminated material. In addition, a small area of groundwater contamination at the site outside of the area proposed for containment needs to be remediated. The recommended remedial action for this area is pumping and treating the groundwater. The recommended combined remedial actions are the most cost effective, reasonable and appropriate remedies to address the contamination present.

Persons desiring to make comments on the proposed remedial actions or the identification of potentially responsible parties may do so at the meeting or in writing prior to the public meeting. Written comments may be submitted to Dr. Nell Tyner, Project Manager, TNRCC, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087. All comments must be received by the close of the public meeting on December 1, 1998.

TRD-9816413
Margaret Hoffman

Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: October 20, 1998



Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on October 12, 1998, on Executive Director's Preliminary Report and Petition Recommending Assessment of Administrative Penalties and Requiring Certain Actions of Gregg Dean and Mike Houge; SOAH Docket Number 582-98-0869; TNRCC Docket Number 97-1065-IHW-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9816454
Douglas A. Kitts
Agenda Coordinator
Texas Natural Resource Conservation Commission
Filed: October 21, 1998



Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of October 20, 1998:

Application Number TA- 8018 by Williams Gas Pipelines-Transco for diversion of three acre-feet in a one year period for industrial and mining (hydrostatic testing and drilling) uses. Water may be diverted from the Trinity River, Trinity River Basin, approximately five miles north of Liberty, Liberty County, Texas, near FARM-TO-MARKET ROAD 2797.

Application Number TA-8023 by Sunland Construction, Inc. for diversion of two acre-feet in a six month period for industrial (hydrostatic testing) use. Water may be diverted from Oyster Creek, San Jacinto-Brazos Coastal Basin, approximately three miles west of Angelton, Brazoria County, Texas, at the crossing of FARM-TO-MARKET ROAD 521 and the Oyster Creek.

Application Number TA-8025 by Granite Construction Co. for diversion of ten acre-feet in a one year period for industrial (soil stabilization) use. Water may be diverted from an unnamed tributary of Caney Creek, Trinity River Basin, approximately six miles northwest of Fairfield, Freestone County, Texas, near INTERSTATE HIGHWAY 45.

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 §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-9816422
LaDonna Castanuela
Acting Chief Clerk
Texas Natural Resource Conservation Commission
Filed: October 20, 1998



Notices of Public Hearings

Notice is hereby given that under the requirements of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning the repeal of 30 TAC (Texas Administrative Code), Chapters 238 and 340.

The proposed repeal would remove current Chapters 238 and 340, as part of the commission's implementation of Senate Bill 1955, 75th Legislature, 1997. The legislative action amended Chapters 32 and 33, Texas Water Code (TWC), requiring the transfer of the water well drillers programs previously administered by the TNRCC to the Texas Department of Licensing and Regulation (TDLR). TDLR is also authorized to adopt rules under Chapters 32 and 33, and TNRCC proposes the repeal of this chapter in response to the TDLR's proposal to adopt 16 TAC, Chapter 76, which proposes rules for well standards and well driller and pump installer licensing.

A public hearing on the proposal will be held on November 23, 1998, at 10:00 a.m. in Room 5108 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments on the proposal should reference Rule Log Number 97144-238-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. Written comments must be received by 5:00 p.m. on November 30, 1998. For further information or questions concerning the proposal, please contact Steve Musick, Water Quality Division, at (512) 239-4514.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9816435
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: October 21, 1998



Notice is hereby given that under the requirements of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural

Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning 30 TAC (Texas Administrative Code), Chapter 216.

The proposed rules will implement revisions to Texas Water Code, §26.177 made by House Bill 1190 passed during the 75th Texas Legislature (1997). The bill revised Texas Water Code §26.177 and made the section permissive for any community regardless of population, and required only for communities with populations of 10,000 or greater where the Clean Rivers Regional Assessment of Water Quality or other commission assessments or studies demonstrate a water pollution impact not associated with permitted sources. The proposed rulemaking provides flexibility in allowing affected cities the opportunity to correct the problems using those resources available to them within a reasonable time, but not to exceed five years.

A public hearing on the proposal will be held on November 10, 1998, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments on the proposal should refer to Rule Log Number 97164-216-WT and may be mailed to Lutrecia Oshoko, MC 204, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Written comments must be received by 5:00 p.m., November 30, 1998. Such comments will not receive individual responses, but will be addressed in the preamble of the adopted rules and published in the *Texas Register*. For more information, please contact Arthur Talley of the Data Collection Section at (512) 239-4546.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-9816437
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: October 21, 1998

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Public Utility Commission of Texas

Application to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 13, 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 Installation Charges for Digital Loop Service and Reduced Monthly Rates for Digital Loop Service, Pursuant to Substantive Rule §23.25. Tariff Control Number 19974.

The Application: SWBT is instituting promotional installation charges and a reduction in the monthly rates for Digital Loop Service. Customer ordering Digital Transmission Loop Arrange-

ment(s) (DTLA) between November 9, 1998 and January 29, 1999 will receive a waiver on the installation charge associated with Digital Loop Service. Also, customers ordering a term other than a month-to-month agreement will receive a reduction in monthly rates. During the promotional period, Digital Loop Service customers ordering new DTLA(s) will receive a waiver of the \$550 installation charge for the initial unit and the \$425 installation charge for each additional unit associated with Digital Loop Service. In order to receive the installation charge waiver, customer must agree to a 12 month or longer service term.

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 November 5, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9816112
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 14, 1998

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Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 16, 1998, CSW/ICG ChoiceCom, L.P., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60103. Applicant intends to amend its SPCOA to reflect a change in ownership structure resulting in a transfer to a non-certificated entity, ICG Communications, Inc.

The Application: Application of CSW/ICG ChoiceCom, L.P., for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19992.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than November 4, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19992.

TRD-9816406
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998

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Notices of Applications for Approval of Intralata Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 6, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of AT&T Communications of the Southwest, Inc. for Approval of IntraLATA Equal Access Imple-

mentation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19710.

The Application: AT&T Communications of the Southwest, Inc. (AT&T) filed a letter apprising the commission of the status of the provision of intraLATA equal access by AT&T to its local customers. IntraLATA equal access will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. AT&T states it is providing residential local service primarily through resale of local service provided by Southwestern Bell Telephone Company (SWBT), and that its' resale customers are provided the same intraLATA toll PIC capabilities as SWBT provides its own retail customers. AT&T commits to timely file a further implementation plan when AT&T provides local service in a manner that requires intraLATA equal access.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19710.

TRD-9816400
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 10, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Leaco Rural Telephone Cooperative, Inc. for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19725.

The Application: Leaco Rural Telephone Cooperative, Inc. is a certified telecommunications utility providing local exchange telephone service in Texas and New Mexico. The cooperative serves 14 customers in Texas in the Antelope Ridge Exchange. Leaco has provided intraLATA equal access to its customers within Texas since March 19, 1997, in compliance with the order of the New Mexico Public Service Commission in Docket Number 95-572. IntraLATA equal access will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. As it has already implemented equal access service, Leaco requests that its' affidavit be accepted as confirmation that it allows competition in the intraLATA toll market.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19725.

TRD-9816401
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: October 20, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 12, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of Fort Bend Long Distance Company for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19736.

The Application: Fort Bend Long Distance Company (Fort Bend) is a facilities-based provider and reseller of local exchange service in Texas. At the time of filing, Fort Bend does not yet serve any customers in Texas. However, Fort Bend plans to begin providing local exchange service before the end of 1998. Fort Bend states it will provide intraLATA equal access as of the initiation of operations where it has the switching capability to do so. IntraLATA equal access will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19736.

TRD-9816402
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on August 21, 1998, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan.

Project Number: Application of CoServ Communications for Approval of IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. Substantive Rule §23.103. Project Number 19785.

The Application: CoServ Communications (CoServ) is a facilities-based provider and reseller of local exchange service in Texas. CoServ asserts it is already providing intraLATA equal access to its existing customers. However, to ensure compliance with P.U.C. Substantive Rule §23.103, CoServ is submitting its implementation plan describing how CoServ provides intraLATA equal access. IntraLATA equal access allows a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+ interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before November 10, 1998. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 19785.

TRD-9816403

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998



Notices of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 12, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Globalcom, Inc., doing business as GCI Globalcom, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19969 before the Public Utility Commission of Texas.

Applicant intends to provide basic local exchange services and interexchange services to both residence and business customers, and seeks authority that will enable it to implement its own facilities, which may include, at some future date, without limitation, a switch utilizing unbundled local loops of the local exchange companies.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than November 4, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9816196
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 15, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 19, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Hyperion Communications of Texas, L.P., for a Service Provider Certificate of Operating Authority, Docket Number 19995 before the Public Utility Commission of Texas.

Applicant intends to provide resold and facilities-based local exchange telecommunications services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 no later than November 4, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9816404

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998



Notices of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Amarillo National Bank in Amarillo, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's (SWBT) Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Amarillo National Bank in Amarillo, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19983.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Amarillo National Bank in Amarillo, 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 Amarillo exchange, and the geographic market for this specific PLEXAR-Custom service is the Amarillo 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-9816405
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for Fort Worth Independent School District in Fort Worth, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's (SWBT) Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for Fort Worth ISD in Fort Worth, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19996.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for Fort Worth ISD in Fort Worth, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Fort Worth exchange, and the geographic market for this specific PLEXAR-Custom service is the Dallas LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of

Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9816427

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 20, 1998



Texas Racing Commission

Notice of Public Hearing

Pursuant to Texas Civil Statutes, Article 179e, §18.02, an administrative law judge will conduct an administrative hearing for the Texas Racing Commission in SOAH Docket No. 476-98-0801, the application for a pari-mutuel Class 2 horse racetrack license in Parker County. The hearing will begin at 9:00 a.m. on Monday, November 6, 1998, at the State Office of Administrative Hearings, Stephen F. Austin Building, 1700 North Congress, Suite 1100, Austin, Texas. All interested persons are welcome to attend.

The applicant, Parker County Squaw Creek Downs, asserts that it is qualified to receive a Class 2 horse racetrack license.

Persons who have intervened and granted party status are: Lone Star Race Park, Ltd., Texas Thoroughbred Association, Texas Horsemen's Partnership, L.L.P., City of Grand Prairie and Grand Prairie Sports Facilities Development Corporation.

The nonparty participants are: Weatherford Chamber of Commerce, United Horsemen's Association and Robert E. Brooks.

The hearing will be conducted in accordance with the Administrative Procedures Act, Chapter 2001, Government Code, State Office of Administrative Hearings Rules of Procedure 1 Tex. Admin. Code Chapter 155 and Texas Racing Commission Rules 16 Tex. Admin. Code Chapter 307.

Questions regarding this matter should be directed to Roselyn Marcus, General Counsel, Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, (512) 833-6699.

TRD-9816226

Paula Flowerday
Executive Secretary
Texas Racing Commission
Filed: October 16, 1998



Sam Houston State University

Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. Sam Houston State University (SHSU) seeks written proposals from qualified consulting firms based in Washington, D.C. to represent and assist the University in developing projects deemed important to the University. Important considerations in the award of the proposed contract will be the years of experience in securing funding assistance for university programs and facilities, a strong bipartisan presence within the firm with considerable experience working with legislative staffs, and a record of substantial success in dealing with the Congress and the Executive Agencies. Excellent skills in university grant and contract awards is necessary. Substantial experience in the development of strategies for

corporate participation in university-sponsored development projects especially those relating to environmental and telecommunication issues. Interested parties are invited to express their interest and describe their capabilities by December 12, 1998. The consulting services desired are a continuation of a service previously performed by a private consultant. This contract represents a renewal and will be awarded to the previous consultant unless a better offer is received. The term of the contract is to be from date of award for a twelve (12) month period with options to renew. Further technical information can be obtained from Dr. Michael J. Warnock, at (409) 294-3621. Deadline for receipt of proposals is 4:00 p.m. December 11, 1998. Date and time will be stamped on the proposals by the Office of Research and Sponsored Programs. Proposals received later than this date and time will not be considered. All proposals must be specific and must be responsive to the criteria set forth in this request.

I. GENERAL INSTRUCTIONS

Submit one copy of your proposal in a sealed envelope to: Office of Research and Sponsored Programs, P. O. Box 2448, Sam Houston State University, Huntsville, Texas, 77341-2448, before 4:00 p.m., December 11, 1998. Proposals may be modified or withdrawn prior to the established due date.

II. DISCUSSIONS WITH OFFERERS AND AWARD

The University reserves the right to conduct discussions with any or all offerers, or to make an award of a contract without such discussions based only on evaluation of the written proposals. The University also reserves the right to designate a review committee in evaluating the proposals according to the criteria set forth under Section III entitled Scope of Work. The Associate Vice President for Research and Sponsored Programs shall make a written determination showing the basis upon which the award was made and such determination shall be kept on file.

III. SCOPE OF WORK

1. Representation and assistance in developing projects deemed important to the University.
2. Assistance in obtaining funding for University projects.
3. Consulting and representation as directed by Sam Houston State University.

IV. EVALUATION

A. Criteria for Evaluation of Proposals:

Firms will be evaluated on time and quality of experience in representing and assisting universities in developing projects. Equal consideration will be given to past performance, writing skills, and the effectiveness of the firms strategies.

- B. Your proposal should include costs for all related expenses.

V. TERMINATION

This Request for Proposal (RFP) in no manner obligates SHSU to the eventual purchase of any services described, implied or which may be proposed until confirmed by a written contract. Progress towards this end is solely at the discretion of SHSU and may be terminated without penalty or obligation at any time prior to the signing of a contract. SHSU reserves the right to cancel this RFP at any time, for any reason and to reject any or all proposals. SHSU requires that the responses to this RFP must state that the proposed terms will remain in effect for at least forty-five (45) days after the scheduled response opening.

TRD-9816442

B.K. Marks
President
Sam Houston State University
Filed: October 21, 1998

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Texas Turnpike Authority Division of the Texas Department of Transportation

Notice of Intent

Pursuant to Title 43, Texas Administrative Code, §§52.1-52.8, concerning Environmental Review and Public Involvement, the Texas Turnpike Authority Division (TTA) of the Texas Department of Transportation is issuing this notice to advise the public that a joint Major Investment Study (MIS) and Environmental Impact Statement (EIS) will be prepared for a proposed U.S. Highway 183 corridor improvement project in Williamson County, Texas. The study corridor includes the existing U.S. Highway 183 alignment and the general area located east of existing U.S. Highway 183. The study limits extend from approximately Lakeline Boulevard, located north of RM 620 and south of the City of Cedar Park, to north of the City of Leander, south of the San Gabriel River.

The TTA, in cooperation with the Federal Highway Administration, will prepare a joint MIS/EIS for a proposed project to relieve traffic congestion on U.S. Highway 183 and within the Cities of Cedar Park and Leander and adjacent portions of Williamson County, Texas. Alternatives to be considered for this project include upgrading the existing U.S. Highway 183 or constructing a traffic reliever route, known as U.S. Highway 183A, on new location. If ultimately selected as the recommended action, U.S. Highway 183A would be located parallel and northeast of existing U.S. Highway 183, beginning at Lakeline Boulevard, south of Cedar Park, Texas, and running north to a terminus with existing U.S. Highway 183 north of Leander, Texas. If constructed, ultimate facility design for U.S. Highway 183A is anticipated to be a six-lane controlled access roadway with intermittent frontage roads and overpasses at major thoroughfares. The total length of U.S. Highway 183A would be approximately 10 1/2 miles.

Other improvements to be considered within the U.S. Highway 183 corridor include implementing Transportation System Management (TSM) and/or Travel Demand Management (TDM) improvements for U.S. Highway 183. The TSM alternative would involve implementing only those activities which maximize the efficiency of existing U.S. Highway 183, such as improved traffic signal timing, more efficient accident removal, or the addition of turn lanes. TDM improvements could include strategies such as flextime, telecommuting, or other control measures to reduce travel time. Ongoing regional high occupancy vehicle (HOV) studies, toll road studies, as well as the combination of a fixed guideway facility (light rail) and/or commuter rail facility will be considered for integration with the proposed U.S. Highway 183A.

The MIS portion of the study will analyze the various mobility alternatives in the U.S. Highway 183 corridor as described above. Information on the costs, benefits, and impact of the alternatives will lead to decisions by TTA, FHWA, the Texas Department of Transportation and the Austin Transportation Study, the metropolitan planning organization for the Austin-area, on the design concept and scope of the investment.

Major considerations in the EIS will include an analysis of the cost of the right-of-way, the numbers and types of relocations necessary, engineering constraints and limitations due to topography, and

potential environmental impacts involving land use, socioeconomic conditions, water resources, air quality, noise, traffic, ecological/cultural resources and hazardous material sites. At the present stage of the planning process, no preferred alternative has been selected. More in-depth studies will be conducted before and after a preferred alternative is chosen to avoid and/or minimize impacts to human, cultural and ecological resources. These studies will be coordinated through appropriate local, state and federal agencies.

As currently envisioned, if construction of U.S. Highway 183A is ultimately selected as the preferred alternative, it will be developed as a controlled access toll road. Accordingly, in conjunction with the preparation of the MIS/EIS, the TTA will conduct a toll feasibility study to evaluate the viability of developing U.S. Highway 183A as a toll road and financing it, in whole or in part, through the issuance of revenue bonds. The toll road designation will not influence the selection of a preferred alternative. Proposed alternatives, including alternative alignments for U.S. Highway 183A, will be evaluated for how well they meet the established purpose and need for the proposed project. Any impacts owing to the toll road designation will be discussed in the environmental impact statement.

An initial public meeting for the proposed U.S. 183 project was held in 1990. However, the project progression was slowed shortly after that meeting due to resource and budget shortfalls. In 1995, the project was revived and another public meeting was held on May 22, 1996. At the meeting, mobility concerns within the U.S. Highway 183 corridor were raised and a proposed corridor for U.S. Highway 183A was shown. A Major Investment Study public initiation meeting was held on May 12, 1998 in Cedar Park, Texas that provided more information on the modal alternatives for the corridor, alternative alignments being considered for the corridor and some of the potential impacts associated with each alternative.

On November 10, 1998, the TTA will conduct another public meeting to discuss the proposed improvements within the U.S. Highway 183 corridor. The purpose of the public meeting will be to receive comments on the proposed project and possible alignments for the U.S. 183A alternative. The meeting will be held in the gymnasium of Giddens Elementary School, 1500 Timberwood Drive, Cedar Park, Texas, 78613. From 6:00 to 7:00 p.m., displays showing the project corridor and possible alignments for the U.S. Highway 183A alternative will be available for review. During this time, TTA staff will be available to answer questions. At 7:00 p.m. there will be a formal project presentation followed by a public comment period. All interested citizens are invited to attend this meeting.

A public hearing will be held after publication of the Draft MIS/EIS. Public notice will be given of the time and place of the hearing. The Draft MIS/EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Agency Contact: Comments or questions concerning this proposed action and the MIS/EIS should be directed to Stacey Benningfield, Environmental Manager, Texas Turnpike Authority Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701, (512) 936-0983.

TRD-9816434

James W. Griffin, P.E.

Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Filed: October 21, 1998



The University of Texas System

Extension of Submittal Deadline related to Invitation for Consultants to Provide Offers of Consulting Services

The University of Texas System (University) published the Invitation for Consultants to Provide Offers of Consulting Services for Invitation No. OTIT-01Amend (Invitation) related to information technology consulting services, in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9657-58). The Invitation was noted as TRD-9814283.

University hereby announces that the deadline for submittal of offers in response to the Invitation has been extended to 5:00 p.m., CST, Monday, November 16, 1998 (Submittal Deadline). All offers must be received at the address designated in the Invitation no later than the Submittal Deadline. Submissions received after the Submittal Deadline will not be considered.

Questions concerning the Invitation or the extension of the Submittal Deadline should be directed to Dr. Mario J. Gonzalez, Vice Chancellor for Telecommunications and Information Technology, The University of Texas System, 201 West Seventh Street, Room 418, Austin, Texas, 78701, 512/499-4207.

Except as specifically modified and amended herein, all of the terms, provisions, requirements and specifications contained in the Invitation remain in full force and effect.

TRD-9816258

Francie A. Frederick

Executive Secretary to the Board of Regents

The University of Texas System

Filed: October 16, 1998



Texas Commission on Volunteerism and Community Service

Notice of Request for Proposals

The Texas Commission on Volunteerism and Community Service issues a Request for Proposals (RFP) for the purpose of subgranting funds to community based organizations (CBO's) to sponsor AmeriCorps Promise Fellows who will help implement programs in support of the five goals for children and youth set at the Presidents' Summit for America's Future. These grants, in the aggregate, will support 20 Fellows. These Fellows will spend one year serving with CBO's that are committed to helping to meet one or more of the five goals of the Presidents' Summit. Each fellow will receive \$10,000 of their annual \$13,000 living allowance from the Texas Commission on Volunteerism and Community Service. Host agencies will be required to make a \$5,000 match to cover additional expenses. Each Fellow who successfully completes a term of service will receive the \$4,725 AmeriCorps Education Award funded through the Corporation for National Service.

Last year in Philadelphia, President Clinton, former Presidents Bush, Carter, and Ford, Mrs. Nancy Reagan, and General Colin Powell, with the endorsement of many governors, mayors, and leaders of the independent sector, declared: "We have a special obligation to America's children to see that all young Americans have:

1. Caring adults in their lives, as parents, mentors, tutors, coaches;

2. Safe places with structured activities in which to learn and grow;
3. A healthy start and a healthy future;
4. An effective education that equips them with marketable skills; and
5. An opportunity to give back to their communities through their own service.

These five goals are now the five fundamental resources sought by America's Promise-The Alliance for Youth, the organization following up on the goals of the Presidents' Summit.

This new Fellowship program will provide local communities with additional and unique support to help carry out their plans to provide America's children with these five fundamental resources.

Eligible Proposers: Texas Commission on Volunteerism and Community Service will consider proposals from community-based organizations and public or private non-profit entities.

Contact: Interested parties should fax a one page request for an RFP to (512) 463-1861, to be received no later than 12:00 noon CST, November 6, 1998. The request should include organization name, contact person, address, and phone number. Contact Texas Commission on Volunteerism and Community Service for more information (512) 463-1861.

Closing Date: Proposals must be received by Texas Commission on Volunteerism and Community Service no later than 5:00 p.m. CST on Friday, November 13, 1998. Hand deliveries and Overnight Mail should be sent to Texas Commission on Volunteerism and Community Service, AmeriCorps Promise Fellows, 1700 North Congress, Room 310, Austin, Texas, 78701. Mailed proposals should be sent to P.O. Box 13385, Austin, Texas, 78711-3385. Proposals received after 5:00 p.m. CST on Friday, November 13, 1998 will not be considered.

Award Procedures: Proposals will be subject to evaluation based on the requirements as set forth in the RFP. Texas Commission on Volunteerism and Community Service will make the final decision as to which proposal or proposals best satisfy the RFP's criteria.

Texas Commission on Volunteerism and Community Service reserves the right to accept or reject any or all proposals submitted. Texas Commission on Volunteerism and Community Service is under no legal obligation to execute a contract on the basis of this notice or the distribution of any RFP. In addition, Texas Commission on Volunteerism and Community Service reserves the right to vary the provisions set forth in the RFP any time prior to the execution of a contract when such variance is deemed to be in the best interest of Texas Commission on Volunteerism and Community Service. Neither this notice nor the RFP commits Texas Commission on Volunteerism and Community Service to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: issuance of RFP-November 1, 1998; proposals due-November 13, 1998 at 5:00 p.m. CST; contract execution-November 30, 1998, or 5 days within receipt of Texas Commission on Volunteerism and Community Service AmeriCorps Promise Fellows Award from the Corporation for National Service. Grant awards are contingent upon receipt of federal funding.

TRD-9816295

J. Randel (Jerry) Hill

General Counsel

Texas Commission on Volunteerism and Community Service

Filed: October 16, 1998

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