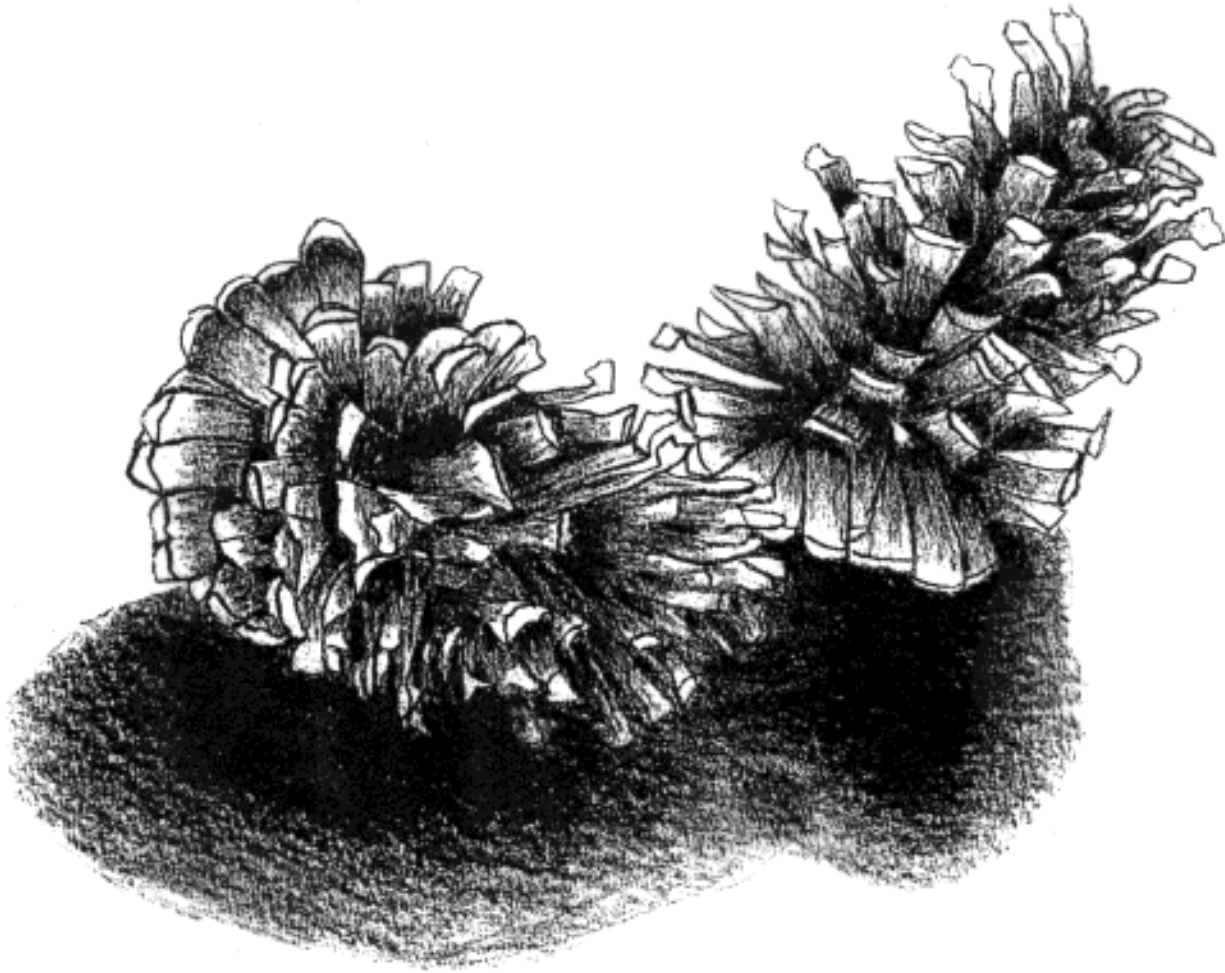


# TEXAS REGISTER

*Volume 23 Number 51 December 18, 1998*

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

***Artist: Joshua Smith***

***9th Grade***

***Killeen Ninth Grade Center***

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# OFFICE OF THE ATTORNEY GENERAL

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

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Letter Opinions

**LO# 98-113. (RQ 1183).** Request from the Honorable Judith Zaffirini, Chair, Health and Human Services Committee, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, regarding whether an optician has any right of access to the records of an optometrist's patient.

**Summary.** Article 4552, V.T.C.S., does not grant an optician who works closely with an optometrist a right of access to the optometrist's patient records. Although the fact that an optician has reviewed a patient's records of treatment by an optometrist may be relevant to proving that an optometry practice and a dispensing optician's business are not separated to the degree required by section 4552.-5.15, V.T.C.S., we cannot conclude as a matter of law that the transfer of records violates any provision of article 4552, V.T.C.S.

**LO# 98-114. (RQ-1007).** Request from the Honorable Jerome Aldrich, Criminal District Attorney, Brazoria County, 111 East Locust, Room 408A, Angleton, Texas 77515, regarding whether a municipality may exercise zoning, or other, police powers over privately owned land below mean high water of a man-made canal within the municipal limits.

**Summary.** A municipality may exercise zoning or other police powers over a privately owned canal bed, although the municipality may not interfere with the public's use of the public waters.

**LO# 98-115. (RQ-1020).** Request from the Honorable Bruce Isaacks, Denton County Criminal District Attorney, P. O. Box 2344, Denton, Texas, 76202 regarding whether the provisions of Local Government Code section 262.011 apply to a county that has employed a purchasing agent under section 262.0115.

**Summary.** The provisions of Local Government Code section 262.011 do not apply to a county that has employed a county purchasing agent under Local Government section 262.0115. The duties of a county purchasing agent employed under section 262.0115

are not limited to the duties of a county auditor with respect to county purchasing. A section 262.0115 purchasing agent is required to carry out the county auditor's purchasing function in addition to the usual duties of a county purchasing agent. The commissioners court may prescribe the purchasing agent's duties within the parameters of the legislative intent of section 262.0115.

**LO# 98-116. (RQ-1108).** Request from the Honorable Sherry L. Robinson, Waller County Criminal District Attorney, 836 Austin Street, Suite 105, Hempstead, Texas 77445, regarding whether Waller County may pay for repair of a road located within the City of Prairie View.

**Summary.** Transportation Code section 251.012 authorizes a county to pay for the repair of a road that is located within a city and is an integral part of or connecting link with the county's road system.

**LO# 98-117. (RQ-1038).** Request from the Honorable Jerome Aldrich, Criminal District Attorney, Brazoria County, 111 East Locust, Room 408A, Angleton, Texas 77515, regarding whether wading across or standing upon artificially submerged coastal land to fish constitutes criminal trespass.

**Summary.** While wading upon privately-held land beneath public waters constitutes "entry" within the meaning of section 30.05(b) of the Penal Code, the question of whether wading upon privately-owned coastal upland submerged by dredging in order to fish there constitutes trespass does not appear to be settled under Texas law.

TRD-9818215  
Sarah Shirley  
Assistant Attorney General  
Office of the Attorney General  
Filed: December 9, 1998

◆ ◆ ◆  
Request for Opinions

**RQ-1213.** Requested from the Honorable J. Russell Ash, Reagan County Attorney, P.O. Box 924, Big Lake, Texas 76932, regarding requirements under Government Code section 61.003 of form authorizing donation of juror reimbursement.

**RQ-1219.** Requested from the Honorable Ken Oden, Travis County Attorney, 314 West 11th Street, Suite 300, Austin, Texas 78701, regarding whether V.T.C.S. art. 2372p-3, section 15(g), prohibits a licensed attorney from advertising as a bail bondsman.

**RQ-1220.** Requested from Mr. Charles W. Heald, P.E., Executive Director, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, regarding whether article 9102, V.T.C.S., the Architectural Barriers Act, is applicable to highways.

**RQ-1221.** Requested from William R. Archer III, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, regarding whether section 501.024, Health and Safety Code, which requires a manufacturer or distributor of a hazardous substance to register with the Texas Department of Health, is preempted by federal law.

**RQ-1222.** Requested from the Honorable Frank Madla, Chair, Senate Committee on Nominations Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether Education Code section 130.008, which allows high school students to obtain joint credit and tuition waivers for certain junior college courses, is applicable to students attending private schools.

**RQ-1223.** Requested from the Honorable Richard J. Miller, Bell County Attorney, P.O. Box 1127 Belton, Texas 76513, regarding constitutionality of Penal Code section 38.12(d)(2)(C), which prohibits a direct-mail solicitation of a criminal defendant within 30 days of his arrest.

TRD-9818214

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Filed: December 9, 1998





# EMERGENCY RULES

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

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

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## 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, amendments to §20.22, concerning extension of the authorized cotton destruction dates in Pest Management Zones 2, 6, 7 and 8. The department is acting on behalf of affected cotton farmers in all of Zone 6, Calhoun and Refugio counties in Zone 2, Brazos County in Zone 7, and Ellis, Limestone, McLennan and Navarro counties in Zone 8. The department believes that extending the cotton destruction dates for the designated counties in Zones 2, 6, 7 and 8 is both necessary and appropriate

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 November 30 deadline. 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 current cotton destruction deadline for Zone 2, Area 4, is October 1. A prior emergency amendment published in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11509) extended that deadline through November 30, 1998. That emergency amendment has expired. The cotton destruction deadline for Zone 2, Area 4, for Calhoun and Refugio counties only is extended through December 14, 1998, for the 1998 crop year.

A prior emergency amendment, also published in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11509), extended the cotton destruction date for Zone 6, to November 30, 1998. That emergency amendment has also expired. The cotton destruction deadline for Zone 6 is extended through December 15, 1998, for the 1998 crop year.

The department also adopts on an emergency basis, amendments to the authorized cotton destruction dates for Zone 7, Brazos county only, and for Zone 8, Ellis, Limestone, McLennan and Navarro counties. The current cotton destruction deadline for these counties is November 30. The cotton destruction deadline will be extended through December 30, 1998 for

Brazos, Ellis, Limestone, McLennan and Navarro counties only. These extensions are also effective only for the 1998 crop year.

The amendments are 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 December 2, 1998.

TRD-9818107

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: December 2, 1998

Expiration date: December 31, 1998

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 80. Manufactured Housing

##### Subchapter D. Standards and Requirements

###### 10 TAC §80.54

The Texas Department of Housing and Community Affairs ("Department"), Manufactured Housing Division, adopts on an emer-

gency basis amendments to 10 TAC §80.54, concerning manufactured home anchor installation requirements in subsection (a) and the requirement for a ground vapor retarder in subsection (b) and (c). The Department finds that an imminent peril to the public safety requires the adoption of the amendments to this rule on an emergency basis. The original emergency filing of subsection (b) and (c) has been withdrawn (published in the *Texas Register* on November 13, 1998, pages 11510, 11511, and 11677) in order that all emergency rules for this section can be found in one *Texas Register* publication. The wording in this filing for subsection (b) and (c) remains the same as previously filed in the withdrawn emergency rule.

The Department finds that there is an immediate need for safe, affordable anchoring of new and used manufactured homes in difficult soils, without which there is an imminent peril to occupants and neighboring homes if such anchoring systems are not implemented. Presently, although there are Department approved anchors for installation in soil and in rock, there are no cross drive rock or soil auger anchors individually designed for mixed rock and soil conditions or hard caliche soil. Even if there were such anchors available, there is a 12-month time period for testing new anchors under the department's requirements, with a cost to the anchor manufacturer of approximately \$50,000.

Alternative anchoring systems approved by the Department, such as custom-designed anchor systems or concrete pads with embedded anchors, are economically prohibitive for most consumers and homeowners who live in areas of difficult soils, or the systems are not designed for all home widths. The Department's Anchor Task Force met on November 12, 1998, and reached consensus on the proposed emergency rules. The rules will require that installers double the amount of cross drive rock anchors and diagonal ties (use two for each specified) when inserted in mixed rock and soil conditions or hard caliche soil in order to meet necessary holding requirements for wind resistance.

The Department has received information indicating that the use of 6-mil polyethylene sheeting may be highly flammable under certain conditions and has determined that the issue needs to be investigated further. For this reason, the ground vapor control requirement found in §80.54(b) is being removed, and the Site Preparation Notice in §80.54(c) has been rewritten to remove references to the ground vapor retarder.

An additional consideration in adopting these emergency rules is that under §9(g) of Article 5221f, the effective date of a rule relating to installation standards shall not be less than 60 days following the date of publication of notice that the rule has been adopted. The Anchor Task Force agreed that these emergency rules could go into effect immediately without unduly burdening the industry.

These emergency amendments are adopted pursuant to Texas Civil Statutes, Article 5221f, §4(a), which gives the Department the authority to adopt standards and requirements for the installation of manufactured housing that are reasonably necessary to protect the health, safety, and welfare of the occupants and the public, and 10 TAC §2001.034, which allows an agency to adopt an emergency rule if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice.

§80.54. *Standards for the Installation of Manufactured Homes.*

(a) All manufactured homes shall be installed in accordance with one of the following:

(1)-(3) (No Change.)

(4) a stabilization system pre-approved by the department; [øf]

(5) on a permanent foundation; or [-]

(6) the state's generic standards set forth in this section, §80.55 of this title (relating to Anchoring Systems), and §80.56 of this title (relating to Multi-Section Connection Standards) with the values and notes for Table 4A in §80.55(d)(2) of this title (relating to Anchoring Systems) modified as follows when approved auger anchors cannot be inserted into a difficult soil, such as mixed soil and rock or caliche (heavily weathered limestone), that is not solid rock:

(A) since the ultimate anchor pull out in the difficult soil will be reduced, the maximum spacing for diagonal ties per side is one half the spacing allowed by Table 4A in §80.55(d)(2) of this title (relating to Anchoring Systems) which will require adding one additional cross drive rock anchor for each anchor specified;

(B) the rods of the approved cross drive rock anchors must be fully inserted, have at least 24 inches of the rod lengths embedded in the difficult soil, and be restrained from horizontal movement, when feasible, by a stabilizer plate between the rods and the home; and

(C) each cross drive rock anchor is connected to one diagonal tie and is not connected to a vertical tie.

(b) Site Preparation Responsibilities and Requirements:

(1) The purchaser is responsible for the proper preparation of the site where the manufactured home (new or used) is to be installed unless the home is installed in a rental community. Except in rental communities, the purchaser shall remove all debris, sod, tree stumps and other organic materials from all areas where footings are to be located. In areas where footings are not to be located, all debris, sod, tree stumps and other organic material shall be trimmed, cut, or removed down to a maximum height of 8 inches above the ground [øf to a lower level is needed to properly install the vapor retarder material]. The retailer must give the purchaser a site preparation notice as described in this section prior to the execution of any binding sales agreement. If the installation is a secondary move, not involving a retail sale, the installer must give the homeowner the site preparation notice prior to any agreement for the secondary installation of the home.

~~{(2) If the retailer or installer provides the materials for skirting or contracts for the installation of skirting, the retailer or installer is responsible for installing the ground vapor retarder and for providing the proper cross ventilation of the crawl space. If the purchaser or homeowner contracts with a person other than the retailer or installer for the skirting, the purchaser or homeowner is responsible for installing the ground vapor retarder and for providing for the proper cross ventilation of the crawl space.}~~

(2) ~~{(3)}~~ Clearance: A minimum clearance of 18 inches between the ground and the bottom of the floor joists must be maintained. In addition, the installer shall be responsible for installing the home with sufficient clearance between the I-Beams and the ground so that after the crossover duct prescribed by the manufacturer is properly installed it will not be in contact with the ground. Refer to §80.56 (relating to Multi-Section Connection Standards) for additional requirements for access openings to the crawl space and

utility connections. It is strongly recommended that the installer not install the home unless all debris, sod, tree stumps and other organic materials are removed from all areas where footings are to be located.

(3) [(4)] Drainage: Except in rental communities, proper drainage is the responsibility of the homeowner. It is strongly recommended that the installer not install the home unless the exterior grade is sloped away from the home or another approved method to prohibit surface runoff from draining under the home is provided. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

[(5) Ground Vapor Control: If the space under the home is to be enclosed with skirting and/or other materials provided by the retailer and/or installer, a vapor retarder that keeps ground moisture out of the home must be installed to prevent moisture damage to the structure. The installer shall ensure that a minimum 6 mil polyethylene sheeting or its equivalent is properly installed and the area under the home is covered with sheeting and overlapped approximately 12 inches at all joints. Any tear larger than 18 inches long or wide must be taped using a material appropriate for the sheeting used. The laps should be weighted down to prevent movement. Any small tears and/or voids around construction (footings, anchor heads, etc.) are acceptable. In addition, crawl space ventilation must be provided at the rate of minimum 1 square foot of net free area, for every 150 square feet of floor area. At least six

openings shall be provided, one at each end of the home and two on each side of the home. The openings shall be screened or otherwise covered to prevent entrance of rodents (note: screening will reduce net free area). The vapor retarder prevents water vapor build-up under the home. Water vapor build-up may cause dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors. For example, a 16'x76' single section home has 1216 square feet of floor area. This 1216 square feet divided by 150 equals 8.1 square feet or 1166 square inches of net free area crawl space ventilation.]

(c) Notice: The site preparation notice to be given to the consumer shall be as follows:

Figure 1: 10 TAC §80.54(c)

(d) (No Change.)

Filed with the Office of the Secretary of State, on December 4, 1998.

TRD-9818162

Daisy A. Stiner

Acting Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 4, 1998

Expiration date: April 2, 1999

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



# PROPOSED RULES

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

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

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## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 19. Quarantines

##### Subchapter A. General Quarantine Provisions

###### 4 TAC §19.2

The Texas Department of Agriculture (the department) proposes an amendment to §19.2, concerning adoption of standards included in the U.S. Domestic Japanese Beetle Harmonization Plan approved by the National Plant Board on August 19, 1998.

Awinash Bhatkar, coordinator for plant quality programs, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Bhatkar 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 to prevent the introduction of Japanese beetle into the state. There will be no effect on small businesses and to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is being proposed under the Texas Agriculture Code §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests and §71.042, which authorizes the department to adopt rules as necessary for the immunity and protection of plants from disease and insect pests.

The code section that will be affected by the proposal is the Texas Agriculture Code, Chapter 71, Subchapters A and B.

§19.2. *Inspection Certificates.*

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

(e) The department hereby adopts the standards included in the U.S. Domestic Japanese Beetle Harmonization Plan approved by the National Plant Board at its Grand Rapids, Michigan meeting held on August 19, 1998. Nursery products and/or floral items shipped from other states into Texas must adhere to the requirements listed in the U.S. Domestic Japanese Beetle Harmonization Plan. The plan provides specific additional declaration to be entered on phytosanitary certificates accompanying the shipments. The declaration mentions the procedure used in reducing the risk of Japanese beetle introduction. A shipment without appropriate additional declaration on the accompanying phytosanitary certificate shall be subject to seizure or stop-sale order and may require treatment, destruction, or, if feasible, returning to point of origin. A copy of the harmonization plan may be obtained at the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

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

Filed with the Office of the Secretary of State, on December 1, 1998.

TRD-9818052

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: January 17, 1999

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

## TITLE 7. BANKING AND SECURITIES

### Part VII. State Securities Board

#### Chapter 115. Dealers and Salesmen

###### 7 TAC §115.1

The State Securities Board proposes an amendment to §115.1, concerning registration of branch offices. The proposed amendment clarifies that branch offices of a dealer or investment adviser are subject to examination by the Agency staff.

Michael S. Gunst, Director, Dealer Registration Division, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Gunst 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 to apprise dealers and investment advisers that the agency may conduct an on-site examination of their branch offices. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted in writing to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas, 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

The proposed amendment affects Texas Civil Statutes, Articles 581-3, 581-12, 581-13, and 581-18.

*§115.1. General Provisions.*

(a)-(g) (No change.)

(h) Branch office. A request for registration of a branch office of a dealer or investment adviser may be made upon initial application of the dealer or investment adviser or by amendment to a current registration. The fee for registration of each branch office is \$25. Simultaneous with the request for registration of a branch office, a branch office manager must be named. The manager must satisfy the examination qualifications required of the dealer or investment adviser before the branch office may be registered. A branch office manager is not required to be registered as a NASD principal, but must be registered in Texas as an agent. Each branch office registered with the Securities Commissioner is subject to unannounced examinations at anytime during normal business hours. When a branch office manager ceases to be employed in such capacity by the dealer or investment adviser, a new branch office manager, qualified by passage of the appropriate examinations, must be named immediately. Absent the simultaneous designation of a new branch manager, the registration of a branch office whose manager ceases to be employed as such by a dealer or investment adviser shall be automatically terminated. The branch office registration may be reinstated upon the designation of a qualified branch office manager and payment of the branch office registration fee.

(i)-(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 December 7, 1998.

TRD-9818168

Denise Voigt Crawford  
Securities Commissioner  
State Securities Board

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 305-8300

◆ ◆ ◆  
**TITLE 16. ECONOMIC REGULATION**

**Part II. Public Utility Commission of Texas**

**Chapter 23. Substantive Rules**

The Public Utility Commission of Texas (commission) proposes the repeals of §23.6 relating to Spanish Language Requirements, §23.41 relating to Customer Relations, §23.42 relating to Refusal of Service, §23.43 relating to Applicant and Customer Deposit, §23.44 relating to New Construction, §23.45 relating to Billing, and §23.46 relating to Discontinuance of Service. Project Number 17709 has been assigned to this proceeding. The Appropriation Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or 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 Section 167; (2) repeal rules no longer needed; (3) update existing rules to reflect changes in the industries regulated by the commission; (4) do clean-up amendments made necessary by changes in law and commission organizational structure and practices; (5) reorganize rules into new chapters to facilitate future amendments and provide room for expansion; and (6) reorganize the rules according to the industry to which they apply. As a result of this reorganization, §23.6 and §§23.41-23.46 will be duplicative of proposed new §§25.21-25.26 and 25.28- 25.31 concerning customer service in Chapter 25, Substantive Rules Applicable to Electric Service Providers; and §§26.21-26.31 concerning customer service in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Ms. Jo Alene Kirkel, assistant director, Office of Customer Protection, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

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

Ms. Kirkel has also determined that for each year of the first five years the repeals are in effect there will be no impact on employment in the geographic area affected by the repeal of these sections.

Comments on the proposed repeals (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeals of §23.6 and §§23.41-23.46.

**Subchapter A. General Rules**

## 16 TAC §23.6

*(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.)*

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.

### §23.6. Spanish Language Requirements.

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 December 1, 1998.

TRD-9818065

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 17, 1999

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



## Subchapter E. Customer Service and Protection

### 16 TAC §§23.41-23.46

*(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 Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

These repeals are 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.

### §23.41. Customer Relations.

### §23.42. Refusal of Service.

### §23.43. Applicant and Customer Deposits.

### §23.44. New Construction.

### §23.45. Billing.

### §23.46. Discontinuance of Service.

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 December 1, 1998.

TRD-9818066

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 17, 1999

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



## Subchapter B. Records and Reports

### 16 TAC §23.19

*(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 §23.19 relating to Registration of Power Marketers and Exempt Wholesale Generators. Project Number 19676 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 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. As a result of this reorganization, §23.19 will be duplicative of proposed new §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities) in Chapter 25, Substantive Rules Applicable to Electric Service Providers.

Mr. Keith Rogas, 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. Rogas 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. Mr. Rogas expects that the proposed repeal will not have an adverse effect on small businesses. There is no anticipated economic cost to persons as a result of repealing this section.

Mr. Rogas has determined that the proposed repeal should not affect a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

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 19676.

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.

§23.19. *Registration of Power Marketers and Exempt Wholesale Generators.*

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 December 3, 1998.

TRD-9818126

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 17, 1999

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



## Chapter 25. Substantive Rules Applicable to Electric Service Providers

### Subchapter A. General Provisions

#### 16 TAC §25.5

The Public Utility Commission of Texas (commission) proposes an amendment to §25.5 relating to Definitions. The proposed amendment adds three definitions to clarify terms used in proposed new §25.105 relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities. Project Number 19676 has been assigned to this proceeding.

Mr. Keith Rogas, Assistant General Counsel, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Rogas 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 a better understanding of terms used in the commission's rules. Mr. Rogas expects that the proposed amendment will not have an adverse effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Mr. Rogas has determined that the proposed amendment should not affect a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed 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. Reply comments may be submitted within 45 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. All comments should refer to Project Number 19676.

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, including rules of practice and procedure.

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

§25.5. *Definitions.*

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

(1)-(40) (No change.)

(41) Qualifying cogenerator - The meaning as assigned this term by 16 U.S.C. §796(18)(C).

(42) Qualifying facility - A qualifying cogenerator or qualifying small power producer.

(43) Qualifying small power producer - The meaning as assigned this term by 16 U.S.C. §796(17)(D).

(44) [~~41~~] 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; and

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

(45) [~~42~~] Rate class - A group of customers taking electric service under the same rate schedule.

(46) [~~43~~] Rate year - The 12-month period beginning with the first date that rates become effective. The first date that rates become effective may include, but is not limited to, the effective date for bonded rates or the effective date for interim or temporary rates.

(47) [~~44~~] Regulatory authority - In accordance with the context where it is found, either the commission or the governing body of a municipality.

(48) [~~45~~] Renewable energy technology - Any technology that exclusively relies on an energy source that is naturally regenerated over a short time scale and derived directly from the sun (solar-thermal, photochemical, and photoelectric), indirectly from the sun (wind, hydropower, and biomass), or from other natural movements and mechanisms of the environment (geothermal and tidal energy). A renewable energy technology does not rely on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

(49) [~~46~~] Renewable resources - A resource that relies on renewable energy technology.

(50) [~~47~~] 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.

(51) [(48)] 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.

(52) [(49)] 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 or an electric utility in the performance of its duties under the Public Utility Regulatory Act to its patrons, employees, other public utilities or electric utilities and the public. The term also includes the interchange of facilities between two or more public utilities or electric utilities.

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

(54) [(51)] Submetering - Metering of electricity consumption on the customer side of the point at which the electric utility meters electricity consumption for billing purposes.

(55) [(52)] Supply-side resource - A resource, including a storage device, that provides electricity from fuels or renewable resources.

(56) [(53)] Tariff - The schedule of a utility containing all rates and charges stated separately by type of service and the rules and regulations of the utility.

(57) [(54)] Tenant - A person who is entitled to occupy a dwelling unit to the exclusion of others and who is obligated to pay for the occupancy under a written or oral rental agreement.

(58) [(55)] Test year - The most recent 12 months for which operating data for an electric utility are available and shall commence with a calendar quarter or a fiscal year quarter.

(59) [(56)] Transmission facilities study - An engineering study conducted by a transmission service provider subsequent to a system security study to determine the required modifications to its transmission system, including the detailed costs and scheduled completion date for such modifications, that will be required to provide a requested transmission service.

(60) [(57)] Transmission interconnection agreement - An agreement that sets forth requirements for physical connection or other terms relating to electrical connection between an eligible transmission service customer and a transmission service provider, including contracts or tariffs for transmission service that include provisions for interconnection. Transmission service providers must have such an agreement with all transmission service providers to whom they are physically connected.

(61) [(58)] Transmission line - A power line that is operated at 60,000 volts or above, when measured phase-to-phase.

(62) [(59)] Transmission losses - Energy losses resulting from the transmission of power.

(63) [(60)] Transmission service - Service that allows a transmission service customer to use the transmission and distribution facilities of electric and municipally owned utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver power to another transmission customer.

(64) [(61)] Transmission service customer - An eligible transmission customer receiving transmission service. Where consistent with the context, "transmission service customer" includes an eligible transmission service customer seeking transmission service.

(65) [(62)] Transmission service provider - An electric or municipally owned utility that owns or operates facilities used for the transmission of electricity and provides transmission service.

(66) [(63)] Transmission system - The transmission facilities at or above 60 kilovolts owned, controlled, operated, or supported by a transmission provider or transmission customer that are used to provide transmission service.

(67) [(64)] Transmission system security study - An assessment by a transmission service provider of the adequacy of the transmission system to accommodate a request for transmission service and whether any costs are anticipated in order to provide transmission service.

(68) [(65)] Transmission upgrade - A modification or addition to transmission facilities owned or operated by a transmission service provider.

(69) [(66)] Unplanned resources - Generation resources owned, controlled or purchased by the transmission customer that have not been designated as planned resources.

(70) [(67)] Unplanned transmission service - Use by a transmission service customer of a transmission service provider's transmission system for the delivery of power from resources that the customer has not designated as planned resources to the customer's loads.

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 December 3, 1998.

TRD-9818127

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 17, 1999

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

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**Subchapter E. Certification, Licensing and Registration**

**16 TAC §25.105**

The Public Utility Commission of Texas (commission) proposes new §25.105 relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities. The proposed new section will replace §23.19 of this title (relating to Registration of Power Marketers and Exempt Wholesale Generators). The proposed new section will provide registration and reporting requirements for power marketers, exempt wholesale generators, and qualifying facilities. Project Number 19676 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 25 has been established for all commission substantive rules applicable to electric 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 proposed new section will add qualifying facilities to power marketers and exempt wholesale generators as persons required to register and provide information concerning their operations. In addition, the proposed new section will add to the information required to include additional information related to generating units. This information is necessary for the commission to monitor the adequacy of electric service in Texas.

The proposed new section reflects different section, subsection, and paragraph designations due to the reorganization of the rules. References to the terms "public utility" or "utility" have been changed to "electric utility" where needed as a result of definition changes in the Texas Utilities Code. 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 sections in Chapter 23 may obtain a redlined version from the commission's Central Records under Project Number 19676.

Proposed new §25.105 does not incorporate §23.19(b) pertaining to definitions. The definitions located in §23.19(b) have been moved to §25.5 of this title (relating to Definitions).

Keith Rogas, Assistant General Counsel, estimates that for each of the first five years that the proposed new section will be in effect, there will be a relatively small cost to the commission to administer and enforce the proposed new section. Mr. Rogas has also determined that, for each of the first five years that the proposed new section will be in effect, there should be no other significant cost to the state. Mr. Rogas has also determined that, for each of the first five years that the proposed new section will be in effect, there should be no cost to local governments as a result of administering and enforcing the proposed new section.

Mr. Rogas estimates that for each of the first five years that the proposed new section will be in effect, it will reduce the commission's costs and improve the commission's effectiveness by establishing a formal procedure to collect the information sought, rather than relying on informal means. Mr. Rogas has determined that for each of the first five years that the proposed new section will be in effect, there should be no other reductions in cost to the state and no reduction in cost to local governments as a result of administering and enforcing the proposed new section.

Mr. Rogas estimates that, for each of the first five years that the proposed new section will be in effect, there will be no significant effect on the revenue of the state or local governments.

Mr. Rogas expects that, for each of the first five years that the proposed new section will be in effect, the public benefits of the

proposed new section will be better information on generating units in the state owned by exempt wholesale generators and qualifying facilities, which is necessary for the commission to monitor the adequacy of electric service in Texas. Mr. Rogas also expects that for each of the first five years that the proposed new section will be in effect, the probable economic cost to persons required to comply with the proposed new section will be relatively small, because the information that the proposed new section requires be filed with the commission is information that generally should be readily available to persons required to comply with the proposed new section. Mr. Rogas also expects that the proposed new section will not have an adverse effect on small businesses.

Mr. Rogas has determined that the proposed new section should not affect a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed new section (16 copies) must 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. Reply comments must be submitted within 45 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed new 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 19676.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code, Title II (Vernon 1998) (PURA) §14.002, which provides the commission with the power to adopt and enforce rules reasonably required in the exercise of its power and jurisdiction; PURA §31.001(c), which finds that the public interest requires that rules be formulated and applied to protect the public interest in a more competitive marketplace; PURA §35.006(b), which requires that the commission shall adopt rules relating to the registration and reporting requirements of power marketers, exempt wholesale generators, and qualifying facilities; and PURA §35.032, which requires power marketers and exempt wholesale generators to register with the commission and provide the commission with information and reports required by commission rules. In addition, the following sections of PURA will be affected by the proposed new section: §34.004, which requires the commission to adopt and periodically update a statewide integrated resource plan; and §37.151(2), which requires that an electric utility or municipally owned utility that holds a certificate of convenience and necessity to provide retail electric utility service in an area provide continuous and adequate service in that area.

Cross Index to statutes: Public Utility Regulatory Act §§14.002, 31.001(c), 34.004, 35.006(b), 35.032, 37.151(2).

§25.105. Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities.

(a) Purpose. This section contains the registration and reporting requirements for a person intending to do business in Texas as a power marketer, exempt wholesale generator (EWG), or qualifying facility (QF).

(b) Applicability.

(1) A power marketer, EWG, or QF becomes subject to this section on the date that it first buys or sells electric energy at wholesale in Texas.

(2) No later than 30 days after the date it becomes subject to this section, a power marketer, EWG, or QF shall register with the commission or provide proof that it has registered with the Federal Energy Regulatory Commission (FERC) or been authorized by the FERC to sell electric energy at market-based rates.

(c) Initial information. Regardless of whether it has registered with the FERC, a power marketer, EWG, or QF shall:

(1) State the type of service it provides in Texas; its address; the name, address, telephone number, facsimile transmission number, and email address of the person to whom communications should be addressed; the names and types of businesses of the owners (with percentages of ownership); and the names and addresses of each affiliate which is an electric utility or a public utility, or an affiliate of an electric utility or a public utility, under the jurisdiction of the commission.

(2) Describe any transmission facilities in Texas, other than interconnection facilities, which any affiliate owns or controls.

(3) Identify each certificated service area for the provision of retail electric utility service in Texas owned or controlled by any affiliate.

(4) Identify each affiliate which owns, controls, or operates a generating unit or sells electricity in Texas.

(5) Describe each existing facility used to provide service. A power marketer should describe the location of each office from which it carries on its business in Texas. An EWG or QF should describe each of its existing generating units in Texas, by providing the following information:

(A) Name;

(B) Gross and net capacity design ratings in megawatts (MW);

(C) Primary and secondary fuels;

(D) Technology (e.g., combined cycle, wind turbines, air pump storage);

(E) If the unit is a cogenerator, amount of power reserved to serve host;

(F) Location, by county and utility service area or control area;

(G) Reliability council;

(H) Summer and winter capacities, net of generating unit's own use;

(I) Firm capacity commitments (names of purchasers, amounts, and contract termination dates); and

(J) Commercial operation date.

(6) Provide the following information for each generating unit planned or under construction:

(A) Copy of air permit applications submitted to the Texas Natural Resource Conservation Commission (Form P1-1, General Application, Air Quality Permit, pages 1 and 2);

(B) Gross and net capacity design ratings in megawatts; and

(C) Copy of press releases announcing the major construction milestones.

(7) Provide a copy of any applicable policy or procedure statement concerning sales to or purchases from affiliated Texas utilities.

(8) Submit a copy of all information supplied to the FERC in connection with filing or registration as a power marketer, EWG, or QF.

(9) Submit the information required in subsection (d) of this section for the previous year. If a person files under this subsection before February 28, the information required in subsection (d) of this section can be provided in a separate filing by February 28.

(10) Submit an affidavit by an authorized person that the registrant is a power marketer, EWG, or QF.

(d) Annual information for existing generating units. An EWG or QF shall provide the following information by February 28 of each year, for the previous year:

(1) Total volume of fuel purchases;

(2) Total megawatt-hour (MWH) generation at the busbar; and

(3) Sales (MWH) by customer, including a cogenerator's sales to its steam host.

(e) Material change in information. Each power marketer, EWG, or QF shall report any material change in the information provided pursuant to this section within 30 days of the change.

(f) Commission list of power marketers, exempt wholesale generators, and qualifying facilities. The commission will maintain a list of power marketers, EWGs, and QFs doing business in Texas.

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 December 3, 1998.

TRD-9818128

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: January 17, 1999

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

## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 89. Adaptations for Special Populations

##### Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students

##### **19 TAC §§89.1205, 89.1210, 89.1220, 89.1230, 89.1233, 89.1245**

The Texas Education Agency (TEA) proposes amendments to §§89.1205, 89.1210, 89.1220, 89.1230, and 89.1245; and

new 89.1233, concerning the state plan for educating limited English proficient students. The sections establish definitions, requirements, and procedures related to: bilingual education and special language programs; program content and design; language proficiency assessment committees; eligible students with disabilities; participation of nonlimited English proficiency students; and staffing and staff development.

The proposed amendments would delete language in 19 TAC §89.1230(c) and add to proposed new 19 TAC §89.1233. Language referring to nonlimited English proficiency students in bilingual education was inadvertently included under §89.1230, when the rule was last adopted in 1996. Language placed in proposed new §89.1230 has not been modified. Additional amendments would update cross-references in §§89.1205, 89.1210, 89.1220, and 89.1245 and delete obsolete language in §89.1210(b). The TEA has developed elementary and secondary manuals and professional development guides that provide for bilingual education program guidelines, in accordance with §89.1210(b). The Region 19 Education Service Center is also developing a comprehensive resource guide.

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

Mr. Alanis and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification that nonlimited English proficient students participating in bilingual education programs are not necessarily students with disabilities. The sections also provide for a program with well-defined guidelines for school districts. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

The amendments and new section are proposed under the Texas Education Code, §§29.051-29.064, which authorizes the commissioner of education to adopt rules related to educating limited English proficient students.

The proposed amendments and new section implement the Texas Education Code, §§29.051-29.064.

§89.1205. *Required Bilingual Education and English as a Second Language Programs.*

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

(g) Districts which are unable to provide a bilingual education program as required by subsection (a) of this section shall request from the commissioner of education an exception to the bilingual education program and approval to offer an alternative program. Approval of exceptions to the bilingual education program shall be

negotiated on an individual basis and shall be valid for only the school year for which it was negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:

(1) (No change.)

(2) a description of the proposed alternative modified bilingual education or intensive English as a second language programs to meet the affective, linguistic, and cognitive needs of the limited English proficient students, including the manner in which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 [75] of this title (relating to Curriculum Requirements);

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

(h) Districts which, because of an insufficient number of certified teachers, are unable to provide an English as a second language program as required by subsection (d) of this section shall request from the commissioner of education a waiver of the certification requirements for the teachers who will provide the instruction in English as a second language for the limited English proficient students. Approval of waivers of certification requirements shall be negotiated on an individual basis and shall be valid for only the school year for which they were negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:

(1) (No change.)

(2) a description of the manner in which the teachers in the English as a second language program will meet the affective, linguistic, and cognitive needs of the limited English proficient student, including the manner by which the students will be given opportunity to master the essential knowledge and skills required by Chapter 74 [75] of this title (relating to Curriculum Requirements);

(3)-(6) (No change.)

§89.1210. *Program Content and Design.*

(a) (No change.)

(b) The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The amount of instruction in each language shall be commensurate with the students' level of proficiency in both languages and their level of academic achievement. The students' level of language proficiency and academic achievement shall be designated by the language proficiency assessment committee. [~~Within a year after the adoption of these rules, the~~] The Texas Education Agency (TEA) shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in each language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.

(c) The bilingual education program shall be an integral part of the regular educational program required under Chapter 74 [75] of this title (relating to Curriculum Requirements). In bilingual education programs using Spanish and English as languages of instruction, districts shall use state-adopted English and Spanish texts and supplementary materials as curriculum tools to enhance the learning process; in addition, districts may use other curriculum adaptations which have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of limited English proficient students as follows.

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

(d)-(g) (No change.)

§89.1220. *Language Proficiency Assessment Committee.*

(a)-(g) (No change.)

(h) Before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the eligibility of limited English proficient students in Grades 3-8 for one of the following options in accordance with §101.3 of this title (relating to Testing Accommodations and Exemptions [~~Exceptions~~]):

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

(i)-(m) (No change.)

(n) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:

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

(6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, type of alternative assessment, and results in accordance with §101.3 of this title (relating to Testing Accommodations and Exemptions [~~Exceptions~~]);

(7)-(8) (No change.)

§89.1230. *Eligible Students with Disabilities.*

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

~~{(e) Districts may enroll students who are not limited English proficient in the bilingual education program in accordance with the Texas Education Code, §29.058.}~~

§89.1233. *Participation of Nonlimited English Proficiency Students.*

Districts may enroll students who are not limited English proficient in the bilingual education program in accordance with the Texas Education Code, §29.058.

§89.1245. *Staffing and Staff Development.*

(a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language programs in accordance with the Texas Education Code, §29.061, concerning bilingual education and special language program teachers. Districts which are unable to secure a sufficient number of certified bilingual education and English as a second language teachers to provide the required programs, shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Chapter 230 [137], Subchapter Q, of this title (relating to Permits).

(b)-(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 December 7, 1998.

TRD-9818184

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

Earliest possible date of adoption: January 17, 1999

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



**TITLE 22. EXAMINING BOARDS**

**Part X. Texas Funeral Service Commission**

**Chapter 203. Licensing and Enforcement-Specific Substantive Rules**

**22 TAC §203.15**

The Texas Funeral Service Commission proposes an amendment to §203.15, concerning requirements for reciprocal licenses. The section is being amended to delete subsection (d) because the Texas Funeral Service Commission no longer has statutory authority to use this subsection as criteria for reciprocity.

Eliza May, Executive Director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. May 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 deletion of language no longer applicable to the rule. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Eliza May, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 206, Austin, Texas 78704-1716.

The amendment is proposed under Texas Civil Statutes, Article 4582b, §5, which authorizes the Texas Funeral Service Commission to adopt rules to administer the statute.

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

*§203.15. Requirements for Reciprocal Licenses.*

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

~~{(d) Reciprocal applicants with a valid current license from another state which does not have license requirements substantially equivalent to those of Texas may be licensed in this state if the applicant meets the requirements as detailed in subsections (a)-(c) of this section and have practiced for at least five years in that state, have graduated from an accredited school or college of mortuary science, and have an active license which is not canceled, suspended, or revoked.}~~

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 December 7, 1998.

TRD-9818166

Eliza May, M.S.S.W.

Executive Director

Texas Funeral Service Commission

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 479-7222



**TITLE 28. INSURANCE**

**Part I. Texas Department of Insurance**

## Chapter 5. Property and Casualty Insurance

### Subchapter E. Texas Windstorm Insurance Association

#### 8. Rates

##### **28 TAC §5.4700**

The Texas Department of Insurance proposes a new §5.4700, concerning rate rollback and rate credits applicable to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association (Association) for certain new residential construction and certain retro-fitted residential construction in the designated catastrophe areas. Created in 1971 by the Texas Legislature as the Texas Catastrophe Property Insurance Association, the Association is composed of all insurers authorized to transact property insurance in Texas and operates pursuant to Article 21.49 of the Insurance Code. The Texas Legislature in House Bill 1632 (Acts 1997, 75th Legislature, chapter 438, §1, effective September 1, 1997) changed the name of the Texas Catastrophe Property Insurance Association to the Texas Windstorm Insurance Association. The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the Association has provided this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. The Association also provides coverage to certain designated catastrophe areas in Harris County, including (i) effective March 1, 1996, the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Commissioner's Order No. 95-1200, November 14, 1995); (ii) effective June 1, 1996, the City of Morgan's Point (Commissioner's Order No. 96-0380, April 5, 1996); and (iii) effective April 1, 1997, in areas located east of State Highway 146 and inside the city limits of the City of Shoreacres and the City of Pasadena (Commissioner's Order No. 97-0225, March 11, 1997). Pursuant to Commissioner's Order No. 97-0626 (June 30, 1997), the Commissioner adopted by reference in §5.4008 of this title the Building Code for Windstorm Resistant Construction (Building Code). The Building Code specifies the applicable building code standards to qualify for coverage from the Association as required by Article 21.49, §6A of the Insurance Code for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after September 1, 1998, the effective date of the Building Code, adopted by reference in §5.4008(a) pursuant to Commissioner's Order No. 98-0803 (July 8, 1998). The Commissioner adopted on an emergency basis amendments to §5.4008 under Commissioner's Order No. 98-1025, effective September 3, 1998. These amendments were adopted on a permanent basis under Commissioner's Order No. 98-1376, effective December 31, 1998. The legislature in 1997 passed House Bill 3383 which enacted a new §8E in Article 21.49 of the Insurance Code (Acts 1997, 75th Legislature, chapter 1000, §3, effective September 1, 1997). New §8E requires the Commissioner to determine the percentage of equitable across-the-board reductions in insurance rates for policies or coverages that are issued by the Association to cover new residential construction, excluding additions or repairs to existing structures, built to the

standards of the Building Code. The Commissioner is to determine these percentage reductions by not later than the 180th day after the date the Building Code is implemented, and if the percentage reductions have not been determined by the 180th day, §8E requires a six percent across-the-board reduction. The proposed new section is necessary to specify the percentage rate rollback required by §8E. In addition, the proposed new section is necessary to provide rate credits applicable to windstorm and hail insurance policies issued by the Association for new residential construction, excluding additions or repairs to existing structures, that have been built to a higher standard of construction than that required by the Building Code, and to provide rate credits applicable to windstorm and hail insurance policies issued by the Association for residential structures constructed prior to September 1, 1998, which have been retrofitted with exterior opening protections that meet the windborne debris criteria standards of the Building Code or equivalent criteria recognized by the Department pursuant to Building Code procedures. These rate credits will provide incentives that are needed to encourage coastal residents and coastal builders to build residential structures that are safer and less susceptible to wind damage from hurricanes and thereby not only reduce the cost of insurance but also reduce the loss of property and lives. Such structures will also reduce the amount of insured losses of the Association in the event of a hurricane.

The proposed percentage rate rollback and rate credits were developed according to the following analysis, and the department notes that staff's final recommendations may vary and that the percentages adopted by the commissioner may vary from staff's recommendations based on evidence adduced at the hearing and/or comments received regarding this proposal. The estimation of savings under the new building code was based on damage ratios for structures and for contents under the new and old building codes given various severities of storms (categories one through five on the Saffir-Simpson scale). These were based on engineering studies performed by Texas A&M University, and are contained in the publication "Cost-effectiveness of the New Building Code for Windstorm Resistant Construction Along the Texas Coast, Final Report" by N. Stubbs, et al. The damage ratios, separately for structures and contents, were weighted by the anticipated distributions of storms by Saffir-Simpson category to obtain estimated overall damage ratios under the new and old codes. The ratio of the new code average damage ratios to those under the old code provided estimates of overall savings in losses. The process was repeated twice, once for anticipated distributions of the severity of storms in the Seaward region and once for the Inland II region (more than 25 miles from the coast). The average of the two sets of indications provided estimates of savings for the Inland I region (between the Seaward region and the Inland II region). The initial loss savings estimates were "tempered" (i.e., reduced) by 25% for conservatism. Based on the loss and expense structure of the residential extended coverage benchmark rates for the first tier counties that will become effective on February 1, 1999, and estimates of the hurricane/non-hurricane split of expected losses, the overall loss savings were calculated by applying the tempered savings ratio to the hurricane portion of expected losses in the rate. That is, no savings were anticipated on non-hurricane losses, even though this likely understates overall savings. The fixed expenses underlying the benchmark rate were added to the adjusted expected loss ratio, and the sum was divided by the complement of the variable expense ratio to obtain a relative rate need. The indi-

cated rate rollback and rate credits percentages were equal to one minus the relative rate needs. It should be noted that the loss adjustment expense provision underlying the benchmark rate was considered to be a fixed expense in these calculations (i.e., there would be no loss adjustment expense dollar savings resulting from the new building code), even though there will likely be some savings given that at least some claims may be eliminated because of the reduced damageability of structures built in accordance with the new code. Based on a review of the Texas A&M study referenced above, savings for retro-fitted buildings built prior to the introduction of the new code were selected.

Proposed subsection (a) specifies the purpose of the new section. Proposed subsection (b) defines terms used in the proposed section. Proposed subsection (c) specifies proposed percentage rate reductions for new residential construction built to Building Code standards for dwelling coverage and personal property coverage for structures located in areas seaward of the Intracoastal Canal (26% for dwelling coverage and 20% for personal property coverage) and for structures located in the Inland I areas (24% for dwelling coverage and 19% for personal property coverage). Proposed subsection (d) specifies proposed percentage rate credits for new residential construction built to higher standards than required by the Building Code for dwelling coverage and personal property coverage for (i) structures located in the Inland I areas that meet the Building Code standards for a residential structure located in areas seaward of the Intracoastal Canal (29% for dwelling coverage and 23% for personal property coverage); (ii) structures located in the Inland II areas that meet the Building Code standards for a residential structure located in the Inland I areas (27% for dwelling coverage and 21% for personal property coverage); and (iii) structures located in the Inland II areas that meet the Building Code standards for a residential structure located in the areas seaward of the Intracoastal Canal (32% for dwelling coverage and 25% for personal property coverage). Proposed subsection (e) specifies the proposed percentage rate credits for dwelling coverage and for personal property coverage for residential structures located in any of the designated catastrophe areas which were constructed prior to September 1, 1998, and which have been retro-fitted with exterior opening protections that meet the windborne criteria standards of the Building Code or equivalent criteria recognized by the Department pursuant to Building Code procedures (10% for dwelling coverage and 10% for personal property coverage). Proposed subsection (e) requires that all exterior openings of the residential structure must be protected for the structure to be eligible for the proposed rate reduction. Proposed subsection (f) requires that a residential structure must be certified by the Department as meeting the standards specified in the Building Code to qualify for the proposed rate rollback reduction or rate credits. Proposed subsection (g) provides that the proposed rate rollback and rate credits shall be applied to windstorm and hail insurance policies issued by the Association on and after February 28, 1999. The effective date stated in the proposal may change depending on the date on which the section is adopted.

The Commissioner will consider the adoption of new §5.4700 in a public hearing under Docket Number 2396, at 9:00 a.m. on January 21, 1999, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Lyndon Anderson, associate commissioner of the property and casualty division, has determined that for each year of the first five years that the proposed new section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section and that there will be no adverse effect on local employment or the local economy.

Mr. Anderson has also 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 administering the section will be the greater likelihood that coastal residents will build structures that are safer and less susceptible to damage from hurricanes. Because the new section provides for rate reductions on policies issued by the Association for new residential construction built to the Building Code standards or higher standards than required by the Building Code, or for certain retro-fitted residential structures built prior to September 1, 1998, coastal residents will have a financial incentive to build or retro-fit to these standards. Compliance with the Building Code standards will result in not only a reduction in insured losses by the Association in the event of a hurricane or other windstorm or hailstorm but also in the reduction of the cost of windstorm and hail insurance and the reduction in the loss of property and lives of coastal residents. The Association is the entity required to comply with the percentage rate rollback and rate credits. The average number of new residential structures constructed in the designated catastrophe areas in accordance with the building code standards and certified by the department is approximately 4,500 annually. Assuming an average value of \$100,000 for a frame construction dwelling and \$40,000 for the personal property located in the dwelling, the average premium for a windstorm and hail insurance policy issued by the Association is \$457. If such new residential structure is constructed to meet the most stringent building code standards, the reduction in premium volume for a residential structure and its contents is estimated to be \$110 per policy annually. Using the approximate 4,500 new structures built annually in the catastrophe area, the total premium volume reduction to the Association resulting from the application of a rate reduction percentage on premiums would be approximately \$500,000 annually after the first year the rule is in effect. During the first year, the reduction will be in relation to the completion of new residences during the first year and the issuance of windstorm and hail policies on the new structures during the first year. This figure may be greater or lesser depending on the actual values of the residences being constructed, the location of the structure, the actual construction elements of the structure, the number of structures insured by the Association and the applicable percentage rate reduction applicable to the area in which the structure is located. Any reduction in premium volume of the Association attributed to residential structures being retro-fitted with exterior opening protections would be in relation to the number of existing insured structures that qualify for a rate reduction. Government Code §2006.011 defines "small business" in pertinent part as a legal entity, including a corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit. Since the Association is a non-profit entity, it does not meet the definition of "small business", and thus it is not necessary to include a small business analysis in this proposal. Further, since the Association is the entity affected by this proposal, the impact on the Association has been discussed.

Comments on the proposed new section must be submitted within 30 days after publication of the proposal in the *Texas*



Register to the Office of the Chief Clerk, Texas Department of Insurance, MC #113-2A, P. O. Box 149104, Austin, Texas, 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Division, Texas Department of Insurance, MC #103-1A, P. O. Box 149104, Austin, Texas, 78714-9104. An additional copy of comments of an actuarial nature should be submitted to Philip O. Presley, Chief Actuary, Texas Department of Insurance, MC #105-5F, P. O. Box 149104, Austin, Texas, 78714-9104. Article 21.49, §5A of the Insurance Code requires a hearing to be held before any orders may be issued pursuant to Article 21.49 and provides that any person may appear and testify for or against the adoption of the proposed order.

The new section is proposed pursuant to the Insurance Code, Articles 21.49 and 1.03A, and in accordance with the Government Code, §§2001.004-2001.038. Pursuant to Article 21.49, §8E of the Insurance Code (Acts 1997, 75th Legislature, chapter 438, §1, effective September 1, 1997), the Commissioner shall hold a rulemaking hearing under Chapter 2001, Government Code, to determine the percentage of equitable across-the-board reductions in insurance rates required for windstorm and hail insurance coverage written by the Association for new residential construction, excluding additions or repairs to existing structures, built to the standards of a new building code. Article 21.49, §5A provides that after notice and hearing, the Commissioner may issue any orders considered necessary to carry out the purposes of Article 21.49 (Texas Windstorm Insurance Association Act), including, but not limited to, maximum rates, competitive rates, and policy forms. It is the position of the Department that the proposed rate credits for new residential construction built to higher standards than required by the Building Code (proposed subsection (d)) and the proposed rate credits for certain retro-fitted residential structures (proposed subsection (e)) are necessary to encourage coastal residents to build safer residential structures that are less susceptible to wind damage from hurricanes and that this goal is consistent with the purposes of Article 21.49. Article 21.49, §5A, by its terms, delegates the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute. The Government Code, §§2001.004-2001.038 (Administrative Procedure Act), authorizes and requires each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

The following statute is affected by this proposal: Insurance Code, Article 21.49

§5.4700. Rate Rollback and Rate Credits

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

(1) to specify, pursuant to Article 21.49, §8E of the Insurance Code, the percentage of rate rollback which must be applied to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association for new residential construction, excluding additions or repairs to existing structures, that have been

built to the standards of the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998;

(2) to specify the percentage of rate credit which must be applied to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association for new residential construction, excluding additions or repairs to existing structures, that have been built to a higher standard of construction than that required by the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998; and

(3) to specify the percentage of rate credit which must be applied to windstorm and hail insurance policies issued by the Texas Windstorm Insurance Association for residential structures constructed prior to September 1, 1998, which have been retro-fitted with exterior opening protections that meet the windborne debris criteria standards of the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998, or equivalent criteria recognized by the Department pursuant to the procedures of the Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998.

(b) Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise.

(1) Article 21.49, §8E— Section 8E of Article 21.49 of the Insurance Code as added by Acts 1997, 75th Legislature, chapter 1000, §3, effective September 1, 1997.

(2) Association—Texas Windstorm Insurance Association.

(3) Building Code—Texas Windstorm Insurance Association Building Code for Windstorm Resistant Construction, which became effective on September 1, 1998.

(4) Department—Texas Department of Insurance

(5) Exterior openings—Openings in the exterior walls or roofs of residential structures, including, but not limited to, windows, doors, garage doors, and skylights.

(6) Inland I areas—Areas inland of the Intracoastal Canal and within approximately 25 miles of the Texas coastline and east of the boundary line specified in §5.4008(b)(2)(A) of this title, and certain areas in Harris County as specified in §5.4008(b)(2)(B) of this title, relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on and after September 1, 1998.

(7) Inland II areas—Areas inland and west of the boundary line specified in §5.4008(b)(2)(A) of this title, relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired, or to Which Additions Are Made on and after September 1, 1998.

(c) Percentage Rate Rollback for New Residential Construction Built to Building Code Standards.

(1) Areas seaward of the Intracoastal Canal. The Association shall implement a rate reduction of 26% for dwelling coverage and 20% for personal property coverage for new residential construction built to the Building Code standards for residential structures located in areas seaward of the Intracoastal Canal.

(2) Inland I areas. The Association shall implement a rate reduction of 24% for dwelling coverage and 19% for personal

property coverage for new residential construction built to the Building Code standards for residential structures located in the Inland I areas.

(d) Percentage Rate Credits for New Residential Construction Built to Higher Standards than Required by the Building Code.

(1) Inland I areas. The Association shall implement a rate reduction of 29% for dwelling coverage and 23% for personal property coverage for new residential construction in the Inland I areas that meets the Building Code standards for a residential structure located in areas seaward of the Intracoastal Canal.

(2) Inland II areas.

(A) The Association shall implement a rate reduction of 27% for dwelling coverage and 21% for personal property coverage for new residential construction located in the Inland II area that meets the Building Code standards for a residential structure located in the Inland I areas.

(B) The Association shall implement a rate reduction of 32% for dwelling coverage and 25% for personal property coverage for new residential construction located in the Inland II areas that meets the Building Code standards for a residential structure located in the areas seaward of the Intracoastal Canal.

(e) Percentage Rate Credits for Certain Retro-fitted Residential Structures. The Association shall implement a rate reduction of 10% for dwelling coverage and 10% for personal property coverage for residential structures in any of the designated catastrophe areas which were constructed prior to September 1, 1998, which have been retro-fitted with exterior opening protections that meet the windborne criteria standards of the Building Code or equivalent criteria recognized by the Department pursuant to Building Code procedures. All exterior openings of the residential structure must be protected for the structure to be eligible for the rate credits specified in this subsection.

(f) Certification Required to Qualify for Rate Rollback Reduction or Rate Credits. A residential structure must be certified by the Department as meeting the standards specified in the Building Code to qualify for the rate reductions specified in this section.

(g) Effective Date. The rate rollback and the rate credits specified in this section shall be applied to windstorm and hail insurance policies issued by the Association on and after February 28, 1999.

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

Filed with the Office of the Secretary of State, on December 7, 1998.

TRD-9818182

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance

Earliest possible date of adoption: January 17, 1999  
For further information, please call: (512) 463-6327



## Chapter 7. Corporate and Financial Regulation

### Subchapter A. Examination and Financial Analysis

#### 28 TAC §7.68

The Texas Department of Insurance proposes new §7.68 concerning annual and quarterly statement blanks, other reporting forms, diskettes or electronic filings with the NAIC via the internet and instructions to be used by insurers and certain other entities regulated by the Texas Department of Insurance when reporting their financial condition and business operations and activities, and the requirement to file such completed statement blanks and other reporting forms, including diskettes or electronic filings with the NAIC via the internet. These statement blanks, other reporting forms, and diskettes or electronic filings with the NAIC via the internet are required for reporting, in 1999, the financial condition and business operations and activities conducted during the 1998 and 1999 calendar years. The new section will replace repealed §7.68 which concerned the adoption of the 1989 annual statement filings and was repealed in the October 15, 1996 issue of the *Texas Register* (21 TxReg 10212). The new section defines terms relevant to the statement blanks and reporting forms; provides the dates by which certain reports are to be filed; and adopts by reference the annual and quarterly statement blanks, other reporting forms, and instructions for reporting the financial condition and business operations and activities; and requires insurance companies and certain other regulated entities to file such annual and quarterly statements and other reporting forms with the department and/or the National Association of Insurance Commissioners as directed. The department has filed with the Office of the Secretary of State, Texas Register Division, copies of the annual and quarterly statement blanks, other reporting forms, and manuals proposed for adoption by reference. Other copies are available for inspection in the office of the Financial Monitoring Activity of the Texas Department of Insurance, William P. Hobby Jr. State Office Building, 333 Guadalupe, Building 3, Third Floor, Austin, Texas.

The new section proposes several changes from the section adopting the forms for reporting in 1998. The department proposes that all companies subject to the proposed section describe the status of their program to address issues arising with the year 2000 and their computer systems in the Management Discussion and Analysis. Information concerning Medicare supplement insurance experience and insurance options and futures have been moved from the annual statement form to supplemental filings in the proposed new rule. The HMO reporting forms have been reorganized and HMOs will be required to provide information to assist the department in monitoring the statutory deposits of an HMO on a quarterly basis. Life insurance companies will be required to report administrative services revenue (ASO business) as fees instead of premiums. Fraternal insurance companies will be required to file schedule DS if they include equity in undistributed income of unconsolidated subsidiaries in its net gain from operations. The section clarifies the requirement for a title company to provide an actuarial opinion with its annual statement. The actuarial opinion is required by Insurance Code, Article 1.11 but has not previously been specified in previous rules adopting these forms. The phase out of the allowance of reserve discounts for property and casualty companies was completed last year and is not included in the proposed section for this year. Form ALT/P/WC, Application for Alternative Excess Statutory Over Statement Reserves for workers' compensation insurance is omitted from this year's proposed forms and property and casualty insurers will apply to the Chief Property and Casualty Actuary in the Financial Program for an exemption or alternative calculation for these reserves. The new section also proposes that

the Texas Health Insurance Risk Pool will be required to report its cash and special deposits in a Schedule E in addition to the other reports that were required last year. Finally, the section provides instructions to all companies that complete certain sections of Schedule D, Investments, will be required to file a paper copy of Schedule D with the department.

The department will consider the adoption of new §7.68 in a public hearing under Docket Number 2386, scheduled for 9:00 a.m. on January 13, 1999, in Room 102 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Jose Montemayor, associate commissioner for the financial program, has determined that for the first year the section will be in effect, there will not be fiscal implications for state government as a result of enforcing or administering the section. There will be fiscal implications in connection with the filing of annual statements as a result of Insurance Code, Article 1.11. Under Article 1.11, insurers are required to file a copy of their annual statement with the National Association of Insurance Commissioners (NAIC), however, Article 1.11 also provides that insurers cannot be required to pay any costs or expenses (other than the expense of preparing and furnishing the annual statement to the NAIC) for the filing of the annual statement with the NAIC, therefore such costs are paid by the department to the NAIC. There will be no effect on local government or local employment for the first five-year period the section will be in effect. There will not be fiscal implications for the remaining four years the section is in effect since the section is applicable only to financial reporting during 1999.

Mr. Montemayor has also determined that, for each year of the first five years this section, as proposed, is in effect, the public benefits anticipated as a result of enforcing this section are the ability of the department to provide financial information to the public and other regulatory bodies as requested, and to monitor the financial condition of insurers and other regulated entities licensed in Texas to better assure financial solvency. Such insurers and other regulated entities are generally required by statute to provide the department with annual reports on their operations. These reports generally summarize information already captured or created by the insurer or other regulated entity in its normal course of business. The probable economic cost to insurers and other regulated entities (excluding health maintenance organizations) required to comply with this proposed section is estimated to be no more than \$3,500. Such estimated cost may be lower based upon factors such as the type of company (e.g. life, accident and health, or property and casualty); the size of the company (e.g. large or small); the type of business written within a company, and the cost of software offered by vendors. The probable economic cost to health maintenance organizations required to comply with this proposed section is estimated to be no more than \$1,200. Such estimated cost may be lower based upon factors such as the size of the health maintenance organization and the cost of the software offered by vendors. The department assumes that small and large businesses will utilize an employee who is familiar with the records of the insurer or health maintenance organization and accounting practices in general. Such individuals are compensated from \$17 to \$30 per hour based on the department's experience. On the basis of cost per hour of labor, there is no expected difference in cost of compliance between small businesses and larger businesses affected by this section.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the Texas Register to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Betty Patterson, Director - Financial Monitoring Activity, Mail Code 303-1A, Texas Department of Insurance, P. O. Box 149099, Austin, Texas 78714-9099. Request for a public hearing on this proposal should be submitted separately to the Office of the Chief Clerk.

The new section is proposed under the Insurance Code, Articles 1.03A, 1.10, 1.11, 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.49, 21.52F, 21.54, 22.06, 23.02, and 23.26. 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, and requires certain insurers to make filings with the National Association of Insurance Commissioners. Article 1.10(9), requires the department to furnish the statement blanks and other reporting forms necessary for companies to comply with the filing requirements. Articles 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.49, 21.54, 22.06, 23.02, and 23.26, require the filing of financial reports and other information by insurers and other regulated entities, and specify particular rule-making authority of the commissioner relating to those insurers and other regulated entities. Article 21.39 requires insurers to establish adequate reserves and provides for the adoption of each current formula for establishing reserves applicable to each line of insurance. Article 21.43 provides the conditions under which foreign insurers are permitted to do business in this state and requires foreign insurers to comply with the provisions of the Insurance Code. Article 21.52F authorizes the commissioner to adopt rules to implement the regulation of nonprofit health corporations holding a certificate of authority under the articles. Article 1.03A provides that the commissioner may adopt rules for the conduct and execution of the duties and functions of the department as authorized by statute for general and uniform application.

The following articles of the Insurance Code will be affected by this proposed section: Articles 1.10, 1.11, 3.07, 3.20-1, 3.27-2, 3.77, 6.11, 6.12, 8.07, 8.08, 8.21, 8.24, 9.22, 9.47, 10.30, 11.06, 11.19, 14.15, 14.39, 15.15, 15.16, 16.18, 16.24, 17.22, 17.25, 18.12, 19.08, 20.02, 20A.10, 20A.22, 21.39, 21.43, 21.49, 21.52F, 21.54, 22.06, 23.02, and 23.26.

§7.68. Requirements for Filing the 1998 Annual and 1999 Quarterly Statements, Other Reporting Forms, and Diskettes or electronic filings with the NAIC via the internet.

(a) Scope. This section provides insurers and other regulated entities with the requirements for the 1998 annual statement, 1999 quarterly statements, other reporting forms, and diskettes or electronic filings with the NAIC via the internet necessary to report information concerning the financial condition and business operations and activities of insurers. This section applies to all insurers and other regulated entities authorized to do the business of insurance in this state and includes, but is not limited to, life insurers; accident insurers; life and accident insurers; life and health insurers; accident and

health insurers; life, accident and health insurers; mutual life insurers; stipulated premium insurers; group hospital service corporations; fire insurers; fire and marine insurers; general casualty insurers; fire and casualty insurers; mutual insurers other than life; county mutual insurers; Lloyd's plans; reciprocal and inter-insurance exchanges; domestic risk retention groups; domestic joint underwriting associations; title insurers; fraternal benefit societies; local mutual aid associations; statewide mutual assessment companies; mutual burial associations; exempt associations; farm mutual insurers; health maintenance organizations; nonprofit health corporations; nonprofit legal services corporations; the Texas Health Insurance Risk Pool; the Texas Workers' Compensation Insurance Fund, and the Texas Windstorm Insurance Association. The commissioner adopts by reference the 1998 annual and 1999 quarterly statement blanks, instruction manuals, and other reporting forms specified in this section. The annual and quarterly statement blanks and other reporting forms are available from the department, Financial Monitoring Activity, Mail Code 303-1A, P. O. Box 149099, Austin, Texas 78714-9099. Insurers and other regulated entities shall properly report to the Texas Department of Insurance and the NAIC by completing the appropriate annual and quarterly statement blanks, prepared with laser quality print (hand written copies must be prepared legibly using black ink), other reporting forms, and diskettes or electronic filings with NAIC via the internet following the applicable instructions as outlined in subsections (d) - (m) of this section.

(b) Conflicts with Other Laws. In the event of a conflict between the Insurance Code, any currently existing departmental rule, form, instructions, or any specific requirement of this section and the NAIC manuals or instruction listed in the subsections listed below, then and in that event, the Insurance Code, the department's promulgated rule, form, instruction, or the specific requirement of subsections (d) - (m) of this section shall take precedence and in all respects control.

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

(1) Association edition - Blanks and forms promulgated by the National Association of Insurance Commissioners.

(2) Commissioner - The commissioner of insurance appointed under the Texas Insurance Code, Article 1.09.

(3) Department - The Texas Department of Insurance.

(4) Insurer - A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(5) NAIC - The National Association of Insurance Commissioners.

(6) Texas edition - Blanks and forms promulgated by the commissioner of insurance.

(d) Filing requirements for life, accident and health insurers. Each life, life and accident, life and health, accident and health, mutual life, or life, accident and health insurance company, stipulated premium insurance company, group hospital services corporation and the Texas Health Insurance Risk Pool (Article 3.77) shall complete and file the following blanks, forms, diskettes or electronic filings with the NAIC via the internet for the 1998 calendar year and the first three quarters of the 1999 calendar year. The forms and reports identified in paragraphs (1)(A)-(E); (2)(A),(B), (H); and (3)(A)-(K) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Instructions, Life, Accident and Health, except as

provided by subsection (b) of this section. The diskettes or electronic filings with the NAIC via the internet identified in paragraph (3)(L) and (M) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Diskette Filing Specifications-Life, Accident & Health, except as provided by paragraph (4) of this subsection.

(1) Reports to be filed both with the department and the NAIC include the following:

(A) Annual Statement (association edition, with a blue colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(B) Annual Statement of the Separate Accounts (association edition, with a green colored cover made of minimum 65lb. paper) (required of companies maintaining separate accounts), the 9 inch by 14 inch size, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(C) Management's Discussion and Analysis (MD&A) (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1999 (stipulated premium insurance companies, May 1, 1999). The department has taken initiatives to promote awareness of the potential for serious and widespread problems, company readiness, and consequences of not planning or addressing the Year 2000 Issue. The department considers the Year 2000 Computer Issue material and relevant to the continuing operations of insurance companies and related entities to ensure uninterrupted policyholder service. As a material and relevant matter that would have an impact on the future operations of the company, the Year 2000 Issue should be discussed in the MD & A. At a minimum, the company should include a general description of the Year 2000 Issue as it relates to their organization, the company's state of readiness and the company's contingency plans, i.e. plans to handle the most reasonably likely worst case scenarios;

(D) Life and Accident and Health Quarterly Statement (association edition) the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1999. However, a Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly statements with the department or the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years;

(E) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(B) Supplemental Compensation Exhibit (association edition) 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1999 (stipulated premium companies, April 1, 1999);

(C) Annual Statement (Texas edition, with a green colored cover made of minimum 65lb. paper) (required of companies writing prepaid legal business in 1998), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1999;

(D) Affidavit in Lieu of Annual Statement (Texas edition) (required of companies authorized to write prepaid legal business that did not write such business in 1998), to be filed on or before March 1, 1999;

(E) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(F) Analysis of Surplus (Texas edition) for life, accident and health insurers, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999); and

(G) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required by paragraph (1)(A) of this subsection, to be filed on or before March 1, 1999 (stipulated premium companies, April 1, 1999).

(H) The Texas Health Insurance Risk Pool shall complete and file the following:

(i) NAIC Annual Statement Life, Accident and Health Annual Statement (association edition), with a blue colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1999. However, only pages 1 - 5, 12, and the Notes to Financial Statements (page 31) and Schedule E (page 72).are required to be completed and filed on or before March 1, 1999; and

(ii) Life and Accident and Health Quarterly Statement (association edition) the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1999.

(3) ports, diskettes, or electronic filings via the internet filed only with the NAIC:

(A) Trusted Surplus Statement (association edition), Life, Accident and Health Supplement) (required of the U. S. branch of an alien insurer), 9 inch by 14 inch size to be filed on or before March 1, May 15, August 15, and November 15, 1999;

(B) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing medicare business), to be filed on or before March 1, 1999;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(D) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit business), 9 inch by 14 inch size, to be filed on or before April 1, 1999;

(E) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), the 9 inch by 14-inch size, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 9-inch by 14 inch size, to be filed on or before April 1, 1999;

(G) Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), the 9 inch by 14 inch size, to be filed on or before April 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(H) Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), the 9 inch by 14 inch size, to be filed on or before April 1, 1999;

(I) Adjustments to the Life, Health and Annuity Guaranty Association Model Act Assessment Base Reconciliation Exhibit (association edition), the 9 inch by 14 inch size, to be filed on or before April 1, 1999;

(J) Schedule DC (association edition) (for insurers engaged in insurance options and futures), the 9 inch by 14 inch size, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(K) Schedule DS (association edition) (required only of companies that have included "equity in the undistributed income of unconsolidated subsidiaries" in its "net gain from operations"), the 9 inch by 14 inch size, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999);

(L) diskettes containing computerized annual statement data, to be filed on or before March 1, 1999 (stipulated premium insurance companies, April 1, 1999) and;

(M) diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1999. A Texas stipulated premium insurance company, unless specifically requested to do so by the department, is not required to file quarterly diskettes with the NAIC if it meets all three of the following conditions:

(i) it is authorized to write only life insurance on its certificate of authority;

(ii) it collected premiums in the prior calendar year of less than \$1 million; and

(iii) it had a profit from operations in the prior two calendar years.

(4) The following provisions shall apply to the filings required in paragraphs (1)-(3) of this subsection.

(A) Texas domestic life, accident and health companies with more than \$30 million in direct premiums in 1998 must establish Asset Valuation Reserves (AVR) and Interest Maintenance Reserves (IMR) in their financial statements in accordance with the instructions in the 1998 NAIC Annual Statement Instructions, Life, Accident and Health Companies. Texas domestic companies with \$30 million or less in direct premiums and the Texas Health Insurance Risk Pool may establish AVR and IMR) in their financial statements in accordance with the instructions in the 1998 NAIC Annual Statement Instructions, Life, Accident and Health Companies or they must value bonds and preferred stocks in compliance with the provisions of the NAIC Purposes and Procedures of the Securities Valuation Office Manual concerning companies not maintaining an AVR or IMR.

(B) Actuarial opinions required by paragraph (1)(E) of this subsection shall be in accordance with the following:

(i) Unless exempted, the statement of actuarial opinion should follow the applicable provisions of §§3.1601-3.1611 of this title (relating to Actuarial Opinion and Memorandum Regulation).

(ii) For those companies exempted from §§3.1601-3.1611 of this title, instructions 1-12, established by the NAIC, must be followed.

(iii) Any stipulated premium company subject to §§3.1601-3.1611 of this title which does not insure or assume risk on contracts with death benefits, cash value, or accumulation values on any one life in excess of \$10,000, except as permitted by Insurance Code, Article 22.13, §1(b), is exempt from submission of a statement of actuarial opinion in accordance with §3.1608 of this title (relating to Statement of Actuarial Opinion Based on an Asset Adequacy Analysis), but must submit an actuarial opinion pursuant to §3.1607 of this title (relating to Statement of Actuarial Opinion Not Including an Asset Adequacy Analysis).

(C) Reporting for "administrative services only" (ASO) plans. Some insurers may act only as administrators of accident and health plans where the plan bears all of the risk of claims. Such plans are commonly referred to as "administrative services only" plans and are also referred to as "uninsured plans." The amounts received for ASO plans shall not be recorded in premiums. Claims paid by the insurer under uninsured accident and health plans should not be reported in the Summary of Operations. Commissions, expenses, and taxes incurred by an insurer for uninsured accident and health plans are to be reported on a gross basis by type of expense. The administration fees and expense reimbursements relating to uninsured business are deducted in the general expense exhibit and general insurance expenses are to be reported in the Summary of Operations net of such fees and reimbursement.

(D) Hard copy filing of Schedule D - Parts 1 through 5 and Schedule DA Part 1A. The annual statement instructions provide for hard copy filing of these schedules only with the state of domicile, the NAIC and any other state requesting such filings. The Texas Department of Insurance is requiring filing hard copy of these schedules for the 1998 year from both domestic and foreign insurers.

(e) Requirements for property and casualty insurers. Each fire, fire and marine, general casualty, fire and casualty, county mutual insurance company, mutual insurance company other than life, Lloyd's plan, reciprocal or inter-insurance exchange, domestic risk retention group, life insurance company that is licensed to write workers' compensation, any farm mutual insurance company that filed a property and casualty annual statement under paragraph (1)(A) of this subsection for the 1997 calendar year or had gross written premiums in 1998 in excess of \$5,000,000, any Mexican non-life insurer licensed under any article of the Insurance Code other than or in addition to Insurance Code, Article 8.24, domestic joint underwriting association, the Texas Workers' Compensation Insurance Fund created under Article 5.76-3, and the Texas Windstorm Insurance Association shall complete and file the following blanks, forms, and diskettes or electronic filings with the NAIC via the internet for the 1998 calendar year and the first three quarters of the 1999 calendar year. The forms and reports identified in paragraphs (1)(A)-(G); (2)(A),(B), (J); and (3)(A)-(G) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Instructions, Property and Casualty, except as provided by subsection (b) of this section. The diskettes or electronic filings with the NAIC via the internet identified in paragraph (3)(H) - (J) of this subsection shall

be completed in accordance with the 1998 NAIC Annual Statement Diskette Filing Specifications - Property and Casualty.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition, with a yellow colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1999. The department has taken initiatives to promote awareness of the potential for serious and widespread problems, company readiness, and consequences of not planning or addressing the Year 2000 Issue. The department considers the Year 2000 Computer Issue material and relevant to the continuing operations of insurance companies and related entities to ensure uninterrupted policyholder service. As a material and relevant matter that would have an impact on the future operations of the company, the Year 2000 Issue should be discussed in the MD & A. At a minimum, the company should include a general description of the Year 2000 Issue as it relates to their organization, the company's state of readiness and the company's contingency plans, i.e. plans to handle the most reasonably likely worst case scenarios;

(C) Financial Guaranty Insurance Exhibit (association edition) (required of companies writing financial guaranty business), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(D) Supplement "A" to Schedule T, Exhibit of Medical Malpractice Premiums Written (association edition) (required of companies writing medical malpractice business), the 9 inch by 14-inch size, to be filed on or before March 1, 1999;

(E) Property and Casualty Quarterly Statement (association edition) the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1999;

(F) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph; and

(G) Combined Property/Casualty Annual Statement (association edition, with a yellow colored cover made of minimum 65lb. paper), the 9 inch by 14-inch size, to be filed on or before May 1, 1999, including the Insurance Expense Exhibit. This form is required only for those affiliated insurers that wrote more than \$35 million in direct premiums as a group, in 1998 as defined in Schedule T of the Annual Statement.

(2) Reports to be filed only with the department:

(A) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(B) Supplemental Compensation Exhibit (association edition) 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(C) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment, as an attachment to page six of the annual statement required by paragraph (1)(A) of this subsection, to be filed on or before March 1, 1999;

(D) Annual Statement (Texas edition), with a green colored cover made of minimum 65lb. paper) (required of companies writing prepaid legal business in 1998), 8-1/2 inch by 14-inch size, to be filed on or before March 1, 1999;

(E) Affidavit in Lieu of Annual Statement (Texas edition) (required of companies authorized to write prepaid legal business that did not write such business in 1998), to be filed on or before March 1, 1999;

(F) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(G) Analysis of Surplus (Texas edition) for property and casualty insurers (required of all licensed companies, except Texas domestic county mutual companies), to be filed on or before March 1, 1999;

(H) Supplement for County Mutuals (Texas edition) (required of Texas domestic county mutual companies, as an attachment to page seventeen of the annual statement as required by paragraph (1)(A) of this subsection), to be filed on or before March 1, 1999; and

(I) Texas Supplemental A for County Mutuals (Texas edition) (required of Texas domestic county mutual companies, as an attachment to page nine of the annual statement as required by paragraph (1)(A) of this subsection, to be filed on or before March 1, 1999.

(J) The Texas Windstorm Insurance Association (Insurance Code Article §21.49) shall complete and file the following:

(i) Annual Statement, (association edition, with a yellow colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1999, except as provided by subsection (b) of this section;

(ii) Property and Casualty Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1999; and

(iii) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1999. The department has taken initiatives to promote awareness of the potential for serious and widespread problems, company readiness, and consequences of not planning or addressing the Year 2000 Issue. The department considers the Year 2000 Computer Issue material and relevant to the continuing operations of insurance companies and related entities to ensure uninterrupted policyholder service. As a material and relevant matter that would have an impact on the future operations of the company, the Year 2000 Issue should be discussed in the MD & A. At a minimum the company should include a general description of the Year 2000 Issue as it relates to their organization, the company's state of readiness and the company's contingency plans, i.e. plans to handle the most reasonably likely worst case scenarios.

(3) Reports, diskettes, or electronic filings via the internet filed only with the NAIC:

(A) Trusteed Surplus Statement (association edition, Property and Casualty Supplement) (required of the U. S. branch of an alien insurer), 9 inch by 14-inch size to be filed on or before March 1, May 15, August 15, and November 15, 1999;

(B) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing medicare business) to be filed on or before March 1, 1999;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 1999;

(D) Insurance Expense Exhibit (association edition), the 9 inch by 14 inch size, to be filed on or before April 1, 1999;

(E) Credit Insurance Experience Exhibit (association edition) (required of companies writing credit accident and/or health business), 9 inch by 14 inch size, to be filed on or before April 1, 1999;

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 9-inch by 14 inch size, to be filed on or before April 1, 1999;

(G) Schedule DC (association edition) (for insurers engaged in insurance options and futures), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(H) diskettes containing computerized annual statement data, to be filed on or before March 1, 1999;

(I) diskettes containing combined annual statement data, to be filed on or before May 1, 1999; and

(J) diskettes containing computerized quarterly statement data, to be filed on or before May 15, August 15, and November 15, 1999.

(4) The following provisions shall apply to all filings required by paragraphs (1) - (3) of this subsection.

(A) No loss reserve discounts, other than as respects fixed and determinable payments such as those emanating from workers' compensation tabular indemnity reserves and long-term disability claims for which specific segregated investments have been established, shall be allowed. The commissioner shall have the authority to determine the appropriateness of, and may disallow such discounts.

(B) The commissioner shall have the authority to determine the appropriateness of, and may disallow anticipated salvage and subrogation.

(C) Texas domestic insurers that write only in Texas may apply for an alternative basis of calculating the excess of statutory reserves over statement reserves, also know as the Schedule P penalty reserve, by submitting a request to the Chief Property and Casualty Actuary of the Financial Program which outlines the reasons and basis for such request. The request should be mailed to the Chief Property and Casualty Actuary, Texas Department of Insurance, Financial Program, MC 305-3A P.O. Box 149104, Austin, Texas 78714-9104. Requests must be submitted to the department on or before December 31, 1998.

(D) Hard copy filing of Schedule D - Parts 1 through 5 and Schedule DA Part 1A. The annual statement instructions provide for hard copy filing of these schedules only with the state of domicile, the NAIC and any other state requesting such filings. The Texas Department of Insurance is requiring filing hard copy of these schedules for the 1998 year from both domestic and foreign insurers.

(f) Requirements for fraternal benefit societies. Each fraternal benefit society shall complete and file the following blanks, forms, and diskettes or electronic filings for the 1998 calendar year and the

first three quarters of the 1999 calendar year. The forms, reports, and diskettes identified in paragraphs (1)(A)-(E); (2)(A),(D); and (3)(A)-(F),(H) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Instructions, Fraternal, except as provided by subsection (b) of this section. The diskettes or electronic filings identified in paragraph (3)(G) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Diskette Filing Specifications-Fraternal, except as provided by subsection (b) of this section.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition, with a brown colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(B) Annual Statement of the Separate Accounts (association edition, with a green colored cover made of minimum 65lb. paper) (required of companies maintaining separate accounts), the 9 inch by 14-inch size, to be filed on or before March 1, 1999;

(C) Fraternal Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1999;

(D) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1999. The department has taken initiatives to promote awareness of the potential for serious and widespread problems, company readiness, and consequences of not planning or addressing the Year 2000 Issue. The department considers the Year 2000 Computer Issue material and relevant to the continuing operations of insurance companies and related entities to ensure uninterrupted policyholder service. As a material and relevant matter that would have an impact on the future operations of the company, the Year 2000 Issue should be discussed in the MD & A. At a minimum, the company should include a general description of the Year 2000 Issue as it relates to their organization, the company's state of readiness and the company's contingency plans, i.e. plans to handle the most reasonably likely worst case scenarios; and

(E) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all companies), to be attached to the annual statement required by subparagraph (A) of this paragraph.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition) 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(B) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(C) Analysis of Surplus (Texas edition) for fraternal benefit societies, to be filed on or before March 1, 1999;

(D) Fraternal Benefit Societies Supplement to Valuation Report (Association edition) to be filed on or before June 30, 1999; and

(E) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment, as an attachment to page ten of the annual statement as required

by paragraph (1)(A) of this subsection, to be filed on or before March 1, 1999.

(3) Reports and diskettes or electronic filings via the internet to be filed only with the NAIC:

(A) Trusted Surplus Statement (association edition, Fraternal Supplement) (required of the U. S. branch of an alien insurer), 9 inch by 14-inch size to be filed on or before March 1, May 15, August 15, and November 15, 1999;

(B) Medicare Supplement Insurance Exhibit (association edition) (for insurers writing medicare business) to be filed on or before March 1, 1999;

(C) Officers and Directors Information (association edition), to be filed on or before March 1, 1999;

(D) Long-Term Care Insurance Exhibit (association edition) (required of companies writing long-term care business), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(E) Schedule DS (association edition) (required only of companies that have included "equity in the undistributed income of the subsidiary" in "net gain from operations"), the 9 inch by 14 in size, to be filed on or before March 1, 1999;

(F) Long-Term Care Experience Reporting Forms (association edition) (required of companies writing long-term care business), the 9-inch by 14-inch size, to be filed on or before April 1, 1999;

(G) diskettes containing computerized annual statement data, to be filed on or before March 1, 1999; and

(H) Fraternal Interest Sensitive Life Insurance Products Report (association edition) (required of companies writing interest sensitive products), the 9 inch by 14 inch size, to be filed on or before April 1, 1999.

(4) The following provisions shall apply to the filings required in paragraphs (1) - (3) of this subsection.

(A) Texas domestic fraternal companies with more than \$30 million in direct premiums in 1998 must establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1998 NAIC Annual Statement Instructions Fraternal. Texas domestic fraternal companies with \$30 million or less in direct premiums may establish Asset Valuation Reserves and Interest Maintenance Reserves in their financial statements in accordance with the instructions in the 1998 NAIC Annual Statement Instructions Fraternal or they must value bonds and preferred stocks in compliance with the provisions of §7.16 of this title (relating to NAIC Purposes and Procedures of the Securities Valuation Office Manual) concerning companies not maintaining an Asset Valuation Reserve or Interest Maintenance Reserve.

(B) Since fraternal are not subject to Article 3.28 Section 2A, Texas Insurance Code, the statement of actuarial opinion for fraternal should follow instructions 1 - 12, established by the NAIC.

(g) Requirements for title insurers. Each title insurance company shall complete and file the following blanks and forms for the 1998 calendar year and the first three quarters of the 1999 calendar year. The reports and forms identified in paragraphs (1)(A)-(D); (2)(A) and (E); and (3)(A) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Instructions, Title, except as otherwise provided by subsection (b) of this section.



The diskette identified in paragraph (3)(B) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Diskette Filing Specifications- Title, except as provided by subsection (b) of this section.

(1) Reports to be filed with the department and the NAIC:

(A) Annual Statement (association edition, with a salmon colored cover made of minimum 65lb. paper), the 9 inch by 14 inch size, to be filed on or before March 1, 1999;

(B) Management's Discussion and Analysis (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1999. The department has taken initiatives to promote awareness of the potential for serious and widespread problems, company readiness, and consequences of not planning or addressing the Year 2000 Issue. The department considers the Year 2000 Computer Issue material and relevant to the continuing operations of insurance companies and related entities to ensure uninterrupted policyholder service. As a material and relevant matter that would have an impact on the future operations of the company, the Year 2000 Issue should be discussed in the MD & A. At a minimum, the company should include a general description of the Year 2000 Issue as it relates to their organization, the company's state of readiness and the company's contingency plans, i.e. plans to handle the most reasonably likely worst case scenarios;

(C) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; required of all companies), to be attached to the annual statement required; and

(D) Title Quarterly Statement (association edition), the 9 inch by 14 inch size, to be filed on or before May 15, August 15, and November 15, 1999.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(B) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(C) Analysis of Surplus (Texas edition) for title insurers to be filed on or before March 1, 1999;

(D) Supplemental Investment Income Exhibit (Texas edition) (shows percent of net investment income by type of investment, as an attachment to page six of the annual statement as required in paragraph (1)(A) of this subsection, to be filed on or before March 1, 1999; and

(E) Schedule SIS, Stockholder Information Supplement (association edition) (required of domestic stock companies which have 100 or more stockholders), the 9 inch by 14 inch size, to be filed on or before March 1, 1999.

(3) Reports to be filed only with the NAIC.

(A) Officers and Directors Information (association edition), to be filed on or before March 1, 1999;

(B) diskettes or electronic filings via the internet containing computerized annual statement data, to be filed on or before March 1, 1999.

(4) Hard copy filing of Schedule D - Parts 1 through 5 and Schedule DA Part 1A. The annual statement instructions provide for hard copy filing of these schedules only with the state of domicile, the NAIC and any other state requesting such filings. The Texas Department of Insurance is requiring filing hard copy of these schedules for the 1998 year from both domestic and foreign insurers.

(h) Requirements for health maintenance organizations. Each health maintenance organization and non-profit health corporation shall complete and file the following blanks and forms, and diskettes for the 1998 calendar year and the first three quarters of the 1999 calendar year. The forms, reports and diskettes identified in paragraphs (1)(A)-(D) and (2)(A),(B) of this subsection shall be completed in accordance with the NAIC Annual Statement Instructions, Health Maintenance Organizations. The forms, reports and diskettes identified in paragraphs (1)(A), (2)(B), (C), (E) and (F) of this subsection shall be completed in accordance with Annual and Quarterly HMO Supplement Instructions (provided by the department). The diskettes or electronic filings identified in paragraph (3) of this subsection shall be completed in accordance with the 1998 NAIC Annual Diskette Filing Specifications - Health Maintenance Organization.

(1) Reports to be filed both with the department and the NAIC:

(A) Annual Statement (association edition), with an orange colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1999;

(B) Management's Discussion and Analysis, (a narrative document setting forth information which enables regulators to enhance their understanding of the insurer's financial position, results of operations, changes in capital and surplus accounts and cash flow), to be filed on or before April 1, 1999. The department has taken initiatives to promote awareness of the potential for serious and widespread problems, company readiness, and consequences of not planning or addressing the Year 2000 Issue. The department considers the Year 2000 Computer Issue material and relevant to the continuing operations of insurance companies and related entities to ensure uninterrupted policyholder service. As a material and relevant matter that would have an impact on the future operations of the company, the Year 2000 Issue should be discussed in the MD & A. At a minimum, the company should include a general description of the Year 2000 Issue as it relates to their organization, the company's state of readiness and the company's contingency plans, i.e. plans to handle the most reasonably likely worst case scenarios;

(C) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items; to be filed by all health maintenance organizations), to be attached to the annual statement required by subparagraph (A) of this paragraph; and the

(D) Medicare Supplement Insurance Experience Exhibit (association edition) (for insurers writing medicare business) to be file on or before March 1, 1999.

(2) Reports to be filed only with the department:

(A) Supplemental Compensation Exhibit (association edition), 9 inch by 14 inch size, (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(B) HMO Quarterly Statement (association edition), 8 1/2 inch by 14 inch size, together with quarterly data of Schedule E - Part 2 - Special Deposits, from the NAIC HMO Annual Statement

Blank to be filed on or before May 15, August 15, and November 15, 1999;

(C) HMO Supplement (Texas edition), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1999. Exhibit II and Exhibit VI of the HMO Supplement are to be filed quarterly on or before March 1, 1999 and May 15, August 15, November 15, 1999;

(D) Texas Overhead Assessment Form (Texas edition) (required of Texas domestic companies only), to be filed on or before March 1, 1999;

(E) Department formatted diskettes containing annual statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before March 1, 1999; and

(F) Department formatted diskettes containing quarterly statement data (diskettes provided by the department for entering of health maintenance organization or non-profit health corporation financial statement data), to be completed according to the instructions provided by the department and filed with the department on or before May 15, August 15, and November 15, 1999.

(3) Reports and diskettes or electronic filings via the internet to be filed only with the NAIC. The diskettes containing computerized annual statement data must be filed on or before March 1, 1999;

(4) Hard copy filing of Schedule D - Parts 1 through 5 and Schedule DA Part 1A. The annual statement instructions provide for hard copy filing of these schedules only with the state of domicile, the NAIC and any other state requesting such filings. The Texas Department of Insurance is requiring filing hard copy of these schedules for the 1998 year from both domestic and foreign insurers.

(i) Requirements for farm mutual insurers not subject to the provisions of subsection (e) of this section relating to requirements for property and casualty insurers. Each farm mutual insurance company shall file the following completed blanks and forms for the 1998 calendar year with the department only:

(1) Annual statement (Texas edition, with a tan colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1999;

(2) Texas Overhead Assessment Form (Texas edition), to be filed on or before March 1, 1999;

(3) Actuarial Opinion (the statement of a qualified actuary, setting forth his or her opinion relating to policy reserves and other actuarial items), to be attached to the annual statement required by paragraph (1) of this subsection, unless otherwise exempted.

(j) Requirements for mutual assessment companies, mutual aid and mutual burial associations, and exempt companies. Each statewide mutual assessment company, local mutual aid association, local mutual burial association, and exempt company shall file the following completed blanks and forms for the 1998 calendar year with the department only:

(1) Annual Statement (Texas edition), with an orange colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before April 1, 1999, provided, however, exempt companies are not required to complete lines 22, 23, 24, 25, and 26 on page 3, the special instructions at the bottom of page 3, and pages 4, 5, 6, and 7. All other pages are required;

(2) Texas Overhead Assessment Form (Texas edition), to be filed on or before April 1, 1999;

(3) Release of Contributions Form (Texas edition), to be filed on or before April 1, 1999;

(4) 3 1/2 % Chamberlain Reserve Table (Reserve Valuation) (Texas edition), to be filed on or before April 1, 1999;

(5) Reserve Summary (1956 Chamberlain Table 3 1/2%) (Texas edition), to be filed on or before April 1, 1999;

(6) Inventory of Insurance in Force by Age of Issue or Reserving Year (Texas edition) to be filed on or before April 1, 1999; and

(7) Summary of Inventory of Insurance in Force by Age and Calculation of Net Premiums (Texas edition), to be filed on or before April 1, 1999.

(k) Requirements for non-profit legal service corporations. Each non-profit legal service corporation shall file the following completed blanks and forms for the 1998 calendar year with the department only;

(1) Annual Statement (Texas edition) with a green colored cover made of minimum 65lb. paper), 8 1/2 inch by 14 inch size, to be filed on or before March 1, 1999; and

(2) Texas Overhead Assessment Form, to be filed on or before March 1, 1999.

(l) Requirements for Mexican casualty companies. Each Mexican casualty company doing business as authorized by a Certificate of Authority issued under Texas Insurance Code, Article 8.24, shall complete and file the following blanks and forms for the 1998 calendar year with the department only. All submissions shall be printed or typed in English and all monetary values shall be clearly designated in United States dollars. The form identified in paragraph (1) of this subsection shall be completed in accordance with the 1998 NAIC Annual Statement Instructions, Property and Casualty, except as provided by this section. An actuarial opinion is not required. It is the express intent of this subsection that it shall not repeal or otherwise modify or amend any department rule or the Insurance Code. The blanks or forms are as follows:

(1) Annual Statement (association edition), with a yellow colored cover made of minimum 65lb. paper), 9 inch by 14 inch size, provided, however, only pages 1 - 4, 15 - 19 and 130 are required to be completed and filed on or before March 1, 1999;

(2) A copy of the balance sheet and the statement of profit and loss from the Mexican financial statement (printed or typed in English), to be filed on or before March 1, 1999;

(3) A copy of the official documents issued by the COMISION NACIONAL DE SEGUROS Y FIANZAS approving the 1998 annual statement, to be filed on or before June 30, 1999; and

(4) A copy of the current license to operate in the Republic of Mexico, to be filed on or before March 1, 1999.

(m) Other financial reports. Nothing in this section prohibits the department from requiring any insurer or other regulated entity from filing other financial reports with the department.

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

Filed with the Office of the Secretary of State, on December 8, 1998.



## Chapter 11. Health Maintenance Organizations

### Subchapter V. Standards for Community Mental Health Centers

#### 28 TAC §§11.2101–11.2104

The Texas Department of Insurance proposes new Subchapter V to Chapter 11, concerning standards for community mental health centers, by adding new §§11.2101 - 11.2104. The new subchapter is necessary to implement legislation enacted by the 75th Legislature in House Bill 587. This legislation, which in pertinent part is codified at Section 534.101 et seq. of the Health and Safety Code, enables community centers to create nonprofit corporations to provide health care services through health maintenance organizations (HMOs). The legislation further directs the department to establish requirements concerning the procedures an entity must follow and the standards an entity must meet to obtain a certificate of authority as a limited health care service plan providing behavioral health care services. This new subchapter will enable entities to increase availability and accessibility to mental health/mental retardation services in settings other than large residential facilities. Section 11.2101 defines terms used in the subchapter. Section 11.2102 describes general provisions regarding these community health maintenance organizations (CHMOs). Section 11.2103 outlines the procedures a CHMO must follow to obtain a certificate of authority. Section 11.2104 details the standards a CHMO must meet to obtain a certificate of authority.

The department will consider the adoption of new §§11.2101 - 11.2104 in a public hearing under Docket Number 2390, scheduled for 9:00 a.m. on January 6, 1999, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Karen Thrash, deputy commissioner, HMO/URA Division, has determined that for each of the first five years the proposed sections will be in effect, there will be no fiscal implications for state and local government as the result of the adoption and implementation of these sections. There will be no measurable effect on local government, local employment, or the local economy as a result of the proposal.

Ms. Thrash has also determined that for each year of the first five years the proposed sections are in effect, the public benefits anticipated as a result of the proposed sections will be increased availability and accessibility of quality mental health care services in a cost-effective format as an alternative to large residential treatment centers. Except as specifically enumerated below, any costs to HMOs complying with the new sections each year of the first five years the proposed sections will be in effect are the result of the legislative enactment of Section 534.101 et seq., Health and Safety Code, the legislative changes to Articles 3.51-14, 20A.02, 20A.04, 20A.05, 20A.09, 20A.13, 20A.20, 20A.26, 20A.33, and 20A.36, of the Insurance

Code, and compliance with Title XIII, Public Health Services Act (42 U.S.C. Section 300e-1), and is not as a result of the adoption and implementation of these proposed sections. Pursuant to discussions with private industry as well as the Texas Department of Mental Health and Mental Retardation, Ms. Thrash estimates that the cost per day of providing court ordered or non-serious mental illness inpatient treatment will be \$525 for mental health or chemical dependency treatment, and \$800 for detox treatment. The cost per day of providing outpatient treatment for non-serious mental illness will be \$75.00 for mental health services or \$100.00 for chemical dependency services. Government Code §2006.011 defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship that is formed for the purpose of making a profit. CHMOs are nonprofit corporations created by governmental entities. Accordingly, they cannot be small businesses and thus it is not necessary to include a small business analysis in this proposal.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Karen Thrash, Deputy Commissioner, HMO/URA Group, Mail Code 103-6A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

The new subchapter is proposed under Section 534.101(b), Health and Safety Code, and Insurance Code Article 1.03A. Section 534.101(b), Health and Safety Code, directs nonprofit organizations to obtain the appropriate certificate of authority from the Texas Department of Insurance to operate as a health maintenance organization. HB 587, the legislation creating these nonprofit CHMOs, at Section 4 directs the Texas Department of Insurance to adopt rules that describe the procedures an entity must follow and the standards an entity must meet to obtain a certificate of authority as a limited health care service plan. Article 1.03A provides that the commissioner of insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance as authorized by statute.

Insurance Code Articles 3.51-14, 20A.02, 20A.04, 20A.05, and 20A.09; Title XIII, Public Health Services Act (42 U.S.C. Section 300e-1); and Section 534.101, Health and Safety Code are affected by this proposal.

§11.2101. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Community Health Maintenance Organization (CHMO)—An entity created under the authority of Section 534.101, Health and Safety Code, by one or more community centers as defined by Section 534.001, Health and Safety Code, and authorized by the Texas Department of Insurance to provide a limited health care service plan as defined in Article 20A.02(l), Insurance Code.

§11.2102. General Provisions.

(a) Each CHMO must comply with all requirements for a limited health care service plan specified in this subchapter.

(b) Each CHMO shall provide coverage for work in progress and must clearly specify that the enrollee must agree to have the work completed by a participating provider in the HMO delivery network, as defined under Article 20A.02(w) Insurance Code, or as otherwise arranged by the limited service HMO.

§11.2103. Requirements for Issuance of Certificate of Authority to a CHMO.

(a) Prior to obtaining a certificate of authority under Section 534.101, Health and Safety Code (concerning Health Maintenance Organizations Certificate of Authority), an applicant CHMO must comply with each requirement for the issuance of a certificate of authority imposed on a limited health care service plan under the Insurance Code Chapter 20A; Chapter 11 of this title (relating to Health Maintenance Organizations); and applicable insurance laws and regulations of this state.

(b) A CHMO with a certificate of authority must comply with all the appropriate requirements that a limited health care service plan must comply with under the Insurance Code, Chapter 20A; Chapter 11 of this title; and applicable insurance laws and regulations of this state to maintain a certificate of authority. A CHMO shall be subject to the same statutes and rules as a limited service HMO and considered a limited service HMO for purposes of regulation and regulatory enforcement.

(c) Nothing in this subchapter precludes one or more community centers from forming a nonprofit corporation under Section 5.01, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes), to provide services on a risk-sharing or capitated basis as permitted under Article 21.52F Insurance Code.

(d) This subchapter does not apply to an activity exempt from regulation under Article 20A.26(f) Insurance Code.

§11.2104. Minimum Standards for Community Health Centers.

Each evidence of coverage providing limited mental health care services by a CHMO shall provide benefits as described in Subchapter Y of this chapter (relating to Limited Service HMOs) as minimum covered services for mental illness/chemical dependency.

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 December 1, 1998.

TRD-9818069

Lynda H. Nesenholtz  
General Counsel and Chief Clerk  
Texas Department of Insurance

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 463-6327



## Chapter 34. State Fire Marshall

### Subchapter H. Storage and Sale of Fireworks

#### **28 TAC §34.818, §34.826**

The Texas Department of Insurance proposes amendments to Subchapter H, Storage and Sale of Fireworks, by amending §34.818 and §34.826. These proposed amendments are necessary, in part, to implement legislation enacted by the 75th Legislature in SB 371. SB 371 stated that the commissioner shall adopt by reference the provisions of two National Fire Protection Association (NFPA) standards - NFPA 1123, applicable to public fireworks displays, and NFPA 1126, applicable to pyrotechnic displays before proximate audiences. In a previous rulemaking procedure, the Commissioner adopted NFPA 1126 as an amendment to §34.826; however, it was determined at

that time to consider NFPA 1123 in a separate rulemaking procedure (See 23 TexReg 9571, September 18, 1998).

On October 9, 1998 the advisory council on fireworks met and subsequently recommended that NFPA 1123 be adopted by reference, with exceptions concerning the use of high density polyethylene (HDPE) pipe and concerning mortar spacing requirements. The council also recommended that NFPA 1123 be adopted without its appendices. The Commissioner has determined that the proposed rule should not include these changes, for the following reasons. NFPA 1123 provides that it is not intended to prevent the use of systems, methods, or devices that provide protections equivalent to the provisions of that code, provided that equivalency can be demonstrated to the authority having jurisdiction. While this allows for modifications of the standards, modifications cannot be made until equivalent protection has been adequately demonstrated. Therefore, the commissioner declines at this time to propose these changes, and accordingly proposes that NFPA 1123 be adopted by reference in its entirety. Second, it is not necessary to specifically exempt the appendices, as they provide that they are not a part of the requirements of the NFPA document, but are included for informational purposes only.

This proposed amendment to §34.826 will adopt by reference NFPA 1123, Code For Fireworks Display. Additionally, as also recommended by the council §34.818(b)(2) is amended to make clear that the point of power interruption required of retail fireworks stands may be located either inside or outside the stand.

G. Mike Davis, state fire marshal, has determined that for each year of the first five years the proposed sections are in effect, any fiscal implications to state government will be the result of the legislative enactment of the Insurance Code, Article 5.43-4, not the result of adoption and implementation of these amendments. There are no fiscal implications for local government as a result of enforcing or administering these amendments. The adoption of NFPA 1123 will not impact local governments because local governments who determine the locations of displays, or who are involved in any manner in the conduct of such displays have already implemented standards affecting these displays. There will be no effect on the local economy or local employment.

Mr. Davis also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit from enforcing and administering the amendments is improved safety regulation of public fireworks displays, consistent with legislative requirements. Any possible economic costs to persons complying with amended §34.826 for each year of the first five years these amendments will be in effect are the result of the adoption, enforcement or administration of the proposed amendments. Even if there were economic costs arising from the rule, as opposed to the statute, for public safety reasons it would neither be legal nor feasible to provide a waiver or exemption for small businesses. In addition, there is no anticipated economic cost associated with the proposed amendment to §34.818, since this amendment merely provides greater flexibility in complying with an already-existing requirement.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the Texas Register, to Lynda H. Nesenholtz, General Counsel & Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A,

Austin, Texas 78714-9104. An additional copy of the comments must be submitted to Mr. G. Mike Davis, State Fire Marshal, Texas Department of Insurance, Mail Code 108-FM, Austin, Texas 78714-9104. Requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The proposal is submitted pursuant to the Insurance Code, Articles 5.43-4 and 1.03A. The Insurance Code, Article 5.43-4, section 16(a), directs the commissioner to adopt rules the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating: (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state; (2) the conduct of public fireworks displays; and (3) the safe storage of Fireworks 1.4G and Fireworks 1.3G. Section 5 of Article 5.43-4 provides that the commissioner, in promulgating rules, may use standards recognized by federal law or regulation, and those published by a nationally recognized standards-making organization. Section 9 of Article 5.43-4 requires the commissioner to adopt by reference certain NFPA standards as rules governing public displays. Article 1.03A provides that the commissioner may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by a statute.

The following statutes are affected by the proposal: The Insurance Code, Article 5.43-4. The Government Code, Chapter 417 §34.818. *Fireworks Retail Site Requirements for Design, Construction, and Storage.*

- (a) (No change.)
- (b) Electrical service, equipment, and devices.
  - (1) (No change.)
  - (2) Each stand utilizing electricity shall have a point of power interruption, either inside or outside the stand, (switch or switches) located near an exit door which interrupts all electric supply to devices and equipment located inside and on the stand.
- (3)-(5) (No change.)

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

§34.826. *Preparing and Conducting Public Displays.*

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

(c) Public display criteria. Public displays shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1123, Code for Fireworks Display, 1995 Edition.

~~[(1) The area selected for the discharge of aerial shells shall be located so that the trajectory of the shells will not come within 25 feet of any overhead object.]~~

~~[(2) Mortars shall be separated from spectator viewing and parking areas; from health care, church, asylum, school, and penal facilities; from storage of hazardous materials; and from residential occupancies by the minimum distances specified in the following table: ]~~

~~[[Figure: 28 TAC §34.826(c)(2)]]~~

~~[(3) Fireworks shall not be discharged within 100 feet of any tent or canvas shelter.]~~

~~[(4) The potential landing area shall be a large, clear, open area acceptable to the authority having jurisdiction.]~~

~~[(5) Spectators, vehicles, or any readily combustible materials shall not be located within the potential landing area during the display.]~~

~~[(6) If, at any time, steady winds of 25 mph or other conditions prevail which in the opinion of either the authority having jurisdiction or the licensed pyrotechnic operator, pose a danger, the public display shall be postponed until conditions improve to an acceptable level.]~~

~~[(7) Any fireworks that remain unfired after the display is concluded shall be immediately disposed of or removed in a manner safe for the particular type of fireworks.]~~

~~[(d) Pyrotechnic equipment and installation. Reusable mortars shall be made of steel tubing or equivalent (cast iron and other fragmenting types of metal are prohibited) having a smooth bore and a steel bottom plate equal in thickness to the tube welded continuously around its perimeter except as follows.]~~

~~[(1) Wooden base plugs in good condition may be substituted for welded steel bottom plates where such plugs have a minimum thickness of 1/2 inch per inch of bore diameter. Plugs shall be securely fastened. Wooden base plugs shall be discarded and replaced when split, shrunken, charred to less than minimum required thickness, or otherwise damaged. Screw type caps for plugs are prohibited.]~~

~~[(2) Mortars limited solely for the firing of single break shells and finale batteries may be made of spiral or convolute wound chipboard or kraft paper tubes. Tubes for two-inch shells shall have a wall thickness of not less than 1/4 inch. Tubes for three-inch shells shall have a wall thickness of not less than 3/8 inch. Tubes for four-, five-, and six-inch shells shall have a wall thickness of not less than 1/2 inch. All tubes shall have a base plug in good condition, the thickness of which shall be not less than half the inside diameter of the tube. The base plug shall be securely fastened to the tube.]~~

~~[(3) For single break shells, three-inch and four-inch mortar tubes may be made of 26 gauge or heavier galvanized iron riveted along their seams, beginning at a point within one inch of each end and spaced not more than three inches between rivets and having a two-inch wooden base plug.]~~

~~[(4) The minimum inside length of reusable mortars shall be not less than five times their inside diameter for mortars up to seven inches inside diameter and not less than four times their inside diameter for mortars having an inside diameter greater than seven inches.]~~

~~[(5) Any damaged mortars (split or bulged tube, base, seam, or with loose rivets, bolts, or wooden base plug) shall not be used for firing.]~~

~~[(6) Not less than 50% of the mortar tube length shall be below the normal surface of the ground. Sand or earth filled bags shall not be required unless the tubes do not conform to construction provisions of this subsection. When required, such bags shall be laid against the firing side of the mortars. The upper surface of the bags shall be level with the mortar tube muzzles. Such bags shall also be placed similarly at both ends of each line of mortars.]~~

~~[(e) Special setting of mortars. On locations where it is impossible to bury mortars in suitable clean earth or where the authority having jurisdiction and the licensed pyrotechnic operator in charge agree that public safety will be increased, mortars may be set for firing in approved sand or dirt filled steel drums or troughs and shall comply with the following.]~~

~~{(1) The depth of the drum or trough shall permit burial in sand of each mortar to within 50% of the length of the mortar.}~~

~~{(2) The containers shall be set and the mortars secured at the angle determined as safe for firing. Batteries may consist of as many approved units as required for the display, but each unit shall be set, braced, and secured, as determined by the wind direction and velocity predicted for the firing time.}~~

~~{(3) Finale batteries shall be set, braced, and secured as determined by the wind direction and velocity predicted for the firing time.}~~

~~{(f) Ready boxes.}~~

~~{(1) Before any firing begins, the entire complement of shells for any licensed or permitted public display shall be brought to the firing site and stored in ready boxes at a point not less than 25 feet distant upwind (with relation to the firing time) from the nearest mortar. These ready boxes shall be constructed and may be of wood, rubber, steel, or fiberboard cartons.}~~

~~{(2) A flame retardant tarp or a wood, rubber, or steel cover shall protect all ready boxes from the time they are placed in position until they are emptied, except that the cover may be lifted when shells are taken from or returned to the boxes.}~~

~~{(3) The use of compartmentation to avoid the mixing of shell sizes is recommended in large displays. Individual boxes should be used for each different shell size.}~~

~~{(g) Loading mortars.}~~

~~{(1) Mortars shall be cleared of paper or other burning material after being fired, if necessary. No shell hang firing shall be cleared from mortars for at least 30 minutes after being lighted.}~~

~~{(2) Finale batteries shall not be reloaded with finale chains, but may be reloaded with individual shells.}~~

~~(d) {(h) Firing mortars.}~~

~~{(1)} All firing shall be done upon order or signal of the licensed pyrotechnic operator directing the public display. [No safety cap shall be removed from any shell match until immediately before the mortar is fired. Used igniters shall not be discarded in the area between the mortars and the ready boxes.}~~

~~{(2) Electric firing, if utilized, shall comply with the following requirements.}~~

~~{(A) Connecting any electric firing circuit to any power supply, whether battery or other, is prohibited until all special effects fireworks, pyrotechnics, and explosives in the sequence are connected to firing leads and are cleared for actual firing. Circuitry may be tested with a galvanometer equipped with a silver chloride battery.}~~

~~{(B) Power sources for firing fireworks and pyrotechnics shall be restricted to batteries or individually isolated, ungrounded generators used for firing purposes only. Commercial or house power circuits may be used for this purpose in conjunction with an appropriate transformer.}~~

~~{(C) Short circuiting shunts shall be maintained on all electrically fired pyrotechnic items during preparatory operations including loading, setting, and adjustment.}~~

~~{(D) Firing boxes shall be designed to prevent firing unless the switch is manually operated.}~~

~~{(E) Each explosive charge set in or on water, either salt or fresh, shall be fired by an individual two wire circuit.}~~

~~(e) {(i) Public display safety precautions.}~~

~~(1) A display must be conducted in accordance with all local regulations and conditions prescribed by the fire prevention officer at the time of the site inspection.~~

~~(2) During the display, at least one approved Class A type 2 1/2 gallon fire extinguisher or charged garden hose connected to a water line or equivalent means of fire protection shall be provided.~~

~~{(3) Fireworks articles or items shall not be permitted to cross over or burst directly above the spectator area during such display and it shall be in full view of the pyrotechnic operator at the time of the burst.}~~

~~{(4) Vehicular traffic control shall be provided in all cases where the authority having jurisdiction determines that there is a potential hazard to motor vehicles and people traveling on public highways or roadways.}~~

~~(f) {(j) Proximate audience display criteria. Public displays before a proximate audience shall be conducted in accordance with the provisions of the National Fire Protection Association (NFPA) 1126, Standards for the Use of Pyrotechnics Before a Proximate Audience, 1996 Edition. Public displays conducted in accordance with this section shall include pyrotechnic devices, including 1.3G, 1.4G, and 1.4S, as defined in NFPA 1126, and individuals conducting such displays shall be regulated by the provisions of this subchapter as pyrotechnic operators.~~

~~(g) {(k) Testing. Testing of fireworks and components of fireworks intended for public displays shall be performed in an area set aside for that purpose and located a safe distance from any plant building or other structure. Such testing shall be conducted under the supervision of a licensed pyrotechnic operator, and no public display permit is required.~~

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 December 7, 1998.

TRD-9818186

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 463-6327

◆ ◆ ◆  
**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part I. Texas Department of Public Safety**

**Chapter 3. Traffic Law Enforcement**

**Subchapter B. Enforcement Action**

**37 TAC §3.22, §3.24**

The Texas Department of Public Safety proposes amendments to §3.22 and §3.24, concerning Enforcement Action. Section 3.22(b)(2) is amended to indicate the instances in which written warnings will not be issued. Amendment to §3.24(b)(2) adds the word "speed" after "reduced" for clarification.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Haas 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 clarification of department policy. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.006(4), which authorizes the director to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4), is affected by this proposal.

§3.22. *Written Warning.*

(a) (No change.)

(b) Use of written warning.

(1) (No change.)

(2) Written warnings will not be issued under any circumstances for:

(A) (No change.)

(B) public intoxication[~~driving under influence of drugs~~];

(C) occupant restraint violations[~~drunk pedestrian~~];

(D) - (E) (No change.)

(F) any violation which contributes to a traffic crash[~~an accident~~].

§3.24. *Speed Law Enforcement.*

(a) (No change.)

(b) Interpretation of Texas Transportation Code, §545.363(a).

(1) (No change.)

(2) The exception "except when reduced speed is necessary ....in compliance with law" will be interpreted to exempt at all times a driver of a vehicle or combination of vehicles who is driving at or near the maximum legal limit for that vehicle or combination of vehicles.

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 December 1, 1998.

TRD-9818054

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-2890



## Subchapter D. Traffic Supervision

### 37 TAC §3.59, §3.62

The Texas Department of Public Safety proposes amendments to §3.59, "Regulations Governing Transportation of Hazardous Materials" and §3.62, "Regulations Governing Transportation Safety." The amendments are necessary to implement changes resulting from revisions, additions, and interpretations to the Federal Hazardous Materials Regulations and the Federal Motor Carrier Safety Regulations. Additional amendments are provided to clarify the department's requirements for municipal certification of police officers to enforce the safety regulations and the procedures for administering the Compliance Audit Review Program.

Section 3.59 is amended to include the hazardous materials reporting requirements in Title 49, Code of Federal Regulations, §171.15 and §171.16. The department previously did not adopt these reporting requirements due to similar requirements contained in §3.102 and authorized by Texas Government Code, §411.018. The adoption of the federal reporting requirements would eliminate the need for motor carriers transporting hazardous materials to comply with two different incident or spill reporting requirements.

Section 3.59 is also amended to provide a date for which all non-specification cargo tanks presently authorized to transport hazardous materials will no longer be permitted. Under the current hazardous materials regulations, non-specification cargo tanks operated in intrastate commerce may continue to be used until July 1, 2000. On or after this date, the use of non-specification cargo tanks is prohibited.

§3.62 is amended to eliminate the requirement for drivers transporting agricultural commodities within a 150 air mile radius of the source of the commodities to maintain a record of duty status. This amendment is based upon an interpretation issued by the United States Department of Transportation which concluded that drivers eligible for the agricultural exemption were exempt from all of the requirements in Part 395 (Hours of Service of Drivers) of the Federal Motor Carrier Safety Regulations.

A second amendment is needed to clarify the requirements for contract carriers of railroad employees due to the elimination of certain requirements in Title 49, Code of Federal Regulations, §391.11, concerning the general qualification of drivers. The amendment changes the reference citation to continue to exclude these drivers from the medical requirements in Subpart E. The amendment also removes the reference to Subpart H that has been deleted from the Federal Motor Carrier Safety Regulations.

A third amendment is provided to clarify the validity period for vision waivers provided by the department in accordance with Title 49, Code of Federal Regulations, §391.49(h).

A fourth amendment is provided to specify the standard that will be used by the department and municipal police officers to declare a vehicle or driver out-of-service for serious violations of the hazardous materials and motor carrier safety regulations. Chapter 644 authorizes an officer of the department and municipal police officers trained and certified to enforce the safety standards to "prohibit the further operation of the vehicle on a highway if the vehicle or operator of the vehicle is in violation of a federal safety regulation or a rule adopted under this article."

Language is being added to the rules to specify that the department and municipal police officers will utilize the North American Standard Uniform Out-of-Service Criteria as the guideline to determine whether or not a driver or vehicle should be prohibited from operating further on the highways of this state. The "Criteria," as developed by the Commercial Vehicle Safety Alliance (CVSA), is strictly a guideline document that is accepted nationally by all law enforcement and regulatory agencies that enforce the federal safety standards. CVSA is a national organization that consists of representatives from the United States, Canada, and Mexico that includes law enforcement and regulatory agencies from the state and federal levels of government as well as the transportation industry.

The department is also including certification requirements for municipalities that will ensure the maximization of the resources of all agencies enforcing the federal safety standards, minimizing duplication of efforts, and maintaining uniformity in the program. The department is also establishing guidelines for the police officers to maintain their certification.

Amendments are also being made to the criteria for conducting compliance reviews that are based upon written complaints and follow-up investigations and to the amount of the administrative penalties that may be assessed for violations of the federal safety standards. The increases in the maximum penalties are provided by the amendments to the Federal Motor Carrier Safety Regulations.

Tom Hass, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there should be no fiscal implications for state and local government as a result of enforcing or administering the rules.

Chief Haas 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 to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in the state. There will be an impact on small and large businesses due to the requirement to replace non-specification cargo tanks to comply with the Hazardous Materials Regulations. The cost of compliance for small businesses is the same as the cost of compliance for large businesses. The department believes that there are several thousand non-specification cargo tanks being used in the state that will be impacted by the new requirements. These tanks are primarily the nurse tanks used by farmers and farm cooperatives to transport anhydrous ammonia and by construction companies transporting gasoline for their machinery. The cost of the cargo tank without the chassis is estimated to range between \$1,500 and \$2,000. The cost of a complete unit is estimated to be \$5,000.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Civil Statutes, Article 6675d, Texas Transportation Code, Chapter 644, and Texas Government Code, §411.006(4) and §411.018, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorize the director to adopt rules regulating the safe operation of commercial motor vehicles.

This proposal affects Texas Civil Statutes, Article 6675d, Texas Transportation Code, Chapter 644, and Texas Government Code, §411.006(4) and §411.018.

§3.59. *Regulations Governing Transportation of Hazardous Materials.*

(a) (No change.)

(b) Explanations and Exceptions.

(1) (No change.)

(2) Except as provided in paragraph (5) of this subsection concerning the reporting of hazardous materials incidents, [The] the federal hazardous materials regulations, adopted herein, will apply to vehicles transporting hazardous materials as a cargo or part of a cargo when operated upon the streets and highways of this state.

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

(5) The reporting of hazardous material incidents as required by Title 49, Code of Federal Regulations, §171.15 and §171.16 for shipments of hazardous materials by highway or rail is adopted by the department. Notices of the hazardous material incidents must be provided to the department's Motor Carrier Bureau, by telephone at (512) 424-2051 or fax at (512) 424-5712 and in writing to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521 [federal regulations has not been adopted, and, therefore, is not required by the Texas Department of Public Safety; however, reporting requirements required by Texas Transportation Code will be applicable].

(6) (No change.)

(7) The use of non-specification cargo tanks by intrastate motor carriers as provided by paragraphs (4) and (6) of this subsection will remain in effect until June 30, 2000.

(8) [(7)] Regulations and exceptions adopted herein are applicable to intrastate drivers and vehicles. All regulations contained in Title 49, Code of Federal Regulations, Parts 382, 385, 386, 390-393 and 395-397 and all amendments thereto pertaining to interstate drivers and vehicles are adopted.

(9) [(8)] Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

(10) [(9)] Penalties assessed for violations of the regulations adopted herein will be based upon the provisions of Texas Transportation Code §644, and §3.62 of this title (relating to Regulations Governing Transportation Safety).

§3.62. *Regulations Governing Transportation Safety.*

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

(d) Exemptions. Exemptions to the adoption in subsection (a) of this section were made pursuant to Texas Transportation Code §644.052, Texas Civil Statutes, Article 6675d, §5 (as authorized by Senate Bill 370 and House Bill 1418), and §5 (as authorized by Senate Bill 1486), and §3A and are adopted as follows:

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

(5) The provisions of Title 49, Code of Federal Regulations, §395.3 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons. [Drivers claiming this exemption must comply with the provisions



of Title 49, Code of Federal Regulations §395.8, Driver's Record of Duty Status.]

(6) (No change.)

(7) Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except 391.11(b)(4) [(6)] and Subpart [subparts] E [and H], Parts 393, 395, and 396, except §396.17.

(e) (No change.)

(f) Vision Waiver. Under this section the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under Title 49, Code of Federal Regulations, Part 391.41(b)(10) provided that intrastate drivers meet the vision standards specified in § 16.9 of this title (relating to Qualifications to Drive in Intrastate Commerce).

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

(3) Waivers granted under this paragraph are valid for a period not to exceed two years [expire two years] after the date of the medical examiner's physical examination of the vision waiver applicant.

(4)-(5) (No change.)

(g) Authority to Enforce.

(1) (No change.)

(2) An officer of the department may prohibit the further operation of a vehicle on a highway or at a port of entry if the vehicle or operator of the vehicle is in violation of a federal safety regulation or rule adopted under Texas Transportation Code, §644, and Texas Civil Statutes, Article 6675d, by declaring the vehicle or operator out-of-service using the North American Standard Uniform Out-of-Service Criteria as a guideline.

(3) [(2)] Police officers from any of the following Texas cities meeting the training and certification requirements contained in subsection (h) of this section and certified by the department may enter or detain on a highway or at a port of entry within the municipality a motor vehicle subject to Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d:

(A) a municipality with a population of 100,000 or more;

(B) a municipality with a population of 25,000 or more, any part of which is located in a county with a population of 2.4 million or more; or,

(C) a municipality any part of which is located in a county bordering the United Mexican States.

(4) A certified police officer from an authorized municipality may prohibit the further operation of a vehicle on a highway or at a port of entry within the municipality if the vehicle or operator of the vehicle is in violation of a federal safety regulation or rule adopted under Texas Transportation Code, §644, and Texas Civil Statutes, Article 6675d, by declaring the vehicle or operator out-of-service using the North American Standard Uniform Out-of-Service Criteria as a guideline.

(h) Municipal Certification Requirements.

(1) Police officers from an authorized municipality may be trained and certified to enforce the federal safety regulations provided the municipality:

(A) executes a Memorandum of Understanding with the department concerning the working policies and procedures of the inspection program whereby the resources of all agencies will be maximized, duplication of efforts will be minimized, and uniformity in the inspection program will be maintained;

(B) implements a program that ensures their officers are conducting the inspections following the guidelines approved by the department;

(C) implements a program that ensures their officers perform the required number of inspections annually to maintain the officers' certification;

(D) agrees to suspend immediately any officer that fails to maintain their certification or that fails to perform the inspections following the guidelines approved by the department;

(E) provides a list to the department by January 31st of each year of the officers that have been suspended and are no longer certified;

(F) provides all roadside inspection data to the department through electronic systems that are compatible with the department's system within 30 days of the inspection.

(2) Failure to comply with the provisions of the Memorandum of Understanding or the training, officer certification, or data-sharing requirements by the municipality may constitute grounds to decertify the municipality's authority to enforce the federal safety regulations.

(i) [(h)] Training and Certification Requirements.

(1) Minimum standards. Police officers from the municipalities specified in subsection (g) of this title and certified to enforce this article must meet the following standards:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 30 level one inspections. [; and]

[(C) successfully complete an annual recertification examination.]

(2) Hazardous materials. Police officers desiring to enforce the Hazardous Materials Regulations must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections. [; and]

[(D) successfully complete an annual recertification examination.]

(3) Cargo Tank Specification. Police officers desiring to enforce the Cargo Tank Specification requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Basic Hazardous Materials Course;

(C) successfully complete a Cargo Tank Inspection Course:

(D) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 16 level one inspections. ~~and~~

~~[(E) successfully complete an annual recertification examination.]~~

(4) Motor Coach. Police officers desiring to enforce motor coach requirements must:

(A) successfully complete the North American Standard Roadside Inspection Course;

(B) successfully complete a Motor Coach Inspection Course;

(C) participate in an on-the-job training program following each course with a certified officer and perform a minimum of 24 level one inspections. ~~and~~

~~[(D) successfully complete an annual recertification examination.]~~

(5) Training provided by the department. When the training is provided by the Texas Department of Public Safety, the department shall collect fees in an amount sufficient to recover from municipalities the cost of certifying its peace officers. The fees shall include:

(A) the per diem costs of the instructors established in accordance with the Appropriations Act regarding in-state travel;

(B) the travel costs of the instructors to and from the training site;

(C) all course fees charged to the department;

(D) all costs of supplies; and

(E) the cost of the training facility, if applicable.

(6) Training provided by other training entities. A public or private entity desiring to train police officers in the enforcement of the Federal Motor Carrier Safety Regulations must:

(A) submit a schedule of the courses to be instructed;

(B) submit an outline of the subject matter in each course;

(C) submit a list of the instructors and their qualifications to be used in the training course;

(D) submit a copy of the examination;

(E) submit an estimate of the cost of the course;

(F) receive approval from the director prior to providing the training course;

(G) provide a list of all police officers attending the training course, including the police officer's name, rank, agency, social security number, dates of the course, and the examination score; and

(H) receive from each police officer or municipality the cost of providing the training course(s).

(j) Maintaining Certification.

(1) To maintain certification to conduct inspections and enforce the federal safety regulations, a municipal officer must:

(A) Perform a minimum of 32 Level I or Level V inspections per calendar year.

(B) If the officer is certified to perform hazardous materials inspections, at least eight inspections (Levels I or II) shall be conducted on vehicles containing non-bulk quantities of hazardous materials.

(C) If the officer is certified to perform cargo tank/bulk packaging inspections, at least eight inspections (Levels I or II) shall be conducted on vehicles transporting hazardous materials in cargo tanks.

(D) If the officer is certified to perform motorcoach/bus inspections, at least eight of the inspections shall be conducted on motorcoaches/buses.

(2) To maintain certification, an officer must attend minimum refresher training approved by the department once each year.

(3) In the event an officer does not perform the minimum number of inspections within a calendar year, his or her certification shall be suspended.

(4) To be recertified, an officer shall pass the applicable examinations which may include the North American Standard Inspection, the General Hazardous Materials Inspection Course, the Cargo Tank/Bulk Packaging Inspection Course, and/or the Motorcoach/Bus Inspection Course and repeat the specified number of inspections with a certified officer.

(5) any officer failing any examination, or failing to successfully demonstrate proficiency in conducting inspections after allowing any certification to lapse will be required to repeat the entire training process as outlined in subsection (i) of this section.

(k) ~~(j)~~ Safety Audit Program. The rules in this subsection, as authorized by Texas Transportation Code §644.155, establish procedures to determine the safety fitness of motor carriers, assign safety ratings, take remedial actions when necessary, assess administrative penalties when required, and prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a commercial motor vehicle. The department will use the Compliance Review Audit to determine the safety fitness of motor carriers and to assign safety ratings. The safety fitness determination will be assessed on intrastate motor carriers and the intrastate operations of interstate motor carriers based in Texas.

(1) Definitions specific to the Safety Audit Program are as follows:

(A) Compliance Review means an on-site examination of motor carrier operations to determine whether a motor carrier meets the safety fitness standard.

(B) Culpability means an evaluation of the blame worthiness of the violator's conduct or actions.

(C) Imminent Hazard means any condition of vehicle, employees, or commercial vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

(D) Satisfactory Safety Rating means that a motor carrier has in place and functioning adequate safety management controls to meet the safety fitness standard prescribed in Title 49, Code of Federal Regulation, Part 385.5. Safety management controls are adequate if they are appropriate for the size and type of operation of the particular motor carrier.

(E) Conditional Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure

compliance with the safety fitness standard that could result in the occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k).

(F) Unsatisfactory Safety Rating means a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard which has resulted in occurrences listed in Title 49, Code of Federal Regulations, Part 385.5(a) through (k)(h).

(2) Inspection of Premises.

(A) Authority to Inspect. An officer or employee of the department who has been certified by the director may enter a motor carrier's premises to inspect lands, buildings, and equipment and copy or verify the correctness of any records, reports or other documents required to be kept or made pursuant to the regulations adopted by the director in accordance with Texas Transportation Code §644.155.

(B) Entry of Premises. The officer or employee of the department may conduct the inspection:

- (i) at a reasonable time;
- (ii) on stating the purpose of the inspection; and
- (iii) by presenting to the motor carrier;

(I) appropriate credentials; and

(II) a written statement from the department to the motor carrier indicating the officer's or employee's authority to inspect.

(C) Civil and Criminal Penalties for Refusal to Allow Inspection.

(i) A person who does not permit an inspection authorized under Texas Transportation Code §644.104, is liable to the state for a civil penalty not to exceed \$1,000. The director may request that the attorney general sue to collect the penalty in the county in which the violation is alleged to have occurred or in Travis County.

(ii) The civil penalty is in addition to the criminal penalty provided by Texas Transportation Code §644.151.

(iii) Each day a person refuses to permit an inspection constitutes a separate violation for purposes of imposing a penalty.

(3) Compliance Review Audits. A Compliance Review will be conducted based upon the following criteria:

(A) unsatisfactory safety assessment factor evaluations;

(B) written complaints concerning unsafe operation of commercial motor vehicles [alleging violations of the Federal Safety Regulations] which are substantiated by valid documentation. Complaints for the purpose of this criterion include involvement in a fatality accident;

(C) follow-up investigations of motor carriers that have been the subject of an enforcement action, an administrative penalty, or the assessment of an Unsatisfactory Safety Rating from the immediately previous Compliance Review [assessed an unsatisfactory safety rating];

(D) requests from the Legislature and state or federal agencies; and,

(E) request for a safety rating determination.

(4) Safety Fitness Rating.

(A) A safety fitness rating is based on the degree of compliance with the safety fitness standard for motor carriers.

(B) A safety rating will be determined following a compliance review using the factors prescribed in Title 49, Code of Federal Regulations, Part 385.7. The following safety ratings will be assigned:

- (i) Satisfactory Safety Rating;
- (ii) Conditional Safety Rating;
- (iii) Unsatisfactory Safety Rating.

(C) The provisions of Title 49, Code of Federal Regulations, Part 385.13 relating to "Unsatisfactory safety rating - Prohibition on transportation of hazardous materials and passengers" is hereby adopted by the department and is applicable to intrastate motor carriers.

(D) The department will provide written notification to the motor carrier of the assigned safety rating within 15 days of the completion of the compliance review.

(i) Notification of a "conditional" or "unsatisfactory" rating will include a list of those items for which immediate corrective action must be taken.

(ii) A notification of an "unsatisfactory" safety rating will also include a notice that the motor carrier will be subject to the provisions of Title 49, Code of Federal Regulations, Part 385.13 which prohibit motor carriers rated "unsatisfactory" from operating a commercial motor vehicle to transport:

(I) hazardous materials requiring placarding under Part 172, Subpart F, of Title 49, Code of Federal Regulations; or

(II) more than 15 passengers, including the driver.

(E) In addition to any criminal penalties provided by statute, a motor carrier assessed an unsatisfactory safety rating who continues to operate in violation of the notifications to cease operations under Title 49, Code of Federal Regulations, Part 385.13 will be subject to a civil suit filed by the Attorney General from a request from the director of the Texas Department of Public Safety. Each day of operation constitutes a separate violation.

(F) Request for a change in a safety rating. A request for a change in a safety rating must be submitted to the Manager of the Motor Carrier Bureau within the time schedule provided in Parts 385.15 and 385.17 of Title 49, Code of Federal Regulations.

(G) The safety rating assigned to a motor carrier will be made available to the public upon request.

(H) ~~[(i) Written requests]~~ Requests should be addressed to the Texas Department of Public Safety, Motor Carrier Bureau, Box 4087, Austin, Texas 78773-0521[0004]. All requests for disclosure of safety rating must be made in writing and will be processed under the Texas Public Information Act.

~~[(ii) Oral requests by telephone will be given an oral response.]~~

~~(I) [(j)] Administrative Penalties.~~

(1) The compliance review may result in the initiation of an enforcement action based upon the number and degree of

seriousness of the violations discovered during the review as well as those factors listed in Title 49, Code of Federal Regulations, Part 385.7. As a result of the enforcement action, the department may impose an administrative penalty against a motor carrier who violates a provision of Texas Civil Statutes, Article 6675d or a provision of the Texas Transportation Code Title 7, Subtitle B, Chapter 522 (relating to Commercial Driver's License), [and] Subtitle C, Chapters 541 - 600 (relating to the Rules of the Road), and Subtitle F, Chapter 644 (relating to Commercial Motor Vehicles), including any amendments not codified in the Texas Transportation Code. Each of these provisions relates to the safe operation of a commercial motor vehicle under Texas Transportation Code §644.153(b).

(2) The department shall have discretion in determining the appropriate amount of the administrative penalty assessed for each violation. A penalty under this section may not exceed the maximum penalty provided for violations of a similar federal safety regulation as provided under 49 United States Code, §521(b), §5123, and Title 49, Code of Federal Regulations, Parts 386.81, 386.82, and Appendix A to Part 386.

(A) Record keeping violations. These are violations of the administrative requirements of the Federal Safety Regulations. A penalty shall not exceed ~~\$550~~[\$500] for each violation. Each day of a violation shall constitute a separate violation, except that the total of all administrative penalties assessed against any violator for all violations relating to any single violation shall not exceed ~~\$2,750~~[\$2,500].

(B) Serious pattern of safety violations. These violations are considered the middle range of violations between those of record keeping noncompliance and a willful case of negligence. These violations are not an isolated event but rather a tolerated pattern of noncompliance. An administrative penalty may be assessed in an amount not to exceed ~~\$1,100~~ [\$1,000] for each violation; except that the maximum penalty for each such pattern of safety violations shall not exceed ~~\$11,000~~ [\$10,000].

(C) Substantial health or safety violations. These are violations which could reasonably lead to or have resulted in serious personal injury or death. An administrative penalty may be assessed in an amount not to exceed ~~\$11,000~~[\$10,000] for each violation.

(D) Employee non-record keeping violations. These are acts committed by a driver of a non-record keeping nature that are considered to be of gross negligence or a reckless disregard for safety. The employee may be assessed an administrative penalty in an amount not to exceed ~~\$11,000~~ [\$ 1,000].

(E) Hazardous materials violations. A person that knowingly violates a hazardous material regulation is liable for an administrative penalty of at least \$250 but not more than \$27,500 for each violation. A person acts knowingly when the person has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstance and exercising reasonable care would have that knowledge. A separate violation occurs for each day the violation, committed by a person that transports or causes to be transported hazardous material, continues.

(3) The amount of the administrative penalty shall be determined by taking into account the following factors:

- (A) nature of the violation;
- (B) circumstances of the violation;
- (C) extent of the violation;
- (D) gravity of the violation;

- (E) degree of culpability;
- (F) history of prior offenses;
- (G) any hazard to the health or safety of the public caused by the violation or violations;
- (H) the economic benefit gained by the violation(s);
- (I) ability to pay;
- (J) the amount necessary to deter future violations;
- (K) effect on ability to continue to do business;
- (L) economic harm to property or the environment caused by the violation;
- (M) efforts to correct the violation; and
- (N) such other matters as justice and public safety may require.

(m) [~~(k)~~] Notification.

(1) The department will notify a motor carrier of an enforcement action by the issuance of a claim letter. The notification will consist of the requirements of Title 49, Code of Federal Regulations, Part 386.11.

(2) The notification may be submitted to the motor carrier's principal place of business by certified mail, first class mail, or personal delivery. A notification sent by mail shall be presumed to have been received by the motor carrier five days after the date of the mailing.

(3) The motor carrier must reply within 20 days of receipt of a claim letter. The reply must contain:

(A) an admission or denial of each allegation of the claim and a concise statement of facts constituting each defense;

(B) a statement of whether the motor carrier requests an administrative hearing concerning the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty;

(C) a statement of whether the motor carrier requests an informal hearing under subsection (1) of this section;

(D) a statement of whether the motor carrier accepts the determination and recommended penalty;

(E) a statement of whether the motor carrier wishes to negotiate the terms of payment or settlement of the amount of the penalty, or the terms and conditions of the order; and

(F) a certification that the reply has been served in accordance with Title 49, Code of Federal Regulations, Part 386.31.

(n) [~~(h)~~] Informal hearing.

(1) Request. If requested, the department will hold an informal hearing to discuss a penalty recommended under this section. Such hearing will be scheduled and conducted by the manager of the Motor Carrier Bureau or the director's designee.

(2) Procedure. An informal hearing shall not be subject to rules of evidence and civil procedure except to the extent necessary for the orderly conduct of the hearing. The department will summarize the nature of the violation and the penalty, and discuss the factual basis for such. The motor carrier will be afforded an opportunity to respond to the allegations verbally and/or in writing.

(3) Resolution. In the event matters are resolved in the motor carrier's favor, the manager or the director's designee will send the carrier written notification that the proposed penalty is withdrawn.

(4) Modified penalty. If matters are resolved resulting in a modified penalty, the manager or the director's designee may prepare a settlement agreement as provided by subsection ~~(p)~~ of this section.

(5) Failure to resolve. If matters are not resolved in the informal hearing, the department will initiate a formal enforcement action as provided by subsection ~~(o)~~ of this section.

~~(o)~~ Formal Enforcement Action.

(1) If the motor carrier requests an administrative hearing, fails to respond in a timely manner to the claim letter as identified in subsection ~~(m)~~ of this section, or does not negotiate a settlement, the department may initiate a formal enforcement action as a contested case. The department will provide written notice of such action to the motor carrier.

(2) A contested case under this subsection will be governed by Texas Government Code, Chapter 2001, subchapters C and D, and Chapter 29 of this title (relating to General Rules of Practice and Procedure), and not by Title 49, Code of Federal Regulations, Part 386, Subparts D and E.

~~(p)~~ Collection and Settlement.

(1) If the motor carrier does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director may refer the matter to the attorney general for collection of the amount of the penalty.

(2) At any time prior to the date on which a final order is issued by the director, the department and the motor carrier may agree to enter into a compromise settlement agreement. The compromise settlement agreement shall be signed by the motor carrier and the director, or the director's designee and will reflect that the motor carrier consents to the assessment of a specific administrative penalty or other action by the department against the motor carrier.

(3) Simultaneously with the filing of a compromise settlement agreement, the motor carrier shall remit a cashier's check or money order to the Texas Department of Public Safety.

~~(q)~~ Installment Payment of Administrative Penalty.

(1) A person(s), firm, or business may, upon approval of the director or the director's designee, be allowed to make installment payments of an administrative penalty, costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state upon submission of adequate proof of inability to pay. An application shall be submitted on a form approved by the department.

(2) The person(s), firm, or business requesting the installment agreement must submit adequate documentation to support the request and make all relevant financial records of the person(s), firm, or business available to the department for inspection and verification.

(3) In the event of a default of the installment agreement by the person(s), firm, or business, then the remaining balance of the installment agreement will be due immediately.

~~(r)~~ Suspension and revocation by the Texas Department of Transportation.

(1) The director will determine whether the department will request the Texas Department of Transportation to suspend or

revoke a registration issued by the Texas Department of Transportation based upon the department's compliance review.

(2) This determination may be based upon the following:

(A) an unsatisfactory safety rating under Title 49, Code of Federal Regulations, Part 385;

(B) multiple violations of Texas Transportation Code §644 and Texas Civil Statutes, Article 6675d;

(C) multiple violations of one of these rules; and/or,

(D) multiple violations of the Uniform Traffic Act or Transportation Code.

(3) Once the determination has been made the director will forward a letter to the executive director of the Texas Department of Transportation requesting said department initiate a suspension/revocation proceeding against the motor carrier.

(4) Any suspension/revocation action initiated by the Texas Department of Transportation, pursuant to this section, shall be administered in the manner specified by the rules of the Texas Department of Transportation.

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 December 1, 1998.

TRD-9818055

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-2890

◆ ◆ ◆  
**37 TAC §3.63**

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

The Texas Department of Public Safety proposes the repeal of §3.63, concerning Route Designations for Non-Radioactive Hazardous Materials on Texas Highways. The section is proposed for repeal due to transfer of the responsibility as the state routing agency for non-radioactive hazardous materials having been transferred to the Texas Department of Transportation.

Tom Haas, Chief of Finance, has determined that for the first five years 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. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to make the public aware that the Department of Public Safety is no longer the state routing agency for non-radioactive hazardous materials. That responsibility has been transferred to the Texas Department of Transportation. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the repeal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Civil Statutes, Article 6675d, Texas Transportation Code, Chapter 522, and Texas Government Code, §411.006(4), which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and which authorize the director to adopt rules regulating the safe operation of commercial motor vehicles.

Texas Civil Statutes, Article 6675d, Texas Transportation Code, Chapter 522, and Texas Government Code, §411.006(4), are affected by this repeal.

§3.63. *Route Designations for Non-Radioactive Hazardous Materials on Texas Highways.*

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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Director

Texas Department of Public Safety

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## Subchapter E. Requirements for Displaying Vehicle Inspection Certificate

### 37 TAC §3.71, §3.75

*(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 Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Public Safety proposes the repeal of §3.71 and §3.75, concerning Requirements for Displaying Vehicle Inspection Certificate. Section 3.71 is proposed for repeal with simultaneous proposal of new §3.71 which reflects the statutory provisions regarding certain registered vehicles and the exception of those vehicles from the requirements of undergoing a vehicle inspection and displaying a valid inspection certificate. Section 3.75 is proposed for repeal due to having been consolidated with new §3.71.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications as a result of enforcing or administering the repeals.

Mr. Haas also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated will be additional flexibility and convenience in obtaining an inspection and clearer interpretation and understanding of the exemptions associated with the vehicle inspection program. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the repeal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeals are proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4) is affected by this repeal.

§3.71. *Antique and Parade Registered Vehicles.*

§3.75. *Vehicles Displaying One-Trip Permits.*

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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Director

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### 37 TAC §3.71

The Texas Department of Public Safety proposes new §3.71, concerning vehicles exempt from the vehicle inspection program. The justification for this section is to reflect the statutory provisions regarding certain registered vehicles and the exemption of those vehicles from the requirements of undergoing a vehicle inspection and displaying a valid inspection certificate.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing or administering the rule will be additional flexibility and convenience in obtaining an inspection and clearer interpretation and understanding of the exemptions associated with the vehicle inspection program. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new section is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4) is affected by this proposal.

§3.71. *Certain Registered Vehicles Exempt from Inspection.*

A vehicle displaying an all-terrain validation sticker, antique license, antique validation sticker, disaster relief license, farm trailer license, former military vehicle license, in-transit license, machinery license, parade license, permit license, rental trailer license, or a trailer or travel trailer license plate if the actual gross weight or registered

gross weight is 4,500 pounds or less, is not required to display a valid inspection certificate. Additionally, a vehicle displaying a factory delivery permit, a one-trip permit, or a 144-hour or 72-hour permit when issued for mobile drilling and servicing equipment used in gas, oil, or crude production, is not required to display a valid inspection certificate. A vehicle displaying a dealer issued charitable organization tag or demonstration/in-transit tag also is not required to display a valid inspection certificate.

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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Dudley M. Thomas  
Director

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For further information, please call: (512) 424-2890



## Subchapter G. Hazardous Materials Incidents

### 37 TAC §3.102

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

The Texas Department of Public Safety proposes the repeal of §3.102, concerning Reporting of Releases of Hazardous Materials by Carriers. The repeal of §3.102 is deemed necessary to simplify the reporting requirements for motor carriers and railroad operators who must also comply with the provisions of Title 49, Code of Federal Regulations, §171.15 and §171.16. Texas Government Code, §411.018 authorizes the department to establish rules for the reporting of hazardous materials spills or incidents. The section also authorizes the department to adopt the Federal Hazardous Materials Regulations which have been adopted by reference in 37 TAC §3.59 (relating to Regulations Governing Transportation of Hazardous Materials). Since the Hazardous Materials Regulations contain reporting requirements which are applicable to both interstate and intrastate motor carriers, the department believes that the requirements of §3.102 are duplicative and therefore, not necessary.

Tom Haas, Chief of Finance, 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.

Mr. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the safe transportation of hazardous materials in Texas by motor carriers. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Government Code, §411.006(4) and §411.018, which provide the director of the Texas Department of Public Safety with the authority to establish

rules for the conduct of the work of the Texas Department of Public Safety, and which authorizes the director to adopt provisions of the hazardous materials regulations.

This repeal affects Texas Government Code, §411.006(4) and §411.018.

§3.102. *Reporting of Releases of Hazardous Materials by Carriers.*

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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Dudley M. Thomas  
Director

Texas Department of Public Safety

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## Chapter 5. Criminal Law Enforcement

### Subchapter A. Investigation

#### 37 TAC §§5.1-5.3

*(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Public Safety proposes the repeal of §§5.1 - 5.3, concerning Criminal Law Enforcement. The repeal and replacement of these sections with new §5.1 will update the rules to current practice standards, which will clarify the evidentiary burden before a criminal investigation is begun. New §5.1 is being proposed simultaneously with this repeal.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications as a result of enforcing or administering the repeals.

Mr. Haas also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the removal of unnecessary rules. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeals are proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval considered necessary for the control of the department.

The proposed repeals affect Texas Government Code, §411.006(4).

§5.1. *Conduct of Investigations.*

§5.2. *Expenditure of Investigative Funds.*

§5.3. *Security and Privacy.*

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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Dudley M. Thomas  
Director

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### 37 TAC §5.1

The Texas Department of Public Safety proposes new §5.1, concerning Conduct of a Criminal Investigation. The new section will more accurately reflect department policy regarding criminal investigations.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of department policy regarding criminal investigations. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The new section is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4) is affected by this proposal.

#### §5.1. Conduct of a Criminal Investigation.

(a) An officer or other member of the Criminal Law Enforcement Division may conduct a criminal investigation when adequate suspicion exists that a crime has been, is being, or is about to be committed. The investigation shall ascertain the facts:

(1) to determine the existence of :

(A) reasonable suspicion to support the temporary detention of a suspect for further investigation or identification;

(B) probable cause to support a search or arrest warrant; or

(C) probable cause to support the warrantless seizure of property or evidence or the warrantless arrest of a suspect who is committing or has committed a crime, or

(2) to take lawful action to prevent a crime from being committed.

(b) An officer or member who is conducting a criminal investigation shall be primarily concerned only with an investigation within the specialty field to which the officer or member has been assigned, except:

(1) in an emergency situation; or

(2) when instructed to participate in a special investigation by a supervisor.

(c) No officer or member may investigate a public official without the prior authorization of the director, the assistant director, or another individual expressly acting in the stead of the director.

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

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Dudley M. Thomas  
Director

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## Subchapter B. Stored or Impounded Vehicles

### 37 TAC §5.11

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

The Texas Department of Public Safety proposes the repeal of §5.11, concerning Expenditure Authorization. The section is proposed for repeal due to being mandated by department policy and therefore not necessary to duplicate by rule.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications as a result of enforcing or administering the repeal.

Mr. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing or administering the repeal will be the removal of unnecessary rules. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4) is affected by this repeal.

#### §5.11. Expenditure Authorization.

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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Dudley M. Thomas  
Director



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## Subchapter C. Criminal Law Enforcement Imprest Fund

### 37 TAC §5.21

*(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 Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Public Safety proposes the repeal of §5.21, concerning Expenditure of Imprest Funds. The section is proposed for repeal due to being mandated by department policy and therefore not necessary to duplicate by rule.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications as a result of enforcing or administering the repeal.

Mr. Haas also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing or administering the repeal will be the removal of unnecessary rules. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

Texas Government Code, §411.006(4) is affected by this repeal.

#### §5.21. Expenditure of Imprest Funds.

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

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Dudley M. Thomas  
Director

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## Chapter 7. Division of Emergency Management

### Subchapter A. Emergency Management Program Requirements

#### 37 TAC §7.2, §7.3

The Texas Department of Public Safety proposes amendments to §7.2 and §7.3, concerning Emergency Management Program

Requirements. Language is added and deleted in §7.2 and §7.3 to comport with applicable Governor's Executive Order, GWB95-1, relating to Emergency Management.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Haas 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 rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Government Code, §418.024 and §418.042.

Texas Government Code, §411.006(4), §418.024, and §418.042 are affected by this proposal.

#### §7.2. Responsibilities of the Chief Elected Official [Executives].

The mayor of each municipal corporation and the county judge of each county are designated as the emergency management director for their respective jurisdictions. The mayor and county judge may each designate an emergency management coordinator who shall serve as an assistant. [~~This authority, but not the responsibility, may be delegated by the chief executive to a subordinate emergency management coordinator who shall serve as the mayor's or judge's chief of staff.~~]

#### §7.3. Notification Required.

The presiding officer of each political subdivision of the state shall notify the Governor's Division of Emergency Management of the manner in which the political subdivision is providing or securing an emergency management program and the person designated to head that program [~~disaster planning and emergency services. Such notification shall provide sufficient detail to permit evaluation for adequacy of protective measures either planning or in being.~~].

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 December 4, 1998.

TRD-9818134  
Dudley M. Thomas  
Director

Texas Department of Public Safety  
Earliest possible date of adoption: January 17, 1999  
For further information, please call: (512) 424-2135



### Subchapter B. Emergency Management Planning Requirements

### 37 TAC §7.13

The Texas Department of Public Safety proposes an amendment to §7.13, concerning Emergency Management Planning and Preplanning Requirements. Language is amended to replace a reference to the Civil Disaster Act of 1950 which has been repealed, with a reference to the current applicable statute. The name of the subchapter has also been amended to more accurately reflect current policy.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rule is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing or administering the rule will be rules that more accurately reflect statute and policy. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Government Code, §418.024 and §418.042.

Texas Government Code, §411.006(4), §418.024, and §418.042 are affected by this proposal.

#### §7.13. Eligibility For Federal Incentive Programs Described.

The Governor's Division of Emergency Management [services] administers certain federal assistance programs authorized under the Robert T. Stafford Disaster Relief Act and the Disaster Relief and Emergency Assistance Act as amended [~~Federal Civil Defense Act of 1950, as amended~~]. To participate in these programs, a city or county must meet, as a minimum, the following basic eligibility requirements:

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

(4) Submit an approvable work plan [~~Program Paper~~] which outlines proposed emergency management activities for the current fiscal year.

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

Filed with the Office of the Secretary of State, on December 4, 1998.

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Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-2135



Subchapter C. Emergency Management Operations

### 37 TAC §§7.25, 7.27-7.29

The Texas Department of Public Safety proposes amendments to §§7.25 and 7.27-7.29, concerning Emergency Management Operations. Language in §7.25 is amended to comport with language of the current State of Texas State Plan as promulgated pursuant to Texas Government Code, §418.042. Section 7.27 is amended by deleting the language "order the public" and inserting in its place "recommend the public," in order to comport with the language of Texas Government Code, §418.018(a). The title of §7.28 is amended by substituting "evacuees" for "refugees." The amended language of the title corresponds to the language in the body of the rule. Section 7.29 is amended to replace the language "Texas Disaster Act," with the language, "Chapter 418 of the Texas Government Code, as amended." The Texas Disaster Act is codified as Texas Government Code, Chapter 418.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Haas 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 rules that more accurately reflect policy and procedures relating to emergency management. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Government Code, §418.024 and §418.042.

Texas Government Code, §411.006(4), §418.024, and §418.042 are affected by this proposal.

#### §7.25. Request from Chief Elected Official [Executive] Required.

Requests for assistance must be made by the chief elected official [~~executive~~] of the city or county or [~~in his name~~] by another official specifically authorized by them [~~him~~].

#### §7.27. Evacuation Recommended [~~Ordered~~].

The decision to recommend [~~order~~] the public to take shelter, evacuate, or relocate rests solely with the officials of the local government.

#### §7.28. Responsibility for Evacuees [~~Refugees~~] Assigned.

Evacuees entering an area for shelter or lodging become the responsibility of the hosting local government.

#### §7.29. Emergency Powers Referenced.

In times of declared disaster, local officials may utilize the emergency powers outlined in Texas Government Code, Chapter 418 [~~The Disaster Act of 1975~~], as amended, and local emergency management plans.

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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Dudley M. Thomas  
Director

Texas Department of Public Safety

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-2135

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**Subchapter D. Recovery and Rehabilitation Requirements**

**37 TAC §7.42**

The Texas Department of Public Safety proposes an amendment to §7.42, concerning Recovery and Rehabilitation Requirements. Language in §7.42 is amended to comport with relevant language in the State of Texas State Plan promulgated pursuant to Texas Government Code, §418.042. The section is also amended to add a requirement that any request for assistance or a request for a gubernatorial disaster declaration must include a local state of disaster.

Tom Haas, Chief of Finance, has determined that for each year of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Haas also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing or administering the rule will be rules that more accurately reflect policy and procedure relating to emergency management. There is no anticipated economic cost to persons who are required to comply with the section as proposed. There are no anticipated economic costs to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendment is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Government Code, §418.024 and §418.042.

Texas Government Code, §411.006(4), §418.024, and §418.042 are affected by this proposal.

*§7.42. Written Request Required.*

Requests for recovery assistance or a gubernatorial disaster declaration must be made in writing by the local chief elected official [executive] to the Governor of Texas. The request must include a local state of disaster.

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 December 4, 1998.

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Dudley M. Thomas  
Director

Texas Department of Public Safety

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For further information, please call: (512) 424-2135

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**37 TAC §7.45**

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

The Texas Department of Public Safety proposes the repeal of §7.45, concerning Assistance Available. The reason for the section no longer exists and, therefore, the section serves no purpose and can be repealed.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications to state or local government.

Mr. Haas also has determined that repeal of the rule would have no anticipated economic cost or benefit to the public. The repeal would have no fiscal impact on small or large businesses.

Comments on the repeal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The repeal is proposed pursuant to Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department and Texas Government Code, §418.024 and §418.042.

Texas Government Code, §411.006(4), §418.024, and §418.042 are affected by this repeal.

*§7.45. Assistance Available.*

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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Dudley M. Thomas  
Director

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For further information, please call: (512) 424-2135

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**Chapter 25. Safety Responsibility Regulations**

**37 TAC §§25.1-25.5, 25.13-25.15, 25.17, 25.18**

The Texas Department of Public Safety proposes amendments to §§25.1 - 25.5, 25.13 -25.15, 25.17, and 25.18, concerning Safety Responsibility Regulations. Amendments to these sections include the reformatting of subsections and paragraphs in order to add and delete language intended to clarify action the department may take regarding accidents, the filing of proof of financial responsibility, and the processing of compliance-related items under the Motor Vehicle Safety Responsibility Act.

Tom Haas, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Mr. Haas 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 to ensure that individuals are fully informed regarding the obligations of both the department and Texas motorists pursuant to the Motor Vehicle Safety Responsibility Act. There is no anticipated economic cost to individuals. There is no anticipated economic cost to small or large businesses.

Comments on the proposal may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890.

The amendments are proposed pursuant to Texas Transportation Code, Chapter 601, which provides that the department shall administer and enforce this chapter.

Texas Transportation Code, Chapter 601, is affected by this proposal.

§25.1. *Accident Reports for Safety Responsibility Determinations.*

(a) (No change.)

(b) Estimates of damages to vehicles or other property will be requested from the parties to an accident when there is doubt as to the amount of damage sustained. These documents are subject to release under the Texas Open Records Act.

(c) Doctor's reports will be requested from the parties to an accident when there is doubt as to the nature and extent of personal injuries sustained by the parties. These documents are subject to release under the Texas Open Records Act.

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

§25.2. *Closed Cases.*

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

~~[(e) No security deposit will be required when the record of the case or evidence of injury shows the injury is minor or inconsequential and does not require the services of an attending physician.]~~

§25.3. *Security.*

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

~~[(e) The department will not issue a suspension order in accident cases where the party in whose behalf security is deposited is over 51% at fault; suspension action is taken only in obvious cases.]~~

(c) ~~[(d)]~~ Action will be taken against the owner of a motor vehicle only when the injured or damaged party submits evidence acceptable to the department that raises a probability of a judgment for negligence~~[evidence raises a probability of a judgment for negligence].~~

(d) ~~[(e)]~~ When a motor vehicle involved in an accident is uninsured, no action will be taken on behalf of passengers against the operator of the vehicle in which the passengers were riding unless acceptable documentary evidence is received by the department.

(e) ~~[(f)]~~ The security deposit required under the Act shall be a deposit:

(1) in cash; or

(2) by certified or cashier's check or money order payable to the Texas Department of Public Safety; or

(3) by a surety bond written by an insurance company duly authorized to execute surety bonds in this state.

(f) ~~[(g)]~~ A joint deposit of security may be made when the owner and operator are separate persons and each one is required to deposit security. The owner or operator making the deposit shall

stipulate in writing that such deposit is on behalf of both persons required to deposit the security. The receipt of such joint deposit, stipulation, and deposit will be an acceptable showing of financial responsibility for both the operator and the owner. Only the person making the deposit will have shown financial responsibility when no joint deposit or stipulation is on file. The same rules apply when a surety bonding company stipulates coverage for both owner and operator.

(g) ~~[(h)]~~ Each depositor of security and each person for whom security is deposited are required to sign application form SR-14 or SR-14A to obtain a return of such security.

(h) Each depositor of security providing proof of insurance in the form of a SR-22 must also file form SR-22A. The SR-22A is acceptable as proof the SR-22 form has been issued for an insurance policy that has a period of at least six months and for which the premiums have been paid in full.

(i) Security deposited with the department as a result of an accident will be released to the injured or damaged party upon receipt of a notice of unsatisfied judgment and a SR-61 form. Security released will be in the amount of the judgment; however, if the amount of the security on file does not satisfy the judgment, the driving and operating privileges of the negligent party will be suspended under the judgment provisions of the law.

(j) An injured or damaged party who has obtained a judgment and requests the department to release a surety bond obtained as a result of an accident will be directed to the company issuing the bond. If funds under the surety bond are not released or the funds fail to satisfy the judgment, the driving and operating privileges of the negligent party will be suspended under the judgment provisions of the law.

(k) Security deposited with the department as a result of an accident will be released to the injured or damaged party upon receipt of a notarized release signed by the damaged or injured party.

§25.4. *Insurance.*

(a) (No change.)

~~[(b) A showing of financial responsibility by reporting automobile liability insurance coverage shall be made on form SR-21.]~~

(b) ~~[(c)]~~ Proof of financial responsibility, form SR-22, is no longer necessary when security is deposited or an affidavit is filed of no suits or civil judgments two years following the accident; when a release is filed or when the security on deposit pays off a judgment. Proof of financial responsibility, form SR-22, is not required with the filing of a release, installment agreement, or a judgment of non-liability under the security provisions of the Act.

~~[(d) Notice of, and information about, an automobile liability fleet policy covering 25 or more vehicles shall be filed on form SR-23.]~~

(c) ~~[(e) Form SR-30 will be used for the purpose of suspending a party for the failure of maintaining proof of financial responsibility by means of an insurance certificate, form SR-22.]~~ Form SR-22 is used to establish proof of financial responsibility by means of an insurance certificate. Form SR-26 is used to cancel a previously filed SR-22 insurance certificate. Form SR-30 will be used for the purpose of suspending a party for failure to maintain proof of financial responsibility by means of an insurance certificate, Form SR-22.

(d) ~~[(f)]~~ "Proof of financial responsibility" in the form of an insurance certificate issued by a liability insurance company shall be filed on form SR-22 prescribed by the department. The names of all

the parties covered and all the motor vehicles insured must appear on the form.

(e) [(g)] A second filing of form SR-22, proof of financial responsibility by an insurance certificate filed by the same insurer cancels any prior filing. If additional motor vehicles are included in the later filing, all vehicles must be listed and explicitly described on the form. The name of each person insured must be on the insurance certificate.

(f) [(h)] The date "proof was required" in an accident is the date of the accident. In a conviction case, proof is required for 2 years from the date of conviction; in a judgment case, proof is required for 2 years from the date the judgment is rendered or entered.

(g) [(i)] A certificate of financial responsibility is issued under Texas Transportation Code, §601.051, where a party has a §601.121, real estate bond or a §601.122, cash or security bond. These bonds must be renewed each year (where proof is not required). Parties with a real estate bond or depositing cash or securities as proof of financial responsibility shall be limited to vehicles solely owned by a natural person. Firms, co-partnerships, associations or corporations do not qualify.

#### §25.5. Releases.

(a) A release from liability submitted in compliance with the provisions of the Act must be signed before a notary public or two witnesses by either the owner of the damaged property, or by the person or persons sustaining personal injury. Form SR-11 shall be submitted as evidence of a release from liability.

(b) When the owner and the operator of one motor vehicle are separate persons and both have reported injuries and/or damages to the department, a release from liability is required from each party; a release from liability of either person is deemed a release of both unless the release expressly states otherwise].

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

#### §25.13. Judgment.

(a) A petition or final order in bankruptcy lifts a suspension based on a judgment.

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

(d) A judgment creditor's consent or revocation of consent shall be filed on Forms SR-84 and SR-85, respectively. [A filing fee as set out in Texas Civil Statutes, Article 6701h, §36, is required with the filing of each form.]

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

#### §25.14. Appeals.

(a) The appeals provisions in Texas Civil Statutes, Article 6701h, §5(b), apply only to appeals under §5. The appeals provisions in Texas Civil Statutes, Article 6701h, §2(b), apply to all other suspensions under the Act.

(b) When the department is not served as required by law with a stay order or injunction, no existing injunction or stay order shall operate to suspend any act or order of the department until a copy signed by the court or certified by the court clerk is received in the office of the department at Austin; or any other local or district office, or placed in the hands of a law enforcement officer of the department].

(c) Before a suspension can be lifted on a stay pending a trial on the merits, where [criminal] charges are filed arising out of the accident, the party appealing a decision under the Act must file either proof of financial responsibility, Form SR-22, or [a 90-

day affidavit, or] evidence of dismissal. Such party will be notified of these requirements in writing to the attorney of record or to the aggrieved party[ on Form SR-159. The original of the form will be sent to the attorney of record, if available; if not available, the original will be sent to the aggrieved party with copies to the judge of the court, the county or district attorney, and the local driver's license hearing officer].

#### §25.15. Conviction Suspensions.

Suspensions of the license and registration of a party convicted of criminal charges are implemented by issuance of suspension orders [on Form DIC-3,] prescribed by the department.

#### §25.17. Reciprocity.

(a) Suspension of driver's license and registrations for out-of-state accident security required shall be issued on Form SR-27-OS. A suspension order is effective 21 days after issuance and notifies the party to report to the department any liability insurance in effect in this state or sister states.

(b) Suspension of driver's license and registrations for out-of-state accident judgments shall be issued on Form SR-27-OSA. The suspension order is effective upon issuance.

#### §25.18. Fees.

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

(c) Proof of financial responsibility maintained by a certificate of insurance must be filed on Form SR-22. When a party's license and registrations have been suspended, a \$50 reinstatement fee and proof of financial responsibility are prerequisites for the withdrawal of such suspension. When a party's license and registrations are suspended in several cases and proof of financial responsibility is required in each case, only one \$50 reinstatement fee is required. [The term "financial responsibility" as used in these sections refers only to security provisions (Texas Civil Statutes, Article 6701h, §§4-11); the term "proof of financial responsibility" refers to proof of the ability to respond in damages for liability (Texas Civil Statutes, Article 6701h, §1(10)). Proof of financial responsibility maintained by a certificate of insurance must be filed on Form SR-22. When a party's license and registrations have been suspended, a \$10 reinstatement fee and proof of financial responsibility are prerequisites for the withdrawal of such suspension. When a party's license and registrations are suspended in several cases and proof of financial responsibility is required in each case, only one \$10 reinstatement fee is required.]

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 December 1, 1998.

TRD-9818064

Dudley M. Thomas

Director

Texas Department of Public Safety

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-2890



## Part III. Texas Youth Commission

### Chapter 97. Security and Control

#### Subchapter B. Peace Officers

### 37 TAC §97.77

The Texas Youth Commission (TYC) proposes an amendment to §97.77, concerning peace officer: firearms management. The amendment will allow TYC apprehension specialists the option of carrying a TYC issued firearm on a TYC issued duty belt in the course of peace officer duties to apprehend TYC escapees and absconders.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater public protection. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas, 78765.

The amendment is proposed under the Human Resources Code, §61.0931, which provides the Texas Youth Commission with the authority to employ and commission apprehension specialists as peace officers for the purpose of apprehending a child.

The proposed rule implements the Human Resource Code, §61.034.

#### §97.77. *Peace Officer: Firearms Management.*

(a) While on duty, apprehension specialists commissioned as peace officers shall carry or have readily available a firearm issued by the Texas Youth Commission (TYC). Through the assistance of the local law enforcement, TYC will ensure the investigation of any situation during which an apprehension specialist uses deadly force or intentionally or accidentally discharges a firearm. TYC will also conduct an investigation to review whether actions taken were in compliance with [or not] agency policy. [was complied with in the aforementioned situation.]

#### (b) Apprehension specialists are:

(1) authorized to carry a TYC issued firearm in a concealed manner, or on a TYC issued duty belt;

(2) authorized to carry firearms in the performance of their duties as commissioned peace officers while in agency offices and vehicles; and

(3) will not carry firearms while on the grounds of any agency operated or contract facility that provides residential services to youth.

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 December 4, 1998.

TRD-9818139

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-6244

## Part XI. Texas Juvenile Probation Commission

### Chapter 343. Standards for Juvenile Pre-Adjudication Secure Detention Facilities

#### 37 TAC §§343.1, 343.2, 343.4, 343.5, 343.9, 343.10, 343.11, 343.16, 343.17, 343.20

The Texas Juvenile Probation Commission proposes amendments to §§343.1, 343.2, 343.4, 343.5, 343.9, 343.10, 343.11, 343.16, and 343.17 concerning pre-adjudication secure detention facilities and new §343.20 concerning chronically overcrowded detention facilities. The amendments and new section are being proposed in an effort to clarify juvenile probation services and address the issue of chronic overcrowding in detention facilities.

Maribeth Powers, Director of Field Services, has determined that for the first five year period the amendments and new section are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Ms. Powers has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be improved juvenile probation services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The amendments and new section are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment and new section.

#### §343.1. *Definitions*

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

(1) Attempted Suicide—Any action a juvenile takes that could result in taking his or her own life voluntarily and intentionally while detained or placed in a secure juvenile facility.

(2) Control Room—A secure area which contains the emergency, monitoring, and communications systems and is staffed 24 hours each day that juveniles are in the facility.

(3) Detention—The temporary secure custody of a juvenile pending court disposition or transfer to another jurisdiction or agency.

(4) Detention Facility Chronic Overcrowding—A detention facility shall be considered to be chronically overcrowded if, within a six month period, the daily population count taken between the hours

of 6:00 am and 8:00 am exceeds the rated capacity of the facility by 20% or more on 90 or more days.

(5) Detention Officer—A person whose primary responsibility is the direct and immediate supervision of the daily activities of detained juveniles. Administrative, food services, janitorial, and other auxiliary staff are not considered to be detention officers.

(6) Hold Over Detention Facility—Any holdover facilities located in the same building or grounds with an adult correctional facility, including those authorized by Section 51.12(I), Texas Family Code, shall comply with criteria set forth in the federal Juvenile Justice and Delinquency Prevention Act (42 U.S.C. 5601, et.seq.) and any subsequent amendments, rules and interpretive commentary passed or promulgated thereto after the effective date of this standard.

(7) Rated Capacity—Maximum number of juveniles who may be housed within a facility in accordance with TJPC Standards.

(8) Secure Detention Facility—Any public or private residential facility that includes construction and fixtures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in the facility and is used for the temporary placement of any juvenile or other individual who is accused of having committed an offense and is awaiting court action, an administrative hearing, or other transfer action. Such facilities shall be operated separately from any post-adjudication facility. Where such facilities are located in the same building or on the same grounds as a post-adjudicatory facility, written policies and procedures require contact between the two populations be kept to a minimum.

#### §343.2. Administration, Organization, and Management.

(a) (No change.)

(b) Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities:

(1) (No change.)

(2) Duties of the Administrative Officer. The duties of the administrative officer shall include, but shall not be limited to the following:

(A) (No change.)

(B) reporting the death, attempted suicide, alleged abuse or neglect, and any serious injury that requires medical treatment by a physician or physician's assistant, of detained juvenile to TJPC and the Chief Juvenile Probation Officer of the placing county within 24 hours of discovery of the incident and in accordance with Chapter 261, Texas Family Code [Texas State Law];

(C)-(F) (No change.)

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

(c) Investigations of allegations of child abuse or neglect. Each facility shall have written policy, procedure and practice to require an internal investigation of allegations of child abuse or neglect in the facility. The policy shall require all staff members to fully cooperate with any investigation of alleged child abuse or neglect in the facility. The policy shall require that any person alleged to be a perpetrator of child abuse or neglect be put on administrative leave or reassigned to a position having no contact with children in the facility until the conclusion of the internal investigation. The alleged perpetrator shall have no contact with the alleged victim(s) pending the conclusion of the internal investigation. At the conclusion of the

internal investigation of child abuse or neglect, each facility shall take appropriate measures to provide for the safety of children.

#### §343.4. Personnel.

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

(1) Qualifications. Selection, retention, promotion, and demotion of facility staff shall be on the basis of knowledge, skills, performance, and abilities. No person shall be discriminated against on the basis of age, sex, race, religion, national origin, or disability. Corrections officers shall be of good moral character and emotionally suited for working with juveniles. A corrections officer shall be at least 21 years of age and have either a high school diploma or a general equivalency diploma. The age requirement may be waived by the TJPC when a written request is submitted by the chair of the juvenile board or the administrative officer of a private facility. A criminal history record check and a sex offender registration database check must be conducted on each prospective employee and a copy of the results of the checks shall be kept on file. A person may not serve as a detention officer if the person is currently on community supervision or parole or serving a sentence for a criminal offense. [Background investigations of prospective employees shall be conducted according to county policy.] Preference in employment should be given to those best qualified by education and training in juvenile corrections. Preference shall be given to those with bachelors' degrees conferred by colleges and universities accredited by an organization recognized by the Coordinating Board, Texas College and University System. The administration shall make a reasonable effort to insure that the ethnic makeup of the facility staff is generally reflective of the ethnic makeup of the residents of the facility, consistent with the requirements of state and federal law.

(2)-(5) (No change.)

#### §343.5. Training and Staff Development.

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

(1) (No change.)

(2) New employees. The administrative officer shall ensure that corrections officers receive:

(A) orientation training within 30 days of employment;  
and

(B) certification in cardiopulmonary resuscitation, first aid, and the use of a physical restraint technique approved by TJPC prior to sole supervision. [40 hours of orientation training before undertaking their assignments. The training shall be approved by the Texas Juvenile Probation Commission. Detention officers shall maintain current certification in cardiopulmonary resuscitation and in first aid.]

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

#### §343.9. Security and Control.

(a) Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

(1)-(6) (No change.)

(7) Physical Restraint. Written policy, procedure, and practice shall require facilities to adopt a TJPC approved physical restraint technique. Restraint techniques shall be restricted to instances of justifiable self-protection, protection of others, prevention

of serious property damage, and prevention of escapes, and movement of juveniles from point to point, and then only as a last resort. In no event are restraint techniques justifiable as punishment, discipline, compliance and intimidation. The physical restraint shall be fully documented and reported. Restraint shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury, injury to others, serious property damage, and prevention of escapes, are absent, or as soon as staff have completed movement of juveniles from point to point.

(b) (No change.)

§343.10. *Rules and Discipline.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

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

(3) Enforcement. Written policy shall describe sanctions staff may impose in response to major rule violations. All such violations and corresponding staff actions shall be recorded in the juvenile's record.

(A) (No change.)

(B) Separation from the group. Room restriction or confinement may be used only when a juvenile is out of control, repeatedly refuses to comply with rules, is a threat to himself or others, is threatened by the group, or at the direction of a medical professional as a health precaution.

(i)-(ii) (No change.)

(iii) If a child is placed in room confinement and is exhibiting behaviors that pose an imminent risk of physical harm to oneself, a detention officer shall personally observe, and document their observations of the juvenile no less than every five minutes.

(C) (No change.)

§343.11. *Food Service.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

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

(6) Juveniles must be allowed adequate time to eat meals and in no case less than 10 minutes.

§343.16. *Juveniles' Rights.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities.

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

(11) Treatment and Safety. Resident juveniles shall not be subjected to abuse or neglect as defined in Chapter 261, Texas Family Code. The following is a list of prohibited conduct:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which may have caused physical injury or death to a juvenile resident;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and TJPC standards;

(D) sexual activity among residents;

(E) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a juvenile resident with physical or emotional harm;

(F) a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused physical or emotional injury or death to a juvenile and includes an act or omission such as the failure to establish or carry out an appropriate services based upon the needs of the child, the failure to provide adequate nutrition, clothing or health care and the failure to provide a safe environment for a juvenile served, including the failure to maintain adequate numbers of appropriately trained staff;

(G) sexual activity, including sexual exploitation as defined in §161.131 of the Texas Health and Safety Code and sexual assault as defined in §22.011 of the Texas Penal Code, involving an employee, agent or contractor and a person served. Sexual activity includes but is not limited to inappropriate sexual contact including kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee him/herself or with another person served;

(H) coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can be reasonably construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a juvenile's sexual history within standard accepted practice.

§343.17. *Programs.*

Written policy and procedure, and practice of the following standards shall apply to all detention facilities except for hold over detention facilities.

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

(3) Recreation. Indoor and outdoor recreational equipment and supplies shall be provided. The recreational schedule standards shall include:

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

(C) Physical Exercise Program. Physical exercises shall not be used for punishment, compliance, or intimidation. Physical exercises should help increase stamina, well being, self-esteem, and healthy behaviors.

(4)-(5) (No change.)

§343.20. *Chronically Overcrowded Detention Centers.*

(a) A chronically overcrowded detention center shall provide TJPC with a plan to remedy the overcrowded conditions within the facility. If the plan includes construction of new beds, there must be provisions to alleviate or manage overcrowded conditions and balance the health and safety of residents and facility staff with protection of the public.

(b) In examining the respective risks to facility occupants and the public, the population of the facility shall be reviewed to insure that:

(1) Only juveniles who meet criteria for detention under 53.02(b) of the Texas Juvenile Justice Code are detained in the facility;

(2) Priorities are established regarding the use of detention space. Such priorities should restrict the use of detention for juveniles who do not present a danger to the public, conserving bed space in



the facility for those juveniles who pose increased risks for the public; and

(3) Juveniles awaiting court appearances and transfers are processed through the system as expeditiously as possible.

(c) Facilities identified as chronically overcrowded shall provide TJPC with a monthly report that documents adherence to numbers one and two above, and that describes progress achieved on their plan to reduce overcrowding and a description of the facility population for the preceding month by offense and length of stay.

(d) Recommended Detention Criteria by Offense Severity:

(1) Detention Priority 1 - Capital Felony

(2) Detention Priority 2 - First Degree Felony

(3) Detention Priority 3 - Second Degree Felony

(4) Detention Priority 4 - Class A Misdemeanors through Third Degree Felonies involving a weapon, violence toward a person or persons, or where the child presents an imminent threat to public safety

(5) Detention Priority 5 - Misdemeanor offenses involving an assault or violence toward a person or persons, or where the child presents an imminent threat to public safety

(6) Detention Priority 6 - All other misdemeanor offenses and technical violations where public safety is not an issue should be restricted or other means of surveillance and control employed if such detention would cause a condition of overcrowding to occur in the facility.

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

Filed with the Office of the Secretary of State on December 4, 1998.

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Vicki Spriggs

Executive Director

Texas Juvenile Probation Commission

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-6681



## Chapter 344. Standards for Juvenile Post-Adjudication Secure Correctional Facilities

### 37 TAC §§344.1-344.4, 344.8-344.10, 344.15, 344.16

The Texas Juvenile Probation Commission proposes amendments to §§344.1 - 344.4, 344.8 - 344.10, 344.15, and 344.16 concerning post-adjudication secure correctional facilities. The amendments and new section are being proposed in an effort to clarify juvenile probation services and address a wide range of issues, including investigations of child abuse, criminal background checks, physical restraint, and treatment and safety.

Maribeth Powers, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcement.

Ms. Powers has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be

improved juvenile probation services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Maribeth Powers at the Texas Juvenile Probation Commission, P. O. Box 13547, Austin, Texas 78711.

The amendments are proposed under Texas Human Resource Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other code or article is affected by the amendment.

#### §344.1. Definitions.

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

(1) Attempted Suicide—Any action a juvenile takes that could result in taking his or her own life voluntarily and intentionally while detained or placed in a secure juvenile facility.

(2) Boot Camp—A facility meeting the above definition that features military-style discipline and structure as an integral part of its treatment and rehabilitation program.

(3) Juvenile Corrections Officer—A person whose primary responsibility is the direct and immediate supervision of the daily activities of juveniles in the facility. Clerical, food service, janitorial and other auxiliary staff are not considered to be Juvenile Corrections Officers.

(4) Post-Adjudication [Post Adjudication] Secure Correctional Facility—A public secure facility administered by a juvenile board or a privately-operated facility certified by the juvenile board includes construction fixtures designed to physically restrict the movements and activities of the residents, and is intended for the treatment and rehabilitation of youth who have been adjudicated for a delinquent offense. Any non-secure residential program operating under the authority of a juvenile board shall not be subject to these standards.

(5) Rated Capacity—Maximum number of juveniles who may be housed within a facility in accordance with TJPC Standards.

~~[Secure Post Adjudicatory Residential Facility —A public secure facility administered by a juvenile board or a privately-operated facility certified by the juvenile board intended for the treatment and rehabilitation of youth who have been placed on probation for a delinquent offense. Any non-secure residential program operating under the authority of a juvenile board shall not be subject to these standards.]~~

#### §344.2. Administration, Organization, and Management.

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

(e) Duties of the administrative officer. Written policy and procedure, and practice shall ensure that the duties of the administrative officer include, but shall not be limited to the following:

(1) (No change.)

(2) reporting the death, attempted suicide, (alleged) abuse or neglect, and any serious injury that requires medical treatment by a physician or physicians assistant, of detained juvenile of any resident of the facility to TJPC and the Chief Juvenile Probation Officer of the

placing county within 24 hours of discovery of the incident and in accordance with Chapter 261, Texas Family Code [~~Texas State Law~~];

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

(f) (No change.)

(g) Investigations of allegations of child abuse or neglect. Each facility shall have written policy, procedure and practice to require an internal investigation of allegations of child abuse or neglect in the facility. The policy shall require all staff members to fully cooperate with any investigation of alleged child abuse or neglect in the facility. The policy shall require that any person alleged to be a perpetrator of child abuse or neglect be put on administrative leave or reassigned to a position having no contact with children in the facility until the conclusion of the internal investigation. The alleged perpetrator shall have no contact with the alleged victim(s) pending the conclusion of the internal investigation. At the conclusion of the internal investigation of child abuse or neglect each facility shall take appropriate measures to provide for the safety of children.

#### §344.3. *Personnel.*

(a) Qualifications. Selection, retention, promotion, and demotion of facility staff shall be on the basis of knowledge, skills, performance, and abilities. No person shall be discriminated against on the basis of age, sex, race, religion, national origin, or disability. Corrections officers shall be of good moral character and emotionally suited for working with juveniles. A corrections officer shall be at least 21 years of age and have either a high school diploma or a general equivalency diploma. The age requirement may be waived by the TJPC when a written request is submitted by the chair of the juvenile board or the administrative officer of a private facility. A criminal history record check and a sex offender registration database check must be conducted on each prospective employee and a copy of the results of the checks shall be kept on file. A person may not serve as a detention officer if the person is currently on community supervision or parole or serving a sentence for a criminal offense. [Background investigations of prospective employees shall be conducted.] Preference in employment should be given to those best qualified by education and training in juvenile corrections. Preference shall be given to those with bachelors' degrees conferred by colleges and universities accredited by an organization recognized by the Coordinating Board, Texas College and University System. The administration shall make a reasonable effort to insure that the ethnic makeup of the facility staff is generally reflective of the ethnic makeup of the residents of the facility, consistent with the requirements of state and federal law.

(b)-(e) (No change.)

#### §344.4. *Training and Staff Development.*

(a) (No change.)

(b) New employees. Written policy, procedure, and practice of the administrative officer shall ensure that corrections officers receive:

(1) orientation training within 30 days of employment;  
and

(2) certification in cardiopulmonary resuscitation, first aid, and the use of a physical restraint technique approved by TJPC prior to sole supervision. [40 hours of Texas Juvenile Probation Commission approved orientation training prior to undertaking their job assignments. All juvenile corrections officers shall maintain current certification in cardiopulmonary resuscitation (CPR) and first aid.]

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

#### §344.8. *Security and Control.*

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

(e) Classification Plan. The security of the facility shall be designed and constructed so that residents can be grouped in accordance with a classification plan. Classification plans shall require that juvenile inmate populations of progressive sanctions level 5 and below be physically segregated from committed (level 6 and 7) juvenile inmates.

(f)-(j) (No change.)

(k) Physical Restraint. Written policy, procedure, and practice shall require facilities to adopt a TJPC approved physical restraint technique. Restraint techniques shall be restricted to instances of justifiable self-protection, protection of others, prevention of serious property damage, and prevention of escapes, and movement of juveniles from point to point, and then only as a last resort. In no event are restraint techniques justifiable as punishment, discipline, compliance and intimidation. The physical restraint shall be fully documented and reported. Restraint shall be terminated as soon as the youth's behavior indicates that threat of imminent self-injury, injury to others, serious property damage, and prevention of escapes, are absent, or as soon as staff have completed movement of juveniles from point to point.

#### §344.9. *Rules and Discipline.*

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

(c) Enforcement.

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

(3) Confinement. Written policy, procedure, and practice shall ensure that when a juvenile has been charged with a minor rules violation requiring confinement for the safety of the juvenile, other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to 24 hours. Confinement for periods of more than 24 hours shall be reviewed every 24 hours by an administrator or designee who was not involved in the incident. Confined juveniles shall not be restrained by mechanical devices unless their behavior indicates that there is a danger that they might harm themselves or others, damage property, or attempt to escape. While in room confinement, a corrections officer shall personally observe, and document their observations, the juvenile at least every 15 minutes. While in room confinement for suicidal threats, a corrections officer shall personally observe, and document their observations of the juvenile at least every 5 minutes.

(4)-(5) (No change.)

#### §344.10. *Food Services.*

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

(g) Juveniles must be allowed adequate time to eat meals and in no case less than 10 minutes.

#### §344.15. *Juvenile Rights.*

(a)-(g) (No change.)

(h) Treatment and Safety. Resident juveniles shall not be subjected to abuse or neglect as defined in Chapter 261, Texas Family Code. The following is a list of prohibited conduct:

(1) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which may have caused physical injury or death to a juvenile resident;

(2) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(3) any use of chemical or bodily restraints not in compliance with federal and state laws and TJPC standards;

(4) sexual activity among residents;

(5) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a juvenile resident with physical or emotional harm;

(6) a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused physical or emotional injury or death to a juvenile and includes an act or omission such as the failure to establish or carry out an appropriate services based upon the needs of the child, the failure to provide adequate nutrition, clothing or health care and the failure to provide a safe environment for a juvenile served, including the failure to maintain adequate numbers of appropriately trained staff;

(7) sexual activity, including sexual exploitation as defined in §161.131 of the Texas Health and Safety Code and sexual assault as defined in §22.011 of the Texas Penal Code, involving an employee, agent or contractor and a person served. Sexual activity includes but is not limited to inappropriate sexual contact including kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee him/herself or with another person served;

(8) coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can be reasonably construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a juvenile's sexual history within standard accepted practice.

§344.16. *Programs.*

(a)-(g) (No change.)

(h) Physical Training Program. Written policy, procedure, and practice shall include a written physical training program plan. The program plan shall include types of exercises, time limits, and a description of how the physical training program supports the program goals of the facility. Physical exercises should help increase stamina, well being, self-esteem, and healthy behaviors.

(1) Before participating in the physical training program, the juvenile shall:

(A) complete an initial physical fitness assessment to determine the juvenile's physical functioning level;

(B) have a current medical assessment (344.6.b.14 Admissions);

(C) have a signed release by a physician to participate in a Boot Camp Program (344.6.b.14 Admissions).

(2) Physical exercises shall not be used for punishment or intimidation. Written policy and procedure shall specify how and under what circumstances physical exercises may be used for program compliance.

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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Vicki Spriggs

Executive Director

Texas Juvenile Probation Commission

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For further information, please call: (512) 424-6681

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 15. Medicaid Eligibility

##### Subchapter F. Budgets and Payment Plans

###### 40 TAC §15.503

The Texas Department of Human Services (DHS) proposes an amendment to §15.503, concerning protection of spousal income and resources, in it Medicaid Eligibility chapter. The purpose of the amendment is to clarify that the expanded protected resource amount (PRA) determined by the hearing officer at appeal cannot exceed the value of the couple's combined countable resources as of the first month of entry to a medical care facility for a continuous stay.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the formula used by hearing officers to develop the expanded PRA will be applied correctly and consistently statewide. The rule correction clarifies existing policy and has no impact on small or large businesses or providers. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Judy Coker at (512) 438-3227 in DHS's Long-Term Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-043, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§32.001-32.042.

§15.503. *Protection of Spousal Income and Resources.*

(a)-(i) (No change.)

(j) Formula for increased PRA at appeal.

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

(4) The amount of resources to be protected is determined by using the formula specified in subparagraphs (A) through (D) of this paragraph. This formula is to be used to determine the maximum amount of resources to be protected regardless of the actual income a resource may or may not be producing at the time of the original PRA or at the time of the appeal hearing.

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

(E) The expanded PRA may not exceed the value of the couple's combined countable resources as of the first month of entry to a medical care facility for a continuous stay.

(5) (No change.)

(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 December 4, 1998.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



## Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

### Subchapter C. Nursing Facility Licensure Application Process

#### 40 TAC §19.201

The Texas Department of Human Services (DHS) proposes an amendment to §19.201, concerning criteria for licensing, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to correct an error in the rule as originally proposed in the June 26, 1998, issue of the *Texas Register*. The word "unable" was inadvertently dropped from the proposed language and the rule became effective October 15, 1998, as proposed. This proposed amendment corrects the error by adding the word "unable" to §19.201(d).

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the public will be protected by requiring nursing facilities to prepare for Year 2000 eventualities. There will be no adverse economic effect on small businesses because preparing for Y2K changes is part of the normal cost of doing business. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy

section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-061, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 242, which gives the department the authority to license and regulate nursing facilities.

The amendment implements the Health and Safety Code, §242.037.

§19.201. *Criteria for Licensing.*

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

(d) In respect to all licenses in effect after December 31, 1999, all services provided under licensure by the Texas Department of Human Services are required, as a condition of licensure, not to constitute a threat to the health and safety of residents as a result of computer software, firmware, or imbedded logic unable to recognize different centuries or more than one century on or after January 1, 2000.

(e)-(i) (No change.)

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

Filed with the Office of the Secretary of State on December 4, 1998.

TRD-9818156

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: March 15, 1999

For further information, please call: (512) 438-3765



## Chapter 48. Community Care for Aged and Disabled

The Texas Department of Human Services (DHS) proposes an amendment to Community Living Assistance and Support Services (CLASS) §48.2102, concerning definitions; and new §48.2111, concerning circumstances requiring denial of services with advance notice; §48.2113, concerning circumstances requiring denial of services and Medicaid eligibility without advance notice; §48.2115, concerning circumstances which may result in denial of services and require advance notice; §48.2117, concerning crisis intervention requiring immediate suspension or reduction of services without advance notice; §48.2119, concerning immediate suspension with advance notice; §48.2121, concerning sanctions; and also proposes an amendment to Community Based Alternatives (CBA) §48.6002, concerning definitions; and new §48.6098, concerning circumstances requiring denial of services with advance notice; §48.6100, concerning circumstances requiring denial of services and Medicaid eligibility without advance notice; §48.6102, concerning circumstances which may result in denial of services and require advance notice; §48.6104, concerning crisis intervention requiring immediate suspension or reduction of services without advance notice; §48.6106, concerning immediate suspension with advance notice; and §48.6108, concerning sanctions, in its Community Care for Aged and Disabled chapter. The purpose of the amendments and new sections is

to provide consumer protection, prevent unauthorized suspension of services by provider agencies, and assure the right of due process in circumstances which may result in the termination or suspension of services to participants. These rules apply to both children and adults and will not be used to terminate services to participants for uncontrollable behavior due to the individual's disability. Program policies require providers to use appropriate interventions and opportunities for conflict/problem resolution through mediation and other problem-solving techniques before initiating actions to terminate services to participants.

In February 1998, DHS published proposed rules in the *Texas Register* to add eligibility rules for both the CBA and CLASS programs. The proposed rules were later withdrawn. A work group was formed composed of disability advocacy groups, participants, parents, and provider agency staff to revise the proposed rules based on comments received. These rules clarify procedures for suspension and termination of services to participants.

DHS will include policies and procedures to clarify these requirements in the CLASS and CBA Provider Manuals. The revised rules were developed with cooperation and input from the workgroup and DHS's Office of General Counsel. Issues of advance notice and right of fair hearing for participants are consistent with the uniform fair hearing requirements being developed by the Health and Human Services Commission.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to prevent unauthorized suspension of services by providers, assure consumer protection and the right of due process, and provide advance notice in circumstances which may result in the denial or suspension of services. There will be no effect on small businesses as a result of enforcing or administering the sections because there is no cost to small businesses in terms of employees, labor, or sales. The sections provide guidelines from DHS to provider agencies regarding client eligibility, suspension, or termination of services. 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 Gerardo Cantu for CBA at (512) 438-3693, or Don Mann for CLASS at (512) 438-3642, in DHS's Community Care section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit- 358, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register* Subchapter C. Medicaid Waiver Program for Persons with Related Conditions

**40 TAC §§48.2102, 48.2111, 48.2113, 48.2115, 48.2117, 48.2119, 48.2121**

The amendment and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code

§531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§48.2102. Community Living Assistance and Support Services (CLASS) Definitions.

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

(1) Advance notice - A statement of the action the state intends to take, provided in writing, to the individual or the individual's authorized representative; and advises them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself, or use legal counsel, a relative, a friend, or other spokesperson. The Texas Department of Human Services (DHS) must provide a notice to the individual at least 10 days before the date of action.

(2) Participant - A person who receives Community Living Assistance and Support Services [(CLASS)].

(3) Persons with related conditions - This term is defined in 25 TAC §406.202 (concerning Definitions for Level-of-care and Level-of-need Criteria). [~~§27.102 of this title (relating to Definitions for Level-of-Care Criteria).~~]

(4) Suspension of services - A temporary reduction of waiver services without loss of program or Medicaid eligibility.

(5) Waiver program - A Medicaid program that provides home and community-based services to persons with related conditions as an alternative to institutional care in accordance with waiver provisions of §1915(c) of the Social Security Act.

(6) Waiver program services - Services provided under waiver provisions of §1915(c) of the Social Security Act.

§48.2111. Circumstances Requiring Denial of Services with Advance Notice.

(a) If one or more of the circumstances specified in paragraphs (1) through (11) of this subsection occur, the case management agency (CMA) and direct services agency (DSA) must provide written documentation to the Texas Department of Human Services (DHS) within two DHS workdays of the occurrence to support a recommendation for denial of Community Living Assistance and Support Services (CLASS). Advance notice is defined in §48.2102 of this title (relating to Community Living Assistance and Support Services (CLASS) Definitions).

(1) The participant leaves the state for more than 90 days or moves to a county in which the CLASS program does not exist. DHS will retain authority to extend this time in extraordinary circumstances.

(2) The participant has been legally confined or has resided in an institutional setting for longer than 120 days. An institution includes legal confinement, an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home, or intermediate care facility for persons with mental retardation/related conditions (ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances.

(3) The participant is not financially eligible for Medicaid benefits.

(4) The participant does not meet the level-of-care criteria for ICF- MR/RC.

(5) The estimated cost of the CLASS services necessary to adequately meet the needs of the participant exceeds the CLASS cost ceiling.

(6) DSA providers have refused to serve the participant on the basis of a reasonable expectation that the participant's medical and nursing needs cannot be met adequately in the participant's residence.

(7) The participant or someone in the participant's home refuses to comply with mandatory program requirements, including the determination of eligibility and/or the monitoring of service delivery.

(8) The participant has no need for habilitation services as determined by the interdisciplinary team.

(9) The participant fails to pay his qualified income trust copayment.

(10) The situation, participant, or someone in the participant's home is hazardous to the health and safety of the service provider, but there is no immediate threat to the health or safety of the provider.

(11) The participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

(b) The supporting documentation must include a description of the interventions that have occurred prior to the decision to recommend the denial of services. The documentation must justify the reasons for denial and describe the strategies, outcomes, and negotiations with the participant in accordance with the program policies in the provider handbook.

(c) If DHS determines the documentation supports initiation of denial, DHS provides written notification to the case manager and DSA authorizing the denial of CLASS services.

(d) Within two workdays following written authorization by DHS, the CMA must provide advance written notification of denial of services to the participant, with copies to DHS and DSA. The notification must specify the reason for denial, the effective date of denial, the regulatory reference, and written notice of the right to appeal.

(e) If the participant appeals the notification of denial within 10 days of written notification, the provider's CMA and DSA continue CLASS services until notification of the decision by the DHS hearing officer. The CMA and DSA must not reduce waiver services until the outcome of the appeal is known.

§48.2113. Circumstances Requiring Denial of Services and Medicaid Eligibility Without Advance Notice.

(a) If one or more circumstances specified in paragraphs (1) through (6) of this subsection occur, the case management agency (CMA) is required to deny Community Living Assistance and Support Services (CLASS) without advance notice.

(1) the operating agency or its designee has factual information confirming the death of the individual;

(2) the operating agency or its designee receives a clear written statement signed by the individual that

(A) he or she no longer wishes services; or

(B) gives information that requires termination or reduction in services and indicates that he or she understands that this must be the result of supplying that information;

(3) the individual's whereabouts are unknown and the post office returns agency or designee mail directed to him or her indicating no forwarding address;

(4) the operating agency or its designee establishes the fact that the individual has been accepted for Medicaid services by another state;

(5) a change in the level of medical care is prescribed by the individual's physician; or

(6) the notice involves an adverse determination made with regard to the preadmission screening requirements.

(b) The case manager and direct services agency provider must verbally notify each other and the Texas Department of Human Services (DHS) by the next workday of the reason for denial and follow up with written documentation on the case information form within two DHS workdays of the verbal notification.

§48.2115. Circumstances Which May Result in Denial of Services and Require Advance Notice.

(a) If one or both circumstances specified in paragraphs (1) and (2) of this subsection occur, the case management agency (CMA), with concurrence by the Texas Department of Human Services (DHS), may deny Community Living Assistance and Support Services (CLASS) with written authorization from DHS. The CMA and direct services agency (DSA) must provide written documentation to DHS to support the reason for the denial of services.

(1) The participant or someone in the participant's home has a substantial and demonstrated pattern of verbal abuse and harassment, not related to the participant's disability, of service providers which results in an inability to provide service(s) to the participant.

(2) The participant or someone in the participant's home has a substantial and demonstrated pattern of discrimination against the service providers on the basis of race, color, national origin, age, sex, or disability that has not improved with appropriate intervention and which results in an inability to provide service(s) to the participant.

(b) Following written authorization by DHS, the CMA must provide advance written notification of denial of services to the participant, DHS, and the DSA, including written notice of the right to appeal. The notification must specify the reason for denial, the effective date of denial, and the regulatory reference.

(c) If the participant appeals the denial of services within 10 days of written notification, the CMA and DSA must continue CLASS services until notification of the decision by the DHS hearing officer. The CMA and DSA must not reduce or suspend services until the outcome of the appeal is known.

§48.2117. Crisis Intervention Requiring Immediate Suspension or Reduction of Services Without Advance Notice.

(a) If the participant or someone in the participant's place of residence exhibits reckless behavior which may result in imminent danger to the health and safety of service providers, the case management agency (CMA) or direct services agency (DSA) is required to make an immediate referral for appropriate crisis intervention services to the Texas Department of Protective and Regulatory Services and/or the police and suspend Community Living Assistance and Support Services (CLASS) services. Suspension of services is defined in

§48.2102 of this title (relating to Community Living Assistance and Support Services (CLASS) Definitions).

(b) The CMA must immediately provide written notice of temporary suspension to the participant, the Texas Department of Human Services (DHS) and the DSA, and the right of appeal to a fair hearing must be explained to the participant. The written notification of temporary suspension must specify the reason for denial/suspension, the effective date, and the regulatory reference, and the right of appeal.

(c) The case manager must verbally inform DHS and the DSA by the following workday of the reason for the immediate suspension and follow up with written notification to DHS within two workdays of verbal notification.

(d) The case manager and DSA must make a face-to-face visit to initiate efforts to resolve the situation. If the temporary suspension of services constitutes a threat to the health and safety of the individual, then community alternatives or placement in an institutional setting must be offered and facilitated by the case manager.

(e) With prior authorization by DHS, the CMA may continue providing services to assist in the resolution of the crisis. This service will be reimbursed as an administrative expense.

(f) If the crisis is not satisfactorily resolved, the case manager provides notification of denial of services and offers the right of appeal. Services do not continue during the appeal process.

§48.2119. Immediate Suspension with Advance Notice.

If the participant has been legally confined or resides in an institutional setting, the case management agency and direct services agency are required to immediately suspend Community Living Assistance and Support Services. The case management agency shall immediately furnish notice of suspension to the participant and explain the right of appeal to a fair hearing. An institution includes an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home, or intermediate care facility.

§48.2121. Sanctions.

The Texas Department of Human Services may sanction, up to and including contract termination, any provider agency that:

(1) has discontinued services to a participant for a reason other than what is allowed in §48.2117 of this title (relating to Crisis Intervention Requiring Immediate Suspension or Reduction of Services Without Advance Notice) and §48.2119 of this title (relating to Immediate Suspension with Advance Notice); or

(2) uses the information cited in §48.2117 of this title to discontinue services to a participant when the provider agency knew or should have known that the cited information did not apply to the participant.

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

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Glenn Scott

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Texas Department of Human Services

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## Subchapter J. 1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

**40 TAC §§48.6002, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108**

The amendment and new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment and new sections implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§48.6002. Community Based Alternatives (CBA) Definitions.

The following words and terms, when used in this subchapter [undesignated head], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Advance notice - A statement of the action the state intends to take provided in writing to the individual or the individual's authorized representative; and advises them of the right to a hearing, the method by which a hearing may be obtained, and that the individual may represent himself, or use legal counsel, a relative, a friend, or other spokesperson. The Texas Department of Human Services (DHS) must provide a notice to the individual at least 10 days before the date of action.

(2) Suspension of services - A temporary reduction of waiver services without loss of program or Medicaid eligibility.

(3) Waiver Program - A Medicaid program that provides home and community-based services to a limited number of eligible adults who are aged and/or disabled as an alternative to institutional care in a nursing facility in accordance with the waiver provisions of the Social Security Act, §1915(c).

(4) Waiver Program Services - Medicaid home and community-based services provided under waiver provisions of the Social Security Act, §1915(c).

§48.6098. Circumstances Requiring Denial of Services with Advance Notice.

(a) If one or more of the circumstances specified in paragraphs (1) through (11) of this subsection occur, the Community Based Alternatives (CBA) provider agency must provide written documentation to the Texas Department of Human Services (DHS) case manager within two DHS workdays of the occurrence to support a recommendation for denial of CBA services. Advance notice is defined in §48.6002 of this title (relating to Community Based Alternatives (CBA) Definitions).

(1) The participant leaves the state for more than 90 days. DHS will retain authority to extend this time in extraordinary circumstances.

(2) The participant has been legally confined or has resided in an institutional setting for longer than 120 days. An institution includes legal confinement, an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home, or intermediate care facility for persons with mental retardation/related conditions

(ICF-MR/RC). DHS will retain authority to extend this time in extraordinary circumstances.

(3) The participant is not financially eligible for Medicaid benefits.

(4) The participant does not meet the medical necessity criteria (MN) for nursing facility care.

(5) The estimated cost of the CBA services necessary to adequately meet the needs of the participant exceeds the CBA cost ceiling.

(6) Home and Community Support Services providers have refused to serve the participant on the basis of a reasonable expectation that the participant's medical and nursing needs cannot be met adequately in the participant's residence.

(7) The participant or someone in the participant's home refuses to comply with mandatory program requirements, including the determination of eligibility and/or the monitoring of service delivery.

(8) The participant fails to pay his room and board expenses or copayment in the adult foster care (AFC) or assisted living/residential care (AL/RC) setting.

(9) The participant fails to pay his qualified income trust copayment.

(10) The situation, participant, or someone in the participant's home is hazardous to the health and safety of the service provider, but there is no immediate threat to the health or safety of the provider.

(11) The participant or someone in the participant's home openly uses illegal drugs or has illegal drugs readily available within sight of the service provider.

(b) The supporting documentation must include a description of the interventions that have occurred prior to the decision to recommend the denial of services. The documentation must justify the reasons for denial and describe the strategies, outcomes, and negotiations with the participant in accordance with the program policies in the provider manual.

(c) If the DHS case manager determines the documentation supports initiation of denial, the case manager provides written notification of denial to the participant and CBA provider agency within two DHS workdays. The written notification must specify the reason for denial, the effective date of denial, the regulatory reference, and provide written notice of the right to appeal.

(d) If the participant appeals the notification of denial within 10 days of written notification, the CBA provider agency continues CBA services until notification of the decision by the DHS hearing officer. The CBA provider agency must not reduce waiver services until the outcome of the appeal is known.

§48.6100. Circumstances Requiring Denial of Services and Medicaid Eligibility Without Advance Notice.

(a) If one or more circumstances specified in paragraphs (1) through (6) of this subsection occur, the Texas Department of Human Services (DHS) case manager is required to deny Community Based Alternatives (CBA) services without advance notice.

(1) the operating agency or its designee has factual information confirming the death of the individual;

(2) the operating agency or its designee receives a clear written statement signed by the individual that

(A) he or she no longer wishes services; or

(B) gives information that requires termination or reduction in services and indicates that he or she understands that this must be the result of supplying that information;

(3) the individual's whereabouts are unknown and the post office returns agency or designee mail directed to him or her indicating no forwarding address;

(4) the operating agency or its designee establishes the fact that the individual has been accepted for Medicaid services by another state;

(5) a change in the level of medical care is prescribed by the individual's physician; or

(6) the notice involves an adverse determination made with regard to the preadmission screening requirements.

(b) The CBA provider agency must verbally notify the DHS case manager by the next DHS workday of the reason for denial and follow up with written documentation on the case information form within two DHS workdays of the verbal notification.

§48.6102. Circumstances Which May Result in Denial of Services and Require Advance Notice.

(a) If one or both circumstances specified in paragraphs (1) and (2) of this subsection occur, the Texas Department of Human Services (DHS) case manager may deny Community Based Alternatives (CBA) services. The CBA provider agency must provide written documentation to DHS to support the reason for the denial of services.

(1) The participant or someone in the participant's home has a substantial and demonstrated pattern of verbal abuse and harassment of service providers, not related to the participant's disability, which results in an inability to provide service(s) to the participant.

(2) The participant or someone in the participant's home has a substantial and demonstrated pattern of discrimination against the service providers on the basis of race, color, national origin, age, sex, or disability that has not improved with appropriate intervention and which results in an inability to provide service(s) to the participant.

(b) The case manager must provide advanced written notification of denial of services to the participant with written notice of the right to appeal. The notification must specify the reason for denial, the effective date of denial, and the regulatory reference.

(c) If the participant appeals the denial of services within 10 days of written notification, the CBA provider agency must continue CBA services until notification of the decision by the DHS hearing officer. The CBA provider agency must not reduce or suspend services until the outcome of the appeal is known.

§48.6104. Crisis Intervention Requiring Immediate Suspension or Reduction of Services Without Advance Notice.

(a) If the participant or someone in the participant's place of residence exhibits reckless behavior which may result in imminent danger to the health and safety of service providers, the Texas Department of Human Services (DHS) case manager and Community Based Alternatives (CBA) provider agency are required to make an immediate referral for appropriate crisis intervention services to the Texas Department of Protective and Regulatory Services and/or the police and suspend CBA services. Suspension of services is defined in §48.6002 of this title (relating to Community Based Alternatives (CBA) Definitions).



(b) The DHS case manager must immediately provide written notice of temporary suspension to the participant and the right of appeal to a fair hearing must be explained to the participant. The written notification must specify the reason for denial/suspension, the effective date, the regulatory reference, and the right of appeal.

(c) The CBA provider agency must verbally inform the DHS case manager by the following DHS workday of the reason for the immediate suspension and follow up with written notification to DHS within two DHS workdays of verbal notification.

(d) The DHS case manager must make a face-to-face visit to initiate efforts to resolve the situation. If the temporary suspension of services constitutes a threat to the health and safety of the individual, then community alternatives or placement in an institutional setting must be offered and facilitated by the case manager.

(e) With prior authorization by DHS, the CBA provider agency may continue providing services to assist in the resolution of the crisis. This service will be reimbursed as an administrative expense.

(f) If the crisis is not satisfactorily resolved, the DHS case manager provides notification of denial of services and offers the right of appeal. Services do not continue during the appeal process.

§48.6106. Immediate Suspension with Advance Notice.

If the participant has been legally confined or resides in an institutional setting, the Community Based Alternatives (CBA) provider agency is required to immediately suspend CBA services. The Texas Department of Human Services case manager shall immediately furnish notice of suspension to the participant and explain the right of appeal to a fair hearing. An institution includes an acute care hospital, state hospital, rehabilitation hospital, state school, nursing home, or intermediate care facility.

§48.6108. Sanctions.

The Texas Department of Human Services (DHS) may sanction, up to and including contract termination, any Community Based Alternatives provider agency that:

(1) has discontinued services to a participant for a reason other than what is allowed in §48.6104 of this title (relating to Crisis Intervention Requiring Immediate Suspension or Reduction of Services Without Advance Notice) and §48.6106 of this title (relating to Immediate Suspension with Advance Notice); or

(2) uses the information cited in §48.6104 of this title to discontinue services to a participant when the provider agency knew or should have known that the cited information did not apply to the participant.

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

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



Subchapter H. Eligibility

**40 TAC §48.2919**

The Texas Department of Human Services (DHS) proposes new §48.2919, concerning time allocation for escort services, in its Community Care for Aged and Disabled (CCAD) chapter. The purpose of the new section is to expand the definition of the "escort" task to allow the attendant to accompany the client to locations other than medical appointments. This rule allows the client to elect to receive "escort" in place of attendant care services with no additional hours allocated.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that aged and disabled CCAD clients can elect to receive "escort" assistance to locations other than medical appointments, which allows clients greater access to their communities. There will be no adverse economic effect on small businesses because attendant care hours will not be increased as a result of this rule change. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Armando Delgado at (512) 438-3217 in DHS's Client Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-067, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The new section implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

§48.2919. Time Allocation for Escort Services.

(a) Allocation of time for escort services on the client needs assessment is allowed only if it can be documented that one of the following occurs at least once a month:

(1) accompanying the client to a clinic, doctor's office, or other trips made for the purpose of obtaining medical diagnosis or treatment; or

(2) waiting in the doctor's office or clinic with a client when necessary due to the client's condition and/or distance from home.

(b) Additional time may not be allocated for escort services for purposes other than those described in subsection (a) of this section. However, the client may elect to substitute escort services for time allotted to any other task.

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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**40 TAC §48.2920**

The Texas Department of Human Services (DHS) proposes an amendment to §48.2920, concerning supervised living, in its Community Care for Aged and Disabled (CCAD) chapter. The purpose of the amendment is to clarify the date from which 14 days of personal leave are counted in CCAD residential care services. This amendment deletes the reference to 14 days of personal leave from the date of the client's authorization, and replaces it with 14 days of personal leave each calendar year. This amendment also promotes consistency with the Community Based Alternative (CBA) Assisted Living/ Residential Care Program rules that were amended in July 1998.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Bost also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that residential care clients will be allowed their 14 days of personal leave in CCAD-Residential Care and CBA-Residential Care in a consistent manner. There will be no adverse economic effect on small businesses because the 14 days of personal leave residential care clients can use per year has not changed. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Armando Delgado at (512) 438-3217 in DHS's Client Eligibility section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-066, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The amendment implements §§22.001-22.030 of the Human Resources Code.

*§48.2920. Supervised Living.*

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

(c) The client is eligible for 14 days of personal leave from the residential care facility each calendar year [~~beginning with the effective date of the authorization period~~]. If the client does not pay the bedhold charge for days of personal leave that exceed the limits, he may lose his space in the facility.

(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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◆ ◆ ◆  
**Chapter 90. Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions**

**Subchapter B. Application Procedures**

**40 TAC §90.11**

The Texas Department of Human Services (DHS) proposes amendments to §90.11, concerning criteria for licensing; §90.42, concerning standards for facilities for persons with mental retardation or related conditions; §90.192, concerning determinations and actions pursuant to inspections; §90.211, concerning definitions; §90.212, concerning incidents of abuse and neglect investigated and reported by facilities to the Texas Department of Human Services (DHS); and §90.216, concerning general provisions. The purpose of the amendments is to comply with Senate Bill 1248, effective May 1, 1998, and to include definitions, technical changes, and substantive changes to §90.212. These substantive changes expand who can not conduct an investigation related to incidents of abuse and neglect to include a person who has ownership by proxy, a person whose name goes on the license, and any family member by consanguinity or affinity. The administrator or designee will advise the resident and the perpetrator of the outcome of the investigation within 10 calendar days of the administrator's signature on the investigative report.

Eric M. Bost, commissioner, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bost also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the protection of individuals being served in the ICFMR/RC program. There will be no effect on small businesses because costs pertaining to training are covered in the reimbursement rates set by the Texas Department of Mental Health and Mental Retardation. Providers are allowed five training days in their rate. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of this proposal may be directed to Maxcine Tomlinson at (512) 438-3169 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-042, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition.

The amendment implements the Health and Safety Code, §§252.001- 252.186.

§90.11. *Criteria for Licensing.*

(a) A person or governmental unit, acting jointly or severally, must be licensed by the Texas Department of Human Services (DHS) [~~(department)~~] to establish, conduct, or maintain a facility in this state.

(b) (No change.)

(c) An applicant for a license must affirmatively show that:

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

(3) the facility meets the construction standards in Subchapter D of this chapter (relating to Facility Construction); ~~and~~

(4) the facility meets the standards for operation based upon an on-site survey; and [-]

(5) with respect to all licenses in effect after December 31, 1999, all services provided under licensure by DHS will not constitute, as a condition of licensure, a threat to the health and safety of residents as a result of computer software, firmware, or computer logic unable to recognize different centuries or more than one century on or after January 1, 2000.

(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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Subchapter C. Standards for Licensure

40 TAC §90.42

The amendment is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition.

The amendment implements the Health and Safety Code, §§252.001- 252.186.

§90.42. *Standards for Facilities for Persons with Mental Retardation or Related Conditions.*

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

(e) Additional requirements.

(1) (No change.)

(2) In the area of cardiopulmonary resuscitation (CPR), the following apply:

(A) At [at] least one staff person per shift and on duty must be trained by a CPR instructor certified [~~in CPR~~] by an organization such as the American Heart Association or the Red Cross.

(B) The facility must ensure that staff maintain their certification as recommended by such organizations.

(3)-(11) (No change.)

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

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Subchapter F. Inspections, Surveys, and Visits

40 TAC §90.192

The amendment is proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition.

The amendment implements the Health and Safety Code, §§252.001- 252.186.

§90.192. *Determinations and Actions Pursuant to Inspections.*

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

(d) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within ten working days of the exit conference [~~and the facility will have seven working days to refute the additional violations~~]. Any discrepancies may be refuted through the Informal Review as outlined in §96.6 of this title (relating to the Informal Review Process for Intermediate Care Facilities for Persons with Mental Retardation and Related Conditions). Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.

(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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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

40 TAC §§90.211, 90.212, 90.216

The amendments are proposed under the Health and Safety Code, Chapter 252, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition.

The amendments implement the Health and Safety Code, §§252.001- 252.186.

§90.211. *Definitions.*

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

(1) Abuse - Any of the following actions:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and regulations;

(D) sexual abuse as defined in this section; and

(E) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

(2) Abuse of a child - The following acts or omissions by any person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual conduct harmful to a child's mental, emotional, or physical welfare;

(F) failure to make a reasonable effort to prevent sexual conduct harmful to a child;

(G) compelling or encouraging the child to engage in sexual conduct as defined by the Texas Penal Code, §43.01; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by §43.21 of the Texas Penal Code, §43.21) or pornographic.

(3) Administrator - The person who is designated to be responsible for the day-to-day operations of the facility and/or the name reflected on the license [~~The director of the facility~~].

(4) Allegation - A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, neglect, or exploitation.

(5) Child - A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(6) Classification -

(A) Class I abuse means:

(i) any act or failure to act performed knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused serious physical injury to a person served; or

(ii) any sexual abuse involving an employee, agent or contractor and a person served, without regard to injury.

(B) Class II abuse means:

(i) any act or failure to act performed knowingly, recklessly or intentionally, including incitement to act, which caused or may have caused nonserious physical injury to a person served;

(ii) any act of force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served; or

(iii) exploitation.

(C) Class III abuse means any verbal or other communication to curse, vilify or degrade a person served, or to threaten a person served with physical or emotional harm, or any act which vilifies, degrades, or threatens a person served with physical or emotional harm.

(7) Complaint - An allegation of abuse, neglect, misappropriation of property, or any other allegation of a regulatory violation which is reported by individuals, family members, or any other person.

(8) Confirmed - A finding that an allegation of abuse, neglect, or exploitation is supported by the preponderance of the evidence.

(9) Department - Texas Department of Human Services.

(10) Designee - A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities delegated by the administrator.

(11) Exploitation - The illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.

(12) Facility - The management, administrator, or other person involved in the provision of care and services to individuals/clients, also including the physical building.

(13) Frequency - The incidence or extent of the occurrence of an identified situation in the facility. The situation can affect a single individual or multiple individuals.

(14) Immediate and serious threat - A situation or set of circumstances in which a high probability exists that serious harm or injury to individuals could occur at any time or already has occurred and may occur again if individuals are not protected from harm or the threat is not removed.

(15) Incident - An allegation of abuse or neglect reported by facility staff to the Texas Department of Human Services state office as required by law.

(16) Incitement - To spur to action or instigate into activity; implies responsibility for initiating another's actions.

(17) Inconclusive - Term used to describe an allegation leading to no conclusion or definite result due to lack of witness or other relevant evidence.

(18) Misappropriation of property - The taking, secretion (concealing), misapplication, deprivation, transfer or attempted transfer to any person not entitled to receive any property, real or personal, or any other thing of value belonging to or under the legal control of an individual without the effective consent of the individual or other appropriate legal authority or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of an individual.

(19) Neglect - A negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to an individual with mental illness or mental retardation, or which placed an individual with mental illness or mental retardation at risk of physical or emotional injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a person served, the failure to provide adequate nutrition, clothing, or health care to a person served, or the failure to provide a safe environment for a person served, including the failure to maintain adequate numbers of appropriately trained staff.

(20) Neglect of a child - Any of the following:

(A) an act which leaves a child in a situation where the child would be exposed to a substantial risk of physical or mental harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of a child;

(B) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away; or

(C) the following acts or omissions by any person:

(i) placing a child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child.

(21) Nonserious physical injury - Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

(22) Perpetrator - The person who has committed an act of abuse, neglect, or exploitation.

(23) Person responsible for a child's care, custody, or welfare - A person who traditionally is responsible for a child's care, custody, or welfare, including:

(A) a parent, guardian, managing or possessory conservator, or foster parent of the child;

(B) a member of the child's family or household as defined by the Texas Family Code, Chapter 71;

(C) a person with whom the child's parent cohabits;

(D) school personnel or a volunteer at the child's school; or

(E) personnel or a volunteer at a public or private child-care facility that provides services for the child or at a public or private residential institution or facility where the child resides.

(24) Reporter - The person filing a report of alleged abuse, neglect, or exploitation, whether the victim of alleged abuse, neglect, or exploitation, a third party filing a report on behalf of the alleged victim, or both.

(25) Serious physical injury - An injury determined to be serious by the examining physician. Examples of serious injury may include the following: fracture, dislocation of any joint, internal injury, any contusion larger than two and one half inch in diameter, concussion, second or third degree burns.

(26) Severity - The seriousness of the identified situation; the degree to which a problem compromises residents' health and safety, or fails to achieve the highest practicable level of physical, mental and psychosocial well-being.

(27) Sexual abuse - Any sexual activity, including sexual exploitation as defined in the Texas Penal Code, involving an employee, agent, or contractor and a person served. Sexual activity includes, but is not limited to, kissing with sexual intent, stroking with sexual intent, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee himself/herself or with another person served.

(28) Sexual exploitation - A coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

(29) Sexually transmitted disease - Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another as a result of sexual contact between persons.

(30) Unconfirmed - Term used to describe an allegation in which a preponderance of evidence exists to prove the [øf] abuse, neglect, or exploitation did not occur [which is not supported by the preponderance of the evidence].

(31) Unfounded - A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

§90.212. *Incidents of Abuse and Neglect Investigated and Reported by Facilities to the Texas Department of Human Services (DHS).*

(a) (No change.)

(b) Reporting responsibilities of employees; failure to report.

(1) Any employee who suspects or has knowledge of, or who is involved in an allegation of abuse, neglect, or exploitation, shall make a verbal report to DHS, immediately, if possible, but in no case more than one hour after the incident. A facility may require its employees to make a verbal report to the facility administrator, immediately, if possible, but no later than one hour after the incident.

(2) Each employee of a facility must sign a statement that the employee realizes that the employee may be criminally liable for failure to report abuse [~~abuses~~] or neglect and that the employee understands his rights under the Health and Safety Code §252.132[~~, such as that the employee has a cause of action against a facility, its owner(s), or employees if he is suspended, terminated, disciplined or discriminated against as a result of reporting abuse or neglect of a resident~~]. These statements must be available for inspection by DHS.

(3) (No change.)

(4) The facility owner, administrator, designee, or employee of the facility who has cause to believe that the physical or mental health or welfare of a resident has been, or may be adversely affected by abuse or neglect caused by another person, shall [~~must~~] report the abuse or neglect to [~~the~~] DHS immediately, if possible, but in no case more than one hour after suspicion or after learning of the incident, at 1-800-292-2065, any day or hour. The following incidents, for example, must be reported to DHS's state office, regardless of the time of day: death; missing resident; abuse or neglect allegations; sexual abuse; misappropriation of resident property; accidental injuries or injuries of unknown origin, if there is reason to believe they were the result of abuse or neglect or if they resulted in serious physical injury; and resident-to-resident abuse if a resident is killed, taken to the hospital, or the physician has ordered treatment other than observation when there is a serious injury.

(c) Qualifications of the facility investigator.

(1) (No change.)

(2) The investigator cannot be the alleged perpetrator or involved in the allegation of abuse or neglect, the administrator or designee, owner, part owner, legal successor or anyone with a controlling interest in the facility/corporation, ownership by proxy, person whose name goes on the license, and any family member by consanguinity or affinity.

(3) Any employee who may become the investigator of a facility must attend training.

(4) Individuals who have been trained, but have not been employed in the area of mental retardation for two years, must be retrained.

(5) [~~(3)~~] The investigator must receive and provide evidence, upon request, such as a certificate or letter of attendance, that he received training on investigation procedures. The documentation of the training content and proof of attendance must be maintained in the facility files.

(6) [~~(4)~~] The training must include at a minimum:

(A) definitions and threshold questions regarding what is an investigation, what are facts, what is evidence, evidence and findings of fact and conclusions.

(B) organizing and conducting an investigation—half life of evidence, assigning responsibility, early stages in an investigation, order of witness interviews and relationship to criminal investigations.

(C) collecting testimonial evidence—identifying witnesses, preparing for an interview, conducting the interview (investigator demeanor), questioning the witness, interviewing uncooperative witnesses and targets and the right to representation.

(D) documentary evidence/taking statements—how to take a statement, special problems in taking statements, and collecting business records.

(E) collecting and preserving physical evidence—injuries, locations in which incidents occur and substances and objects.

(F) drawing conclusions and reporting investigative findings—evaluating evidence and writing investigative reports.

(d) Responsibility of the facility investigator.

(1) Within 24 hours of receipt of an allegation, the investigator will begin to conduct an investigation. The investigator will:

(A) immediately notify the law enforcement agency of any sexual incident, physical abuse that results in an injury, drug diversions, burglary, and theft, for investigation and evidence collection. The facility will abide by all instructions given by the law enforcement agency. The investigator will record the date and time of the allegation, name of law enforcement employee contacted, and the police case number;

(B)-(E) (No change.)

(2) The investigator must act autonomously and report directly to the administrator or designee during the investigation.

(3) [~~(2)~~] The investigator will write a report and it will contain the following information:

(A) a brief description of the allegation;

(B) a detailed description of the investigation from its initiation to completion, including date, time, and location of the alleged incident; location of the alleged victim, witnesses, and the suspect; description of injuries to the alleged victim; how the incident was discovered; how the alleged perpetrator was identified; description of any other evidence; and how the evidence was collected and protected;

(C) summary of the evidence;

(D) analysis of the evidence;

(E) determination as to whether the abuse, neglect, or exploitation occurred; and

(F) recommendations regarding corrective actions up to but not including disciplinary actions, and an opinion as to how the allegation(s) might be classified.

(4) [~~(3)~~] The report should include all witness statements and supporting documentation.

(5) [~~(4)~~] The investigator will provide a copy of the report to the facility administrator or designee.

(6) [~~(5)~~] The administrator or designee will accept or reject the recommendations and document justification in areas of disagreement, which will be attached to the facility investigator's report.

(7) [~~(6)~~] The written investigation report must be sent to DHS no later than the fifth calendar day after the oral report. DHS will review and classify the allegation of abuse.

(8) ~~[(7)]~~ If law enforcement was notified, the investigator or administrator or designee will submit the report to the law enforcement agency.

(e) Responsibilities of the facility administrator or designee.

(1) Immediately, but in no case more than one hour, after notification of an allegation of abuse, neglect, or exploitation, and on an ongoing basis, the facility administrator or designee shall ensure that adequate medical and/or ~~[psychological]~~ mental and emotional care have been provided to the alleged victim. The medical and/or mental and emotional needs of the alleged victim will be addressed by the Qualified Mental Retardation Professional (QMRP). ~~[, and] The administrator or designee shall take measures to ensure the safety of the person, including the following actions.~~

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

~~[(E) The facility administrator or designee will ensure that the resident's medical and psychological needs are met immediately and on an ongoing basis.]~~

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

(4) The facility administrator or designee must ensure that resident rights and protections are upheld at all times.

(f) Confidentiality of the investigative process.

(1) Within 10 calendar days of the administrator's signature on the report, the [The] administrator or designee will advise the resident of the outcome in a language or process which the resident understands and in writing. The legal guardian or parent of a minor and reporter(s) shall be informed in writing of the outcome of the investigation.

(2) Within 10 calendar days of the administrator's signature on the report, the [The] perpetrator will be informed, in writing, of the outcome of the investigation and any disciplinary action.

(3) The reports, records, and working papers used by or developed in the investigative process and the resulting final report regarding abuse, neglect, and exploitation are confidential and may be disclosed only as provided under law. Information discussed during deliberations of abuse, neglect and exploitation investigations may not be discussed outside the purview of those deliberations with the exception of the concerns and recommendations which are to be addressed by the appropriate persons.

(g) Facility responsibility.

(1) The facility administrator or designee will develop and implement policies and procedures to be used in the investigative process [must ensure that resident rights and protection are upheld at all times].

(2) (No change.)

(3) If abuse by an outside person, not facility or contract staff, is substantiated, the facility IDT will determine if the victim is able to make an informed decision regarding any interaction with the perpetrator. If the IDT determines that the client is unable to make informed decisions, the IDT will recommend [determine] the degree of restrictions on visitation to the Specially Constituted Committee for approval.

(h) Disciplinary action.

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

(3) If anyone is dissatisfied with the investigation, they may contact DHS, Long Term Care - Regulatory, within 30 calendar

days of the notification of the outcome of the investigation, for review of the investigative process. The individual will be notified within 30 calendar days of their request of the determination of the review.

(i) (No change.)

§90.216. *General Provisions.*

(a) Confidentiality. All reports, records, and working papers used or developed by the Texas Department of Human Services (DHS) in an investigation are confidential, and may be released to the public only as follows.

(1) (No change.)

(2) If DHS receives written authorization from a facility resident or the resident's legal representative regarding an investigation of abuse or neglect involving that resident, DHS will release the completed investigation report without removing the resident's name. The authorization must:

(A) be signed and dated within six months of the request or state a length of time the authorization is valid;

(B) detail the information to be released;

(C) identify to whom the information can be released;  
and

(D) release DHS from all liability for complying with the authorization.

(3) ~~[(2)]~~ The reporter and the facility will be notified of the results of DHS's investigation of a reported case of abuse or neglect.

(b)-(d) (No change.)

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

Filed with the Office of the Secretary of State on December 4, 1998.

TRD-9818152

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: March 1, 1999

For further information, please call: (512) 438-3765

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**Part IX. Texas Department on Aging**

**Chapter 254. Operations of the Texas Department on Aging**

The Texas Department on Aging proposes the repeal of existing §254.13 and proposes a new §254.13 concerning compliance with contractor responsibilities, rewards and sanctions. The section proposed for repeal has been substantially revised and will be superseded by the proposed new section if adopted. The new section incorporates new language and will clarify the types and levels of administrative violations and the sanctions that may be imposed by the Department on area agencies on aging for non-compliance with contract terms. The new section will also identify, to the extent available and subject to the availability of funds and other resources, the rewards

available to those area agencies that demonstrate exceptional performance in meeting their contractual obligations.

The proposed new section outlines the contractor's responsibilities for compliance with contractual requirements and establishes preventative maintenance measures by the Department to ensure program outcome and provide fiscal accountability. The revision also includes new definitions that will clarify the terms specific to this chapter.

Frank Pennington, director of program and fiscal accountability, has determined that for the first five-year period the repeal and new section are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Pennington has also determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of adopting the repeal and the proposed new rule will be a better understanding of the rules governing the operations of the Department by incorporating new language and simplifying previous language in the proposed new rule. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Frank Pennington, director of program and fiscal accountability, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

#### 40 TAC §254.13

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

The repeal is proposed under the Human Resources Code, §101.021, which provides the Texas Department on Aging with the authority to promulgate rules governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§254.13. Compliance with Contractor Responsibilities, Rewards and 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 December 7, 1998.

TRD-9818165

Mary Sapp

Executive Director

Texas Department on Aging

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-6872



#### 40 TAC §254.13

The new section is proposed under the Human Resources Code, §101.021 which provides the Texas Department on Aging with the authority to promulgate rules for governing the operation of the Department.

The Human Resources Code, Chapter 101, relating to the operation of the Texas Department on Aging, is affected by this proposed action.

§254.13. Compliance with Contractor Responsibilities, Rewards and Sanctions.

(a) Background. To the extent feasible, and subject to the availability of funds and other resources, the Department will give rewards to those area agencies on aging which the Department finds have demonstrated exceptional performance. When a contractor has failed to comply with the terms of a contract which governs the use of monies appropriated under that contract, the Texas Department on Aging may take actions, described in this section, as may be legally available and appropriate to the circumstance. It is the intent of this rule to outline the rewards available for compliance with a contract and the sanctions available for non-compliance with contract terms and conditions.

(b) Definitions. Definitions for the terms used in this section are located in §254.1 of this title (relating to the Operation of the Texas Department on Aging) and the definitions for words and terms specific to this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Level One Sanction - The sanction that the Texas Department on Aging may impose as a response to a contractual breach and/or failure to comply with agency rules and specific state and federal requirements.

(2) Level Two Sanction - The sanction that the Texas Department on Aging may impose as a response to a severe problem and the potential negative impact such a problem may have on a Contractor's region or the state.

(3) Level Three Sanction - The sanction that the Texas Department on Aging may impose where a severe and/or continued failure to comply with contractual requirements, agency rules, and/or state and/or federal laws may affect service delivery and/or Contractor financial stability.

(4) Level Four Sanction - The sanction that the Texas Department on Aging may impose where a severe and/or continued failure to comply with contractual requirements, agency rules, and/or state and/or federal laws continues to go uncorrected.

(5) Acceptable corrective action plan - Identification of actions to be taken, including a time line, that are acceptable to the Department to correct an identified issue of contractual or legal non-compliance.

(6) Administrative payments - Payments for general administration of an Area Agency on Aging, including any indirect costs recovery.

(7) Certified - When used in conjunction with performance measure testing it describes having obtained acceptable results, within tolerances allowed by the State Auditor's Office, for data tested.

(8) Discretionary funds - Any funds issued by the Department that are not awarded based on a general funding formula or not awarded to all Area Agencies on Aging by action of the Texas Board on Aging.

(9) Extension - An approved request, which is submitted to the Department on or before the original due date, to submit required reports or other required information later than the established original due date. No more than 2 extensions shall be granted in any one federal fiscal year.



(c) Preventive Maintenance. Preventive maintenance measures, developed to ensure program outcome and provide fiscal accountability, include technical assistance, Program Instructions, timely and effective program and fiscal monitoring, performance measure testing, and quality initiative reviews.

(1) Technical assistance is performance-driven and outcome-based, stressing the sharing of information and best practice models. Assistance is provided for both fiscal and program issues.

(2) Program Instructions provide clarification and interpretation of rule and are performance-driven and outcome-based. Program Instructions may be provided for both fiscal and program issues.

(3) Program and Fiscal Monitoring assistance may include site visits, desk reviews, and analysis of both financial and program outcomes to help identify potential weaknesses before such weaknesses result in sub-standard performance or questioned costs. Monitoring may result in recommendations that provide practical solutions that can be used to take immediate corrective action.

(4) Performance measure testing is conducted to determine the accuracy of data submitted to the Department and to assess the quality of the controls in place to ensure the consistency of accurate and well-documented data. Certification of performance measure testing should be by design of the controls in place within the system.

(5) Quality Initiative assistance includes routine evaluation of essential quality indicators and certification systems and will be enhanced with timely and relevant professional training and technical assistance to help develop and maintain the knowledge, skills, and abilities required across program lines.

(d) Contractor Responsibilities. A contractor is responsible for compliance with the terms of the contract and shall:

(1) comply, as applicable, with all governing documents set forth in §254.3 of this title (relating to Governing Documents);

(2) comply with the requirements of approved contracts or plans;

(3) meet the administrative and service requirements as published by the Department, including, but no limited to, all budget documents and required reporting in a timely, complete, and accurate manner, consistent with §260.1 of this title (relating to Area Agency on Aging Administrative Requirements), and §260.2 of this title (relating to Area Agency on Aging Fiscal Responsibilities);

(4) respond to requests by the Department for specific correction as a result of:

(A) the area plan or area plan amendment review;

(B) program and fiscal reviews, monitoring and assessments;

(C) investigation and response to complaints; or

(D) erroneous or incomplete information on program performance or financial reports.

(e) Rewards. Rewards for exceptional performance will be determined by the Department based on the results of annual monitoring of an Area Agency on Aging by the Department. Actual rewards are not limited to, but may include, any one or a combination of: notification of outstanding performance to the public in the Area Agency's region and the Board on Aging; funding awards for conferences or leadership workshops including in-state travel; funding

awards for the purchase of computer equipment; and decreased frequency of monitoring and other review processes.

(f) Level One Sanctions. Level one sanctions may result in one or more of the following actions:

(1) require the development, submission, and implementation of an acceptable corrective action plan to address identified weaknesses and/or non-compliance;

(2) submission of additional and/or more detailed financial and/or performance reports;

(3) designation as a high-risk contractor requiring additional monitoring visits; and

(4) repayment of disallowed costs.

(g) Level Two Sanctions. Level two sanctions may result in one or more of the following actions:

(1) imposition of one or more level one sanctions;

(2) restrictions on ability to draw down contractor/Area Agency on Aging administrative funds with notice of such action to the Area Agency on Aging Director, the Area Agency on Aging Director's superior, and the contractor's Chairman of the Board or comparable agency official;

(3) prohibit participation in discretionary funds application or carryover pool redistribution; and

(4) provision of appropriate technical assistance.

(h) Level Three Sanctions. Level three sanctions may result in one or more of the following actions:

(1) imposition of one or more level one sanctions;

(2) imposition of one or more level two sanctions;

(3) prohibit or limit provision of direct services by contractor/Area Agency on Aging;

(4) prohibit or limit the use of specific service providers/vendors; and

(5) imposition of the requirement that reimbursement payments made to contractor/Area Agency on Aging for the remainder of the fiscal year shall be made only following submission of bills paid or other documentation to show that bills for which reimbursement is sought have been paid.

(i) Level Four Sanctions. Level four sanctions may result in one or more of the following actions:

(1) imposition of one or more level one sanctions;

(2) imposition of one or more level two sanctions;

(3) imposition of one or more level three sanctions;

(4) require directed amendment to current area plan; and

(5) recommend dedesignation and/or cancellation of the contract of the Area Agency on Aging to the Texas Board on Aging.

(j) Administrative Violations. Administrative violations shall result in disciplinary actions as specified in this section, unless the violation was due to an act of God or action by the Department. Violations will be documented and greater levels of administrative sanctions will be applied for non-compliance issues deemed most serious and for continued non-compliance of less serious offenses.

(k) Violations Subject to Level One Sanctions. Violations which may result in the imposition of level one sanctions include the following:

(1) failure to submit a required report by the due date or approved extension. For purposes of this violation, a Form 269 and CIS/MIS submission for a single month shall be considered one report submission;

(2) failure to submit required reports accurately and completely, if identified by the Department (not to exceed two instances in one fiscal year), and not corrected within five workdays following notification;

(3) failure, on the third occurrence, to submit required reports accurately and completely, if identified by the Department, whether or not a violation notice was previously issued;

(4) failure to submit timely an acceptable corrective action plan for findings of program and fiscal monitoring within 45 days;

(5) failure to conduct an appropriate audit review process for required provider audits;

(6) failure to resolve deficiencies noted in an audit review within timeframes established by contract;

(7) failure to comply with the Department's requirements related to the Agreement Between the State of Texas and the Secretary of the Treasury, the United States Department of the Treasury in Accordance With the Cash Management Improvement Act of 1990 (CMIA), and its attendant regulations as set forth in 31 Code of Federal Regulations (CFR), Part 205, for the first time within a budget period; and

(l) Violations Subject to Level Two Sanctions. Violations which may result in the imposition of level two sanctions include the following:

(1) failure to rectify any level one sanction within the timeframe established for corrective action;

(2) failure to timely complete corrective actions provided in any corrective action plan;

(3) failure to timely submit a Single Audit, in accordance with OMB Circular A-133, to the Department;

(4) failure to be certified as having had accurate data following performance measure testing;

(5) commits a second violation, within a budget period, of the Department's requirements related to the Agreement Between the State of Texas and the Secretary of the Treasury, the United States Department of the Treasury in Accordance With the Cash Management Improvement Act of 1990 (CMIA), and its attendant regulations as set forth in 31 Code of Federal Regulations (CFR), Part 205;

(6) failure to conduct on-site monitoring of providers as required;

(7) failure to issue letter of findings within 30 days following on-site monitoring or quality assurance review (QAR) of service providers; and

(8) failure to assure contractor's resolution of deficiencies found during service provider's monitoring/quality assurance review within the timeframes established in the corrective action plan.

(m) Violations Subject to Level Three Sanctions. Violations which may result in the imposition of level three sanctions include the following:

(1) failure to rectify any level 1 sanction within 90 days following the timeframe established for corrective action;

(2) failure to rectify any level 2 sanction within the timeframe established for corrective action;

(3) failure to appropriately act upon reported or identified threats to the health and safety of program participants within 72 hours of notice/identification;

(4) failure to appropriately report and respond to allegations of abuse, neglect, and/or exploitation, and/or allegations of fraud or ethics code violations;

(5) failure to have tested data certified as accurate 2 times out of any 4 consecutive performance measure tests; and

(6) commits four or more level one violations or three or more level two violations within the same fiscal year.

(n) Violations Subject to Level Four Sanctions. Violations which may result in the imposition of level four sanctions include the following:

(1) failure to rectify any level 1 sanction within 180 days following the timeframe established for corrective action;

(2) failure to rectify any level 2 sanction within 90 days following the timeframe established for corrective action; and

(3) failure to rectify any level 3 sanction within the timeframe established for corrective action.

(o) Notice.

(1) The date of notice shall be the date the notice is sent to the contractor via facsimile transmission (FAX), if transmitted or recorded as delivered by 12:00 Noon on a regular business day. If transmitted after 12:00 Noon, the next business day will be considered the date of notice.

(2) All notices of violations will be sent by the following methods:

(A) facsimile (FAX) transmission for all notices; and

(B) letter by regular mail for violations subject to a level one and level two sanction or, for violations subject to a level three and level four sanction, by regular mail, return receipt requested.

(3) All notices will be addressed to:

(A) the contractor's Executive Director or designated representative;

(B) the Director of the Area Agency on Aging; and

(C) the contractor's Chairman of the Board or comparable agency official.

(p) Fraud. All allegations of fraud will be investigated by the Department. Complaints will be referred to the appropriate agency for action. Since payments to contractors are made from both State and Federal funds, submission of false or fraudulent claims, statements, documents, or the concealment of a material fact may be prosecuted as a felony in either Federal or State Court.

(1) The Department will inform the contractor of the exact nature of the complaint and may require the contractor to conduct its own internal investigation.

(2) The Department will document its investigation's findings and conclusions and inform the contractor and the complainant of the results. If an investigation indicates there is a substantiated situation in which there is a question of fraud, the Department will require the contractor to take corrective action and/or refer the complaint to the Texas Attorney General's Office, the United States Attorney General's Office and other appropriate law enforcement agencies.

(q) Ethics Code Violations. Violations of the Ethics Code requirements, Texas Government Code 572, related to ethics, as specified in the contract, will be investigated by the Department and referred by the Department to the appropriate law enforcement agency. Ethics violations may result in criminal prosecution and may be pursued based on the provisions of the Texas Government Code, the Election Code, the Penal Code, or other pertinent laws and regulations.

(1) The Department will inform the contractor of the exact nature of the complaint and may require the contractor to conduct its own internal investigation.

(2) The Department will document its investigation's findings and conclusions and inform the contractor and the complainant of the results. If an investigation indicates there is a substantiated situation in which there is a question of ethics code violations, the Department will require the contractor to take corrective action and/or refer the complaint to appropriate law enforcement agencies.

(r) Abuse, Neglect, and Exploitation. Abuse, neglect, exploitation and other violations of client rights will be reported by the Department to the appropriate authorities.

(s) Other Remedies. The Department may take and/or impose other remedies that are legally available based on the circumstances involved.

(t) Procedures for the Withdrawal of Area Agency on Aging Designation.

(1) If the Department proceeds to withdraw Area Agency on Aging designation, action shall be taken to assure that appropriate individuals and agencies are informed in advance of the reasons which make it necessary. Correspondence shall be prepared summarizing the basis for the action. This correspondence shall be mailed by certified mail, return receipt requested, to the contractor and other interested parties, including subcontractors or vendors for the contract involved. Such notification will be sent at least ten working days prior to the effective date of the dedesignation as an area agency on aging. Such notification shall explain the right of the contractor to appeal such decisions as outlined in 254.15 of this title (relating to Appeal Procedures for Area Agencies on Aging Contractors).

(2) Procedures following withdrawal of designation. If the Department withdraws an area agency's designation, the Department shall take the following action:

(A) Notify Appropriate Entities. The Department shall notify by certified mail, return receipt requested, the Assistant Secretary on Aging, Department of Health and Human Services, and those individuals and agencies specified in paragraph (1) of this subsection:

(B) Continue Services. The Department shall provide a plan for the continuity of services in the affected planning and service area and will:

(i) discontinue reimbursement to the contractors concerned;

(ii) notify service providers to submit requests for reimbursement directly to the Texas Department on Aging or to the designated contractor;

(C) place a notice in local and regional newspapers advising that claims against the contractor related to Older Americans Act programs shall be referred to the Texas Department on Aging; and

(D) designate an interim or new area agency in the planning and service area within 180 calendar days, or extension of time approved by the Administration on Aging.

(3) Administration by the Department. If necessary to ensure continuity of services in a PSA, the Department may, for a period of up to 180 calendar days after withdrawing designation of an area agency:

(A) perform the area agency responsibilities;

(B) assign the responsibilities of the area agency to another agency in the planning and service area;

(C) assign the responsibility to an area agency on aging in a contiguous planning and service area; or

(D) if necessary, may request an extension of the 180 day limit from the Assistant Secretary. The Assistant Secretary may extend the period an additional 180 calendar days if the need for the extension is demonstrated.

(u) Appeals. Appeals will be provided as specified in §254.15 of this title (relating to Appeal Procedures for Area Agency on Aging Contractors).

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 December 7, 1998.

TRD-9818164

Mary Sapp

Executive Director

Texas Department on Aging

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 424-6872

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**TITLE 43. TRANSPORTATION**

**Part III. Automobile Theft Prevention Authority**

**Chapter 57. Automobile Theft Prevention Authority.**

**43 TAC §57.35, §57.36**

The Automobile Theft Prevention Authority (ATPA) proposes amendments to §§57.35 and 57.36, concerning the level of funding for projects receiving ATPA grant funds. The ATPA has statutory authority to determine funding levels. The ATPA previously published proposed amendments to §57.36, which removed the required grantee match contribution, on March 18, 1997, (22 TexReg 2839). These proposed amendments were adopted, on April 17, 1997, but the *Texas Register* never published them, due to the transition of transferring ATPA rules

from Title 1 to Title 43 of the Texas Administrative Code. As a result, the rule, as amended, was automatically withdrawn on October 10, 1997, (22 TexReg 10127). A new proposed rulemaking on §57.36 was published on September 4, 1998, (23 TexReg 9011), but was withdrawn from consideration, on November 6, 1998, (23 TexReg 11339), in order to consider other changes to this section and to §57.35.

In this rulemaking, proposed changes to subsections (a), (c) and (d) of §57.36, again, delete the requirement for a cash or in-kind match by a grantee in order to receive ATPA funds after the second year of funding. The current maximum levels of funding as provided in subsection (a) are not changed. However, in subsection (d) and a new subsection (e), the ATPA proposes to allow a grantee to request ATPA funds above its 80% maximum of the second year award in a project's third grant year and thereafter, provided the grantee contributes a cash match of 20% of the total ATPA funds awarded. Currently, a grantee, beginning in the third year of a project, is restricted to a maximum funding level of 80% of the second year award. The original intent of this restriction was to encourage projects to become, in part, self-funded. Inadvertently, this restriction has prevented the ATPA from awarding sufficient funding to successful projects, after the second year. Under the proposed option, the ATPA will consider increased funding above the 80% restriction for qualified projects to assist in covering annual cost increases and to support continued growth. However, in order to receive this additional funding, a grantee must contribute a 20% cash match, which must be expended prior to the expenditure of any ATPA funds. In this manner, the ATPA hopes to encourage self-funding and at the same time provide sufficient ATPA funding for successful projects that should be continued at current activity levels or expanded.

The ATPA proposes a new subsection (f), which allows grantees in their 80% year of funding to be awarded additional funding, without cash match, to encourage the consolidation of programs or the inclusion of new agencies in current grant programs. Allowing programs to consolidate or add new agencies should result in a more cost efficient disbursement of funds and enable the ATPA to continue to expand the geographic coverage of ATPA-sponsored auto theft prevention efforts.

For consistency with the proposed changes to §57.36, paragraph (3) of §57.35, which sets out requirements for continued funding, is proposed for amendment by referencing the new §57.36(d). Other changes in text are proposed for clarity, grammar, consistency and format.

Agustin De La Rosa, Jr., Director of the ATPA, has determined that for each year of the first five years that the rules, as amended, will be in effect, there may be some fiscal implications to state and local governments who are ATPA grantees, as a result of enforcing, administering or complying with the rules as proposed for amendment. An actual dollar amount cannot be determined. The fiscal implications for a particular governmental body will be determined by the amount of funds requested by the respective governmental body above the 80% funding level of the grantee's second year award and the requirement that the cash match contributions be expended prior to ATPA funds awarded. If a governmental body chooses to apply for additional funding, then matching funding will be required which means an increase in agency expenses. At the same time, however, the governmental body will receive additional ATPA funds which will be used, in addition to agency funding, to offset increased costs of an on-going project. If

the request for additional funding is for consolidating existing programs or the inclusion of new agencies, no additional local funds will be required. Moreover, it is not anticipated that any mandatory increase or decrease in expenses as result of these proposed amendments will occur, since participation by local governments is permissive. Also, the 80% funding level beginning in the third year is a current restriction.

There will be no other fiscal implications to state government as a result of enforcing or administering the rules, as proposed for amendment except that the ATPA anticipates being able to direct its grant funds in a more cost efficient manner for the broadest geographic and program coverage possible.

Mr. De La Rosa has also determined that for each year of the first five years the rule as amended will be in effect, the public will benefit: (1) by continued ATPA funding for successful projects, without requiring a local cash match, (2) by the availability of additional ATPA funding for the growth of successful projects beyond their second year, and (3) by more cost effective and flexible funding requirements to encourage consolidation and the inclusion of new agencies in existing programs. Additionally, for the same period of time, Mr. De La Rosa has determined that there is no anticipated economic costs to persons required to comply with the rule as proposed for amendment, except as already explained above in the fiscal implications for governmental bodies who are ATPA grantees. There is no anticipated effect on small businesses.

Comments on the proposal may be submitted to Agustin De La Rosa, Jr., Director, Automobile Theft Prevention Authority, 200 East Riverside Drive, Austin, Texas 78704, for a period of 30 days following publication in this issue of the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a). The ATPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties, which includes determining levels of funding for the ATPA grant projects as part of its plan for providing financial support to combat automobile theft and economic automobile theft as required by §§7 and 8 of Article 4413(37).

Sections 57.35, 57.36 – Article 4413(37) §§6(a), 7, 8 are affected by this proposal.

*§57.35. Requirements for Funding.*

Continuation funding for local projects will be considered for staff recommendations to the ATPA [Automobile Theft Prevention Authority] only if the following requirements have been satisfied:

- (1) the project is eligible for funding in accordance with the requirements set forth in this chapter, the ATPA's application kit, [for the Automobile Theft Prevention Assistance Program] and the ATPA's grant administration guidelines;
- (2) all administrative, program, and financial requirements are complete; and
- (3) the project's detailed budget provides for the respective share of cash contribution required for that year of funding if additional funding is requested under §57.36(d) of this title (relating to Level of Funding for Grant Projects).

*§57.36. Level of Funding for Grant Projects.*

(a) Except as provided in subsections (d) and (f) of this section, the level of ATPA funding for a project may not exceed the following annual rates:

(1) Years 1 and 2 – 100% of the grant request for each year.

(2) Year 3 and thereafter – 80% of the second year award. [The formal definition of match is any article, service, facility or personnel expenses provided for use by the grant recipient, not to exceed 20% of the grantee's second year award OR the 1994 award as a benchmark, subject to review by the Executive Director and ATPA Board, and to availability of funds. The level of funding for projects receiving ATPA funding will be at the following ratios of maximum ATPA funds and minimum local cash and/or in-kind match contributions (ATPA - funded indirect costs excluded):-]  
[Figure 4: 43 TAC §57.36(a)]

(b) (No change.)

(c) Equipment costs funded by the ATPA during a project's first year shall be deducted before the calculation of subsequent year funding. [The level of funding for any project is subject to the following restrictions:]

~~{(1) equipment costs funded by the ATPA during the project's first year shall be deducted before the calculation of subsequent year funding;}~~

~~{(2) documented increases in project cost that require ATPA funding may be allowed, and the ATPA funds and local cash contribution shall share in this cost at their respective percentages for the year of funding.}~~

(d) A grantee, in an 80% funding year, may apply for additional funding above 80% of the second year award if the grantee

~~contributes a cash match of 20% of the total ATPA award. [Grantees who are in their 80% ATPA funding year may either apply for 80% of the second Fiscal Year grant funds without match or provide documentation for 20% of cash and/or in-kind contribution match, if the grantee chooses to show its local contribution to the grant program.]~~

(e) A grantee awarded additional ATPA funds as provided in subsection (d) of this section must expend its 20% cash contribution prior to the expenditure of any ATPA funds.

(f) A grantee, in an 80% funding year, may apply for additional funding above 80% of the second year award, for costs incurred in conjunction with the consolidation of existing grant programs or the inclusion of new agencies in a current grant program.

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

Filed with the Office of the Secretary of State, on December 7, 1998.

TRD-9818163

Agustin De La Rosa

Director

Automobile Theft Prevention Authority

Earliest possible date of adoption: January 17, 1999

For further information, please call: (512) 416-4606

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# WITHDRAWN RULES

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An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

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## **TITLE 10. COMMUNITY DEVELOPMENT**

### **Part I. Texas Department of Housing and Community Affairs**

#### **Chapter 80. Manufactured Housing**

##### **Subchapter D. Standards and Requirements**

###### **10 TAC §80.54**

The Texas Department of Housing and Community Affairs has withdrawn the emergency amendment to §80.54, which appeared in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11510).

Filed with the Office of the Secretary of State on December 4, 1998.

TRD-9818161

Daisy A. Stiner

Acting Executive Director

Texas Department of Housing and Community Affairs

Effective date: December 4, 1998

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



## **TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

### **Part XI. Texas Juvenile Probation Commission**

#### **Chapter 343. Standards for Juvenile Pre-Adjudication Secure Detention Facilities**

##### **37 TAC §§343.1, 343.2, 343.4, 343.5, 343.9-343.11, 343.16, 343.17, 343.20**

The Texas Juvenile Probation Commission has withdrawn from consideration for permanent adoption the new sections and amendments to §§343.1, 343.2, 343.4, 343.5, 343.9-343.11, 343.16, 343.17, 343.20, which appeared in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9006).

Filed with the Office of the Secretary of State on December 4, 1998.

TRD-9818157

Vicki Spriggs

Executive Director

Texas Juvenile Probation Commission

Effective date: December 4, 1998

For further information, please call: (512) 424-6681



#### **Chapter 344. Standards for Juvenile Post-Adjudication Secure Correctional Facilities**

##### **37 TAC §§344.2-344.4, 344.8-344.10, 344.15, 344.16**

The Texas Juvenile Probation Commission has withdrawn from consideration for permanent adoption the amendments to §§344.2-344.4, 344.8-344.10, 344.15, 344.16, which appeared in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9008).

Filed with the Office of the Secretary of State on December 4, 1998.

TRD-9818159

Vicki Spriggs

Executive Director

Texas Juvenile Probation Commission

Effective date: December 4, 1998

For further information, please call: (512) 424-6681



## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part I. Texas Department of Human Services**

#### **Chapter 15. Medicaid Eligibility**

##### **Subchapter F. Budgets and Payment Plans**

###### **40 TAC §15.502**

The Texas Department of Human Services has withdrawn from consideration proposed amendment §15.502, concerning definitions and incurred medical expenses as allowable deductions from nursing facility applied income, in its Medicaid Eligibility chapter. The text of the proposed amendment appeared in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6704). The withdrawal is effective immediately.

Filed with the Office of the Secretary of State on December 7, 1998.

TRD-9818170

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: December 7, 1998

For further information, please call: (512) 438-3765





# ADOPTED RULES

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An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

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## TITLE 16. ECONOMIC REGULATION

### Part VIII. Texas Racing Commission

#### Chapter 301. Definitions

##### 16 TAC §301.1

The Texas Racing Commission adopts amendments to §301.1, relating to definitions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. These amendments are adopted without changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10790).

No comments were received regarding the adoption of the proposals.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse races; and §11.011, which authorizes the commission to adopt rules to implement pari-mutuel wagering on simulcasting races.

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 December 2, 1998.

TRD-9818120

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: January 1, 1999

Proposal publication date: October 23, 1998

For further information, please call: (512) 833-6699



#### Chapter 303. General Provisions

##### Subchapter A. Organization of the Commission

##### 16 TAC §§303.1–303.10, 303.14, 303.15

The Texas Racing Commission adopts amendments to §§303.1–303.10, 303.14, and 303.15, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. These amendments are adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10598) and will not be republished.

No comments were received regarding the adoption of the proposals.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §2.02, which specifies the make-up of the Commission; §2.12, which requires the commission to adopt rules separating the policy making responsibilities of the Commission from the management responsibilities of the executive secretary; §§2.15, 2.16 and 5.04, which state the requirements regarding the commission's investigatory files and criminal history information; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §6.08 and §6.09, which authorize the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses and greyhounds respectively; §7.02, which authorizes the Commission to adopt rules specifying the qualification and experience required for licensing; §7.04, which authorizes the Commission to revoke, suspend or deny an occupational license for past criminal activity; Texas Civil Statutes Article 6252, §13(d), which requires the Commission to adopt guidelines relating to criminal offenses and occupational licenses; and §8.01, which authorizes the Commission to allocate live and simulcast racing days.

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 December 2, 1998.

TRD-9818119

Paula C. Flowerday

Executive Secretary  
Texas Racing Commission  
Effective date: January 1, 1999  
Proposal publication date: October 16, 1998  
For further information, please call: (512) 833-6699

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**16 TAC §303.12**

The Texas Racing Commission adopts the repeal of §303.12, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. However, this section adopted for repeal duplicates statutory provisions, serving no additional purpose. The repeal is adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10600) and will not be republished.

No comments were received regarding the repeal of this section.

The repeal of this section is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 1998.

TRD-9818118  
Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission  
Effective date: January 1, 1999  
Proposal publication date: October 16, 1998  
For further information, please call: (512) 833-6699

◆ ◆ ◆  
**Subchapter B. Powers and Duties of the Commission**

**16 TAC §§303.31-303.33, 303.38, 303.41, 303.42**

The Texas Racing Commission adopts amendments to §§303.31-303.33, 303.38, 303.41, and 303.42, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. These amendments are adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10600) and will not be republished.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §2.02, which specifies the make-up of the Commission; §2.12, which requires the commission to adopt rules separating the policy making responsibilities of the Commission from the management responsibilities of the executive secretary; §§2.15, 2.16 and 5.04, which state the requirements regarding the commission's investigatory files and criminal history information; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; and §8.01, which authorizes the Commission to allocate live and simulcast racing days.

No comments were received regarding the amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 1998.

TRD-9818117  
Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission  
Effective date: January 1, 1999  
Proposal publication date: October 16, 1998  
For further information, please call: (512) 833-6699

◆ ◆ ◆  
**16 TAC §§303.36, 303.37, 303.39, 303.40**

The Texas Racing Commission adopts the repeal of §§303.36, 303.37, 303.39, and 303.40, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. However, these sections adopted for repeal duplicate statutory provisions, serving no additional purpose. The repeal is adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10601) and will not be republished.

No comments were received regarding the repeal of this section.

The repeal of these sections are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 1998.

TRD-9818116  
Paula C. Flowerday  
Executive Secretary  
Texas Racing Commission

Effective date: January 1, 1999  
Proposal publication date: October 16, 1998  
For further information, please call: (512) 833-6699



## Subchapter C. Powers and Duties of the Comptroller of Public Accounts

### 16 TAC §303.62

The Texas Racing Commission adopts an amendment to §303.62, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. The amendment is adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10602) and will not be republished.

No comments were received regarding the adoption of the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §2.02, which specifies the make-up of the Commission; §4.01, which authorizes the Comptroller to prescribe by rule the form and manner in which books and records be kept and §4.03 which authorizes the Comptroller to adopt rules for the enforcement of the Comptroller's powers and duties under the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 2, 1998.

TRD-9818115

Paula C. Flowerday  
Executive Secretary

Texas Racing Commission

Effective date: January 1, 1999

Proposal publication date: October 16, 1998

For further information, please call: (512) 833-6699



## Subchapter D. Texas Bred Incentive Programs

### Division 1. General Provisions

#### 16 TAC §§303.81-303.84

The Texas Racing Commission adopts amendments to §§303.81-303.84, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. Sections

303.81, 303.82 and 303.84 are adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10602) and will not be republished. Section 303.83 is adopted with changes. Minor changes have been made to the factors listed in subsection (c) based on input from the parties who will be affected by this rule. Specifically, "to breeders" is replaced with "through the ATB program" in subsection (c)(1); "Texas bred foals and pup" is replaced with "horses or greyhounds accredited during the past year" in subsection (c)(3); "of breeders" is replaced with "and names of persons" in subsection (c)(4); "and greyhounds" is deleted in subsection (c)(5) with "in Texas and percentage of greyhounds finishing first in open races in Texas" added at the end of subsection (c)(5); "yearlings and two year olds in training" is replaced with "Texas bred horses and greyhounds" in subsection (c)(6); and subsection (c)(8) is added. These changes do not substantially alter the criteria, but based on input from the affected parties, better define the measures that should be used to measure performance. These minor changes received support.

No comments were received regarding the adoption of the proposals.

The amendments are proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of race-tracks; and §6.08 and §6.09, which authorize the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses and greyhounds respectively.

#### §303.83. Audits, Financial Statements and Performance Measures.

(a) An official breed registry shall expend the funds available to it under the Act in the manner required by law. The commission may require or conduct an audit of the financial records of a breed registry to ensure the breed registry is complying with the applicable law.

(b) Not later than June 15 of each year, each breed registry designated by the Act shall submit to the commission audited financial statements regarding its operations. The executive secretary may prescribe the form for the financial statements.

(c) Not later than June 15 of each year, each breed registry designated by the Act shall submit to the commission a report on the following performance measures:

- (1) amount of money distributed through the ATB program;
- (2) ratio of organization expenses to amount of money distributed;
- (3) number of horses or greyhounds accredited during the past year;
- (4) number and names of persons receiving awards;
- (5) percentage of ATB horses finishing first, second or third in open races in Texas and percentage of greyhounds finishing first in open races in Texas;
- (6) median sales price of Texas bred horses and greyhounds;
- (7) average turn around time for ATB funds; and

(8) number of ATB horses that finish first, second or third in graded stakes/"black-type" races in North America.

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 December 2, 1998.

TRD-9818114

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: January 1, 1999

Proposal publication date: October 16, 1998

For further information, please call: (512) 833-6699



### 16 TAC §303.86

The Texas Racing Commission adopts a new rule §303.86, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. The new rule is adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10603) and will not be republished.

No comments were received regarding the adoption of the proposals.

The new rule is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; and §6.08 and §6.09, which authorize the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses and greyhounds respectively.

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 December 2, 1998.

TRD-9818113

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: January 1, 1999

Proposal publication date: October 16, 1998

For further information, please call: (512) 833-6699



## Division 2. Programs for Horses

### 16 TAC §303.92, §303.93

The Texas Racing Commission adopts amendments to §303.92 and §303.93, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. These amendments are adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10603) and will not be republished.

No comments were received regarding the adoption of the proposals.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorize the Commission to adopt rules on all matters relating to the operation of racetracks; and §6.08, which authorizes the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses.

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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Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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For further information, please call: (512) 833-6699



### 16 TAC §303.99

The Texas Racing Commission adopts a new rule §303.99, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. The new rule is adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10604) and will not be republished.

No comments were received regarding the adoption of the proposals.

The new rule is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; and §6.08, which authorizes the Commission to adopt rules relating to the accounting, audit and distribution of all amounts set aside for the Texas-Bred program for horses.

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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Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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For further information, please call: (512) 833-6699



## Subchapter F. Licensing Persons with Criminal Backgrounds

### 16 TAC §303.201, §303.202

The Texas Racing Commission adopts amendments to §303.201 and §303.202, relating to general provisions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced sections. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist. These amendments are adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10604) and will not be republished.

No comments were received regarding the adoption of the proposals.

The amendments are adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §7.02, which authorizes the Commission to adopt rules specifying the qualification and experience required for licensing; §7.04, which authorizes the Commission to revoke, suspend or deny an occupational license for past criminal activity; and Texas Civil Statutes Article 6252, §13(d), which requires the Commission to adopt guidelines relating to criminal offenses and occupational licenses.

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 December 2, 1998.

TRD-9818110

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: January 1, 1999

Proposal publication date: October 16, 1998

For further information, please call: (512) 833-6699



## Chapter 307. Practice and Procedures

## Subchapter A. General Provisions

### 16 TAC §307.8

The Texas Racing Commission adopts new §307.8, concerning the placement on probation of a licensee whose license has been suspended. This new rule is adopted without changes to the proposed text as published in the October 16, 1998 issue of the *Texas Register* (23 TexReg 10605). The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission was given the authority to place on probation a person whose license has been suspended. This rule implements this grant of authority as enacted by the sunset legislation.

No comments were received regarding the adoption of the new rule.

The new section is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §3.14, which authorizes the Commission to place on probation a person whose license is suspended.

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 December 2, 1998.

TRD-9818109

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

Effective date: January 1, 1999

Proposal publication date: October 16, 1998

For further information, please call: (512) 833-6699



## Chapter 309. Operation of Racetracks

## Subchapter A. General Provisions

### Division 1. General Provisions

#### 16 TAC §309.4

The Texas Racing Commission proposes new §309.4, concerning the compliance inspection program. This new rule is adopted without changes to the proposed text as published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10607). The Texas Racing Act was revised by sunset legislation effective September 1, 1997, and in that legislation, the Commission is required to adopt rules requiring the report and correction of inappropriate or unsafe conditions at pari-mutuel racetracks. This rule implements the sunset legislation.

No comments were received regarding the adoption of the new rule.

The new section is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the planning, construction, and operation of racetracks; and §6.062, which authorizes the

Commission to adopt rules requiring the report and correction of inappropriate or unsafe conditions at pari-mutuel racetracks.

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 December 2, 1998.

TRD-9818108

Paula C. Flowerday

Executive Secretary

Texas Racing Commission

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Proposal publication date: October 16, 1998

For further information, please call: (512) 833-6699

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## TITLE 19. EDUCATION

### Part II. Texas Education Agency

#### Chapter 61. School Districts

##### Subchapter CC. Commissioner's Rules Concerning School Facilities

###### 19 TAC §61.1032

The Texas Education Agency (TEA) adopts an amendment to §61.1032, concerning the instructional facilities allotment with changes to the proposed text as published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11266). The section establishes definitions, requirements, and procedures related to the instructional facilities allotment, which was created by the 75th Texas Legislature in 1997. The instructional facilities allotment equalizes the tax effort of school districts for debt service on new school debt. The adopted amendment is necessary to clarify and simplify the administrative process for the instructional facilities allotment.

The following change has been made to the rule since it was published as proposed.

Language has been added to §61.1032(l) that reads "prior to the deadline for a subsequent cycle for which funds are available" to further clarify the debt issuances that are eligible for higher prioritization.

The following comment has been received regarding adoption of the amendment.

Comment. Alvarado Independent School District (ISD) expressed objection to the elimination of the deadline for applications when funding is not available, stating that compliance with a previously announced deadline would make it eligible for a reduction in property wealth for prioritization purposes. Failure of other districts to comply with the previously announced deadline would have made other districts ineligible for the prioritization advantage. The rule changes proposed would allow some districts that would not have complied with the previous deadline to receive the same prioritization advantage for which Alvarado ISD has worked.

Agency Response. The agency disagrees with this comment. The rule change was proposed to eliminate an application filing deadline requirement, thus making paperwork requirements

more convenient when no funding is available for allotments. The argument presented by Alvarado ISD is that the rule change would unfairly advantage districts that fail to file applications by a deadline, yet proceed with entering a debt without assurance of state assistance. The agency does not believe that the change significantly affects eligibility for the advantage in prioritization, since the receipt of the advantage is conditioned on the district entering a debt without state assistance. Each district that applies in the interim period in which funding is unavailable must meet all other application requirements, including the actual debt issuance prior to an assurance of state assistance. The agency believes that the legislative intent was to make an advantage available in prioritization for future awards to those districts that must proceed with debt issuance without financial aid from the state during a particular biennium. The amendments to the rule are consistent with that intent, yet allow more flexibility in filing applications. In review of the proposed rule text for response to public comment, the agency identified an ambiguity in the requirement that a district enter the debt without state assistance. Language has been added to §61.1032(l) to clarify that the debt must be entered prior to a deadline for an application cycle for which funding is available.

The amendment is adopted under the Texas Education Code, §46.002, which authorizes the commissioner of education to adopt rules for the administration of the instructional facilities allotment.

###### §61.1032. *Instructional Facilities Allotment.*

(a) Definitions. The following definitions apply to the instructional facilities allotment governed by this section:

(1) Instructional facility - real property, an improvement to real property, or a necessary fixture of an improvement to real property that is used predominantly for teaching the curriculum required by Texas Education Code (TEC), §28.002.

(2) Noninstructional facility - a facility that may occasionally be used for instruction, but the predominant use is for purposes other than teaching the curriculum required by TEC, §28.002.

(3) Necessary fixture - equipment necessary to the use of a facility for its intended purposes, but which is permanently attached to the facility such as lighting and plumbing.

(4) Debt service - as used in this section, debt service shall include payments of principal and interest on bonded debt or the amount of a payment under an eligible lease-purchase arrangement.

(5) Allotment - represents the amount of eligible debt service that can be considered for state aid. The total allotment is comprised of a combination of state aid and local funds. The state share and local share are adjusted annually based on changes in average daily attendance, property values, and debt service.

(b) Application process. A school district must complete an application requesting funding under the Instructional Facilities Allotment. The commissioner may require supplemental information to be submitted at an appropriate time after the application is filed to reflect changes in amounts and conditions related to the debt. The application shall contain at a minimum the following:

(1) a description of the needs and projects to be funded with the debt issue or other financing, with an estimate of cost of each project and a categorization of projects according to instructional and noninstructional facilities or other uses of funds;

(2) a description of the debt issuance or other financing proposed for funding, including a projected schedule of payments covering the life of the debt;

(3) an estimate of the weighted average maturity of bonded debt; and

(4) drafts of official statements or contracts that fully describe the debt, as soon as available.

(c) District eligibility. All school districts legally authorized to enter into eligible debt arrangements as defined in subsection (d) of this section are eligible to apply for an Instructional Facilities Allotment.

(d) Debt eligibility. In order to be eligible for state funding under this section, a debt service requirement must meet all of the criteria of this subsection.

(1) The debt service must be an obligation of the school district which is entered into pursuant to the issuance of bonded debt under TEC, Chapter 45, Subchapter A; an obligation for refunding bonds as defined in TEC, §46.007; or an obligation under a lease-purchase arrangement authorized by Local Government Code, §271.004.

(2) Application for funding of the bonded debt service or lease-purchase payments must be made prior to the pricing of the bonds or the passage of an order by the school district board of trustees authorizing a lease-purchase arrangement.

(3) Eligible bonded debt must have a weighted average maturity of at least eight years. The term of a lease-purchase agreement must be for at least eight years. For purposes of this section, a weighted average maturity shall be calculated by dividing bond years by the issue price, where "bond years" is defined as the product of the dollar amount of bonds divided by 1,000 and the number of years from the dated date to the stated maturity, and "issue price" is defined as the par value of the issue plus accrued interest, less original issue discount or plus premium.

(4) Funds raised by the district through the issuance of bonded debt must be used for an instructional facility purpose as defined by TEC, §46.001. The facility acquired by entering into a lease-purchase agreement must be an instructional facility as defined by TEC, §46.001.

(5) If the bonded debt is for a refunding or a combination of refunding and new debt, the refunding portion must meet the same eligibility criteria with respect to dates of first debt service as a new issue as defined by TEC, §46.003(d)(1).

(6) An amended application is required for any eligible refunding bonds, regardless of whether a complete or partial refunding is accomplished. Refunding bonds must also meet the following three criteria as defined by TEC, §46.007:

(A) Refunding bonds may not be called for redemption earlier than the earliest call date of the bonds being refunded.

(B) Refunding bonds must not have a maturity date later than the final maturity date of the bonds being refunded.

(C) The refunding of bonds must result in a present value savings, which is determined by computing the net present value of the difference between each scheduled payment on the original bonds and each scheduled payment on the refunding bonds. Present value savings shall be computed at the true interest cost of the refunding bonds.

(e) Biennial limitation on access to allotment. The cumulative amount of new debt service for which a district may receive approvals for funding within a biennium shall be the greater of \$100,000 per year or \$250 per student in average daily attendance per year. A district may submit multiple applications for approval during the same biennium. Timely application before the pricing of bonds or authorizing order for a lease-purchase must be made to ensure eligibility of the debt for program participation. The calculation of the limitation on assistance shall be based on the highest annual amount of debt service that occurs within the state fiscal biennium in which payment of state assistance begins. Increases in debt service payment requirements in subsequent biennia must receive approval through additional applications. The limitation on the allotment for subsequent biennia shall be the total dollar amount of debt service approved for the allotment, based on the calculation of the limitation on assistance at the time of approval.

(f) Finality of award. Awards of assistance under TEC, Chapter 46, will be made based on the information available at the close of the application cycle. Changes in the terms of the issuance of debt, either in the length of the payment schedule or the applicable interest rate, that occur after the time of the award of assistance will not result in an increase in the debt service considered for award. Any reduction in debt service requirements resulting from changes in the terms of issuance of debt shall result in a reduction in the amount of the award of assistance.

(g) Data sources.

(1) For purposes of determining the limitation on assistance and prioritization, the projected average daily attendance as submitted to the legislature by the Texas Education Agency (TEA) in March of an odd-numbered year, as required by TEC, §42.254, shall be used.

(2) For purposes of prioritization, the final property values certified by the Comptroller of Public Accounts for the tax year preceding the year in which assistance is to begin shall be used. If final property values are unavailable, the most recent projection of property values shall be used.

(3) For purposes of both the calculation of the limitation on assistance and prioritization, the commissioner may consider, prior to the close of an application cycle, adjustments to data values determined to be erroneous.

(4) All final calculations of assistance earned shall be based on property values as certified by the Comptroller for the preceding school year, and the final average daily attendance for the current school year.

(h) Allocation of debt service between qualified and non-qualified projects. Debt service shall be allocated among qualified and nonqualified purposes and among eligible and ineligible categories of debt. The method used for allocation among qualified and nonqualified purposes shall be on the basis of pro rata value of the instructional facility versus the noninstructional purposes over the life of the debt service, unless a different basis is indicated in the bond order. The method of allocation of debt service between eligible and ineligible categories must be the same method selected for approval by the Attorney General.

(i) Payments and deposits.

(1) Payment of state assistance shall be made as soon as practicable after September 1 of each year. No payments shall be made until the pricing of bonds is determined to be final or the contract for lease-purchase financing has been assigned.



(2) Funds received from the state for bonded debt must be deposited to the interest and sinking fund of the school district and must be considered in setting the tax rate necessary to service the debt.

(3) Funds received from the state for lease-purchase agreements must be deposited to the general fund of the district and used for lease-purchase payments.

(4) A final determination of state assistance for a school year will be made using final attendance data and property value information as may be affected by TEC, §42.257. Additional amounts owed to districts shall be paid along with assistance in the subsequent school year, and any reductions in payments shall be subtracted from payments in the subsequent school year.

(5) As an alternative method of adjustment of payments, the commissioner may increase or decrease allocations of state aid under TEC, Chapter 42, to reflect appropriate increases or decreases in assistance under TEC, Chapter 46.

(j) Approval of Attorney General required. All bond issues and all lease-purchase arrangements must receive approval from the Attorney General before a deposit of state funds will be made in the accounts of the school district.

(k) Deadlines.

(1) Two application cycles will be conducted each year. Applications shall be received by 5:00 p.m., on June 15 and December 15 of each year, or the last official business day that precedes these dates.

(2) Based on availability of appropriations, the commissioner may cancel application cycles. In the event of cancellation of an application cycle, the commissioner shall provide for an interim application process to maintain eligibility of school district debt for consideration for funding at a later time. Applications received in this circumstance shall be considered in the next cycle only if the provisions of subsection (k)(4) of this section are met. Applications received in an interim in which no funds are available will be reviewed along with any other applications received for the next cycle for which funds are available. Interim applications receive no special consideration other than the adjustment to property wealth as indicated in subsection (l) of this section, if applicable.

(3) An application received after the deadline shall be considered a valid application for the subsequent period unless withdrawn by the submitting district before the end of the subsequent period.

(4) An application may be submitted no earlier than 180 calendar days prior to the prospective sale date/pricing date of the bond issue or the date the school board adopts the order authorizing a lease-purchase agreement. If the pricing of the bonds or the signing of a lease-purchase agreement has not taken place by the end of the 180-day period, the TEA shall consider the application withdrawn. In the case of a lease-purchase agreement, funding of the agreement, through the sale of revenue bonds or other comparable financing transaction, must also be accomplished within the 180-day limit.

(5) The school district may not submit an application for bonded debt prior to the successful passage of an authorizing proposition. An application for a lease-purchase agreement may not be submitted prior to the end of the 60-day waiting period in which voters may petition for a referendum, or until the results of the referendum, if called, approve the agreement.

(l) Prioritization and notice of award. Upon close of the application cycle, all eligible applications shall be ranked in order of property wealth per student in average daily attendance. State assistance will be awarded beginning with the district with the lowest property wealth and continue until all available funds have been utilized. If a district has not previously received any assistance due to a lack of appropriated funds, its property wealth for prioritization shall be reduced by 10% for each biennium in which assistance was not provided. The reduction in property wealth for prioritization purposes is only effective if the district actually entered the proposed debt without state assistance prior to the deadline for a subsequent cycle for which funds are available. Each district shall be notified of the amount of assistance awarded and its position in the rank order for the application cycle.

(m) Bond taxes. A school district that receives state assistance must levy and collect sufficient interest and sinking fund taxes to meet its local share of the debt service requirement for which state assistance is granted. Failure to levy and collect sufficient taxes shall result in pro rata reduction of state assistance. The requirement to levy and collect interest and sinking fund taxes specified in this subsection may be waived at the discretion of the commissioner for a school district that must maintain local maintenance tax effort in order to continue receiving federal impact aid.

(n) Exclusion from taxes. The taxes collected for bonded debt service for which funding under TEC, Chapter 46, is granted shall be excluded from the tax collections used to determine the amount of state aid under TEC, Chapter 42. For a district operating with a waiver as described in subsection (m) of this section, the amount of the local share of the allotment shall be subtracted from the total tax collections used to determine state aid under TEC, Chapter 42.

(o) Calculation of bond tax rate (BTR) for lease-purchase arrangements. The value of BTR in the formula for state assistance for a lease-purchase arrangement shall be calculated based on the lease-purchase payment requirement, not to exceed the relevant limitations described in this section. The lease-purchase payment shall be divided by the guaranteed level (FYL), then by average daily attendance (ADA), then by 100. The value of BTR shall be subtracted from the value of district tax rate (DTR) as computed in TEC, §42.302, prior to limitation imposed by TEC, §42.303.

(p) Continued treatment of taxes and lease-purchase payments. Once approved for funding under TEC, Chapter 46, a district may not select whether taxes associated with the bonded debt are considered for purposes stated in TEC, Chapter 46, or Chapter 42. Until approved for assistance under TEC, Chapter 46, taxes collected for debt service may be considered in the calculation of state aid in TEC, Chapter 42. Bonded debt service or lease-purchase payments that were excluded from consideration for state assistance due to prioritization or due to the limitation on assistance may be considered for state assistance in subsequent biennia through additional applications. A modified application may be provided for previously rejected debt service or lease-purchase payments.

(q) Variable rate bonds. Variable rate bonds are eligible for state assistance under the Instructional Facilities Allotment. For purposes of calculating the biennial limitation on access to the allotment, the payment requirement for a variable rate bond shall be valued at the interest rate specified in the official statement (or draft) as the rate to be used in calculating the minimum amount a district must budget for payment of interest cost and the scheduled minimum mandatory redemption amount, if applicable. For purposes of calculating state assistance under TEC, Chapter 46, the lesser of

the actual interest rate or that used for the calculation of the limitation on access to the allotment shall be used. A district may exercise its ability to make payments in amounts in excess of the minimum, but the excess amount shall not be used in determining the value of BTR or in the calculation of state assistance under TEC, Chapter 46, in that year.

(r) Reports required. The commissioner may require such information and reports as are necessary to assure compliance with applicable laws. The commissioner may require immediate notification by the district of relevant financing activities such as refunding or refinancing of bond issues, renegotiation of lease-purchase terms, change in use of bond proceeds, or other actions taken by the district that might affect state funding requirements.

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 December 7, 1998.

TRD-9818185

Criss Cloudt

Associate Commissioner, Policy Planning and Research  
Texas Education Agency

Effective date: December 27, 1998

Proposal publication date: November 6, 1998

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



## TITLE 22. EXAMINING BOARDS

### Part XXV. Structural Pest Control Board

#### Chapter 599. Treatment Standards

##### 22 TAC §599.1

The Structural Pest Control Board adopts amendments of §599.1 without changes to the proposed text published in the October 9, 1998 issue of the *Texas Register* (23 TexReg 10276).

The amendment will provide consistent information about devices used for termite control.

The rule will function in that the amendment will require any one who wishes to have a device for termite control approved to provide information to the Board to support the approval.

No comments were received.

The amendment is adopted under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the provision of structural pest control services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 1998.

TRD-9818125

Benny M. Mathis, Jr.

Executive Director

Structural Pest Control Board

Effective date: December 23, 1998

Proposal publication date: October 9, 1998

For further information, please call: (512) 451-7200



##### 22 TAC §599.4

The Structural Pest Control Board adopts amendments of 599.4 with changes to the proposed text published in the September 18, 1998 issue of the *Texas Register* (23 TexReg 9528). The additional changes are use of the term diagram rather than graph for clarity.

The amendment will reduce the paperwork burden on licensees while still allowing the customer to receive the information they need to make an informed decision.

The rule will function in that the amendment provides that only the diagram will generally be required on a retreatment for an existing customer.

No comments were received

The amendment is adopted under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate the provision of structural pest control services.

§599.4. *Termite Treatment Disclosure Documents.*

(a) As part of each estimate submitted and before conducting an initial termite treatment for a customer, the pest control company proposing the treatment shall present the prospective customer or designee with the disclosure documents statement.

(b) Each termite treatment disclosure document shall include, but is not limited to:

(1) a diagram and description of the structure or structures to be treated include the following:

(A) the address or location;  
(B) approximate measurements as accurately as possible;

(C) areas of present W.D.I. activity;  
(D) areas to be treated;

(2) a label for any pesticide recommended or used;

(3) the complete details of the warranty provided if any, including:

(A) if the warranty does not include the entire structure treated, the areas included must be listed;

(B) the time period of the warranty;

(C) the renewal options and cost;

(D) the obligations of the pest control operator to retreat for termite infestations or repair damage caused by termite infestations within the warranty period; and

(E) conditions that could develop as a result of the owners action or inaction that would void the warranty.

(4) the signature of approval on the diagram by a certified applicator or licensed technician in the termite category employed by the company making the proposal.

(5) the concentration of any liquid termiticide application to be used on the treatment.

(6) for subterranean termite post construction treatments the following statements and definitions in at least 8-point type: A termite treatment may be a partial treatment or spot treatment, these types of treatments are defined as follows:

(A) Partial This technique allows a wide variety of treatment strategies but is more involved than a spot treatment (see definition below). Ex.: treatment of some or all of the perimeter, bath traps, expansion joints, stress cracks and bait locations.

(B) Pier and Beam Generally defined as the treatment of the outer perimeter including porches, patios and treatment of the attached garage. In the crawl space, treatment would include any soil to structure contacts as well as removal of any wood debris on the ground.

(C) Slab Construction Generally defined as treatment of the perimeter and all known slab penetrations as well as any known expansion joints or stress cracks.

(D) Spot Treatments Any treatment which concerns a limited, defined area less than ten (10) linear or square feet that is intended to protect a specific location or "spot". Often there are adjacent areas susceptible to termite infestation which are not treated.

(7) For all termite treatments the following statement in at least 8-point type: For all treatments there will be a diagram showing exactly what will be treated. Treatment specifications and warranties for those treatments may vary widely. Review the pesticide label provided to you for minimum treatment specification. If you have any questions, contact the service provider or the Texas Structural Pest Control Board, 1106 Clayton Lane, Suite 100LW, Austin, Texas, 78723. Telephone number (512) 451-7200.

(8) For pre-construction treatments, The Board-approved Termite Pretreatment Disclosure Document (SPCB/D-1) must be provided to, and signed by, the contractor or purchaser of the pretreatment service. A signed copy must be kept in the pest control use records of the licensee. Failure to provide this document will result in an administrative penalty of not less than \$3000 per violation. The text and format of the termite pre-treatment disclosure document shall be as follows:

Figure: 22 TAC §599.4(b)(8)

(9) Paragraph (5) of this subsection does not apply to termiticide baits.

(10) For drywood termite and related insect treatments the following statements and definitions in at least eight (8) point type: A drywood termite or related insect treatment may be a full treatment or limited treatment. These types of treatments are defined as follows: Full Treatment Generally defined as a treatment to control 100 percent of the insect infestation by tarpaulin fumigation or appropriate sealing method. A full treatment by fumigation is designed to eliminate every insect colony, both accessible and inaccessible. It should include the infested structure and all attached structures. Tarpaulin fumigation reaches every part of a structure that may not be reached by other approved methods. Limited Treatment Any treatment less than full treatment. A treatment which has a limited and defined area that is intended to protect a specific location. Often there are adjacent areas susceptible to drywood termite or related insect infestations which are not treated. Because of the nature of wood destroying insects, these untreated areas may continue to harbor drywood termites and unrelated insects throughout the structure without detection.

(11) A consumer information sheet as required by Section 595.7 of this title (relating to Consumer Information Sheet).

(c) Before conducting an initial termite treatment for the customer, the pest control company proposing the treatment shall present the prospective customer or designees with a diagram and description of the structure(s) to be treated including the following:

- (1) construction details needed for clarity of the report;
- (2) areas of W.D.I. evidence;
- (3) areas of conditions conducive to infestation by W.D.I.;

and

- (4) the type of construction;
  - (A) foundation
    - (i) slab;
    - (ii) Pier and beam and type of pier;
    - (iii) basement; or
    - (iv) other (specify)
  - (B) siding:
    - (i) wood
    - (ii) brick or stone; or
    - (iii) other (specify)
  - (C) roof:
    - (i) composition;
    - (ii) wood shingle;
    - (iii) metal; or
    - (iv) other
  - (D) primary use:
    - (i) residence;
    - (ii) public building;
    - (iii) commercial;
    - (iv) industrial; or
    - (v) other (specify)
  - (E) inaccessible or obstructed areas

(d) For any retreatment of a property for an existing customer, the pest control company shall provide the following before conducting the retreatment:

- (1) the label; if different than that used in the preceding treatment(s)
- (2) a diagram of the structure showing areas to be treated
- (3) any changes to the warranty information
- (4) a consumer information sheet as required by §595.7 of this title.

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 December 3, 1998.

TRD-9818124  
Benny M. Mathis, Jr.  
Executive Director

Structural Pest Control Board  
Effective date: December 23, 1998  
Proposal publication date: September 18, 1998  
For further information, please call: (512) 451-7200

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## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty Insurance

##### Subchapter E. Texas Windstorm Insurance Association

###### Division 1. Plan of Operation

###### **28 TAC §5.4008**

The Commissioner of Insurance adopts amendments to 28 TAC §5.4008 concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association. The amended section adopts by reference amendments to the Building Code for Windstorm Resistant Construction that supercede the amendments which were adopted pursuant to an emergency under Commissioner's Order Number 98-1025, effective September 3, 1998. Section 5.4008 is adopted without changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10798), which text will not be republished, and with changes to the proposed amendments which the section adopts by reference, all of which are more particularly described below. The amended section was considered in a public hearing on November 24, 1998, under Docket No. 2385, by the Senior Associate Commissioner for Regulation and Safety acting pursuant to Delegation Order #98-1354.

The amended section concerns building code specifications in the plan of operation of the Texas Windstorm Insurance Association (Association or TWIA). Created in 1971 by the Texas Legislature as the Texas Catastrophe Property Insurance Association, the Association is composed of all insurers authorized to transact property insurance in Texas and operates pursuant to Article 21.49 of the Insurance Code. The Texas Legislature in H.B. 1632 (Acts 1997, 75th Leg., ch. 438, §1, eff. Sept. 1, 1997) changed the name of the Texas Catastrophe Property Insurance Association to the Texas Windstorm Insurance Association. The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the Association has provided this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. The Association also provides coverage to certain designated catastrophe areas in Harris County, including (i) effective March 1, 1996, the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Commissioner's Order No. 95-1200, November 14, 1995); (ii) effective June 1, 1996, the City of Morgan's Point (Commissioner's Order No. 96-0380, April 5, 1996); and (iii) effective April 1, 1997, in areas located east of State Highway 146 and inside the city limits of the City of Shoreacres and the City

of Pasadena (Commissioner's Order No. 97-0225, March 11, 1997). The Association's plan of operation specifies in §5.4008 the applicable building code standards to qualify for coverage from the Association as required by Article 21.49, §6A of the Insurance Code for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after September 1, 1998, the effective date of the Building Code for Windstorm Resistant Construction (the code), adopted by reference in §5.4008(a) pursuant to Commissioner's Order No. 98-0803. The amendments are necessary to (i) expand the standards and specifications of the code to provide additional prescriptive construction methods to be used in the construction, repair and additions of buildings located in the designated catastrophe areas to increase the building options available to the building industry and consumers; (ii) provide an exemption for application of the code to historical structures located in the designated catastrophe areas; and, (iii) make editorial and non substantive changes.

The amendments are a result of recommendations by the Building Code Advisory Committee to expand the available use of the code in the designated catastrophe areas. Article 21.49 §6A(f), Insurance Code, requires the commissioner to appoint a Building Code Advisory Committee (advisory committee) to advise and make recommendations to the commissioner on building specifications in the TWIA plan of operation for structures to be eligible for windstorm and hail insurance through the TWIA. Article 21.49, §6A(f) requires that the advisory committee be composed of one representative of the TWIA, a representative of the residential building industry in the catastrophe area, a representative of municipal building officials in the catastrophe area, a registered professional engineer who resides in the catastrophe area with knowledge of building codes, a representative of the commissioner, a county commissioner or county judge, and other persons as may be deemed appropriate by the commissioner. Pursuant to Texas Revised Civil Statutes, Article 6252-33, 28 TAC §5.4002 was adopted (Commissioner's Order No. 94-0183 (February 18, 1994)) to specify the advisory committee's purpose and scope, tasks, reporting requirements, and composition and duration.

After adoption of the code by the commissioner under Commissioner's Order No. 97-0626, dated June 30, 1997, the department staff developed a training program on the use of the code and provided training and educational seminars to the building industry in the designated catastrophe areas. During those training sessions, comments and recommendations for improving the code were solicited from the training participants. These comments and recommendations were provided to the advisory committee for review at an advisory committee meeting on May 20, 1998. The advisory committee requested the department staff to proceed with developing the recommended changes for inclusion into the existing code and to provide the advisory committee members the final recommended changes at the next advisory committee meeting. The advisory committee met on July 31, 1998 to consider the proposed recommendations presented by the department staff and unanimously voted to recommend the code changes for the commissioner's consideration.

The department has made a change in section 104 of the amendments adopted by reference which change resulted from the numerous requests and recent inquiries received from builders and contractors concerning the need for flexibility in the code's application to introduce alternative products and construction methods, in order to provide additional options for

builders and contractors and to avoid stifling construction along the coast. The amendment to section 104 would allow the use of alternate materials or methods of construction not specifically prescribed in the code. The alternate material or method of construction must be at least equivalent to that prescribed by the code, must meet the wind load provisions of ASCE 7-93, a nationally recognized consensus design standard, and must be accepted by the Texas Department of Insurance prior to its use. This amendment has also been reviewed by the Building Code Advisory Committee and the Texas Association of Builders with no objections received. This amendment facilitates the purposes and benefits of the amendments to the code as proposed which, among other things, provide additional flexibility to builders and allow them to select the most effective way to achieve the standards set forth in the code. Staff has also made editorial, grammatical, and typographical changes to the amendments adopted by reference.

Amended §5.4008 adopts by reference the following amendments to the code:

A. Throughout the code, references to the Texas Catastrophe Property Insurance Association (TCPPIA) are changed to Texas Windstorm Insurance Association (TWIA) and references to Texas registered professional engineers are changed to Texas licensed professional engineers to be consistent with the current changes in the Texas Engineering Practice Act.

B. Section 100, General Requirements: Editorial changes are made in this section to simplify and clarify inspection procedures by the department and to change the references to inspection forms used by the department which have been adopted under a separate rule. Editorial changes are made to the simplified wind pressures to clarify applicable building types. Section 104 is changed to allow the use of alternate materials or methods of construction not specifically prescribed in the code, but which are at least equivalent to that prescribed by the code, and which must meet the wind load provisions of ASCE 7-93 and must be accepted by the Texas Department of Insurance prior to use.

C. Section 200, Basic Definitions, Assumptions, and Limitations of the Prescriptive Code.

1. 201, Applicability. A new exemption is added to this section to exempt historical structures from the requirements of the code. Historical structures are defined as those structures which are listed or eligible to be listed in the National Register of Historic Places or listed as a Recorded Texas Historic Landmark or designated by official action of a legally constituted municipal or county authority as having special historical and architectural significance and is at least 50 years old. This section also clarifies that the prescriptive requirements are intended primarily for wind resistant construction.

2. 207, Limitations on the Prescriptive Code. Editorial changes are made to define mean roof height and to clarify the maximum allowable wall height. Illustrations are added to show mean roof height and building height limitations. Expanded limitations for building dimensions and roof span limitations for one- and two-story buildings are added to increase the number of buildings eligible to be constructed using the prescriptive building code.

3. 208, Design Loads. Non substantive editorial changes are made to clarify and simplify the requirements contained in this section of the code.

4. 211, Materials. A reference is added to indicate that properly graded finger-jointed lumber is an acceptable material

to be used in the construction of a structure subject to the new code. Specifications for gypsum wallboard are added to be consistent with references to other specifications of building materials. Clarifications and specifications are added for corrosion resistant standards for fasteners and metal framing connectors.

D. Section 300, Prescriptive Requirements, Area Inland of the Dividing Line.

1. 301, Foundations. A clarification provides that the structural requirements for reinforcement in the grade beams are for uplift resistance only. The dimensions and reinforcement requirements for grade beams are revised. New options and equivalencies are added for welded wire fabric, such as synthetic fiber reinforcement. The amount of cover required for reinforcement in the grade beams is added to the code and clarification of the requirements for tying reinforcing rebar for masonry wall anchorage is also added to the code. Additional alternatives and minimum design requirements are included for other anchorage systems to substitute for anchor bolts in slabs. The pile foundation section is reorganized for clarity. The requirements for bolts to beam and pile connections are improved.

2. 302, Floor Framing. The blocking requirements for floor joists are eliminated as unnecessary. A new option is added for the fastening of the floor sheathing to the floor framing.

3. 303, Wood Stud Wall Framing. A new exception is added to allow recessed front entryways with loadbearing walls in excess of 10 feet. A clarification is added for the species of lumber that can be used for loadbearing walls and an option is added for the use of lower grade lumber for the trimmer and cripple studs and for the use of standard grade lumber for top plates. Clarifications are added for the requirements and application for uplift resistance for each wall stud and cripple stud. The application of anchorage requirements for framing around openings is clarified. The uplift resistance tables for wall studs and framing around openings is expanded for larger roof spans. The requirements and application for the construction of the garage door returns is clarified and the use of No. 2 Southern Pine and glue-laminated beams for the garage door headers is included. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. The wall bracing section is revised to clarify the use of a minimum shearwall segment along exterior walls, to provide options for fasteners for gypsum wallboard, to permit the use of single studs at the end of shearwall segments, to provide options for alternative sheathing applications, to include an exception to the minimum shearwall segment for recessed front entryways and to address sheathing requirements for gable endwalls. An optional provision is added to address the use of sheathing for wall bracing and uplift resistance along with the use of structural panels exclusively for uplift resistance. Holddown capacities are revised and capacities have been added for buildings with a wall height of 9 feet. Illustrations are added or revised to clarify the use of sheathing for shear transfer and to clarify the use and installation of shear transfer framing anchors. Bolt dimensions are clarified for use in anchoring of chimney framing.

4. 304, Masonry Walls. The minimum shearwall segments at any location on the structure are clarified in the code. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet.

Illustrations are revised to clarify the application of shearwall segments and to clarify the definition of pier height. A new section is added to address interior walls, both wood frame and masonry construction, in a masonry building.

5. 305, Ceiling Framing. A clarification is added regarding the application of bracing in the ceiling joist section of the code. A clarification is added to indicate the acceptable locations of bracing in gable endwalls. The existing illustration for wall studs at a gable endwall is revised to show uplift connections of the top plate to the wall stud.

6. 306, Roof Framing. New options are added to specify rafter span options for tile roofs and for ceilings that are attached and not attached to rafters. A new option is provided for hip splices. Location of rafter bracing and purlins is clarified, and the minimum ridge board requirements are clarified along with a clarification of the species and grade of lumber used for ridge boards. The span table for ridge beams is revised to comply with deflection limitations. An option is included for replacing collar ties with ridge straps. The illustration showing the correct lap for ceiling joists is revised. A clarification for the application of ridge straps is included and a clarification to address thrust loads on rafters where a structure has a cathedral ceiling is also added. The minimum thickness of sheathing is clarified to be 7/16 of an inch. The uplift resistance table is expanded for larger roof spans. The blocking requirements for roof decking at gable endwalls when balloon framing is used are eliminated as unnecessary.

7. 307, Roof Coverings. The application of the metal drip edge on a composition roof is clarified and the methodology for the application of asphalt plastic cement to composition shingles at the eaves and at the gable ends is also clarified. The slope limitation and nailing requirements for a composition roof are also clarified.

8. 308, Exterior Openings. Wind pressure options are added for doors, windows and garage doors. Fastener requirements for garage doors and exterior windows are clarified. The requirements for wind pressure are added for skylights, which were not included in the existing code.

9. 309, Exterior Coverings. A clarification is added that the underlayment requirements for wood structural panel siding can be either building paper or an equivalent moisture barrier. A clarification is added to stipulate that various board sidings and brick veneer cannot be used for lateral load resistance. Requirements for turbine and ridge vents are added to outline the wind load specifications.

10. 310, Mechanical and Exterior Equipment. A clarification is added that where lumber is exposed, such lumber must be treated lumber.

11. 311, Miscellaneous Construction. It is clarified that this section also addresses manufactured awnings in addition to patio covers. Illustrations are added for construction of supported overhangs and covered porches. Specifications are added for species and grade of lumber for the support beams and posts for supported overhangs and covered porches. Span requirements for support beams are revised to comply with deflection requirements. The allowable dimensions for supported overhangs and covered porches are expanded, and the uplift load requirements have been revised. A clarification is also added regarding overhang limitations.

12. 312, Reroofing a Wood Shingle or Shake Roof. A new option is added to provide for the application of structural sheathing over space boards.

E. Section 400, Prescriptive Requirements, Area Seaward of Established Dividing Line.

1. 401, Foundations. A clarification is added that the structural requirements for reinforcement in the grade beams are for uplift resistance only. The dimensions and reinforcement requirements for grade beams are revised. New options and equivalencies are added for welded wire fabric, such as synthetic fiber reinforcement. The amount of cover required for reinforcement in the grade beams is added to the code and clarification of the requirements for tying reinforcing rebar for masonry wall anchorage is also added to the code. Additional alternatives and minimum design requirements are included for other anchorage systems to substitute for anchor bolts in slabs. The pile foundation section is reorganized for clarity. The requirements for bolts to beam and pile connections are improved.

2. 402, Floor Framing. The blocking requirements for floor joists are eliminated as unnecessary. A new option is added for the fastening of the floor sheathing to the floor framing.

3. 403, Wood Stud Wall Framing. A new exception is added to allow recessed front entryways with loadbearing walls in excess of 10 feet. A clarification is added for the species of lumber that can be used for loadbearing walls and an option is added for the use of lower grade lumber for the trimmer and cripple studs and for the use of standard grade lumber for top plates. Clarifications are added for the requirements and application for uplift resistance for each wall stud and cripple stud. The application of anchorage requirements for framing around openings is clarified. The uplift resistance tables for wall studs and framing around openings is expanded for larger roof spans. The requirements and application for the construction of the garage door returns is clarified and the use of No. 2 Southern Pine and glue-laminated beams for the garage door headers is included. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. The wall bracing section is revised to clarify the use of a minimum shearwall segment along exterior walls, to provide options for fasteners for gypsum wallboard, to permit the use of single studs at the end of shearwall segments, to provide options for alternative sheathing applications, to include an exception to the minimum shearwall segment for recessed front entryways and to address sheathing requirements for gable endwalls. An optional provision is added to address the use of sheathing for wall bracing and uplift resistance along with the use of structural panels exclusively for uplift resistance. Holddown capacities are revised and capacities have been added for buildings with a wall height of 9 feet. Illustrations are added or revised to clarify the use of sheathing for shear transfer and to clarify the use and installation of shear transfer framing anchors. Bolt dimensions are clarified for use in anchoring of chimney framing.

4. 404, Masonry Walls. The minimum shearwall segments at any location on the structure are clarified in the code. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. Illustrations are revised to clarify the application of shearwall segments and to clarify the definition of pier height. A new

section is added to address interior walls, both wood frame and masonry construction, in a masonry building.

5. 405, Ceiling Framing. A clarification is added regarding the application of bracing in the ceiling joist section of the code. A clarification is added to indicate the acceptable locations of bracing in gable endwalls. The existing illustration for wall studs at a gable endwall is revised to show uplift connections of the top plate to the wall stud.

6. 406, Roof Framing. New options are added to specify rafter span options for tile roofs and for ceilings that are attached and not attached to rafters. A new option is provided for hip splices. Location of rafter bracing and purlins is clarified, and the minimum ridge board requirements are clarified along with a clarification of the species and grade of lumber used for ridge boards. The span table for ridge beams is revised to comply with deflection limitations. An option is included for replacing collar ties with ridge straps. The illustration showing the correct lap for ceiling joists is revised. A clarification for the application of ridge straps is included and a clarification to address thrust loads on rafters where a structure has a cathedral ceiling is also added. The minimum thickness of sheathing is clarified to be 15/32 of an inch. The uplift resistance table is expanded for larger roof spans. The blocking requirements for roof decking at gable endwalls when balloon framing is used are eliminated as unnecessary.

7. 407, Roof Coverings. The application of the metal drip edge on a composition roof is clarified and the methodology for the application of asphalt plastic cement to composition shingles at the eaves and at the gable ends is also clarified. The slope limitation and nailing requirements for a composition roof are also clarified.

8. 408, Exterior Openings. Wind pressure options are added for doors, windows and garage doors. Fastener requirements for garage doors and exterior windows are clarified. The requirements for wind pressure are added for skylights which were not included in the existing code. It is clarified that exterior opening systems must meet wind pressure requirements in addition to either being designed to resist or protected from impact by windborne debris. A new, prescriptive option for impact protective systems is added to the code using wood structural panels for application to wood frame construction. This new option can be used in lieu of proprietary products, such as shutters or impact resistant windows, outlined or specified in the department's product evaluation reports.

9. 409, Exterior Coverings. A clarification is added that the underlayment requirements for wood structural panel siding can be either building paper or an equivalent moisture barrier. A clarification is added to stipulate that various board sidings and brick veneer cannot be used for lateral load resistance. Requirements for turbine and ridge vents are added to outline the wind load specifications.

10. 410, Mechanical and Exterior Equipment. A clarification is added that where lumber is exposed, such lumber must be treated lumber.

11. 411, Miscellaneous Construction. Clarified that this section also addresses manufactured awnings in addition to patio covers. Illustrations are added for construction of supported overhangs and covered porches. Specifications are added for species and grade of lumber for the support beams and posts for supported overhangs and covered porches. Span require-

ments for support beams are revised to comply with deflection requirements. The allowable dimensions for supported overhangs and covered porches are expanded, and the uplift load requirements have been revised. A clarification is also added regarding overhang limitations.

12. 412, Reroofing a Wood Shingle or Shake Roof. A new option is added to provide for the application of structural sheathing over space boards.

#### F. Appendices.

1. Windstorm Offices. Updated telephone numbers of the Texas Department of Insurance's windstorm field offices are added to this appendix.

2. Glossary. New definitions of construction terms used in the code are added or revised in this appendix.

3. TDI Standard TDI 1-98. Definitions for porous and nonporous impact protective systems are added. The acceptance criteria for impact protective systems and exterior opening systems are clarified.

4. Reference Material Sources. References are added to include additional national standards used in the development of the code.

5. Shearwall Examples. Existing shearwall examples are clarified to incorporate the amendments to the code.

6. Fastening Schedule. Additional options are provided for fasteners.

7. Figures. Illustrations are added to correspond to changes and clarifications for the code. The effective date of the amendments is December 31, 1998.

SUMMARY OF COMMENTS AND AGENCY'S RESPONSE TO COMMENTS. Comment: A commenter supports the adoption of changes to 28 TAC §5.4008 incorporating revisions to the new coastal building code. The commenter says the revisions greatly increase the flexibility of the code, thereby increasing the options available to home buyers, and the revisions serve to clarify areas of uncertainty.

Agency Response: The department agrees and appreciates the comments.

NAMES OF THOSE COMMENTING FOR AND AGAINST THE SECTION. For: Texas Association of Builders.

The amendments are adopted pursuant to the Insurance Code Articles 21.49 and 1.03A. Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the Association. Article 21.49, §6A(f), Insurance Code, requires the Commissioner to appoint a Building Code Advisory Committee to advise and make recommendations to the Commissioner on building specifications in the Association's plan of operation for structures to be eligible for windstorm and hail insurance through the Association. Article 21.49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation with the advice of the Association's board of directors. Article 21.49, §6A(f) and §5(c), by their terms, delegate the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent

with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only 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 December 1, 1998.

TRD-9818076

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: December 21, 1998

Proposal publication date: October 23, 1998

For further information, please call: (512) 463-6327

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 106. Exemptions From Permitting

##### Subchapter K. General

##### 30 TAC §106.261, §106.262

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §106.261, concerning Facilities (Emission Limitations) and §106.262, concerning Facilities (Emission and Distance Limitations). The amendments are adopted with changes to the proposed text as published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6386).

##### EXPLANATION OF ADOPTED RULES

The commission initiated a protectiveness review of the exemptions in §106.261 and 106.262. This rulemaking addresses several areas of concern found in that review. It should be noted, however, that the proposed changes are not reflective of a full protectiveness review of the exemption, which cannot be performed until sufficient data have been collected. A full protectiveness review will be initiated after data collection.

The first concern is that the commission does not have the data to determine whether §106.261 is protective in practice. There is no current requirement for a company to submit to the commission any information on chemicals emitted under the exemption. Without such data, the commission cannot fully evaluate the protectiveness of the exemption as used in practice. Therefore, this amendment will require registration, with Forms PI-7-261 or PI-7-261(a), for the use of 106.261. Forms PI-7-261 and PI-7-261(a) will be developed by staff with input from outside the agency. This registration will enable the commission staff to assess how the exemption is used in practice, track multiple uses of the exemption at a facility, and gather information in order to consider future changes to the rule.

The second concern is that the current §106.262 references outdated toxicological information. Generally speaking, Limit

values (L-values) contained in §106.262 are based on Threshold Limit Values (TLVs) published by the American Conference of Governmental Industrial Hygienists (ACGIH). TLVs are health threshold limits for occupational workers. The current §106.262 relies on *Threshold Limit Values for Chemical Substances in the Work Environment Adopted by ACGIH with Intended Changes for 1985-1986* (1985-1986 ACGIH Guide) for toxicological data to determine maximum emissions allowed under this exemption. This amendment updates §106.262 to reference the *1997 TLVs and BEIs: Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices* (1997 ACGIH Guide) rather than the 1985-1986 ACGIH Guide. These L-values are combined with modeling data in a formula to calculate an emission rate for a single use that would be expected to result in ground level concentrations that are protective of sensitive members of the general public.

The third concern is that Table 262 in the current §106.262 needs to be updated to address specific compounds that have odor, vegetation damage, and health effects concerns not adequately addressed in the TLVs of the 1997 ACGIH Guide. Because the Guide is directed only toward health impacts on occupational workers, the values reflect many, but not all, effects of concern. This amendment updates the compounds specifically listed in Table 262. Sixteen compounds are deleted from the table because they are now adequately referenced in the 1997 ACGIH Guide. In addition, 30 compounds are modified or added to the table because they are not adequately addressed in the 1997 ACGIH Guide.

As background, §106.262 was formerly Standard Exemption 118 (SE 118). When SE 118 was originally established, modeling was conducted to assure that adverse health effects would not be expected to occur in the general public as a result of emissions authorized by single uses of SE 118. The TLVs in the 1985-1986 ACGIH Guide were the primary, but not the only, source of L-values in SE 118. This standard exemption contained a table (Table 118A, now Table 262) of substances with alternate L-values which were not based on the TLVs in the 1985-1986 ACGIH Guide. L-values on Table 118A were set to prevent odor nuisance, vegetation damage, and other health effects not specifically or adequately addressed in the final 1985-1986 ACGIH Guide.

Changes to alternate L-values in Table 262 can be grouped into three categories that consider nuisance odors, vegetation damage, and human health effects not specifically or adequately addressed in the 1997 ACGIH Guide. The following is a more detailed explanation of the changes.

The first category of changes considers nuisance odors. The substances in this category are methyl t-butyl ether (MTBE), cumene, 5-ethylidene-2-norbornene, amyl acetate, butyric acid, cresol, diisobutyl ketone, ethyl mercaptan, 1,6-hexanediamine, isoamyl acetate, methyl acrylate, methyl amyl ketone, methyl isoamyl ketone, methyl mercaptan, methyl sulfide, propyl acetate, and propyl mercaptan.

An example justification for an alternate L-value based on odor follows. Emissions of MTBE were not authorized by §106.262. A TLV for MTBE was not published in the 1985-1986 ACGIH Guide, nor was it listed in Table 262. The 1997 ACGIH Guide contains a TLV for MTBE of 144 mg/m<sup>3</sup>. An L-value based on this TLV could potentially lead to nuisance odor conditions, because the odor-threshold for MTBE is significantly lower than concentrations that are of concern for potential health



effects. Specifically, from a short-term standpoint, the limited epidemiological and controlled exposure studies conducted to date indicate that MTBE exposure levels typically experienced by motorists refueling cars with reformulated gasoline ( 3 mg/m<sup>3</sup>) would not increase acute health effects above background levels (Agency for Toxic Substances and Disease Registry (ATSDR), 1996). This level, however, is well above the MTBE odor threshold (American Petroleum Institute (API), 1994). Thus, the alternate L-value is set to address the odor potential of MTBE. This alternate L-value adequately addresses odor nuisance, as well as short- and long-term health effects (ATSDR, 1996; United States Environmental Protection Agency (USEPA), 1997). It should be noted that the proposed alternate L-value of 60 mg/m<sup>3</sup> was determined to be in error. Thus, the corrected alternate L-value of 45 mg/m<sup>3</sup> is listed in the amended Table 262.

The justification for the alternate L-value for 5-ethylidene-2-norbornene is also provided. Emissions of 5-ethylidene-2-norbornene were authorized by §106.262; the 1985-1986 TLV of 25 mg/m<sup>3</sup> was the L-value originally used. The TLV published on the 1997 list is still 25 mg/m<sup>3</sup> and was set to minimize the potential for irritation of the eyes and nose (ACGIH, 1991). However, an L-value based on this TLV could potentially lead to nuisance odor conditions, since the odor-threshold for 5-ethylidene-2-norbornene is several times lower than concentrations that are of concern for irritant effects (Amoore, 1983; Ruth, 1986). Thus, the proposed alternate L-value of 7 mg/m<sup>3</sup> is based on the odor threshold, and is set to prevent odor nuisance. The proposed alternate L-value is protective of health effects, as well.

The L-values for the other substances listed in this category are similarly based on the odor thresholds for each of the substances. The values are also protective of both short- and long-term health effects.

The second category of changes considers vegetation damage. The substances in this category are hydrogen fluoride and boron trifluoride.

Justification for alternate L-values based on vegetation damage follows. The 1997 ACGIH Guide lists TLVs of 2.3 mg/m<sup>3</sup> for hydrogen fluoride and 2.8 mg/m<sup>3</sup> for boron trifluoride. An L-value based on these TLVs, though protective of human health, could potentially lead to adverse effects in vegetation, because some species of plants are very sensitive to water-soluble forms of fluoride (McCune, et al., 1976; National Academy of Sciences, 1971; McCune, 1969). The listed L-value of 0.5 mg/m<sup>3</sup> is protective of both vegetation damage and human health.

The third category of changes considers human health effects not specifically or adequately addressed in the 1997 ACGIH Guide. L-values for butyl chromate, chromic acid, chromium VI compounds, ethylene dibromide, nitropropane, and propylene oxide were set based on carcinogenic potential. L-values for chromium metal, chromium II, and chromium III; amorphous silica compounds; silicon carbide; and ethylene glycol were set based on their potential for respiratory effects. The L-value for n-butyl alcohol was set based on its potential for irritation and nervous system effects. The L-value for halothane was set based on its potential for reproductive effects.

An example justification for an alternate L-value based on human health effects not specifically or adequately addressed in the 1997 ACGIH Guide follows. Emissions of halothane were not authorized by §106.262 because a TLV for halothane

was not published in the 1985-1986 ACGIH Guide or listed in Table 262. Halothane is included in the universe of substances authorized by this amendment, however, because the 1997 ACGIH guide contains a TLV (404 mg/m<sup>3</sup>) for halothane. This value does not specifically reflect the potential for adverse reproductive effects (e.g., spontaneous abortions) in exposed females, or the potential for increased risk of birth defects that have been associated with exposure to halothane (Dixon, 1986; ACGIH, 1991). The references cited suggest that the air concentration resulting from an alternate L-value of 16 mg/m<sup>3</sup> would consider these effects. The alternate L-value is listed in Table 262.

Cyanogen chloride and isophorone were originally proposed to be listed in the amended Table 262, but are not included in this adoption. The alternate L-value for cyanogen chloride was based on an error in a source reference. The alternate L-value for isophorone was not significantly different from the L-value listed in the 1997 ACGIH Guide. Therefore, the proposed alternate L-values have been removed from the amended Table 262, and L-values for these compounds will be found in the 1997 ACGIH Guide.

Table 262 is also amended to expand the categories of TLVs used in this exemption. The Table referenced only the Time-Weighted Average (TWA) TLV. This amendment will allow use of the Short-Term Exposure Level (STEL) and the Ceiling Limit for compounds which do not have a TWA TLV listed.

Section 106.262(5) restricted storage of compounds with potential for disasters. This section is amended to rename two and add four compounds to the list. These revisions incorporate updates made in the disaster potential list since 1985.

The following sources were referred to in the development of the L-values.

Agency for Toxic Substances and Disease Registry (ATSDR), 1996. Toxicological Profile for Methyl t-Butyl Ether. Public Health Service, U.S. Department of Health and Human Services, Atlanta, Georgia.

American Conference of Governmental Industrial Hygienists (ACGIH), 1991. Documentation of the Threshold Limit Values and Biological Exposure Indices, 6th Edition. ACGIH, Cincinnati, Ohio.

American Conference of Governmental Industrial Hygienists (ACGIH), 1997. Guide to Occupational Exposure Values-1997. ACGIH, Cincinnati, Ohio.

American Conference of Governmental Industrial Hygienists (ACGIH), 1986. Documentation of the Threshold Limit Values and Biological Exposure Indices, 5th Edition. ACGIH, Cincinnati, Ohio.

American Petroleum Institute (API), 1994. Odor Threshold Studies Performed with Gasoline and Gasoline Combined with MTBE, ETBE, and TAME. API Publication Number 4592. API, Washington, D.C.

Amoore, J.E. and Hautala, E., 1983.

"Odor as an Aid to Chemical Safety: Odor Thresholds Compared with Threshold Limit Values and Volatilities for 214 Industrial Chemicals in Air and Water Dilution," *J. Applied Toxicology*, 3 (6): 272-290.

Deutsche Forschungsgemeinschaft (DFG), 1997. List of MAK and BAT Values, 1997. Commission for the Investigation of

Health Hazards of Chemical Compounds in the Work Area, Report No. 33. Wiley-VCH Publishers, Weinheim, Germany.

Dixon, R.L., 1986. "Toxic responses of the reproductive system," in *Casarett and Doull's Toxicology The Basic Science of Poisons, 3rd Edition*. C.D. Klaassen, M.O. Amdur, and J. Doull, Editors. Macmillan Publishing Company, New York, New York.

U.S. Environmental Protection Agency (USEPA), 1997a. 1,2,-Dibromoethane. Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Office of Research and Development, Washington, D.C.

U.S. Environmental Protection Agency (USEPA), 1997b. Methyl t-butyl ether. Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Office of Research and Development, Washington, D.C.

U.S. Environmental Protection Agency (USEPA), 1997c. Propylene Oxide. Integrated Risk Information System (IRIS), National Center for Environmental Assessment, Office of Research and Development, Washington, D.C.

International Agency for Research on Cancer, 1987. IARC Monographs on the Evaluation of the Carcinogenic Risk of Chemicals to Humans, Volume 42, Silica and some Silicates. Lyon, France.

McCune, D.C., MacLean, D.C. and Schneider, R.E., 1976. "Experimental approaches to the effects of airborne fluoride on plants," in *Effects of Air Pollutants on Plants*. T.A. Mansfield, Editor. Cambridge University Press.

McCune, D.C., 1969. "Fluoride criteria for vegetation reflect the diversity of plant kingdom," *Environmental Science & Technology*. 8: 720-735.

Biological Effects of Atmospheric Pollutants: Fluorides, 1971. National Academy of Sciences (NAS), Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1994. Recommended Exposure Limits (RELs). Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1989. Current 51: Carcinogenic Effects of Exposure to Propylene Oxide. Publication No. 89-111. Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1980. Health Hazard Alert-2- Nitropropane. Publication No. 80-142. Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

National Institute of Occupational Safety and Health (NIOSH), 1977. Criteria for a Recommended Standard...Occupational Exposure to Ethylene Dibromide. Public Health Service, U.S. Department of Health, Education, and Welfare, Washington, D.C.

Occupational Safety and Health Administration, 1989. Final Rule. 29 CFR Part 1910. *Federal Register* 54 (12): 2332-2724; Ruth, J.H., 1986. "Odor Thresholds and Irritation Levels of Several Chemical Substances: A Review," *American Industrial Hygiene J.* 47: A142-A151.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted 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 Texas Government Code.

The commission received comments, however, that the requirement for persons to register all emission increases under §106.261, within ten days after the increase, would be excessively burdensome to businesses which use the §106.261 exemption frequently. After additional analysis, the commission has determined that annual registration of increases of less than five tons per year will be sufficient to meet the intent of this amendment, which is to allow the commission to better evaluate the protectiveness of §106.261. The commission has modified the registration requirements in the adopted amendment to allow annual registrations for emission increases of less than five tons per year. Increases of five tons or more must still be registered within ten days. The commission estimates that it will cost a person between \$75 and \$330 to file a registration, based on labor expenses and postage. This is not a significant or overly burdensome expense for an annual registration. More frequent registration would likely indicate increased production and growth of the business and the ability to absorb registration expenses more readily.

The commission concludes that, while the registration requirements will have an adverse effect on some individual businesses, the effect is small. Therefore, this amendment will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety.

The amendment does not meet any of the four applicability requirements listed in §2001.0225(a).

This amendment does not exceed a standard set by federal law and is not specifically required by state law. Exemptions from permitting are not addressed in federal law.

This amendment falls within the commission's authority under Texas Health and Safety Code, §382.057, to exempt certain changes or types of facilities from permitting if it is found on investigation that such changes or types of facilities will not make a significant contribution of air contaminants to the atmosphere.

This amendment does not exceed the requirements of a delegation agreement or contract between the state and federal government as there is no agreement or contract between the commission and the federal government concerning exemptions from permitting.

This amendment is adopted under a specific state law. The commission has the statutory authority to propose and adopt rules concerning exemptions from permitting under Texas Health and Safety Code, §382.057.

#### TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for this amendment under Texas Government Code, §2007.043. The specific purpose of this amendment is to increase the ability of the commission to evaluate the protectiveness of the exemption in §106.261 and to amend §106.262 by updating the L-values upon which emission limits in the exemption are based. This amendment does not affect private real property in a

manner that requires the commission to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or the Texas Constitution, Article 1, §17 or §19. The amendment is not the producing cause of a reduction of at least 25% in the market value of any private real property.

This amendment affects existing exemptions from permitting by requiring industries to report emission changes made under the authority of §106.261 and by updating and expanding Table 262 to reflect more current toxicological information. The cost to affected entities will be between \$75 and \$330 per registration, based on labor costs to fill out the registration form and postage. This amendment will only apply to those who choose to use an exemption in lieu of obtaining a permit. The cost of obtaining a permit is typically orders of magnitude above the cost of obtaining authorization by exemption. This amendment likewise will not have an adverse impact on industries operating under the current or prior §106.261 and §106.262 or their predecessor exemptions.

Moreover, Texas Government Code, Chapter 2007, does not apply to this amendment because this amendment constitutes a modification of a regulation that "provides a unilateral expectation that does not rise to the level of a recognized interest in private real property" as provided in Texas Government Code, §2007.003(b)(5). Texas Health and Safety Code, §382.0518 requires persons to obtain a permit from the commission to authorize the emission of contaminants into the atmosphere. Texas Health and Safety Code, §382.057 authorizes the commission to create exemptions from the statutory requirement to have a permit. This amendment modifies two such exemptions. A person does not have a vested legal right or interest guaranteeing that an exemption will never change in the future. Finally, the amendment of §106.262 is an action taken to prohibit or restrict a condition or use of private real property that constitutes a public nuisance as defined by background principles of nuisance and property law of this state. The L-values are changed to prevent nuisance odors, vegetation damage, and damage to human health.

#### COASTAL MANAGEMENT PLAN

The commission has determined that this amendment relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et. seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP.

The CMP goal applicable to this amendment is 31 TAC §501.21: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions and values of Coastal Natural Resource Areas (CNRAs). The CMP policy applicable to this amendment is 31 TAC §501.14(q): to comply with Title 40, Code of Federal Regulations (CFR), in order to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare. The commission has reviewed this amendment for consistency with these CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this amendment is consistent

with the applicable CMP goals and policies. This amendment will not cause any significant increases in emissions and is consistent with 40 CFR Part 51, Subpart I, concerning Review of New Sources and Modifications. No persons submitted comments regarding the consistency of the amendments with the CMP during the comment period.

#### HEARING AND COMMENTERS

A public hearing was held in Austin on July 14, 1998, and the public comment period closed on August 3, 1998. Oral testimony was received from Mobil Oil Corporation at the hearing. Written comments were received from: Mobil Oil Corporation (Mobil), Sanden International (Sanden), Amoco Corporation (Amoco), and Baker & Botts, on behalf of the Texas Industry Project (TIP).

#### ANALYSIS OF TESTIMONY

Mobil, Amoco, and TIP opposed the registration requirements proposed for §106.261. They commented that the additional requirement of registration for all §106.261 claims would be an excessive requirement for small emission increases and that the requirement would strain industry resources as well as the commission staff, who would be required to handle the paperwork for these changes.

The commenters suggested that the collection of data on an annual basis would be more efficient. Mobil suggested that records of changes made under this exemption be kept on site. In addition, a commenter at agenda requested simplification of the PI-7 form used for exemption registration.

The commission agrees that, for small increases of emissions, annual registration would be sufficient to satisfy the need to track emission increases under this exemption. Section 106.261(7) and (8) has been revised to require registration with a PI-7-261 form and to allow annual registration with a PI-7-261(a) form. With the revisions, a person may register emission increases of less than five tons per year (tpy) by either submitting a PI-7-261 within ten days of the change or submitting a PI-7-261(a) form on an annual basis. Emission increases of five tpy and greater must still be registered using a PI-7-261 form within ten days of the change or installation of a new facility under this exemption. Upon adoption, annual registrations shall be submitted on a calendar-year basis by March 31 for the previous calendar year. Registration requirements for §106.261 shall be effective January 1, 1999. These forms will be developed by staff with input from outside the agency.

Because the intent of this rulemaking is to collect data to examine the uses of the exemption, it is necessary for the registrations to be sent to the commission rather than allowing on-site retention as proposed by Mobil.

TIP commented that the proposed §106.261 does not address several types of dust. TIP suggested adding "rubber dust, wood dust, Hydrocarbon resin dust, Polymer dust and PM-10" to the lists of substances (chemicals, compounds, constituents) included in §106.261(3). If the commission cannot accomplish such listings, TIP requested discussion in the preamble stating that those substances can be authorized by §106.261(4) rather than nuisance dust criteria in the 1997 ACGIH Guide.

The commission's intent with this rulemaking is to begin the collection of information on the uses of §106.261 and to update the L-values of the substances authorized by §106.262.

The substances included in the L-value update process were limited to those listed in the 1985- 1986 ACGIH Guide, the 1997 ACGIH Guide, and Table 262 in §106.262. Therefore, these comments are outside the scope of this rulemaking. The substances referenced in the comments will be considered for possible addition at a later date. The substances referenced can be authorized under §106.261 and §106.262; however, the emissions are restricted based on L-values listed in the 1997 ACGIH Guide or alternate L-values listed in Table 262.

In addition, Sanden and TIP recommended that certain other compounds be added to §106.261(3). Sanden suggested that fluorocarbon 134a be added because it is used in all new vehicle air conditioning systems and that fluorocarbon 141b be added because it is used for cleaning applications. TIP suggested that acetone, "isomers of hexane other than n-hexane," and methyl ethyl ketone be added to the list because propyl alcohol has a lower TLV and is already included in the exemption. Similarly, TIP suggested that toluene be added to the list because styrene has a lower TLV and is already included in the exemption.

These comments are outside the scope of this rulemaking. The commission's intent with this rulemaking is to begin the collection of information on the uses of §106.261 and not to substantially change the substances authorized in the current exemption. The substances referenced in the comment will be considered for possible addition or clarification at a later date.

Sanden commented that §106.261(3) puts a limit on helium despite the fact that helium is inert and unreactive. Ethane and methane are relatively far less safe than helium, but are exempted by §106.4(a)(5). Helium is not exempted by that section. All three are simple asphyxiants. Sanden requested that helium be removed from §106.261 and added as an exemption, like ethane and methane, to §106.4(a)(5).

The commission agrees that helium should be removed from §106.261(3) and added to the list of exempted compounds under §106.4(a)(5). However, §106.4(a)(5) should be amended first to include helium prior to its removal from §106.261(3). Future rulemaking will address this comment. In researching the request from Sanden, staff also identified hydrogen in the list of compounds under §106.261(3). Because hydrogen is already exempted under §106.4(a)(5), it is being removed from §106.261(3).

TIP commented that cumene should be deleted from Table 262 because the 1997 ACGIH list contains a new listing for this chemical.

A TLV for cumene of 246 mg/m<sup>3</sup> was published in the 1997 ACGIH Guide, and was set to prevent nervous system depression in workers. This level, however, is well above the odor threshold (Amoore, 1983). Thus, the alternate L-value is set to address the odor potential of cumene. This alternate L-value considers odor nuisance, as well as short- and long- term health effects.

TIP commented that explanation is needed to clarify the discrepancy between the ACGIH TLV- based L-values and the proposed ESL-based L-values for the substances listed in the updated Table 262 of §106.262. TIP cannot determine why there is a discrepancy between the L-value it would expect and the L-value proposed by the commission, using 5-ethylidene-2-norbornene as an example. TIP commented that it is not sufficient to simply state that "more conservative values have been included to address the effects of the 32 compounds on

odor, corrosiveness, vegetation, and nuisance." TIP requested that the commission identify the bases for specific chemical L-values in both this adoption and in future rulemaking proposals.

The preamble has been expanded to explain in more detail the reasoning behind the new alternate L-values in Table 262. Specifically highlighted is the process used to develop the alternate L-value for 5-ethylidene-2-norbornene. Additionally, a list of references consulted in developing alternate L-values is included in the preamble.

TIP commented that changes were needed to clarify the interaction of §106.261 and §106.262 with the exemption for large storage tanks in §106.478. The commenter stated that the actual language of the exemptions does not clearly state that §106.261 and §106.262 can be used simultaneously with §106.478 to qualify storage of liquids not listed in Table 478 in §106.478, particularly known impurities in an otherwise authorized chemical. The commenter requested that such clarification be made in the adoption preamble or in appropriate guidance memoranda on the Texas Natural Resource Conservation Commission (TNRCC) Web site.

A memorandum regarding the interaction of these exemptions entitled "Interpretation of Standard Exemptions 106 and 118" dated August 1, 1990, is available on the TNRCC Web site. This memorandum clarifies the use of §106.261 (formerly SE 106) and §106.262 (formerly SE 118) in combination with each other and other exemptions. Specifically, the memo states that SE 106 (now §106.261) and SE 118 (now §106.262) can be used to authorize specific chemicals where the facility meets all of the conditions of another exemption except the chemical specification.

TIP commented that clarification is required for §106.478 with respect to the storage of complex chemicals composed of molecules of liquids already listed in Table 478 in §106.478, and requested that the clarification be issued on the TNRCC Web site. TIP requested that, if such guidance is not provided, the commission authorize such storage of combination compounds through §106.261 and §106.262.

This comment is outside the scope of this rulemaking. As noted earlier, the commission's intent in this rulemaking is to begin collection of information on the uses of §106.261, and to update the L-values in the amended Table 262 in §106.262. As a matter of record, the compounds specifically listed in the comment are authorized for storage and loading/unloading under §106.472(9). Amendments to §106.478 will be proposed as necessary at a future date.

#### STATUTORY AUTHORITY

The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §§382.012, 382.017, and 382.057. Section 382.012 requires the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air. Section 382.017 authorizes the commission to adopt rules consistent with the policy and purposes of the TCAA, while §382.057 authorizes the commission by rule to exempt certain facilities or changes to facilities from the requirements of §382.0518 if such facilities or changes will not make a significant contribution of air contaminants to the atmosphere.

*§106.261. Facilities (Emission Limitations) (Previously SE 106).*

Facilities, or physical or operational changes to a facility, are exempt provided that all of the following conditions of this section are satisfied.

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

(3) Total new or increased emissions, including fugitives, shall not exceed 6.0 pounds per hour (lb/hr) and ten tons per year of the following materials: acetylene, argon, butane, crude oil, refinery petroleum fractions (except for pyrolysis naphthas and pyrolysis gasoline) containing less than ten volume percent benzene, carbon monoxide, cyclohexane, cyclohexene, cyclopentane, ethyl acetate, ethanol, ethyl ether, ethylene, fluorocarbons Numbers 11, 12, 13, 14, 21, 22, 23, 113, 114, 115, and 116, helium, isohexane, isopropyl alcohol, methyl acetylene, methyl chloroform, methyl cyclohexane, neon, nonane, oxides of nitrogen, propane, propyl alcohol, propylene, propyl ether, sulfur dioxide, alumina, calcium carbonate, calcium silicate, cellulose fiber, cement dust, emery dust, glycerin mist, gypsum, iron oxide dust, kaolin, limestone, magnesite, marble, pentaerythritol, plaster of paris, silicon, silicon carbide, starch, sucrose, zinc stearate, or zinc oxide.

(4)-(6) (No change.)

(7) For emission increases of five tons per year or greater, notification must be provided using Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(8) For emission increases of less than five tons per year, notification must be provided using either:

(A) Form PI-7-261 within ten days following the installation or modification of the facilities. The notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any; or

(B) Form PI-7-261(a) by March 31 of the following year summarizing all uses of this exemption in the previous calendar year. This annual notification shall include a description of the project, calculations, data identifying specific chemical names, limit values, and a description of pollution control equipment, if any.

(9) This exemption is effective January 1, 1999. The registration requirements in paragraphs (7) and (8) of this section begin January 1, 1999. Registration under paragraph (8)(B) of this section is due beginning March 31, 2000, for exemptions claimed in calendar year 1999.

§106.262. *Facilities (Emission and Distance Limitations) (Previously SE 118).*

Facilities, or physical or operational changes to a facility, are exempt provided that all of the following conditions of this section are satisfied.

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

(3) New or increased emissions, including fugitives, of chemicals shall not be emitted in a quantity greater than five tons per year nor in a quantity greater than E as determined using the equation  $E = L/K$  and the following table.

Figure: 30 TAC §106.262(3)

(4) (No change.)

(5) The facilities in which the following chemicals will be handled shall be located at least 300 feet from the nearest property line

and 600 feet from any off-plant receptor and the cumulative amount of any of the following chemicals resulting from one or more authorizations under this section (but not including permit authorizations) shall not exceed 500 pounds on the plant property and all listed chemicals shall be handled only in unheated containers operated in compliance with the United States Department of Transportation regulations (49 Code of Federal Regulations, Parts 171-178): acrolein, allyl chloride, ammonia (anhydrous), arsine, boron trifluoride, bromine, carbon disulfide, chlorine, chlorine dioxide, chlorine trifluoride, chloroacetaldehyde, chloropicrin, chloroprene, diazomethane, diborane, diglycidyl ether, dimethylhydrazine, ethyleneimine, ethyl mercaptan, fluorine, formaldehyde (anhydrous), hydrogen bromide, hydrogen chloride, hydrogen cyanide, hydrogen fluoride, hydrogen selenide, hydrogen sulfide, ketene, methylamine, methyl bromide, methyl hydrazine, methyl isocyanate, methyl mercaptan, nickel carbonyl, nitric acid, nitric oxide, nitrogen dioxide, oxygen difluoride, ozone, pentaborane, perchloromethyl mercaptan, perchloryl fluoride, phosphene, phosphine, phosphorus trichloride, selenium hexafluoride, stibine, liquified sulfur dioxide, sulfur pentafluoride, and tellurium hexafluoride. Containers of these chemicals may not be vented or opened directly to the atmosphere at any time.

(6)-(7) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 4, 1998.

TRD-9818145

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Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-1966



## Chapter 305. Consolidated Permits

### Subchapter F. Permit Characteristics and Conditions

#### 30 TAC §305.126

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §305.126, concerning Additional Standard Permit Conditions for Wastewater Discharge Permits. The amendments are adopted with changes to the proposed text published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6389).

#### EXPLANATION OF ADOPTED RULE

The amendments to §305.126 are being made to reflect changes to the policy and administration of the reporting requirements for wastewater discharge facilities. Minor amendments to the existing rule are being made regarding the calculation of flow limitations, and administration of waiver requests. These revisions are based on public comments received and the determination that the existing rule, with minor revisions, will promote advance planning more effectively than would occur under the proposed amended rule and, therefore, assist in pollution prevention. In addition, the existing rule contains provisions giving facilities the flexibility to determine

when and how to expand their treatment facilities. Permittees can obtain a waiver from the rule requirements if they show it is not necessary to add more capacity to the treatment facility. The rule does not dictate when permittees have to increase capacity nor how much capacity must be provided. The rule is designed to set time frames for initiating planning and for obtaining permit authorizations to construct facilities if necessary.

The rule amendments being adopted will implement the commission's new permitting policy which specifies that any domestic wastewater discharge facility with one million gallons per day or greater permitted flow will receive an annual average flow limitation. Any domestic wastewater discharge facility with less than one million gallons per day of permitted flow will continue to receive a daily average flow limitation. The rule has been revised so that it applies to facilities with either daily average flow limitations or annual average flow limitations. The rule is also being revised to specify that waiver requests will be signed by the enforcement division of the commission.

#### FINAL REGULATORY IMPACT ANALYSIS

The commission has determined that a regulatory impact analysis is not required because the rule does not meet the definition of a major environmental rule as defined in §2001.0225 of the Texas Government Code, and it will not have an adverse effect in a material way on the economy, environment, or public health and safety of any sector of the state.

The intent of the current rule is to promote advance planning and to assist community leaders by requiring them to plan ahead for future expansion and/or upgrading of treatment systems, or construction of new wastewater treatment facilities. The specific intent of the rule revision is to keep the rule consistent with and reflective of policy changes made in 1997 regarding how flows for large facilities are calculated. This policy change specified that domestic wastewater discharge facilities with a million gallon per day (MGD) or greater permitted flow will receive an annual average flow limitation. The annual average flow is calculated based on all the daily flow averages for 12 consecutive months. The 1997 change also added a new requirement that these facilities report maximum 2-hour peak flows for each calendar month.

Because the current rule is based on daily average flow limitations, it is being revised to cover the large facilities that now receive an annual average flow limit due to the permitting policy change. Under Section 26.042 of the Texas Water Code the commission has the ability to establish reasonable requirements for monitoring and reporting of disposal activities. The revisions to the 75/90 rule will more accurately reflect when large facilities have reached the 75 percent and 90 percent benchmarks because annual averages provide more data from which to determine capacity needs. Large facilities are subject to seasonal fluctuations or wastewater trends, and are therefore susceptible to triggering the 75 percent and 90 percent benchmarks for short-term anomalous flows. Under an annual average limitation, facilities will trigger the benchmarks more accurately because fluctuations will be averaged over a longer period of time. It will act as a better indicator, for both the permittee and the commission, for when large facilities will need to begin taking steps to expand or upgrade their treatment systems.

The rule revision will have a small positive effect on the economy because it will make it easier for facilities to comply with the requirements of the rule. The rule will not have an adverse effect on the environment or public health and safety because the quality of discharges from these larger facilities will continue to be regulated by the requirements of their wastewater discharge permits. The annual average flow average does not change how a facility's effluent loading is calculated. A facility that has received an annual average still reports the 30-day average flow which is used to calculate the loadings for a permittee's effluent limitations. This method is the same for all facilities.

#### 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. The specific purpose of the rule is to change the rule so that it is consistent with administrative and policy changes adopted by the commission. The rulemaking will substantially advance this specific purpose by specifying the rule applies to facilities with either annual or daily average flow limitations, and that waiver requests will be signed by the enforcement division director of the commission. The current rule does not create a taking because it is intended to provide that a wastewater treatment facility make necessary assessments regarding population growth and the facility's capacity. It does not adversely affect the economy in a material way. Rather, the rule assists treatment facilities that are receiving an increased waste stream due to population growth or economic expansion, and is a tool for insuring that these facilities are able to adequately meet future needs. This rule is intended to aid the ability of facilities to stay compliant with regulatory and statutory requirements in addressing any future population needs by making assessments based on benchmarks which allow a facility to address their needs along manageable time lines. The inclusion of an annual average will bring the rule in line with a policy change made in the water quality permitting program which utilizes the annual average, rather than the daily average referenced in the current rule, for facilities discharging over a million gallons a day. Promulgation and enforcement of this rule will not affect private real property that is the subject of this rule because facilities subject to annual average flow limitations will benefit under the 75/90 rule. Annual averages are based on a full year's worth of reporting, and will provide a better indication of actual expansion and planning needs for these facilities, further insuring that these facilities are not unnecessarily subject to the requirements of the rule. Therefore, there is no burden over and above that burden already present under the rule in effect currently.

#### COASTAL MANAGEMENT PROGRAM

The commission has reviewed the rulemaking and found that it is subject to the Coastal Management Program and must be consistent with all applicable goals and policies of the Coastal Management Program (CMP).

The commission has prepared a consistency determination for the rule pursuant to 31 TAC §505.22 and has found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to this rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the rule include the administrative policies and the policies for specific

activities related to the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the proposed rule amendments will not change the requirements for permittees to evaluate their treatment capacity needs. In addition, the rule does not violate any applicable provisions of the CMP's stated goals and policies.

#### HEARING AND COMMENTERS

The commission did not hold a public hearing on the proposed rule changes. The comment period for the proposed rules closed on July 20, 1998. Five commenters submitted written comments. The City of Dallas wrote in support of the rule. The law firm of Henry, Lowerre, Johnson, Hess & Frederick (Henry, Lowerre), the Lower Colorado River Authority (LCRA), the Texas Parks and Wildlife Department (TPWD), and the Texas Center for Policy Studies (TCPS), on behalf of the center and the Wimberley Valley Watershed Association wrote in opposition to the rule.

#### ANALYSIS OF TESTIMONY

The City of Dallas commented that the proposed rule places the burden on permittees to meet treatment capacity needs and would give the city more flexibility in how it plans for future growth.

The commission agrees that the proposed rules were designed to give regulated entities more local control over treatment capacity decisions. However, the existing rules contain a provision designed to make the rules flexible for permittees by allowing requirements to be waived under certain circumstances. The commission has determined that further flexibility for permittees is not necessary, and the rule will not be revised.

TCPS commented that the proposed rule amendments would "eviscerate and render meaningless" the rule requirements to conduct advance planning regarding treatment capacity needs. The rule will no longer accomplish its original objective, which was to ensure treatment plants did not reach the stage of risking inadequate capacity. LCRA noted that the lower Colorado River suffered from discharges that resulted from municipal dischargers who did not build needed treatment capacity. The rule was intended to assist community leaders by requiring them to plan ahead for needed expansions and upgrades to their treatment plants, and these planning requirements, while perhaps unyielding, helped solve a real problem.

The commission agrees that the current rule has contributed to advance planning by wastewater treatment facilities, and will retain the rule as it currently exists.

TCPS, TPWD, and Henry, Lowerre commented that the existing rule already provides enough flexibility by allowing permittees to request a waiver from requirements to obtain authorization to commence construction of additional treatment and/or collective facilities. TCPS also stated that the current rule is a reasonable way to avoid over-capacity situations, and is not unduly burdensome to permittees.

The commission agrees that the waiver provision in the existing rule provides flexibility to permittees by allowing requirements to be waived under certain circumstances. The existing rule leaves the ultimate decision over when and how much to expand or upgrade a treatment facility to the permittee. The waiver provision will be retained in the rule.

Henry, Lowerre commented that the record for the rule should include historic documentation that shows a need for strong and enforceable requirements. The commission should take into consideration the historical problems that led to the promulgation of the rule in the 1980s. The TCPS, LCRA, and Henry, Lowerre also noted the state is currently experiencing rapid growth and development similar to the growth that occurred in the 1980s that led to the need for the rule in the first place. This current growth makes the rule important today, and is an inappropriate time for the rule to be scaled back.

The commission agrees that the rule was adopted in 1986 in response to concerns regarding adequate treatment time and capacity for domestic wastewater treatment plants across the state. The object of the rule was to assist community leaders by requiring them to plan ahead for future expansion and/or upgrading of the treatment system, or construction of new wastewater treatment facilities. The commission agrees that current economic conditions in the state may make it a less than ideal time to reduce the reporting requirements of the 75/90 rule at this time, and the revisions will not be adopted.

TCPS commented that the revisions to the rule will threaten the environment and public health in Texas. TPWD expressed concern that the rule change may have adverse impacts on state fish and wildlife resources. Henry, Lowerre also noted that the rule revision will have negative impacts on the state's ability to ensure attainment of water quality standards, plan for future growth, and prevent significant degradation of the quality of state waters. This is particularly important since the commission is involved in efforts to perform and implement Total Daily Maximum Loads on polluted water bodies.

While the commission disagrees that the proposed rule amendments would have negative impacts on the environment, the commission agrees that the advance planning mechanism of the existing rule has been effective. As the reporting requirements are not being revised, these mechanisms will continue to be utilized.

Henry, Lowerre noted that the existing rule is valuable, particularly during periods of rapid development, when sewage treatment needs are often given low priority. The commenter further noted that the existing rule is clear and easily enforced, which helps the commission make use of its limited resources. TPWD noted that the enforcement of the existing rule has led to decreased incidents of overburdened treatment facilities and infiltration by-passes. LCRA commented that history has demonstrated that unless discharges are required to plan for expansion in advance, some communities will not act. Instead of the rule amendments, the commission should require permittees to substantiate claims that expansion is not necessary, and "no action" strategies must be approved by the commission.

The commission agrees that the existing rule has been useful in promoting advance planning, particularly during periods of growth when such planning is especially important. This advance planning has helped keep facilities on track with capacity needs, and these provisions in the rule are being retained. The commission notes that under the waiver provisions of the existing rule, permittees must submit waiver requests to the executive director with an engineering report supporting the claim that the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility.

Henry, Lowerre commented that the proposed amendments are a major environmental regulation and therefore subject to §220.0225 of the Texas Government Code. The revisions will be a burden to the commission and have major negative impacts on the quality of Texas waters. The commenter further noted that the amendments would have fiscal impacts not noted by the commission, such as costs of negative impacts on water quality, and the cost of tracking and notification by commission staff. There will also be negative impacts on the commission's efforts to assume the federal National Pollution Discharge Elimination System (NPDES) program, as the rule revisions would further burden commission staff and resources.

The commission believes proposed revisions in the 75/90 rule were not a major environmental rule and that the proposed changes would not have caused negative water quality impacts because the rule would have simply shifted the focus to requiring the permittee to advise the commission of its plans to ensure adequate treatment capacity. A facility would still have had to remain in compliance with all permit limitations. The TNRCC's strong enforcement philosophy has been, and will continue to be, a critical factor in ensuring permit compliance. In response to the comment regarding the negative impacts on the commission's ability to assume the federal NPDES program, this agency has received authorization and is currently administering that program. Because the reporting requirements of the rule are being retained, the concerns about negative fiscal impacts should no longer be an issue.

#### STATUTORY AUTHORITY

These amendments are adopted under the Texas Water Code §5.102, which provides the commission with general powers to carry out duties under the Texas Water Code, and §5.103 and §5.105 which provide the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission. Additionally, the amendments are adopted under Texas Water Code §26.042, which authorizes the commission to prescribe reasonable requirements for monitoring and reporting of waste collection, treatment and disposal activities.

*§305.126. Additional Standard Permit Conditions for Waste Discharge Permits.*

(a) Whenever flow measurements for any sewage treatment plant facility in the state reaches 75 percent of the permitted average daily or annual average flow for three consecutive months, the permittee must initiate engineering and financial planning for expansion and/or upgrading of the wastewater treatment and/or collection facilities. Whenever the average daily or annual average flow reaches 90 percent of the permitted average daily flow for three consecutive months, the permittee shall obtain necessary authorization from the commission to commence construction of the necessary additional treatment and/or collection facilities. In the case of a wastewater treatment facility which reaches 75 percent of the permitted average flow for three consecutive months, and the planned population to be served or the quantity of waste produced is not expected to exceed the design limitations of the treatment facility, the permittee will submit an engineering report supporting this claim to the executive director. If in the judgment of the executive director the population to be served will not cause permit noncompliance, then the requirements of this section may be waived. To be effective, any waiver must be in writing and signed by the director of the enforcement division of the commission, and such waiver of these requirements will be reviewed upon expiration of the existing permit;

however, any such waiver shall not be interpreted as condoning or excusing any violation of any permit parameter.

(b) The permittee shall give notice to the executive director as soon as possible of any planned physical alterations or additions to the permitted facility. In addition to the requirements of §305.125(7) of this title (relating to Standard Permit Conditions), notice shall also be required under this subsection when:

(1) the alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §305.534 of this title (relating to New Sources and New Dischargers); or

(2) the alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under 40 Code of Federal Regulations (CFR) 122.42(a)(1) as adopted by §305.531 of this title (relating to Establishing and Calculating Additional Conditions and Limitations for TPDES Permits);

(3) the alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(c) If the permittee is a new discharger, it must provide quantitative data described in 40 CFR §§122.21(h)(4)(I) and (ii) no later than two years after commencement of discharge; however, the permittee need not conduct tests which the permittee has already performed and reported under the discharge monitoring requirements of its TPDES permit.

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 December 7, 1998.

TRD-9818187

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: December 27, 1998

Proposal publication date: June 19, 1998

For further information, please call: (512) 239-4640

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 97. Security and Control

##### Subchapter A. Security and Control

###### 37 TAC §97.15

The Texas Youth Commission (TYC) adopts new §97.15, concerning drug testing youth, without changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10844).



Adoption of the new rule is justified to initiate drug testing of youth in TYC custody. Test results will facilitate an increase in youth accountability and alert staff to possible breaches of security.

The new rule will establish procedures by which TYC youth may be tested to monitor substance abuse problems and compliance with specialized programs. The new process will assist staff in holding youth accountable for their behavior while meeting the individual needs of those youth.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted rule implements the Human Resource Code, §61.034.

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 December 4, 1998.

TRD-9818140

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: January 1, 1999

Proposal publication date: October 23, 1998

For further information, please call: (512) 424-6244



### 37 TAC §97.21

The Texas Youth Commission (TYC) adopts an amendment to §97.21, concerning approved restraint equipment, with changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10845). Changes to the proposed text consist of section title change from Mechanical Restraint Equipment to Approved Restraint Equipment.

The amendment is justified and necessary to allow for use of Orthochlorobenzalmalononitrile (CS), also known as tear gas, to reduce or eliminate imminent danger or the threat of danger to youth and staff or property by certain youth who threaten or engage in riotous behavior.

The amendment will permit TYC to use the chemical agent Orthochlorobenzalmalononitrile (CS), also known as tear gas, in TYC institutions as authorized when necessary to gain control and when TYC youth are involved in a major disruption which is likely to result in major property destruction and/or injury to staff, youth, or other persons.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The adopted rule implements the Human Resource Code, §61.034.

### §97.21. *Approved Restraint Equipment.*

(a) Purpose. The purpose of this rule is to provide for the use of specific approved equipment and chemical agent which may be used by staff in the physical restraint and of youth who are out of control.

(b) Applicability.

(1) Mechanical restraint may be employed only in compliance with (GAP) §97.23 of this title (relating to Use of Force).

(2) Chemical agent may be employed only in compliance with (GAP) §97.25 of this title (relating to Use of Force: Chemical Agents).

(c) Texas Youth Commission (TYC) staff may use only agency approved equipment or chemical agent for the purpose of restraint and may use such equipment or agent only in a manner consistent with its intended purpose.

(d) Restrictions.

(1) Devices must be applied properly. A device must not be secured so tightly as to interfere with circulation nor so loosely as to permit chafing of the skin.

(2) Restraint devices may not be secured to any stationary object except as provided in using full body restraint. Prohibitions include:

(A) restraining in a standing position to a fixed object.

(B) attaching any approved restraint equipment to any part of a vehicle during transportation.

(3) Youth in restraints may not be secured to another youth.

(e) Approved Equipment. The following restraint devices and chemical agents are approved for use by TYC staff. All other devices are specifically disapproved.

(1) Handcuffs—Metal (not plastic) devices fastened around the wrist to restrain free movement of the hands and arms.

(2) Wristlets—A cloth or leather band fastened around the wrist or arm and which may be secured to a waist belt.

(3) Anklets—A cloth or leather band fastened around the ankle or leg.

(4) Ankle Cuffs—Metal, cloth or leather band or device fastened around the ankle to restrain free movement of the legs. Handcuffs may not be used to cuff the ankles.

(5) Plastic Cuffs—Plastic devices fastened around the wrist or legs to restrain free movement of hands, arms or legs. Use is authorized only in case of riot. See (GAP) §97.27 of this title (relating to Riot Control).

(6) Locked Waist Band—A cloth, leather, or metal band fastened around the waist. The belt is used to secure the arms to the sides or front of the body.

(7) Padlocks or Key Locks—Locks used to secure handcuffs, wristlets, anklets and ankle cuffs.

(8) Mittens—A cloth, plastic, foam rubber, or leather hand covering fastened around the wrist or lower arm. Acceptable fasteners include elastic, Velcro, ties, paper tape, pull strings.

(9) Helmets—A plastic, foam rubber, or leather head covering. If appropriate, a face guard may be attached to the helmet. The device must be proper size for the youth, and the chin strap should not be so tight as to interfere with circulation.

(10) Shield—A plastic shield normally identified as riot shields equipped with handles or holding straps.

(11) Chemical Agents—Oleoresin Capsicum (OC), also known as pepper spray, and Orthochlorobenzalmalononitrile (CS), also known as tear gas, as authorized.

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 December 4, 1998.

TRD-9818141

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: January 1, 1999

Proposal publication date: October 23, 1998

For further information, please call: (512) 424-6244

◆ ◆ ◆  
**37 TAC §97.29**

The Texas Youth Commission (TYC) adopts an amendment to §97.29, concerning escape/abscondence and apprehension, without changes to the proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10846).

The amendment to the section is justified and necessary to allow for the prompt and reasonable apprehension of TYC youth on parole upon the youth's failure to report to a designated TYC location, as required.

The amendment will define failure to report as a violation of a youth's parole, and permit staff to notify appropriate apprehension personnel when a youth fails to report, as required, to an assigned location.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.0811, which provides the Texas Youth Commission with the authority to develop a management system for parole services that objectively measures and provides for the classification of children on the level of children's needs and the degree of risk they present to the public.

The adopted rule implements the Human Resource Code, §61.034.

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 December 4, 1998.

TRD-9818142

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: January 1, 1999

Proposal publication date: October 23, 1998

For further information, please call: (512) 424-6244

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**TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

**Part I. Texas Department of Human Services**

**Chapter 15. Medicaid Eligibility**

**Subchapter A. General Information**

**40 TAC §15.100**

The Texas Department of Human Services (DHS) adopts an amendment to §15.100, without changes to the proposed text published in the June 26, 1998, issue of the *Texas Register* (23 TexReg 6699). DHS is withdrawing the proposal to amend §15.502 which was proposed at the same time. Comments received by mail and at a public hearing prompted the need to withdraw these rules for further consideration.

The justification for the amendment is to allow medical practitioners, other than the client's physician, to sign the medical necessity form.

The amendment will function by streamlining the procedure for obtaining a statement of medical necessity.

The department received no comments regarding adoption of this amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 7, 1998.

TRD-9818169

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: December 27, 1998

Proposal publication date: June 26, 1998

For further information, please call: (512) 438-3765

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**Chapter 48. Community Care for Aged and Disabled**

**Subchapter B. Transition to Life in the Community Program**

#### 40 TAC §§48.2001-48.2005

The Texas Department of Human Services (DHS) adopts the repeal of §§48.2001 - 48.2005 without changes to the proposed text published in the October 23, 1998 issue of the *Texas Register* (23 TexReg 10862). The text will not be republished.

Justification for the repeal is that the rule base will be free of obsolete information.

The repeal will function by deleting the rules for Transition to Life in the Community Program, because the program has not been in effect since 1993. Thus the rules are obsolete and serve no useful purpose.

The department received no comments regarding adoption of the repeal.

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

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 December 7, 1998.

TRD-9818172

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: January 1, 1999

Proposal publication date: October 23, 1998

For further information, please call: (512) 438-3765



#### Chapter 49. Contracting for Community Care Services

##### 40 TAC §§49.1, 49.19, 49.27

The Texas Department of Human Services (DHS) adopts amendments to §§49.1 and 49.19, and adopts new §49.27, in its Contracting for Community Care Services chapter. The amendment to §49.1 and new §49.27 are adopted with changes to the proposed text published in the October 16, 1998, issue of the *Texas Register* (23 TexReg 10629). The amendment to §49.19 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments and new section is to implement new state mandated contracting requirements related to the year 2000 conversion; clarify the role of religious and charitable organizations; implement the Senate Bill 30 requirements for the development of a new provider contract and the re-enrollment and amendment of existing Medicaid contracts; and correct a reference to corrective action plans as a provider sanction.

The amendments and new section will function by preventing improper or late delivery of services, protecting the religious integrity and character of charitable and religious organizations, and strengthening the ability to prevent provider fraud in the Texas Medicaid program.

No comments were received regarding adoption of the amendments and new section. DHS has initiated several changes to the text for clarification. In §49.1(g) DHS has changed the word "this" before contract to "the." In §49.27, DHS has changed the word "this" before contract to "a."

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement §§22.001-22.030 and 32.001-32.042 of the Human Resources Code.

##### §49.1. General Requirements for Participation.

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

(e) A provider who is enrolled in the Medicaid program who wants to continue to participate in the program must, in accordance with instructions from the Texas Department of Human Services (DHS), either re-enroll in the Medicaid program under a new contract or agreement approved by the Texas Health and Human Services Commission (HHSC) no later than September 1, 1999, or, at the discretion of DHS, modify the provider's existing contract or agreement using language approved by HHSC no later than September 1, 1999.

(f) A provider enrolled in the Medicaid program who does not re-enroll in the program under a new contract or agreement or does not modify the existing provider contract or agreement in accordance with the instructions of DHS by September 1, 1999, does not retain eligibility to participate in the Medicaid program.

(g) A provider agency certifies that the goods and/or services covered by the contract are designed to be used prior to, during, and after calendar year 2000 A.D. The goods and/or services will operate during such time periods without error relating to date data which represents different centuries or more than one century.

##### §49.27. Religious and Charitable Organizations.

A religious or charitable organization is eligible to be a contractor on the same basis as any other private organization. The contractor retains its independence from state and local governments, including the contractor's control over the definition, development, practice, and expression of its charitable or religious beliefs. Except as provided in federal law, the Texas Department of Human Services (DHS) shall not interpret a contract to require a charitable or religious organization to alter its form of internal governance or remove religious art, icons, scripture, or other symbols. If a religious or charitable organization segregates the government funds provided under the contract, then only the financial assistance provided by these funds will be subject to audit. Neither DHS's selection of a charitable or faith-based contractor of social services nor the expenditure of funds under a contract is an endorsement of the contractor's charitable or religious character practices or expression.

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 December 7, 1998.

TRD-9818171

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services  
Effective date: January 1, 1999  
Proposal publication date: October 16, 1998  
For further information, please call: (512) 438-3765



## Part XII. Texas Board of Occupational Therapy Examiners

### Chapter 375. Fees

#### 40 TAC §375.2

The Texas Board of Occupational Therapy Examiners adopts the repeal of §375.2, concerning Special Cases, Prorations, and Refunds of Fees, without changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5948).

This repeal is being adopted to eliminate obsolete language that is no longer necessary to the operation of the Board.

This repeal removes obsolete language relating to fees.

No comments were received regarding repeal of this section.

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.

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 December 7, 1998.

TRD-9818177  
Jennifer J. Jones  
Executive Assistant  
Texas Board of Occupational Therapy Examiners  
Effective date: December 27, 1998  
Proposal publication date: June 5, 1998  
For further information, please call: (512) 305-6900



### Chapter 387. Administrative Hearing Procedures

#### 40 TAC §387.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §387.1, concerning Administrative Hearing Procedures without changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5948).

This repeal is being adopted to eliminate obsolete language that is no longer necessary to the operation of the Board.

This repeal removes obsolete language relating to administrative hearings.

No comments were received regarding repeal of this section.

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.

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 December 7, 1998.

TRD-9818178  
Jennifer J. Jones  
Executive Assistant  
Texas Board of Occupational Therapy Examiners  
Effective date: December 27, 1998  
Proposal publication date: June 5, 1998  
For further information, please call: (512) 305-6900



### Chapter 389. Petition for Adoption of Rules

#### 40 TAC §389.1

The Texas Board of Occupational Therapy Examiners adopts the repeal of §389.1, concerning Petition for Adoption of Rules, without changes to the proposed text as published in the June 5, 1998 issue of the *Texas Register* (23 TexReg 5949).

This repeal is being adopted to eliminate obsolete language that is no longer necessary to the operation of the Board.

This repeal removes obsolete language relating to petition for adoption of rules.

No comments were received regarding repeal of this section.

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.

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 December 7, 1998.

TRD-9818179  
Jennifer J. Jones  
Executive Assistant  
Texas Board of Occupational Therapy Examiners  
Effective date: December 27, 1998  
Proposal publication date: June 5, 1998  
For further information, please call: (512) 305-6900



## Part XX. Texas Workforce Commission

### Chapter 800. General Administration

#### Subchapter B. Allocations and Funding

##### 40 TAC §800.56

The Texas Workforce Commission (Commission) adopts amendments to §800.56, concerning allocation of child care funds to local workforce development areas (workforce areas)

without changes to proposed text as published in the October 23, 1998, issue of the *Texas Register* (23 TexReg 10862). The adopted text will not be republished here.

The child care services are provided under Texas Human Resources Code Chapter 44. The adopted rule amendments specify the method the Commission will employ in carrying out the allocation of funds to the workforce areas and the use of those funds provided for in Texas Labor Code, §302.062, for certain child care. The amendments set forth the provisions for budgeting and expending funds for the different types of child care clients to the extent permitted by statutory and regulatory provisions related to the funding sources.

The purpose of the amendments is to allow local workforce development boards (Boards) to have more flexibility in the use of funds at the local level. It is the Commission's intent to allocate funds to workforce areas for the purpose of meeting and exceeding statewide performance measures as set forth in the state General Appropriations Act.

The purpose of the change of the language from "75% of the state median income" to "150% of the federal poverty guidelines" is to utilize the federal poverty level indicators instead of the state median income levels as the mechanism for targeting At-Risk children for child care services in areas of desperate need. The use of the 75% of the state median income level instead of 150% of the federal poverty guidelines to determine allocations to local workforce development areas results in a shifting of funds away from areas of the state that have substantial numbers of children living below or near the poverty level. Use of the state median income level instead of the federal poverty guidelines could result in parents leaving employment to care for children or having to leave their children in unsafe situations, such as unsupervised care, in order to maintain employment.

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

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

The specific amount of funds available for allocation to workforce areas will be determined during the Commission's budgetary process. The amendments are designed to be respon-

sive to the needs of workforce areas, changes in state and federal laws and regulations, and issues that may arise in the further management of workforce training and services by the Commission through the Boards.

The Commission held a public hearing on the proposed rule on November 20, 1998, in Room 644 of the TWC Building at 101 East 15th Street in Austin, Texas.

The Commission received one comment on the rule from the North Central Texas Workforce Board, which was in support of the amendments.

The commenter supported the usage of 150% of the federal poverty level as well as the caveat that funds allocated for Food Stamps Employment and Training may not be used for any other purpose. Further, the commenter supported giving flexibility to the Boards for the prioritization of funding areas as well as the ability to move care dollars to operations in proportion to the increase in the number of children served. Finally, the commenter supported the Board being given the responsibility of assuring that no more than 5% of the total expenditure of funds are used for operations/administration expenses as per federal regulations contained in 45 *Federal Register* 39989, §98.52.

The Commission appreciates the comment and agrees.

The amendments are adopted under Texas Labor Code, Title 4, 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's programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on December 3, 1998.

TRD-9818123

J. Randel (Jerry) Hill  
General Counsel

Texas Workforce Commission

Effective date: December 23, 1998

Proposal publication date: October 23, 1998

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



# == REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

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## Proposed Rule Reviews

Employees Retirement System of Texas

### Title 34, Part IV

Chapter 69. Membership and Refunds

The Employees Retirement System of Texas has reviewed §69.3, concerning Members of Governing Boards, in accordance with the Appropriations Act, Article IX, §167, and proposes that the rule be readopted, as the agency's reason for adopting this Section continues to exist. Please refer to the Texas Administrative Code to review §69.3.

Comments on the proposed re adoption of this section may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas, 78711-3207 or e-mail Mr. Nail at [wnail@ers.state.tx.us](mailto:wnail@ers.state.tx.us).

TRD-9818143

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Filed: December 4, 1998



Chapter 85. Flexible Benefits

The Employees Retirement System of Texas is in the process of reviewing Chapter 85, concerning the Flexible Benefits Program, in accordance with the Appropriations Act, Article IX, §167. Please refer to the Texas Administrative Code on the Secretary of State's website at [www.sos.state.tx.us](http://www.sos.state.tx.us), to review the current Flexible Benefits rules.

Comments on Chapter 85 may be submitted to William S. Nail, Deputy Executive Director and General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207 or e-mail Mr. Nail at [wnail@ers.state.tx.us](mailto:wnail@ers.state.tx.us).

TRD-9818144

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Filed: December 4, 1998



Texas Board of Professional Engineers

### Title 22, Part VI

The Texas Board of Professional Engineers proposes to review Chapter 131, Subchapter A (§§131.1-131.20), concerning Bylaws and Definitions, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The board is proposing to readopt these rules as they continue to exist.

Comments on the proposed review may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

TRD-9818222

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Filed: December 9, 1998



The Texas Board of Professional Engineers proposes to review Chapter 131, Subchapter B (§§131.31-131.38, 131.51-131.55), concerning Application for License, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The board is proposing to readopt these rules as they continue to exist.

Comments on the proposed review may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas, 78760-8329.

TRD-9818223

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Filed: December 9, 1998



The Texas Board of Professional Engineers proposes to review Chapter 131, Subchapter C (§§131.71-131.73), concerning References, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The board is proposing to readopt these rules as they continue to exist.

Comments on the proposed review may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas, 78760-8329.

TRD-9818224  
John R. Speed, P.E.  
Executive Director  
Texas Board of Professional Engineers  
Filed: December 9, 1998



The Texas Board of Professional Engineers proposes to review Chapter 131, Subchapter D (§131.81), concerning Engineering Experience, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The board is proposing to readopt this rule as it continues to exist.

Comments on the proposed review may be submitted to John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas, 78760-8329.

TRD-9818225  
John R. Speed, P.E.  
Executive Director  
Texas Board of Professional Engineers  
Filed: December 9, 1998



Texas Department of Public Safety

### **Title 37, Part I**

The Texas Department of Public Safety (DPS) files this notice of intention to review Chapter 7-Division of Emergency Management, Chapter 9-Public Safety Communications, and Chapter 13-Controlled Substances pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As part of this review process, the DPS is proposing amendments to Chapter 7: §§7.2, 7.3, 7.13, 7.25, 7.27-7.29, 7.42, and the repeal of §7.45. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. The DPS will accept comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist in the comments filed on the proposed amendments.

The DPS is not proposing any changes to Chapter 7: §§ 7.1, 7.11, 7.12, 7.21-7.24, 7.26, 7.41, 7.43, and 7.44; Chapter 9; and Chapter 13. DPS's reason for adopting these sections continues to exist. Comments regarding the Section 167 requirements as to whether the reason for adopting these sections of Chapters 7, 9, and 13 continues to exist, may be submitted to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0140, (512) 424-2890 within 20 days after publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Mary Ann Courter, Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0140, (512) 424-2890.

TRD-9818133  
Dudley M. Thomas  
Director  
Texas Department of Public Safety  
Filed: December 4, 1998



Public Utility Commission of Texas

### **Title 16, Part II**

The Public Utility Commission of Texas files this notice of intention to review §23.19 relating to Registration of Power Marketers and Exempt Wholesale Generators pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, Section 167 (Section 167). Project Number 19676 has been assigned to the review of this rule section.

As part of this review process, the commission is proposing the repeal of §23.19 and is proposing new §25.105 of this title (relating to Registration and Reporting by Power Marketers, Exempt Wholesale Generators, and Qualifying Facilities) in Chapter 25, Substantive Rules Applicable to Electric Service Providers to replace §23.19. The proposed new section and the proposed repeal may be found in the Proposed Rules section of the *Texas Register*. The commission will accept comments on the Section 167 requirement in the comments filed on the proposed new section.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

TRD-9818129  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 3, 1998



## **Adopted Rule Reviews**

Texas Education Agency

### **Title 19, Part II**

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter BB, Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students, pursuant to the 1998-99 General Appropriations Act, Section 167. The TEA proposed the review of 19 TAC Chapter 89, Subchapter BB, in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9800).

The TEA finds that the reason for adopting continues to exist. The TEA received no comments related to the rule review requirement as to whether the reason for adopting the rules continues to exist. As part of the review, the TEA is proposing amendments to 19 TAC §§89.1205, 89.1210, 89.1220, 89.1230, and 89.1245 and new 19 TAC §89.1233, which may be found in the Proposed Rules section of this issue.

TRD-9818183  
Criss Cloudt  
Associate Commissioner, Policy Planning and Research  
Texas Education Agency  
Filed: December 7, 1998





Structural Pest Control Board

**Title 22, Part XXV**

The Texas Structural Pest Control Board adopts the review of all sections in Chapters 591 pertaining to General Provisions (§§591.1-591.22) and all sections in Chapter 593 pertaining to Licenses (§§593.1-593.24) in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, Section 167.

The Board has considered whether the reasons for adopting these rules still exist and whether amendments are needed, and has found there is a need for the continuation of the rules.

Public comments on the rules were received. As a result of the review, some minor changes to the rules will appear in the proposed rules section of the *Texas Register* and will be adopted in accordance with state rulemaking requirements.

TRD-9818132

Benny Mathis

Executive Director

Texas Structural Pest Control Board

Filed: December 3, 1998



# TABLES & GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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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 10	shred and plow a,b
2 - Area 2	No dates set	September 20	shred and plow a,b
2 - Area 3	No dates set	September 25	shred and plow a,b
2 - Area 4	No dates set	October 1	shred and plow a,b
2 - Area 4 Calhoun and Refugio Counties only	No dates set	<del>October 1</del> December 14	shred and plow a,b
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	<del>October 31</del> December 15	shred and/or plow a,c
7	March 20 - May 31	November 30	shred and/or plow a,c
7 Brazos County only	March 20 - May 31	<del>November 30</del> December 30	shred and/or plow a,c
8	March 20 - May 31	November 30	shred and/or plow a,c
8 Ellis, Limestone, McLennan and Navarro Counties only	March 20 - May 31	<del>November 30</del> December 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.

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 1: 10 TAC §80.54(c)

**SITE PREPARATION NOTICE**

**FAILURE TO PROPERLY PREPARE THE SITE MAY INVALIDATE YOUR WARRANTIES.** Unless the home is installed in a rental community, you, the purchaser or homeowner, are responsible for the proper preparation of the site where your manufactured home is to be installed.

All debris, sod, tree stumps and other organic materials from all areas where foundation footings are to be located must be removed. In areas where footings are not to be located, all debris, sod, tree stumps or other organic materials must be trimmed, cut, or removed down to a maximum height of 8 inches above the ground.

The exterior grade must slope away from the home or other approved means must be provided to prohibit surface runoff from draining under the home. Drainage prevents water build-up under the home. Water build-up may cause shifting or settling of the foundation, dampness in the home, damage to siding and bottom board, buckling of walls and floors, delamination of floor decking and problems with the operation of windows and doors.

By your signature(s), you acknowledge that you understand the content of this notice and that you have received a copy and further that this notice was given to you on the date shown and prior to the signing of any binding sales or installation agreement.

\_\_\_\_\_  
purchaser/homeowner signature

\_\_\_\_\_  
purchaser/homeowner signature

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type or print name

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date

\_\_\_\_\_  
date

## PROPER PRE-CONSTRUCTION TERMITE TREATMENTS

### A Guide for Builders and Commercial Customers

Texas Structural Pest Control Board  
1106 Clayton Lane #100LW  
Austin, Texas 78723  
Telephone No. (512) 451-7200

#### I. Definitions

The Texas Structural Pest Control Board licenses pest control operators and regulates the application of pesticides for the prevention or control of subterranean termites. Because of the importance of treatments made to buildings under construction (commonly called pre-treats), this publication has been prepared for businesses which hire pest control operators for these preventative termite treatments.

A pre-construction treatment may be a full treatment or a partial treatment, defined in the following manner:

##### A. FULL TREATMENT

Effective preconstruction treatment for subterranean termite prevention requires the establishment of complete vertical and/or horizontal chemical barriers between wood in the structure and the termite colonies in the soil.

**For Horizontal Barriers,** applications shall be made using a low pressure spray after grading is completed and prior to the pouring of the slab or footing to provide thorough and continuous coverage of the area being treated.

**For Vertical Barriers,** establish vertical barriers in areas such as around the base of foundations, plumbing lines,

backfilled soil against foundation walls and other areas which may warrant more than just a horizontal barrier.

##### B. PARTIAL TREATMENT

A partial treatment is anything less than a full treatment as described above. A partial treatment only protects the areas treated from wood destroying insects. The areas treated must be treated using at least the minimum labeled rate.

#### II. APPLICATION RATES

Pesticides used to treat for termites (termiticides) are purchased in concentrate form and diluted for application. To evaluate the treatment process, it is necessary to know:

- 1) the proper dilution ratio and
- 2) the correct volume of that solution to apply in or around various structural elements.

Dilution ratios are specified on each termiticide label, and they must be followed. If more than one allowable rate for soil application is given, the pest control operator must use at least the minimum rate shown and may not exceed the maximum rate.

Most termiticides require 1-2 gallons of concentrate to make up 100

gallons of solution. However, there are some exceptions; it is important to review the label to know the correct rate.

The volume of diluted solution used to treat various structural elements is the same on all termiticide labels:

1) Fill material to be covered by a slab is treated at a rate of 1 gallon per 10 square feet (soil fill). For coarse fill, use 1.5 gallons per 10 square feet or as specified on the product label.

2) Soil backfill areas next to walls, piers, pipes and under "critical areas" like slab expansion joints are treated with 4 gallons per 10 linear feet per foot of depth. (This includes fill areas inside chimneys and earth-filled porches).

3) Hollow masonry units receive 2 gallons per 10 linear feet. Though a concrete block wall may have multiple chambers (2 or 3 hole blocks), it is counted as one hollow void when calculating the amount of termiticide needed for treatment.

Review specific label requirements for proper mixture rates and application procedures.

#### III. CONTACTING THE STRUCTURAL PEST CONTROL BOARD

The Texas Structural Pest Control Board does not regulate pricing of treatments. However, we are interested in situations where the price is only a fraction of the cost of materials needed to do the job correctly. Remember, comparing the bid price to the size of the structure and the cost of termiticide does not include costs such as insurance, travel, labor and other costs associated with overhead. **FURTHER, A CONTRACTOR MAY HAVE CIVIL OR CRIMINAL LIABILITY IF THEY CONSPIRE TO VIOLATE STRUCTURAL PEST CONTROL BOARD REGULATIONS.**

Termiticide labels have specific directions about the product's use. Pest Control Companies must follow these directions and Structural Pest Control Board regulations including 599.3 (a) and (b):

(a) All pesticide applications must be made by using the application rate and methods and by following the precautionary statements on the labeling of the pesticide being used. Treatments using less than label recommended concentrations at higher volume applications are prohibited for preconstruction treatments,

(b) for a full treatment the entire structure shall be treated to provide a continuous horizontal and vertical barrier as described on the pesticide label including the posting of a treatment sticker and the final treatment to be performed within 30 days of notification of completion of landscaping or one year from the date of completion of construction, whichever comes first. Except, when construction has proceeded

to the point that all areas cannot be treated before the company providing the treatment is called to perform the job, a partial treatment will be permitted if the owner of the structure or the person in charge of the construction and the certified applicator for the pest control company sign a statement attesting to the conditions, and attach it to the contract with an amended graph showing the exact areas treated and send copies to the owner and to the Structural Pest Control Board.

Termiticides must be used at the prescribed rate, to protect the structure from termites and to comply with state regulations.

The Structural Pest Control Board will inspect specific treatments in response to consumer complaints or information that indicates a possible improper treatment. **THE PEST CONTROL COMPANY IS REQUIRED TO INFORM THE STRUCTURAL PEST CONTROL BOARD 4-24 HOURS PRIOR TO PERFORMING THE TREATMENT.** The Board will also inspect treatments during compliance inspections of pest control company operations and will randomly make inspections of job sites where treatments are in progress. Such on-site inspections typically involve collecting samples of the tank mix and soil samples of treatment sites following application.

Questions about termite treatment procedures should be directed to the Structural Pest Control Board office.

#### **I V . T R E A T M E N T**

#### **REQUIREMENTS**

This information, furnished to the Structural Pest Control Board, will allow us to inspect treatments in progress to ensure that proper procedures are being used. Keep in mind that an inspection by the Structural Pest Control Board is not required for the treatment or construction to proceed. Inspections at pretreatment sites will be made on a case-by-case basis.

It is the philosophy of this agency to combine firm but fair enforcement actions with an educational approach to obtain regulatory compliance.

TREATMENT IS:

- A. FULL
- B. PARTIAL

I have received a copy of the Guide for Builders and Commercial Customers.

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Signature of  
Customer or Contractor

---

Date  
spcb/d-1

FIGURE: 28 TAC 34.826 (c)(2)

Mortar	Mortar Separation Distances		
	Spectator-Viewing Areas Parking Areas 1 & 2-Family Dwellings	Health-Care & Penal Facilities	Storage of Hazardous Materials
2 in.	100 ft.	600 ft.	600 ft.
3 in.	125 ft.	600 ft.	600 ft.
4 in.	125 ft.	600 ft.	600 ft.
5 in.	150 ft.	600 ft.	600 ft.
6 in. & larger	200 ft.	600 ft.	600 ft.

Figure: 30 TAC §106.262(3)

<u>D, Feet</u>	<u>K</u>	
100	326	E = maximum allowable hourly emission, and never to exceed 6 pounds per hour.
200	200	
300	139	
400	104	
500	81	L = value as listed or referenced in Table 262
600	65	
700	54	
800	46	K = value from the table on this page. (interpolate intermediate values)
900	39	
1,000	34	
2,000	14	D = distance to the nearest off-plant receptor.
3,000 or more	8	



TABLE 262  
LIMIT VALUES (L) FOR USE WITH EXEMPTIONS FROM PERMITTING §106.262

The values are not to be interpreted as acceptable health effects values relative to the issuance of any permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Acetone	590.
Acetaldehyde	9.
Acetone Cyanohydrin	4.
Acetonitrile	34.
Acetylene	2662.
N-Amyl Acetate	2.7
Sec-Amyl Acetate	1.1
Benzene	3.
Beryllium and Compounds	0.0005
Boron Trifluoride, as HF	0.5
Butyl Alcohol, -	76.
Butyl Acrylate	19.
Butyl Chromate	0.01
Butyl Glycidyl Ether	30.
Butyl Mercaptan	0.3
Butyraldehyde	1.4
Butyric Acid	1.8
Butyronitrile	22.
Carbon Tetrachloride	12.
Chloroform	10.
Chlorophenol	0.2
Chloroprene	3.6
Chromic Acid	0.01
Chromium Metal, Chromium II and III Compounds	0.1
Chromium VI Compounds	0.01
Coal Tar Pitch Volatiles	0.1
Creosote	0.1
Cresol	0.5
Cumene	50.
Dicyclopentadiene	3.1
Diethylaminoethanol	5.5

Table 262 (Con't)

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Diisobutyl Ketone	63.9
Dimethyl Aniline	6.4
Dioxane	3.6
Dipropylamine	8.4
Ethyl Acrylate	0.5
Ethylene Dibromide	0.38
Ethylene Glycol	26.
Ethylene Glycol Dinitrate	0.1
Ethylidene-2-norbornene, 5-	7.
Ethyl Mercaptan	0.08
Ethyl Sulfide	1.6
Glycolonitrile	5.
Halothane	16
Heptane	350.
Hexanediamine, 1,6-	0.32
Hydrogen Chloride	1.
Hydrogen Fluoride	0.5
Hydrogen Sulfide	1.1
Isoamyl Acetate	133.
Isoamyl Alcohol	15.
Isobutyronitrile	22.
Kepone	0.001
Kerosene	100.
Malononitrile	8.
Mesityl Oxide	40.
Methyl Acrylate	5.8
Methyl Amyl Ketone	9.4
Methyl-t-butyl ether	45.
Methyl Butyl Ketone	4.
Methyl Disulfide	2.2
Methylenebis (2-chloroaniline) (MOCA)	0.003
Methylene Chloride	26.
Methyl Isoamyl Ketone	5.6
Methyl Mercaptan	0.2

Table 262 (Con't)

<u>Compound</u>	<u>Limit (L)</u> <u>Milligrams Per Cubic Meter</u>
Methyl Methacrylate	34.
Methyl Propyl Ketone	530.
Methyl Sulfide	0.3
Mineral Spirits	350.
Naphtha	350.
Nickel, Inorganic Compounds	0.015
Nitroglycerine	0.1
Nitropropane	5.
Octane	350.
Parathion	0.05
Pentane	350.
Perchloroethylene	33.5
Petroleum Ether	350
Phenyl Mercaptan	0.4
Propionitrile	14.
Propyl Acetate	62.6
Propylene Oxide	20.
Propyl Mercaptan	0.23
Silica-amorphous- precipitated, silica gel	4.
Silicon Carbide	4.
Stoddard Solvent	350.
Styrene	21.
Succinonitrile	20.
Tolidine	0.02
Trichloroethylene	135.
Trimethylamine	0.1
Valeric Acid	0.34
Vinyl Acetate	15.
Vinyl Chloride	2.

NOTE: The time weighted average (TWA) Threshold Limit Value (TLV) published by the American Conference of Governmental Industrial Hygienists (ACGIH), in its TLVs and BEIs guide (1997 Edition) shall be used for compounds not included in the table. The Short Term Exposure Level (STEL) or Ceiling Limit (annotated with a "C") published by the ACGIH shall be used for compounds that do not have a published TWA TLV. This section cannot be used if the compound is not listed in the table or does not have a published TWA TLV, STEL, or Ceiling Limit in the ACGIH TLVs and BEIs guide.

[ Figure 1: 43 TAC §57.36(a)

<u>Year</u>	<u>Local ATPA Funds (maximum)</u>	<u>Contribution (minimum)</u>
First	100%	0%
Second	100%	0%
Third	80%	20%
Fourth	80%	20%
Fifth	80%	20%

]

# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## 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 December 1, 1998, through December 8, 1998:

#### FEDERAL AGENCY ACTIONS:

Applicant: Sheridan Energy, Inc.; Location: The project is located in wetlands adjacent to the Gulf Intracoastal Waterway, in the William Baxter Survey, A-4, at Latitude 28 46'29.990" and Longitude 95 36'50.118", approximately 1 mile south of Sargent, Matagorda County, Texas. The USGS Quad Reference Map for this location is Cedar Lakes West; Project No.: 98-0538-F1; Description of Proposed Action: The applicant proposes impact 2.52 acres of wetlands adjacent to the Gulf of Mexico to enlarge an existing oil/gas well pad for the installation of a typical land drilling rig and appurtenant structures for multiple directional drilling operations, and installation of production facilities. The enlarged area will be 350 foot wide by 350 foot long and enclosed by a levee structure. Approximately 3,700 cubic yards of material will be excavated along the perimeter of the project to construct the levees. A portion of the site is covered by the original gravel pad. The remaining area will be covered with a board pad. A closed mud system will be utilized for drilling operations. In the event drilling operations are unsuccessful, the pad area will be cleaned and restored to pre-project elevations and contours within 90 days of cessation of drilling activities. If drilling is successful, the site will be reduced to two permanently impacted areas for production facilities/levees and the wellhead. The production facility and levees will be approximately 73 feet wide by 175 feet long and cover 0.25 acre. This area will require 440 cubic yards of gravel fill material for the pad and approximately 300 cubic yards of material that will be excavated along the perimeter of the production area for the levees. The wellhead area will be 60 feet wide by 80 feet long covering 0.11 acre and require 180 cubic yards of gravel fill material. Any pipelines required for production purposes will be routed along the

existing access road. To mitigate for wetland impacts, the applicant proposes to abandon and clear an existing well pad for use by nesting shore birds and restore 0.8 acre of the existing access road to natural ground level. The gravel from the road will be relocated onto the remaining roadway and dirt will be relocated to an approved upland location; Type of Application: U.S.A.C.E. permit application #21505 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Northwood Estates; Location: The proposed work site is located at the northeast intersection of FM 2004 and SH 288, in Lake Jackson, Brazoria County, Texas. The site can be located on the U.S.G.S. Lake Jackson Quadrangle; Project No.: 98-0539-F1; Description of Proposed Action: The applicant proposes to place fill material into 2.9 acres of scattered, isolated wetlands present on a 150 acre tract of land. The 2.9 acres of wetlands is a conglomerate of 106 separate wetland areas. They range from 0.001 to 0.225 acres in size. The work would be conducted to support the development of a single family, housing subdivision. The applicant proposes to mitigate for wetland impacts by creating 2.5 acres of wetlands and preserving a nearby 17.5 acre wooded habitat. Wetlands would be created inside an existing 19 acre freshwater lake. Created wetlands would consist of a 10 foot wide shallow fringe along 7,125 feet of the lake shoreline and 2 wetland flats located near the lake center. The lake would be stocked with bass. The applicant also proposes to preserve a 17.5 acre wooded tract that contains 5.86 acres of wetlands. The 150 foot wide unimproved channel bisecting this wooded tract is not included in the preservation acreage totals; Type of Application: U.S.A.C.E. permit application #21519 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: R.H. Calder, Ltd.; Location: The project is located on a 341-acre tract of land, northeast of the intersection of Calder Road and IH 45 north, in League City, Galveston County, Texas. The site can be located on the U.S.G.S. Dickinson quadrangle map; Project No.: 98-0540-F1; Description of Proposed Action: The applicant proposes to place fill material into 26.78 acres of isolated wetlands, excavate 7.79 acres of wetlands and avoid/enhance another 13.34 acres of wetlands. The project site is a 341 acre tract of land surrounded by residential/commercial development. Purpose of the work is to provide for the development of a residential, multi-family subdivision with commercial amenities. Avoided wetlands will be buffered with a 7.6 acre upland fringe. To compensate for wetland

impacts the applicant proposes to create 25.76 acres of new wetlands and recreate 9.74 acres of wetlands that would be impacted for a proposed detention basin. In this detention basin area 9.74 acres of existing wetlands would be reduced in elevation and incorporated into the proposed wetland detention basin area. All mitigation will be onsite. Some of the created wetland areas will contain areas of open water and upland islands. Created swales will be seeded with hydrophytic species. Minimum success criteria is considered to be 70% areal coverage of hydrophytic species for 2 consecutive years. The area will be reseeded if 70% vegetative coverage is not obtained in 2 years. Mitigation monitoring will cease once minimum success criteria are met; Type of Application: U.S.A.C.E. permit application #21482 under §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action 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-9818216  
Garry Mauro  
Chairman  
Coastal Coordination Council  
Filed: December 9, 1998

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## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 12/14/98 - 12/20/98 is 18% for Consumer<sup>1</sup>/Agricultural/Commercial<sup>2</sup>/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 12/14/98 - 12/20/98 is 18% for Commercial over \$250,000.

<sup>1</sup>Credit for personal, family or household use.

<sup>2</sup>Credit for business, commercial, investment or other similar purpose.

TRD-9818192  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: December 8, 1998

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## Texas Education Agency

### Request for Application Concerning the Christa McAuliffe Fellowship Program

**Eligible Applicants.** The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-99-004 from qualified teachers for the Christa McAuliffe Fellowship Program. This program honors the memory of the late Christa McAuliffe, the New Hampshire teacher who served as an astronaut on the space shuttle Challenger in January 1986. All applicants must have at least eight years of teaching experience in elementary or secondary public or private schools.

Three fellowships will be offered: One fellowship will be offered for a teacher in grades Pre-K through five, one fellowship will be offered for a teacher in Grades 6-8, and one fellowship will be offered for a teacher in Grades 9- 12. Teachers of all grade levels and subject areas are encouraged to submit applications that focus on the implementation of education reform that addresses, directly or indirectly, the goals outlined in the state's systemic education plan.

**Description.** Each Christa McAuliffe Fellowship must be focused on making improvements in educator preparation, educational research and the use of technology to enhance classroom instruction in one or more of the priority areas in the state's systemic education improvement plan. The priority areas are: (1) ensure that all students learn to read at grade level by the end of the third grade and continue to read at grade level; (2) ensure that all students demonstrate exemplary performance in writing; (3) ensure that all students demonstrate exemplary performance in the understanding of mathematics; (4) ensure that all students demonstrate exemplary performance in the understanding of science; and (5) ensure that all students demonstrate exemplary performance in the understanding of social studies.

The fellowships may be used for: (1) sabbaticals for study, research, or academic improvement; (2) consultation with or assistance to other school districts or private school systems; (3) development of special innovative programs; (4) projects or partnerships that involve the business community and the schools; (5) programs that incorporate the use and sharing of technologies to help students learn; or (6) expanding or replicating model programs of staff development.

**Dates of Project.** The Christa McAuliffe Fellowship Program will be implemented during the 1999-2000 school year. Applicants should plan for a starting date of August 1, 1999, and ending date of July 31, 2000.

**Project Amount.** Funds will be available to full-time teachers currently teaching in elementary or secondary public or private schools. Applications for the Christa McAuliffe Fellowship Program are competitive and will be funded until grant funds are depleted.

**Selection Criteria.** Distribution of the awards will be based on the applications prepared by the teachers and reviewed by a statewide panel composed of teachers, parents, school administrators, representatives of higher education, and members of professional education organizations. Each application will be judged on: (1) the applicant's proposal abstract and project description; (2) research, evaluation, dissemination and educational benefits of the proposal; (3) professional education, experience in education and professional activities; (4) the proposal budget; and (5) letters of support. The statewide panel will make the final selection of recipients for the fellowship awards and will present the names to the commissioner who in turn will present them to the Council of Chief State School Officers.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any application that is submitted in response to this RFA. This RFA does not commit TEA to pay any costs incurred before a contract is executed. The issuance of the RFA does not

obligate TEA to award a contract or pay any costs incurred in the preparation of a response.

Requesting the Application. A complete copy of RFA #701-99-004 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about this request, contact Terri Rodgers, Texas Education Agency, (512) 475-1233. This information is also available on the Texas Education Agency web site at <http://www.tea.state.tx.us>.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. Central Standard Time, Friday, March 12, 1999.

TRD-9818221

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: December 9, 1998



### Request for Early Reading Diagnostic Instruments

The Texas Education Agency (TEA) is notifying publishers that early reading diagnostic instruments for Kindergarten, Grade 1, and Grade 2 may be submitted for review. Texas Education Code (TEC), §28.006, authorizes the commissioner of education to develop recommendations for school districts for administering reading instruments to diagnose student reading development and comprehension.

Under TEC, §28.006(b), the commissioner of education shall adopt a list of reading instruments that school districts may use. Any reading instrument used must be based on scientific research concerning reading skills development and reading comprehension. Proposed reading instruments will be reviewed for validity, reliability, and cost-effectiveness, as well as ease of administration and application by the classroom teacher. The list of reading instruments adopted under TEC, §28.006(b), must also provide for diagnosing the reading development and comprehension of students participating in a program under TEC, Chapter 29, Subchapter B (relating to bilingual education and special language programs).

School districts were required to administer an early reading diagnostic instrument beginning in the 1998-1999 school year. School districts will again be required to administer an early reading skills and comprehension instrument in the 1999-2000 school year, under TEC, §28.006(g). The list of reading instruments and recommendations for implementation will be available no later than May 1, 1999. State funds will only pay for the cost of administering a reading instrument that is on the list adopted by the commissioner of education.

Proposals must be submitted to the Office of Statewide Initiatives, Suite 4-104, 1701 North Congress Avenue, Austin, TX 78701, by January 29, 1999, to be considered. If you would like your reading instrument returned after review, please indicate so on a cover letter submitted with the proposal. Additional information regarding the criteria used to evaluate instruments will be made available through the Office of Statewide Initiatives. For additional information, contact the Office of Statewide Initiatives at (512) 463-9027.

TRD-9818220

Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

Filed: December 9, 1998



### General Services Commission

Notice to Bidders - NTB 96-001D-303

SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION (FCSM), 1711 SAN JACINTO, BID ROOM, ROOM 180, AUSTIN, TEXAS, TELEPHONE (512) 463-3417, ON THURSDAY, JANUARY 14, 1999, AT 3:00 P.M., FOR:

**Project No. 96-001D-303:** Exterior Cladding for Parking Structure "P", Austin, Texas. The approximate cost for this project is between \$900,000. and \$1,100,000.

**Bid Receipt Location:** General Services Commission/FCSM, 1711 San Jacinto, Bid Room 180, Austin, Texas 78701 (P. O. Box 13047, Austin, Texas 78711). After submitting bid, proceed to the second floor receptionist for directions to public bid opening.

**Contractor Qualifications:** Prime contractors are required to submit information to the FCSM Division, 1711 San Jacinto, Austin, Texas 78701, on FCSM's Contractor Qualification Form no later than 5:00 P.M., on January 7, 1999, to document compliance with contractor's qualification requirements for this project. Telephone (512) 463-3417 to obtain form. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. Review and acceptance by FCSM of contractor qualification statements is required prior to obtaining bid documents from the Architect. Failure to provide information regarding all requirements may delay acceptance which will delay receiving bid documents.

**Pre-Bid Conference:** A Pre-Bid Conference will be held on Monday, January 4, 1999, at 2:00 P.M., at General Services Commission, FCSM Division, Central Services Building, 1711 San Jacinto, Room 200, Austin, Texas 78711.

**Bid Documents:** Plans and specifications will be available December 14, 1998, for prime contractors, from Bouchard Parshall Architects, a Joint Venture, 416 Congress Avenue, Suite 300, Austin, Texas 78701-3620, Tel. (512) 477-1696, FAX: (512) 477-1693. A deposit of \$100.00 for one set will be required for the bid documents. Bid Documents will be available for review at the FCSM's division office, the Architect's office and the plan rooms of Associated Builders Exchange of Texas and the Dodge Company.

Any questions regarding this project should be directed to the project manager, Jason Nezamabadi at (512) 463-8247 or E-mail address: [jason.nezamabadi@gsc.state.tx.us](mailto:jason.nezamabadi@gsc.state.tx.us).

**BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.**

To be run in : Austin American-Statesman and San Antonio Express-News on Saturday, December 12, 1998 and Monday, December 14, 1998.

TRD-9818210

Judy Ponder

General Counsel

General Services Commission

Filed: December 8, 1998





## Notice of Extension for Request for Proposals - Energy Education Outreach Program

The State Energy Conservation Office ("SECO") of the General Services Commission published in the December 4, 1998, issue of the *Texas Register* (23 TexReg 12535) a Notice of Request for Proposals (RFP) for the Energy Education Outreach Program to implement energy conservation education programs in the Texas Schools.

The preproposal conference date, the deadline to submit written questions concerning the Request for Proposal, and the closing date for receipt of the Request for Proposal have been extended as follows:

**Preproposal Conference** - All potential proposers are encouraged to attend a preproposal conference to be held on **Monday, December 21, 1998, from 10:00 a.m. until 12:00 p.m.**, Conference Room 212, General Services Commission, State Energy Conservation Office, located in the Rusk State Office Building at 209 East 10th Street, Austin, Texas. The purpose of the meeting is to answer any questions regarding the RFP, the required format, the selection criteria, or the evaluation process. **IT IS NOT MANDATORY TO ATTEND THE PREPROPOSAL CONFERENCE.**

**Written Questions:** All questions concerning this RFP that arise after the preproposal conference must be submitted in writing to Glenda Baldwin, State Energy Conservation Office, P. O. Box 13047, Austin, Texas 78711-3047 or transmitted to facsimile number 512/305-8855 by 12:00 p.m. on **Wednesday, December 30, 1998.**

**Closing Date:** Proposals must be postmarked or received by GSC CEO no later than 12:00 p.m. (Central Standard Time) on **Friday, January 15, 1999.** Proposals received after that time and proposals submitted by facsimile will not be accepted. Copies of proposals are to be sent to Glenda Baldwin, General Services Commission, State Energy Conservation Office, P.O. Box 13047, Austin, Texas 78711-3047. Hand deliveries of copies of proposals are to be delivered to the Attention of Glenda Baldwin, General Services Commission, State Energy Conservation Office, Thomas Jefferson Rusk Building, Suite 206, 208 East 10th, Austin, Texas 78701.

TRD-9818205  
Judy Ponder  
General Counsel  
General Services Commission  
Filed: December 8, 1998

## Governor's Office of Budget and Planning

### Notification of Consultant Award

The Governor's Office of Budget and Planning furnishes this notice of a consulting services contract award to prepare and negotiate with the federal government, under the provisions of OMB Circular A-87, the State of Texas' consolidated statewide cost allocation plan for the fiscal year ending August 31, 2000 and to prepare a full cost recovery plan under the provisions of state law. The notice for request for proposals was published in the October 2, 1998 *Texas Register* (23 TexReg 10177).

**Description of Services.** The contractor will develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs and ascertain indirect costs from state funds to provide state services.

**Effective Date and Value of Contract.** The contract will be effective from the date of execution until August 31, 2000. The total cost of the contract is \$40,000.

**Name of Contractor.** The contract has been awarded to DMG-Maximus, 13601 Preston Road, Suite 400W, Dallas, Texas 75240.

Persons who have questions concerning this award may contact Tom Adams, Governor's Budget and Planning Office, P.O. Box 12428, Austin, Texas 78711, (512) 463-1771.

TRD-9818121  
Donna Davidson  
Assistant General Counsel  
Governor's Office of Budget and Planning  
Filed: December 2, 1998

## Texas Department of Health

### Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: William C. Goss, D.D.S., San Antonio, R08753; Cassada and Sauer LLP, Amarillo, R08825; Debra G. Stewart, D.D.S. and Donald R. Tamplen, D.D.S., Stafford, R10144; Dennis R. Murray, D.D.S., M.S., Inc., Conroe, R10162; Walker Dental Center, Houston, R21302; Interserve, Corp., Bloomington, Minnesota, Z01186; X-Ray Diagnostics, Inc., El Paso, R18989; UIC, Inc., Fort Worth, R15956; Scintag, Inc., Cupertino, California, R15201; Medical Arts Clinic, Aransas Pass, R05700; Imaging Dynamics, Inc., Fort Worth, R21860; P. M. Circuits, Irving, R19787; Texas Industrial Laboratories, Fort Worth, R06987; Cosmetic Laser Center, San Antonio, Z01111; Comprehensive Foot Care, San Antonio, R21366; Highlands Chiropractic Clinic, Highlands, R18209; Cordova Health Management, Inc., San Antonio, R23331.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818173  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: December 7, 1998

## Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation, Part 13, (25 Texas Administrative Code 289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Southwest & Johnson X-ray Co., Inc., Dallas, L04603; Construction Services, San Angelo, L04752; Preston Products, Incorporated, Wichita Falls, G01649.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818176  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: December 7, 1998



## Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: Crystal Vet Med Center, Crystal City, R01493, November 24, 1998; X-Ray Equipment Company/Radiation Therapy Services, Inc., Mansfield, R08351, November 24, 1998; Al C. Franklin, D.D.S., McKinney, R09644, November 24, 1998; Daniel R. Matthews, D.D.S., Harlingen, R13997, November 24, 1998; Safari Animal Care Centers, League City, R14819, November 24, 1998; Lake Buchanan Medical Center, Buchanan Dam, R16553, November 24, 1998; Houston Pro Medical Management, Inc., Houston, R19508, November 24, 1998; Family Chiropractic Health Center, Stafford, R20763, November 24, 1998; Southwest Injury Rehabilitation Center, Houston, R20890, November 24, 1998; Palm Chiropractic, Brownsville, R23135, November 24, 1998.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818174  
Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: December 7, 1998



## Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material licenses: MedMark, Inc., Dallas, G01533, November 24, 1998; Houston Woodtech, Houston, G01657, November 24, 1998; Parsons Engineering Science, Incorporated, Austin, L04956, November 24, 1998.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9818175  
Susan K. Steeg  
General Counsel  
Texas Department of Health  
Filed: December 7, 1998



## Texas Department of Insurance

### Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to use the assumed name of METHODISTCARE STAR HEALTH PLAN by METHODIST CARE, INC., a domestic HMO. The home office is in Houston, Texas.

Application to use the assumed name of METHODISTCARE 65 PLUS by METHODIST CARE, INC., a domestic HMO. The home office is in Houston, Texas.

Application to change the name of HEALTH CARE SERVICE CORP., A MUTUAL LEGAL RESERVE COMPANY to BLUE CROSS AND BLUE SHEILD OF TEXAS, A DIVISION OF HEALTH CARE SERVICE CORPORATION, a foreign mutual life company. The home office is in Chicago, Illinois.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9818217  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: December 9, 1998



### Notices of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2397, on December 22, 1998, at 9:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. This hearing is concerning 28 TAC §§21.2001, 21.2004, and 21.2010 relating to amendments concerning medical child support orders.

The proposed amendments and the statutory authority for the proposed amendments, were published in the November 6, 1998, issue of the *Texas Register* (23 TexReg 11270).

TRD-9818218

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: December 9, 1998



The Commissioner of Insurance will hold a public hearing under Docket Number 2398, on December 22, 1998, at 9:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. This hearing is concerning 28 TAC section 21.2401-21.2407 relating to new sections concerning requirements of parity between mental health benefits and medical/surgical benefits.

The proposed new sections and the statutory authority for the new sections, was published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8022).

TRD-9818219

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: December 9, 1998



## **Texas Natural Resource Conservation Commission**

### **Enforcement Orders**

An agreed order was entered regarding CITY OF ANNONA, Docket Number 1998-0163-MWD-E; TNRCC Permit Number 10863-001; Enforcement ID Number 12115 on November 23, 1998 assessing \$2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHET ANDREWS DBA OAK HILL MOBILE HOME PARK, Docket Number 1998-0262-MWD-E; No TNRCC Permit; Enforcement ID Number 12225 on November 23, 1998 assessing \$8,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUCE BAYOU PUBLIC UTILITY DISTRICT, Docket Number 1997-1176-MWD-E; Water Quality Permit Number 11167-001; Enforcement ID Number 12066 on November 23, 1998 assessing \$4,500 in administrative penalties with \$3,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator at (512) 239-4493, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUBSEA VENTURES, INCORPORATED, Docket Number 1998-0315-AIR-E; Account Num-

ber HG-9639-L; Enforcement ID Number 12383 on November 23, 1998 assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. JOHN WALLACE & MR. DAVE BARTER DBA R & W INDUSTRIES, Docket Number 1998-0335-AIR-E; Account Number BM-0239-U; Enforcement ID Number 12353 on November 23, 1998 assessing \$1,800 in administrative penalties with \$360 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 NORTH TEXAS CEMENT COMPANY, Docket Number 1998-0844-AIR-E; Account ID Number ED-0034-O; Enforcement ID Number 12755 on November 23, 1998 assessing \$6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CUIEL CONSTRUCTION, INCORPORATED, Docket Number 1998-0100-AIR-E; Account Number EE-0739-E; Enforcement ID Number 291 on November 23, 1998 assessing \$1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laura Kohansov, Staff Attorney at (512) 239-2029 or Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RICHARD DINSORE, Docket Number 1997-1037-OSI-E; TNRCC ID Number 3885; Enforcement ID Number 11944 on November 23, 1998 assessing \$938 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLASSCOCK COUNTY COOP GIN, Docket Number 1998-0660-PWS-E; PWS Number 0870003; Enforcement ID Number 6412 on November 23, 1998 assessing \$863 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES JONES DBA JONES MOBILE HOME PARK, Docket Number 1997-0676-PWS-E; PWS Number 0920029 on November 23, 1998 assessing \$480 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Hernandez, Staff Attorney at (512) 239-0612 or Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas

Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding APPLEBY WATER SUPPLY CORPORATION, Docket Number 1998-0428-PWS-E; PWS ID Number 1740005; Enforcement ID Number 12428 on November 23, 1998 assessing \$1,750 in administrative penalties with \$350 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandy VanCleave, Enforcement Coordinator at (512) 239-0667, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BAUKE MULDER, Docket Number 1998-0356-AGR-E; No Permit; Enforcement ID Number 12380 on November 23, 1998 assessing \$3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting 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 ADNAN ENTERPRISES, INC., Docket Number 1998-0404-PST-E; PST Facility ID Number 54554; Enforcement ID Number 12136 on November 23, 1998 assessing \$1,100 in administrative penalties with \$220 deferred.

Information concerning any aspect of this order may be obtained by contacting Julia McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SUPREME BEEF PACKERS, INC., Docket Number 1997-0939-IWD-E; No Permit; Enforcement ID Number 11475 on November 23, 1998 assessing \$11,760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9818208

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: December 8, 1998



#### Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Order. The TNRCC Staff proposes a Default Order when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 16,**

**1999.** The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Orders is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of the proposed Default Order is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the Default Order should be sent to the attorney designated for the Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 16, 1999.** Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorney is available to discuss the Default Order and/or the comment procedure at the listed phone number; however, comments on the Default Order should be submitted to the TNRCC in **writing.**

(1) COMPANY: COMPANY: Larry Young; DOCKET NUMBER: 98-0020-OSI-E; ENFORCEMENT ID NUMBER: 3672; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: on-site sewage facility installer; RULES VIOLATED: 30 TAC §285.58(a)(4) and Texas Health and Safety Code, §366.051 by forging signatures on permit applications; 30 TAC §285.58(a)(10) by abandoning the on-site sewage facility installation at a residence; PENALTY: \$6,563; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898- 3838.

TRD-9818213

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: December 9, 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 the Texas Water Code, §7.075. Section 7.075 requires that before the TNRCC may approve the AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **January 16, 1999.** Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle,

Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about the AOs should be sent to the attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 16, 1999**. Written comments may also be sent by facsimile machine to the attorney at (512) 239- 3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Chappell, Incorporated; DOCKET NUMBER: 96-0818-PST-E; ENFORCEMENT ID NUMBER: E11268; LOCATION: Cisco, Eastland County, Texas; TYPE OF FACILITY: underground storage tank; RULES VIOLATED: Texas Water Code, §26.121(a)(1) and (2) by allowing the discharge of contaminated water into or adjacent to water in the state; 30 TAC §334.50(b)(1)(A) by failing to provide adequate release detection for their underground storage tanks; 30 TAC §334.51(b)(1)(B) by failing to provide spill and overflow prevention equipment for their underground storage tank systems; 30 TAC §334.54(d)(1)(B) by failing to permanently remove from service underground storage tanks that have been temporarily out of service for longer than 12 months; PENALTY: \$21,000; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602, (915)698-9674.

(2)COMPANY: AZIZOLAH REZAKHANI DBA LUBE KWIK; DOCKET NUMBER: 98-0569- AIR-E; TNRCC ID NUMBER: DB-4770-J; LOCATION: Garland, Dallas County, Texas; TYPE OF FACILITY: state emissions inspection station; RULES VIOLATED: 30 TAC §114.50(e)(1) and Texas Health and Safety Code, §382.085(b) by issuing three motor vehicle inspection certificates without conducting all emissions tests; PENALTY: \$2,344; STAFF ATTORNEY: Tracy L. Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(3)COMPANY: Sports and Fitness Clubs of America, Incorporated dba "Q" The Sports Club; DOCKET NUMBER: 98-0270-MWD-E; TNRCC ID NUMBER: 90101602; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: health club and associated pond system; RULES VIOLATED: 30 TAC §313.4 by failing to operate and maintain the permanent water quality system in accordance with the water pollution abatement plan and by failing to control debris/brush in the stormwater pond as documented during an inspection; PENALTY: \$2,000; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(4)COMPANY: Harris County Fresh Water Supply District Number 1-A; DOCKET NUMBER: 97-0819-MWD-E; TNRCC ID NUMBER: 11195-001; LOCATION: Baytown, Harris County, Texas; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TNRCC Permit Number 11195-01 and the Texas Water Code, §26.121 by causing, suffering, or allowing a discharge of pollutants into or adjacent to water in the state without authorization; PENALTY: \$14,000; STAFF ATTORNEY: Guy Henry, Litigation Division, MC 175, (512) 239-6259; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-9818212

Paul C. Sarahan

Director, Litigation Division

Texas Natural Resource Conservation Commission

Filed: December 9, 1998

◆ ◆ ◆  
Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued during the period of December 9, 1998

Application Number TA-8047 by Bay Ltd. for diversion of 1 acre-foot in a 1 year period for industrial (road construction) use. Water may be diverted from the Mud Flats tributary of Copano Bay, San Antonio-Nueces Coastal Basin, approximately 15 miles east of Sinton, San Patricio County, Texas where the Mud Flats tributary crosses State Highway 188.

Application Number TA-8049 by Texas Utilities Pipeline Services, Inc. for diversion of 2 acre-feet in a 6 month period for mining (boring) use. Water may be diverted from the East Fork of the Trinity River, Trinity River Basin, approximately 12.5 miles southeast of McKinney, Collin County, Texas at the Texas Utilities Pipeline Services right of way on the East Fork of the Trinity River.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9818209

LaDonna Castanuela

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: December 8, 1998

◆ ◆ ◆  
Public Notices

Final Notice of Deletion

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of deletion (delisting) of a facility from the state registry (state Superfund registry) 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 which has been deleted is the South Texas Solvents state Superfund site which was originally proposed for listing on the state Superfund registry on January 16, 1987 (12 TexReg 205). The site is in Banquete, Nueces County, Texas, approximately four miles south of Banquete at the intersection of FM 666 and Nueces CR 23.

This notice is issued to finalize the deletion process which began on October 30, 1998, when the executive director of the TNRCC issued a public notice in the *Texas Register* 23 TexReg 11243-11244) of TNRCC's intent to delete the South Texas Solvents site from the state Superfund registry, following the determination made pursuant to 30 TAC §335.344(c), that the site no longer poses an imminent and substantial endangerment to public health and safety or the environment. The notice (23 TexReg 11243-11244) further indicated that the TNRCC shall hold a public meeting, as required by 30 TAC §335.344(b), if a written request is filed with the executive director of the TNRCC within 30 days, challenging the determination by the executive director made pursuant to 30 TAC §335.344(c). Equivalent publication of the notice (23 TexReg 7135-7136) was also published in the October 29, 1998 edition of the *The Nueces County Record Star*. The TNRCC did not receive a request for a public meeting from the potentially responsible parties or any interested persons during the request period (within 30 days of publication of notice); therefore, the South Texas Solvents site is hereby deleted from the Texas state Superfund registry. All inquiries regarding the deletion of this site should be directed to Janie Montemayor, TNRCC Community Relations, 1-800-633-9363 (within Texas only) or 512-239-3844.

TRD-9818207  
Margaret Hoffman  
Director  
Texas Natural Resource Conservation Commission  
Filed: December 8, 1998



The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of deletion (delisting) of a facility from the state registry (state Superfund registry) 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 which has been deleted is the Houston Lead state Superfund site which was originally placed on the state Superfund list in November 1987.

This notice is issued to finalize the deletion process which began on October 23, 1998, when the executive director of the TNRCC issued a public notice in the *Texas Register* TexReg 10986-10987) of TNRCC's intent to delete the Houston Lead site from the state Superfund registry, following the determination made pursuant to 30 TAC §335.344(c)(5), that the site had been accepted under the voluntary cleanup program and was therefore eligible for deletion from the state Superfund list. The notice (23 TexReg 10986-10987) indicated that the TNRCC shall hold a public meeting, as required by 30 TAC §335.344(b), if a written request is filed with the executive director of the TNRCC within 30 days, challenging the determination by the executive director made pursuant to 30 TAC §335.344(c)(5). Equivalent publication of the notice (23 TexReg 10986-10987) was also published in the October 23, 1998 edition of the *Houston Chronicle*.

The TNRCC did not receive a request for a public meeting from the potentially responsible parties or any interested persons during the request period (within 30 days of publication of notice); therefore, the Houston Lead site is hereby deleted from the Texas state Superfund registry. All inquiries regarding the deletion of this site should be directed to Joe Shields, TNRCC Community Relations, 1-800-633-9363 (within Texas only) or 512-239-0666.

TRD-9818206

Margaret Hoffman  
Director  
Texas Natural Resource Conservation Commission  
Filed: December 8, 1998



## Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant To P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 4, 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: Application to Contel of Texas, Inc. to Waive NRCs for Discretionary and Competitive Services, Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20187.

The Application: Contel proposes to waive the special services service charge of \$6.85 for residential customers who order CUSTOM CALLING AND/OR CUSTOMER CALLING LOCAL AREA SIGNALING SERVICES during the period of January 4, 1999 through April 3, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 by December 31, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818204  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 8, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 4, 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: Application to GTE-Southwest, Inc. to Waive NRCs for Discretionary and Competitive Services, Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20188.

The Application: GTE-SW proposes to waive the secondary service order charge of \$8.00 for residential customers who order Custom Calling and/or Customer Calling Local Area Signaling Services during the period of January 4, 1999 through April 3, 1999.

Persons who wish to intervene in this proceeding should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 by December 31, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818203  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas

Filed: December 8, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on December 4, 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: Application of Southwestern Bell Telephone Company to Introduce a New Optional Feature for Digital Loop Service Called SuperTrunk Pursuant to P.U.C. Substantive Rule §23.25. Tariff Control Number 20189.

The Application: Southwestern Bell Telephone Company (SWBT) is introducing a new optional feature for Digital Loop Service called SuperTrunk. SWBT will offer a Digital Loop Service feature called SuperTrunk which will provide a direct connection from a SWBT digital switch to the customer's premises as an option of Digital Loop Service. It provides two-way digital capability which will allow all channels to receive and generate calls. Direct Inward Dial numbers may or may not be assigned to these channels.

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 December 29, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818202  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 8, 1998



#### Notice of Application for Suspension or Modification of Requirements under P.U.C. Substantive Rule §23.103

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 30, 1998, for suspension, modification, or waiver of the requirements under P.U.C. Substantive Rule §23.103.

Project Title and Number: Application of Frontier Telemanagement, Inc. for Suspension or Modification of the Requirements to Provide IntraLATA Equal Access or, in the Alternative, Waiver of P.U.C. Substantive Rule §23.103. Project Number 20127.

The Application: Frontier Telemanagement, Inc. (Frontier) is a small certified telecommunications utility (CTU) serving less than two percent of the nation's subscriber lines and, pursuant to P.U.C. Substantive Rule §23.103(d)(3) may petition the Public Utility Commission of Texas for a suspension or modification of the requirements of this subsection, which requires the implementation of intraLATA equal access for Texas telephone customers.

Frontier provides telecommunications services to end users in the territory of Southwestern Bell Telephone Company (SWBT) as a nonfacilities-based reseller under a Service Provider Certificate of Operating Authority (SPCOA). Frontier does not provide local exchange service through its own switch, but rather relies on SWBT as its underlying carrier to provide switched service. Frontier states it lacks the technical capability to provide intraLATA equal access to its customers because it has to rely on the services provided by SWBT and SWBT is not providing intraLATA equal access.

Frontier requests that the commission suspend, modify, or in the alternative waive, the application of P.U.C. Substantive Rule §23.103 intraLATA equal access requirements with regard to the resold local exchange services provided by Frontier under its SPCOA, until such time as the company's underlying carriers are required to provide intraLATA equal access.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 on or before January 7, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. Please reference Project Number 20127.

TRD-9818122  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 3, 1998



#### Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on November 30, 1998, to amend a certificate of convenience and necessity pursuant to §§14.001, 32.001, 36.001, 37.051, and 37.054, 37.056, 37.057, 37.058 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998) (PURA). A summary of the application follows.

Docket Title and Number: Application of Brazos Electric Power Cooperative, Inc. (Brazos) to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Cooke County, Docket Number 20149 before the Public Utility Commission of Texas.

The Application: In Docket Number 20149, Brazos requests approval to construct 3.5 miles of 138-kV transmission line (initially operated at 69-kV) and switching station facilities in Cooke County. The proposed transmission line is being constructed to provide loop service to the existing Red River substation that is currently being served radially. The reliability of service will be enhanced with the loop service.

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 within 15 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9818146  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 4, 1998



#### Public Notices of Interconnection Agreement

On December 2, 1998, Southwestern Bell Telephone Company and Net-tel Corporation, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-

104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20177. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20177. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by January 5, 1999, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20177.

TRD-9818131

Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 3, 1998



On December 2, 1998, Southwestern Bell Telephone Company and C2C Fiber, Inc., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20179. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20179. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 31, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 20179.



TRD-9818130  
Rhonda Dempsey  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: December 3, 1998



## Texas Tech University

### Request for Proposals-Consultant

Texas Tech University requests proposal responses for a consultant to assist the University in the development of a strategy to promote regional economic growth of the South Plains of Texas.

The past basis of economic growth of the Lubbock and South Plains economies has been agriculture, health care, and education. All three are undergoing substantial change. Loss of economic dynamics in West Texas threaten's the university's base. New engines for economic growth must be cultivated. The new approaches must reorient the current growth direction through diversification.

The University intends to establish institutional structures to identify its commercially valuable research, to effect technology transfer, to facilitate business start-up and to promote mutually beneficial public/private partnerships. The regional economic development groups and Texas Tech University have begun coordinating resources in this effort.

Proposal responses will be received until January 19, 1999, 3:00 p.m. CST in the Office of Contracting, room 327 Drane Hall, Texas Tech University, 15th and University, Lubbock, Texas, 79409. Questions should be directed to Patricia Aldridge, Director of Contracting, (806) 742-3841, fax (806) 742-0350 at the above address. If additional clarification is needed, all potential vendors will be notified by written addenda. If your firm is interested in responding to the Request for Proposal, please contact Patricia Aldridge at the above address/phone number to request a complete copy of the RFP. No late proposals will be accepted. Texas Tech University reserves the right to reject any/all proposal responses and will make an award that best meets the needs of the University.

Selection will be based on the following criteria: (10 copies of proposal responses are required)

1. current and previous direct relevant experience of the proposed project director and the extent of the role to be taken

2. Qualifications of the other personnel assigned to this project
3. direct relevant experience of the firm
4. demonstrated results of prior similar consulting projects
5. the proposer's understanding of the scope of work
6. familiarity with the University's strengths and strategies
7. quality and efficiency of the work plan
8. Ability to meet the proposed schedule
9. cost of the work

TRD-9818199  
James L. Crowson  
Assistant Secretary to the Board of Regents  
Texas Tech University  
Filed: December 8, 1998



## Texas Department of Transportation

### Public Comment Extension

In the November 13, 1998, issue of the *Texas Register* (23 TexReg 11597), the Texas Department of Transportation published proposed amendments to §§11.200-11.205, under Title 43, Texas Administrative Code, concerning the Statewide Transportation Enhancement Program, and specified that the deadline for receipt of comments was 5:00 p.m. on December 15, 1998. In order to assure adequate time for public input on these proposed amendments that deadline is hereby extended to 5:00 p.m. on December 30, 1998.

Comments on the proposals may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-9818193  
Bob Jackson  
Deputy General Counsel  
Texas Department of Transportation  
Filed: December 8, 1998



# *Texas Register*

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