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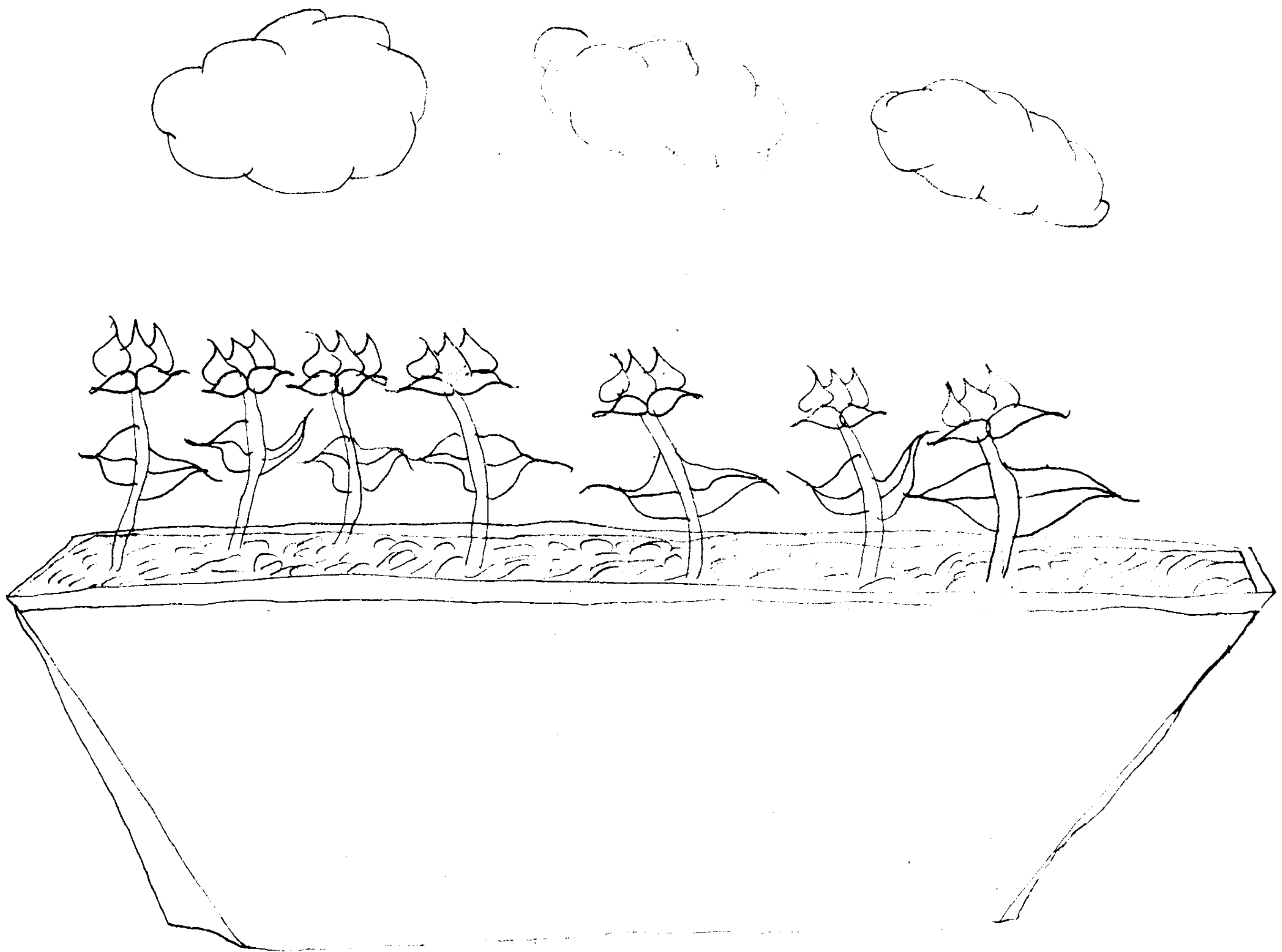

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5th Grade

Levi Fry Intermediate

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(800) 226-7199
(512) 463-5561
FAX (512) 463-5569
http://www.sos.state.tx.us

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THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the ***Texas Register*** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments Made February 18, 1999

To be members of the Texas A&M University System Board of Regents for terms to expire February 1, 2005: Lionel Sosa, 644 Alamo Heights Boulevard, San Antonio, Texas 78209, whose replacing John Lindsey of Houston whose terms expired; R. H. (Steve) Stevens, Jr., 5251 Stamper Way, Houston, Texas 77056, whose replacing T. Michael O'Connor of Victoria whose term expired; Susan Rudd Wayne, M.D., 6800 Bellaire Court South, Benbrook, Texas 76132 whose replacing Guadalupe Lopez Rangel of Corpus Christi whose term expired.

To be a member of the Veterans Land Board for a term to expire December 29, 2002: Darryl Ladd Pattillo, 1700 Jackson Hole Cove, Austin, Texas 78746, whose being reappointed.

To be members of the Texas Aerospace Commission for terms to expire February 1, 2005: Gale E. Burkett, 400 Creekside Court, League City, Texas 77573, whose replacing Lee L. Kaplan, of Houston whose term expired; J. Jan Collmer, 5525 Westgrove Drive, Dallas, Texas 75248-2030, whose replacing James R. Royer of Houston whose term expired; Michael J. Butchko, 4070 Enclave Mesa Circle, Austin, Texas 78731, whose replacing William Earl Jewett of Amarillo whose term expired.

To be members of the Texas Public Finance Authority Board of Directors for terms to expire February 1, 2005: Helen Huey, 1517 Monarch Oaks, Houston, Texas 77055, whose replacing Peter Lewis of Dallas whose term expired; H. L. Bert Mijares, Jr., 5632 Cortina, El Paso Cheryl D. Creuzot of Houston whose term expired.

To be Judge of the 125th Judicial District Court, Harris County, until the next General Election and until his successor shall be duly elected and qualified: John A. Coselli, Jr., 6403 Valerie, Bellaire, Texas 77401, whose replacing Judge Don E. Wittig of Houston who was elected to the 14th Court of Appeals, Harris County.

To be members of the Texas Board of Health for terms to expire February 1, 2005: Beverly Harris Robinson, Ph.D., 6315 Hidden Hollow, Windcrest, Texas 78239-2722, whose replacing David L. Collins of Houston whose term expired; Margo Sneller Scholin, 6348 Sewanee Street, Houston, Texas 77005 whose replacing Ruth F. Stewart of San Antonio whose term expired.

To be members of Texas Woman's University Board of Regents for a term to expire February 1, 2001: Carlos R. Hamilton, Jr., M.D., 3713 Chevy Chase, Houston, Texas 77019, whose filling the unexpired term of Dr. Ronald F. Garvey of Dallas whose term expired; and for terms to expire February 1, 2005: Jerry L. Brownlee, 12907 County Road 1117, Cleburne, Texas 76031 whose replacing Hutchins Bailey of Flint whose term expired: Delia M. Reyes, 15820 Knoll Trail, #117, Dallas, Texas 75248, whose replacing Cheryl B. Wattley of Dallas whose term expired.

George W. Bush, Governor of Texas

Filed: February 19, 1999

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. You may view copies of opinions at http://www.oag.state.tx.us. 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.

Requests for Opinions

RQ-0018. Requested from Mr. Gary L. Warren, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286 regarding whether the Texas Commission on Fire Protection may use funds from a particular line item appropriation for certain administrative expenses. Request Number 0018-JC.

RQ-0019. Requested from the Honorable David M. Motley, Kerr County Attorney, County Courthouse, Suite BA-103, 700 Main St., Kerrville, Texas 78028, regarding responsibility for payment of court costs assessed by Kerr County in holding medication petition hearings on Bexar County residents under §574.106, Health and Safety Code. Request Number 0019-JC.

RQ-0020. Requested from the Honorable David P. Weeks, Walker County Criminal District Attorney, P.O. Box 1659, Huntsville, Texas 77342, regarding venue for inmates of the Texas Department of Criminal Justice who bring divorce proceedings. Request Number 0020-JC.

RQ-0021. Requested from the Honorable Jeri Yenne, Brazoria County Criminal District Attorney, 111 East Locust, Room 408A, Angleton, Texas 77515, regarding whether a juvenile court may conduct a contempt proceeding against a person who violates an order of a justice court after reaching the age of seventeen. Request Number 0021-JC.

RQ-0022. Requested from Mr. William M. Hale, Executive Director, Texas Commission on Human Rights, P.O. Box 13493, Austin, Texas 78711-3493, regarding validity of rider to 1997 Appropriations Act regarding training provided by the Texas Commission on Human Rights: Reconsideration of Attorney General Opinion DM-497 (1998). Request Number 0022-JC.

RQ-0023. Requested from the Honorable Bill Ratliff, Chair, Finance Committee, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, regarding whether the legislature may establish a voucher system that excludes home schools. Request Number 0023-JC.

TRD-9901142
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: February 24, 1999

♦ ♦ ♦

PROPOSED RULES

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

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

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter Q. Post-Interconnection Agreement Dispute Resolution

16 TAC §§22.322, 22.323, 22.326

The Public Utility Commission of Texas (commission) proposes amendments to §22.322 relating to Definitions, §22.323 relating to Filing of Agreement, and §22.326 relating to Formal Dispute Resolution Proceeding. These sections are located in the commission's Procedural Rules, Subchapter Q, concerning Post-Interconnection Agreement Dispute Resolution. Project Number 17709 has been assigned to this proceeding. The proposed amendments are necessary to remove references to Procedural Rules, Subchapter P, §22.302 of this title (relating to Definitions), clarify procedures for filing amendments to interconnection agreements, and amend §22.326 to allow sufficient time to review the issues and provide timely notice to parties as to the status of the arbitrator's decision.

The proposed amendment to §22.322 removes the reference to the definitions in Procedural Rules, Subchapter P, as these definitions have been proposed for movement to §22.2 of this title (relating to Definitions) under the review of Procedural Rules, Subchapter P, relating to Dispute Resolution. The definition section for Subchapter P, §22.302, has been proposed for repeal. The definitions in Procedural Rules, Subchapter Q, are to remain in this subchapter as subchapter specific definitions. The definitions have also been numbered to comply with the requirements of the *Texas Register* as adopted in 1998.

The proposed amendment to §22.323 adds a sentence to clarify filing procedures for substitution pages to an interconnection agreement.

The proposed amendment to §22.326(g) extends the time to commence the hearing to address the complaint from 50 days after filing of the complaint to 75 days after filing of the complaint. The proposed amendment to §22.326(k) rearranges sentences for clarity, extends the time for the arbitrator to file the written decision from 15 days after the close of the hearing to 15 days after the filing of post-hearing briefs, and requires the arbitrator to notify parties when the arbitrator's decision is final. The extensions of time are necessary to allow for sufficient review of the issues.

Paula Mueller, deputy chief, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Mueller has determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the sections will be rules that more accurately reflect other sections, clarify filing procedures, and allow time for sufficient review of post-interconnection agreements that are in dispute. There will be no effect on small businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Mueller has also determined that for each year of the first five years the proposed sections are in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326, within 30 days after publication. The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission invites specific comments regarding whether the reason for adopting these sections continues to exist in considering the proposed amendments. The commission also invites specific comments

regarding the costs associated with, and benefits that will be gained by implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the amendments. All comments should refer to Project Number 17709 and reference Procedural Rules, Subchapter Q.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (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; and the federal Telecommunications Act of 1996 which authorizes the commission to engage in negotiations, arbitration, approval, and enforcement of agreements for interconnection, services or network elements.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.322. Definitions.

The [~~In addition to the terms defined in Subchapter P, §22.302 of this title (relating to Definitions), the~~] following words and terms when used in this subchapter shall have the following meaning, unless the context clearly indicates otherwise.

(1) Arbitrator–The commission, any commissioner, or any commission employee selected by the commission to serve as the presiding officer in a dispute resolution hearing. The provisions of Subchapter P, §22.307 of this title (relating to Subsequent Proceedings) shall not apply to this subchapter to the extent that the provisions of §22.307 would preclude participation of a commission staff employee who participated in the dispute resolution proceeding subject to Subchapter P from participating in the dispute resolution proceeding subject to this subchapter.

(2) Dispute resolution proceeding–A proceeding conducted by an arbitrator or commission employee in accordance with this subchapter. A dispute resolution proceeding is not a contested case subject to the Administrative Procedure Act, Texas Government Code §§2001.001, *et. seq.* A dispute resolution proceeding may include formal or informal hearings.

(3) Informal settlement conference–One or more optional, informal meetings between commission staff (an arbitrator or other commission employee) and parties to an interconnection agreement. The purpose of the informal settlement conference is to provide a forum in which disputes may be resolved outside of a more formal hearing procedure.

§22.323. Filing of Agreement.

To the extent that the arbitrator concludes that the dispute resolution requires amending the interconnection agreement, such amended agreement shall be submitted to the commission for review and approval in accordance with Subchapter P, §22.309 of this title (relating to Approval of Arbitrated Agreements). The amended agreement shall be submitted within 20 days after the arbitrator's decision is final. If amendments are filed as substitution pages to an existing interconnection agreement, the revision date and docket number shall be clearly marked on each substituted page.

§22.326. Formal Dispute Resolution Proceeding.

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

(g) Notice and hearing. Unless §22.327 or §22.328 of this title apply, the arbitrator shall make arrangements for the hearing to address the complaint, which shall commence no later than 75 [~~50~~] days after filing of the complaint. The arbitrator shall notify the parties, not less than 15 days before the hearing, of the date, time, and location of the hearing. The hearing shall be transcribed by a court reporter designated by the arbitrator.

(h)-(j) (No change.)

(k) Decision.

(1) The written decision of the arbitrator shall be filed with the commission within 15 days after the filing of post-hearing briefs [~~close of the hearing~~] and shall be mailed by first-class mail to all parties of record in the dispute resolution proceeding. [~~The decision of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The decision may also contain the items addressed in Subchapter P, §22.305(r)(4)-(6) to the extent deemed necessary by the arbitrator to explain or support the decision.~~] On the same day that the decision is issued, the arbitrator shall notify the parties by facsimile that the decision has been issued. To the extent that the decision involves 9-1-1 issues, the arbitrator shall also notify the Advisory Commission on State Emergency Communications (ACSEC) by facsimile on the same day.

(2) The decision of the arbitrator shall be based upon the record of the dispute resolution hearing, and shall include a specific ruling on each of the disputed issues presented for resolution by the parties. The arbitrator may provide for later implementation of specific provisions as addressed in the arbitrator's decision. The decision may also contain the items addressed in Subchapter P, §22.305(r)(4)-(6) to the extent deemed necessary by the arbitrator to explain or support the decision.

(3) [~~(2)~~] Within three business days from the date the arbitrator's decision is issued, any commissioner may place the arbitrator's decision on the agenda for the next available open meeting. If the decision is scheduled for open meeting, then the decision shall be stayed until the commission affirms or modifies the decision.

(4) If no commissioner places the arbitrator's decision on the open meeting agenda within three business days, the arbitrator's decision is final and effective on the expiration of that third business day. The arbitrator shall notify the parties when the arbitrator's decision is deemed final under this paragraph. [~~The arbitrator may provide for later implementation of specific provisions as addressed in the arbitrator's decision. Should the decision be scheduled for open meeting, then the decision shall be stayed until the commission affirms or modifies the decision.~~]

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 February 19, 1999.

TRD-9901025
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 936–7308

Chapter 23. Substantive Rules

Subchapter A. General Rules

16 TAC §23.5

(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 §23.5 relating to Cost of Copies of Public Records. Project Number 17709 has been assigned to this proceeding. The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The 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, §23.5 will be duplicative of proposed new §25.6 of this title (relating to Cost of Copies of Public Information) in Chapter 25, Substantive Rules Applicable to Electric Service Providers; and proposed new §26.6 of this title (relating to Cost of Copies of Public Information) in Chapter 26, Substantive Rules Applicable to Telecommunications Service Providers.

Ms. Paula Mueller, deputy chief, 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.

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

Ms. Mueller has also determined that for each year of the first five years the proposed section is in effect there should be no affect on 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 N. Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. All comments should refer to Project Number 17709, repeal of §23.5.

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

§23.5. Cost of Copies of Public Records.

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

Filed with the Office of the Secretary of State on February 19, 1999.

TRD-9901019
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 936-7308

Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter A. General Provisions

16 TAC §25.6

The Public Utility Commission of Texas (commission) proposes new §25.6 relating to Cost of Copies of Public Information. The proposed new section will replace §23.5 of this title (relating to Cost of Copies of Public Records). The section is necessary to clarify the cost that will be charged by the commission for copies of public information. Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The 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. 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 only changes to proposed new §25.6 from existing §23.5 are to update the title to reflect "public information" consistent with the Texas Government Code and Title 1, Texas Administrative Code (TAC), Part 5, Chapter 111, Subchapter C; and to update the effective date of the citation to 1 TAC §§111.61 - 111.70 concerning costs of copies of open records.

Ms. Paula Mueller, Deputy Chief, 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.

Ms. Mueller 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 recovery of the cost necessary to provide information to the public as authorized by Texas Government Code 552.261. There will be no effect on small businesses as a result of enforcing this section. The economic cost to persons who are required to comply with the section as proposed depends upon the number of copies that are purchased.

Ms. Mueller has also determined that for each year of the first five years the proposed section is in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

Comments on the proposed section (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, PO Box 13326, Austin, Texas 78711-3326, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. The commission also invites specific comments regarding the Section 167 requirement as to whether the reason for adopting or readopting the rule continues to exist. All comments should refer to Project Number 17709 - Proposed §25.6 relating to Cost of Copies of Public Information.

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

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

§25.6. Cost of Copies of Public Information.

The rules set forth in 1 TAC §§111.61 - 111.70 (relating to Costs of Copies of Public Information) as in effect on September 18, 1996, will apply to copies of public records made at the commission.

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

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TRD-9901017

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: April 4, 1999

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

Chapter 26. Substantive Rules Applicable to Telecommunications Service Providers

Subchapter A. General Provisions

16 TAC §26.6

The Public Utility Commission of Texas (commission) proposes new §26.6 relating to Cost of Copies of Public Information. The proposed new section will replace §23.5 of this title (relating to Cost of Copies of Public Records). The section is necessary to clarify the cost that will be charged by the commission for copies of public information. Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The 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. Chapter 26 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 only changes to proposed new §26.6 from existing §23.5 are to update the title to reflect "public information" consistent with the Texas Government Code and Title 1, Texas Administrative Code (TAC), Part 5, Chapter 111, Subchapter C; and to update the effective date of the citation to 1TAC §§111.61 - 111.70 concerning costs of copies of open records.

Ms. Paula Mueller, Deputy Chief, 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.

Ms. Mueller 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 recovery of the cost necessary to provide information to the public as authorized by Texas Government Code 552.261. There will be no effect on small businesses as a result of enforcing this section. The economic cost to persons who are required to comply with the section as proposed depends upon the number of copies that are purchased.

Ms. Mueller has also determined that for each year of the first five years the proposed section is in effect there should be no affect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act §2001.022.

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

the rule continues to exist. All comments should refer to Project Number 17709 - Proposed §26.6 relating to Cost of Copies of Public Information.

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

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

§26.6. Cost of Copies of Public Information.

The rules set forth in 1 TAC §§111.61 - 111.70 (relating to Costs of Copies of Public Information) as in effect on September 18, 1996, will apply to copies of public records made at the commission.

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

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7308

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 162. Supervision of Medical School Students

22 TAC §162.3

The Texas State Board of Medical Examiners proposes an amendment to §162.3, concerning registration for the supervision of medical students. The amendment is proposed to ensure that the medical school has a certificate of authority from the Texas Higher Education Coordinating Board. The proposed review of Chapter 162 is contemporaneously published elsewhere in this issue of the *Texas Register*. The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Tony Cobos, general counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Cobos also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that the medical school has a certificate of authority from the Texas Higher Education Coordinating Board. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06 is affected by the proposed rule.

§162.3. Registration.

(a) To register to supervise a medical school student in training, a physician must certify to the board that he or she:

(1) has a valid written agreement with the medical school to supervise its students in training and the medical school has a certificate of authority from the Texas Higher Education Coordinating Board. A copy of the agreement and certificate of authority must be provided to [~~and approved by~~] the board. A certificate of authority by the Texas Higher Education Coordinating Board is defined in REGULATION OF PRIVATE POST SECONDARY EDUCATIONAL INSTITUTIONS, Subchapter G, §§61.301-61.319, Texas Education Code.

(2)-(6) (No change.)

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

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

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TRD-9901082
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-7016

Chapter 163. Licensure

22 TAC §163.10

The Texas State Board of Medical Examiners proposes an amendment to §163.10, concerning Distinguished Professors Temporary License. The amendment is proposed to specify who may request a temporary license for distinguished professors. The amendment will also correct the names of two medical schools in subsection (a)(4).

Tony Cobos, general counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Cobos also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a current and concise rule. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(c) is affected by the proposed rule.

§163.10. Distinguished Professors Temporary License.

(a) The executive director of the board may issue a distinguished professors temporary license to an endorsement applicant:

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

(4) who holds an appointment as a salaried full professor on the faculty working full-time in one of the following institutions:

(A) (No change.)

(B) University of Texas Southwestern Medical [~~Health Science~~] Center at Dallas;

(C)-(F) (No change.)

(G) Texas A&M University College [~~School~~] of Medicine;

(H)-(J) (No change.)

(b) The distinguished professors temporary license shall be requested by the president, dean or chief academic officer of the institution as defined in subsection (a)(4) of this section and shall be valid only in the institution or its affiliated hospitals.

(c) (No change.)

(d) At the conclusion of this one-year period, the distinguished professor shall present recommendations [~~in his or her behalf~~] from the [~~chief administrative officer and the~~] president, dean or chief academic officer of the institution, and shall petition the board for a permanent, unrestricted license to practice medicine in Texas. If this petition is denied, the institution may request a one-year extension of the distinguished professors temporary license. If an extension is granted, and following termination of such extension, the distinguished professor shall again present recommendations from the [~~chief administrative officer and the~~] president , dean or chief academic officer of the institution and re-petition the board for a permanent, unrestricted license to practice medicine in Texas. If the petition is again denied, no further distinguished professors temporary license shall be issued.

(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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Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

Chapter 166. Physician Registration

22 TAC §166.2, §166.4

The Texas State Board of Medical Examiners proposes amendments to §166.2 and §166.4, concerning Continuing Medical Education and Renewal of Expired License. The amendments are proposed to clarify existing requirements. The proposed review of Chapter 166 is contemporaneously published elsewhere in this issue of the *Texas Register*. The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Tony Cobos, general counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Cobos also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be current and updated rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.01(c) and §3.025 are affected by the proposed rules.

§166.2. Continuing Medical Education.

(a) As a prerequisite to the annual registration of a physician's license, 24 hours of continuing medical education (CME) are required to be completed in the following categories:

(1) (No change.)

(2) Beginning with annual registrations in [~~January 1,~~] 1999, at least one of the formal hours of CME which are required by subsection (a)(1) of this section must involve the study of medical ethics and/or professional responsibility. Whether a particular hour of CME involves the study of medical ethics and/or professional responsibility shall be determined by the organizations which are enumerated in subsection (a)(1) of this section as part of their course planning.

(3) The remaining hours may be composed of informal self-study, attendance at hospital lectures or [~~,~~] grand rounds not approved for formal CME, or case conferences and shall be recorded in a manner that can be easily transmitted to the board upon request.

(b) (No change.)

(c) A licensee shall be presumed to have complied with this section if in the preceding 36 months the licensee becomes board certified or recertified in a medical specialty and the medical specialty program meets the standards of the American Board of

Medical Specialties, the American Medical Association, the Advisory Board for Osteopathic Specialists and Boards of Certification, or the American Osteopathic Association. This provision exempts the physician from all CME requirements, including the requirement for one hour involving the study of medical ethics and/or professional responsibility, as outlined in subsection (a)(2) of this section, and this exemption is valid for one annual renewal period only.

(d)-(p) (No change.)

§166.4. Renewal of Expired License.

(a) If a physician's license has expired, the physician may renew the license without monetary penalty during the first 30 days following expiration.

(b) [~~(a)~~] If a physician's license has been expired for longer than 30 days, but less than 91 days [~~90 days or less~~], the physician may renew the license by submitting a completed annual registration form and paying to the board the required renewal fee and a fee that is one-half of the annual registration fee as established by the board under the Medical Practice Act, §3.10(b)(7).

(c) [~~(b)~~] If a physician's license has been expired for longer than 90 days but less than one year, the physician may renew the license by submitting a completed annual registration form and paying to the board all unpaid renewal fees and a fee that is equal to the annual registration fee as established by the board under the Medical Practice Act, §3.10(b)(7).

(d) [~~(c)~~] If a physician's license has been expired for one year, it is considered to have been canceled, unless an investigation is pending, and the physician may not renew the license.

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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Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
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For further information, please call: (512) 305-7016

Chapter 171. Institutional Permits

The Texas State Board of Medical Examiners proposes the repeal of §§171.1-171.9 and new §§171.1-171.6, concerning Institutional Permits. The repeals and new rules are necessary to improve the regulation of postgraduate medical training in the State of Texas. The repeal and replacement of this chapter was previously proposed in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11533). The withdrawal of that version is contemporaneously published elsewhere in this issue of the *Texas Register*. The adopted review of Chapter 171 is contemporaneously published elsewhere in this issue of the *Texas Register*. The review is in accordance with the Appropriations Act of 1997, HB 1, Article IX, Section 167.

Tony Cobos, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Cobos also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to improve the regulation of postgraduate medical training in the State of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

22 TAC §§171.1-171.9

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

The repeals are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.01(b) is affected by the proposal.

§171.1. Institutional Permits.

§171.2. Degree Qualifications.

§171.3. Institutional Permit Renewal.

§171.4. Visiting Professor Permit.

§171.5. Rehabilitation Permit.

§171.6. Exchange Intern, Resident, or Fellow Permit.

§171.7. Research Fellowship Permit.

§171.8. National Health Service Corps Permit.

§171.9. Faculty Temporary License.

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 February 22, 1999.

TRD-9901075
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-7016

22 TAC §§171.1-171.6

The new sections are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.01(b) is affected by the proposal.

§171.1. Construction.

(a) Permit holders under this chapter shall be subject to the duties, limitations, disciplinary actions, rehabilitation order provisions, and procedures applicable to licensees in the Medical Practice Act and board rules. Permit holders under this chapter shall also be subject to the limitations and restrictions elaborated in this chapter.

(b) Permit holders under this chapter shall cooperate with the board and board staff involved in investigation, review, or monitoring associated with the permit holder's practice of medicine. Such cooperation shall include, but not be limited to, permit holder's written response to the board or board staff written inquiry within 14 days of receipt of such inquiry.

(c) The board may, in its discretion, retain jurisdiction over a permit and the permit holder if the permit is canceled and/or expires while the permit holder is under investigation.

(d) The issuance of a permit to a physician shall not be construed to obligate the board to issue the physician subsequent permits or licenses. The board reserves the right to investigate, deny a permit or full licensure, and/or discipline a physician regardless of when the information was received by the board.

(e) The director of each approved postgraduate training program shall, as soon as practicable, report in writing to the executive director of the board:

(1) if a permit holder has been terminated or has resigned from the program,

(2) if a permit holder has been absent from the program for more than 30 days,

(3) if the program has information that a permit holder has been arrested after the permit holder begins training in the program, and/or

(4) any relevant information relating to the acts of any permit holder if in the opinion of the director of the program the permit holder poses a threat to the public welfare through the practice of medicine.

(f) Failure of any hospital or medical institution to comply with the provisions of this chapter or the Medical Practice Act §2.09(i) may be grounds for the denial of permits to persons seeking permits to practice at that institution.

(g) Board staff shall establish a mechanism by which a medical institution and/or training program may receive information regarding the application status of any physician who has applied with the Board for a permit to practice in that medical institution and/or training program.

§171.2. Postgraduate Resident Permits.

(a) This section applies to all physicians who will begin postgraduate training in Texas after June 1, 2000. Postgraduate physicians in training for whom any Texas postgraduate training program was issued an institutional permit on the physician's behalf before June 1, 2000, shall be governed by §171.3 of this title (relating to Institutional Permits).

(b) Definitions.

(1) Postgraduate Resident: physician who is in postgraduate training as an intern, resident, or fellow in an approved postgraduate training program.

(2) Approved Postgraduate Training Program: a clearly defined and delineated postgraduate medical education training program, including postgraduate subspecialty training programs, approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, or the Texas State Board of Medical Examiners.

(3) Basic Postgraduate Resident Permit: permit issued by the board in its discretion to a postgraduate resident who has not previously been issued a permit or license to practice medicine in Texas and is enrolled in an approved postgraduate training program in Texas, regardless of his/her PGY status within the program; the permit shall be effective for one year from the date of issuance and may be renewed for a one-year period twice; at such time as the basic postgraduate resident permit (and its timely renewals) expires the physician shall not be eligible for another basic postgraduate resident permit.

(4) Advanced Postgraduate Resident Permit: permit issued by the board in its discretion to a postgraduate resident whose basic postgraduate resident permit has expired and who is enrolled in an approved postgraduate training program in Texas, regardless of his/her PGY status within the program; the permit shall be effective for one year from the date of issuance and may be renewed for a one-year period four times.

(c) The board, in its discretion, may grant a postgraduate resident permit to train in an approved postgraduate training program to a physician who qualifies under this subchapter.

(d) A postgraduate resident permit holder is restricted to the supervised practice of medicine that is part of and approved by the training program. The permit does not allow for the practice of medicine which is outside of the approved program.

(e) Qualifications of Postgraduate Permit Holders.

(1) To be eligible for a postgraduate resident permit, an applicant must present satisfactory proof to the board that the applicant:

(A) is at least 18 years of age;

(B) is of good professional character as elaborated in the Medical Practice Act §3.08;

(C) has completed:

(i) the entire primary, secondary, and premedical education required in the country of medical school graduation, if the medical school is located outside the United States or Canada; or

(ii) substantially equivalent courses as determined by the board in its discretion.

(D) is either:

(i) a graduate of a medical school accepted by the board; or

(ii) a graduate of a school or college located outside the United States or Canada that was not approved by the board at the time the degree was conferred but whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education Coordinating Board, unless the they have completed a Fifth Pathway program. All Fifth Pathway applicants must have completed all of the didactic work of the foreign medical school whose curriculum meets the requirements for an unapproved medical school as determined by a committee of experts selected by the Texas Higher Education

Coordinating Board, but has not graduated from an unapproved acceptable medical school.

(2) To be eligible for a postgraduate resident permit, an applicant must not have:

(A) a medical license, permit, or other authority to practice medicine that is currently restricted, cancelled, suspended, revoked or subject to other discipline in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(B) an investigation or proceeding pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in a state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(C) a prosecution pending against the applicant in any state, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude;

(3) To be eligible for an advanced postgraduate resident permit, applicants who begin postgraduate training in Texas after June 1, 2002 must not have failed any examination required for full licensure in the Medical Practice Act, 3.05(c) and as construed in board rules, within the limited number of attempts prescribed in those provisions.

(f) Application for Postgraduate Resident Permit.

(1) Application Procedures.

(A) Applications for postgraduate resident permit shall be submitted to the board on or before the following deadlines:

(i) Basic Postgraduate Resident Permit Applications: 60 days prior to the date the applicant begins postgraduate training in Texas; basic postgraduate resident permit applications shall not be deemed incomplete for lack of medical school transcript or diploma until after 100 days from the first day of the resident's training;

(ii) Advanced Postgraduate Resident Permit Applications: 90 days prior to the date the applicant begins his/her postgraduate training in Texas authorized by an advanced postgraduate resident permit.

(B) The board's executive director may in his/her discretion allow substitute documents where exhaustive efforts have been made to secure the required documents.

(C) For each document presented to the board which is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a Government Official, Official Translation Agency, or a College or University Official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate." He/she must sign the translation with his/her signature notarized by a Notary Public. The translator's name and title must be typed/printed under the signature.

(D) The board's executive director shall review each application for postgraduate resident permit and shall recommend to the board all applicants eligible to receive a permit. The executive director shall also report to the board the names of all applicants determined to be ineligible to receive a permit, together with the reasons for each recommendation. The executive director may refer any application to a committee of the board for a recommendation concerning eligibility.

(E) An applicant deemed ineligible to receive a permit by the executive director may request review of such recommendation by a committee of the board within 20 days of written receipt of such notice from the executive director.

(F) If the committee finds the applicant ineligible to receive a permit, such recommendation together with the reasons for the recommendation, shall be submitted to the board unless the applicant makes a written request for a hearing within 20 days of receipt of notice of the committee's determination. The hearing shall be before an administrative law judge of the State Office of Administrative Hearings and shall comply with the Administrative Procedure Act, the rules of the State Office of Administrative Hearings and the board. The board shall, after receiving the administrative law judge's proposed findings of fact and conclusions of law, determine the eligibility of the applicant to receive a permit. A physician whose application to receive a permit is denied by the board shall receive a written statement containing the reasons for the board's action.

(G) All reports and investigative information received or gathered by the board on each applicant are confidential and are not subject to disclosure under the open records law and the Medical Practice Act §4.05(c). The board may disclose such reports and investigative information to appropriate licensing authorities in other states.

(2) Basic Postgraduate Resident Permit Application. An application for a basic postgraduate resident permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §3.05(c) and as construed in board rules, payable by check through a United States bank;

(B) a certified copy of the applicant's complete medical school transcript evidencing graduation submitted directly to the board by the school or a notarized copy of the applicant's diploma;

(C) a valid Educational Commission for Foreign Medical Graduates (ECFMG) certificate, if the applicant is a graduate of a medical school located outside the United States unless the applicant has completed a Fifth Pathway program. All Fifth Pathway applicants must submit a ECFMG interim certificate;

(D) certification by the director of medical education of the postgraduate training program on a form provided by the board that:

(i) the program meets the definition of an approved postgraduate training program in subsection (b) of this section;

(ii) the applicant has been accepted into the program; and

(iii) the director has received a letter from the dean of the applicant's medical school which states that the applicant is scheduled to graduate from medical school before the date the applicant plans to begin postgraduate training; this provision applies only to applicants who are not able to provide a certified copy of their transcript or a notarized copy of their diploma by the time of their application to the board for a postgraduate resident permit;

(E) a listing of the applicant's licensure exam history on a form provided by the board;

(F) information regarding the applicant's criminal and disciplinary history on a form provided by the board;

(G) information regarding the applicant's ability to practice medicine on a form provided by the board;

(H) an oath on a form provided by the board signed by the applicant swearing that:

(i) the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States is not restricted, cancelled, suspended, revoked, or subject to other discipline;

(ii) no investigation or proceeding is pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(iii) no prosecution is pending against the applicant in any state or territory, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude;

(iv) the applicant fully understands that the board's issuance of a postgraduate resident permit to the physician shall not be construed to obligate the board to issue the physician subsequent permits or licenses and that the board reserves the right to discipline, investigate, deny a permit, and/or full licensure to a physician regardless of when the information which serves as the basis for such action was received by the board; and

(v) the applicant has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this chapter; and will subject themselves to the disciplinary procedures of the Texas State Board of Medical Examiners; and

(I) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(3) Advanced Postgraduate Resident Permit Application. An application for an advanced postgraduate resident permit must be on forms furnished by the board and include the following:

(A) the required fee as mandated in the Medical Practice Act, §3.05(c) and as construed in board rules, payable by check through a United States bank;

(B) certification by the director of medical education of the postgraduate training program on a form provided by the board that:

(i) the program meets the definition of an approved postgraduate training program in subsection (b) of this section; and

(ii) the applicant has been accepted into the program;

(C) certificate of graduation submitted directly to the board from the applicant's medical school on a form provided by the board; the applicant shall attach to the form a recent photograph, meeting United States Government passport standards, before submitting the form to the medical school;

(D) evaluations, on forms provided by the board, regarding the applicant's professional affiliations and training in the United States;

(E) a history report from the Federation of State Medical Boards, on a form provided by the board, requested by the applicant and submitted directly to the board;

(F) a letter submitted directly to the board from every state or territory of the United States, a province of Canada, in which the applicant has ever held a medical license, permit or authority to practice medicine, regardless of the current status of that license, verifying the status of the license, permit or authority to practice medicine, including a description of any sanctions or pending disciplinary matters;

(G) a report of action regarding the applicant from the National Practitioner Data Bank submitted directly to the board;

(H) a notarized certificate of the applicant's permanent Educational Commission for Foreign Medical Graduates (ECFMG) certificate, if the applicant is a graduate of a medical school located outside the United States unless the applicant has completed a Fifth Pathway program. All Fifth Pathway applicants must submit an ECFMG interim certificate;

(I) a copy of the applicant's certificate to practice in the country in which the applicant's medical school is located, if the applicant is a graduate of a medical school located outside of the United States. If a certificate is unavailable, a letter submitted directly to the board from the body governing licensure of physicians in the country in which the school is located will be accepted. The letter must state that the applicant has met all the requirements for licensure in the country in which the school is located. If an applicant is not licensed in the country of graduation due to a citizenship requirement, a letter attesting to this fact will be required to be submitted directly to the board;

(J) a listing of the applicant's licensure exam history on a form provided by the board;

(K) information regarding the applicant's criminal and disciplinary history on a form provided by the board;

(L) information regarding the applicant's ability to practice medicine on a form provided by the board;

(M) an oath on a form provided by the board signed by the applicant swearing that:

(i) the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States is not restricted, cancelled, suspended, revoked, or subject to other discipline;

(ii) no investigation or proceeding is pending against the applicant for the restriction, cancellation, suspension, revocation, or other discipline of the applicant's medical license, permit, or authority to practice medicine in another state or territory of the United States, a province of Canada, or a uniformed service of the United States;

(iii) no prosecution is pending against the applicant in any state or territory, federal, or Canadian court for any offense that under the laws of this state is a felony, a misdemeanor that involves the practice of medicine, or a misdemeanor that involves a crime of moral turpitude; and

(iv) the applicant fully understands that the board's issuance of a postgraduate resident permit to the physician shall not be construed to obligate the board to issue the physician subsequent permits or licenses and that the board reserves the right to discipline, investigate, deny a permit, and/or full licensure to a physician regardless of when the information which serves as the basis for such action was received by the board; and

(v) the applicant has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this chapter; and will subject themselves to the disciplinary procedures of the Texas State Board of Medical Examiners; and

(N) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(g) Renewal and Expiration of Postgraduate Resident Permit.

(1) Postgraduate resident permits shall be issued with effective dates corresponding with the first day of the resident's training.

(2) Basic postgraduate resident permits shall be effective as provisional basic postgraduate resident permits for 100 days from the first day of the resident's training in Texas. After 100 days, the provisional basic postgraduate resident permit shall expire but may be extended by the executive director of the board as a full basic postgraduate resident permit. Said extension shall be in the discretion of the executive director of the board contingent upon the applicant fulfilling the qualifications for a postgraduate permit and successfully completing the basic postgraduate resident application. A full postgraduate resident permit may be issued at the discretion of the executive director of the board at any time an application is complete.

(3) Postgraduate resident permits shall expire on the earlier of:

(A) one year from the date the permit was issued or renewed; or

(B) on the date the physician is terminated or dismissed from the approved training program.

(4) A postgraduate resident permit holder may renew an unexpired postgraduate resident permit by submitting a renewal form, provided by the board, and by paying the required renewal fee to the board on or before the expiration date of the permit. The required form shall include:

(A) information regarding the permit holder's criminal and disciplinary history, mailing address, and place where engaged in training since the permit holder's last application or renewal,

(B) an evaluation by the permit holder's program director, on a form provided by the board, regarding the permit holder's training; and

(C) such other information or documentation the board and/or the executive director deem necessary to ensure compliance with this chapter, the Medical Practice Act and board rules.

(5) The executive director of the board may, in his/her discretion, renew a postgraduate resident permit for good cause shown.

(h) Board-Approved Postgraduate Training Programs.

(1) The executive director may in his/her discretion, upon written request, approve training programs as referenced in subsection (b)(2) of this section. Said training programs shall be limited to postgraduate subspecialty programs. If the executive director does not recommend approval, the program's director may appeal to the board for its discretionary consideration of the request.

(2) Approval of training programs shall include but not be limited to the following considerations:

(A) the goals and objectives of the program;

(B) the process by which the program selects subspecialty residents;

(C) whether prior residency training in a related specialty is required of subspecialty residents in the program;

(D) the duties and responsibilities required of subspecialty residents in the program;

(E) the formal educational experiences required of subspecialty residents in the program, including grand rounds, seminars and journal club;

(F) the scholarly research required of subspecialty residents in the program, including participation in peer reviewed and funded research which may result in publications or presentations at regional and national scientific meetings;

(G) the type of supervision provided for subspecialty residents by the program;

(H) the curriculum vitae, including academic appointments, of all supervising staff;

(I) the academic affiliation of the program;

(J) the methods for evaluation of subspecialty residents by the program; and

(K) whether a specialty Board gives credit for the program.

(3) All postgraduate training programs approved by the board may be re-evaluated every three years to assure compliance with the above considerations and consideration of continuation of the program. Said re-evaluation shall not be conducted without six months prior notice by board staff to the postgraduate subspecialty training program. Permit holders shall be allowed to complete their training program regardless of continuing program re-evaluation. Training programs approved by the board before June 1, 2000, may be re-evaluated after January 1, 2001.

(i) Temporary Postgraduate Resident Permit.

(1) The executive director of the board may, in his/her discretion, issue a temporary postgraduate resident permit to a physician who is in an approved postgraduate training program with the following limitations:

(A) For a physician whose application for full postgraduate resident permit is pending agency review, the executive director of the board may, in his/her discretion, issue a temporary postgraduate resident permit if the application is complete.

(B) For a physician whose application for full postgraduate resident permit is not complete, the executive director of the board may, in his/her discretion, issue a temporary postgraduate resident permit if the applicant shows good cause for why the application is incomplete.

(2) A temporary postgraduate resident permit is valid for 100 days from the date issued. The executive director, in his/her discretion, may issue additional temporary postgraduate resident permits to an applicant with a maximum of four temporary permits per physician.

§171.3. Institutional Permits.

(a) This section shall apply to all postgraduate physicians in training whose postgraduate training program was issued an institutional permit on the physician's behalf on or before June 1, 2000.

(b) Institutional permits may be issued to postgraduate training programs approved by the Accreditation Council for Graduate Medical Education, American Osteopathic Association, or the Texas State Board of Medical Examiners for interns, residents, and postresidency fellows.

(1) An intern is a physician who is in a clearly defined and delineated first postgraduate year program.

(2) A resident is a physician who is in a specialized, clearly defined, and delineated postgraduate program.

(3) A postresidency fellow is a physician who is in a specialized, clearly defined, and delineated program, following completion of a delineated residency program, for additional training in a medical specialty or subspecialty delivered in a program approved by the Accreditation Council for Graduate Medical Education, the American Osteopathic Association, or in a program approved by the Texas State Board of Medical Examiners.

(c) The executive director may in his/her discretion, upon written request, approve training programs as referenced in §171.2(b)(2) of this title (relating to Postgraduate Resident Permits). Said training programs shall be limited to postgraduate subspecialty programs. If the executive director does not recommend approval, the program director may appeal to the board for its discretionary consideration of the request.

(d) Approval of training programs shall include but not be limited to the following considerations:

(1) the goals and objectives of the program;

(2) the process by which the program selects fellows;

(3) whether prior residency training in a related specialty is required of fellows in the program;

(4) the duties and responsibilities required of fellows in the program;

(5) the formal educational experiences required of fellows in the program, including grand rounds, seminars and journal club;

(6) the scholarly research required of fellows in the program, including participation in peer reviewed and funded research which may result in publications or presentations at regional and national scientific meetings;

(7) the type of supervision provided for fellows by the program;

(8) the curriculum vitae, including academic appointments, of all supervising staff;

(9) the academic affiliation of the program;

(10) the methods for evaluation of fellows by the program; and

(11) whether a specialty Board gives credit for the program.

(e) All postgraduate training programs approved by the board may be re-evaluated every three years to assure compliance with the above considerations and consideration of continuation of the program. Said re-evaluation shall not be conducted without six months prior notice by board staff to the postgraduate subspecialty training program. Permit holders shall be allowed to complete their training program regardless of continuing program re-evaluation. Training programs approved by the board before June 1, 2000, may be re-evaluated after January 1, 2001.

(f) Applicants who have graduated from a medical school approved by the Liaison Committee on Medical Education, or the American Osteopathic Association must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program; and

(2) certification by the director of medical education of the program that the internship, residency, or fellowship meets the appropriate definition on a form provided by the board.

(g) Applicants who have graduated from a medical school outside the United States or Canada must submit:

(1) a completed application and fee 45 days prior to the beginning date of the program;

(2) a notarized copy of medical school diploma or Fifth Pathway Certificate;

(A) copies should be notarized as being a "true copy" of the original document and the Notary Public must sign, date, and affix his/her notary seal to the document;

(B) if the document is in a foreign language, an official word-for-word translation must be furnished. The board's definition of an official translation is one prepared by a Government Official, Official Translation Agency, or a College or University Official, on official letterhead. The translator must certify that it is a "true translation to the best of his/her knowledge, that he/she is fluent in the language, and is qualified to translate;" he/she must sign the translation with his/her signature notarized by a Notary Public and the translator's name and title must be typed/printed under the signature;

(3) a notarized copy of a valid ECFMG document, or:

(A) proof of an unrestricted license from another state or territory in the United States or Canada; or

(B) proof of citizenship in the United States and residency of the State of Texas prior to entering medical school as provided in Texas Health and Safety Code §311.001;

(4) certification by the director of medical education that the internship, residency, or fellowship program meets the appropriate definition on a form provided by the board; and

(5) certification by the director of medical education, on a form provided by the board that the original medical school diploma, certified medical school transcript from each medical school, valid ECFMG document, and an original Dean's certification has been inspected.

(h) The board's executive director may, on a case by case basis and in his/her discretion, allow substitute documents where exhaustive efforts have been made to secure the required documents.

(i) Initial institutional permits are issued for 14 months; the permit may be renewed for a one-year period up to seven times,

depending upon the requirements of the physician's specialty training program.

(j) Physicians holding an institutional permit must confine their practice of medicine to the designated teaching program. The permit may be cancelled if §3.08 or any other provision of the Medical Practice Act is violated, or if the permit is used to practice medicine outside the teaching program.

(k) If the training is terminated for any reason other than illness or other reasons acceptable to the board, the permit is void and no additional permit will be issued.

(l) Denial of a permanent Texas license is grounds for revoking or not issuing an institutional permit.

(m) Failure of any hospital or medical institution to comply with these provisions shall be grounds for the denial of the institutional permit and any future permits for persons wishing to serve at that institution.

§171.4. Visiting Professor Permit.

The board may issue a permit to practice medicine to a physician appointed as a visiting professor by a Texas medical school in accordance with this section.

(1) The visiting professor permit may be valid for any number of 31-day increments not to exceed 24 increments. The incremental periods wherein the permit is valid need not be contiguous, but rather may be in any arrangement approved by the executive director of the board.

(2) The visiting professor permit shall state on its face the periods during which it will be valid. If all periods of validity are not known at the time of the permit issuance, the permit holder shall request that the executive director of the board endorse the permit with each incremental period of validity as such becomes known. No permit shall be valid at any time when the period of validity is not stated on the permit unless suitable temporary alternative arrangements have been presented to and accepted by the executive director or secretary-treasurer of the board.

(3) The visiting professor permit shall be issued to the institution authorizing the named visiting professor to practice medicine within the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the visiting professor. The visiting professor may participate in the full activities of the department in whichever hospital the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(4) The visiting professor and the school shall file affidavits affirming acceptance of the terms, limitations and conditions imposed by the board on the medical activities of the visiting professor.

(5) The application for visiting professor permit or the renewal thereof shall be presented to the secretary-treasurer or executive director of the board at least 30 days prior to the effective date of the appointment of the visiting professor. The application shall be made by the chairman of the department in which the visiting professor will teach and provide such information and documentation to the board as may be requested. Such application shall be endorsed by the dean of the medical school or by the president of the Health Science Center.

(6) All applications shall state the date when the visiting professor shall begin performance of duties.

§171.5. National Health Service Corps Permit.

The board may issue a permit to practice medicine to a physician who has contracted with the National Health Service Corps to practice medicine in Texas under the following terms and conditions.

(1) The physician must be a graduate of a medical school approved by the board. A notarized true copy of the diploma shall be submitted to the board before the permit is issued.

(2) The physician must hold a valid, unrestricted license in another state or territory to practice medicine. A copy of the license shall be submitted to the board before the permit is issued. If the physician is not licensed in another state, he or she must have passed either the United States Medical Licensing Examination (USMLE), within three attempts, with a score of 75 or better on each step, all steps must be passed within seven years, or the National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor, within three attempts, all steps must be passed within seven years. A certified transcript of the scores shall be submitted to the board before the permit is issued.

(3) The physician must have a valid contract with the National Health Service Corps. This permit will expire at the termination of the contract with the National Health Service Corps. A copy of the contract shall be submitted to the board before the permit is issued.

(4) The permit shall be issued for one year and may be renewed.

(5) The permit allows the physician to practice medicine only within the scope of his or her contract with the National Health Service Corps.

§171.6. Faculty Temporary Permit.

(a) The board may issue a faculty temporary permit to practice medicine to a physician appointed by a Texas medical school in accordance with this section:

(1) The physician must hold a valid medical license in another state, territory, or Canadian province; or have completed three years of post-graduate training.

(2) The physician must not have failed a licensure examination that would prevent the physician from obtaining an unrestricted physician license in Texas.

(3) The physician must hold a salaried faculty position of assistant professor-level or higher working full-time in one of the following institutions:

(A) University of Texas Medical Branch at Galveston;

(B) University of Texas Southwestern Medical Center at Dallas;

(C) University of Texas Health Science Center at Houston;

(D) University of Texas Health Science Center at San Antonio;

(E) University of Texas Health Center at Tyler;

(F) University of Texas M.D. Anderson Cancer Center;

(G) Texas A&M University College of Medicine;

(H) Texas Tech University School of Medicine;

(I) Baylor College of Medicine; or

(J) University of North Texas Health Science Center at Fort Worth.

(4) The physician must sign an oath on a form provided by the board swearing that the applicant has read and is familiar with board rules and the Medical Practice Act; will abide by board rules and the Medical Practice Act in activities permitted by this chapter; and will subject themselves to the disciplinary procedures of the Texas State Board of Medical Examiners.

(b) The faculty temporary permit shall be issued for a period of one year, and may, in the discretion of the executive director of the board, be renewed three times.

(c) The faculty temporary permit holder's practice of medicine shall be limited the teaching confines of the applying medical school as a part of duties and responsibilities assigned by the school to the physician.

(d) The physician may participate in the full activities of the department in whichever hospitals the appointee's department has full responsibility for clinical, patient care, and teaching activities.

(e) The physician and the school shall file affidavits affirming acceptance of the terms, limitations, and conditions imposed by the board on the medical activities of the physician.

(f) The application and fee for the faculty temporary permit or the renewal thereof shall be presented to the executive director of the board at least 30 days prior to the effective date of the appointment of the physician.

(g) The application shall be made by the chairman of the department in which the physician will teach and provide such information and documentation to the board as may be requested.

(h) The application shall be endorsed by the dean of the medical school or by the president of the Health Science Center.

(i) Three years in a teaching faculty position at any institution listed in subsection (a)(3) of this section may be equivalent to three years of approved post-graduate training if, at the conclusion of this three-year period, the physician presents recommendations in his or her behalf from the chief administrative officer and the president of the institution.

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 February 22, 1999.

TRD-9901074
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-7016

Chapter 185. Physician Assistants

22 TAC §185.2, §185.14

The Texas State Board of Medical Examiners proposes amendments to §185.2 and §185.14, concerning Definitions and Notification of Intent to Practice and Supervise. The definitions in §185.2 are being numbered to comply with Texas Register requirements. Also, the amendments are necessary for clarification of the term "submit" as it relates to documentation required for approval for a physician assistant to practice and for a physician to supervise a physician assistant. In addition, the combining of two separate applications into one form will be more efficient.

Tony Cobos, general counsel, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Cobos also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be updated and efficient rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendments are proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b-1, §14 and §15 are affected by the proposed rules.

§185.2. Definitions.

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

(1) Alternate physician–That physician designated by the supervising physician to act in his or her stead.

(2) Board–The Texas State Board of Physician Assistant Examiners.

(3) Medical Board–The Texas State Board of Medical Examiners.

(4) Physician assistant–A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(5) State–Any state, territory, or insular possession of the United States and the District of Columbia.

(6) Submit - The term used to indicate that a completed item has been actually received and date-stamped by the Board along with all required documentation and fees, if any.

(7) Supervising physician–A physician licensed by the medical board either as a doctor of medicine or doctor of osteopathic medicine who is assuming responsibility and legal liability for the services rendered by the physician assistant, and who has received approval from the medical board to supervise a specific physician assistant.

(8) Supervision–Overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision does not require the constant physical presence of the supervising physician but includes a situation where a supervising physician and the person being supervised are, or can easily be, in contact with one another by radio, telephone, or another telecommunication device.

§185.14. Notification of Intent to Practice and Supervise.

(a) A physician assistant licensed under the Physician Assistant Licensing Act must, before beginning practice or upon changing practice, submit [~~on a form prescribed by the board~~] notification of the license holder's intent to begin practice. Notification under this section must include:

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

(b) A physician assistant must submit notification [~~notify the board~~] of any changes in, or additions to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition is made.

(c) For the purposes of this section, a single form prescribed by the board shall be used to provide notification of the license holder's intent to begin practice or any changes in, or additions to, the person acting as a supervising physician.

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 February 22, 1999.

TRD-9901072
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-7016

Chapter 193. Standing Delegation Orders

22 TAC §193.2

The Texas State Board of Medical Examiners proposes an amendment to §193.2, concerning Definitions. The definitions are being numbered to comply with Texas Register requirements. Also, the amendment is necessary for clarification of the term "submit" as it relates to documentation required for approval for a physician to delegate prescriptive authority to a physician assistant or advanced practice nurse.

Tony Cobos, general counsel, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Mr. Cobos also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be updated rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas 78768-2018. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d) is affected by the proposed rule.

§193.2. Definitions.

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

(1) Advanced practice nurse–A registered nurse approved by the Texas State Board of Nurse Examiners to practice as an advanced practice nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, a nurse midwife, nurse anesthetist, and clinical nurse specialist, as defined by §8, Article 4514, Revised Statutes.

(2) Authorizing physician–A physician or physicians licensed by the board who execute a standing delegation order.

(3) Carrying out or signing a prescription drug order–To complete a prescription drug order presigned by the delegating physician, or the signing of a prescription by an advanced practice nurse or physician assistant after the person has been designated with the board by the delegating physician as a person delegated to sign a prescription. The following information shall be provided on each prescription: the patient's name and address; the drug to be dispensed; directions to the patient for taking the drug; dosage; the intended use of the drug, if appropriate; the name, address, and telephone number of the physician; the name, address, telephone number, identification number, and signature of the physician assistant or advanced practice nurse completing or signing the prescription drug order; the date; and the number of refills permitted. This also includes the ability of a physician assistant or advanced practice nurse to telephone prescriptions in to a pharmacy under his or her prescriptive authority.

(4) Dangerous drug–A device or a drug that is unsafe for self medication and that is not included in the Texas Health and Safety Code, Schedules I-V or Penalty Groups I-IV of Chapter 481 (Texas Controlled Substances Act). The term includes a device or a drug that bears or is required to bear the legend: "Caution: federal law prohibits dispensing without prescription."

(5) Health professional shortage area (HPSA)–

(A) An area in an urban or rural area of Texas (which need not conform to the geographic boundaries of a political subdivision and which is a rational area for the delivery of health services) which the secretary of health and human services determines has a health manpower shortage and which is not reasonably accessible to an adequately served area;

(B) a population group which the secretary determines to have such a shortage; or

(C) a public or nonprofit private medical facility or other facility which the secretary determines has such a shortage as delineated in 42 United States Code, §254(e)(a)(1).

(6) Medically underserved area (MUA)–An area or population group designated by the USDHHS as an area with a shortage of personal health services. Also includes an area defined by rule adopted by the Texas Board of Health that is based on demographics specific to this state, geographic factors that affect access to health care, and environmental health factors.

(7) Physician Assistant–A person who is licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners.

(8) Physician's orders–The instructions of a physician for the care of an individual patient.

(9) Protocols–Delegated written authorization to initiate medical aspects of patient care including authorizing a physician assistant or advanced practice nurse to carry out or sign prescription drug orders pursuant to the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5) and (6) and §193.6 of this title (relating to the Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses). The protocols must be agreed upon and signed by the physician, the physician assistant and/or advanced practice nurse, reviewed and signed at least annually, maintained on site, and must contain a list of the types or categories of dangerous drugs available for prescription, limitations on the number of dosage units and refills permitted, and instructions to be given the patient for follow-up monitoring or contain a list of the types or categories of dangerous drugs that may not be prescribed. Protocols shall be defined to promote the exercise of professional judgment by the advanced practice nurse and physician assistant commensurate with their education and experience. The protocols used by a reasonable and prudent physician exercising sound medical judgment need not describe the exact steps that an advanced practice nurse or a physician assistant must take with respect to each specific condition, disease, or symptom.

(10) Site serving a medically underserved population–A site located in a medically underserved area; a site located in a health manpower shortage area; a rural health clinic designated under Public Law 95-210, the Rural Health Clinic Services Act of 1977; a public health clinic or a family planning clinic operating under contract with the Texas Department of Human Services or the Texas Department of Health; a site located in an area in which there exists an insufficient number of physicians providing services to eligible clients of federal, state, or locally funded health care programs, as determined by the Texas Department of Health; or a site that serves a disproportionate number of clients eligible to participate in federal, state, or locally funded health care programs, as determined by the Texas Department of Health.

(11) Standing delegation order–Written instructions, orders, rules, regulations, or procedures prepared by a physician and designed for a patient population with specific diseases, disorders, health problems, or sets of symptoms. Such written instructions, orders, rules, regulations or procedures shall delineate under what set of conditions and circumstances action should be instituted. These instructions, orders, rules, regulations or procedures are to provide authority for and a plan for use with patients presenting themselves prior to being examined or evaluated by a physician to assure that such acts are carried out correctly and are distinct from specific orders written for a particular patient, and shall be limited in scope of authority to be delegated as provided in §193.4 of this title (relating to Scope of Standing Delegation Orders). As used in this chapter, standing delegation orders do not refer to treatment programs ordered by a physician following examination or evaluation by a physician, nor to established procedures for providing of care by personnel under direct, personal supervision of a physician who is directly supervising or overseeing the delivery of medical or health care. Such standing delegation orders should be developed and approved by the physician who is responsible for the delivery of medical care covered by the orders. Such standing delegation orders, at a minimum, should:

(A) include a written description of the method used in developing and approving them and any revision thereof;

(B) be in writing, dated, and signed by the physician;

(C) specify which acts require a particular level of training or licensure and under what circumstances they are to be performed;

(D) state specific requirements which are to be followed by persons acting under same in performing particular functions;

(E) specify any experience, training, and/or education requirements for those persons who shall perform such orders;

(F) establish a method for initial and continuing evaluation of the competence of those authorized to perform same;

(G) provide for a method of maintaining a written record of those persons authorized to perform same;

(H) specify the scope of supervision required for performance of same, for example, immediate supervision of a physician;

(I) set forth any specialized circumstances under which a person performing same is to immediately communicate with the patient's physician concerning the patient's condition;

(J) state limitations on setting, if any, in which the plan is to be performed;

(K) specify patient record-keeping requirements which shall, at a minimum, provide for accurate and detailed information regarding each patient visit; personnel involved in treatment and evaluation on each visit; drugs, or medications administered, prescribed or provided; and such other information which is routinely noted on patient charts and files by physicians in their offices; and

(L) provide for a method of periodic review, which shall be at least annually, of such plan including the effective date of initiation and the date of termination of the plan after which date the physician shall issue a new plan.

(12) Standing medical orders–Orders, rules, regulations or procedures prepared by a physician or approved by a physician or the medical staff of an institution for patients which have been examined or evaluated by a physician and which are used as a guide in preparation for and carrying out medical or surgical procedures or both. These orders, rules, regulations or procedures are authority and direction for the performance for certain prescribed acts for patients by authorized persons as distinguished from specific orders written for a particular patient.

(13) Submit - The term used to indicate that a completed item has been actually received and date-stamped by the Board along with all required documentation and fees, if any.

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 February 22, 1999.

TRD-9901071
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-7016

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

Subchapter A. Definitions

22 TAC §231.1

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

The Board of Vocational Nurse Examiners proposes to repeal §231.1 relating to Definitions. On December 8, the Board reviewed Chapter 231 relating to Administration as outlined in the Board Rule Review Plan and determined that §231.1 be repealed so the Board may adopt a new §231.1 for clarification and to establish a numbering system for all definitions.

Mary M. Strange, Executive Director, has determined that for the first five year period the repeal of this rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the repeal of this rule as is in effect, the public benefits anticipated as a result of enforcing the rule will be consistent definitions. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The repeal is proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§231.1. Definitions.

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

Filed with the Office of the Secretary of State on February 12, 1999.

TRD-9900948
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-8100

The Board of Vocational Nurse Examiners proposes new §231.1 relating to Definitions. On December 8, the Board reviewed Chapter 231 relating to Administration as outlined in the Board Rule Review Plan and determined that new §231.1 be proposed for clarification and to establish a numbering system for all definitions.

Mary M. Strange, Executive Director, has determined that for the first five year period the rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be consistent definitions. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The new rule is proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§231.1. Definitions.

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

(1) Act - refers to the Vocational Nurse Act

(2) Active License - A license is considered active only if the licensee has utilized their nursing knowledge, skills and/or abilities within the immediate past five years preceding renewal and met all other requirements for current licensure.

(3) Administrative Procedure Act - The Administrative Procedure

(4) Agency - the Board of Vocational Nurse Examiners

(5) Applicant - a party making application for licensure.

(6) Application for Licensure - the process of making application for licensure as a Licensed Vocational Nurse in accordance with the provisions of the Act.

(7) Board - the Board of Vocational Nurse Examiners

(8) Board Member - a person appointed by the Governor and confirmed by the State Senate to serve on the Board of Vocational Nurse Examiners.

(9) Complete Application - an application that has been received with fees, correctly completed and has all required documents.

(10) Current License - a license that reflects a date which has not expired.

(11) Delinquent Licensee - an individual holding a license to practice vocational nursing, whose license has expired for nonpayment of renewal fees, and whose license has not been suspended or revoked by disciplinary action.

(12) Direct Supervision - Requires the vocational nurse holding a temporary permit to work under the direction of a Licensed Vocational Nurse, Registered Nurse, or licensed Physician who is physically present on the same unit and is readily available to provide immediate consultation and assistance.

(13) Division - One of the administrative units within the jurisdiction of the agency.

(14) Endorsement - process of recognition of and subsequent granting of licensure to an applicant who meets all Texas requirements and holds a valid license to practice vocational/practical nursing in another state, District of Columbia, or territory of the United States.

(15) Hardship - a circumstance which results in failure to meet board requirements for examination due to natural disaster, personal illness, injury, or medical emergency of self or immediate family, death in immediate family or other extraordinary circumstances.

(16) Legitimate Excuse - a written statement meeting specified hardship criteria.

(17) License - a document issued evidencing the person has fulfilled requirements as stated in the Vocational Nurse Act.

(18) Licensee - An individual whose license to practice vocational nursing is current and in force, and has not been suspended or revoked by disciplinary action of the board.

(19) Licensed Vocational Nurse - a person who is licensed under this Act by the Board of Vocational Nurse Examiners.

(20) Licensing - the agency process respecting the granting, denial, renewal, revocation or suspension of a license.

(21) National Council Licensure Examination for Practical Nurses (NCLEX-PN) - The practical/vocational nurse licensure examination developed by the National Council of State Boards of Nursing, Inc., and used for licensure by those jurisdictions whose boards of nursing are National Council members.

(22) Nursing or Nursing Services - attending or caring for a person's illness or health for compensation.

(23) Peer Review - the process of evaluating the qualifications of the vocational nurse, evaluating the appropriateness and quality of vocational nursing services rendered within the scope of vocational nursing practice, merits of complaint against the vocational nurse and the efficacy of the complaint.

(24) Person - any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(25) Petitioner - any party making a formal written supplication or request to the board.

(26) Practical Nurse or Licensed Practical Nurse - the title used in some other states for nurses with licensure requirements similar to those for Licensed Vocational Nurses in this State.

(27) Register - the Texas Register

(28) Rule - any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. The definition includes substantive regulations.

(29) Vocational Nursing or Vocational Nursing Services - nursing services that generally require experience and education in biological, physical or social sciences sufficient to qualify for licensure as a Licensed Vocational Nurse.

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 February 12, 1999.

TRD-9900949
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-8100

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Subchapter B. General Practice and Procedure

22 TAC §§231.15, 231.30, 231.35, 231.37, 231.38, 231.48, 231.49

The Board of Vocational Nurse Examiners proposes amendments to §§231.15, 231.30, 231.35, 231.37, 231.38, 231.48 and 231.49. On December 8, the Board reviewed Chapter 231 relating to Administration as outlined in the Board Rule Review Plan and determined that these rules be amended for clarification, consistency and reflect changes that have been made in other rules and laws.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules as proposed are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the rules as proposed are in effect, the public benefits anticipated as a result of enforcing the rule will be that the rules are reflective of current law. Also, §231.49 will eliminate delays for many individuals who overpay when renewing their licenses or requested endorsement to other states. Many overpayments are in an amount of $5 to $10. Most people request that we keep the overpayment rather than delay them getting their license or endorsement information. However, at this time we are required to send the money back and this can cause a delay of one to two weeks. There will be no cost to small or large businesses. The fiscal impact to individuals will be to those who overpay and do not request a return of said overpayment.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§231.15. Functions of the Board.

The Board is authorized to:

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

(6) deny or withdraw approval of a program for failure to meet requirements;

(7)-(14) (No change.)

§231.30. Order of Business.

(a) The order of business at all regular and special meetings of the Board will, when practicable, be as follows:

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

(3) Report of Director of Education [~~Reports of Committees~~].

(4) Special Presentations [~~Report of Executive Secretary~~].

(5) Unfinished Business [~~Report of Director of Education~~].

(6) Report of Executive Director [~~Special Reports~~].

(7) New Business [~~Unfinished Business~~].

(8) Adjournment [~~New Business~~].

~~[(9) Adjournment.]~~

(b) (No change.)

§231.35. Seal of the Board.

The seal of the Board shall be an embossed circular seal 1-7/8 inches in diameter, consisting of two concentric circles. The inner circle shall be 1-3/16 inches in diameter and shall contain the State Seal [~~great seal of the State~~] of Texas. The outer circle shall contain the wording "Texas Board of Vocational Nurse Examiners.

§231.37. Director of Education.

The Director of Education shall be a Licensed Vocational Nurse or a Registered Nurse currently licensed in this state, who shall have had at least five years experience in teaching nursing in an approved school of nursing or an approved program in vocational nursing. The duties shall be to visit and inspect all schools of vocational nursing to determine whether the minimum requirements for vocational nursing programs are being met. The Director of Education shall comply with working conditions set for State employees in the general provisions of Article IX [~~V~~] of the Appropriations Act. The Director of Education is directly responsible to the Executive Director.

§231.38. Associate Director (Directors) of Education.

The Associate Director (Directors) of Education shall be a Licensed Vocational Nurse or a Registered Nurse currently licensed in this State, who shall have had at least five years experience in teaching nursing in an approved school of nursing or an approved program in vocational nursing. The Associate Director of Education shall comply with provisions of Article IX [~~V~~] of the Appropriations Act.

§231.48. Bylaws.

(a) Article I, Title and Purposes

(1) The name shall be the "Board of Vocational Nurse Examiners", House Bill 47, Chapter 118, Acts 52nd Legislature, 1951

(2) The purposes of the Board shall be to:

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

(K) [~~to~~] provide for examination of graduates of approved schools;

(L) [~~to~~] examine and approve credentials of applicants for endorsement;

(M) [~~to~~] renew biennially the licenses of persons licensed under the Vocational Nurse Act;

(N)-(0) (No change.)

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

§231.49. Overpayment.

Overpayment, in amount not to exceed $10 [$4], for sales, charges, and fees, will not be automatically returned.

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 February 12, 1999.

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Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
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For further information, please call: (512) 305-8100

22 TAC §231.21

(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 Board of Vocational Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Vocational Nurse Examiners proposes to repeal §231.21 relating to Election of Officers. On December 8, the Board reviewed Chapter 231 relating to Administration as outlined in the Board Rule Review Plan and determined that §231.21 be repealed because it is obsolete.

Mary M. Strange, Executive Director, has determined that for the first five year period the repeal of this rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the repeal of this rule as is in effect, the public benefits anticipated as a result of enforcing the rule will be consistent and current rules. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The repeal is proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§231.21. Election of Officers.

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 February 12, 1999.

TRD-9900951
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-8100

Subchapter C. Board Rules

22 TAC §231.64

The Board of Vocational Nurse Examiners proposes an amendment to §231.64 relating to Petition Decision By Board. On December 8, the Board reviewed Chapter 231 relating to Administration as outlined in the Board Rule Review Plan and determined that §231.64 be amended as the reference to §231.62 is evidently a typographical error. It should read §231.63.

Mary M. Strange, Executive Director, has determined that for the first five year period this rule is in effect, there will be no fiscal implication for state or local government as a result of enforcing the rule.

Mrs. Strange has also determined that for the first five years the amendment of this rule is in effect, the public benefits anticipated as a result of enforcing the rule will be a correct reference in the rule There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§231.64. Petition Decision by Board.

Within 60 days after submission of a petition requesting the adoption of a rule the agency either shall deny the petition in writing stating its reasons for the denial, or shall initiate rulemaking proceedings in accordance with §231.63 [~~§231.62~~] of this title (relating to Petition for Adoption of Rules [~~Adoption, Amendment, or Repeal of Rules~~]) and by law.

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

Filed with the Office of the Secretary of State on February 12, 1999.

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Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-8100

Chapter 235. Licensing

Subchapter A. Application for Licensure

22 TAC §§235.4, 235.6, 235.11, 235.17, 235.19

The Board of Vocational Nurse Examiners proposes amendments to §§235.4, 235.6, 235.11, 235.17, and 235.19 relating to Application for Licensure. On December 8, the Board reviewed Chapter 235 relating to Licensing as outlined in the Board Rule Review Plan and determined that these rules be amended for clarification, consistency and compliance with law.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for the first five years the amendment of these rules is in effect, the public benefits anticipated as a result of enforcing the rules will be a correct, and consistent rules. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendments are proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§235.4. Applicants for Relicensure by Examination.

(a) (No change.)

(b) Applicants will be allowed three opportunities for the licensing examination; one initial and two reexaminations [~~to take the examination~~] within one year of first time scheduled.

(c) (No change.)

§235.6. Applications for Licensure by Endorsement.

An applicant for licensure in Texas by endorsement shall:

(1)-(6) (No change.)

(7) show employment in the nursing profession within the past five [~~four~~] years or evidence of a completed refresher course or completion of supervised employment for a specified period and a copy of the job description;

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

§235.11. Policies Concerning Professional Graduates.

Graduates of a professional nursing program will be eligible to take the examination for vocational nurse licensure once the graduate has unsuccessfully taken the registered nurse licensure examination approved [~~administered~~] by the Board of Nurse Examiners. The professional nurse graduate will be allowed three opportunities for the licensing examination within one year of the applicant's first failure of the registered nurse licensure examination.

§235.17. Temporary Permits.

(a) Graduates of approved vocational nursing programs in this state, another state, or the District of Columbia.

(1) (No change.)

(2) A permit will not be issued to an applicant who has previously failed an examination approved [~~administered~~] by the Board or by another state.

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

(b) (No change.)

(c) Endorsement Applicants.

(1) Temporary permits shall be issued to endorsement applicants who meet licensure requirements and:

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

(C) hold active and current license to practice vocational/practical nursing in another state;

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

(2) (No change.)

(d) (No change.)

§235.19. Licensure of Persons with Criminal Convictions.

(a) Exam Applicants

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

(3) If the conviction involved is a felony that relates to the duties and responsibilities of a licensed vocational nurse, applicant may [~~shall~~] be disqualified from obtaining licensure as a licensed vocational nurse.

(b) Endorsement Applicants

(1) (No change.)

(2) If the conviction involved is a felony that relates to the duties and responsibilities of a licensed vocational nurse, applicant may [~~shall~~] be denied licensure as a licensed vocational nurse.

(3) (No change.)

(c) (No change.)

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

Filed with the Office of the Secretary of State on February 12, 1999.

TRD-9900953
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-8100

Subchapter D. Issuance of Licenses

22 TAC §§235.43, 235.45, 235.46

The Board of Vocational Nurse Examiners proposes amendments to §§235.43, 235.45 and 235.46 relating to Issuance of Licenses. On December 8, the Board reviewed Chapter 235 relating to Licensing as outlined in the Board Rule Review Plan and determined that these rules be amended for clarification, consistency and compliance with law.

Mary M. Strange, Executive Director, has determined that for the first five year period the rules are in effect, there will be no fiscal implication for state or local government as a result of enforcing the rules.

Mrs. Strange has also determined that for the first five years the amendment of these rules is in effect, the public benefits anticipated as a result of enforcing the rules will be a correct, and consistent rules. There will be no cost to small or large businesses and no fiscal impact to individuals.

Comments may be submitted to Mary M. Strange, Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe, Suite 3-400, Austin, Texas 78701.

The amendments are proposed under Texas Civil Statutes, Article 4528c, Section 5(f), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

§235.43. Application for Renewal of License.

An application for renewal of license shall be mailed biennially at least 30 days prior to expiration date to every currently licensed vocational nurse at the last known address. If in default of a Texas Guaranteed Student Loan (71st Legislature) the Board must receive a release letter before a renewal application can be issued.

§235.45. Duplicate License or Temporary Permit.

A duplicate license or temporary permit to replace any license or temporary permit lost, destroyed or mutilated, may be issued, subject to the rules of the Board. A licensee or applicant requesting a duplicate license or temporary permit under this rule will, if possible, surrender to the Board any remaining portions of the original license or temporary permit. The individual shall file with the request, a sworn affidavit setting out the reasons for issuance of a duplicate license or temporary permit. [~~the request so that the Board will reflect the reason for the issuance of a duplicate license or temporary permit.~~] Duplicate licenses will reflect the original license number of the licensee. Temporary permits will reflect the original expiration date.

§235.46. Notification of Change of Name or Address.

A sworn affidavit, marriage license, divorce decree, or legal court order setting out change of name will be submitted to the Board by the licensee, as appropriate. A fee is required for a name change and an additional fee for a duplicate license or temporary permit reflecting the change. If the change occurs at the time of renewal there will be no additional charge other than the renewal fee. Notification of change of address shall be submitted in writing to the Board by each licensee within 10 days of change. There will be no additional charge for updating address information. However, a new license will not be issued for an address change only.

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 February 12, 1999.

TRD-9900954
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 305-8100

Part XXXVIII. Texas Midwifery Board

Chapter 831. Midwifery

The Texas Midwifery Board (board) proposes new §§831.1-831.3, 831.7, 831.51, 831.111, 831.121, 831.131, and 831.141 concerning the regulation of midwives. The sections cover introduction; definitions; the Midwifery Board; petition for the adoption of a rule; midwifery practice standards and principles; eye prophylaxis; newborn screening; informed choice and disclosure statement; and the provision of support services.

The board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules con-

cerning documentation of midwives; standards for approval of midwifery education courses, instructors, and facilities; standards for midwifery practice; basic and continuing midwifery education requirements; reporting and processing complaints; disciplinary procedures; procedures for reciprocity for initial documentation; and any additional rules necessary to implement any duty imposed on the board by the Act, subject to the approval of the Texas Board of Health. Effective December 1, 1998, the Midwifery Program and the Midwifery Board were administratively transferred from the Texas Department of Health (department), Women's Health Division, to the Professional Licensing and Certification Division of the department. The rules are currently located in 25 Texas Administrative Code (TAC), and the department proposes the repeal of 25 TAC §§37.171-37.174, 37.176-37.177, 37.179, 37.181-37.185 in order that the new sections may be proposed by the Texas Midwifery Board, which will be listed as an independent board under 22 TAC. The repeals can be found in this same issue of the *Texas Register* in the Proposed Rules section.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Standards, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed. There are no anticipated costs to persons who are required to comply with the sections as proposed.

Ms. Underwood has also determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections is enhancement of the board's ability to protect the public through standardization of and improvement in the quality of midwifery practice. There will be no effect on small businesses. There will be no impact on local employment.

Comments on the proposal may be submitted to Yvonne Feinleib, Midwifery Program Coordinator, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, telephone (512) 834-4523. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

Subchapter A. The Board

22 TAC §§831.1–831.3, 831.7

The new sections are proposed under Texas Civil Statutes, Article 4512i, §8A(b), which authorizes the board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

The new sections affect the Texas Midwifery Act, Texas Civil Statutes, Article 45.

§831.1. Introduction.

(a) Purpose. This chapter implements the applicable provisions of the Texas Midwifery Act, Texas Civil Statutes, Article 4512i, relating to the practice and regulation of direct entry midwifery in Texas.

(b) Construction. These sections cover definitions; the Midwifery Board; the petition for the adoption of a rule; annual documentation; education; midwifery practice standards and principles; the administration of oxygen; eye prophylaxis; newborn screening; the informed choice and disclosure statement; the provision of support services; and complaint review.

§831.2. Definitions.

The following words and terms when used in these sections shall have the following meaning unless the context clearly indicates otherwise:

(1) Act - The Texas Midwifery Act, Texas Civil Statutes, Article 4512i.

(2) Appropriate health care facility - The Department of Health, a local health department, a public health district, a local health unit or a physician's office where specified tests can be administered and read, and where other medical/clinical procedures normally take place.

(3) Approved midwifery education courses - The basic midwifery education courses approved by the Midwifery Board.

(4) Board - The Texas Board of Health.

(5) Certified nurse-midwife - A registered nurse licensed in Texas, recognized by the Board of Nurse Examiners as an advanced nurse practitioner, and certified by the American College of Nurse-Midwives.

(6) Code - Texas Health and Safety Code.

(7) Commissioner - The Commissioner of Health.

(8) Department - the Texas Department of Health.

(9) Documentation - The annual process of documenting midwives under the Texas Midwifery Act.

(10) Health authority - A physician who administers state and local laws regulating public health under the Health and Safety Code, Chapter 121, Subchapter B.

(11) Local health department - A department of health created by the governing body of a municipality or county under the Health and Safety Code, Chapter 121, Subchapter D.

(12) Local health unit - A division of a municipality or county government that provides limited public health services as provided by the Health and Safety Code, §121.004.

(13) Midwife - A person who practices midwifery under the Texas Midwifery Act and has met the requirements and standards of the Midwifery Board in these sections.

(14) Midwifery - The practice by a midwife of giving the necessary supervision, care, and advise to a woman during normal pregnancy, labor and the postpartum period; conducting a normal delivery of a child; and providing newborn care.

(15) Midwifery Board - The Midwifery Board appointed by the Texas Board of Health.

(16) Newborn care - The care of a child for the first six weeks of the child's life.

(17) Normal childbirth - The labor and delivery at or close to term (37 up to 42 weeks) of a pregnant woman whose assessment reveals no abnormality or signs or symptoms of complications.

(18) Physician - a physician licensed to practice medicine in Texas by the Board of Medical Examiners.

(19) Postpartum care - The care of a woman for the first six weeks after the woman has given birth.

(20) Program - The department's midwifery program.

(21) Public health district - A district created under the Health and Safety Code, Chapter 121, Subchapter E.

(22) Standing delegation orders - Written instructions, orders, rules, regulations or procedures prepared by a physician and designated for a patient population, and delineating under what set of conditions and circumstances actions should be instituted, as described in the rules of the Texas Board of Medical Examiners in Chapter 193 of this title (relating to standing delegation orders).

§831.3. Midwifery Board.

(a) Membership. Members are appointed by the Texas Board of Health (board) in accordance with the composition specified by the Texas Midwifery Act. A record of attendance shall be kept at each meeting. If a member misses two consecutive meetings, written notice shall be given to the member. A third consecutive absence from a regularly scheduled meeting shall be grounds for membership termination by the board.

(b) Officers. Midwifery Board officers shall consist of a chairperson from one of the public interest members and vice-chairperson from any of the other members. The officers are selected at the Midwifery Board's first regular meeting, and thereafter as terms expire or vacancies are otherwise created. Officers shall serve two-year terms and shall be eligible for re-election for one additional term. The chairperson shall be the presiding officer of the Midwifery Board. The vice-chairperson shall assume the authority and duties of the chairperson in his/her absence.

(c) Terms of office. The members of the Midwifery Board serve for staggered terms of six consecutive years, with the terms of three members expiring on January 31st of each odd numbered year.

(d) Meetings.

(1) Frequency. The Midwifery Board shall meet at least semi-annually and at other times when called by the Midwifery Board or the Board. Notice of the time, date, place and purpose of regular meeting shall be provided to the members by mail or by telephone or both, at least seven days in advance of each meeting.

(2) Quorum. A majority of the Midwifery Board's members constitutes a quorum for the transaction of business at any meeting. A majority is defined as more than one- half of the membership. The Midwifery Board may act only by majority vote of its members present and voting. Each member shall be entitled to one vote. Proxy votes shall not be allowed.

(3) Subcommittees. The subcommittees of the Midwifery Board shall be appointed from the membership by the chairperson with such powers and responsibilities as shall be delegated to them by the chairperson.

(4) Parliamentary procedure. Parliamentary procedures for all Midwifery Board or subcommittee meetings shall be conducted in accordance with the latest edition of Robert's Rules of Order, except that the chairperson may vote on any actions as any other member. In case of a tie vote, the chairperson's vote will be the tie breaker.

(5) Minutes. Minutes of all Midwifery Board meetings shall be prepared and transmitted to the members for their review prior to subsequent meetings.

(6) Public participation. All requests from the public to participate in Midwifery Board meetings shall be submitted to the chairperson. He or she may approve participation and may limit, as necessary, the time for each participant to address the Midwifery Board. Written comments are encouraged, and may be submitted to the Midwifery Board for its consideration.

(7) Compensatory per diem. Each Midwifery Board member is entitled to receive compensatory per diem in the amount of $50 for each Midwifery Board meeting, or subcommittee meeting attended. In addition, each Midwifery Board member is entitled to receive regular per diem and travel allowances as authorized for state employees in accordance with the rate established in the current general appropriations act.

(8) Texas Open Meetings Act. All meetings of the Midwifery Board shall be announced and conducted in accordance with the Texas Open Meetings Act, Government Code, Chapter 551.

§831.7. Petition for the Adoption of a Rule.

(a) Purpose. The purpose of this section is to delineate the procedures of the board for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; contain the petitioner's name, address, and organization, if any; and describe the rule and the reason for it; however, if the program coordinator determines that further information is necessary to assist the board in reaching a decision, the program coordinator may require that the petitioner resubmit the petition and that it contain:

(A) a brief explanation of the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefits anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The program coordinator may refuse to accept a petition which does not contain the information in paragraph (2) of this subsection or the information in paragraph (2)(A)-(D) of this subsection if the program coordinator determines that the latter information is necessary.

(4) The petition shall be mailed or delivered to the Midwifery Board, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the program coordinator shall submit an accepted petition to the board for its consideration and disposition.

(2) Within 60 days after receipt of an accepted petition, the board shall deny the petition or institute rule-making procedure in accordance with the Administrative Procedure Act, Government Code, Chapter 2001, Subchapter B. The board may deny parts of the petition and/or institute rulemaking procedures on parts of the petition.

(3) If the board denies the petition, the program coordinator shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rulemaking procedures, the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rule. All initial accepted petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b) and (c) of this section. The program coordinator may refuse to forward to the board for consideration any subsequent petition for the adoption of the same or a similar rule submitted within six months after the date of the initial petition.

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 February 12, 1999.

TRD-9900957
Edna Dougherty
Chair
Texas Midwifery Board
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Subchapter D. Practice of Midwifery

22 TAC §§831.51, 831.111, 831.121, 831.131, 831.141

The new sections are proposed under Texas Civil Statutes, Article 4512i, §8A(b), which authorizes the board to adopt rules, subject to the approval of the Texas Board of Health, necessary for the documentation and regulation of Texas midwives.

The new sections affect the Texas Midwifery Act, Texas Civil Statutes, Article 45.

§831.51. Midwifery Practice Standards and Principles.

(a) Standards for the Practice of Midwifery in Texas.

(1) Midwifery care is provided by qualified midwives as defined by the Texas Midwifery Act, Texas Civil Statutes, Article 4512i.

(2) Midwifery care supports individual rights and self-determination within the boundaries of safety.

(3) Midwifery care is based upon the knowledge, skill, and judgment that foster the delivery of safe and competent care to mother and newborn, giving the newborn the opportunity for a good beginning.

(4) Midwifery care is provided in accordance with established minimal standards which promote safe and competent care. The midwife implements these standards through adherence to the principles for the practice of midwifery in Texas as detailed in subsection (b) of this section.

(5) Midwifery care is provided in a safe environment.

(6) Midwifery care utilizes the community health care and social system to meet medical, psychosocial, economic and cultural or family needs.

(7) Midwifery care is documented in complete, legible health records.

(8) Midwifery care includes an ongoing process of evaluation and quality assurance.

(b) Principles. Midwifery practice is based upon the acquisition of clinical skills necessary for the care of essentially normal pregnant women and newborns. These skills may be obtained through apprenticeship or within an institution. Care as defined by the Midwifery Board of the Texas Department of Health (department) includes antepartum, intrapartum, postpartum, and newborn services. The midwife is committed to maintain a high standard of professional care, to participate in continuing education, and to promote the concepts of high quality and safe practice among all Texas midwives.

(1) Qualifications for midwives in Texas. The midwife:

(A) is documented through the Texas Department of Health, Midwifery Program;

(B) has attended an approved mandatory basic midwifery education course or has been exempted from this requirement prior to January 1, 1994;

(C) shows evidence of continuing competency through an ongoing process of continuing education; and

(D) is in compliance with the legal requirements of Texas while practicing in the state.

(2) Clients rights. The midwife:

(A) provides clients with a description of the scope of midwifery practice, both in written and oral form, which includes but is not limited to her/his:

(i) midwifery experience;

(ii) limitations of practice;

(iii) date of expiration of documentation;

(iv) date of expiration of cardiopulmonary resuscitation certification;

(v) compliance with continuing education;

(vi) compliance with the standards of practice of midwifery in Texas as adopted in rule by the Texas Department of Health;

(vii) compliance with the client's individual rights relative to this paragraph;

(viii) medical consultation arrangements;

(ix) procedures regarding newborn blood screening;

(x) practice for ophthalmia neonatorum prevention; and

(xi) a delineation of the prohibited acts as detailed by the Midwifery Act of 1993.

(B) provides information regarding the client's rights as follows. The client has the right:

(i) prior to the administration of any drug or natural remedy to herself or her infant, to be informed by the midwife caring for her of the reason for such administration, all potential direct or indirect effects, and all risks or hazards to herself or her unborn or newborn infant which may result from the use of the drug or remedy;

(ii) to be accompanied during the stress of labor and birth by someone she cares for, and to whom she looks for emotional comfort and encouragement;

(iii) to be informed of any known or suspected condition which may cause her or her baby difficulty or problems. She has the right to care by a physician or other licensed health care professional operating under physician supervision for conditions or

problems which are outside the scope of practice of the midwife. The client has the right to timely referral in such situations;

(iv) to be informed of the name and qualifications of all individuals participating in her care;

(v) to have access to and receive copies upon request of her and her baby's midwifery records which will be complete, accurate and legible; and

(vi) of self-determination to decline or continue care upon the midwife's recommendation. The client's decision to exercise this right will be made in writing. The midwife will retain a copy of this document to demonstrate compliance with this section.

(3) Criteria for safe and competent care. The midwife:

(A) provides care only to clients determined to be at low or normal risk, as defined in the following subparagraphs, of developing complications during pregnancy, childbirth, and the postpartum and neonatal periods;

(B) provides clients with information on other providers and services when requested or when care required is not within the scope of midwifery practice;

(C) practices in accordance with this section; and

(D) will not knowingly accept nor thereafter maintain responsibility for the prenatal, intrapartum, or postpartum care of a woman or neonatal care of an infant who has or develops a high risk condition or complication, except as detailed in clauses (i), (iv), (v), and (vi) of this subparagraph.

(i) If on the initial assessment or subsequent assessments, the midwife determines or suspects that the client has any of the conditions or symptoms listed in clauses (ii) and (iii) of this subparagraph, a consult by a physician who has current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision will be obtained in a timely manner. "Consultation" refers to a particular client, not generalized advice affecting more than one woman. The consultant is to evaluate the client and then advise the midwife whether to refer the client, co-manage the client with specified medical supervision, or continue midwifery care. The midwife will document the consultation in writing. If reasonable and documented attempts have been made to consult with a licensed physician or other licensed health care provider operating under physician supervision and the physician or other provider refuses to see the client, then the midwife may continue to provide care to the client after obtaining written informed consent that the client agrees to such care and is aware that she has or may have a high-risk condition which should be evaluated by a physician. If after the client has been made aware that she has or may have a high-risk condition; and she chooses to decline medical consultation, co-management, or referral, then the midwife may continue to provide care for the client if she signs a waiver of medical referral.

(ii) The midwife will recommend consultation if the client's history concerning prior pregnancies or medical history includes any of the following:

(I) preterm (less than 36 weeks) labor during two or more previous pregnancies;

(II) preterm (less than 36 weeks) rupture of membranes;

(III) delivery of an infant weighing less than 5 1/2 pounds or 2500 grams at term;

(IV) delivery of a large infant weighing greater than or equal to 10 pounds or 4500 grams that resulted in trauma to the infant;

(V) neonatal (first month of life) death;

(VI) severe postpartum hemorrhage (non-traumatic) requiring transfusion;

(VII) three or more consecutive spontaneous abortions;

(VIII) suspicion for an incompetent cervix;

(IX) mother or current conception's father having had a previous infant or fetus with a known or suspected genetic or familial disorder. (Refer to subsection 9 of this section for sample prenatal genetic screening questions which are from the American College of Obstetricians and Gynecologists (ACOG) Technical Bulletin #108.);

(X) mother or current conception's father having had a previous infant or fetus with a significant congenital anomaly;

(XI) pregnancy induced hypertension requiring medication, medical supervision or hospitalization; pre-eclampsia; or eclampsia;

(XII) gestational diabetes (diet controlled);

(XIII) intrauterine fetal demise;

(XIV) shoulder dystocia that resulted in trauma to the infant;

(XV) placenta previa at time of labor;

(XVI) placental abruption;

(XVII) Rh or other blood group isoimmunization;

(XVIII) inverted uterus;

(XIX) pelvic or genital tract anomaly;

(XX) cardiac disease;

(XXI) rheumatic fever;

(XXII) renal disease, pyelonephritis, recurrent urinary tract infection, urinary calculi, or urinary tract anomaly;

(XXIII) cancer;

(XXIV) vascular disease;

(XXV) any non A-Hepatitis;

(XXVI) hepatic insufficiency;

(XXVII) thyroid disease;

(XXVIII) syphilis;

(XXIX) thrombophlebitis or thromboembolism;

(XXX) HIV positivity; or

(XXXI) any other history which poses a risk to the mother or fetus as assessed by a midwife exercising ordinary skill and education.

(iii) The midwife will recommend a consultation if the client's history or examination concerning her current pregnancy includes any of the following:

(I) age 15 or under;

(II) exposure to a teratogen during current pregnancy or six weeks prior to conception;

(III) drug, tobacco and/or alcohol abuse;

(IV) significant psychological dysfunction;

(V) vaginal bleeding after twelve weeks;

(VI) significant abdominal pain;

(VII) significantly decreased fetal movement;

(VIII) urinary tract infection or signs or symptoms of urinary tract infection unresponsive to natural remedies or in association with temperature equal to or greater than 100.4 degrees Farenheit;

(IX) elevated temperature equal to or greater than 100.4 degrees Farenheit for more than 48 hours;

(X) chest pain and/or difficulty breathing;

(XI) signs or symptoms of thrombophlebitis or thromboembolism;

(XII) persistent, severe headaches;

(XIII) visual disturbances;

(XIV) seizure disorder requiring treatment;

(XV) asthma requiring treatment;

(XVI) pulmonary disease;

(XVII) gastrointestinal or colon disease requiring treatment;

(XVIII) contracted pelvis;

(XIX) hypertension, a diastolic blood pressure of at least 90 mm Hg or systolic pressure of at least 140 mm Hg or a rise in the former of at least 15 mm Hg or in the latter of 30 mm Hg. The blood pressures cited should be manifested on at least two occasions six hours or more apart;

(XX) severe edema of hands, face, or lower extremities;

(XXI) severe varicosities of vulva or lower extremities;

(XXII) intrauterine fetal demise;

(XXIII) non-vertex presentation after 36 weeks;

(XXIV) anemia (hemoglobin equal to or less than 10 g/dl or hematocrit equal to or less than 30%) not corrected by iron therapy;

(XXV) active genital herpes at the time of delivery;

(XXVI) gonorrhea, chlamydia, HPV, or pelvic inflammatory disease;

(XXVII) syphilis;

(XXVIII) HIV positivity;

(XXIX) proteinuria, equal to or greater than +1 on two consecutive visits or equal to or greater than +2 on one visit;

(XXX) glycosuria, equal to or greater than +1 on two visits (if unable to perform blood glucose screening for this finding);

(XXXI) abnormal pap smear;

(XXXII) abnormal fetal growth pattern or uterine discrepancy greater than four weeks on two visits unless assessment by palpation finds fetal growth appropriate for dates;

(XXXIII) intrauterine growth retardation;

(XXXIV) post-term pregnancy, equal to or greater than 42 and 0/7 weeks;

(XXXV) possible preterm (less than 36 weeks) labor;

(XXXVI) significant maternal trauma;

(XXXVII) hyperemesis gravidarum;

(XXXVIII) polyhydramnios or ogliohydramnios;

(XXXIX) vaginitis other than simple, non-recurrent monilia;

(XL) hepatitis, chronic hepatic dysfunction, or positive Hepatitis B surface antigen; or

(XLI) any other medical or obstetric condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(iv) If on any assessment, the midwife determines that the client has one or more of the following conditions, she will consult, in a timely manner, with a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision and, upon his/her documented recommendation, transfer care of the client or otherwise follow his/her recommendation. If the midwife is unable to obtain a consult, in a timely manner, the care of the client must be transferred to a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision:

(I) history of incompetent cervix;

(II) history of gestational diabetes in a prior pregnancy requiring insulin therapy;

(III) history of autoimmune disease; e.g., systemic lupus erythematosus;

(IV) diabetes mellitus or gestational diabetes during current pregnancy;

(V) history of prior C-section or uterine surgery;

(-a-) The department agrees with the current obstetric practice of encouraging vaginal birth after C-section (VBAC). Further, it agrees with the most recent (1994) ACOG guidelines concerning VBAC which state that:

(-1-) The concept of routine repeat cesarean birth should be replaced by a specific decision process between the client and the physician for a subsequent mode of delivery;

(-2-) In the absence of a contraindication, a woman with one previous cesarean delivery with a

lower uterine segment incision should be counseled and encouraged to undergo a trial of labor in her current pregnancy;

(-3-) A woman who has had two or more previous cesarean deliveries with lower uterine segment incisions and who wishes to attempt vaginal birth should not be discouraged from doing so in the absence of contraindications;

(-4-) A trial of labor and delivery should occur in a hospital setting that has professional resources to respond to obstetric emergencies;

(-b-) If however, a client chooses not to accept the department's position that VBACs should be conducted in a hospital setting, œthen she may continue care with the midwife if the client signs a waiver of medical transfer and the client has not had a classical C-section.

(-c-) A waiver document shall be developed by the Midwifery Board and department for use in this situation and the midwife will have each client, for whom she conducts a VBAC, sign this form. The form will be retained in the client's midwifery record.

(VI) chronic hypertension;

(VII) hemoglobinopathy;

(VIII) preterm labor (less than 36 weeks);

(IX) preterm rupture of membranes (less than 36 weeks);

(X) multiple gestation;

(XI) Rh or other blood group isoimmunization;

(XII) seizure activity;

(XIII) pyelonephritis;

(XIV) AIDS or HIV positivity with immune compromise;

(XV) cancer; or

(XVI) any other medical or obstetric condition or symptom which poses a significant risk to the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(v) If any of the following conditions or symptoms are noted during labor, delivery, or immediately postpartum (the first 24 hours), the midwife will immediately consult with a licensed physician who has current obstetric knowledge and, unless the physician recommends otherwise, transfer care. If a physician is not available for immediate consultation, the midwife will transfer care to a licensed physician. If delivery is imminent after recognition of one of these conditions or symptoms and transfer is not feasible, then delivery should be carried out by the midwife. Consultation and/or transfer should then occur immediately postpartum except for those conditions in subclauses (I) and (III)-(VI) of this clause:

(I) multiple gestation;

(II) preterm (less than 36 weeks) labor;

(III) estimated fetal weight less than 5 1/2 pounds or 2500 grams;

(IV) active phase dilatation less than 1cm/3-4 hours;

(V) second stage greater than 1-2 hours in a multiparous woman or greater than 2-3 hours in a primiparous woman and delivery;

(VI) rupture of membranes for greater than 24 hours and not anticipated to deliver within 4 hours or delivery not imminent after an additional 4 hours;

(VII) premature rupture of membranes longer than 24 hours and not in the active phase of labor;

(VIII) foul smelling amniotic fluid;

(IX) hypertension, a diastolic blood pressure greater than 90 mm Hg or systolic pressure greater than 140 mm Hg or a rise in the former of at least 15 mm Hg or in the latter of 30 mm Hg;

(X) severe abdominal pain inconsistent with normal labor or involution;

(XI) significant decrease in urine output;

(XII) persistent vomiting or diarrhea;

(XIII) foul smell to the placenta or infant;

(XIV) retained placenta or fragment, i.e., lack of spontaneous placental expulsion within one hour with no excessive bleeding or evidence of shock, or evidence of incomplete placenta on post expulsion exam;

(XV) inappropriate uterine involution;

(XVI) inability to void within six hours of delivery with adequate hydration; or

(XVII) any other medical or obstetric condition which poses a risk to the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(vi) If any of the following conditions or symptoms are noted during labor, deliver, or immediately postpartum (the first 24 hours), the midwife will transfer the client immediately to a physician. If delivery is imminent after recognition of one of these conditions or symptoms and transfer is not feasible, then delivery should be carried out by the midwife. Consultation and/or transfer should then occur immediately postpartum except for those conditions in subclauses (I) and (IV)-(VI) of this clause:

(I) non-vertex presentation; e.g., breech or transverse lie or face with position other than mentum anterior;

(II) vaginal bleeding more than bloody show (prior to delivery);

(III) herpetic lesions;

(IV) moderate to severe thick meconium staining of amniotic fluid;

(V) non-reassuring fetal heart rate persistent baseline rate less than 120 beats per minute or greater than 160 beats per minute; persistent decelerations (greater than 10 minutes without variability or greater than 30 minutes with good variability) or recurring decelerations from baseline. A shorter observation interval prior to transfer may be indicated in the presence of large decreases in rate;

(VI) umbilical cord or extremity prolapse;

(VII) persistent fall in blood pressure to equal to or less than 80/50;

(VIII) pulse persistently greater than 120 or less than 50;

(IX) respiratory rate persistently greater than 30 or less than 10;

(X) elevated temperature, equal to or greater than 100.4 degrees Farenheit;

(XI) faintness, pallor, or other signs/symptoms consistent with shock;

(XII) loss of consciousness;

(XIII) persistent severe headache;

(XIV) visual disturbance;

(XV) seizure;

(XVI) chest pain and/or difficulty breathing;

(XVII) uterine inversion;

(XVIII) uterine atony with significant bleeding;

(XIX) significant postpartum bleeding, i.e., greater than 1,000cc during the first two hours following delivery of the infant;

(XX) third- or fourth-degree perineal laceration, or significant vulvar, vaginal, or cervical laceration; or

(XXI) any other medical or obstetric condition which poses a significant risk to the mother or fetus, as assessed by a midwife exercising ordinary skill and education.

(vii) If any of the following conditions or symptoms are noted during the postpartum period, the midwife will refer the client in a timely manner to a licensed physician who has current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision:

(I) significant vaginal bleeding;

(II) persistent severe headache;

(III) visual disturbance;

(IV) seizure;

(V) significant abdominal pain inconsistent with involution;

(VI) chest pain and/or difficulty breathing;

(VII) signs or symptoms of thrombophlebitis;

(VIII) urinary problems, e.g., difficulty with initiation or emptying, pain, blood, or frequency;

(IX) blood pressure equal to or greater than 140 mm Hg systolic or 90 mm Hg diastolic;

(X) temperature equal to or greater than 100.4 degrees Farenheit;

(XI) improper healing or infection of delivery site lacerations;

(XII) inappropriate uterine involution;

(XIII) foul smelling lochia;

(XIV) significant edema of hands, legs, or face;

(XV) signs or symptoms of mastitis unresponsive to natural remedies within 24 hours;

(XVI) hemoglobin less than or equal to 10 g/dl and/or hematocrit less than or equal to 30%; or

(XVII) any other medical or obstetric condition or symptom which poses a risk to the mother, as assessed by a midwife exercising ordinary skill and education.

(viii) If any of the following conditions or symptoms are noted in the neonate at birth or during the immediate postpartum period (the first 24 hours), the infant will be immediately transferred to a physician:

(I) vital signs that indicate the following:

(-a-) APGAR score less than seven at five minutes and/or less than eight at 20 minutes;

(-b-) pulse rate at rest persistently less than 120 beats per minute or greater than 160 beats per minute during the first hour of life and then less than 100 beats per minute or greater than 160 beats per minute;

(-c-) respiratory rate persistently less than 30 breaths per minute or greater than 60 breaths per minute and/or difficulty breathing and/or grunting and/or nasal flaring and/or sternal retraction;

(-d-) persistent temperature equal to or greater than 100.4 degrees Farenheit or less than 97.7 degrees Farenheit rectally; or

(-e-) requires full cardiopulmonary resuscitation;

(II) physical exam (done within one to two hours of birth) that indicate the following:

(-a-) foul smelling infant;

(-b-) birth injury;

(-c-) flaccidity and/or lethargy and/or irritability;

(-d-) asymmetrical movements of extremities:

(-1-) spasticity;

(-2-) seizure and/or twitching and/or tremor;

(-3-) abnormal tone; or

(-4-) persistent jitteriness;

(-e-) shrill or abnormal cry;

(-f-) vomiting or choking;

(-g-) persistent poor suck or swallow;

(-h-) central cyanosis;

(-i-) pale;

(-j-) persistent "beefy" red skin in conjunction with other signs and symptoms;

(-k-) mottling of skin with normal temperature;

(-l-) jaundice;

(-m-) presence of abnormal rash or vesicles;

(-n-) loss of consciousness;

(-o-) delivered with meconium staining and symptoms of respiratory distress; or

(III) any other condition or symptom which poses a significant risk to the infant, as assessed by a midwife exercising ordinary skill and education.

(ix) If any of the following conditions or symptoms are noted in the neonate within the first 24 to 36 hours after birth, then a consult by a licensed physician who has current pediatric knowledge or another licensed health care provider with current

pediatric knowledge operating under such a physician's supervision will be obtained within 24 hours or the time specified:

(I) birth weight less than 5-1/2 pounds with respiratory distress or greater than 10 pounds with signs of hypoglycemia;

(II) congenital anomaly, e.g.:

(-a-) cleft lip and/or palate;

(-b-) possible Down's Syndrome;

(-c-) umbilical abnormalities, e.g., umbilical cord with more or less than three vessels;

(-d-) abnormal abdominal wall; or

(-e-) spinal dimple.

(III) any non-vertex delivery;

(IV) absence of urination within 12-24 hours;

(V) absence of meconium passage within 24-36 hours;

(VI) head/length ratio discrepancy; or

(VII) any other condition or symptom which poses a risk to the infant, as assessed by a midwife exercising ordinary skill and education.

(x) If any of the following conditions or symptoms are noted in the infant during the first four to six weeks of life, the neonate will be referred in a timely manner to a licensed physician who has current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision:

(I) vital signs that indicate the following:

(-a-) pulse rate persistently less than 110 beats per minute or greater than 160 beats per minute;

(-b-) respiratory rate persistently less than 30 breaths per minute or greater than 60 breaths per minute and/or difficulty breathing and/or grunting and/or nasal flaring and/or sternal retraction; or

(-c-) temperature persistently above 99.6 degrees Farenheit or less than 96.5 degrees Farenheit axillary;

(II) physical exam that indicates the following:

(-a-) flaccidity and/or lethargy and/or irritability;

(-b-) asymmetrical movements of extremities:

(-1-) spasticity;

(-2-) seizure and/or twitching and/or tremor;

(-3-) abnormal tone; or

(-4-) persistent jitteriness.

(-c-) vomiting and/or choking;

(-d-) persistent poor suck and/or poor swallow;

(-e-) central cyanosis;

(-f-) pale;

(-g-) persistent "beefy" red skin in conjunction with other signs and symptoms;

(-h-) mottling of skin with normal temperature;

(-i-) jaundice;

(-j-) presence of abnormal rash or vesicles;

(-k-) loss of consciousness;

(-l-) failure to appropriately wet eight to ten diapers per day;

(-m-) failure to pass stool in a normal manner;

(-n-) bloody stool or abdominal distention;

(-o-) poor feeding, less than eight feedings daily; or

(-p-) failure to gain weight.

(III) abnormal lab:

(-a-) newborn screening; or

(-b-) positive syphilis serology; or

(IV) any other condition or symptom which poses a risk to the infant, as assessed by a midwife exercising ordinary skill and education.

(4) Guidelines for safe and competent care.

(A) The midwife will collect and assess maternal care data through a detailed obstetric, gynecologic, medical, social, and family history and a complete prenatal physical exam and appropriate laboratory testing; develop and implement a plan of care; thereafter evaluate the client's condition on an ongoing basis; and modify the plan of care as necessary:

(i) Antepartum evaluation. The following components will be included in the antepartum evaluation:

(I) History. The history will include an inquiry regarding all of the following categories:

(-a-) client identification;

(-b-) age;

(-c-) race, ethnicity;

(-d-) psychosocial/economic;

(-e-) drug/alcohol/tobacco;

(-f-) medications;

(-g-) allergies;

(-h-) gynecologic;

(-i-) menstrual;

(-j-) contraceptive;

(-k-) sexual;

(-l-) HIV risk;

(-m-) obstetric;

(-n-) current pregnancy;

(-o-) perinatal risk;

(-p-) current problems;

(-q-) medical;

(-r-) surgical;

(-s-) anesthesia problems;

(-t-) hospitalizations;

(-u-) transfusions;

(-v-) family/genetic;

(-w-) immunization status (Td, rubella, etc.);

(-x-) nutrition; and

(-y-) abuse/trauma.

(II) Physical exam/assessment. The physical exam/assessment will include at least the following:

(-a-) weight and height;

(-b-) blood pressure;

(-c-) pulse;

(-d-) breasts, to include teaching on self exam (may be referred);

(-e-) abdomen, to include fundal height, estimated fetal weight, and fetal heart tones;

(-f-) pelvic, to include external genitalia, vagina, cervix, uterus, adnexa, and pelvimetry (unless contraindicated);

(-g-) fetal lie and presentation, if equal to or greater than 36 weeks;

(-h-) estimation of gestational age by physical findings; and

(-i-) assessment of varicosities, edema, and reflexes.

(III) Laboratory. The client will be encouraged to have the following laboratory tests performed:

(-a-) hemoglobin and/or hematocrit or CBC;

(-b-) urine dipstick for protein, glucose, and nitrites;

(-c-) syphilis serology;

(-d-) blood group, Rh type, and antibody screen;

(-e-) hepatitis B surface antigen;

(-f-) rubella screen;

(-g-) pap smear;

(-h-) gonorrhea test, if at risk;

(-i-) chlamydia test, if at risk;

(-j-) HIV test, if at risk; and

(-k-) hemoglobin electrophoresis, if Black or of Italian, Greek, Mediterranean, Philippine or Oriental ancestry and not previously tested.

(IV) Assessment. At the conclusion of the initial evaluation the antepartum client's overall health and risk status will be assessed. The assessment will include a consideration of at least the following:

(-a-) gestational age;

(-b-) maternal status;

(-c-) fetal status;

(-d-) nutritional/Women, Infants, and Children (WIC) status;

(-e-) psychosocial status; and

(-f-) educational needs.

(V) Plan. A plan of care will be developed based upon the assessment of the antepartum client. The plan of care will include a referral plan for diagnosis and treatment if necessary.

(VI) Education and counseling. Health education/counseling will be provided and will include consideration of at least the following (depending upon gestational age, certain of these items may be covered during subsequent visits as appropriate):

(-a-) midwife services/routine;

(-b-) reproductive physiology/anatomy;

(-c-) roles of various members of the health care team;

(-d-) caution concerning medications, recreational drugs, alcohol, tobacco, x-ray and chemical exposure, and sexual transmitted disease (STD) exposure;

(-e-) HIV infection;

(-f-) toxoplasmosis risk;

(-g-) environmental/work hazards;

(-h-) nutritional needs of pregnancy, weight gain, referral to WIC;

(-i-) danger signs of pregnancy appropriate to gestational age;

(-j-) when to seek medical care and where to obtain care in the case of an emergency;

(-k-) delivery arrangements;

(-l-) signs and symptoms of preterm labor;

(-m-) labor;

(-n-) rupture of membranes;

(-o-) fetal movement;

(-p-) minor discomforts/symptoms of pregnancy;

(-q-) comfort measures;

(-r-) physical changes of pregnancy, fetal growth;

(-s-) sexual activity;

(-t-) self breast exam;

(-u-) physical activity/exercise/posture;

(-v-) preparation for labor and delivery, childbirth classes;

(-w-) preparation for parenthood and arrangement for infant health care;

(-x-) infant feeding choices, breast-feeding should be promoted; and

(-y-) family planning/ postpartum care.

(ii) Subsequent antepartum evaluations. The following components will be included in each subsequent antepartum evaluation:

(I) History. Each follow-up history will include an inquiry regarding at least the following historical categories:

(-a-) current problems;

(-b-) progress of pregnancy to include an evaluation of fetal movement after 20 weeks;

(-c-) perinatal risks; and

(-d-) follow-up of problems identified in previous visits.

(II) Physical assessment. Each follow-up assessment will include at least the following:

(-a-) weight;

(-b-) blood pressure;

(-c-) abdomen, to include fundal height, estimated fetal weight, and fetal heart tones;

(-d-) fetal lie and presentation, if equal to or greater than 36 weeks;

(-e-) estimation of gestational age by physical findings; and

(-f-) assessment of varicosities and edema.

(III) Laboratory. Each follow-up assessment will include at least the following:

(-a-) urine dipstick for protein, glucose, and nitrites; and

(-b-) each client will be encouraged to have the following laboratory tests performed at the times indicated:

(-1-) hemoglobin and/or hematocrit at 28 and 36 weeks;

(-2-) blood glucose screening one hour post oral 50 gram glucose load at 24 to 28 weeks;

(-3-) if Rh negative, and initial antibody screen negative, repeat antibody screen at 28 weeks as precursor to Rh immune globulin administration. If the screen is still negative, the midwife will recommend that the client receive Rh immune globulin. If antibody screen is positive, refer to physician; and

(-4-) Maternal Serum Alpha-Fetoprotein (MSAFP) or triple screen, ideally at 16 to 18 weeks, may be done from 15 to 20 weeks.

(IV) Assessment. Each follow-up evaluation will conclude with an assessment which includes a consideration of at least the following:

(-a-) gestational age;
(-b-) maternal status;
(-c-) fetal status;
(-d-) nutritional/WIC status;
(-e-) psychosocial status; and
(-f-) educational needs.

(V) Plan. The current plan of care will be continued or modified based upon the assessment of the client. The plan will include a referral plan for diagnosis and treatment if necessary.

(VI) Education and counseling. The following health education and counseling components will be discussed or reviewed at subsequent evaluations as appropriate to the client's gestational age and needs:

(-a-) danger signs of pregnancy appropriate to gestational age;
(-b-) signs and symptoms of preterm labor, 24-36 weeks;
(-c-) true/false labor, if equal to or greater than 36 weeks;
(-d-) rupture of membranes;
(-e-) fetal movement;
(-f-) comfort measures;
(-g-) weight gain;
(-h-) physical activity/exercise/posture;
(-i-) physical changes of pregnancy/fetal growth;
(-j-) delivery arrangements;
(-k-) preparation for labor and delivery, childbirth classes;
(-l-) preparation for parenthood and arrangement for infant health care;
(-m-) infant feeding choices, breast-feeding should be promoted; and
(-n-) family planning/postpartum care.

(iii) Routine antepartum visits. Routine antepartum visits will be scheduled according to the following intervals:

(I) every four weeks for the first 28 weeks;

(II) every two to three weeks from 28 to 36 weeks;

(III) every week after 36 weeks; or

(IV) more frequently, if indicated.

(iv) Recommended vitamins. The midwife should recommend to all clients that they take one, over-the-counter, prenatal, multi-vitamin supplement with folic acid/iron each day (unless allergic or contraindicated).

(B) The midwife will appropriately evaluate the client when the midwife arrives for the labor and delivery, by obtaining a history, performing a physical exam, and performing a laboratory evaluation. The following components will be included in the evaluation of the client:

(i) History. The history will include an inquiry regarding all of the following:

(I) contractions onset, frequency, duration;

(II) other abdominal or pelvic pain;

(III) status of membranes if ruptured, when, amount, clear versus meconium stained;

(IV) vaginal bleeding;

(V) fetal movement; and

(VI) other problems or concerns.

(ii) Physical assessment. The physical will include at least the following:

(I) blood pressure;

(II) pulse;

(III) temperature;

(IV) abdomen, to include estimated fetal weight, fetal lie and presentation, and fetal heart tones;

(V) assessment of varicosities and edema; and

(VI) pelvic exam (unless contraindicated) which will include the following:

(-a-) external genitalia;
(-b-) cervix for dilatation, effacement, station, presentation, and position; and
(-c-) a sterile speculum exam, if necessary, prior to or in lieu of the cervical exam to evaluate for possible rupture of membranes.

(iii) Laboratory. The laboratory assessment will include a urine dipstick for protein, glucose, and nitrites.

(C) The midwife will appropriately monitor the client after the midwife's arrival for the labor and delivery. This monitoring will be done unobtrusively in order not to disturb the physiological process of labor. The following components will be included in the evaluation:

(i) Vital signs. The following vital signs will be obtained:

(I) blood pressure to be measured at least every two hours, or more frequently if indicated;

(II) pulse to be taken at least every four hours;

(III) respirations to be evaluated at least every four hours; and

(IV) temperature to be measured at least every four hours unless equal to or greater than 99 degrees Farenheit, then measured at least every one to two hours.

(ii) Contractions. Contractions will be monitored as follows:

(I) frequency, duration, and intensity at least every two hours in the latent phase of the first stage;

(II) frequency, duration, and intensity at least every 30 minutes to one hour in the active phase of the first stage or as indicated by heart rate patterns; and

(III) frequency, duration, and intensity at least every 15 minutes in the second stage.

(iii) Fetal heart tones. Fetal heart tones will be auscultated as follows:

(I) for routine monitoring, first establish a baseline by listening for several minutes before, during, and after

a contraction; then listen during and for at least 30 seconds following a contraction according to the following schedule:

(-a-) at least every two hours in the latent phase of the first stage;

(-b-) at least every 30 minutes in the active phase of the first stage;

(-c-) at least every 15 minutes in the second stage; and

(-d-) for at least 30 seconds immediately after rupture of the membranes, and during and for at least 30 seconds following the next contraction.

(II) For VBAC monitoring, first establish a baseline as in subclause (I) of this clause, then listen during and for at least 30 seconds following a contraction according to the following schedule:

(-a-) at least every two hours in the latent phase of the first stage;

(-b-) at least every 15 minutes in the active phase of the first stage;

(-c-) at least every five minutes in the second stage; and

(-d-) for at least 30 seconds immediately after rupture of the membranes, and during and for at least 30 seconds following the next contraction.

(III) As indicated for bleeding or other signs of a possible problem.

(iv) Cervical and vertex status. Vaginal examinations are performed to assess the progress of labor. Although necessary, they will be kept to a minimum to reduce the risk of infection. Attention will be directed toward aseptic technique. Cervical dilatation and effacement and vertex station and position will be evaluated during each exam.

(v) Membrane status. Membrane status will be monitored for rupture, relative fluid volume, foul odor, and the presence of meconium once ruptured:

(I) temperature monitored every four hours;

(II) pulse monitored every four hours; and

(III) minimal sterile vaginal exams.

(vi) Intake/output status. The intake/output of the client will be monitored as follows:

(I) intake all oral or other intake will be monitored on an ongoing basis; and

(II) urinary output the client will be encouraged to void at least every two to three hours. Frequency and relative volume of voiding will be monitored on an ongoing basis.

(vii) Subjective status. The client will be monitored for complaints and concerns.

(viii) The following will not occur:

(I) application of pressure on abdomen or uterus at any stage in labor; and

(II) administration by any method (buccal, vaginal, IM, IV, intranasal, etc.) of oxytocin (Pitocin, Syntocinon, Uteracon), ergot, or prostaglandins prior to or during labor. Oxytocin or ergot may be administered after delivery of the placenta only under delegated authority of a licensed physician with current obstetric knowledge.

(D) The midwife will appropriately assist in normal, spontaneous vaginal deliveries.

(i) When delivery is imminent, the patient will not be left unattended, nor should any attempt be made to delay the birth of the infant by physical restraint; and

(ii) Forceps or vacuum extraction will not be utilized.

(E) The midwife will appropriately monitor and advise the mother during the immediate postpartum period for at least two hours and until her condition is stable. The following components will be evaluated or covered during this time period:

(i) Vital signs. The following vital signs will be obtained:

(I) blood pressure to be measured at least every 15-30 minutes during the first hour and then every hour if stable;

(II) pulse to be taken at least every 15-30 minutes during the first hour and then every hour if stable;

(III) respirations to be taken at least every 15-30 minutes during the first hour and then every hour if stable; and

(IV) temperature to be taken at least every four hours.

(ii) Intake/output status. Intake and output will be monitored.

(iii) Physical assessment. The client will be assessed frequently to assure that:

(I) the uterine fundus is well contracted; and

(II) bleeding is not excessive.

(iv) Subjective status. The client will be monitored for complaints and concerns.

(v) Laboratory and isoimmunization prophylaxis. If unsensitized and Rh negative, the client will be referred to a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision within 72 hours of delivery for laboratory work-up and administration of Rh immune globulin or the midwife will obtain the necessary laboratory specimen and administer Rh immune globulin under standing delegation order from a licensed physician with current obstetric knowledge within 72 hours of delivery.

(vi) Education and counseling. Health education and counseling will be provided and will include consideration of at least the following (reinforcement will occur during subsequent postpartum visits):

(I) diet/nutrition;

(II) bowel/bladder function;

(III) postpartum bleeding;

(IV) perineal care;

(V) breast-feeding;

(VI) warning signs;

(VII) pain relief;

(VIII) physical activity/exercise;

(IX) sexual activity;

(X) contraception; and

(XI) infant care located in subparagraph (F)(iii) and subparagraph (J)(vi) this paragraph.

(F) The midwife will appropriately evaluate the newborn by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the immediate postpartum period; provide necessary infant care; and provide pertinent education and counseling to the mother:

(i) Evaluation and monitoring. The following components will be included in the evaluation and monitoring of the infant.

(I) Vital signs. APGAR scores will be obtained at one minute and five minutes. If the five minute score is less than seven, obtain additional scores every five minutes until twenty minutes has passed or two successive scores are equal to or greater than 7. The following vital signs will be taken at 30 minute intervals for at least two hours or until the infant's temperature has stabilized, whichever is longer:

(-a-) pulse;
(-b-) respirations (rate and effort); and
(-c-) temperature.

(II) Physical exam. The physical exam will include at least the following:

(-a-) skin;
(-b-) head and neck;
(-c-) eyes, ears, nose, and throat;
(-d-) fontanel;
(-e-) heart/lungs;
(-f-) abdomen;
(-g-) umbilical cord;
(-h-) external genitalia;
(-i-) back;
(-j-) extremities (check for hip dislocation);
(-k-) neurological exam; and
(-l-) weight, length, head circumference.

(III) Laboratory.

(-a-) Cord blood will be taken and submitted to a state-approved lab for testing for syphilis. In the event that cord blood is not obtained, the midwife will arrange for collection of a specimen of blood from the mother within 24 hours after delivery and submit such sample to an approved laboratory; and

(-b-) The blood specimen for the first newborn screening will be obtained after 36 hours of age. It should be obtained after the baby has been breast-feeding or on protein (milk) feeding for at least 24 hours. The second screen will be done between one and two weeks of age.

(IV) Monitoring. The newborn will be observed for a minimum of two hours if stable with no signs of distress.

(ii) Care of the infant. The following components will be included in the care of the infant.

(I) Prophylaxis. Eye treatment will be provided within two hours after birth using one of the CDC approved ophthalmic preparations, i.e., silver nitrate, erythromycin, or tetracycline; and

(II) Feeding. Feeding can begin in the immediate newborn period if the infant is stable with no signs of distress.

(iii) Education and counseling. The following components will be included in education and counseling of the mother:

(I) Signs and symptoms. The significance of the following if observed in the newborn will be discussed:

(-a-) poor suck;
(-b-) abnormal cry;
(-c-) irritability, lethargy; or
(-d-) elimination:

(-1-) abnormalities with urine; or

(-2-) abnormalities with stool.

(II) Health care and immunization. Information regarding health care and immunization will be provided as follows:

(-a-) Routine pediatric care by a licensed physician with current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision will be recommended to begin at birth. Arrangements with an appropriate physician or other health care provider should be made during the antepartum period;

(-b-) The administration of the first hepatitis B vaccine at 12 hours of age will be discussed; the client will also be educated during the antepartum period about hepatitis B and the newborn hepatitis B vaccine; and

(-c-) The client should be referred to a licensed physician or other health care provider for vaccine information.

(G) The midwife will appropriately evaluate the mother at one to two days postpartum, including the following components.

(i) History. The history will include consideration of at least the following:

(I) current problems;

(II) abdominal/uterine/perineal pain;

(III) bleeding;

(IV) intake/output; and

(V) breast-feeding.

(ii) Physical assessment. The physical assessment will include at least the following:

(I) blood pressure;

(II) pulse;

(III) respirations;

(IV) temperature;

(V) breasts;

(VI) abdomen/fundus;

(VII) perineum; and

(VIII) assessment of varicosities and edema.

(iii) Laboratory. Hemoglobin and/or hematocrit or CBC will be strongly encouraged.

(iv) Assessment. The assessment will include at least the following:

(I) physical status;

(II) nutritional/WIC status; and

(III) psychosocial status.

(v) Plan. A plan of care will be developed based upon the assessment of the client. The plan of care will include a referral plan for diagnosis and treatment if necessary. The client will be counseled regarding family planning, contraception, and routine health care provided by a licensed physician or another licensed health care provider supervised by a licensed physician. The client's prenatal, multi-vitamin supplement with folic acid/iron should be continued during the postpartum period unless contraindicated.

(H) The midwife will appropriately evaluate the mother at two to three weeks postpartum, including the following components:

(i) History. The history will include consideration of at least the following:

(I) drugs/alcohol/tobacco;

(II) medications;

(III) current problems;

(IV) nutrition;

(V) bowel/bladder function;

(VI) abdominal/uterine/perineal pain;

(VII) bleeding; and

(VIII) breast-feeding.

(ii) Physical assessment. The physical assessment will include at least the following:

(I) blood pressure;

(II) pulse;

(III) weight;

(IV) abdomen/fundus;

(V) perineum; and

(VI) assessment of varicosities and edema.

(iii) Assessment. The assessment will include at least the following:

(I) physical status;

(II) nutritional/WIC status; and

(III) psychosocial status.

(iv) Plan. The current plan of care will be continued or modified based upon the assessment of the client. Family planning, contraception, and the client's medical postpartum follow up will be discussed.

(I) The midwife will appropriately evaluate the mother at four to six weeks postpartum, including the following components.

(i) History. The history will include consideration of at least the following categories:

(I) drugs/alcohol/tobacco;

(II) medications;

(III) allergies;

(IV) current problems;

(V) abdominal/uterine/perineal pain;

(VI) nutrition;

(VII) bowel/bladder function;

(VIII) bleeding;

(IX) menstruation;

(X) gynecologic;

(XI) sexual activity;

(XII) contraception; and

(XIII) abuse/trauma.

(ii) Physical exam/assessment. The physical exam/ assessment will include at least the following:

(I) blood pressure;

(II) pulse;

(III) weight;

(IV) abdomen;

(V) pelvic exam to include external genitalia, vagina, cervix, uterus, and adnexa; and

(VI) assessment of varicosities and edema.

(iii) Laboratory. Hemoglobin and/or hematocrit or CBC will be encouraged.

(iv) Assessment. The assessment will include at least the following:

(I) physical status;

(II) nutritional/WIC status; and

(III) psychosocial status.

(v) Plan of care. A plan of care will be developed based upon the assessment of the client. The plan of care will include a referral plan for diagnosis and treatment if necessary. Family planning, contraception, and routine health care follow up provided by a licensed physician or other licensed health care provider operating under the supervision of a licensed physician should be reiterated.

(J) The midwife appropriately encourages follow-up care of the infant in concert with the mother for the first four to six weeks postpartum. The following components will be included in each evaluation of the newborn.

(i) History. The history will include consideration of at least the following categories:

(I) feeding;

(II) bowel and bladder function;

(III) concerns of mother;

(IV) problems;

(V) illnesses;

(VI) allergies; and

(VII) evaluations by other health care providers.

(ii) Vital signs. The following vital signs will be taken:

(I) pulse;

(II) respiratory rate; and

(III) temperature.

(iii) Physical assessment. The physical assessment will include at least the following:

(I) general health;

(II) muscle tone;

(III) feeding pattern;

(IV) color;

(V) skin condition;

(VI) elimination; and

(VII) cumulative weight gain.

(iv) Assessment. The infant's overall health and risk status will be assessed. The assessment will include at least the following:

(I) physical status; and

(II) feeding and weight gain status.

(v) Plan of care. A plan of care will be developed based upon the assessment of the infant. The plan of care will include a referral plan for diagnosis and treatment if necessary. The midwife will encourage the mother to take the infant to a licensed physician with current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision for a complete six week assessment.

(vi) Education and counseling. Health education and counseling will be provided to the mother and reviewed as appropriate to the infant's age and needs. It will include consideration of at least the following:

(I) diet, nutrition;

(II) bowel and bladder function;

(III) growth, weight gain;

(IV) bathing;

(V) clothing;

(VI) injury/poison prevention;

(VII) danger signs, illness;

(VIII) medical care and follow up; and

(IX) immunizations.

(5) Safe environment. The midwife:

(A) assesses the birth setting for reasonable freedom from environmental hazards;

(B) arranges, with the cooperation of the woman and family, the intended birth place;

(C) brings her/his own equipment;

(D) will not make arrangements for a home delivery if there is no phone available at the home or nearby or an adequate emergency transport system;

(E) promotes involvement of family and support persons in the birth setting;

(F) does not leave the client unattended during established active labor;

(G) is available and responds promptly to her client's needs;

(H) follows accepted infection control procedures regarding equipment, examinations, and procedures; and

(I) is familiar with and practices universal precautions established by Occupational Safety and Health Administration (OSHA) guidelines.

(6) Community systems. The midwife:

(A) collaborates and consults with and refers to the available medical and health care community;

(B) utilizes ancillary health and social community services; and

(C) demonstrates knowledge of psychosocial, economic, cultural, and family factors that may affect care, appropriate collaboration, and referral.

(7) Midwifery care records. The midwife:

(A) completely and accurately documents the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(B) utilizes a record format that facilitates communication of information to consultants or other appropriate providers of care;

(C) facilitates clients' access to their own records;

(D) maintains the confidentiality of client records; and

(E) retains records for a minimum of five years.

(8) Evaluation and quality assurance. The midwife:

(A) collects client care data systematically and is involved in analysis of that data for evaluation of the process and outcome of care;

(B) seeks consultation to review problems identified by the midwife or by other professionals or consumers in the community; and

(C) acts to resolve problems that are identified.

(9) Sample Prenatal Genetic Screen. The following questions on this sample prenatal genetic screening form should be answered to determine possible risks.

Figure: 22 TAC §831.51(b)(9)

§831.111. Eye Prophylaxis.

(a) A midwife is responsible for seeing that every infant which she or he delivers receives the necessary eye prophylaxis to prevent ophthalmia neonatorum, in accordance with the medications specified by the Texas Department of Health.

(b) The administration and possession of prophylaxis by a midwife is not a violation of the provisions of the Health and Safety Code, Chapter 483, concerning dangerous drugs.

§831.121. Newborn Screening.

(a) Each midwife who assists at the birth of a child is responsible for seeing that newborn screening tests are performed according to the Health and Safety Code, Chapters 33 and 34, and §§37.51-37.69 of this title (relating to Newborn Screening Program). The midwife may perform the tests or refer for them. If she or he does them, then she or he must have been appropriately trained. Each

midwife must have one of the following documents on file with the midwifery program in order to be documented.

(1) Midwife Training Certification Form for Newborn Screening Specimen Collection. Should the midwife choose to do the newborn screening she or he will obtain training to perform this test from an appropriate health care facility. Instruction will be based upon the procedure for newborn screening developed by the department's Newborn Screening Program under authority of the Health and Safety Code, Chapter 33. The midwife who requests the training must show the training facility a copy of her or his documentation form to prove that she or he is in compliance with the Midwifery Act. At the completion of the instruction for newborn screening blood collection, the midwife will request that the form *Midwife Training Certification Form for Newborn Screening Specimen Collection* be signed by the designated representative of the health care facility, attesting to the fact that the midwife has complied with this requirement. This training, as part of the documentation requirements, is only necessary once unless there is a change in screening procedures.

(2) Newborn Screening Agreement for Newborn Babies of Midwife Clients. The midwife could also choose to refer the family to have the infant's screening done at an appropriate health care facility. In this case, the midwife must use the form *Newborn Screening Agreement for Newborn Babies of Midwife Clients* to attest to her responsibility for seeing that the screening is done and to designate a facility for such screening. The form must include a section where the facility representative signs, agreeing that the facility will do the screening.

(b) As long as the midwife has been approved to perform the newborn screening test, the act of collecting this specimen will not constitute "practicing medicine" as defined by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §1.03(a)(12).

(c) As long as one is available, a physician or an appropriately trained professional acting under standing delegation order from a physician at an appropriate health care facility shall instruct midwives in the proper procedure (newborn screening collection procedure of the department's Newborn Screening Program) for newborn screening blood specimen collection and submission. The physician, registered nurse, or any other person who instructs a midwife in the approved techniques for newborn screening on the orders of a physician is immune from liability arising out of the failure or refusal of a midwife to:

(1) collect and submit the blood specimen in an approved manner; or

(2) send the samples to the designated department laboratories in a timely manner.

§831.131. Informed Choice and Disclosure Statement.

As required in this section, each midwife shall disclose in oral and written form to a prospective client the limitations on the skills and practices of the midwife. The written informed choice and disclosure statement which has been approved by the Midwifery Board shall include:

(1) an informed choice statement containing:

(A) statistics of the midwife's experience as a midwife;

(B) the date of expiration of the midwife's documentation;

(C) the date of expiration of the midwife's adult and infant cardiopulmonary resuscitation and neonatal resuscitation certification;

(D) the midwife's compliance with continuing education requirements; and

(E) medical backup arrangements; and

(2) a disclosure statement, which includes the legal requirements of the midwife and prohibited acts as stated in the Texas Midwifery Act. The disclosure statement may not exceed 500 words and must be in Spanish and English.

§831.141. Provision of Support Services.

This provision applies to the Texas Department of Health (department), a local health department, a public health district, or a local health unit which is owned, operated, or leased by a political subdivision of the state. The appropriate governmental entity is required to provide clinical and laboratory services to pregnant women and newborns who are clients of midwives as long as the services are required of the midwives by the Texas Midwifery Act. The procedure and requirements for the clinical and laboratory services are as follows.

(1) The laboratory tests are those which are standard for prenatal, postpartum, family planning and newborn care (to include serology and newborn screening).

(2) The clinical services include prenatal, postpartum, child health and family planning services.

(3) A reasonable fee may be charged for such services; however, no person may be denied services because of inability to pay.

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 February 12, 1999.

TRD-9900958
Edna Dougherty
Chair
Texas Midwifery Board
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Subchapter L. Medical Advisory Board

25 TAC §1.151

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

The Texas Department of Health (department) proposes the repeal of §1.151 and new §1.151 and §1.152, concerning the operation of the Medical Advisory Board (MAB). As called for by Health and Safety Code, §12.095, the MAB makes

recommendations to the Texas Department of Public Safety (DPS) regarding the possible medical limitations of driver licensees/applicants, and/or factors which may affect the sound judgment of concealed handgun licensees/applicants.

The General Appropriations Act, HB1, Article IX, Rider 167, passed by the 75th Legislature, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Section 1.151 has been reviewed and the department has determined that reason for-adopting the section continues to exist in that a rule on this subject is needed; however, the rule needs revision as described in the preamble.

New §1.151 and §1.152 became necessary due to legislation in the 75th Legislature, Regular Session. Specifically, HB 2909 amended §12.092 and §12.095 of the Health and Safety Code to additionally require the MAB to assist DPS in determining whether an applicant for or a holder of a license to carry a concealed handgun is capable of exercising sound judgment with respect to the proper use and storage of a handgun. References to the Medical Standards on Motor Vehicle Operations Division (MSMVO) have been replaced with language referring to the Medical Advisory Board or the bureau. New §1.152 creates a department physician to serve as permanent chair of the MAB for quality improvement, to ensure stability and to increase the efficiency of the panel.

The department published a Notice of Intention to review §1.151 as required by Rider 167 in the *Texas Register* (23 TexReg 9076) on September 4, 1998. No comments were received by the department on this section.

Gene Weatherall, Bureau Chief, has determined that for each year of the first five-year period the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Weatherall 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 fewer, but more effective meetings and more thorough deliberation of the cases. There will be no effect on small business. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated impact on local employment.

Comments on the proposal may be submitted in writing to Gene Weatherall, Chief, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6700. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The repeal is proposed under the Health and Safety Code, §§12.001, 12.092, 12.094 and 12.095, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The repeal affects the Health and Safety Code, §12.094, the Health and Safety Code, Chapter 12; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§1.151. Operation of the Medical Advisory Board and the Medical Standards on Motor Vehicle Operations Division.

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 February 12, 1999.

TRD-9900940
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

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25 TAC §1.151, §1.152

The new sections are proposed under the Health and Safety Code, §§12.001, 12.092, 12.094 and 12.095, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The new sections affect the Health and Safety Code, §12.094, the Health and Safety Code, Chapter 12; and the General Appropriations Act, House Bill 1, Article IX, Rider 167, passed by the 75th Legislature.

§1.151. Definitions.

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

(1) Applicant - An individual referred by the Texas Department of Public Safety (DPS) to the Medical Advisory Board (MAB) for medical review.

(2) Bureau - The Texas Department of Health, Bureau of Emergency Management staff, responsible for administering MAB activities.

(3) Commissioner - The Commissioner of Health.

(4) DPS -The Department of Public Safety.

(5) MAB -The Medical Advisory Board (MAB) is the body of physicians and optometrists licensed by the State of Texas and established under authority of the Health and Safety Code, §12.092, from which a panel is to be convened when opinions are requested by the DPS.

(6) MAB Chair - The Health Care Quality & Standards medical consultant physician appointed by the Commissioner of Health (commissioner) to chair the MAB, and to act in the capacity of a MAB member.

(7) MAB panel - A body of at least three MAB members, convened to review applicants and provide opinions at the request of the DPS.

§1.152. Operation of the Medical Advisory Board.

(a) Purpose. The purpose of this section is to establish the requirements governing the operation and administration of the Medical Advisory Board (MAB).

(b) Appointment and terms of office.

(1) The present MAB is divided into four groups:

(A) Group One's term will expire January 1 of even numbered years;

(B) Group Two's term will expire July 1 of even numbered years;

(C) Group Three's term will expire January 1 of odd numbered years; and

(D) Group Four's term will expire July 1 of odd numbered years.

(2) The commissioner shall appoint MAB members from:

(A) persons licensed to practice medicine in Texas, including physicians who are board certified in medicine, psychiatry, neurology, physical medicine, or ophthalmology, and who are jointly recommended by the Texas Department of Health (department) and the Texas Medical Association; and

(B) persons licensed to practice optometry in this state who are jointly recommended by the department and the Texas Optometric Association.

(3) The Health Care Quality and Standards medical consultant to the MAB shall serve as MAB chair.

(c) Meetings.

(1) Upon request by the Department of Public Safety (DPS), the Bureau of Emergency Management (bureau) shall convene a MAB panel.

(A) To take action as a panel, at least three members of the MAB must be present.

(B) Each panel member shall prepare an individual independent written report that states the member's opinion as to the ability of an applicant or licensee to operate a motor vehicle safely or to exercise sound judgment with respect to the proper use and storage of a handgun.

(2) Failure to attend scheduled meetings may result in a recommendation for the member's dismissal from the MAB by the MAB chair.

(3) The MAB shall meet in closed session to discuss records, reports, or testimony relating to the medical condition of an applicant or licensee. All such records, reports, and testimony are for the confidential use of the MAB and DPS and may not be disclosed to others except as authorized by the Transportation Code, Chapter 521, Subchapter N.

(d) Official records.

(1) The bureau may collect and maintain the individual medical records from a physician, hospital, or other health care provider necessary for use by the MAB. All records provided shall be kept confidential. Health care providers may request and shall be mailed a copy of any medical information they provided.

(2) The applicant shall provide current medical information to the MAB which is pertinent to the medical condition(s) for which DPS requested the review. Information shall be provided within 20 days by a licensed physician or a licensed medical facility. In lieu of a physician, any department-approved health care provider who treated the applicant may provide information regarding the candidate's fitness to operate a motor vehicle safely; or to the ability to exercise sound judgment with respect to the proper use and storage of a handgun.

(3) In its deliberations, the MAB panel may examine any medical records or reports containing material which may be relevant to the ability of the licensee or applicant to operate a motor vehicle safely or the ability to exercise sound judgment with respect to the proper use and storage of a hand gun. Additional information supplied to the bureau or DPS may be utilized. Any decision will be held in abeyance until the applicant provides all additional information deemed necessary by the MAB.

(4) An affidavit of MAB proceedings shall be prepared for DPS upon request.

(5) The members on the MAB shall issue recommendations or opinions to DPS. The final decision to issue, renew, restrict, or revoke a license shall rest entirely with DPS.

(6) MAB members other than the MAB chair shall be paid a meeting attendance fee in the amount of $100 per meeting.

(e) Impartiality. Any MAB member who is unable to be impartial as to any applicant before the MAB shall so declare this partiality to the members present and shall not participate in any MAB proceedings involving that applicant.

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 February 12, 1999.

TRD-9900941
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 14. County Indigent Health Care Program

Subchapter F. Advisory Committee

25 TAC §14.501

The Texas Department of Health (department) proposes an amendment to §14.501, concerning the Indigent Health Care Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of the Indigent Health Care Program.

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

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

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Government Code; to continue the committee until July 1, 2003; to change the composition of the committee; to clarify

that members holdover until their replacement is appointed; to standardize the time of the appointment process at every two years instead of every year; to require that the presiding officer and the assistant presiding officer of the committee will be selected by the chairman of the board for a term of two years; to allow a temporary vacancy in the office of assistant presiding officer to be filled by vote of the committee until appointment by the chairman of the board occurs; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in July rather than January; and reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

Debbie Blount, Associate Commissioner for Health Care Financing Program and Policy, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

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

Comments may be submitted to Rose Marie Linan, Indigent Health Care Program, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6458. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§14.501. Indigent Health Care Advisory Committee.

(a) (No change.)

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

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

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

(f) Composition.

(1) The committee shall be composed of 11 members consisting of four [~~two~~] consumer and seven [~~nine~~] other representatives appointed by the board.

(2) Since the composition of the committee as it existed on March 1, 1999, is changed under this section, existing members shall continue to serve until the board appoints members under the new composition.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their terms until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on August 31st of each even- numbered year.

(2) (No change.)

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

(1) Each officer shall serve until the June 30th of each odd-numbered year. Each officer may holdover until his or her replacement is appointed by the chairman of the board [~~next regular election of officers~~].

(2) (No change.)

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

(4) If the office of assistant presiding officer becomes vacant, it [~~A vacancy which occurs in the offices of presiding officer or assistant presiding officer~~] may be filled temporarily by vote of the committee until a successor if appointed by the chairman of the board [~~at the next committee meeting~~].

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

(7) The presiding officer and assistant presiding officer serving on January 1, 1999, will continue to serve until the chairman of the board appoints their successors.

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

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

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

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

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

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

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

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

(n) Statement by members.

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

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

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

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

(2) (No change.)

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

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

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

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

Filed with the Office of the Secretary of State, on February 12, 1999.

TRD-9900936
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 29. Purchased Health Services

Subchapter D. Medicaid Home Health Services

25 TAC §29.303, §29.305

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes amendments to §29.303 and §29.305, concerning recipient qualifications for home health services and home health services benefits and limitations.

The department has determined the need to amend its rules to ensure access to medically necessary diabetic supplies and related testing equipment, and to expedite the delivery of medically necessary home health services to recipients. The amendments remove the homebound requirement for receiving diabetic supplies and related testing equipment and permits the department to eliminate the prior authorization requirement for certain services.

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

Mr. Moritz also has determined that for each year of the five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to ensure accessibility to medically necessary services. There will be no effect on small businesses and there are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Nancy Nichols, Program Specialist III, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 338-6511. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under the Human Resources Code, §32.021 and Government Code §531.02, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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

§29.303. Recipient Qualifications for Home Health Services.

An eligible Medicaid recipient must meet the following requirements to qualify for Medicaid home health services:

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

(4) receive prior authorization from the department for home health services unless otherwise specified by the department; and

(5) (No change.)

§29.305. Home Health Services Benefits and Limitations.

(a) Home health service benefits include the following.

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

(3) Medical supplies. Medical supplies are covered benefits if they meet the following criteria.

(A) Medical supplies must be:

(i)-(iii) (No change.)

(iv) prior authorized unless otherwise specified by the department.

(B)-(C) (No change.)

(4) Durable medical equipment (DME). Durable Medical Equipment [~~DME~~] must meet the following requirements to qualify for reimbursement under Medicaid home health services.

(A) DME must:

(i) (No change.)

(ii) be prior authorized unless otherwise specified by the department;

(iii)-(vi) (No change.)

(B)-(D) (No change.)

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

(8) Diabetic supplies and related testing equipment. Diabetic supplies and related testing equipment must meet the following requirements to qualify for reimbursement under Medicaid home health services:

(A) diabetic supplies and related testing equipment must be prescribed by a physician;

(B) prior authorization is required unless otherwise specified by the department; and

(C) an eligible recipient is not required to be homebound to obtain diabetic supplies and related testing equipment.

(b) Home health service limitations include the following.

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

(4) Prior approval. Services or supplies furnished without prior approval, unless otherwise specified by the department, are not benefits.

(5) (No change.)

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

Filed with the Office of the Secretary of State, on February 22, 1999.

TRD-9901038
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 37. Maternal and Child Health Services

Subchapter H. Midwives

25 TAC §§37.171–37.174, 37.176, 37.177, 37.179, 37.181–37.185

The Texas Department of Health (department) proposes the repeal of §§37.171- 37.174, 37.176-37.177, 37.179, 37.181-37.185, concerning midwives. Specifically, the sections cover purpose; definitions, duties of the Texas Board of Health, the Midwifery Board, the Texas Department of Health, and the midwifery program coordinator; Midwifery Board meetings; additional information collected by the midwifery program; informed choice and disclosure statement; publishing of reports; newborn screening; injunctions and civil and criminal penalties; provision of support services; eye prophylaxis; and midwifery practice standards and principles.

The department proposes repeal of the sections in 25 Texas Administrative Code (TAC) in order that new sections may be proposed by the Texas Midwifery Board for adoption at 22 TAC, Examining Boards, Chapter 831, Midwives. The Texas Midwifery Board is authorized by the Texas Midwifery Act (the Act), Texas Civil Statutes, Article 4512i, §8A(b), to adopt rules concerning documentation of midwives; standards for approval of midwifery education courses, instructors, and facilities; standards for midwifery practice; basic and continuing midwifery education requirements; reporting and processing complaints; disciplinary procedures; procedures for reciprocity for initial documentation; and any additional rules necessary to implement any duty imposed on the board by the Act, subject to the approval of the Texas Board of Health. Effective December 1, 1998, the Midwifery Program and the Midwifery Board were administratively transferred from the department's Women's Health Division to the department's Professional Licensing and Certification Division. The new rules proposed by the Midwifery Board in 22 TAC, Chapter 831, can be found in this issue of the *Texas Register* in the Proposed Rule section.

Jack Baum, D.D.S., Acting Associate Commissioner for Community Resources and Development, 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 the repeals.

Dr. Baum also has determined that for each of the first five years the repeals are in effect, the public benefit anticipated is more effective regulation of the midwifery practice. There are no anticipated economic costs to small businesses or to persons who will be affected by the repeals. No effect on local employment is anticipated.

Written comments on the proposed repeals may be submitted to Yvonne Feinleib, Midwifery Program Director, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, telephone (512) 834-4523. Comments will be accepted for 30 days following publication of the proposed repeals in the *Texas Register*.

The repeals are proposed under Health and Safety Code, §12.001(b), which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

The repeals affect the Texas Midwifery Act, Texas Civil Statutes, Article 4512i.

Sections proposed for Repeal:

§37.171. Purpose.

§37.172. Definitions.

§37.173. Duties of the Texas Board of Health, the Midwifery Board, the Texas Department of Health and the Midwifery Program Coordinator.

§37.174. Midwifery Board.

§37.176. Additional Information.

§37.177. Informed Choice and Disclosure Statement.

§37.179. Publishing Reports.

§37.181. Newborn Screening.

§37.182. Injunctions and Civil and Criminal Penalties.

§37.183. Provision of Support Services.

§37.184. Eye Prophylaxis.

§37.185. Midwifery Practice Standards and Principles.

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 February 12, 1999.

TRD-9900956
Edna Dougherty
Chair
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 39. Primary Health Care Services Program

Subchapter B. State Primary Care Program Advisory Committee

25 TAC §39.41

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

The Texas Department of Health (department) proposes the repeal of §39.41, concerning the Community Oriented Primary Care Advisory Committee (committee). The committee has provided advice to the Texas Board of Health (board) and the department in planning, coordinating, and administering the development of a community-based comprehensive system of primary care, encompassing a full spectrum of psychosocial, preventive, acute/urgent, case management, and dental services.

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

In 1995, the board established a rule relating to the Community Oriented Primary Care Advisory Committee. The rule states that the committee will automatically be abolished on July 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should be abolished. Issues relating to the type of advice previously provided by the committee may be addressed through the establishment of ad hoc committees

Janet Lawson, M.D., Acting Chief, Bureau of Community Oriented Public Health, has determined that for each year of the first five years the repeal is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section since the section will no longer exist.

Dr. Lawson 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 section will be nonexistent since the section will no longer exist. There will be no effect on small businesses. There are no economic costs to persons as a result of this repeal. There will be no effect on local employment.

Comments may be submitted to Janet Lawson, M.D., Acting Chief, Bureau of Community Oriented Public Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-2177. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§39.41. Community Oriented Primary Care Advisory Committee

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 February 12, 1999.

TRD-9900945
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 115. Home and Community Support Services Agencies

Subchapter F. Advisory Committee

25 TAC §115.71

The Texas Department of Health (department) proposes an amendment to §115.71, concerning the Home and Community Support Services Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) in the area of licensing of home and community support services agencies and was established under the Health and Safety Code, §142.015.

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

In 1995, the board established a rule relating to the Home and Community Support Services Advisory Committee. The rule states that the committee will automatically be abolished on July 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until July 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Government Code; to add the task of advising the department on enforcement provisions as specified in the Health and Safety Code, §142.015(c); to continue the committee until July 1, 2003; to clarify who may call a meeting; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, or the committee except with certain approval; to require the committee's annual report in July rather than January; and to reference reimbursement of a member's expenses if authorized by the General Appropriations Act or budget execution process. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

C. Thomas Camp, Chief, Bureau of Licensing and Compliance, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

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

Comments may be submitted to Veronda Durden, Health Facility Licensing Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, 512/834-6647. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§115.71. Home and Community Support Services Advisory Committee.

(a) (No change.)

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

(c) (No change.)

(d) Tasks.

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

(3) The committee may advise the Texas Department of Health (department) on the implementation of enforcement provisions of the Health and Safety Code, Chapter 142.

(4) [~~(3)~~]The committee shall carry out any other tasks given to the committee by the board.

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

(f)-(h) (No change.)

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

(1) A meeting may be called by department [~~agreement of Texas Department of Health (department)~~] staff, [~~and either~~] the presiding officer, or any three members of the committee.

(2) (No change.)

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

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

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

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

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

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

(n) Statement by members.

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

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

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

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

(2) (No change.)

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

(p) Reimbursement for expenses. In accordance with the requirements set forth in the Government Code, Chapter 2110, a [~~A~~] committee member may [~~not~~] receive reimbursement for the member's expenses incurred for each day the member engages in official business [~~unless allowed under the Texas Civil Statutes, Article 6252-33~~] if authorized by the General Appropriations Act or budget execution process .

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

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

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TRD-9900942

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: April 4, 1999

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

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25 TAC §115.72

The Texas Department of Health (department) proposes an amendment to §115.72, concerning the Texas Department of Health/Board of Nurse Examiners (TDH/BNE) Memorandum of Understanding Advisory Committee (committee). The committee provides advice to the Texas Board of Health (board) and the Board of Nurse Examiners (BNE) regarding circumstances under which the provision of health-related tasks or services provided by a home and community support services agency are not considered to be the practice of professional nursing under the personal assistance services licensure category. The committee was established under the Health and Safety Code, §142.016(b).

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

In 1995, the board established a rule relating to the TDH/BNE Memorandum of Understanding Advisory Committee. The rule states that the committee will automatically be abolished on July 1, 1999. The board has now reviewed and evaluated the committee and has determined that the committee should continue in existence until July 1, 2003.

This section amends provisions relating to the operation of the committee. Specifically, language is revised to reference the Government Code; to continue the committee until July 1, 2003; to clarify that members holdover until their replacement is appointed; to clarify that the committee is prohibited from holding an executive session (closed meeting) for any reason; to clarify that the committee and its members may not participate in legislative activity in the name of the board, the department, the BNE, or the committee except with certain approval; to require the committee's annual report in July rather than January; and reimbursement for a committee member's expenses if authorized by General Appropriations Act or budget execution process. These changes will clarify procedures for the committee and emphasize the advisory nature of the committee.

C. Thomas Camp, Chief, Bureau of Licensing and Compliance, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering this section.

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

Comments may be submitted to Veronda Durden, Health Facility Compliance Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6647. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

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

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

§115.72. Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee.

(a) (No change.)

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

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

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

(f) Composition.

(1) The committee shall be composed of ten members [~~jointly appointed by the board and the BNE~~]. The members of the committee shall be appointed as follows:

(A) [~~(1)~~] one representative from the BNE and one representative from the Texas Department of Health (department);

(B) [~~(2)~~] one representative from the Texas Department of Mental Health and Mental Retardation;

(C) [~~(3)~~] one representative from the Texas Department of Human Services;

(D) [~~(4)~~] one representative from the Texas Nurses Association;

(E) [~~(5)~~] one representative from the Texas Association for Home Care, Incorporated, or its successor;

(F) [~~(6)~~] one representative from the Texas Hospice Organization, Incorporated, or its successor;

(G) [~~(7)~~] one representative of the Texas Respite Resource Network or its successor; and

(H) [~~(8)~~] two representatives of organizations such as the Personal Assistance Task Force or the Disability Consortium that advocate for clients in community-based settings.

(2) The representatives from the organizations listed in subparagraphs (1)-(7) may serve without further approval of the board or the BNE. The representatives of organizations described in subparagraph (8) must be approved by the board and the BNE before serving.

(g) Terms of office. The term of office of each member shall be six years. Members shall serve after expiration of their term until a replacement is appointed.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire on January 31 of each even-numbered year.

(2) (No change.)

(h) (No change.)

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

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

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

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

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

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

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

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

(n) Statement by members.

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

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

(o) Reports to board. The committee shall file an annual written report with the board and the BNE [~~in sufficient detail to allow each agency to report to the legislative budget board pursuant to Texas Revised Civil Statutes Annotated, Article 6252-33, §7~~].

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

(2) (No change.)

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board and the BNE each July [~~January~~]. It shall be signed by the cochairmen and appropriate department staff.

(p) Reimbursement for expenses. Except in accordance with the requirements set forth in the Government Code, Chapter 2110 [~~Texas Revised Civil Statutes Annotated, Article 6252-33, §4~~], a committee member shall [~~not~~] be reimbursed for expenses incurred for each day the member engages in official committee business if authorized by the General Appropriations Act or budget execution process.

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

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

Filed with the Office of the Secretary of State, on February 12, 1999.

TRD-9900944
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 143. Medical Radiologic Technologists

25 TAC §§143.1, 143.2, 143.4, 143.7–143.9, 143.11, 143.14, 143.16–143.20

The Texas Department of Health (department) proposes amendments to §§143.1, 143.2, 143.4, 143.7-143.9, 143.11, 143.14, and 143.16-143.20, concerning persons performing radiologic procedures. The amendments cover purpose and scope; definitions; fees; types of certificates and applicant eligibility; examinations; standards for the approval of curricula and instructors; continuing education requirements; disciplinary actions; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; hardship exemptions; and alternate training requirements.

The amendments add definitions for physician assistant, mobile radiography, mobile x-ray equipment and portable x-ray equip-

ment. All definitions are included with numbers to comply with the new *Texas Register* format required by 1 Texas Administrative Code, §91.1, effective February 17, 1998. Also, the amendments will add a waiver for training program fees for programs accredited by the Texas Higher Education Coordinating Board; list what is considered directly related continuing education topics; clarify dangerous or hazardous procedures for registered nurses and physician assistants; add qualifications for non-certified technician training program instructors; and update and clarify existing language.

Bernie Underwood, C.P.A., Chief of Staff Services, Health Care Quality and Standards, has determined that for each of the first five years the sections will be in effect, there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated decrease in revenue to the state of approximately $600 per year. There will be no fiscal implication for local government.

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

Comments on the proposal may be submitted to Jeanette Hilsabeck, Administrator, Medical Radiologic Technologist Certification Program, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3183, (512) 834-6617; FAX (512) 834-6677. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments are proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e) which provides the Texas Board of Health (board)with the authority to adopt rules necessary to implement the Act; and the Texas Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

These proposed amendments implement the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, 4512m.

§143.1. Purpose and Scope.

(a) (No change.)

(b) Scope. These sections cover definitions; the Medical Radiologic Technologist Advisory Committee; fees; applicability (exceptions to certification); application requirements and procedures; types of certificates; examinations; standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name or address; certifying persons with criminal backgrounds to be medical radiologic technologists; disciplinary actions; alternate eligibility requirements; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; [~~and~~] hardship exemptions; and alternate training requirements.

§143.2. Definitions.

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

(1) Act - The Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, Acts 1987, 70th Legislature, Chapter 1096, §3.01.

(2) Administrator - The department employee designated as the administrator of regulatory activities authorized by the Act.

(3) AMA - The American Medical Association.

(4) AP - Anterior/posterior.

(5) Applicant - A person who applies to the Texas Department of Health for a certificate or temporary certificate, general or limited.

(6) ARCRT - American Registry of Clinical Radiography Technologists and its successor organizations.

(7) ARRT - The American Registry of Radiologic Technologists and its predecessor or successor organizations.

(8) BCE - The Texas State Board of Chiropractic Examiners.

(9) BDE - The Texas State Board of Dental Examiners.

(10) Biennial - Occurring every two years.

(11) BME - The Texas State Board of Medical Examiners.

(12) BNE - The Texas State Board of Nurse Examiners.

(13) Board - The Texas Board of Health.

(14) BPE - The Texas State Board of Podiatry Examiners.

(15) Cardiovascular (CV) - Limited to the coronary vessels, atria, ventricula, ascending aorta and aortic arch.

(16) Certificate - A medical radiologic technologist certificate, general or limited, unless the wording specifically refers to one or the other, issued by the Texas Department of Health.

(17) Chiropractor - A person licensed by the Board of Chiropractic Examiners (BCE) to practice chiropractic.

(18) Committee - The Medical Radiologic Technologist Advisory Committee.

(19) Dentist - A person licensed by the Board of Dental Examiners (BDE) to practice dentistry.

(20) Department - The Texas Department of Health.

(21) Federally qualified health center (FQHC) - A health center as defined by 42 United States Code, §1396d(2)(B).

(22) Fluoroscopy - The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

(23) Fluorography - Hard copy of a fluoroscopic image; also known as spot films.

(24) General certification - An authorization to perform radiologic procedures.

(25) Instructor - An individual approved by the department to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

(26) JCAHO - The Joint Commission on Accreditation of Healthcare Organizations.

(27) JRCENMT - The Joint Review Committee on Education in Nuclear Medicine Technology and its successor organizations.

(28) JRCERT - The Joint Review Committee on Education in Radiologic Technology and its successor organizations.

(29) JRCCVT - The Joint Review Committee in Cardiovascular Technology.

(30) Limited certification - An authorization to perform radiologic procedures that are limited to specific parts of the human body.

(31) Limited Medical Radiologic Technologist (LMRT) - A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, podiatric, [~~and~~] chiropractic and cardiovascular.

(32) Medical radiologic technologist (MRT) - A person who holds a general certificate issued under the Act, and who, under the direction of a practitioner, intentionally administers radiation to other persons for medical reasons.

(33) Mobile radiography - Includes mobile x-ray equipment and portable x-ray equipment.

(34) Mobile x-ray equipment - Equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled.

(35) NMTCB - Nuclear Medicine Technology Certification Board and its successor organizations.

(36) Non-Certified Technician (NCT) - A person who has completed a training program and who is listed on the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

(37) PA - Posterior/anterior.

(38) Physician - A person licensed by the Board of Medical Examiners (BME) to practice medicine.

(39) Physician assistant - A person licensed as a physician assistant by the Texas State Board of Physician Assistant Examiners. 40) Podiatrist - A person licensed by the Board of Podiatry Examiners (BPE) to practice podiatry.

(41) Portable x-ray equipment - Equipment designed to be hand-carried.

(42) Practitioner - A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed under the laws of this state and who prescribes radiologic procedures for other persons for medical reasons.

(43) Radiation - Ionizing radiation in amounts beyond normal background levels from sources such as medical and dental radiologic procedures.

(44) Radiologic procedure - Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

(45) Registered nurse - A person licensed by the Board of Nurse Examiners (BNE) to practice professional nursing.

(46) Registry - A list of names and other identifying information of non-certified technicians.

(47) Sponsoring institution - A hospital, educational, or other facility, or a division thereof, that offers or intends to offer a course of study in medical radiologic technology.

(48) Supervision - Responsibility for and control of quality, radiation safety and protection, and technical aspects of the application of ionizing radiation to human beings for diagnostic and/or therapeutic purposes.

(49) Temporary certification, general or limited - An authorization to perform radiologic procedures for a limited period, not to exceed one year.

(50) TRCR - Texas Regulations for the Control of Radiation, 25 Texas Administrative Code, Chapter 289 of this title (relating to Texas Regulations for the Control of Radiation). The regulations are available from the Standards Branch, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189 (phone 1-512-834-6688).

§143.4. Fees.

(a) (No change.)

(b) The schedule of fees is as follows:

(1)-(16) (No change.)

(17) training program application fee - $350 (the application fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(18) training program amendment fee - $40 (the amendment fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(19) training program renewal fee - $150 (the renewal fee for training programs accredited by the Texas Higher Education Coordinating Board shall be waived);

(20)-(21) (No change.)

§143.7. Types of Certificates and Applicant Eligibility.

(a) General. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants for certification as a medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT).

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

(4) A person certified as an MRT or LMRT shall carry or display the original certificate or current identification card at the place of employment. Photocopies shall not be carried or displayed [~~but may be kept in a file~~].

(5) A person certified as an MRT or LMRT shall only allow his or her certificate to be copied for the purpose of verification by employers, licensing boards, professional organizations and third party payors for credentialing and reimbursement purposes. Other persons and/or agencies may contact the board's office in writing or by phone to verify certification.

(6) [~~(5)~~] No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(7) [~~(6)~~] No one shall make any alteration on any certificate or identification card issued by the department.

(b)-(e) (No change.)

(f) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (d) of this section.

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

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, mobile radiography [~~bedside radiography~~], nuclear medicine, and/or radiation therapy procedures. However, a person holding a limited certificate in the cardiovascular category may perform radiologic procedures involving the use of contrast media and fluoroscopic equipment for the purposes of diagnosing or treating a disease or condition of the cardiovascular system.

(4) (No change.)

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

§143.8. Examinations.

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

(c) Approved examination for the general certificate. A general certificate shall be issued upon successful completion of the Nuclear Medicine Technology Certification Board (NMTCB) examination or the appropriate examination of the American Registry of Radiologic [~~Clinical Radiography~~] Technologists (ARRT). The three disciplines are radiography, nuclear medicine technology, and radiation therapy technology. Determination of the appropriate examination shall be made on the basis of the type of educational program completed by the general temporary certificate holder.

(d) (No change.)

(e) Applicants approved for the limited certification examination will be allowed three attempts to pass the examination. The three attempts must be made within a three- year period of time. When either three unsuccessful attempts have been made or three years have expired, the individual is no longer considered eligible under this section. To be eligible for an additional examination the applicant must submit documentation indicating completion of remedial activities. The fourth attempt must occur within the one-year period following the third unsuccessful attempt. Those failing the fourth attempt, or waiting longer than one year following the third unsuccessful attempt, may only become eligible by re-entering and completing an approved limited certification program. Upon the applicant's successful completion of the examination, the department shall issue an approval letter for the limited certificate.

(f) [~~(e)~~] Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by the agency or organization administering the examination(s) for the department to each person issued any temporary certificate or approved under the provisions of §143.15 of this title.

(g) [~~(f)~~] Standards of acceptable performance. The scaled score to determine pass or fail performance shall be 75.

(h) [~~(g)~~] Completion of examination application forms. Each applicant shall be responsible for completing and transmitting appropriate examination application forms and paying appropriate examination fees by the deadlines set by the department or the agency or organization administering the examinations prescribed by the department.

(i) [~~(h)~~] Results.

(1) Notification of examinees. Results of an examination prescribed by the department but administered under the auspices of another agency will be communicated to the applicant by the department, unless the contract between the department and that agency provides otherwise.

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the department.

(3) Deadlines. The department shall notify each examinee of the examination results within 14 days of the date the department receives the results.

(j) [~~(i)~~] Refunds. Examination fee refunds will be in accordance with policies and procedures of the department or the agency or organization prescribed by the department to administer an examination. No refunds will be made to examination candidates who fail to appear for an examination.

§143.9. Standards for the Approval of Curricula and Instructors.

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

(d) Application procedures for limited certificate programs which are not accredited by JRCERT or JRCCVT. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

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

(6) The application shall include:

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

(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175 or verification of accreditation by the Texas Higher Education Coordinating Board; and

(J) (No change.)

(7)-(10) (No change.)

(e) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) (No change.)

(2) a clinical practicum for each category of limited curriculum is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart. Figure: 25 TAC §143.9(e)(2)

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

(C) For the skull category, the 100 hours of clinical experience must include a minimum of 4 [~~15~~] independently performed procedures to include the skull (posterior/anterior, anterior/posterior, lateral and occipital), paranasal sinuses, facial bones, and the mandible. At least two procedures must be the mandible. Only

one student shall receive credit for any one radiologic procedure performed.

(D) (No change.)

(f)-(i) (No change.)

(j) Application procedures for limited certificate programs accredited by JRCERT or JRCCVT.

(1) (No change.)

(2) The application must be notarized and shall be accompanied by the following items:

(A) (No change.)

(B) a copy of the current accreditation issued to the program by the JRCERT or JRCCVT;

(C)-(D) (No change.)

§143.11. Continuing Education Requirements.

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

(c) Content. All continuing education activities should provide for the professional growth of the technologist.

(1) At least 50% of the required number of hours must be activities which are directly related to the use and application of ionizing forms of radiation to produce diagnostic images and/or administer treatment to human beings for medical purposes. For the purpose of this section, directly related topics include, but are not limited to: radiation safety, radiation biology and radiation physics; anatomical positioning; radiographic exposure technique; radiological exposure technique; emerging imaging modality study; patient care associated with a radiologic procedure; radiopharmaceutics, pharmaceutics, and contrast media application; computer function and application in radiology; mammography applications; nuclear medicine application; and radiation therapy applications.

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

(d) (No change.)

(e) Additional acceptable activities. The additional activities for which continuing education credit will be awarded are as follows:

(1) successful completion or recertification in a cardiopulmonary resuscitation course, basic cardiac life support course, or advanced cardiac life support course during the continuing education period. Such successful completion or recertification shall be limited to not more than:

(A) three hours credit during a renewal period[~~;~~] for a cardiopulmonary resuscitation course or basic cardiac life support course; or

(B) six hours credit during a renewal period for an advanced cardiac life support course;

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

(f) Reporting of continuing education. Each MRT or LMRT is responsible for and shall complete and file with the department at the time of renewal or to be considered for renewal when in an extension, a continuing education report form approved by the department listing the title, date and number of hours for each activity for which credit is claimed. In the alternative, a technologist may request an exemption as set out in subsection (j) of this section or may submit a copy of the technologist's current and active annual registration or credential card indicating that the technologist is in good standing and not on probation in accordance with subsection (b)(8) of this section, with a signed statement that the technologist completed during the renewal period at least 50% of the required number of hours [~~12 clock hours~~] of continuing education directly related to the performance of a procedure utilizing ionizing radiation for medical purposes and that no more than 50% of the required number of hours shall be verifiable independent self-study activities.

(1) At the time of renewal [~~Following each renewal month~~] or at other times determined by the department, the department will select a random sample of technologists to verify compliance with the continuing education requirements. The technologists selected in the random sample shall submit at the time of renewal or within 30 days following notification from the department:

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

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

(g) (No change.)

(h) Activities unacceptable as continuing education. The department shall not grant credit for:

(1)-(9) (No change.)

(10) activities in accordance with subsection (e)(3) of this section in excess of the one-time credit per topic of instruction or in excess of a total of five contact hours during a continuing education period; [~~or~~]

(11) activities in accordance with subsection (e)(4) of this section in excess of five contact hours during a continuing education period; or [~~.~~]

(12) activities that are an employment requirement or concerning specific institutional policies and procedures.

(i) (No change.)

(j) Exemptions. The department will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

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

[~~(3) a technologist is a nonresident of Texas for the entire renewal period and submits a sworn statement that the continuing education requirements of the resident state or country have been met;~~]

(3) [~~(4)~~] a technologist shows reasons of health, certified by a licensed physician, that prevent compliance with the continuing education requirement for the entire renewal period. The technologist must complete and forward to the department a sworn affidavit and provide documentation that clearly establishes the period of disability and resulting physical limitations;

(4) [~~(5)~~] a technologist submits a sworn statement and shows reason which prevents compliance and the reason is acceptable to the department; [~~or~~]

(5) [~~(6)~~] a technologist is called to or on active duty with the armed forces of the United States for the entire renewal period and so long as the technologist does not administer a radiologic procedure in a setting outside of the active duty responsibilities during the time on active duty. The technologist must file a copy of orders to active military duty with the department; or

(6) [~~(7)~~] a technologist submits proof of successful completion of an advanced level examination or an entry level examination in another discipline of radiologic technology administered by or for the ARRT during the renewal period. All examinations shall

be topics dealing with ionizing forms of radiation administered to human beings for medical purposes.

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

§143.14. Disciplinary Actions.

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

(c) Engaging in unprofessional conduct means the following:

(1)-(32) (No change.)

(33) failing reasonably to protect the certificate from fraudulent or unlawful use.

(d)-(j) (No change.)

(k) Pursuant to the Act, §2.15, the department is authorized to assess an administrative penalty against a person who violates the Act or this chapter.

§143.16. Dangerous or Hazardous Procedures.

(a) Purpose. The purpose of this section is to identify the radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT). There are specific procedures identified in subsections (b) and (c) of this section which may be performed by a registered nurse (RN) or a [~~certified~~] physician assistant [~~(PA)~~] trained under §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §143.20 of this title (relating to Alternative Training Programs). A person trained under §143.17 or §143.20 of this title and placed on a registry under §143.18 of this title (relating to Registry of Non-Certified Technicians) is not an MRT, LMRT or otherwise certified under the Medical Radiologic Technologist Certification Act (Act) and shall not perform a dangerous or hazardous procedure identified in this section unless expressly permitted under this section.

(b) Dangerous procedures identified. Unless otherwise noted, the list of dangerous procedures which may only be performed by a practitioner or MRT are:

(1) (No change.)

(2) administration of radio-pharmaceuticals, unless performed by an RN or physician assistant [~~PA~~] who is appropriately trained as authorized by the department's Bureau of Radiation Control for licensure of radioactive materials;

(3) radiation therapy, including simulation and brachytherapy;

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

(6) fluoroscopy and/or fluorography, unless performed by an LMRT with a certificate issued in the cardiovascular category, or by an RN or physician assistant [~~PA~~] who assists in the performance of [~~performs~~] the procedure under the [~~direction and~~] supervision of a practitioner; and

(7) cineradiography (including digital acquisition techniques), unless performed by an LMRT with a certificate issued in the cardiovascular category.

(c) Hazardous procedures identified. Unless otherwise noted, the list of hazardous procedures which may only be performed by a practitioner or MRT are:

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

(5) spine radiography, excluding lumbar oblique views performed by an RN or physician assistant who performs the procedure under the supervision of a practitioner;

(6) [~~(5)~~] shoulder girdle radiographs, excluding AP and lateral shoulder views, AP clavicle and AP scapula, unless performed by an RN or physician assistant [~~PA~~] who performs the procedure under the direction and supervision of a practitioner;

(7) [~~(6)~~] pelvic girdle radiographs, excluding AP or PA views;

(8) [~~(7)~~] sternum radiographs, unless performed by an RN or physician assistant [~~PA~~] who performs the procedure under the direction and supervision of a practitioner; and

(9) [~~(8)~~] radiographic procedures which utilize contrast media, unless performed by an RN or physician assistant [~~PA~~] who assists in the performance of [~~performs~~] the procedure under the [~~direction and~~] supervision of a practitioner.

(d)-(h) (No change.)

(i) Effective date.

(1) (No change.)

(2) [~~Until January 1, 1998, an RN or PA may perform procedures listed in subsections (b)(2), (b)(6), (c)(5), (c)(7), or (c)(8) of this section under the direction and supervision of a practitioner.~~] On or after January 1, 1998, an RN or physician assistant [~~PA~~] must be trained under §143.17 of this title or §143.20 of this title, or have been approved to perform radiologic procedures under a hardship exemption granted under §143.19 of this title (relating to Hardship Exemptions), in addition to performing the listed procedure under the direction and supervision of a practitioner. Subsections (b)(6) and (c)(8) shall not be construed to authorize an RN or physician assistant to independently perform fluoroscopy, fluorography or procedures utilizing contrast media.

(j) (No change.)

§143.17. Mandatory Training Programs for Non-Certified Technicians.

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

(c) Instructor qualifications [~~Approved instructors~~].

(1) An instructor(s) shall have education and not less than six months classroom or clinical experience teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications: [~~For purposes of this section, an individual is approved by the Texas Department of Health (department) to teach in a training program if the individual meets the requirements of §143.9(h)(1)-(2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.~~]

(A) be a currently certified MRT who is also currently credentialed as a radiographer by the American Registry of Radiologic Technologists (ARRT);

(B) be a currently certified LMRT (excluding a temporary certificate) whose limited certificate category(ies) matches the category(ies) of instruction and training; or

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas State Board of Chiropractic Examiners (BCE), Texas State Board of Medical Examiners (BME), or Texas State Board of Podiatry Examiners (BPE), the Texas Department of Human Services, the United States Department of Health and Human Services.

(2) (No change.)

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

(f) Application materials. The application shall include, at a minimum:

(1)-(9) (No change.)

(10) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175. If approval has been granted by the Texas Higher Education Coordinating Board, a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section is not necessary; and

(11) (No change.)

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

[(j) Previously completed training. A person who has completed part or all of the training described in subsection (d) of this section shall be considered to have completed an approved training program for part or all of the training but shall be required to complete the remainder of the training program described in subsection (d) of this section prior to the person's placement on the registry, as set out in §143.18 of this title (relating to Registry of Non- Certified Technicians).]

[(1) Unless the person is a registered nurse or certified physician assistant, the previously completed training shall be acceptable only if completed within two years of the time of the person's initial placement on the registry.]

[(2) Previously completed training shall be acceptable only if it was:]

[(A) completed at an education program approved under §143.9 of this title;]

[(B) live, interactive, and instructor-directed and meets the requirements for acceptance as continuing education credit for MRTs and LMRTs as set out in §143.11 of this title (relating to Continuing Education Requirements); or]

[(C) accepted for continuing education credits by the Board of Nurse Examiners.]

[(3) If a person has completed part of the training described in subsection (d) of this section, the program director of the training program shall verify that the previously completed hours comply with this section.]

[(4) If a person has completed all of the training described in subsection (d) of this section, the department shall verify that the previously completed hours comply with this section at the time of the person's placement on the registry.]

[(5) Verification of previously completed training shall be made by reviewing only original certificates, official transcripts, printed course curriculum, syllabi, outlines or other documentation acceptable to the department issued in the name of the person who is seeking credit for previously approved training. Photocopied certificates or transcripts will not be accepted for review.]

[(6) This subsection shall expire on January 1, 1998.]

[(k) The Board of Health shall consider adopting rules later this year to describe the training programs for RNs, PAS, and podiatric procedures.]

§143.18. Registry of Non-Certified Technicians.

(a) Purpose. The purpose of this section is to set out the rules for administering the registry of non-certified technicians performing radiologic procedures, established in accordance with the Medical Radiologic Technologist Certification Act (Act), §2.05(a)(4). The purpose of the department's registry is to provide a mechanism for consumers or employers to ascertain or verify that a person performing radiologic procedures has complied with the Act, §2.05(f) by successfully completing a training program in accordance with §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §143.20 of this title (relating to Alternate Training Requirements).

(b) (No change.)

(c) Initial placement on the registry. In order to be listed on the registry for the first time, the information described in subsection (b) of this section shall be reported to the Texas Department of Health (department) by the training program approved under §143.17 or §143.20 of this title after the person's successful completion of the training. A person who has completed all the training program through previously completed courses in accordance with §143.17(j) of this title may apply directly to the department to be placed on the registry.

(d)-(h) (No change.)

§143.19. Hardship Exemptions.

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

(c) Required application materials.

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

(4) The application must include a list of the person(s) performing radiologic procedures who is not a MRT, LMRT, or NCT.

(5) [(4)] The application shall be accompanied by one or more of the following:

(A) if the applicant is unable to attract or retain an MRT or LMRT, a sworn affidavit describing in narrative form the applicant's attempts to attract and retain an MRT or LMRT at a comparable salary for the area;

(B) if the applicant is located more than 50 highway miles from the nearest school of medical radiologic technology approved in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors), a sworn affidavit describing in narrative form the physical address of the nearest school of medical radiologic technology; the physical address of the applicant hospital, FQHC, or primary practice location of the practitioner; and the actual distance in highway miles between the school and the applicant hospital, FQHC, or practitioner's primary practice. The applicant shall include a map of the area clearly indicating the locations of each entity;

(C) if the nearest school of medical radiologic technology approved in accordance with §143.9 of this title has a waiting list of school applicants due to a lack of faculty or space, a sworn affidavit from the applicant indicating that admissions to the school are pending because of a lack of faculty or space;

(D) if the need for graduates in medical radiologic technology of the applicant exceeds the number of graduates from the nearest school of medical radiologic technology approved in ac-

cordance with §143.9 of this title, a sworn affidavit from the applicant indicating that the number of graduates from the nearest school does not meet the applicant's needs for radiologic technologists;

(E) if emergency conditions have occurred during the 90 days prior to making application for the hardship exemption, a sworn affidavit from the applicant describing the emergency conditions, the hardship(s) the emergency conditions have created and how long the hardship(s) is anticipated to continue. For the purposes of this subparagraph, emergency conditions may include a disaster, epidemic, or other catastrophic event;

(F) documentation that the United States government has declared a state of war;

(G) if the equipment operated is a bone densitometry unit(s) which utilizes x-radiation, a sworn affidavit from the applicant indicating the name of the person operating the equipment and proof that the person is a certified densitometry technologist in good standing with the International Society for Clinical Densitometry (ISCD) or has completed at least 20 hours of training as follows:

(i) specific bone densitometry equipment utilizing x-radiation to be used by the operator–16 hours presented by a medical radiologic technologist (MRT) or an equipment applications specialist knowledgeable of the specific equipment to be utilized; and

(ii) radiation safety and protection for the patient, self and others–four hours presented by an MRT or a licensed medical physicist within the 24-month period prior to application or reapplication for a hardship exemption;

(H) if the applicant uses only a hand-held fluoroscope with a maximum operating capability of 65 kilovolts and 1 milliampere, or a similar type of x-ray unit for imaging upper extremities only, at the location indicated on the application form and the applicant believes that the radiation produced by the radiographic equipment represents a minimal threat to the patient and the operator of the equipment, the following is required to be submitted:

(i) a copy of the current certificate of registration issued by the Bureau of Radiation Control; and

(ii) a sworn affidavit describing the equipment used; the types of radiographs performed; the training completed by the operator of the equipment within the 24-month period prior to application or reapplication for a hardship exemption; the date(s) the training was completed by the operator; the radiation safety measures taken for the patient, operator and others; the level or amount of supervision provided by an MRT or a practitioner(s) to the operator while performing the radiographic procedure; and the equipment manufacturer's specifications for the diagnostic radiographic equipment utilized at the location indicated on the application form, including the maximum operating capability;

(I) if the applicant employs, for the purpose of performing radiologic procedures, a person registered in accordance with rules adopted under §2.08 of the Act on or before January 1, 1998, a sworn affidavit indicating the name(s) of the person(s) and proof that the person(s) was registered on or before January 1, 1998. Such affidavit shall be on a form attesting that the training under §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) or §143.20 of this title (relating to Alternate Training Requirements) causes a fiscal hardship for the applicant. The affidavit shall include a statement that the person(s) performing radiologic procedures is adequately supervised and trained for the procedures being performed. If the applicant is a practitioner or FQHC, the person who will perform radiologic procedures must be registered in accordance with rules adopted under §2.08 of the Act at the time of application for the hardship exemption. If the person who will perform radiologic procedures is not an RN, the name of the practitioner for whom the radiologic procedures are performed, as named on the current registration permit, shall match the name or location of the applicant for whom the hardship is granted;

(J) if the applicant is a hospital accredited by the Joint Commission on the Accreditation of Health Care Organizations or which participates in the federal Medicare cost reimbursement program, an original letter on hospital letterhead stating the name(s) of the person(s) performing radiologic procedures in compliance with § 2.07(d) of the Act on or before January 1, 1998. The letter shall be accompanied by a sworn affidavit from the applicant attesting that the training under §143.17 or §143.20 of this title causes a fiscal hardship for the applicant. The affidavit shall include a statement that the person(s) performing radiologic procedures is adequately supervised and trained for the procedures being performed;

[~~(K) if the applicant employs for the purpose of performing radiologic procedures, a person enrolled on or before December 31, 1997, in a training program approved by the department under §143.17 of this title or §143.20 of this title. Applications under this hardship postmarked after October 31, 1998, will not be processed. This subparagraph and all letters of exemption issued under this subparagraph shall expire on December 31, 1998. The following items must be submitted:~~]

[~~*(i)* a sworn affidavit indicating the name(s) of the person(s) enrolled in training on or before December 31, 1997, and attending classes at the time of application;~~]

[~~*(ii)* an original verification statement from a department approved training program indicating that the person(s) named in the hardship application was enrolled on or before December 31, 1997, and was currently attending classes. The enrollment and attendance verification must be dated within 15 days of the date of application under this section to the department; and~~]

[~~*(iii)* proof that the person(s) was registered in accordance with rules adopted under §2.08 of the Act at the time of enrollment or at the time of application under this section, if the applicant is a practitioner or FQHC; or~~]

(K) [~~(L)~~] if the applicant employs for the purpose of performing radiologic procedures, a person who had at least one year of experience performing radiologic procedures and who, by July 31, 1999, has completed four hours of study in radiation safety and protection in a program approved by the department under §143.9 of this title, §143.11 of this title (relating to Continuing Education Requirements), §143.17 of this title, or §143.20 of this title, or provided by a person who meets the requirements of §143.9(h)(1)-(2) of this title, excluding the phrase, "the subjects assigned." This subparagraph shall expire October 1, 1999. The following items must be submitted:

(i) a sworn affidavit indicating the name(s) of the person(s) who will perform radiologic procedures pursuant to this hardship exemption;

(ii) a sworn affidavit or other documentation stating the person(s) had at least one year of experience performing radiologic procedures between January 1, 1993, and July 1, 1998;

(iii) an original verification statement, certificate of completion or transcript indicating that the person(s) named in the hardship exemption application has completed or will complete by July 31, 1999, a four-hour course of study in radiation safety and

protection. Documentation of completion of the four-hour course of study in radiation safety and protection shall be submitted prior to placement on the department's registry under §143.18 of this title (relating to the Registry of Non-Certified Technicians);

(iv) if the applicant is a practitioner or FQHC, proof that the person(s) was registered in accordance with rules adopted under §2.08 of the Act at the time of application under this section;

(v) an acknowledgment that the persons performing radiologic procedures, as an alternative to training, will take and pass the core section of the limited certificate examination, as described in §143.8 of this title (relating to Examinations) covering radiation protection, radiographic equipment operation and maintenance, image production and evaluation, and patient care and management. An examination candidate must pass the examination on or before July 1999. A person who passes the examination described in this clause shall be included on the department's registry under §143.18 of this title. A person listed on the registry is not required to complete the training described in §143.17 of this title or §143.20 of this title. A person who does not pass the examination by the third attempt will be notified by the department that the person may no longer perform radiologic procedures under this hardship exemption. The following shall apply to this hardship exemption and the special examination administered under this clause:

(I) the passing score shall be an unscaled 55;

(II) a schedule of examinations indicating the dates, locations, fees, examination application procedures, and application deadlines will be provided to the person(s) named on the hardship exemption application as person(s) performing radiologic procedures;

(III) a maximum of three examination attempts shall be allowed for each person covered by the hardship exemption;

(IV) all examination application fees are nonrefundable and must be paid by the examination application deadlines established by the department. A person who applied for a specific examination and who failed to appear for the examination shall forfeit the examination fee, even if notification is made prior to the examination that the person will be unable to take the examination;

(V) applications under this hardship exemption may be postmarked up to and including October 31, 1998; and

(VI) in no event shall any letters of exemption issued under this subparagraph extend beyond the expiration date of October 1, 1999. If the person(s) performing radiologic procedures does not apply for the examination to be administered on July 1999, the hardship exemption will expire on the examination application deadline which is two months prior to that examination.

(6) [~~(5)~~] All application materials and information are subject to verification by the department.

(7) [~~(6)~~] The department shall send a written notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of the written notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

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

§143.20. Alternate Training Requirements.

(a) Purpose. The purpose of this section is to set out the minimum standards for registered nurses (RNs), physician assistants [~~(PAs)~~] and podiatric medical assistants (PMAs).

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and interactive and directed by an approved instructor. Distance learning activities and audiovisual teleconferencing may be utilized, provided these include two-way, interactive communications which are broadcast or transmitted at the actual time of occurrence. Appropriate on-site supervision of persons participating in the distance learning activities or teleconferencing shall be provided by the approved training program. No credit will be given for training completed by self-directed study or correspondence.

(1) Effective January 1, 1998, before an RN or physician assistant [~~PA~~] performs a radiologic procedure, the RN or physician assistant [~~PA~~] must complete the hours stated in subsection (d) of this section, or the hours stated in §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians).

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

(c) (No change.)

(d) Training requirements for registered nurses and physician assistants. A training program preparing RNs and physician assistants [~~PAs~~] to perform radiologic procedures shall be designed to build on the health care knowledge base and skills acquired through completion of an educational program that qualifies the person for licensure as an RN or physician assistant [~~PA~~]. The training shall consist of:

(1) a minimum of 30 [~~32~~] classroom hours of coursework that are fundamental to diagnostic radiologic procedures covering all of the following items:

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

[~~(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects - 2 classroom hours; and~~]

(2) one or more of the following units of classroom instruction in radiologic procedures:

(A) (No change.)

(B) spine (non-pediatric) - 10[~~eight~~] classroom hours;

(C)-(D) (No change.)

(3) if the RN or physician assistant [~~PA~~] will perform pediatric radiologic procedures other than extremities, a minimum of two classroom hours for each of the areas identified in paragraph (2)(A)-(C) of this subsection.

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

[~~(k) Previously completed training. A person who has completed part or all of the training described in subsections (d) or (e) of this section shall be considered to have completed an approved training program for part or all of the training but shall be required to complete the remainder of the training program described in subsections (d) or (e) of this section prior to the person's placement on the registry, as set out in §143.18 of this title (relating to Registry of Non-Certified Technicians).~~]

[~~(1) Unless the person is an RN or PA, the previously completed training shall be acceptable only if completed within two years of the time of the person's initial placement on the registry.~~]

[~~(2) Previously completed training shall be acceptable only if it was:~~]

~~[(A) completed at an education program approved under §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) or §143.17 of this title;]~~

~~[(B) live, interactive, and instructor-directed and meets the requirements for acceptance as continuing education credit for medical radiologic technologists or LMRTs as set out in §143.11 of this title (relating to Continuing Education Requirements); or]~~

~~[(C) accepted for continuing education credits by the Board of Nurse Examiners.]~~

~~[(3) If a person has completed part of the training described in subsections (d) or (e) of this section, the program direcator of the training program shall verify that the previously completed hours comply with this section.]~~

~~[(4) If a person has completed all of the training described in subsections (d) or (e) of this section, the department shall verify that the previously completed hours comply with this section at the time of the person's placement on the registry.]~~

~~[(5) Verification of previously completed training shall be made by reviewing only original certificates, official transcripts, printed course curriculum, syllabi, outlines or other documentation acceptable to the department issued in the name of the person who is seeking credit for previously approved training. Photocopied certificates or transcripts will be not accepted for review.]~~

~~[(6) This subsection shall expire on January 1, 1998.]~~

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 February 12, 1999.

TRD-9900937
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

Chapter 181. Vital Statistics

Subchapter A. Miscellaneous Provisions

25 TAC §181.14

The Texas Department of Health (department) proposes new §181.14, concerning the form and content of death and fetal death certificates. The section requires the State Registrar to determine the required items of information on certificates of death and fetal death.

Richard B. Bays, Chief, Bureau of Vital Statistics has determined that for the first five year period the section is in effect, there will be no fiscal implications to state or local government.

Mr. Bays also has determined that for each of the first five years the section is in effect, the public benefit anticipated will be a formal process for establishing the form and content of death and fetal death certificates. There will also be no cost to the funeral industry and no impact on local employment.

Comments on the proposed new section may be submitted to Richard B. Bays, State Registrar, Bureau of Vital Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3191 or faxed to his attention at (512) 458-7130. Public comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under the authority of the Health and Safety Code, §191.003, which provides the Board of Health with authority to adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics; and §193.001 which allows the department to prescribe the form and content of the death and fetal death certificates; and §12.001 which provides the board with authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new section affects the Health and Safety Code, Chapters 191 and 193.

§181.14. Death and Fetal Death Certificate Form and Content.

(a) The State Registrar shall determine the items of information to be contained on certificates of death and fetal death. The format of the items will be designated in forms VS-112 entitled "Certificate of Death" and VS-113 entitled "Certificate of Fetal Death".

(b) Only funeral directors or persons in charge of interment or in charge of removal for disposition may prepare and file the certificate of death and fetal death on the forms VS-112 and VS-113.

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 February 12, 1999.

TRD-9900943
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 458–7236

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter A. Automobile Insurance

Division 3. Miscellaneous Interpretations

28 TAC §5.205

The Texas Department of Insurance proposes amendments to 28 TAC §5.205, concerning the Automobile Theft Prevention Authority (ATPA) pass-through fee. Section 5.205 (a) authorizes insurers to recoup from policyholders the $1 fee per motor vehicle year required to be paid by insurers to the ATPA under Texas Civil Statutes, Article 4413(37) §10. Section 5.205 (b) provides the manner in which the notice of the fee is to be included on motor vehicle insurance policies. Section 5.205 (c) specifies the type of policies that are to be assessed the $1 fee and the basis on which the fee will be assessed. Section 5.205 (d) exempts certain types of motor vehicle policies from the fee requirement.

The amendments are necessary to harmonize 28 TAC §5.205 with recent amendments to 43 TAC §57.48 adopted by the ATPA. The ATPA adopted amendments to 43 TAC §57.48 to clarify the types of motor vehicles and the types of insurance policies that are subject to the statutory fee of $1 per motor vehicle year of insurance. New paragraphs (3) and (4) of 43 TAC §57.48 have been added to define the term "motor vehicle" as referenced in Article 4413(37) §10, and to clarify that all "motor vehicle insurance" policies (as those terms are defined in the Insurance Code), with certain exceptions, are subject to the $1 fee. Article 4413(37) §10 (2) refers to "motor vehicle" in defining the term "motor vehicle years," in connection with computing the amount of assessment for an insurance company. Article 4413(37) §10 does not define "motor vehicle insurance" or "motor vehicle." The Texas Department of Insurance in 28 TAC §5.205 (c) has specified that the $1 fee is to be assessed only on "primary liability" motor vehicle insurance. The recently adopted amendments by the ATPA to 43 TAC §57.48 do not restrict the fee to only primary liability policies. The ATPA's amendments define "motor vehicle insurance," as it is defined in Article 5.06 of the Insurance Code, to mean "every form of insurance on any automobile, or other vehicle hereinafter enumerated and its operating equipment or necessitated by reason of the liability imposed by law for damages arising out of the ownership, operation, maintenance, or use in this State of any automobile, motorcycle, motorbicycle, truck, truck-tractor, tractor, traction engine, or any other self-propelled vehicle, and including also every vehicle, trailer or semi-trailer pulled or towed by a motor vehicle, but excluding every motor vehicle running upon fixed rails or tracks." The ATPA's amendments significantly broaden the definition of motor vehicle insurance because they do not restrict the assessment of the $1 fee to only primary liability insurance (as it has been specified in 28 TAC §5.205) thus the ATPA's section is in conflict with 28 TAC §5.205.

The department recognizes that Article 4413(37) §6 gives the ATPA the authority to adopt rules and implement its powers and duties including the authority to interpret and define the terms "motor vehicle" and "motor vehicle insurance," as these terms relate to the assessment of the $1 fee. The department proposes to delete §5.205 (c) to remove the restriction on the assessment of the $1 fee to only primary liability insurance. The department also proposes to delete §5.205 (d) and allow the ATPA's section to specify those types of motor vehicle insurance that are to be exempt from the fee assessment. The department further proposes to delete the reference to primary liability insurance in subsection (b) and add a reference to motor vehicle insurance "as defined in 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations)."

David Durden, deputy commissioner for the automobile and homeowners division of the Texas Department of Insurance, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local units of government as a result of enforcing or administering the section. Mr. Durden also has determined there will be no other implications for the local economy and no impact on local employment as a result of administering the proposed amendments.

Mr. Durden also has determined that for each year of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing or administering the proposed amendments will be that the department's rules will be in accord with the ATPA's rules concerning the assessment of the $1 fee. Another anticipated public benefit as a result of enforcing the proposed amendments will be a reduction in motor vehicle theft in the state and a concomitant reduction in motor vehicle insurance premiums. There is no anticipated adverse economic effect on large or small insurers who are required to comply with the proposed amendment because insurers are authorized to recoup the fee from the policyholder.

Comments on the proposal to be considered by the department must be submitted within 30 days after publication of the proposed amendments in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin, Texas, 78714-9104. An additional copy of comments should be submitted to David Durden, Deputy Commissioner, Automobile and Homeowners Division, P. O. Box 149104, MC 104-5A, Austin, Texas, 78714-9104. A request for public hearing on the proposed amendments must be submitted separately to the Office of Chief Clerk.

The amendments to §5.205 are proposed pursuant to Texas Civil Statutes, Article 4413(37) §10; the Insurance Code, Articles 5.06, 5.98, and 1.03A; and the Government Code §§2001.001 *et seq.* Texas Civil Statutes, Article 4413(37) §10 requires insurers to pay to the ATPA a fee equal to $1 multiplied by the total number of motor vehicle years of insurance for insurance policies delivered, issued for delivery or renewed by the insurer during the calendar year. Article 5.06 §(1) authorizes the commissioner to adopt a policy form and endorsements for each type of motor vehicle insurance. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt reasonable rules and regulations, which must be for general and uniform regulation, for the conduct and execution of the duties and functions of the department only as authorized by a statute. The Government Code, §§20001.001 *et seq.* (Administrative Procedure Act) authorize and require 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 administrative agency.

The following articles of the Insurance Code are affected by this section: Insurance Code, Articles 5.06; 5.98.

§5.205. Automobile Theft Prevention Authority Pass-Through Fee.

(a) (No change.)

(b) Any insurer recouping the fee from the policyholder as authorized by subsection (a) of this section must include on or with each motor vehicle insurance policy, as defined in 43 TAC §57.48 (relating to Motor Vehicle Years of Insurance Calculations), that is [~~providing primary liability coverage~~] delivered, issued for delivery, or renewed in this state on or after October 5, 1992, including those policies issued through the Texas Automobile Insurance Plan, a notice conforming with either paragraph (1) or paragraph (2) of this subsection.

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

[~~(c) All automobile policies providing primary liability coverages shall be assessed the $1.00 fee per motor vehicle year except for those policies specifically excepted in subsection (d) of this section. For purposes of this section, the term "motor vehicle year" shall mean one motor vehicle insured for one year.~~]

~~[(d) The fee shall not be assessed or recouped on garage liability policies, nonresident policies, policies providing only non-ownership or hired auto coverages, and any motor vehicle insurance policy not providing primary liability coverage.]~~

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 February 22, 1999.

TRD-9901035

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: April 4, 1999

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing Proclamation

The Texas Parks and Wildlife proposes amendments to §§65.11, 65.26, 65.28, 65.42, 65.46, 65.64, and 65.72, concerning the Statewide Hunting and Fishing Proclamation.

The amendment to §65.11, concerning Lawful Means, modifies the provisions of paragraph (1)(B) to reflect the fact that muzzleloader-only seasons now apply to spike-bucks as well as antlerless deer, and prohibits, with exceptions, the use during archery-only season of devices enabling archery equipment to be kept at full or partial draw. The amendment to §65.26, concerning Managed Lands Deer Permits, adds provisions for the use of bonus tags in conjunction with MLD permits and specifies that the provisions of muzzleloader-only seasons do not apply on properties qualifying for an extended season and enhanced bag limit. The amendment to §65.28, concerning Landowner Assisted Management Permit System, adds provisions for the use of bonus tags in conjunction with LAMPS permits. The amendment to §65.42, concerning Deer: increases the statewide bag limit for white-tailed deer for persons who purchase a bonus tag; specifies the conditions for use of the bonus tag; eliminates 'doe days' in Archer, Baylor, Clay, Montague, and Wise counties; expands the number of 'doe days' in the counties listed in paragraph (4)(C); alters the opening date of the season in Austin, Blanco, Colorado, Fayette, Gillespie, Llano, Lavaca, and Mason counties; creates a restricted general season in Grayson County; and institutes special regulations for the take of buck deer in Austin, Colorado, Fayette, Lavaca, and Washington counties. The amendment to §65.46, concerning Squirrel, creates a youth-only open season in certain counties. The amendment to §65.64, concerning Turkey, opens new seasons for Eastern turkey in six additional counties. The amendment to §65.72, concerning Fish: establishes a prohibition on the underwater use of hand-operated devices to take fish; modifies the statewide walleye regulations to allow two walleye of less than 16 inches in the daily bag limit; reduces the minimum length for largemouth bass from 16 to 14 inches on Lakes Brownwood, Champion Creek, and Coleman; removes the 14-18 inch length limit on Lakes Striker, Tyler State Park, and Weatherford, which places these lakes under the statewide 14-inch minimum length and 5-fish daily bag limit; imposes a 12-inch minimum length limit for blue catfish and a 25-fish daily bag limit for blue and channel catfish on Fort Phantom Hill and E.V. Spence Reservoirs; creates a 14-21 inch slot limit for largemouth bass on Lake Murvaul while allowing one fish per day over 21 inches to be retained; changes the minimum allowable length limit for temporarily weighing and retaining largemouth bass on Purtis Creek State Park Lake and all water bodies within the boundaries of Purtis Creek State Park, Gibbons Creek Reservoir and all waters within Texas Municipal Power Agency property, and Lake Raven to 21 inches; restricts baitfish use in Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties to common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, and golden shiners; and conforms regulations for king mackerel and red snapper with proposed regulations for federal waters.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed rules are in effect, there will be no additional fiscal implications to state or local governments as a result of enforcing or administering the proposed rules.

Mr. Macdonald also has determined that for each of the first five years the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the dispensation of the agency's statutory duty to protect and conserve the wildlife resources of this state, the duty to equitably distribute opportunity for the enjoyment of those resources among the citizens, and the execution of the commission's policy to maximize recreational opportunity within the precepts of sound biological management practices.

There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald (Wildlife (512) 389-4775), Ken Kurzawski (Inland Fisheries 389-4591), Paul Hammerschmidt (Coastal Fisheries 389-4650), David Sinclair (Wildlife Enforcement 389-4854), or Dennis Johnston (Fisheries Enforcement 389-4628), Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4775 or 1-800-792-1112.

Division 1. General Provisions

31 TAC §§65.11, 65.26, 65.28

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), and Chapter 67, which

provide the Commission with authority to establish wildlife resource regulations for this state; and under 42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Parks and Wildlife Code, Chapter 42.

The amendments affect Parks and Wildlife Code, Chapter 61.

§65.11. Lawful Means.
It is unlawful to hunt any of the wildlife resources of this state except by the means authorized by this section and as provided in §65.19 of this title (relating to Hunting Deer with Dogs).

(1) Firearms.

(A) (No change.)

(B) Special muzzleloader-only [~~antlerless~~] deer seasons are restricted to muzzleloading firearms only.

(C)-(D) (No change.)

(2) Archery.

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

(E) Special archery-only seasons are restricted to lawful archery equipment only, except as provided in paragraph (3) of this section. It is unlawful for any person to hunt deer or turkey during an archery-only season by means of a bow equipped with any device that allows the bow to locked at full or partial draw, except for persons who have in their immediate possession a physician's statement certifying that the person has an upper-limb disability.

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

§65.26. Managed Lands Deer (MLD) Permits.
(a)-(c) (No change.)

(d) Except for deer taken under an Antlerless and Spike-Buck Control Permit, all deer harvested on a property where MLD permits have been issued must immediately be tagged with the appropriate MLD permit as specified in the WMP and [~~with~~] either an [~~the~~] appropriate tag from the hunting license of the person who killed the deer or a valid bonus tag.

(e) On all tracts of land for which both MLD buck permits and MLD antlerless permits have been issued for the harvest of white-tailed deer, and on properties for which the WMP specifies a harvest quota of zero for either sex:

(1) (No change.)

(2) the provisions of §65.42(b)(7) of this title (relating to Archery-Only Open Season), §65.42(b)(8) of this title (relating to Muzzleloader-Only Open Season), and the stamp requirements of Parks and Wildlife Code, Chapter 43, Subchapter I, do not apply; and

(3) (No change.)

(f)-(g) (No change.)

§65.28. Landowner Assisted Management Permit System (LAMPS).
(a)-(c) (No change.)

(d) All deer killed [~~harvested~~] on a tract of land for which LAMPS permits have been issued shall be tagged with a valid LAMPS permit, and either an [~~the~~] appropriate white-tailed deer tag from the hunting license of the person who killed [~~taking~~] the deer or a valid bonus tag.

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 February 22, 1999.

TRD-9901089
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 389–4775

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Division 2. Open Seasons and Bag Limits-Hunting Provisions

31 TAC §§65.42, 65.46, 65.64

The amendments are proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendments affect Parks and Wildlife Code, Chapter 61.

§65.42. Deer.

(a) Except as provided in §65.27 of this title (relating to Antlerless and Spike-Buck Deer Control Permits) or paragraph (11) of this subsection, no person may exceed the annual bag limit of five white-tailed deer (no more than three bucks) and two mule deer (no more than one buck).

(b) White-tailed deer. The open seasons and annual bag limits for white-tailed deer shall be as follows.

(1) In Bandera, Bexar, [~~Blanco,~~] Brewster, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Culberson, Edwards, [~~Gillespie,~~] Glasscock, Hays (west of Interstate 35), Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), [~~Llano, Mason,~~] McCulloch, Medina (north of U.S. Highway 90), Menard, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis (west of Interstate 35), Upton (that southeastern portion located both south of U.S. Highway 67 and east of State Highway 349), Uvalde (north of U.S. Highway 90), and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. 90 and west of Spur 239) counties, there is a general open season.

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

(2) In Blanco, Gillespie, Llano, and Mason counties, there is a general open season.

(A) Open season: the Saturday closest to November 15 through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(3) [~~(2)~~]In Aransas, Atascosa, Bee, Calhoun, Cameron, Hidalgo, Live Oak, Nueces, Refugio, San Patricio, Starr, and Willacy counties, there is a general open season.

(A) Open season: second Saturday in November through the third Sunday in January.

(B) Bag limit: four deer, no more than two bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(4) [~~(3)~~]In Brooks, Dimmit, Duval, Frio, Jim Hogg, Jim Wells, Kenedy, Kinney (south of U.S. Highway 90), Kleberg, LaSalle, Maverick, McMullen, Medina (south of U.S. Highway 90), Uvalde (south of U.S. Highway 90), Val Verde (that southeastern portion located both south of U.S. Highway 90 and east of Spur 239), Webb, Zapata, and Zavala counties, there is a general open season.

(A) Open season: Second Saturday in November through the third Sunday in January.

(B) Bag limit: five deer, no more than three bucks.

(C) Special Late General Season. In the counties listed in this paragraph there is a special late general season for the take of antlerless and spike-buck deer only.

(i) Open season: 14 consecutive days starting the first Monday following the third Sunday in January.

(ii) Bag limit: five antlerless or spike-buck deer in the aggregate, no more than three of which may be spike bucks.

(5) [~~(4)~~]No person may take or attempt to take more than one buck deer per license year from the counties, in the aggregate, listed within this paragraph, except as provided in subsection (a) of this section or authorized under the provisions of §65.26 of this title (relating to Managed Land Deer Permits).

(A) In Archer, Baylor, Bell (west of Interstate 35), Bosque, Callahan, Clay, Comanche, Coryell, Eastland, Erath, Grayson (Hagerman National Wildlife Refuge only), Hamilton, Hood, Jack, Lampasas, McLennan, Montague, Palo Pinto, Parker, Shackelford, Somervell, Stephens, Taylor, Throckmorton, Williamson (west of Interstate 35), Wise, and Young counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Special regulation: in Grayson County, lawful means are restricted to lawful archery equipment and crossbows only.

(B) In Brazoria, Fort Bend, Goliad (south of U.S. Highway 59), Harris, Jackson (south of U.S. Highway 59), Matagorda, Victoria (south of U.S. Highway 59), and Wharton (south of U.S. Highway 59) Counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. If MLD permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits.

(C) In Armstrong, Borden, Briscoe, Carson, Childress, Collingsworth, Cottle, Crosby, Dickens, Donley, Fisher, Floyd, Foard, Garza, Gray, Hall, Hansford, Hardeman, Haskell, Hemphill, Hutchinson, Jones, Kent, King, Knox, Lipscomb, Motley, Ochiltree, Randall, Roberts, Scurry, Stonewall, Swisher, Wheeler, Wichita, and Wilbarger counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first 16 [~~six~~] days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first 16 [~~six~~] days, antlerless deer may be taken only by MLD antlerless permits.

(D) In [~~Archer, Baylor, Clay,~~] Cooke, Denton, Hill, Johnson, and [~~Montague,~~] Tarrant[~~, and Wise~~] counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) During the first nine days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD permits have been issued for the tract of land. After the first nine days, antlerless deer may be taken only by MLD antlerless permits.

(E) In Anderson, Bowie, Brazos, Burleson, Camp, Cass, Cherokee, Delta, Franklin, Freestone, Gregg, Grimes, Harrison, Henderson, Hopkins, Houston, Lamar, Leon, Limestone, Madison, Marion, Morris, Navarro, Red River, Robertson, Rusk, San Jacinto, Smith, Titus, Trinity, Upshur, Van Zandt, Walker, and Wood counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits or LAMPS permits.

(iv) Special Requirement: In that portion of Henderson County bounded on the north by the county line, on the east by U.S. Highway 175 and Tin Can Alley Road, on the south by State Highway 31, and on the west by State Highway 274, hunting of deer is restricted to shotguns with buckshot, longbow, compound bow, recurved bow, or crossbow. Other game animals or game birds may be taken only with shotgun, longbow, compound bow, recurved bow, or crossbow.

(F) In Dallam, Hartley, Moore, Oldham, Potter, and Sherman Counties, there is a general open season.

(i) Open season: Saturday before Thanksgiving for 16 consecutive days.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(G) In Nacogdoches, Panola, Sabine, San Augustine and Shelby Counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) From Thanksgiving Day through the Sunday immediately following Thanksgiving Day, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. From the first Saturday in November through the day before Thanksgiving Day, and from the Monday immediately following Thanksgiving Day through the first Sunday in January, antlerless deer may be taken only by MLD antlerless deer permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(H) In [~~Austin,~~] Bastrop, Bell (east of Interstate 35), Caldwell, [~~Colorado,~~] Comal (east of Interstate 35), Crane, DeWitt, Ector, Ellis, Falls, Fannin, [~~Fayette,~~] Goliad (north of U.S. Highway 59), Gonzales, Guadalupe, Hays (east of Interstate 35), Hunt, Jackson (north of U.S. Highway 59), Karnes, Kaufman, [~~Lavaca,~~] Lee, Loving, Midland, Milam, Rains, Travis (east of Interstate 35), Upton (that portion located north of U.S. Highway 67; and that area located both south of U.S. Highway 67 and west of state highway 349), Victoria (north of U.S. Highway 59), Waller, Ward, Washington, Wharton (north of U.S. Highway 59), Williamson (east of Interstate 35), and Wilson counties, there is a general open season.

(i) Open season: first Saturday in November through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(iv) Special regulation: in Washington County, the take of buck deer is limited to spike-bucks and bucks having at least ten antler points.

(I) In Austin, Colorado, Fayette, and Lavaca counties, there is an open season.

(i) Open season: the Saturday closest to November 15 through the first Sunday in January.

(ii) Bag limit: three deer, no more than one buck and no more than two antlerless.

(iii) Antlerless deer may be taken only by MLD antlerless permits.

(iv) Special regulation: in the counties listed in this subparagraph, the take of buck deer is limited to bucks having at least eight antler points and spike bucks having at least one antler of at least four inches in length.

(6) [~~(5)~~]In Angelina, Chambers, Hardin, Jasper, Jefferson, Liberty, Montgomery, Newton, Orange, Polk, and Tyler counties, there is a general open season.

(A) Open season: first Saturday in November through the first Sunday in January.

(B) Bag limit: four deer, no more than two bucks and no more than two antlerless.

(C) During the first 23 days of the general season, antlerless deer may be taken without antlerless deer permits unless MLD or LAMPS permits have been issued for the tract of land. If MLD or LAMPS permits have been issued, they must be attached to all antlerless deer harvested on the tract of land. After the first 23 days, antlerless deer may be taken only by MLD antlerless permits or LAMPS permits. On National Forest, Corps of Engineers, Sabine River Authority and Trinity River Authority lands, antlerless deer may be taken only by MLD antlerless permits.

(7) [~~(6)~~]In Andrews, Bailey, Castro, Cochran, Collin, Dallas, Dawson, Deaf Smith, El Paso, Gaines, Galveston, [~~Grayson (except on the Hagerman National Wildlife Refuge)~~], Hale, Hockley, Hudspeth, Lamb, Lubbock, Lynn, Martin, Parmer, Rockwall, Terry, Winkler, and Yoakum counties, there is no general open season.

(8) [~~(7)~~]Archery-only open seasons. In all counties where there is a general open season for white-tailed deer[~~, and in Grayson County~~], there is an archery-only open season during which either sex of white-tailed deer may be taken as provided for in §65.11(2) and (3) of this title (relating to Means and Methods).

(A) Open season: the Saturday closest to September 30 for 30 consecutive days.

(B) Bag limit: [~~Except for Grayson County,~~] the bag limit in any given county is as provided for that county during the general open season. [~~In Grayson County, the bag limit is three deer, no more than one buck and no more than two antlerless.~~]

(9) [~~(8)~~]Muzzleloader-only open seasons, and bag and possession limits shall be as follows.

(A) In Bandera, Bexar, Blanco, Brewster, Brown, Burnet, Coke, Coleman, Comal (west of Interstate 35), Concho, Crockett, Culberson, Edwards, Gillespie, Glasscock, Hays (west of Interstate 35), Howard, Irion, Jeff Davis, Kendall, Kerr, Kimble, Kinney (north of U.S. Highway 90), Llano, Mason, Medina (north of U.S. Highway 90), Menard, McCulloch, Mills, Mitchell, Nolan, Pecos, Presidio, Reagan, Real, Reeves, Runnels, San Saba, Schleicher, Sterling, Sutton, Terrell, Tom Green, Travis (west of Interstate 35), Upton (that portion located both south of U.S. Highway 67 and east of state highway 349), Uvalde (north of U.S. Highway 90), and Val Verde (north of U.S. Highway 90; and that portion located both south of U.S. Highway 90 and west of Spur 239) Counties, there is an open season during which only antlerless and spike-buck deer may be taken only with a muzzleloader.

(B) Open Season: from the first Saturday following the closing of the general open season for nine consecutive days.

(C) Bag limit: four antlerless or spike-buck deer in the aggregate, no more than two of which may be spike bucks.

(10) [~~(9)~~]Special Youth-Only Season. There shall be a special youth-only general hunting season in all counties where there is a general open season.

(A) open season: the Saturday and Sunday immediately preceding the first Saturday in November.

(B) bag limits, provisions for the take of antlerless deer, and special requirements:

(i) as specified for the first two days of the general season in the individual counties in paragraphs (1)-(6) of this subsection, except as provided in clause (ii) of this subparagraph; and

(*ii*) in the counties listed in paragraph (5)(G) [(4)(G)] of this subsection, as specified for the period of time from Thanksgiving Day through the Sunday immediately following Thanksgiving Day.

(C) Only licensed hunters 16 years of age or younger may hunt during the season established by this subsection.

(11) Bonus tag.

(A) A person in possession of a valid bonus deer tag may take one buck or antlerless white-tailed deer during an open white-tailed deer season in any county, irrespective of the county bag limit, provided that person also possesses one of the following:

(*i*) an appropriate, valid MLD permit (buck or antlerless);

(*ii*) a valid LAMPS permit (antlerless only); or

(*iii*) an appropriate, valid Special Permit (buck or antlerless) issued by the department for a public hunt, in which case the bonus tag is valid only on the wildlife management area or state park specified by the permit and only during the date and time specified on the permit.

(B) No person may:

(*i*) purchase more than five bonus tags per license year;

(*ii*) use a bonus tag on more than one animal; or

(*iii*) buy, sell, or otherwise exchange a bonus tag for remuneration or considerations of any kind; however, a bonus tag may be given to another person.

(C) A person who kills a deer shall immediately attach a properly executed bonus tag to the deer.

(c) (No change.)

§65.46. Squirrel: Open Seasons, Bag, and Possession Limits.

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

(e) In the counties listed in subsection (b) of this section, there shall be a special youth-only general hunting season during which only licensed hunters 16 years of age or younger may hunt.

(1) open season: the Saturday and Sunday immediately preceding October 1.

(2) bag and possession limits: as specified in subsection (b) of this section.

§65.64. Turkey.

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

(c) Eastern turkey. The open seasons and bag limits for Eastern turkey shall be as follows. In Angelina, Bowie, Cass, Cherokee, Delta, Fannin, Grayson, Gregg, Harrison, Hopkins, Jasper, Lamar, Marion, Nacogdoches, Newton, Polk, Red River, Sabine, San Augustine, San Jacinto, [and] Trinity, Tyler, and Walker counties there is a spring season.

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

(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 February 22, 1999.

TRD-9901090
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 389–4775

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Division 3. Seasons and Bag Limits-Fishing Provisions

31 TAC §65.72

The amendment is proposed under Parks and Wildlife Code, Chapter 61, Uniform Wildlife Regulatory Act (Wildlife Conservation Act of 1983), which provides the Commission with authority to establish wildlife resource regulations for this state.

The amendment affects Parks and Wildlife Code, Chapter 61.

§65.72. Fish.

(a) General rules.

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

(6) In Brewster, Crane, Crockett, Culberson, Ector, El Paso, Jeff Davis, Hudspeth, Loving, Pecos, Presidio, Reeves, Terrell, Upton, Val Verde, Ward, and Winkler counties, the only fishes that may be used for bait are common carp, fathead minnows, gizzard and threadfin shad, sunfish (Lepomis), goldfish, and golden shiners.

(b) Bag, possession, and length limits.

(1) (No change.)

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

(A) (No change.)

(B) Statewide daily bag and length limits shall be as follows:
Figure 1: 31 TAC §65.72(b)(2)(B)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(*i*) The following is a figure:
Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(*ii*) (No change.)

(c) Devices, means and methods.

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

(5) Device Restrictions.

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

(I) Pole and line.

(*i*) Game and non-game fish may be taken by pole and line. It is unlawful to take or attempt to take fish with one or more hooks attached to a line or artificial lure used in a manner to foul-hook a fish (snagging or jerking). A fish is foul-hooked when caught by a hook in an area other than the fish's mouth.

(*ii*) Game and nongame fish may be taken by pole and line. It is unlawful to take fish with a hand-operated device held underwater except that a spear gun and spear may be used to take nongame fish.

(iii) [~~(ii)~~] Game and non-game fish may be taken by pole and line, except that in the Guadalupe River in Comal County from the second bridge crossing on River Road upstream to the easternmost bridge crossing on F.M. Road 306, rainbow and brown trout may not be retained when taken by any method except artificial lures. Artificial lures cannot contain or have attached either whole or portions, living or dead, of organisms such as fish, crayfish, insects (grubs, larvae, or adults), or worms, or any other animal or vegetable material, or synthetic scented materials. This does not prohibit the use of artificial lures that contain components of hair or feathers. It is an offense to possess rainbow and brown trout while fishing with any other device in that part of the Guadalupe River defined in this paragraph.

(J)-(R) (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 February 22, 1999.

TRD-9901091
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 389–4775

Subchapter H. Public Lands Proclamation

31 TAC §65.192

The Texas Parks and Wildlife Department proposes an amendment to §65.192, concerning the Public Lands Proclamation. The amendment to §65.192 authorizes the executive director to postpone or cancel hunts in response to severe weather and other emergencies. The amendment is necessary to provide a mechanism for delaying or canceling hunts when circumstances make it impractical or dangerous to hold them at their scheduled times.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Macdonald also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be increased recreational opportunity for users of the public hunting system, and the preservation of recreational opportunity by rescheduling postponed hunts.

There will be no effect on small businesses. There are no additional economic costs to persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Herb Kothmann, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4770 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, Chapter 81, Subchapter E, which provides the Parks and Wildlife Commission with authority to establish an open season on wildlife management areas and public hunting lands and authorizes the executive director to regulate numbers, means, methods, and conditions for taking wildlife resources on wildlife management areas and public hunting lands; Chapter 12, Subchapter A, which provides that a tract of land purchased primarily for a purpose authorized by the code may be used for any authorized function of the department if the commission determines that multiple use is the best utilization of the land's resources; Chapter 62, Subchapter D, which provides authority, as sound biological management practices warrant, to prescribe seasons, number, size, kind, and sex and the means and method of taking any wildlife; and §42.0177, which authorizes the commission to modify or eliminate the tagging requirements of Chapter 42.

The amendment affects Parks and Wildlife Code, Chapter 81, Subchapter E; Chapter 12, Subchapter A; Chapter 62, Subchapter D; and Chapter 42.

§65.192. Powers of the Executive Director.

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

(f) The executive director may close public hunting lands to public use to protect sensitive sites, and may cancel hunts or close the seasons on certain areas to avoid depletion of wildlife resources <u>or in response to severe weather or other emergencies</u>.

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

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

Filed with the Office of the Secretary of State, on February 22, 1999.

TRD-9901087
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389–4775

Chapter 69. Resource Protection

Subchapter D. Memorandum of Understanding

31 TAC §69.71

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

The Texas Parks and Wildlife Department proposes the repeal of §69.71 and new §69.71, concerning Memorandum of Understanding (MOU) with the Texas Department of Transportation. The new section adopts by reference the provisions of 43 TAC §2.22, which contains the text of an MOU required by Trans-

portation Code, §201.607. The new rule is necessary to implement the statutory duty of the Texas Department of Transportation and the Texas Parks and Wildlife Department to enter into cooperative agreements for the protection and preservation of the natural environment. The proposed rule will function by codifying procedures providing for Texas Parks and Wildlife Department (TPWD) review of TxDOT projects that have the potential to affect natural resources within the jurisdiction of TPWD.

Robert Macdonald, Wildlife Division regulations coordinator, has determined that for each of the first five years that the proposed rule is in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the proposed rule.

Mr. Macdonald also has determined that for each of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the repeal as proposed will be multi-agency cooperation in the protection and preservation of wildlife resources and habitat in this state.

There will be no effect on small businesses. There are no economic costs to persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Roy Frye, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4579 or 1-800-792-1112.

The proposed repeal and new section are proposed under Transportation Code, §201.607, which requires each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources to examine and revise their memorandum of understanding with the Texas Department of Transportation.

The repeal and new rule affect Transportation Code, §201.607.

§69.71. Review of Fish and Wildlife Impacts of Texas Department of Transportation Activities.

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

Filed with the Office of the Secretary of State, on February 22, 1999.

TRD-9901086
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 389–4775

The proposed new section is proposed under Transportation Code, §201.607, which requires each state agency that is responsible for the protection of the natural environment or for the preservation of historical or archeological resources to examine and revise their memorandum of understanding with the Texas Department of Transportation.

The new rule affects Transportation Code, §201.607.

§69.71. Memorandum of Understanding.

The Texas Parks and Wildlife Commission adopts by reference the provisions of 43 TAC §2.22 (relating to Memorandum of Understanding with the Texas Parks and Wildlife 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 February 22, 1999.

TRD-9901088
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 389–4775

Part X. Texas Water Development Board

Chapter 357. Regional Water Planning Guidelines

31 TAC §357.4

The Texas Water Development Board (the board) proposes an amendment to §357.4, concerning the Regional Water Planning Guidelines. The amendment will allow for the Texas Department of Agriculture to add a member in an advisory role relating to Senate Bill 1. This placement of a Texas Department of Agriculture non-voting member will provide that agency with appropriate input into the regional water planning process.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Todd has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to allow the Texas Department of Agriculture to provide appropriate input into the regional water planning process. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Suzanne Schwartz, 512/463-7981, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under the authority granted in Texas Water Code, §6.101, which provides the board with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code and laws of Texas, and under the authority of Texas Water Code, §16.053, which requires the board to develop rules and guidelines to govern procedures to be followed in carrying out the responsibilities in Texas Water Code, §16.053, which responsibilities include designation of representatives for regional water planning areas

and procedures for adoption of regional water plans by regional water planning groups.

The statutory provisions affected by the amendments are Texas Water Code, §16.053.

§357.4. Designation of Regional Water Planning Groups.

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

(g) Regional water planning groups shall add the following non-voting members of each regional water planning group:

(1) staff member of the board to be designated by the executive administrator;

(2) staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) member designated by each adjacent regional water planning group to serve as a liaison; [~~and~~]

(4) one or more persons to represent those entities with headquarters located in another regional water planning area and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the regional water planning area, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the regional water planning area, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the regional water planning area; and[~~.~~]

(5) staff member of the Texas Department of Agriculture designated by its commissioner.

(h) The regional water planning group, at its discretion may add as non-voting members:

(1) a representative designated by each state or nation that shares water resources with the regional water planning area;

(2) a representative designated by an entity with binational authority, if the regional water planning area shares water resources with another nation; and

(3) a representative designated by state or federal agencies, including Texas Natural Resource Conservation Commission, and Texas General Land Office, [~~and Texas Department of Agriculture,~~] or other entities that the regional water planning groups determine important to the planning effort.

(i)-(l) (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 February 17, 1999.

TRD-9900991
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 463–7981

Chapter 363. Financial Assistance Programs

Subchapter H. Groundwater District Loan Program

31 TAC §§363.801–363.811

The Texas Water Development Board (the board) proposes new sections §§363.801-363.811, regarding the Groundwater District Loan Program, to govern applications for financial assistance to groundwater districts or authorities under the Water Assistance Fund, established by Texas Water Code, Chapter 15, Subchapter B.

Section 363.801 sets out the scope of the subchapter which addresses the rules for the Groundwater District Loan Program. Section 363.802 provides that loans made under the subchapter have a term of not to exceed three years. Section 363.803 provides that applications for loans will be funded on a first-come, first-served basis based on a completed application.

Section 363.804 describes an eligible applicant for loan funds. Section 363.805 specifies that funds may be used to fund or reimburse a district's startup costs and operating costs. The section further lists some of the eligible costs.

Section 363.806 describes the general, fiscal, and legal information that must be included in an application for financial assistance. Section 363.807 provides for the findings that the board must make in approving an application. Section 363.808 states that financial assistance may be made through the issuance of a note and entering into a loan agreement. Section 363.809 provides for the documents and activities that must be completed to close on a loan. Section 363.810 provides standards for the release of funds. Section 363.811 provides that the board is authorized to conduct financial audits.

Ms. Patricia Todd, Director of Accounting and Finance, has determined that for the first five-year period these sections are in effect there be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Todd has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be to provide funds so that groundwater districts can carry through with duties assigned by Senate Bill 1, 75th Legislative Session. Ms. Todd has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Gail Allan, 512/463-7804, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including, specifically, the SRF program.

The statutory provisions affected by the proposed amendments are Subchapter L. Chapter 36, Texas Water Code.

§363.801. Scope of Subchapter.

This subchapter shall govern applications for financial assistance to groundwater districts or authorities under the Water Assistance Fund, established by Texas Water Code, Chapter 15, Subchapter B. The funding program described in this subchapter shall be known as the Groundwater District Loan Program. Unless in conflict with the provisions of this subchapter, the provisions of Subchapter A of this

title (relating to General Provisions) shall also apply to applications for financial assistance for the Groundwater District Loan Program.

§363.802. Loans.

The board may make loans under this subchapter for a period not to exceed three years.

§363.803. Criteria and Methods for Distribution of Funds.

Applications for assistance may be submitted at any time and will be funded on a first-come, first-served basis, based on submission of a completed application. A completed application is one that contains all of the information required in §363.806 of this title (relating to Applications.)

§363.804. Eligible Applicant.

An eligible applicant is any district or authority created under the Texas Constitution, Section 52, Art. III, or Section 59, Article XVI, that has the authority to regulate the spacing of water wells, the production from water wells, or both. The term "district" as used in this subchapter shall apply to both districts and authorities which meet the eligibility requirements of this section.

§363.805. Use of Funds.

Loan funds may be used to fund or reimburse an applicant's initial expenses, including start-up and operating costs. Eligible costs of the applicant may include:

(1) creation expenses, including election costs;

(2) salaries and payroll taxes;

(3) utilities;

(4) travel;

(5) insurance;

(6) building and office leases;

(7) office supplies and furniture;

(8) telephone and computer equipment; and

(9) legal and professional fees.

§363.806. Applications.

(a) An applicant shall submit an application for financial assistance in writing and will accompany the written application either with a telephone briefing or, if feasible, a meeting with board staff.

(b) The following information is required on all applications to the board for financial assistance.

(1) General, Fiscal and Legal Information. The application shall include:

(A) the name and address of the applicant;

(B) a citation of the law under which the applicant operates and was created;

(C) the amount of financial assistance being requested;

(D) the name, address and telephone numbers of the applicant's board members;

(E) the legal authority to pledge selected revenues;

(F) the financing plan for repaying the total cost of the loan;

(G) except for newly created districts, the most recent annual financial statements and latest monthly and year-to-date financial reports of the applicant;

(H) a certified copy of a resolution of the applicant's governing body requesting financial assistance from the board, authorizing the submission of the application, and designating the authorized representative for executing the application and for appearing before the board;

(I) an affidavit executed by the authorized representative stating that the facts contained in the application are true and correct to his/her best knowledge and belief; that the applicant will comply with all representations in the application and with all laws of the State of Texas and all rules and published policies of the board; that there is no litigation or other proceeding pending or threatened against the applicant wherein an adverse decision would materially adversely affect the financial condition of the applicant or its ability to issue debt; and that the application for financial assistance was considered and approved by the governing body in an open meeting;

(J) a description of the initial operations; and

(K) the total start-up cost of the initial operations.

(2) Additional Application Information. Any additional information requested by the executive administrator as necessary to complete the financial and legal reviews.

§363.807. Findings Required.

The board, by resolution, may approve the application if it finds that:

(1) granting financial assistance to the applicant will serve the public interest; and

(2) the revenue pledged by the applicant from district taxes and fees and other sources will be sufficient to meet all the obligations assumed by the applicant.

§363.808. Notes and Loan Agreements

(a) The board may provide financial assistance to applicants by purchasing a note and entering into a loan agreement with the applicant.

(b) The applicant is not required to engage the services of a bond counsel or a financial advisor.

§363.809. Loan Closing.

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

(1) the term of the loan and a schedule for repayment of principal and interest;

(2) the interest rates for the loan, which will be set as the standard rate under §363.33(a)(3) of this title (relating to Interest Rates for Loans and Purchase of Board's Interest in State Participation Projects);

(3) that an annual audit of the applicant, prepared in accordance with generally accepted auditing standards by a certified public accountant or licensed public accountant, be provided annually to the executive administrator for the term of the loan;

(4) that a final accounting be made to the executive administrator of the total sources and authorized use of loan funds if so requested by the executive administrator;

(5) that the applicant shall levy and collect taxes and/or charges to provide adequate revenue to pay principal and interest on the loan as it comes due.

(6) that the applicant will apply any unused funds to the repayment of loan principal in inverse order of maturity;

(7) that the applicant shall maintain current, accurate and complete records and accounts necessary to demonstrate compliance with financial assistance related legal and contractual provisions;

(8) any additional conditions that may be imposed by the board or requested by the executive administrator.

(b) Closing Requirements. The applicant shall be required to execute the note and loan agreement as a condition of closing.

§363.810. Release of Funds.

Funds for approved applications shall be released only after the applicant has completed all of the requirements of §363.809 of this title (relating to Loan Closing), including execution of the loan documents.

§363.811. Audits.

The executive administrator is authorized to conduct financial audits of every loan which is financed in whole or in part by board financial assistance, including the financing of start-up and operating costs of a district. Audits may be conducted on site if necessary, and board staff shall be provided access to all district records necessary to complete such audit. The district shall take actions to correct any items found to be in noncompliance with agreements relating to board financial assistance.

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 February 17, 1999.

TRD-9900989
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: April 8, 1999
For further information, please call: (512) 463–5580

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 401. Practice and Procedure

Subchapter I. Notice and Processing Periods for License Applications

37 TAC §§401.121, 401.123, 401.125, 401.127

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

The Texas Commission on Fire Protection proposes the repeal of §§401.121, 401.123, 401.125 and 401.127 concerning notice and processing periods for license applications. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that a more timely response to incomplete applications is required and allowing applicants to reapply when deficiencies are resolved.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the repeal.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties.

Texas Government Code, §419.008 is affected by the proposed repeal.

§401.121. Purpose of Establishing Time Periods.

§401.123. Notice of Deficiency.

§401.125. Processing Periods.

§401.127. Appeal.

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 February 22, 1999.

TRD-9901044
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 918–7184

Subchapter I. Notice and Processing Periods for Certificate Applications

37 TAC §§401.121, 401.123, 401.125, 401.127

The Texas Commission on Fire Protection proposes new §§401.121, 401.123, 401.125 and 401.127 concerning notice and processing periods for certificate applications. The new sections eliminate references to "license" applications and substitute a reference to "certificates". In addition the processing period is reduced from 90 days to 30 days, after which an incomplete application may be denied.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the new sections will

be that a more timely response to incomplete applications is required and allowing applicants to reapply when deficiencies are resolved.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed new sections.

The commission has determined that the proposed new sections relating to notice and processing periods for certificate applications will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties.

Texas Government Code, §419.008 is affected by the proposed new sections.

§401.121. Purpose of Establishing Time Periods.

In order to minimize delays which hamper small businesses and other enterprises, this subchapter establishes time periods within which the Texas Commission on Fire Protection shall review and process certificate applications efficiently and provides for an appeal process should the agency violate these periods in accordance with the Government Code, Chapter 2005.

§401.123. Notice of Deficiency.

(a) Manner of Notice. Written notice that an application is complete or deficient must be mailed to the applicant or delivered by such means as will reasonably provide actual notice.

(b) Written Notice Not Required. Written notice that an application is complete shall not be required under this subchapter if an application is approved and a certificate issued during the notice period.

§401.125. Processing Periods.

(a) Notice to applicant. Within 30 days from receipt of an application for a certificate or approval issued pursuant to the Government Code, Chapter 419, the agency shall determine a filing to be complete or deficient and immediately issue written notice to the applicant regarding the status of the application.

(1) Complete application.

(A) The written notice for a complete application shall state that the application is complete and accepted for filing and shall advise the applicant of the time period in which the agency must deny or approve the application unless such information has previously been provided to the applicant.

(B) For purposes of this section, an application is complete upon agency determination that it is in compliance with the content and form prescribed by the agency.

(2) Deficient application.

(A) The written notice for a deficient application shall state that the application is not complete, set out the specific additional information that is required for completion, and advise the applicant that the agency may disapprove an application that is not complete within 30 days of its original receipt. After one written notice of deficiency has been issued, another is not required for an application resubmitted in whole or in part with deficiencies.

(B) In addition to notice issued under subparagraph (A) of this paragraph, the agency may notify the applicant, in any manner, of deficiencies in the application.

(b) Processing of application. Within 60 days after receipt of a complete application, the agency shall:

(1) issue the certificate on payment of the appropriate fees and successful completion of all required examinations; or

(2) deny the certificate.

(c) Application disapproved. The agency may disapprove an application that is not complete within 30 days of its original receipt by the agency.

§401.127. Appeal.

(a) Hearing.

(1) Notice. An applicant who does not receive notice as to the complete or deficient status of a certificate application within the period established in this subchapter for such application may petition for a hearing to review the matter.

(2) Processing. An applicant whose permit is not approved or denied within the period established in this subchapter for such certificate may petition for a hearing to review the matter.

(3) Procedure. A hearing under this section shall be in accordance with the Administrative Procedure Act and Subchapter E of this chapter (relating to Contested Cases).

(b) Petition. A petition filed under this section must be in writing and directed to the executive director. The petition shall identify the applicant, indicate the type of certificate sought and the date of the application, specify each provision in this subchapter that the agency has violated, and describe with particularity how the agency has violated each provision. The petition shall be filed with the office of the executive director.

(c) Decision. An appeal filed under this section shall be decided in the applicant's favor if the executive director finds that:

(1) the agency exceeded an established period under this subchapter; and

(2) the agency failed to establish good cause for exceeding the period.

(d) Good cause. The agency is considered to have good cause for exceeding a notice or processing period established for a permit if:

(1) the number of certificates to be processed exceeds by 15% or more the number of certificates processed in the same calendar quarter of the preceding year;

(2) the agency must rely on another public or private entity for all or part of its certificate processing, and the delay is caused by the other entity;

(3) the hearing and decision-making process results in reasonable delay under the circumstances;

(4) the applicant is under administrative review; or

(5) any other conditions exist giving the agency good cause for exceeding a notice or processing period.

(e) Commission review. A permit applicant aggrieved by a final decision or order of the executive director concerning a period established by these sections may appeal to the commission in writing after the decision or order complained of is final, in accordance with 401.93 of this title (relating to Appeals to the Commission).

(f) Relief.

(1) Complete or deficient status. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to issue notice as to the complete or deficient status of an application shall be entitled to notice of application status.

(2) Certificate approval or denial. An applicant who maintains a successful appeal under subsection (c) of this section for agency failure to approve or deny a certificate shall be entitled to such approval or denial of the certificate and to full reimbursement of all filing fees that have been paid to the agency in connection with the application.

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 February 22, 1999.

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T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

Chapter 403. Criminal Convictions and Eligibility for Certification and Licensure

37 TAC §§403.1, 403.3, 403.5, 403.7, 403.9, 403.11

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

The Texas Commission on Fire Protection proposes the repeal of §§403.1, 403.3, 403.5, 403.7, 403.9 and 403.11 concerning criminal convictions and eligibility for certification and licensure. The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state government. There will be minimal cost to fire departments and individuals when the conviction warrants notification to the commission.

Mr. Calagna also has determined that for each of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the consistency of rules with legislation.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed repeal.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The repeal is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties.

Texas Government Code, §419.008 is affected by the proposed repeal.

§403.1. Purpose.
§403.3. Scope.
§403.5. Access to Criminal History Record Information.
§403.7. Criminal Convictions Guidelines.
§403.9. Mitigating Factors.
§403.11 Procedures for Suspension, Revocation, or Denial of a Certificate or License to Persons with Criminal Backgrounds.

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 403. Criminal Convictions and Eligibility for Certification

37 TAC §§403.1, 403.3, 403.5, 403.7, 403.9, 403.11, 403.15

The Texas Commission on Fire Protection proposes new §§403.1, 403.3, 403.5, 403.7, 403.9, 403.11 and 403.15 concerning criminal convictions and eligibility for certification. The new sections delete references to licenses or permits issued by the State Fire Marshal's Office which was transferred to the Department of Insurance. In addition statutory references are updated. Finally, new §403.15 requires the holder of a certificate and their employing fire department to report convictions within 14 days of the conviction.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new sections are in effect there will be minimal cost to fire departments and individuals when the conviction warrants notification to the commission.

Mr. Calagna also has determined that for each of the first five years the proposed new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be the consistency of rules with legislation.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed new sections.

The commission has determined that the proposed new sections relating to criminal convictions and eligibility for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties.

Texas Government Code, §419.008 is affected by the proposed new sections.

§403.1. Purpose.

(a) The purpose of this chapter is to establish guidelines and criteria on the eligibility of persons with criminal convictions for a certificate issued by the Texas Commission on Fire Protection (the commission) and to establish procedures for suspension, revocation, or denial of a certificate held or applied for by persons with criminal convictions pursuant to Texas Civil Statutes, Articles 6252-13c and 6252-13d.

(b) The duties and responsibilities of persons who hold certifications issued by the commission each involve matters that directly relate to public safety. Fire protection personnel and volunteer fire fighters often have access to areas not generally open to the public. The public relies on the honesty, trustworthiness, and reliability of persons certified by the commission. Thus, crimes involving moral turpitude, including but not limited to fraud and dishonesty, are directly relevant. In addition, the ability of such persons to function unimpaired by alcohol or the illegal use of drugs, in dangerous or potentially dangerous circumstances, including but not limited to the operation of emergency vehicles is paramount in light of the duty to protect the health and safety of the public.

§403.3. Scope.

(a) The guidelines established in this chapter apply to a person who holds or applies for any certificate issued under the commission's regulatory authority contained in Government Code, Chapter 419.

(b) When a person's criminal conviction of a felony or misdemeanor directly relates to the duties and responsibilities of the holder of a certificate issued by the commission, the commission may:

(1) deny to a person the opportunity to be examined for a certificate;

(2) deny the application for a certificate;

(3) refuse to renew a certificate;

(4) suspend or revoke an existing certificate; or

(5) limit the terms or practice of a certificate holder to areas prescribed by the commission.

§403.5. Access to Criminal History Record Information.

(a) Criminal history record. The commission is entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation identification division, or another law enforcement agency to investigate the eligibility of a person applying to the commission for or holding a certificate.

(b) Confidentiality of information. All information received under this section is confidential and may not be released to any person outside the agency except in the following instances:

(1) a court order;

(2) with written consent of the person being investigated;

(3) in a criminal proceeding; or

(4) in a hearing conducted under the authority of the commission.

(c) Early review. A fire department that employs a person regulated by the commission, a person seeking to apply for a beginning position with a fire department, a volunteer fire department with members participating in the commission volunteer fire fighter certification program, or an individual participating in the commission volunteer fire fighter certification program may seek the early review under this chapter of the person's present fitness to be certified prior to completing the requirements for certification by requesting such review in writing and providing the person's full name, birth date, and any additional identifying information requested by the commission. A decision based on an early review does not bind the commission if there is a change in circumstances.

§403.7. Criminal Convictions Guidelines.

(a) The following crimes are considered to relate directly to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of persons certified by the commission:

(1) offenses under the Government Code, Chapter 419, relating to the Texas Commission on Fire Protection;

(2) offenses under the Texas Transportation Code Title 6 Roadways, which are punishable by fines greater than $200, or imprisonment, or both fine and imprisonment;

(3) offenses under the Health and Safety Code, Chapter 481, concerning controlled substances;

(4) offenses under the Health and Safety Code, Chapter 483, concerning dangerous drugs;

(5) offenses under the following titles of the Texas Penal Code:

(A) Title 5–offenses against the person;

(B) Title 6–offenses against the family;

(C) Title 7–offenses against property;

(D) Title 8–offenses against public administration;

(E) Title 9–offenses against public order and decency;

(F) Title 10–offenses against public health, safety and morals;

(G) Title 11–offenses involving organized crime; and

(H) Title 4–inchoate offenses Chapter 15 preparatory offenses to any of the offenses in this section;

(6) the offenses listed in this subsection are not inclusive, in that the commission may consider other particular crimes in special cases in order to promote the intent of the statutes administered by the commission.

(b) In all cases the commission shall consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring the certificate issued by the commission;

(3) the extent to which the certificate might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the certificate holder;

(5) the level and nature of supervision of the person by others; and

(6) the level and nature of access to public, commercial, and residential properties, including access after regular business hours and access to areas not open to the general public.

§403.9. Mitigating Factors.

(a) In addition to the factors that must be considered under §403.7 of this title (relating to Criminal Conviction Guidelines), in determining the present fitness of a person who has been convicted of a crime, the commission shall consider the following evidence:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person at the time of the commission of the crime;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person prior to and following the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release; and

(6) other evidence of the person's present fitness, including letters of recommendation from:

(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other persons in contact with the convicted person.

(b) It shall be the responsibility of the applicant to the extent possible to secure and provide to the commission the recommendations of prosecution, law enforcement, and correctional authorities as required by statute and these rules upon request by the commission staff. The applicant shall also furnish:

(1) a copy of the indictment, information or complaint;

(2) a copy of the judgement(s) or order(s) of the court adjudicating guilt, granting probation, community supervision, deferred adjudication, or discharge from probation or community supervision;

(3) a record of steady employment in the form of a letter from current or former employers;

(4) a record that the applicant has supported his or her dependents in the form of a letter from a person in the applicant's community with personal knowledge of the circumstances;

(5) evidence that the applicant has paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, in the form of copies of official records, documents, or a letter from the person's probation or parole officer where applicable concerning his or her current status.

§403.11. Procedures for Suspension, Revocation, or Denial of a Certificate to Persons with Criminal Backgrounds.

(a) If the commission's Standards Division (the division) proposes to suspend, revoke, limit, or deny a certificate based on the criteria in this chapter, the division shall notify the individual at his or her last known address as shown in the commission's records, by registered or certified mail. The notice of intended action shall specify the facts or conduct alleged to warrant the intended action.

(b) If the proposed action is to limit, suspend, revoke, or refuse to renew a current certificate, the notice of intended action shall comply with the preliminary notice requirements of Government Code §2001.054(c). The individual may request an informal conference with the commission staff in order to show compliance with all requirements of law for the retention of the certificate, pursuant to Government Code §2001.054(c). The request for an informal staff conference must be submitted to the division director no later than 15 days after the date of the notice of intended action. If the informal staff conference does not result in an agreed consent order, a formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(c) An individual who does not hold a current certificate may request a formal hearing in order to contest the proposed action of the division. The request must be submitted in writing to the division director no later than 15 days after the date of the notice. A formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(d) If the individual does not request an informal staff conference or a formal hearing in writing within the time specified in this section, the individual is deemed to have waived the opportunity for a hearing, and the proposed action will be taken.

(e) If the commission limits, suspends, revokes, or denies a certificate under this chapter, the executive director shall give the person written notice:

(1) of the reasons for the decision;

(2) that the person may appeal the decision of the executive director to the commission in accordance with §401.93 of this title (relating to Appeals to the Commission) within 30 days from the date the decision of the executive director is final and appealable;

(3) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County, Texas, for judicial review of the evidence presented to the commission and its decision and that such petition must be filed with the court no later than 30 days after the commission's action is final and appealable.

§403.15. Report of Convictions by Individual or Department.

(a) A certificate holder shall report to the commission, any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, within 14 days of the date of the conviction.

(b) A fire department or local government regulated by the commission shall report to the commission, any conviction, other than a minor traffic offense (Class C misdemeanor) under the laws of this state, another state, the United States, or foreign country, that it has

knowledge of, of any certificate holder, within 14 days of the date of the conviction.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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Chapter 421. Standards for Certification

37 TAC §§421.3, 421.5, 421.11

The Texas Commission on Fire Protection proposes amendments to §421.3 and §421.5, and new §421.11 concerning standards for certification. The amendments to §421.3 add competencies and qualifications for marine fire protection personnel, fire inspector, and fire investigator, considered essential to the positions, including the ability to read and understand English language manuals. This ability is tested by the written examination administered by the commission. The amendments to §421.5 add definitions that clarify NFA course credit. The new §421.11 adds language that requires certification within one year in all disciplines and procedures for removal and reinstatement.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended and new sections are in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the proposed amendments and proposed new section are in effect the public benefit anticipated as a result of enforcing the amended and new sections will be that applicants for certification as marine fire protection personnel, fire inspector, and fire investigator will have clear guidelines for qualifications and competencies for the positions. In addition the amount of credit given NFA courses are standardized.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed amendments and new section.

The commission has determined that the proposed amendments and new section relating to standards for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments and new section are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum requirements for fire protection; Texas Government Code, §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; Texas Government Code, §419.0322, which provides for limits on compensation; and Texas Government Code, §419.071, which provides the commission with authority to establish standards for the volunteer certification program.

Texas Government Code, §§419.022, 419.032, 419.0322 and 419.071 is affected by the proposed amendments and new section.

§421.3. Minimum Standards Set by the Commission.

(a) (No change.)

(b) Functional position descriptions.

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

(3) Marine fire protection personnel. The following general position for marine fire protection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the marine fire fighter operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: familiarity with geographic and physical components of a navigable waterway; ability to use and understand communication equipment, terminology, and procedures used by the maritime industry; and knowledge in the operation of fire fighting vessels.

(B) Competency. A marine fire fighter must demonstrate competency in handling emergencies utilizing equipment and skills in accordance with the objectives in Chapter 3 of the Commission Certification Curriculum Manual, adopted by the Texas Commission on Fire Protection.

(4) Fire inspection personnel. The following general position description for fire inspection personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire inspector operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; must be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an inspection; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in an environment with potentially loud noises; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, construction and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Demonstrate knowledge of characteristics and behavior of fire, and fire prevention principles. Good manual dexterity with the ability to perform all tasks related to

the inspection of structures and property; ability to bend, stoop, and crawl on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold, and moisture; and the ability to work in low light, confined spaces, elevated heights, and other potentially dangerous environments.

(B) Competency. A fire inspector must demonstrate competency in conducting inspections utilizing equipment and skills in accordance with the objectives in Chapter 4 of the Commission Certification Curriculum Manual, adopted by the Texas Commission on Fire Protection.

(5) Fire Investigator personnel. The following general position description for fire investigator personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the fire investigator operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. Successfully complete a commission approved course; achieve a passing score on certification examinations; be at least 18 years of age; generally, the knowledge and skills required to show the need for a high school education or equivalent; ability to communicate verbally, via telephone and radio equipment; ability to lift, carry, and balance weight equivalent to weight of common tools and equipment necessary for conducting an investigation; ability to interpret written and oral instructions; ability to work effectively with the public; ability to work effectively in a hazardous environment; ability to function through an entire work shift; ability to calculate area, weight and volume ratios; ability to read and understand English language manuals including chemical, legal and technical terms, building plans and road maps; ability to accurately discern street signs and address numbers; ability to document, in writing, all relevant information in prescribed format in light of legal ramifications of such; ability to converse in English with coworkers and other personnel. Good manual dexterity with the ability to perform all tasks related to fire investigation; ability to bend, stoop, and walk on uneven surfaces; ability to climb ladders; ability to withstand varied environmental conditions such as extreme heat, cold and moisture; and the ability to work in low light, confined spaces, elevated heights and other potentially dangerous environments.

(B) Competency. A fire investigator or arson investigator must demonstrate competency in determining fire cause and origin utilizing equipment and skills in accordance with the objectives in Chapter 5 of the Commission Certification Curriculum Manual, adopted by the Texas Commission on Fire Protection.

(6) Hazardous Materials Technician personnel. The following general position description for hazardous materials personnel serves as a guide for anyone interested in understanding the qualifications, competencies, and tasks required of the hazardous materials technician operating in the State of Texas. It is ultimately the responsibility of an employer to define specific job descriptions within each jurisdiction.

(A) Qualifications. In addition to the qualifications for basic structural fire protection personnel: analyze a hazardous materials incident, plan a response, implement the planned response, evaluate the progress of the planned response, and terminate the incident.

(B) Competency. A hazardous materials technician must demonstrate competency handling emergencies resulting from releases or potential releases of hazardous materials, using specialized chemical protective clothing and control equipment in accordance with the objectives in Chapter 6 of the Commission Certification Curriculum Manual, adopted by the Texas Commission on Fire Protection.

§421.5. Definitions.

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

(1)-(21) (No change.)

(22) High school–A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(23)-(24) (No change.)

(25) National Fire Academy credit hours–For the purpose of determining the number of hours to credit for National Fire Academy courses both resident and hand off. The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE). For courses that have not been evaluated by ACE, commission staff will review and determine credit.

(26) [(25)] Participating volunteer fire fighter–An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(27) [(26)] Participating volunteer fire department–A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(28) [(27)] Part-time fire protection employee–An individual who is designated as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(29) [(28)] Recognition of training–A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(30) [(29)] School–Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(31) [(30)] Trainee–An individual who is participating in a commission approved training program.

(32) [(31)] Training officer–The officer or supervisor, by whatever title he or she may be called, that is in charge of a commission approved training program.

(33) [(32)] Volunteer fire protection personnel–Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(34) [(33)] Years of experience–For purposes of higher levels of certification, defined as full years of service while holding:

(A) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(B) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent; or

(C) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent.

§421.11. Requirement to be Certified Within One Year.

(a) All full-time or part-time employees of a fire department or local government who are assigned duties identified as fire protection personnel duties must be certified by the Commission in the discipline(s) to which they are assigned within one year of their assignment to the duties. An individual who accepts assignment(s) in violation of this section shall be removed from the assignment(s) and will be subject to administrative penalties. A department or local government that assigns an individual in violation of this section will also be subject to administrative penalties.

(b) An individual who has been removed from assignment to duties identified as fire protection personnel duties for violation of this section must petition the commission in writing for permission to be reassigned to the duties from which they were removed. The petition will be considered only if the individual has obtained all appropriate certification(s) applicable to the duties to which the individual seeks reassignment.

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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T.R. Thompson
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37 TAC §421.9

The Texas Commission on Fire Protection proposes amendments to §421.9, concerning designation of fire protection duties. The amendments to §421.9 adds a subsection that permits a fire department to employ, on a part-time basis, certified fire protection personnel without additional part-time certification.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be fiscal implications for the state estimated at approximately $1,200 each year for reduction in certification fee revenue. Local governments that employ part-time fire employees previously certified as fire protection personnel will have a reduction in cost of $20 per person.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that it eliminates an unnecessary cost to local governments of issuing part-time certification to persons already certified as fire protection personnel.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed amendment.

The commission has determined that the proposed amendments relating to standards for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e- mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum requirements for fire protection personnel and Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 and §419.032 is affected by the proposed amendments.

§421.9. Designation of Fire Protection Duties.

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

(e) A person certified as fire protection personnel in one fire department may be employed and designated as a part- time fire protection employee in another fire department without additional certification as a part-time fire protection employee.

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 423. Fire Suppression

Subchapter A. Minimum Standards For Structure Fire Protection Personnel Certification

37 TAC §423.11

The Texas Commission on Fire Protection proposes amendments to §423.11, concerning higher levels of certification. The amendments to §423.11 provides a technical correction to the section allowing persons to seek higher levels of structure certification while assigned to another discipline.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the

amended section is in effect there will be no fiscal implications for state or local governments.

Mr. Calagna also has determined that for each of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be that fire service personnel will have a clearer understanding of requirements for higher levels of certification in structural fire protection while assigned to another discipline.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed amendments.

The commission has determined that the proposed amendment relating to higher levels of certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code 419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

Texas Government Code, §419.022 is affected by the proposed amendment.

§423.11. Higher Levels of Certification.

(a) An individual may receive higher levels of certification in structural fire protection while being assigned to another discipline, provided that all requirements for the higher level or levels of certification are [~~must be~~] met.

(b) (No change.)

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

Filed with the Office of the Secretary of State, on February 22, 1999.

TRD-9901050
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 918–7184

Chapter 429. Minimum Standards For Fire Inspectors

37 TAC §429.3

The Texas Commission on Fire Protection proposes amendments to §429.3 concerning minimum standards for basic fire inspector certification. The amendments to §429.3 changes the number of minimum hours of instruction in a National Fire Academy resident program for fire inspection which makes it consistent with the basic inspectors curriculum of the commission. It also allows for a combination of several courses that can be taught along with the basic course of Fire Inspection Principles.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be no fiscal implications to state or local governments.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended section will be that the number of instruction hours in a National Fire Academy program for fire inspection will be consistent with the basic inspectors curriculum of the commission.

There are no additional costs of compliance for small businesses or individuals required to comply with the proposed amendment.

The commission has determined that the proposed amendments relating to minimum standards for fire inspectors will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendment.

§429.3. Minimum Standards for Basic Fire Inspector Certification.

(a) (No change.)

(b) In order to be certified by the commission as a Basic Fire Inspector an individual must complete a commission approved fire inspection training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one of the following:

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

(4) successful completion of a minimum of 226 [~~240~~] hours of instruction in a National Fire Academy resident program for fire inspection. The resident program must include the basic course, Fire Inspection Principles [~~(80 hours)~~], and any combination of the following courses or its predecessor [~~and a minimum of 160 hours of instruction in at least two of the following courses~~]:

(A) Fire Prevention Specialist [~~II (80 hours)~~]; or

(B) Plans Review for Inspectors [~~(80 hours)~~]; or

(C) Code Management: A Systems Approach [~~(80 hours)~~]; or

(D) Management of Fire Prevention Programs [~~(80 hours)~~]; or

(E) Strategic Analysis of Fire Prevention Programs [~~(80 hours)~~].

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

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

Filed with the Office of the Secretary of State, on February 22, 1999.

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T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

Chapter 431. Fire Investigation

Subchapter A. Minimum Standards for Arson Investigator Certification

37 TAC §431.11

The Texas Commission on Fire Protection proposes amendments to §431.11, concerning minimum standards for arson investigator certification for law enforcement personnel. The amendments to §431.11 clarifies that employees of law enforcement agencies such as a sheriff's office or police department may be certified as arson investigators on a voluntary basis.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be no fiscal implications to state or local governments.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be consistency and clarification as to personnel eligible to become certified as arson investigators.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed amendment.

The commission has determined that the proposed amendments relating to minimum standards for arson investigator certification for law enforcement personnel will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendments.

§431.11. Minimum Standards for Arson Investigator Certification for Law Enforcement Personnel.

A law enforcement officer employed or commissioned by a law enforcement agency as a basic peace officer who is designated as an arson investigator by an appropriate local authority is eligible for certification on a voluntary basis by complying with this chapter. [~~A permanent, full- time, full-paid law enforcement officer designated as a arson investigator by an "appropriate" local authority is eligible for certification by complying with this chapter.~~]

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

Filed with the Office of the Secretary of State, on February 22, 1999.

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T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

Chapter 435. Fire Fighter Safety

37 TAC §435.1, §435.3

The Texas Commission on Fire Protection proposes amendments to §435.1 and §435.3 concerning fire fighter safety. The amendments to §435.1 deletes obsolete language that references protective clothing purchased prior to 1998. It also encourages fire departments to maintain a standard operating procedure regarding the use, care, and maintenance of the protective clothing. The amendments to §435.3 deletes redundant language that references the use of self-contained breathing apparatus before the adoption of the current national standard.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be no fiscal implications for state government. Local governments may incur costs to replace any protective clothing that does not meet the national standards. Fire departments that have non-compliant protective clothing may incur costs up to $1500 per person to replace the equipment.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that fire fighters are protected by clothing that meets national standards.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed amendments.

The commission has determined that the proposed amendments relating to fire fighter safety will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.042, which provides the commission with authority to adopt standards for protective clothing and SCBA.

Texas Government Code, §§419.022, 419.040, 419.041, and 419.042 are affected by the proposed amendments.

§435.1. Protective Clothing.

The employing entity shall:

(1) (No change.)

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association:

(A) (No change.)

(B) an entity may continue to use protective clothing in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the protective clothing constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard; and

[~~(C) fire fighter boots purchased or contracted for prior to May 16, 1988, are not required to meet the minimum standards for protective clothing;~~]

[~~(D) protective hoods purchased or contracted for prior to August 16, 1991, are not required to meet the minimum standards for protective clothing;~~]

[~~(E) protective clothing for proximity fire fighting purchased or contracted for prior to August 14, 1992, are not required to meet the standards for protective clothing; and~~]

(3) maintain and provide upon request by the commission, a departmental standard operating procedure regarding the use, care and maintenance of protective clothing [~~during fire suppression operations~~].

§435.3. Self-contained Breathing Apparatus.

The employing entity shall:

(1) (No change.)

(2) ensure that all self-contained breathing apparatus used by fire protection personnel complies with the minimum standards of the National Fire Protection Association identified in NFPA 1981, Standard on Open-Circuit Self-contained Breathing Apparatus for Fire Fighters:

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

[~~(C) an entity may continue to use a self-contained breathing apparatus in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the continued use of the self- contained breathing apparatus constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;~~]

(3)-(9) (No change.)

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

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TRD-9901053
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

Chapter 437. Fees

37 TAC §437.3

The Texas Commission on Fire Protection proposes amendments to §437.3, concerning fees for certification. The amendments to §437.3 requires testing prior to assignment in all fire protection disciplines consistent with changes to other commission rules.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be no fiscal implications to state or local governments.

Mr. Calagna also has determined that for each of the first five years the proposed amendments is in effect the public benefit anticipated as a result of enforcing the amended section will be the consistency of language in the rules.

There are no additional costs of compliance for small or large businesses or individuals required to comply with the proposed amendments.

The commission has determined that the proposed amendments relating to fees for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of

its powers and duties; and Texas Government Code, §419.026, which provides the commission with authority to establish fees for certification and examinations; and Texas Government Code, §419.034, which provides the commission with authority to establish standards for certificate renewal.

Texas Government Code, §419.026, and §419.034 are affected by the proposed amendments.

§437.3. Fees–Certification.

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

(e) If a person re-enters the fire service whose certificate(s) has been expired for one year or longer, the employing entity must:

(1) within 14 days of employment, notify the Commission that the individual has been employed;

(2) prior to assignment to any fire protection [~~suppression~~] duties, obtain documented proof that the individual has passed the proficiency test as required by §439.13 of this title (relating to Testing for Proof of Proficiency) within one calendar year prior to the date of employment; and

(3) (No change.)

(f)-(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 February 22, 1999.

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T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

Chapter 439. Examinations for Certification

37 TAC §439.3

The Texas Commission on Fire Protection proposes amendments to §439.3 concerning examinations for certification. The amendments to §439.3 specifies that if training is conducted in phase format that the examination will be based upon the curriculum in place at the time of the examination.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there are no fiscal implications for state government. Local governments that pay for their employees' training may incur an additional cost of $250 per individual to obtain refresher training.

Mr. Calagna also has determined that for each of the first five years the proposed amendments are in effect the public benefit anticipated as a result of enforcing the amended sections will be that personnel are proficient in the current standards.

There are no additional costs of compliance for small or large businesses required to comply with the proposed amendment. Individuals may incur a $250 cost to obtain refresher training.

The commission has determined that the proposed amendments relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032, concerning basic certification examinations.

Texas Government Code, §419.032 is affected by the proposed amendments.

§439.3. Definitions.

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

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

(6) Examination–A state test administered by the commission which an examinee must pass as one of the requirements for certification. Exams will be based on curricula as currently adopted in the Commission Certification Curriculum Manual. The state test can consist of only a written test or it can consist of a test that contains both a written portion and a performance skills portion. If the training program is conducted in the phase format, the examination will be based on the curriculum in place at the time of the examination.

(7)-(9) (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 February 22, 1999.

TRD-9901055
T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

Chapter 441. Continuing Education

37 TAC §441.19

The Texas Commission on Fire Protection proposes new §441.19 concerning continuing education for head of a fire department. The new section adds language to ensure that anyone certified as the head of a fire department maintains continuing education training.

Mr. Anthony C. Calagna, Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the new section is in effect there will be no fiscal implications for state governments. Local governments that pay for training of fire department heads may incur costs from $50 to $200 a year depending on the source of training.

Mr. Calagna also has determined that for each of the first five years the proposed new section is in effect the public benefit anticipated as a result of enforcing the new section will be the maintenance of continuing education training for all personnel certified as head of a fire department.

There are no additional costs of compliance for small or large businesses required to comply with the proposed new section. Individuals may incur costs from $50 to $200 a year depending on the source of training.

The commission has determined that the proposed new section relating to continuing education for head of a fire department will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

There is no local employment impact resulting from the change.

Comments on the proposal may be submitted to: Gary L. Warren Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.032, which authorizes the commission to establish qualifications relating to continuing education or training programs.

Texas Government Code, §419.032 is affected by the proposed new section.

§441.19. Continuing Education for Head of a Fire Department.

(a) Continuing education will be required for personnel certified as head of a fire department.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A, Track B, or a combination of the two.

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 February 22, 1999.

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T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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For further information, please call: (512) 918–7184

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 104. Informal Appeals, Formal Appeals, and Mediation by Applicants/Clients of Determinations by Agency Personnel that Affect the Provision of Vocational Rehabilitation Services

[~~Informal and Formal Appeals by Applicants/Clients of Decisions by a Rehabilitation Counselor or Agency Official~~]

40 TAC §§104.1–104.8

The Texas Rehabilitation Commission (TRC) proposes amendments to §§104.1-104.8, concerning informal appeals, formal appeals, and mediation by applicants/clients of determinations by agency personnel that affect the provision of vocational rehabilitation services.

The sections are being amended to conform the rules to the 1998 amendments to the Rehabilitation Act of 1973, 29 U.S.C. §§701 et. seq.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, 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.

Mr. Harrison 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 conformity to the 1998 amendments to the Rehabilitation Act of 1973, 29 U.S.C. §§701 et seq. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendments are proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§104.1. Purpose and Scope.

(a) Purpose. The purpose of these rules is to provide the Texas Rehabilitation Commission with a system for the institution, conduct, and determination of "informal" and "formal appeals" and "mediation" as those terms are defined herein. These rules shall be liberally construed in accordance with the purpose for which they were adopted. These rules inform all applicants and persons served by TRC of their due process right to appeal when they are dissatisfied with any determination made by a rehabilitation counselor or agency official regarding the furnishing or denial of services.

(b) Statutory Authority. These rules are created pursuant to the Rehabilitation Act of 1973, as amended, 29 United States Code Annotated (USCA) §§701 et seq. and Department of Education Regulations at 34 Code of Federal Regulations (CFR), Part 361 [~~§361.48~~]. Federal laws and regulations prevail over state laws and regulations. The Administrative Procedure Act, Texas Government Code Annotated, §§2001.001 et seq. does not apply to client administrative hearings which are conducted pursuant to federal law.

(c) Scope.

(1) This chapter applies to client (applicant) appeals, mediations, and hearings [~~appeals and hearings~~] before the Texas Rehabilitation Commission.

(2) These rules shall be construed to insure fair and expeditious determinations.

(3) These rules supplement the procedures required by law.

§104.2. Definitions.

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

(1) Act–The Rehabilitation Act of 1973 as amended, 29 United States Code §701 et seq.

(2) Appellant–An individual who has filed a petition for administrative hearing.

(3) Applicant–An individual who has applied for services under the Act, but for whom an eligibility determination has not been made. [~~As used in these rules, unless specifically denoted, the terms "client" and "applicant" are synonymous.~~]

(4) Authorized representative–An attorney authorized to practice law in the State of Texas and/or a person designated by the applicant or client to represent them.

(5) Client–An individual who has been determined to be eligible for services by the commission pursuant to the Act and commission rules. As used in these rules, unless specifically denoted, the terms "client" and "applicant" are synonymous.

(6) Client Assistance Program (CAP)–The program created by the Act which provides assistance in informing and advising clients and applicants of all available benefits under the Act. CAP provides assistance and advocacy in pursuing legal, administrative, or other appropriate remedies to ensure protection of the client's rights under the Act if requested by the client or the client's authorized representative.

(7) Commission–The Texas Rehabilitation Commission (TRC), its officers and agents.

[~~Commissioner's Office for Administrative Hearings– An office of the Texas Rehabilitation Commission which provides, among other functions, administrative support to the impartial hearing officer during the formal appeal process and is the point of contact for client's questions about the administrative hearings process.~~]

(8) Commissioner [~~Director of state unit/commissioner~~]–The commissioner of the Texas Rehabilitation Commission.

[~~Discovery– The process of gathering all relevant information necessary to render a fair and unbiased decision.~~]

(9) Formal appeal–The timely filing of a Petition for Administrative Hearing due to a client's continued dissatisfaction with a decision of the Commission regarding the furnishing or denial of services.

(10) Hearing–A due process formal appeal conducted under these rules by an impartial hearing officer regarding allegations set forth in the client's Petition for Administrative Hearing regarding the furnishing or denial of services. This term includes prehearing conferences.

(11) Hearing completion date–The date set by the impartial hearing officer which closes the period during which the parties may submit further evidence into the record or the date the impartial hearing officer receives the hearing transcript, whichever is later.

(12) Impartial hearing officer (IHO)–Individual who is selected on a random basis and is appointed by the commissioner to hear a formal appeal pursuant to these rules. The IHO is selected from a pool of qualified persons identified jointly by TRC and by members of the Rehabilitation Council of Texas [~~TRAC~~].

(13) Informal appeal or review–A communication or series of communications between a client and a Commission official which seeks to resolve the client's dissatisfaction with any determination made by a vocational rehabilitation counselor or commission official concerning the furnishing or denial of services.

(14) Mediation–A voluntary process by which applicants and eligible individuals who have requested appeals may attempt resolution of disputes with TRC involving determinations affecting the provision of vocational rehabilitation services through the use of a trained mediator.

(15) Office for Administrative Hearings and Subrogation–An office of the Texas Rehabilitation Commission which provides, among other functions, administrative support to the impartial hearing officer during the formal appeal process and is the point of contact for client's questions about the administrative hearings process.

(16) Party–An individual or agency named or admitted to participate in a formal appeal before the commission.

(17) Record–The official record of a formal appeal includes all of the following: pleadings; motions; intermediate rulings; orders; evidence received or considered; statements of matters officially noticed; questions and offers of proof; objections and rulings on objections; the IHO decision; any other decision, opinion, or report by the IHO [~~or Commissioner~~]; and all Commission memoranda or data, including client files, submitted to or considered by the IHO [~~or the Commissioner~~]. The record is maintained by the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation.

(18) Regional program director–Person who reviews applicant and client appeals at the TRC Regional Office level. The person holding this position in each region is also referred to as the operations director for programs.

(19) Respondent–The Texas Rehabilitation Commission (TRC).

(20) Rule–Any written commission 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. The term does not include certain proceedings excluded by the Act.

(21) Standard of review–The criteria for a court to remand or overturn a final decision of the Commission. In any such action the court will receive the records relating to the hearing, will hear additional evidence at the request of a party to the action; and basing the decision of the court on the preponderance of the evidence, will grant such relief as the court determines to be appropriate. [~~The criteria for the Travis County District Court to remand or overturn a final decision of the Commissioner. The standard of review is by substantial evidence limited to the administrative record.~~]

(22) State plan–The commission is required by the Act to submit to the Department of Education a state plan covering a three-year period which describes the state's vocational rehabilitation and independent living programs and the plans and policies to be followed in carrying out those programs.

(23) Rehabilitation Council of Texas [~~Texas Rehabilitation Commission Advisory Council (TRAC)~~]–The council created [~~by Human Resources Code, Title 7, §111.016~~] in accordance with

United States Code, Title 29, Section 725 [~~the federal Rehabilitation Act amendments of 1992, Public Law 102-569~~].

§104.3. General Provisions.

(a) General. The formal appeal and mediation process commences with the filing of a Petition for Administrative Hearing with the Office for Administrative Hearings and Subrogation. Appeals of determinations made by personnel of the commission that affect the provision of vocational rehabilitation services to applicants or eligible individuals may be made concerning:

(1) applicants for vocational rehabilitation services; and

(2) clients.

(b) [~~(a)~~] Jurisdiction.

(1) The Impartial Hearing Officer acquires jurisdiction over a case after a client files a Petition for Administrative Hearing and the IHO is appointed pursuant to these rules.

(2) A Petition for Administrative Hearing shall be considered filed on the date the Petition is received and date-stamped by the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation.

(3) The IHO's authority is limited to a review of a client's dissatisfaction with the furnishing or denial of services by personnel of the Commission [~~a rehabilitation counselor or agency official~~]. The IHO does not have authority to:

(A) change or alter [~~TRC~~] rules, policies, or procedures of the Commission;

(B) hear alleged violations of the Americans with Disabilities Act, §504 of the Act, or other federal laws; or

(C) hear or decide class actions.

(c) [~~(b)~~] Conduct and Decorum. Appropriate conduct and decorum shall be maintained and enforced by the IHO. Every party, witness, attorney, or other representative shall participate in all proceedings with proper dignity, courtesy, and respect for the Commission, the IHO, and all other parties. Attorneys and other representatives or parties shall observe and practice a high standard of ethical behavior.

(d) [~~(c)~~] Computation of Time.

(1) Unless otherwise required by law in computing any period of time prescribed or allowed by these rules, the date of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless such day is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. Unless specifically stated otherwise, "days" as used in these policies refer to calendar days.

(2) Unless otherwise provided by statute, the time for filing any pleading may be extended by order of the IHO at the request of any party upon written motion duly filed with the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation prior to the expiration of the applicable period of time for the filing of same. Said motion shall include a showing that there is good cause for such extension of time and that the need therefor is not caused by neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof. Any party may file written pleadings contesting a motion to extend which shall be served upon all other parties contemporaneously with the filing thereof.

(3) The date upon which a pleading or motion is filed is the date on which it is received and date-stamped by the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation .

[~~(4) Unless specifically stated otherwise, "days" as used in these rules means calendar days.~~]

(e) [~~(d)~~] Appearances and right to representation. Any party may appear on his/her own behalf or may be represented by an attorney at law in good standing with the State Bar of Texas or by an authorized representative. The IHO may require any person appearing in a representative capacity to provide such evidence of his authority as the IHO may deem necessary.

[~~(e) Notice of right to formal appeal.~~]

[~~(1) Subject to the provisions of 34 Code of Federal Regulation §361.48, the commission is responsible for providing notice to all parties as required therein and by other applicable law.~~]

(f) Notification.

(1) An applicant or an eligible individual or, as appropriate, the applicant's representative or individual's representative, shall be notified of the right to obtain review of determinations described in subsection (a) of this section in an impartial due process hearing under subsection (h) of this section, and of the right to pursue mediation with respect to the determinations under §104.5(c) of this title (relating to Formal Appeal and Mediation), and of the availability of assistance from the client assistance program. Such notification shall be provided in writing at the time an individual applies for vocational rehabilitation services, and at the time the individualized plan for employment for the individual is developed, and upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

(2) The IHO shall issue notice of the date, time, and location for the hearing.

(g) Evidence and representation. An applicant or an eligible individual, or, as appropriate, the applicant's representative or individual's representative, will be provided with an opportunity to submit at the mediation session or hearing evidence and information to support the position of the applicant or eligible individual, and may be represented in the mediation session or hearing by a person selected by the applicant or eligible individual.

(h) Hearings.

(1) Hearing officer. A due process hearing shall be conducted by an impartial hearing officer who shall issue a decision based on the provisions of the approved state plan, the Rehabilitation Act if 1973, as amended (including regulations implementing the Act), and state regulations and policies that are consistent with the Rehabilitation Act and its implementing regulations. The impartial hearing officer shall provide the decision in writing to the applicant or eligible individual, or, as appropriate, the applicant's representative or individual's representative, and to the commission.

(2) List. The commission will maintain a list of qualified impartial hearing officers who are knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, as amended, from which hearing officers will be selected. For the purposes of maintaining such list, impartial hearing officers shall be identified

jointly by the Commission, and by members of the Rehabilitation Council of Texas.

(3) Selection. An impartial hearing officer shall be selected to hear a particular case relating to a determination on a random basis.

(i) [~~(f)~~] Confidentiality. All personal information regarding applicants or clients in the possession of the commission must be used only for purposes directly connected with the administration of the Act. Information may not be shared with advisory or other bodies which do not have official responsibility for administration of the Act.

(j) [~~(g)~~] Testimony under oath or affirmation. In any hearing, the IHO shall administer an oath or affirmation before permitting testimony from any witness.

(k) [~~(h)~~] Class actions. Class actions are not permitted under these rules.

(l) [~~(i)~~] Reasonable accommodation. The commission shall provide reasonable accommodation to the client or other individuals with disabilities, upon request, for purposes of the appeal process as required by the Americans with Disabilities Act of 1990, 42 United States Code §12101 et seq. and the Act, §504.

(m) [~~(j)~~] Stay of official acts or services. A request for an informal or formal appeal does not of itself stay an official act of or the provision of services by the commission unless the official act or services are stayed by controlling law.

(n) [~~(k)~~] Limitations on number of witnesses. The IHO has the right in any proceeding under these rules to limit the number of witnesses whose testimony will be repetitious and to set time limits in order to exclude irrelevant, immaterial, or unduly repetitious testimony, so long as all viewpoints are given a reasonable opportunity to be heard.

(o) [~~(l)~~] Mileage and Witness fees.

(1) An individual who is not an employee of TRC and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give testimony or to produce documents is entitled to receive:

(A) mileage, in the same amount per mile as the mileage travel allowance for state employees, for traveling to and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the individual's place of residence; and

(B) a fee of not less than $10 a day for each day or part of a day the individual is required to be present or a fee equal to the per diem and travel allowances of a state employee, if an overnight stay is required.

(2) Mileage and fees to which a witness is entitled under this rule shall be paid by the party at whose request the individual appears or at whose request the deposition is taken.

~~[(m) Continuation of services. Pursuant to the Act, pending a final decision by the IHO or the resolution of an informal or formal appeal, the commission shall not institute a suspension, reduction, or termination of services being provided under the individualized written rehabilitation program (IWRP), unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the client. In the case of a client who has completed a term of training or similar services prior to the appeal, and the next term has not yet begun (prior to the current appeal), it is understood that such training or services are not "being provided."]~~

(p) Impact on provision of services. Unless the individual with a disability so requests, or, in an appropriate case, the individual's representative so requests, pending a decision by a mediator or impartial hearing officer under subsection (h)(1) of this section or §104.6 of this title (relating to Motion for Reconsideration), the commission will not institute a suspension, reduction, or termination of services being provided for the individual, including evaluation and assessment services and plan development, unless such services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual, or the individual's representative. In the case of a client who has completed a term of training or similar services prior to the appeal, and the next term has not yet begun (prior to the current appeal), it is understood that such training or services are not "being provided."

§104.4. Informal Appeal.

(a) A client or applicant may seek an informal appeal of his/her dissatisfaction with a decision. An informal appeal consists of meetings, properly documented, with the VRC, area manager, and the regional program director, in that order.

(b) During the informal appeal process, the Commission shall maintain a file of all documentation, decisions, and actions throughout the process. The parties shall jointly agree on dates, times, and locations of meetings.

(c) An informal appeal may not be used as a means to delay a formal hearing or mediation.

(d) A client/applicant may file a petition for a formal administrative hearing at any time during the informal appeals process.

~~[(a) A client may seek a timely review of his/her dissatisfaction with a decision by the rehabilitation counselor, the area manager, and the regional program director, in that order.]~~

~~[(b) An informal appeal may not be used as a means to delay a formal appeal before an impartial hearing officer unless the parties jointly agree to a delay. The rehabilitation counselor shall immediately inform the client of his/her right to petition for a formal appeal in lieu of initiating the informal appeal process. During the informal appeal process, the commission shall maintain a file of all documentation, decisions, and actions throughout the process. The parties shall jointly agree on the applicable dates, times, and locations for the meetings.]~~

§104.5. Formal Appeal and Mediation.

(a) The formal appeal process commences with the filing of a Petition for Administrative Hearing with the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation. [~~The hearing must be held within 45 days of an individual's request for review, unless informal resolution is achieved prior to the 45th day, or the parties agree to a specific extension of time.~~]

(b) Role of [~~Commissioner's~~] Office for Administrative Hearings and Subrogation. Upon receipt of the Petition for Administrative Hearing, the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation shall:

(1) acknowledge receipt of the petition for administrative hearing (via certified mail, return receipt requested) and advise the appellant of the availability of the Client Assistance Program, including the address and telephone number [~~within five days of receipt of the petition for administrative hearing~~];

(2) date-stamp the Petition and record a docket control number for the appeal;

(3) select the impartial hearings officer (IHO), who is appointed by the commissioner, on a random basis from a pool of qualified persons identified jointly by TRC and the Rehabilitation Council of Texas [TRAC] in accordance with the Rehabilitation Act [within ten days of receipt of the Petition for Administrative Hearing and immediately] and forward a copy of the Petition for Administrative Hearing to the IHO;

(4) forward a copy of the Petition for Administrative Hearing to the Office of the General Counsel, Deputy Commissioner for Rehabilitation Services and Commission Representative immediately upon receipt;

(5) provide administrative support to the IHO:

(A) serve as the custodian of records for all documents, motions, and pleadings directed to the IHO;

(B) coordinate and schedule all dates, meetings, hearings;

(C) make all necessary arrangements for the formal appeal:

(i) schedule and set up the hearing location;

(ii) if required, retain the services of a certified shorthand reporter to prepare a transcript of the proceedings;

(iii) provide any requested reasonable accommodations;

(6) compile and maintain the official record of the appeal;

(7) accompany IHO to prehearing conference, administrative hearing and provide necessary assistance during the proceedings;

[(8) send copies of witness lists to all parties to the hearing and to witnesses who are TRC employees.]

(c) Mediation. Applicants and eligible individuals who have requested appeals may agree with the Commission to attempt resolution of disputes involving determinations described in §104.3(a) of this title (relating to General Provisions) through mediation. The mediation process must be voluntary on the part of the parties. It may not be used to deny or delay the right of an individual to a hearing under §104.3(h) of this title, or to deny any other right afforded by law, and it will be conducted by a qualified and impartial mediator who is trained in effective mediation techniques. The Commission will bear the cost of the mediation process. Clients/Applicants are responsible for the cost of any attorney or other person representing him/her.

(1) List of mediators. The Commission will maintain a list of individuals who are qualified mediators and knowledgeable in laws (including regulations) relating to the provision of vocational rehabilitation services under the Rehabilitation Act of 1973, as amended, from which mediators will be selected.

(2) Scheduling. Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.

(3) Agreement. An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement and signed by both parties or their representatives, and the mediator.

(4) Confidentiality. Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding. The parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.

(d) [(c)] Impartial Hearing Officer.

(1) Qualifications. The IHO:

(A) cannot be an employee of a public agency;

(B) cannot be a member of the Rehabilitation Council of Texas [Texas Rehabilitation Advisory Council] (the Act, § 105, as amended in 1992); and

(C) must have knowledge of the delivery of vocational rehabilitation services, the state plan under the Act, §101, the federal regulations, and commission rules governing the provision of such services and training with respect to the performance of official duties;

(D) must not have been involved in previous decisions regarding the vocational rehabilitation of the applicant or client;

(E) must have no personal or financial interest that would conflict with his/her objectivity; [and]

(F) must have [, in addition to all of the above,] successfully completed impartial hearings training presented by the commission ; and [.]

(G) must not be a client of TRC.

(2) Powers and Duties.

(A) The IHO shall have the authority and duty to:

(i) conduct a full, fair, and impartial hearing;

(ii) take action to avoid unnecessary delay in the disposition of the proceeding;

(iii) maintain order; and

(iv) permit deviations from the rules and procedures prescribed in subsections (f) [(e)]-(j) of this section, except subsection (j)(4)(F) of this section, in the interest of justice or to expedite the proceedings. If prior to adjournment of a hearing either party disagrees with a ruling or otherwise so requests, the IHO shall include in the written record a justification, and an explanation of how the decision is in the interest of justice and/or reasonably necessary to expedite the proceedings. Actions taken under this subsection shall be limited to procedural matters, and no party shall lose any substantive rights.

(B) The IHO shall have the power to regulate the course of the hearing and the conduct of the parties and authorized representative(s), including the power to:

(i) administer oaths;

(ii) take testimony;

(iii) rule on questions of evidence;

(iv) rule on discovery issues;

(v) issue orders relating to hearing and prehearing matters, including orders granting permission to subpoena witnesses and imposing sanctions regarding discovery;

(vi) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(vii) admit or deny party status;

(viii) grant continuance(s);

(ix) require parties to submit legal memoranda, proposed findings of fact, and conclusions of law;

(x) make findings of fact and conclusions of law; and

(xi) issue decisions.

(C) An IHO shall disqualify him/herself if the IHO has directly or indirectly had prior involvement with any issues that are the basis for the hearing , or if the IHO has a personal relationship or familial relationship with any party or witness.

(D) Substitution of impartial hearing officers.

(i) If for any reason an IHO is unable to continue presiding over a pending hearing or issue a decision after the conclusion of the hearing, another IHO may be designated as a substitute in accordance with applicable law and these rules.

(ii) The substitute IHO may use the existing record and need not repeat previous proceedings, but may conduct further proceedings as necessary and proper to conclude the hearing and render a decision.

(e) [~~(d)~~] Ex Parte Communications. Unless required for the disposition of ex parte matters authorized by law, the IHO may not communicate, directly or indirectly, in connection with any issue of fact or law with the commissioner or any party or a party's representative, except upon notice to all parties.

(f) [~~(e)~~] Prehearing Procedures.

(1) Prehearing Conference(s).

(A) When appropriate, the IHO may hold a prehearing conference to resolve matters preliminary to the hearing.

(B) A prehearing conference may be convened to address preliminary matters including the following listed in clauses (i)-(xv) of this subparagraph:

(i) issuance of subpoenas;

(ii) factual and legal issues;

(iii) stipulations;

(iv) clarification of the issues at the discretion of the IHO;

(v) requests for official notice;

(vi) identification and exchange of documentary evidence;

(vii) admissibility of evidence;

(viii) identification and qualification of witnesses;

(ix) motions;

(x) discovery disputes;

(xi) order of presentation;

(xii) scheduling;

(xiii) settlement conferences; [~~and~~]

(xiv) mediation; and

(xv) [~~(xiv)~~] such other matters as will promote the orderly and prompt resolution of the issues and conduct of the hearing.

(C) Among other matters, as stated in subsection (b) of this section, an IHO may order:

(i) that the parties jointly discuss the prospects of settlement or stipulations or other dispute resolution methods approved herein and be prepared to report thereon at the prehearing conference;

(ii) that the parties file and be prepared to argue preliminary motions at the prehearing conference;

(iii) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and

(iv) that the parties make a concise statement of undisputed facts and issues at the prehearing conference.

(D) All or part of the prehearing conference may [~~will~~] be recorded or transcribed.

(E) The IHO may, after acquiring jurisdiction, issue an order requiring a prehearing "statement of the case." The parties shall [~~, within 14 days of service,~~] file a statement specifying the party's present position on any or all of the following listed in clauses (i)-(v) of this subparagraph as required by the IHO. Parties shall supplement this statement on a timely basis. The statement may [~~shall~~] include:

(i) the disputed issues or matters to be resolved;

(ii) a brief statement of the facts or arguments supporting the party's position in each disputed issue or matter;

(iii) a list of facts or exhibits to which a party will stipulate; and

(iv) a list of the witnesses which each party intends to call at the hearing, including a designation of each as either a fact or expert witness, and a brief statement summarizing the testimony and/or opinions (experts) of each witness . [~~; and~~]

~~[(v) a description of the discovery, if any, the party intends to engage in and an estimate of the time needed to complete discovery.]~~

(2) Prehearing Orders.

(A) The IHO may issue a prehearing order reciting the actions taken or to be taken with regard to any matter addressed at the prehearing conference.

(B) The prehearing order shall be a part of the hearing record.

(C) If a prehearing conference is not held, the IHO may issue a prehearing order to regulate the conduct of the proceedings of the formal hearing.

~~[(3) Settlement Conferences.]~~

~~[(A) Upon request of any party and approval by the IHO, or at the IHO's discretion, a conference outside the presence of the IHO may be held to address settlement.]~~

~~[(B) Settlement discussions shall not be made a part of the case record.]~~

~~[(C) This section is not in derogation of the agency's and the parties' ability to settle cases independently of the impartial hearing officer.]~~

(3) [~~(4)~~] Stipulations.

(A) The parties, by stipulation, may agree to any substantive or procedural matter.

(B) A stipulation shall be filed in writing or entered on the record at the prehearing (or hearing).

(C) The IHO may require additional development of stipulated matters.

(g) [~~(f)~~] Pleadings.

(1) In a formal appeal all pleadings, including the Petition for Administrative Hearing, shall contain:

(A) the name of the party making the pleading;

(B) the names of all other known parties;

(C) a concise statement of the facts alleged and relied upon;

(D) a statement of the type of relief, action, or order desired;

(E) any other matter required by law;

(F) a certificate of service, as required by these rules; and

(G) the signature of the party making the pleading or the party's authorized representative.

(2) Any pleading filed pursuant to a formal appeal may be amended up to 14 days prior to the hearing. Amendments filed after that time will be accepted at the discretion of the IHO.

(3) Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the Commission. All pleadings relating to any matter pending before the Commission shall be filed with the IHO through the [~~Commissioner's~~] Office for Administrative Hearings and Subrogation.

(4) All pleadings shall be typed or printed on 8 1/2 by 11 inch paper with a one-inch margin. Reproductions are acceptable, provided all copies are clear and permanently legible.

(5) Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the authorized representative.

(6) The party or the party's designated representative filing the pleading shall include a signed certification that a true and correct copy of the pleading has been served on every other party.

[~~(g) Discovery.~~]

[~~(1) Forms and scope of discovery.~~]

[~~(A) Discovery is the process by which a party may, prior to the hearing, obtain evidence which is relevant to the subject matter of the hearing.~~]

[~~(B) The parties are entitled to conduct the following forms of discovery:~~]

[~~*(i)* oral or written depositions of any party or non-party;~~]

[~~*(ii)* requests for admission;~~]

[~~*(iii)* interrogatories; and~~]

[~~*(iv)* requests for production or examination.~~]

[~~(C) Scope of discovery. Parties may obtain discovery regarding any matter which is relevant to the subject matter of the hearing or which is reasonably calculated to lead to the discovery of evidence which would be admissible at the hearing.~~]

[~~(D) All discovery requests should be directed to the party from which discovery is being sought.~~]

[~~(E) Copies of discovery requests and documents filed in response thereto shall be served on all parties and should not be filed with the IHO unless directed by the IHO to do so or when in support of objections, motions to compel, motions for protective orders, or motions to quash.~~]

[~~(F) All parties will be afforded a reasonable opportunity to file objections and motions to compel with the IHO regarding any and all discovery requests.~~]

[~~(2) Depositions.~~]

[~~(A) After the filing of a Petition for Administrative Hearing (TRC-505) any party may take the testimony of any person, including a party, upon oral or written examination.~~]

[~~(B) Reasonable notice must be served in writing by the party or the party's authorized representative proposing to take a deposition upon oral examination to every other party or the party's authorized representative. The notice shall state the name of the deponent, the time and the place of the taking of the deposition, and if the production of documents or tangible things is desired, a designation of the items to be produced by the deponent which describes each item with reasonable particularity. The notice shall also state the identity of persons who will attend other than the witness, parties, authorized representatives and their employees, and the officer taking the deposition. If any party intends to have any other persons attend, that party must give reasonable notice to all parties of the identity of such other persons.~~]

[~~(C) When the deponent is a party, notice proposing to take a deposition served upon the party or the party's authorized representative shall have the same effect as a subpoena served on the party. If the deponent is an agent or employee who is subject to the control of a party, notice which is served upon the party or the party's authorized representative shall have the same effect as a subpoena served on the deponent. A party or a party's agents, employees, or persons subject to that party's control may be compelled to produce designated documents or tangible things if the notice sets forth the individual items or categories of items to be produced with reasonable particularity.~~]

[~~(D) After the filing of a petition for administrative hearing (TRC-505), any party may take the testimony of any person, including a party, by deposition upon written questions. A party proposing to take depositions upon written questions shall serve them upon every other party or the party's authorized representative with written notice 10 days before the deposition is to be taken. The notice shall state the name and address of the deponent, the hearing in which the deposition is to be used, the name or descriptive title and address of the officer before whom the deposition is to be taken, and if the production of documents or tangible things is desired, a designation of the items to be produced by the deponent which describes each item with reasonable particularity.~~]

[~~(E) Any party may subpoena an individual who is not a party in order to take the testimony of that person upon oral or written examination. The procedure for issuance of subpoenas is set out at paragraph (6) of this subsection.~~]

[~~(F) Upon proof of service of a notice to take a deposition, written or oral, any officer authorized to take depositions and any certified shorthand reporter shall immediately issue and cause to be served upon the witness a subpoena directing him to appear~~

before the officer at the time and place stated in the notice for the purpose of giving a deposition.]

[(G) A witness may be compelled by subpoena duces tecum to produce books, papers, documents, or tangible things within his care, custody or control. The subpoena duces tecum shall direct with particularity the witness to produce, at such time and place designated, documents or tangible things which constitute or contain evidence or information relating to any of the matters within the scope of the hearing.]

[(3) Requests for Admission.]

[(A) At any time after filing of the petition for administrative hearing, a party may serve upon any other party a written request for the admission, for purposes of the pending hearing only, of the truth of any matters within the scope of these rules set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request.]

[(B) Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. Whenever a party is represented by an authorized representative, service of a request for admissions shall be made on the party's representative. A true copy of a request for admission or of a written answer or objection, together with proof of the service thereof, shall be filed promptly with the Commissioner's Office for Administrative Hearings.]

[(C) Each matter to which an admission is requested shall be separately set forth. The matter is admitted without necessity of an order unless, within 30 days after service of the request, or within such time as the IHO may allow, or as otherwise agreed by the parties, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or the party's representative. If objection is made, the reason therefor shall be stated.]

[(D) The answer shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny.]

[(E) The IHO may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment if the IHO finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the action will be subserved thereby. Any admission made by a party under this rule is for the purpose of the pending action only and neither constitutes an admission by the party for any other purpose nor may be used against that party in any other proceeding.]

[(4) Interrogatories.]

[(A) Any party may serve upon any other party written interrogatories to be answered by the party served, or the party's authorized representative.]

[(B) When a party has designated an authorized representative, service of interrogatories and answers to interrogatories shall be made on the representative.]

[(C) Interrogatories may relate to any matters which are relevant to the subject matter of the hearing, but the answers, subject to any objections as to relevance, may be used only against the party answering the interrogatories.]

[(D) The party upon whom the interrogatories have been served shall serve answers on the party submitting the interrogatories within the time specified by the party serving the interrogatories, which specified time shall not be less than 30 days after the service of the interrogatories. The IHO, on motion and notice for good cause shown, may enlarge or shorten the time for serving answers or objections.]

[(E) The number of questions including subsections in a set of interrogatories shall be limited so as not to require more than 30 answers. No more than two sets of interrogatories may be served by a party to any other party except by agreement or as permitted by the IHO.]

[(5) Requests for production or examination.]

[(A) Any party may serve on any other party a request to produce and permit the requesting party or the party's authorized representative to inspect or copy any designated documents which are relevant to the subject matter of the hearing and which are in the possession, custody, or control of the party to whom the request is directed.]

[(B) The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts.]

[(C) The party upon whom the request is served shall serve a written response which shall state, with respect to each item or category of items, that inspection or other requested action will be permitted as requested, and he shall thereafter comply with the request, except only to the extent that he makes objections in writing to particular items, or categories of items, stating specific reasons why such discovery should not be allowed.]

[(D) A party who produces documents for inspection shall produce them as they are kept in the usual course of business, or shall organize and label them to correspond with the categories in the request.]

[(E) The request shall be served upon every party to the action. The party upon whom the request is served shall serve a written response and objections, if any, within 30 days after the service of the request. The time for making a response may be shortened or lengthened by the IHO upon a showing of good cause.]

[(6) Subpoenas.]

[(A) Any party may subpoena a witness for the purposes of taking their deposition by oral or written examination or to compel testimony at the hearing.]

[(B) A party may not obtain a subpoena without having petitioned the IHO for an order granting the issuance of a subpoena upon a showing of good cause as to the need for the subpoena.]

[(C) Upon a finding that good cause exists for the issuing of a subpoena, the IHO may enter an order granting the issuance of a subpoena.]

[(D) The party seeking the subpoena must then present the IHO order granting the issuance of a subpoena to a certified shorthand reporter or any officer authorized to issue subpoenas who shall immediately issue and cause to be served upon the witness a subpoena directing him to appear at the time and place stated in the order.]

[(E) All costs associated with the issuing of a subpoena are to be borne by the requesting party.]

[(F) The form of the subpoena and the service thereof shall be in conformance with the rules applicable to subpoenas in Texas Courts.]

[(G) If the witness fails to comply with the subpoena, the party requesting the subpoena may bring suit to enforce the subpoena in a district court either in Travis County or in the county in which the subject hearing will be held.]

[(7) Compelling Discovery.]

[(A) In the event of a discovery dispute, a party, upon reasonable notice to all other parties, may file a motion to compel or file a motion for protective order with the IHO. Such motions shall contain a sworn certificate by the party filing the motion that efforts to resolve the discovery dispute without the necessity of IHO intervention were attempted and failed.]

[(B) At the IHO's discretion, an order compelling discovery or a protective order may be issued to protect the movant from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. The IHO's authority extends to but is not limited by any of the following:]

[*(i)* ordering that requested discovery be answered or produced;]

[*(ii)* ordering that the requested discovery not be sought in whole or in part, that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;]

[*(iii)* ordering that the discovery be undertaken only by such method, upon such terms and conditions, or at the time and place directed by the IHO; and]

[*(iv)* ordering that, for good cause shown, results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted.]

[(C) Sanctions.]

[*(i)* When a party does not comply with the IHO order compelling discovery, the requesting party may, upon reasonable notice to all other parties, apply to the IHO for sanctions. A party may not request sanctions without having first obtained an order compelling discovery.]

[*(ii)* If a party, or an officer, director, or an authorized representative of a party, fails to comply with an order compelling discovery, the IHO may, after opportunity for hearing, make orders in response to such failure, including any of the following:]

[*(I)* preventing the disobedient party from further discovery of any kind, or of a particular kind;]

[*(II)* deeming any facts pertaining to the order, or any other facts, to be established, as claimed by the moving party;]

[*(III)* disallowing the disobedient party from supporting or opposing designated claims or defenses, or prohibiting the party from introducing designated matters into evidence; and]

[*(IV)* striking pleadings or parts of pleadings, staying further action until the order is obeyed, or dismissing the proceeding with or without prejudice.]

[*(iii)* The IHO may impose any of the sanctions listed above on a party who abuses the discovery process in seeking or resisting discovery or who files a request, response, or answer that is frivolous, oppressive, or made for the purpose of delay.]

[*(iv)* A party who fails to respond to or fails to supplement a response to a discovery request may not present evidence that the party was under a duty to provide in a response or supplemental response, and may not offer the testimony of an expert witness or of any other person having knowledge of the discoverable matter, unless the IHO finds good cause to permit the evidence despite the noncompliance. The burden of establishing good cause is upon the party offering the evidence, and good cause must be shown in the record.]

[*(v)* Unless permitted by law, party representatives shall not communicate with the IHO or the commissioner without the knowledge of all other parties. (The IHO may impose sanctions for impermissible communications.)]

[*(vi)* The IHO shall state the specific basis for any sanction in the record or in a written order. A sanctioned party has the right to appeal the sanction to the commissioner.]

(h) Dismissal. After giving notice and hearing, the IHO may upon the motion of any party or the IHO's own motion, dismiss the appeal upon showing of any one of the following: [Dismissal without Hearing.]

[(1) The IHO may entertain motions for dismissal without a hearing for the following reasons:]

(1) [(A)] failure to prosecute;

(2) [(B)] unnecessary duplication of proceedings or res judicata;

(3) [(C)] withdrawal;

(4) [(D)] moot questions;

(5) [(E)] lack of jurisdiction;

(6) [(F)] failure to raise a material issue in the pleading;

(7) [(G)] failure of a party to appear at a scheduled hearing.

[(2) If the IHO finds that such motion should be granted the IHO will so order, and the commissioner may enter a final order of dismissal.]

(i) Motions.

(1) Unless otherwise provided by these rules, the following listed in subparagraphs (A)-(I) of this paragraph shall apply.

(A) A party may move for appropriate relief before or during a hearing.

(B) A party shall submit all motions in writing or orally at a hearing.

(C) Written motions shall:

(i) be filed no later than 15 days before the date of the hearing, except where good cause is stated in the motion, the IHO may permit a written motion subsequent to that time;

(ii) state concisely the question to be determined;

(iii) be accompanied by any necessary supporting documentation; and

(iv) be served on each party.

(D) An answer to a written motion shall be filed on the earlier of:

(i) seven days after receipt of the motion; or

(ii) on the date of the hearing.

(E) On written notice to all parties or with telephone consent of all parties, the IHO may schedule a conference to consider a written motion.

(F) The IHO may reserve ruling on a motion until after the hearing.

(G) The IHO may issue a written decision or state the decision on the record.

(H) If a ruling on a motion is reserved, the ruling shall be in writing and may be included in the IHO's decision.

(I) The filing or pendency of a motion does not alter or extend any time limit otherwise established by these rules.

(2) Continuance(s) may be granted by the IHO in accordance with applicable law. Motions for continuances shall be in writing or stated in the record and shall set forth the specific grounds upon which the party seeks the continuance.

(3) Unless made during a prehearing or hearing, a party seeking a continuance, cancellation of a scheduled proceeding, or extension of an established deadline must file such motion no later than 10 days before the date or deadline in question. A motion filed less than 10 days before the date or deadline in question must contain a certification that the movant contacted the other party(ies) and whether or not it is opposed by any party(ies). Further, if a continuance to a certain date is sought, the motion must include a proposed date or dates and must indicate whether the party(ies) contacted agree on the proposed new date(s).

(j) Hearing.

(1) The IHO shall set the date and time for the hearing. [~~The hearing must take place within 45 days of the request unless additional time is granted as authorized by law.~~] The location shall be the Commission's regional or area office nearest the Appellant's residence or as agreed to by the parties.

(2) Order of procedure at the hearing.

(A) The appellant may state briefly the nature of the claim or defense, what the appellant expects to prove, and the relief sought. Immediately thereafter, the respondent may make a similar statement, and any other parties will be afforded similar rights as determined by the IHO. Each party is allowed 10 minutes for such statement.

(B) Evidence shall then be introduced by the appellant. The respondent and any other parties shall have the opportunity to cross-examine each of the appellant's witnesses.

(C) Cross-examination is not limited solely to matters raised on direct examination. Parties are entitled to redirect and recross-examination.

(D) Unless the statement has already been made, the respondent may briefly state the nature of the claim or defense, what the respondent expects to prove, and the relief sought.

(E) Evidence, if any, shall be introduced by the respondent. The appellant and any other parties shall have the opportunity to cross-examine each of the respondent's witnesses.

(F) Any other parties may make statements and introduce evidence. The appellant and respondent shall have opportunity to cross-examine the other parties' witnesses.

(G) The parties may present rebuttal evidence.

(H) The parties may be allowed closing statements at the discretion of the IHO.

(I) The IHO may permit deviations from this order of procedure in the interest of justice or to expedite the proceedings.

(J) Parties shall provide four copies of each exhibit offered.

(3) No evidence shall be admitted which is irrelevant, immaterial, or unduly repetitious.

(4) Documentary evidence and official notice.

(A) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the original and the copy or excerpts.

(B) When numerous similar documents which are otherwise admissible are offered into evidence, the IHO may limit the documents received to those which are typical and representative. The IHO may also require that an abstract of relevant data from the documents be presented in the form of an exhibit, provided that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made.

(C) The following laws, rules, regulations, and policies listed in clauses (i)-(vi) of this subparagraph are officially noticed:

(i) the Rehabilitation Act of 1973, as amended, 29 United States Code, §701 et seq.;

(ii) Department of Education regulations, 34 Code of Federal Regulations, Part 361 [~~§361.48~~];

(iii) Texas Human Resources Code, Title 7, §111 et seq.;

(iv) TRC State Plan for Vocational Rehabilitation Services;

(v) TRC Rehabilitation Services Manual; and

(vi) TRC Administrative Policies and Procedures Manual.

[~~(D) Prepared testimony. In all proceedings and after service of copies upon all parties of record at such time as may be designated by the IHO, the prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same.~~

~~Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.~~]

(D) [~~(E)~~] Exhibits.

(i) Exhibits shall not exceed 8 1/2 by 11 inches (unless they are folded to that size). Maps, drawings, and other exhibits which are not the required size shall be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(ii) Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(iii) The original of each exhibit offered shall be tendered to the court reporter for identification.

(iv) In the event an exhibit has been identified, objected to, and excluded, the IHO shall determine whether or not the party offering the exhibit withdraws the offer, and, if so, permit the return of the exhibit. If the excluded exhibit is not withdrawn it shall be given an exhibit number for identification, shall be endorsed by the IHO with a ruling, and shall be included in the record for the only purpose of preserving the exception.

(E) [~~(F)~~] Offer of proof. When testimony on direct examination is excluded by ruling of the IHO, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing. [~~Such offer of proof shall be sufficient to preserve the point for review by the commissioner.~~] The IHO may ask such questions of the witness as deemed necessary to satisfy that the witness would testify as represented in the offer of proof. [~~An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.~~]

(5) Failure to attend hearing and default. If, after receiving notice of a hearing, a party fails to attend a hearing, the IHO may proceed in that party's absence and, where appropriate, may issue a decision against the defaulting party.

(k) Impartial Hearing Officer Decision.

(1) Within 30 days of the hearing completion date, the IHO shall issue an opinion based on the provisions of the approved State plan, the applicable regulations, and the Act which shall contain separately stated:

(A) findings of fact;

(B) conclusions of law; and

(C) opinion.

(2) The [~~Commissioner's~~] Office for Administrative Hearings and Subrogation shall submit the IHO opinion to the Commissioner with a copy to each party.

§104.6. Motion for Reconsideration [~~Action by the Commissioner~~]. Either party to a hearing may file a motion for reconsideration with the Office for Administrative Hearings and Subrogation within 15 days after issuance of the decision of the impartial hearing officer. The motion for reconsideration must specify the matters in the decision of the impartial hearing officer which the party considers to be erroneous. The impartial hearing officer shall rule on the motion for reconsideration no later than 10 days after receipt of the motion. If the motion is granted, the IHO shall issue a decision upon reconsideration within an additional 15 days. If the impartial hearing officer fails to rule on the motion for reconsideration within 10 days, the motion is denied as a matter of law.

[~~(a) The Commissioner cannot delegate the responsibility for making any final Commission order to any other officer or employee of the Commission.~~]

[~~(b) Within 20 days of the mailing of the IHO's opinion the Commissioner will decide whether or not to formally review the IHO opinion by studying the opinion and the official case record. The Commissioner shall notify the appellant in writing of his or her intent to review within 20 days of the mailing of the IHO opinion.~~]

[~~(1) If the Commissioner fails to provide the required written notice, the IHO opinion is final.~~]

[~~(2) If the Commissioner decides not to formally review the IHO's opinion, the opinion of the IHO becomes final. In that case, the Commissioner will issue an order making the opinion of the IHO final.~~]

[~~(3) If the Commissioner decides to formally review the IHO's opinion, the Commissioner will issue an order to that effect and written notice of this order will be sent to the Appellant by certified mail, return receipt requested.~~]

[~~(4) The parties will then have 15 days in which to submit any additional relevant evidence. The 15-day period begins on the date of the order that informs the parties that the Commissioner will review the opinion of the IHO.~~]

[~~(5) Within 30 days of the mailing of the Commissioner's order to review the IHO's opinion the Commissioner shall issue a final order and provide a full report to all parties in writing of the reasons for the order including findings of fact and conclusions of law separately stated.~~]

[~~(c) The Commissioner's order reviewing the IHO's opinion will be based on the following standards of review.~~]

[~~(1) The Commissioner may not overturn or modify an opinion of an IHO, or part of an opinion that supports the position of the Appellant unless the Commissioner concludes, based on clear and convincing evidence, that the opinion of the IHO is clearly erroneous on the basis of being contrary to federal or state law, including policy.~~]

[~~(2) Review shall include all applicable laws, rules, regulations, policies, and procedures.~~]

[~~(3) Review may be made on all questions of law, fact, and written policy and procedure.~~]

[~~(4) The review may result in affirming the opinion of the IHO in whole or in part or reversing or remanding the case to the IHO for further proceedings.~~]

[~~(5) The review may result in reversing or remanding the opinion of the IHO when the record of the hearing or opinion contains any one or more of the following, and the opinion is found to be:~~]

[~~(A) in violation of constitutional, statutory, regulatory, or written policy provisions;~~]

[~~(B) in excess of the statutory authority of the commission;~~]

[~~(C) made upon unlawful procedure;~~]

[~~(D) affected by other error of law, regulation, or written policy;~~]

[~~(E) not reasonably supported by the evidence; or~~]

[~~(F) arbitrary, capricious, or characterized by abuse of or clearly unwarranted exercise of discretion.~~]

[(6) When none of the conditions in paragraph (5) of this subsection are present in the record of the hearing or the opinion, an order affirming the opinion of the IHO shall be issued.]

§104.7. Finality of the Decision of the Commission [Motions for Rehearing].

The decision of the impartial hearing officer under §104.6 of this title (relating to Motion for Reconsideration) is the final decision of the Commission. A decision dismissing the case under §104.3(h)(1) of this title (relating to General Provisions) or §104.5(j)(5) of this title (relating to Formal Appeal and Mediation) becomes the final decision of the Commission if a timely motion for reconsideration is not filed.

[(a) A motion for rehearing is prerequisite to a judicial appeal. A motion for rehearing must be filed by a party within 20 days after the date the party receives notice of the commissioner's final decision or order.]

[(b) Replies to a motion for rehearing must be filed with the commission within 15 days after the date the motion for rehearing is filed.]

[(c) Commission action on the motion for rehearing must be taken within 30 days of receipt of the motion for rehearing. If agency action is not taken within the 30-day period, the motion for rehearing is overruled by operation of law 30 days after the date the motion for rehearing is received by the commission.]

[(d) The commission may, by written order, extend the period of time for filing the motions and replies and taking agency action, except that an extension may not extend the period for commission action beyond 90 days after the motion for rehearing is received by the commission.]

[(e) In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the motion for rehearing is received by the commission.]

§104.8. Civil Action/Judicial Review [Judicial Review of Final Order].

(a) General. Any party aggrieved by a final decision of an impartial hearing officer may bring a civil action for review of such decision. The action may be brought in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy. In any such action the court will receive the records relating to the hearing, will hear additional evidence at the request of a party to the action; and basing the decision of the court on the preponderance of the evidence, will grant such relief as the court determines to be appropriate.

(b) Exhaustion of administrative remedies, including a Motion for Reconsideration, is a prerequisite to judicial review.

(c) A party seeking judicial review of the final Commission decision shall commence his civil action no later than 30 days after the date of the final decision.

(d) Implementation. If a party brings a civil action to challenge a final decision of a hearing officer under §104.3(h)(1) of this title (relating to General Provisions) or §104.6 of this title (relating to Motion for Reconsideration), the final decision involved shall be implemented pending review by the court. [Pursuant to these rules and 29 United States Code §722(c)(5)(J) the district courts of Travis County, Texas, have jurisdiction to hear appeals of final orders of the Commission. The standard of review will be by substantial evidence. A party may seek judicial review of the final order of the Commission by appealing to the Travis County District Courts within 30 days of receipt of notice that a party's motion for rehearing has been overruled.]

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 February 22, 1999.

TRD-9901083
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 424–4050

Chapter 106. Contract Administration

The Texas Rehabilitation Commission (TRC) proposes the repeal of §106.35 and new §106.35, acquisition of client goods and services.

The section is being repealed and replaced to simplify the process of appeals by contractors who believe that some adverse action relating to their contract has been taken by the commission.

Charles E. Harrison, Jr., Deputy Commissioner for Financial Services, 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.

Mr. Harrison 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 a simplified process of appeals by contractors who believe that some adverse action relating to their contract has been taken by the commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger Darley, Assistant General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

Subchapter A. Acquisition of Client Goods and Services

40 TAC §106.35

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

The repeal is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§106.35. Appeals.

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 February 22, 1999.

TRD-9901084
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 424–4050

The new section is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

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

§106.35. Appeals.

(a) Appeals based upon final decision letter.

(1) General. After the commission has issued a final decision letter to the contractor implementing an adverse action taken by the commission pursuant to §106.32 of this title (relating to Adverse Actions), the contractor has the right to appeal. Except as provided in subsection (b) of this section, a copy of the final decision letter must be included with the appeal, and the appeal must be received by the commission within 60 days after issuance of the final decision letter. Appeals and requests for reconsideration under this section must be sent to the commission by certified mail–return receipt requested.

(2) Procedures. Appeals must be in writing and submitted to the appropriate deputy commissioner. Written materials that the contractor wishes to have considered may be submitted with the appeal. The appeal should state whether the contractor requests a personal meeting to discuss the appeal, and if the contractor requests, a meeting will be scheduled with a representative of the commission. At the meeting, the contractor may be represented by a person of his or her selection, the contractor will be provided with an opportunity to present evidence and information to support his or her position, and the contractor and the commission may agree to employ a mediator at the commission's expense. A written decision will be provided to the contractor within 30 days after conclusion of the meeting, or if no meeting is held, within 45 days after the commission receives the appeal, unless the appropriate deputy commissioner extends the time.

(3) Record. The record of an appeal shall consist of a copy of the written appeal; a copy of the final decision letter described in paragraph (1) of this subsection, or if no final decision letter was issued, a copy of the contractor's request for final decision letter described in subsection (b) of this section; a copy of the written decision issued by the commission described in paragraph (2) of this subsection; and if applicable, a copy of any mediation agreement that was executed by the commission and the contractor.

(4) Request for reconsideration. After the decision on an appeal is issued, the contractor may submit in writing a request for reconsideration. Requests are to be directed to the Assistant Commissioner, Buyer Support Services, and must be received by the commission within 20 days after the decision on the appeal is issued. The request for reconsideration will be decided by or on behalf of the Commissioner. The decision will be based on the record of the appeal described in paragraph (3) of this subsection, a summary prepared by the commission representative of the information provided by the contractor and the evidence accepted by the commission representative at the meeting described in paragraph (2) of this subsection, any written material submitted by the contractor along with his or her request for reconsideration, and the commission representative's response to the request for reconsideration.

(A) The request for reconsideration shall:

(i) specifically point out any errors in the record;

(ii) specify all relief requested; and

(iii) state all reasons why the relief should be granted.

(B) The commission representative shall file his or her response to the request for reconsideration not later than 20 days after the commission's receipt of the request.

(C) The commission shall issue a decision on the request for reconsideration no later than 45 days after receipt of the request for reconsideration. The decision may affirm, reverse or modify the final decision letter. The decision on the request for reconsideration is the final decision of the commission. If the commission does not rule on the request for reconsideration within 45 days, the written decision on the appeal which is described in paragraph (2) of this subsection becomes the final decision of the commission. The Commission and/or his or her designee may extend any time period by ten days upon written request of the contractor or commission representative.

(b) Obtaining a final decision letter. If the contractor believes that an adverse action has been taken against him before a final decision letter has been issued, the contractor may contact the appropriate deputy commissioner in writing, describe the adverse action which has been taken, and request a final decision letter. Requests for a final decision letter must be submitted to the commission by certified mail–return receipt requested. If the commission does not issue a final decision letter within 30 days after receipt of the request by the deputy commissioner, the contractor may, at his or her option, appeal within 60 days of receipt of the request by the deputy commissioner. A copy of the request for a final decision letter, along with a U.S. Postal Service or equivalent notice showing receipt of the request by the commission, must be included with the appeal.

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 February 22, 1999.

TRD-9901085
Charles Schiesser
Chief of Staff
Texas Rehabilitation Commission
Earliest possible date of adoption: April 4, 1999
For further information, please call: (512) 424–4050

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 7. BANKING AND SECURITIES

Part IV. Texas Savings and Loan Department

Chapter 75. Applications

Subchapter B. Expedited Applications

7 TAC §§75.25–75.27

The Texas Savings and Loan Department has withdrawn from consideration for permanent adoption new §§75.25–75.27, which appeared in the January 1, 1999, issue of the *Texas Register* (24 TexReg 17).

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901027
James L. Pledger
Commissioner
Texas Savings and Loan Department
Effective date: February 2, 1999
For further information, please call: (512) 475–1350

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 171. Institutional Permits

22 TAC §§171.1–171.9

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed repeal of §§171.1-171.9, which appeared in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11533).

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901077
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: February 22, 1999
For further information, please call: (512) 305–7016

22 TAC §§171.1-171.6

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed new §§171.1-171.6, which appeared in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11533).

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901076
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: February 22, 1999
For further information, please call: (512) 305–7016

Chapter 173. Applications

22 TAC §173.1

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed repeal of §173.1, which appeared in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9521).

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901070
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: February 22, 1999
For further information, please call: (512) 305–7016

Chapter 175. Schedule of Fees and Penalties

22 TAC §§175.1-175.4

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed repeal of §§175.1-175.4, which appeared in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11543).

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901069
Bruce A. Levy, M.D., J.D.
Executive Director

Texas State Board of Medical Examiners
Effective date: February 22, 1999
For further information, please call: (512) 305–7016

Chapter 175. Fees, Penalties and Applications

22 TAC §§175.1-175.5

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption the proposed new §§175.1-175.5, which appeared in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11543).

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901068
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Effective date: February 22, 1999
For further information, please call: (512) 305–7016

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 14. School Bus Transportation

Subchapter E. Advertising General Provisions

37 TAC §§14.61–14.68

The Texas Department of Public Safety has withdrawn from consideration for permanent adoption new §§14.61–14.68, which appeared in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9265).

Filed with the Office of the Secretary of State on February 18, 1999.

TRD-9901003
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: February 18, 1999
For further information, please call: (512) 424–2135

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

Subchapter B. Contested Case Hearings

7 TAC §§9.16, 9.25, 9.39

The Finance Commission of Texas, the Texas Department of Banking, the Savings and Loan Commissioner and the Consumer Credit Commissioner (the agencies) adopts amendments to §9.16 and §9.25, concerning certain pleading requirements, and new §9.39, concerning disposition of exhibits. The sections are adopted without changes to the proposed text as published in the December 25, 1998, issue of the *Texas Register* (23 TexReg 12977), and the text will not be republished.

Pursuant to Chapter 9, a simplified system of pleading has been adopted for agency administrative proceedings under which opposing parties are presumed to contest all material allegations in an application or complaint without the necessity of filing pleadings. The amendment to §9.16(b) requires written advance notice to be given the agency of any "affirmative defenses." This requirement is desirable so that the agency will have a reasonable opportunity to investigate the facts surrounding any affirmative defenses in advance of the hearing. The related amendment of §9.25 adds new subsection (f) to make clear that the standard Texas rule regarding the burden of proof on affirmative defenses applies in agency administrative hearings. (See Ray, 1 Texas Practice, Law of Evidence (3rd Edition 1980) §43.)

New §9.39 will alleviate the storage problem created by oversized exhibits introduced in hearings by permitting the return of exhibits to the parties after cases have become final and all appeals exhausted. This section will be supplemented by a request to the Texas State Library to authorize the agencies to dispose of exhibits in this manner under agency records retention schedules.

The agencies received no comments regarding the proposals.

The sections are adopted pursuant to Government Code §2001.004, which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures. The sections are also adopted under specific rulemaking authority in the substantive statutes administered by the agencies.

Finance Code, §31.003(a)(5), authorizes the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commissioner.

Finance Code, §152.102, authorizes the finance commission to adopt rules necessary for the enforcement and orderly administration of that chapter (regulating sale of checks).

Finance Code, §153.002, authorizes the finance commission to adopt rules necessary to implement that chapter (regulating currency exchange and transmission).

Finance Code, §154.051(b), authorizes the department of banking to adopt rules concerning matters incidental to the enforcement and orderly administration of that chapter (regulating prepaid funeral benefits).

Finance Code, §11.302, authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Finance Code, §96.002(a)(2), and §66.002, also authorize the savings and loan commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and loan commissioner or the savings and loan department.

Finance Code, §11.304, authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Finance Code, Chapter 14 and Title 4, plus amendments to the source law made by Acts 1997, 75th Legislature, Chapter 1396). Texas Civil Statutes, Article 5069-3A.901, also authorizes the finance commission to adopt rules necessary for the enforcement of Article 5069-3A.001. Finance Code, §371.006, further authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of Finance Code, Chapter 371.

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 February 19, 1999.

TRD-9901026
Everette D. Jobe
Certifying Official
Finance Commission of Texas
Effective date: March 11, 1999
Proposal publication date: December 25, 1998
For further information, please call: (512) 475–1300

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

13 TAC §1.67

The Texas State Library and Archives Commission adopts an amendment to §1.67, concerning references to a federal statute, without changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11009) and will not be republished.

The amendment updates references in commission rules to reflect changes in federal law.

The amendment will reduce possible misunderstandings as to which federal statute is being referenced.

No comments were received concerning the adoption of the amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 1999.

TRD-9901012
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: March 10, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–5440

13 TAC §1.73

The Texas State Library and Archives Commission adopts an amendment to §1.73, concerning the legal establishment of a public library, without changes to the proposed text as published in October 30, 1998, issue of the *Texas Register* (23 TexReg 11010) and will not be republished.

This amendment is required because of state legislation passed allowing the establishment of public libraries through public library taxing districts under certain conditions.

This amendment adds as a form of legal establishment those public libraries established as library districts by the provisions of Local Government Code, Chapter 326, clarifies the definition of public library service, and corrects a statutory citation.

One comment was received in support of the adoption of the amendment that includes as a form of legal establishment those public libraries established as library districts by the provisions of Local Government Code, Chapter 326.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 1999.

TRD-9901011
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: March 10, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–5440

13 TAC §1.85

The Texas State Library and Archives Commission adopts an amendment to §1.85, concerning annual reports, without changes to the proposed text as published in October 30, 1998, issue of the *Texas Register* (23 TexReg 11011) and will not be republished.

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

The amendment sets April 30 as the date by which a public library shall file a current and complete annual report with the Texas State Library and Archives Commission.

No comments were received concerning the adoption of the amendment.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463–5440

Chapter 2. General Policies and Procedures

Subchapter C. Grant Policies

Division 1. General Grant Policies

13 TAC §2.119

The Texas State Library and Archives Commission adopts an amendment to §2.119, concerning negotiated grants, without

changes to the proposed text as published in October 30, 1998, issue of the *Texas Register* (23 TexReg 11011) and will not be republished.

The section must be amended to permit the commission to award contracts for a new type of support for public libraries.

The amendment adopts guidelines for grants to regional and major resource library systems so that these systems may establish programs to provide technical assistance to library staff in local public libraries to implement new technology.

Under this amendment the commission staff will negotiate grant agreements with library systems to help library staff use and maintain information resource technology.

No comments were received concerning the adoption of the amended section.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 1999.

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Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
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For further information, please call: (512) 463–5440

Division 4. Library Establishment Grants, Guidelines for Public Libraries

13 TAC §§2.140–2.146

The Texas State Library and Archives Commission adopts new §§2.140-2.146, concerning Grants to Establish Public Libraries. New §2.142 is adopted with changes to the proposed text as published in October 30, 1998, issue of the *Texas Register* (23 TexReg 11012). Sections 2.140, 2.141 and §§2.143-2.146 are adopted without changes to the proposed text and will not be republished.

The new sections contain guidelines for grants to establish public libraries in counties and cities without publicly supported library service.

These sections will enable organizations to prepare applications for financial assistance from the Commission.

One comment was received from Westbank Community Library staff concerning proposed §2.142 stating that it needlessly excluded library districts as an eligible applicant for Library Establishment Grants.

The commission concurs with the comment made by Westbank Community Library staff; therefore, the phrase specifically excluding library districts has been deleted from §2.142.

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

§2.142. Eligible Applicants.

(a) Applications will be accepted from the governing authority of counties without countywide public library service, and cities without public library service, and library sales tax districts. An eligible county is defined as one with no existing countywide publicly supported library service, or a county served by a library that has not expended city, county, or school district funds for the past three years. An unserved city is one without available public library service that has not expended city, county, or school district funds for public library service for the past three years.

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

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

(2) the applicant submits a grant application, and

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

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

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

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 February 18, 1999.

TRD-9901014
Raymond Hitt
Assistant State Librarian
Texas State Library and Archives Commission
Effective date: March 10, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 463–5440

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter N. Decision and Orders

16 TAC §22.262, §22.264

The Public Utility Commission of Texas adopts amendments to §22.262 relating to Commission Action After a Proposal for Decision and §22.264 relating to Rehearing without changes to the proposed text as published in the November 27, 1998 *Texas Register* (23 TexReg 11885). Project Number 17709 has

been assigned to this proceeding. The proposed amendments conform these sections to current commission practice, clarify that it takes two votes to grant a request for oral argument, and that it takes two votes to consider a motion for rehearing at an open meeting.

The commission received comments from Central Power and Light Company, Southwestern Power Company, and West Texas Utilities Company, the Texas electric utility operating companies of the Central and South West Corporation (collectively, CSW).

Comments on §22.264(c):

CSW requests reconsideration on the proposed requirement that an affirmative vote by two commissioners is required for consideration of a motion for rehearing at an open meeting. CSW states that the first step to obtaining a grant of rehearing is persuading at least one of three commissioners that an error of policy, law or fact has been committed by an initial order. CSW believes that a participant to a proceeding before the commission may be able to make a strong point for rehearing in a motion for rehearing. CSW also believes that a single commissioner may wish to place such a motion on the agenda for the purposes of attempting to persuade at least one fellow commissioner to grant the motion. CSW believes that as a matter of fundamental fairness a single commissioner should have the right to attempt to persuade his or her fellow commissioners in open meeting as to the merits of a motion for rehearing, or to expand upon certain points of law or policy in response to statements or claims in a motion for rehearing.

The commission declines to make the change requested by CSW. Adding the sentence "An affirmative vote by two commissioners is required for consideration of the motion at an open meeting" reflects the current procedure for motions for rehearing at the commission. The sentence clarifies commission practice for adding consideration of motions for rehearing to an open meeting and ensures that all participants in proceedings are aware of that practice. In considering whether to add a motion for rehearing to an open meeting agenda, Commissioners rely on the pleadings filed by parties. Parties should include sufficient information in the pleadings to allow Commissioners to decide if the motion for rehearing should be considered in open meeting.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission had invited specific comments regarding the §167 requirement, as to whether the reason for adopting the rules continues to exist, in the comments on the proposed amendments. No interested persons commented on the §167 requirement. The commission finds that the reason for adopting these sections continues to exist.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross-Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 February 18, 1999.

TRD-9901005
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 10, 1999
Proposal publication date: November 27, 1998
For further information, please call: (512) 936–7308

Chapter 23. Substantive Rules

Subchapter B. Records and Reports

16 TAC §23.16

The Public Utility Commission of Texas adopts the repeal of §23.16 relating to Contribution Disclosure Statements in Appeals of Municipal Utility Rates without changes to the proposed text as published in the November 20, 1998 *Texas Register* (23 TexReg 11757). The repeal is necessary to avoid duplicative rule sections. The commission has adopted §25.240 of this title (relating to Contribution Disclosure Statements in Appeals of Municipal Utility Rates) to replace §23.16. This repeal is adopted under Project Number 17709.

The commission received no comments on the proposed repeal.

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 1999.

TRD-9901000
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: March 10, 1999
Proposal publication date: November 20, 1998
For further information, please call: (512) 936–7308

Chapter 25. Substantive Rules Applicable to Electric Service Providers

Subchapter J. Costs, Rates and Tariffs

16 TAC §25.240

The Public Utility Commission of Texas (commission) adopts new §25.240 relating to Contribution Disclosure Statements in Appeals of Municipal Utility Rates without changes to the proposed text as published in the November 20, 1998 *Texas Register* (23 TexReg 11759). The proposed section replaces §23.16 of this title (relating to Contribution Disclosure Statements in Appeals of Municipal Utility Rates). The proposed section implements Public Utility Regulatory Act (PURA) §33.122(j) which requires the commission to adopt rules applicable to a party to an appeal under PURA, Chapter 33, Subchapter D, that provide for the public disclosure of financial and in-kind contributions and expenditures related to preparing and filing an appeal petition and preparing testimony or legal representation for an appeal; and PURA §33.123(f) which requires the commission adopt rules for reporting financial and in-kind contributions in support of an appeal under §33.123. This section is adopted under Project Number 17709.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The 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 commission requested specific comments on the §167 requirement as to whether the reason for adopting or readopting the rule continues to exist. The commission received no comments on proposed §25.240. The commission finds that the reason for adopting the rule continues to exist.

This section is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §33.122(j) which requires the commission to adopt rules applicable to a party to an appeal under Chapter 33, Subchapter D; and PURA §33.123(f) which requires the commission adopt rules for reporting financial and in-kind contributions in support of an appeal under §33.123.

Cross Index to Statutes: Public Utility Regulatory Act §§14.002, 33.122, and 33.123.

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 February 18, 1999.

TRD-9900999

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 10, 1999

Proposal publication date: November 20, 1998

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

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TITLE 19. EDUCATION

Part VII. State Board for Educator Certification

Chapter 230. Professional Educator Preparation and Certification

Subchapter U. Assignment of Public School Personnel

19 TAC §230.601

The State Board for Educator Certification (SBEC) adopts an amendment to §230.601, concerning Assignment of Public School Personnel without changes to the proposed text as published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12603) and will not be republished.

The amendments establish assignment criteria for newly-approved courses based on the Texas Essential Knowledge and Skills (TEKS).

In July 1997, the State Board of Education (SBOE) completed adoption of the Texas Essential Knowledge and Skills (TEKS). The TEKS set standards for the content that Texas public school students must know and be able to do. School districts began implementation of the TEKS September 1, 1998. The TEKS add new courses to the public school curriculum. At the August 7, 1998 meeting, the Board adopted the first set of amendments addressing assignment criteria for many of the new TEKS courses. This amendment includes assignment criteria for additional TEKS courses in areas such as Career and Technology Education, English Language Arts and Reading, Social Studies, and Fine Arts.

School district personnel who are appropriately certified and have the necessary skills and knowledge for the assignment can more effectively educate students.

No comments were received regarding adoption of the rule.

The amendment is adopted under the Texas Education Code (TEC), §21.041(b)(2) which requires the State Board for Educator Certification to propose rules that specify the classes of certificates to be offered.

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 February 22, 1999.

TRD-9901039

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: March 14, 1999

Proposal publication date: December 11, 1998

For further information, please call: (512) 469–3001

Subchapter V. Induction for Beginning Teachers

19 TAC §230.611

The State Board for Educator Certification (SBEC) adopts the repeal of §230.611, concerning Standards for Management and Leadership Development for Administrators without changes to the proposed text as published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12603) and will not be republished.

The rule is repealed because it is no longer necessary. 19 TAC Chapter 232, Subchapter R, relating to Certificate Renewal and Continuing Education Requirements, will satisfy the requirements of the Texas Education Code (TEC), §21.041(9) and §21.054 relating to continuing education requirements.

This repeal will allow the Board to adopt amendments to 19 TAC, Chapter 230, Subchapter V, relating to Continuing Education, by deleting §230.611, Standards for Management and Leadership Development for Administrators, and changing the subchapter heading. The new rules governing certificate renewal (19 TAC Chapter 232, Subchapter M), as well as new rules for the Principal and Superintendent Certificates, render §230.611 unnecessary. However, §230.610 will remain as written in 19 TAC, Chapter 230, Subchapter V, relating to Continuing Education.

New rules will be implemented on September 1, 1999 requiring SBEC to issue the Standard Certificate, which must be renewed every five years. Included in the renewal requirements for administrators is the completion of 200 clock hours of continuing professional education during that five-year period. As a result of these new rules, existing provisions in Chapter 230, Subchapter V should be eliminated to remove conflicting language.

New rules governing certificate renewal and continuing professional education will be implemented and old rules eliminated.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Education Code (TEC), §21.041(b)(9) which requires the Board to provide for continuing education 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 February 22, 1999.

TRD-9901040

Pamela B. Tackett

Executive Director

State Board for Educator Certification

Effective date: March 14, 1999

Proposal publication date: December 11, 1998

For further information, please call: (512) 469–3001

Chapter 241. Principal Certificate

19 TAC §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35, 241.40

The State Board for Educator Certification (SBEC) adopts new §§241.1, 241.5, 241.10, 241.15, 241.20, 241.25, 241.30, 241.35 and 241.40, concerning Principal Certificate without changes to the proposed text as published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12603) and will not be republished.

The new rules focus on defining seven specific standards with accompanying knowledge and skills, rather than specific coursework requirements. The Standard Principal Certificate would become the appropriate certificate under Texas Education Code §21.003(a) to be employed as a principal or assistant principal. In addition to identifying the standards, the new rules contain language addressing requirements for admission to a principal preparation program, specific activities that must occur during preparation, requirements to receive the Provisional and Standard Principal Certificates, and renewal requirements including activities related to assessment, development of an individual growth plan, and continuing professional education.

The Texas Education Code, §21.054(b) specifies that continuing education for principals must be based on an individual assessment of the standards identified by the SBEC. It is important to note that although currently certified principals and assistant principals are exempt from renewal requirements, TEC §21.054(b) does not allow the Board to exempt these individuals from the assessment requirements. As a result, language is included in the rule in 19 TAC 241.30(b) requiring all principals and assistant principals to complete the individual assessment and professional growth plan.

No comments were received regarding adoption of the new rules.

The new sections are adopted under the Texas Education Code (TEC), Chapter 21, Subchapter B. TEC §21.040(4) requires the Board to appoint for each class of educator certificate an advisory committee composed of members of that class to recommend standards for that class to the Board. TEC §21.041(b)(2)-(4) requires the Board to specify the classes of certificates to be issued, specify the period of validity for each class of educator certificate, and specify requirements for the issuance and renewal of an educator certificate. TEC §21.046(b) requires that the qualifications for certification of a principal must: allow an outstanding teacher to qualify by substituting approved experience and professional training for part of the educational experience; provide that supervised and approved on-the-job experience must be accepted in lieu of classroom hours; and emphasize instructional leadership; administration, supervision, and communication skills; curriculum and instruction management; performance evaluation; and organization and fiscal management. TEC §21.046(c) requires the Board to ensure that each candidate for certification as a principal is of the highest caliber and multilevel screening processes, validated comprehensive assessment programs, and flexible internships with successful mentors exist to determine whether a candidate for certification as a principal possesses the essential knowledge, skills, and leadership capabilities necessary for success. TEC §21.046(d) requires the Board to consider the knowledge, skills, and proficiencies for principals as developed by relevant national organizations and the State Board of Education. TEC §21.054(a) requires the Board to establish a process for identifying continuing education courses and programs that fulfill continuing education

requirements. TEC §21.054(b) requires that continuing education for principals be based on an individual assessment of the knowledge, skills, and proficiencies necessary to perform successfully as a principal; an individualized professional growth plan shall be developed as a result of the assessment; assessment results and the growth plan may only be released with the approval of the principal assessed and be used for professional growth purposes; and each certified principal shall participate in the assessment process at least once every five years.

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 February 22, 1999.

TRD-9901041
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: March 14, 1999
Proposal publication date: December 11, 1998
For further information, please call: (512) 469–3001

Chapter 242. Superintendent Certificate

19 TAC §§242.5, 242.10, 242.15, 242.20, 242.25, 242.30, 242.35

The State Board for Educator Certification (SBEC) adopts new §§242.5, 242.10, 242.15, 242.20, 242.25, 242.30, and 242.35 concerning Superintendent Certificate without changes to the proposed text as published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12608) and will not be republished.

The new rules are necessary to create standards for leadership that are unique to the campus and district levels.

The Standard Superintendent Certificate will become the appropriate certificate under TEC §21.003(a) to be employed as a public school superintendent. In addition to identifying the required knowledge and skills, these rules contain language addressing requirements for admission to a superintendent preparation program, specific activities that must occur during preparation, requirements to receive the Standard Superintendent Certificate, activities related to mentorship for first-time superintendents, renewal, and continuing professional education.

The new rules also require first-time superintendents to participate in a one-year mentorship to include at least 36 clock hours of professional development directly related to the standards identified in new §242.15.

No comments were received regarding adoption of the new rules.

The new rules are adopted under the Texas Education Code (TEC), Chapter 21, Subchapter B, §21.040(4) which requires the Board to appoint for each class of educator certificate an advisory committee composed of members of that class to recommend standards for that class to the Board. TEC §21.041 (b) (2) (3) (4) requires the Board to specify the classes of certificates to be issued, specify the period of validity for each class of educator certificate, and specify the requirements for issuance and renewal of an educator certificate. TEC §21.046 (a) requires that the qualifications for superintendent must permit a candidate for certification to substitute management training or experience for part of the educational experience.

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 February 22, 1999.

TRD-9901042
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: March 14, 1999
Proposal publication date: December 11, 1998
For further information, please call: (512) 469–3001

Chapter 250. Agency Administration

Subchapter A. Purchasing

19 TAC §250.1

The State Board for Educator Certification (SBEC) adopts new §250.1, concerning Historically Underutilized Business (HUB) Program without changes to the proposed text as published in the December 11, 1998, issue of the *Texas Register* (23 TexReg 12629) and will not be republished.

The new rule adopts by reference the rules of the General Services Commission (GSC) regulating the Historically Underutilized Business (HUB) Program for state purchases.

Section 124.5, Article IX, of the Appropriations Act (75th Legislature, 1997) requires state agencies to adopt the rules of the General Services Commission (GSC) relating to the Historically Underutilized Business (HUB) Program.

The GSC administers the state's HUB Program. GSC helps state agencies identify HUB participation in the procurement process of goods, services, and public utility contracts. For HUBs, these initiatives eliminate barriers to equal economic opportunities in state purchasing.

GSC's rules are based on a policy of encouraging the use of HUBs in state procurement and the results of the State of Texas Disparity Study findings. HUB goals may be achieved by contracting directly with HUBs or indirectly through subcontracting opportunities.

The SBEC's new rules will help eliminate barriers to equal economic opportunities in state purchasing for HUBs.

No comments were received regarding adoption of the new rule.

The new rule is adopted under House Bill 1, General Appropriations Act, 75th Legislature, Regular Session (1997), Article IX, Section 124.5; Texas Government Code, §2161; TEC §§21.031, 21.041(a).

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 February 22, 1999.

TRD-9901043

Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: March 14, 1999
Proposal publication date: December 11, 1998
For further information, please call: (512) 469–3001

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 181. Vital Records

The Texas Department of Health (department) adopts new §§181.31, 181.32 and 181.41-181.49, regarding the reporting of adoptions, records received from child-placing agencies no longer in business, and the operation of the Bureau of Vital Statistics (BVS), Central Adoption Registry (CAR). Sections 181.31, 181.32, 181.41, 181.43-181.45 are adopted with changes to the proposed text as published in the September 25, 1998, issue of the *Texas Register* (23 TexReg 9698). Sections 181.42 and 181.46-181.49 are adopted without changes and therefore will not be republished.

New §181.31 restates the statutory requirement for courts to send adoption reporting information to BVS. The collection of this information was designed in part to aid the CAR in matching and cross-referencing biological family data with adoptive family data.

New §181.32 clarifies and identifies the process by which a child-placing agency notifies the department when it relinquishes its child-placing agency license and must transfer, by law, all adoption records to an entity described in the section for permanent safe-keeping. If the child-placing agency chooses to turn its adoption records over to BVS, the section establishes procedures on shipping the records to BVS and what information is needed prior to the shipping. It also addresses who may have access to the non-identifying part of the record as described by law and specifies that updated medical and social information may be added to the agency's adoption record by the biological family for the purpose of alerting the adoptive family to important genetic, medical and social history.

Last, new §§181.41-181.49 reflect the procedures for the CAR, transferred from the Texas Department of Protective and Regulatory Services to the department as directed by House Bill (HB) 1091 of the 75th Legislature. The CAR is a mutual-consent voluntary adoption registry which offers adoptees, birth parents, and biological siblings the ability to locate each other without having to go through the court system or spending excessive amounts of time and effort through other sources.

The department is making the following changes to clarify the intent and improve the accuracy of the sections.

Change: Concerning §181.31(a), the standardized BVS Form VS-160 was specified to clarify which form the court is to send to the department.

Change: Concerning §181.32(c), additional information was included to prepare defunct child-placing agency records for shipping to BVS and to off-set some of the cost to the department when the records are microfilmed for permanent safe-keeping. Included in the language is the removal of staples, paper clips and brackets from the adoption folders; keeping the birth parent file together with the adoptive parent and the child's file; and creating card files that cross-reference the birth mother's name with the adoptive parents' and adoptee's names.

Change: Concerning §181.32(e), the phrase "or other birth relative" was added due to the permanency of adoption records and to the fact that often the birth parents and grandparents are deceased.

Change: Concerning §181.32(e)(2), the phrase "or the adult adoptee" was deleted from the proposed language due to the law that allows the department to inform only the adoptive parents of any updated medical and social information. Unfortunately, when the adoptive parents are deceased or cannot be located, important medical information that may be vital to the health of the adoptee will not be disclosed.

Change: Concerning §181.41(c), a sentence was added to strengthen the rule requiring a child-placing agency's registry to forward a registrant's application to the CAR.

Change: Concerning §181.43(b)-(c), the dates to submit information to the CAR were changed from March to June to allow time for the final rules to be published in the *Texas Register*.

Change: Concerning §181.45(b), language was added to clarify that the section was referring to a male "birth parent" and not just a male applicant.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting changes.

Comment: Concerning §181.31, one commenter thought that providing the birth parent and adoptive parent information on the certified report of adoption form may result in giving court information to birth parents to use in petitioning the court to open the sealed adoption record.

Response: The department disagrees with the comment. The court information is made confidential by the Family Code, §108.003(b). The birth parents may get the information by order of a court. The cross-reference information that is now provided by the courts to BVS specifically allows the CAR to economically cross-reference and match applicants. No change was made in response to this comment.

Comment: Concerning §181.31(a)(7), one commenter asked about the identity of the child-placing agency recorded in the report of adoption form. The commenter recommended that the facilitator's name be added to the form when the adoption occurs independently of a child placing agency.

Response: The department disagrees with the commenter. The facilitator's name does not provide any additional information to operate the adoption registry and is not needed on Form VS-160.

Comment: Concerning §181.32(e)(1), one commenter had concerns about the redacted or de-identified portion of the updated medical history record that shall be shared with the adoptive parents or the adult adoptee. The commenter requested that the word "redacted" be removed and the term "de-identified" remain in place. The commenter felt that the word "redacted" would provide too much leeway for withholding information and that the redaction process may not be cost effective for the person requesting the record.

Response: The department disagrees with the commenter. The dictionary defines redaction as "an act or instance of editing;

to select or adapt for publication: edit; a work that has been edited." The term "de-identify" is not defined in the dictionary but is used to mean to remove identifying information from the record. The Family Code, §162.006 requires the department to "edit" the records to protect the "identity" of certain persons. The department is not in agreement that the term "redact" be deleted from that section, but has included both terms in paragraph (1).

Comment: Concerning §181.32(e)(2), one commenter noted that locating the last known address of the adoptive parents in the attempt to inform them of their right to examine the agency record may indicate only the address at the time of the adoption. It was recommended that the language be changed to "the bureau shall make concerted efforts to locate (the current address, phone number, whereabouts of) adoptive parents..."

Response: The department agrees with the commenter and has included similar language in the paragraph.

Comment: Concerning §181.43, one commenter asked about requiring authorized adoption registries to send to the CAR duplicate information of all registrant information maintained in those registries, including all registrant files. Clarification was requested as to whether sending applicant information is sufficient, whether other information, such as a child- placing agency's adoption case file on a particular registrant would be required, or whether sending the standardized BVS Form 2271, Voluntary Adoption Registry Application, would meet the requirement. Clarification was also requested on whether later documentation received by the registry from the registrant should be forwarded to the department.

Response: The department agrees that clarification should be made as to what "all registrant information" includes and has amended subsection (a) to reflect that BVS Form 2271 be completed with all known names, including proof of age and identity of each registrant, and the names, date of birth, and place of birth of each person for whom the registrant is searching, if known. Any updated information including changes of address of the registrant shall be forwarded to the CAR. Adoption case files are considered part of the child-placing agency's files and are not considered part of the registry files unless the information contained in the files provides information to benefit or aid the match process.

Comment: Concerning §181.43, one commenter asked about the possibility of the CAR and another registry simultaneously matching registrants and recommended designating which registry would take the lead in the match notification process. Additionally, it was recommended that if a child-placing agency was involved in the adoption, its registry would be designated to take the lead. An exception was noted by the commenter that if there was no identified registry or the registrants specifically did not register with another registry and chose instead to only register with the CAR, the department would be responsible for making the match and releasing the identifying information.

Response: The department agrees that a duplicate notification process could exist if a qualified applicant registers in more than one voluntary adoption registry and has added subsection (d) to address this situation.

Due to the underutilization of the voluntary adoption registry system by qualified child- placing agencies' registries, the CAR encourages other registries to provide their clients with BVS Form 2271 so they may register solely with the CAR, alleviating unnecessary or burdensome paperwork for the child-placing agencies who primarily provide post-adoption services, including third party intermediary services.

Comment: Concerning §181.43, one commenter asked for notification by the CAR to the child-placing agency's registry when an applicant adopted by or searching for a child placed for adoption by the child-placing agency applies only to the CAR.

Response: The department disagrees. It must follow Family Code, §162.405(b)-(d) and can provide the applicant with the registry identity. The department may "confirm or deny" a match upon inquiry of a registry under the Family Code, §162.414(c)-(d). No change was made as a result of this comment.

Comment: Concerning §181.44(c), one commenter requested that the CAR provide inquirers or registrants with the mailing or E-mail address, or telephone number of the identified child-placing agency.

Response: The department agrees and the section has been amended to include the address, telephone information and E-mail address, if known, of the child-placing agency.

Comment: Concerning §181.45(a)(1), one commenter said that BVS Form 2271 does not provide an area for the child placing agency's registry to tailor the form to meet its needs.

Response: The department has included all information in the form that is mandated by law and additional information to aid in research; however, it agrees that space is not provided on the form for a mailing address to the agency's registry and has amended paragraph (1) to address this. The form shall be amended by BVS, within reason, allowing for information that a registry needs to complete its registration process. In addition, the section is amended to state that the registry may add information, on a separate form, for their applicant to complete.

Comment: Concerning §181.46(b)(3), one commenter agreed with the language in the rules that states the one hour of mandated counseling may be provided by an unlicensed mental health professional provided he or she has, at a minimum, a bachelor's degree from an accredited college and expertise in post-adoption counseling.

Response: The department originally added the language to the proposed rules to allow various persons who are knowledgeable in the field of post-adoption to counsel matchees on the expectations of a reunion. No further changes were made in response to this comment.

Comment: One commenter expressed concern that if a child-placing agency followed the voluntary adoption registry rules, then the child-placing agency would not be able to provide third-party intermediary services to search for the missing party when a match does not occur.

Response: Texas Family Code §162.401, states that the registry is not intended to "inhibit or prohibit persons from locating each other through other legal means or to inhibit or affect in any way the provision of postadoptive services and education, by adoption agencies or others, that go further than the procedures set out for registries..." The department agrees with the commenter that the voluntary adoption registry is one of the tools that helps reunite persons separated by adoption. No change was made in response to the comment.

Comments were received by the Texas Department of Protective and Regulatory Services, and two individuals. One com-

menter was in favor of the rules. The two remaining commenters were neither for nor against the rules in their entirety; however, they raised questions, offered comments for clarification purposes and suggested clarifying language concerning specific provisions in the rules.

Subchapter B. Vital Records

25 TAC §181.31, §181.32

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

§181.31. Minimum Requirements for Adoption Reporting.

(a) In complying with the Texas Family Code, §108.003, the court that renders a decree of adoption shall send to the Texas Department of Health, Bureau of Vital Statistics a certified report of adoption on Form VS-160. The clerk shall send the form not later than the 10th day of the first month after the month in which the court renders the adoption decree. The report shall include, but not be limited to, the following:

(1) the name of the adopted child after adoption;

(2) the birth date of the adopted child;

(3) the docket number of the adoption suit;

(4) the identity of the court rendering the adoption;

(5) the date of the adoption order;

(6) the name and address of each parent, guardian, managing conservator or other person whose consent to adoption was required or waived under the Texas Family Code, Chapter 159, or whose parental rights were terminated in the adoption suit;

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

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

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

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

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

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

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

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

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

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

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

This agency hereby certifies that the 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 February 12, 1999.

TRD-9900938
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: March 4, 1999
Proposal publication date: September 25, 1998
For further information, please call: (512) 458–7236

Subchapter C. Central Adoption Registry

25 TAC §§181.41–181.49

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

§181.41. Mutual Consent Voluntary Adoption Registries.

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

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

(c) An adoptee, a birth parent or a biological sibling may register with the registry of the agency through which the adoptee was adopted or placed for adoption and with the Central Adoption Registry. If the client initially registers with the child-placing agency's registry, that registry shall forward a copy of the registrant's application, along with appropriate identification, to the Central Adoption Registry.

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

(a) An authorized voluntary adoption registry shall send to the Texas Department of Health - Bureau of Vital Statistics' Central Adoption Registry duplicate information of all registrant information it maintains in its registry. This includes all registrant file information and Bureau of Vital Statistics Form BVS - 2271. The child-placing agency's adoption case files are not needed, unless the information contained in those files provides information to benefit or aid the match process. Registrant information shall also include proof of age and identity of each registrant, and all known names, dates of birth, and places of birth of each person for whom the registrant is searching, if known. Subsequent documentation including address changes of the registrant received by the registry shall be forwarded to the Central Adoption Registry.

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

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

(d) The Central Adoption Registry shall take the lead in completing a match and releasing identifying information between two biological relatives if it is the only registry involved. If a birth parent, sibling, or adoptee who was placed for adoption by a child-placing agency that operates an authorized registry registers with both registries, the two registries shall coordinate the responsibilities for completing the match, releasing identifying information, and informing the secondary registry when identifying information is released.

§181.44. Inquiry through the Central Index.

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

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

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

§181.45. Registration in the Voluntary Adoption Registry System.

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

(1) complete registration form (BVS - 2271) and any other information the authorized registry deems necessary to identify the person(s) the applicant is searching for. Form BVS - 2271 shall provide a space to include the registry's mailing address; and

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

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

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

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

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

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

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

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg
General Counsel
Texas Department of Health
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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter D. Fire and Allied Lines Insurance

Division 1. Prohibited Practices by Insurers Subject to the Insurance Code, Article 5.26

28 TAC §§5.3001–5.3004

The Texas Department of Insurance adopts the repeal of §§5.3001-5.3004, relating to the prohibition against regulated and nonregulated insurers entering into guaranty agreements, indemnity agreements, or reinsurance agreements designed to circumvent the application of Article 5.26 to regulated insurers.

The repeal of §§5.3001-5.3004 is necessary because the enactment of Articles 18.23A and 19.12A adequately address the problems these sections were designed to address and therefore have rendered §§5.3001-5.3004 unnecessary. Sections 5.3001 and 5.3002 describe certain practices that insurers were engaging in to circumvent the promulgated rating system established by Article 5.26. These sections focused on the practice of nonregulated insurers issuing policies at rates less than those authorized for use by regulated insurers and these blocks of policies were being assumed by the rate regulated insurers through guaranty, indemnity, or reinsurance agreements. Through these arrangements, the regulated insurers were charging rates that were inadequate and not actuarially sound and the board was concerned that such practices could lead to insurer insolvency. The board was particularly concerned with the practice of regulated insurers establishing affiliated Lloyds companies and reciprocal exchanges expressly for the purpose of writing policies below the promulgated rate and then ceding those policies to the regulated affiliate. Section 5.3002 specified these practices to be in violation of Articles 5.26 and 5.41, issued a mandate to insurers to cease and desist from such practices, and issued a directive to the commissioner to investigate insurers engaging in such practices. Sections 5.3003 and 5.3004 included multi-peril policies under the prohibitions described in §§5.3001 and 5.3002 if the multi-peril policy included coverage that was regulated under Article 5.26. In 1991, Articles 5.26 and 5.41 were amended to reflect that a new benchmark rating system, outlined in Subchapter M, would be used to regulate residential property insurance rates instead of the promulgated rating system. Simultaneous with these amendments to Articles 5.26 and 5.41, Article 5.101 was enacted to establish the benchmark rating system. The effect of these legislative changes was that the benchmark rating system supplanted the promulgated rating system for residential property insurance rates. Also in 1991, Articles 18.23A and 19.12A were enacted to address the problem of affiliated Lloyds and reciprocal exchanges being used to circumvent the promulgated rating system. These statutes mandate that an insurer who is subject to rate regulation through the benchmark rating system may not assume a risk written by an affiliated Lloyds or reciprocal exchange if the risk is written at a lower rate in the affiliated Lloyds or reciprocal exchange than the rate charged by the regulated company that would be assuming the risk. The problem that the sections are designed to address is addressed by the statutes by prohibiting the reinsurer from assuming a risk written by the affiliated company at a rate below the reinsurer's filed flex rate. Since the problem of circumventing rate regulation through the use of affiliated companies has been adequately addressed by the enactment of Articles 18.23A and 19.12A, §§5.3001-5.3004 are unnecessary and are being repealed.

The adoption of the repeals will result in the elimination of sections that are unnecessary and no longer serve a useful purpose. Moreover, the repeals will contribute generally to a streamlining of Chapter 5 of the Texas Administrative Code by elimination of sections which have become obsolete.

The agency did receive comments from one commentor, however, these comments were subsequently withdrawn.

The repeals are adopted under the Insurance Code, Articles 5.98 and 1.03A; and the Government Code §§2001.001 et seq. Article 5.98 provides that the Commissioner of Insurance may adopt reasonable rules that are appropriate to accomplish the purposes of Chapter 5, Texas Insurance Code entitled Rating and Policy Forms, and which contains statutes governing fire insurance and allied lines. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Government Code §§2001.001 et seq. (Administrative Procedure Code) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 18, 1999.

TRD-9901008
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
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For further information, please call: (512) 463–6327

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 216. Water Quality Performance Standards for Urban Development

Subchapter B. Municipal Water Pollution Control and Abatement

30 TAC §§216.21–216.30

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts new §§216.21-216.30, concerning Municipal Water Pollution Control and Abatement. The new sections are adopted with changes to the proposed text as published in the October 30, 1998, issue of the *Texas Register* (23 TexReg 11072). These sections will form a new Subchapter B under Chapter 216.

EXPLANATION OF RULES

The rules implement revisions to Texas Water Code, §26.177 made by House Bill 1190 (1997) passed during the 75th Texas Legislature. The bill revised Texas Water Code, §26.177 and made the development and submission of a water pollution control and abatement plan permissive for any community regardless of population. However, a plan is required for cities with populations of 10,000 or greater where the Clean Rivers Regional Assessment of Water Quality or other commission assessments or studies demonstrate a water pollution impact attributable to non-permitted sources. The rulemaking also provides flexibility in allowing affected cities the opportunity to correct the problem before the commission determines whether to require the submission of a plan as provided by 26.177. Such opportunity will be for a reasonable time, but not to exceed five years, to reflect resources available to an affected city and to coordinate this program with the five-year basin cycle water quality management program provided under Texas Water Code, §26.0285.

In developing the rules, program staff has also considered other matters such as: federal permitting under Phase II of the storm water permitting program; delegation of the National Pollutant Discharge Elimination System (NPDES) permitting program to the state; revision of state and federal water quality standards to address wet weather conditions; evolving federal policy on Total Maximum Daily Loads (TMDLs); and the development of a state coastal nonpoint source management program in compliance with the Coastal Zone Management Act, §6217.

New §216.21, relating to Purpose and Policy, explains that the purpose of these rules is to establish procedures and measures to address water pollution, identified in cities of 10,000 or more, that is attributable to non-permitted sources. This section also establishes that this subchapter is not intended to prevent the commission from abating or preventing the pollution of water through permits, orders, or other actions.

New §216.22, relating to Applicability, explains that the rule applies to cities with populations of 10,000 or more in which a water quality assessment report has identified a water pollution problem that is attributable to non-permitted sources.

New §216.23, relating to Definitions, includes definitions that apply to this subchapter and are not included in 30 TAC Chapter 3.

New §216.24, relating to Water Quality Assessments and Studies, specifically identifies the related water quality assessments and studies which may be used by the executive director to identify water pollution that is attributable to non-permitted sources. Water quality assessments and studies which may be used by the executive director to identify water pollution that is attributable to non- permitted sources include, but are not limited to, the commission's program to develop TMDLs in accordance with the federal Clean Water Act, §303(d). In this scenario, cities and other stakeholders located in watersheds of waterbodies that do not meet applicable water quality standards would be encouraged and given an opportunity to work with the commission in the development and implementation of TMDLs for the segment. TMDLs are technical analyses performed to determine how much pollution a waterbody can receive without violating its water quality standards. If, during the development of a TMDL, non-permitted sources in a city are determined to be contributing to water pollution, the city will be notified by the executive director and given a reasonable amount of time to correct the problem. Actions undertaken by the city to correct the problem will need to be coordinated with the TMDL Implementation Plan adopted for the waterbody.

New §216.25, relating to Notice of Initial Determination, explains that the executive director will notify a city if it is determined that an assessment or study has identified water pollution that is attributable to non-permitted sources.

New §216.26, relating to Final Determination of Applicability, explains that unless the executive director and the city agree that the city will develop and implement a water pollution control and abatement program after expiration of a specified time period, the commission at a regularly scheduled commission meeting shall evaluate and take action on the executive director's recommendation. The section further explains that the commission may find that if the city continues to meet the criteria and needs to implement a program, refer the matter to the State Office of Administrative Hearings (SOAH), determine that the city is not required to develop a Water Pollution Control and Abatement Program, or issue any other order the commission deems appropriate. The section also explains that the executive director will incur the burden of demonstrating that the city meets the criteria in §216.22(a).

New §216.27, relating to Water Pollution Control and Abatement Program, explains that a water pollution control and abatement program under this subchapter shall encompass areas within the city's municipal boundaries and its extraterritorial jurisdiction and explains the elements of such a program.

New §216.28, relating to Submittal of Water Pollution Control and Abatement Programs, details the process for a city submitting a water pollution control and abatement program to the commission.

New §216.29, relating to Amendment Procedures for Water Pollution Control and Abatement Programs, details the process for the city to submit an amendment to the program for commission review and approval. The rule also provides that the commission may, on its own motion or in response to a petition by the executive director, require the city to amend its program.

New §216.30, relating to Appeals, explains that any person outside the corporate city limits, but within the extraterritorial jurisdiction (ETJ) affected by any ruling by a city related to waste pollution control and abatement, may appeal such an action to the commission or the appropriate state district court.

FINAL REGULATORY IMPACT ANALYSIS

The commission has reviewed the rulemaking in light of the regulatory analysis requirement of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because the rules are not a "major environmental rule" as defined in that section of the Code and do not exceed any standard, requirement, or authority set by federal or state law or delegated agreement. Although the rules

are intended to protect the environment, they do not meet the other requirements that must be met for the definition to apply. The rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Furthermore, the rules are not adopted solely under the general powers of the commission, but are adopted under the specific authority of Texas Water Code, §26.177.

The rules are intended to assist the commission in identifying water pollution from non-point sources and to improve the quality of surface water resources in the state. In order for the commission to ameliorate the adverse affects of non-point source pollution to surface waters in the state, it must be able to identify water pollution from non-point sources affecting not only the surface water, but the environment generally. Enacting these rules will provide an overall benefit to the economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state because by identifying the existence of non-point source pollution and tracing it back to a source which can be regulated beneficially affects the entire state, especially the public health and the public safety, because the ultimate goal is to abate a source of pollution that is contaminating the surface water in the state.

The identification of non-point source pollution costs the state and affected municipalities less in the long run because the more polluted water courses become from non-point source pollution, the fewer municipalities and industrial users the commission will be able to permit for discharges into waters in the state. Obtaining a permit will only become more difficult over time because stream segment assimilative capacities will not be available for additional discharges. This in turn will affect a municipality's ability to accommodate a burgeoning population demanding additional services from the city. A detailed response to specific comments submitted on the Regulatory Impact Analysis (RIA) is found elsewhere in this preamble.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment (TIA) for these rules pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. A detailed response to specific comments submitted on the TIA is found elsewhere in this preamble. The specific purpose of the rules is to implement requirements of Texas Water Code, §26.177. The rules will substantially advance this specific purpose by establishing procedures to address water pollution that is attributable to non-permitted sources in cities with populations of 10,000 or more. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the rules govern actions a city must take to abate and/or prevent water pollution occurring within its jurisdiction. The rules require cities to identify and regulate discharges into waters in the state which are non-permitted and may be contributing to the pollution of a water body. To the extent a municipality must enact an ordinance, rule, regulatory requirement, resolution, policy, guideline, or similar measure to address the issue of non-permitted discharges which might have an effect on real private property, Texas Government Code, §2007.003(b)(4) exempts a municipality from application of the Private Real Property Act.

COASTAL MANAGEMENT PROGRAM

The executive director has reviewed the rulemaking and found that the rules do not govern specific actions identified in the Coastal Management Plan subject to consistency with the Coastal Management Program (CMP), including air pollution emissions, on-site sewage disposal systems, underground storage tanks, or other specific non-point source control related actions expressly identified under Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the CMP. Nor does it govern or authorize actions listed in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the rules are not subject to the CMP. However, the development and implementation of water pollution control and abatement plans, where appropriate, will provide significant protection for coastal natural resources and will be an integral part of the state's coastal non-point source pollution control program, and have been included in the state's submission to the National Oceanic and Atmospheric Administration (NOAA) for purposes to meeting the requirements of the federal Coastal Zone Management Act, §6217.

HEARING AND COMMENTERS

A public hearing was held on November 10, 1998 in Austin. Oral comment was presented by Texas Cities Coalition on Stormwater (TCCOSW). Written comments were received from TCCOSW, the City of Fort Worth (COFW), City of Vernon (COV), City of Pflugerville (COP), City of Cleburne (COC), City of Dallas (COD), City of Arlington (COA), City of North Richland Hills (CONRH), Texas Coastal Management Program (TGLO), and the Texas Municipal League (TML).

GENERAL COMMENTS

COFW commented that the proposed rules do not take into account the work done and the money spent by municipalities having to comply with the National Pollutant Discharge Elimination System. COC commented that the proposed rules do not state how these rules affect the Texas Pollutant Discharge Elimination System (TPDES) and asked if designation under these rules constitutes designation under the TPDES program and requires a permit. COC also asked if a Water Pollution Control and Abatement Plan (WPCAP) serves to comply with TPDES requirements. COD commented that abatement programs under the United States Environmental Protection Agency (EPA) Municipal Separate Storm Sewer System (MS4) Permits required of Phase I and Phase II cities should be acceptable water pollution control and abatement programs and that the commission should not duplicate efforts through the proposed rules. COD further commented that if these rules are proposed to be TNRCC's new storm water permit program, then the City of Dallas would support the change. However, if this is another program in addition to the present storm water permit program, the City of Dallas opposes the proposal. COA commented that Phase I NPDES permittees that have a Storm Water Management Program in place should be exempt from the proposed §216.22 (Applicability). COA also commented that §216.27(b)(5) imposes more restrictive planning or a duplication of plans already in place on Phase I NPDES MS4 cities that have storm sewer discharge permits. TCCOSW commented that the rule should also address the relationship between the federal stormwater permitting program for municipal separate storm sewer systems (MS4) and the proposed rule as mentioned in the RIA.

The rules implementing Texas Water Code, §26.177 do not duplicate or otherwise affect NPDES or TPDES stormwater permitting, nor place duplicative or unnecessary burdens on cities. Discharges covered by the rules address non-permitted sources of water pollution. NPDES permits, Phase I or Phase II Stormwater, seek to address permitted sources and therefore, would not be duplicated by the §26.177 program. Rather, the program seeks to address pollution not covered by a permitting program.

TCCOSW argued that the commission should implement §26.177 as an integral part of its ongoing Statewide Watershed Management Approach. TCCOSW described the Statewide Management Approach as resulting in a Watershed Action Plan for each water quality limited waterbody in the state and cited 40 Code of Federal Regulations (CFR) Part 130 as a reference.

The commission disagrees with the comment that §26.177 should only be implemented as part of the Statewide Watershed Management Approach described by TCCOSW. The Watershed Management Approach recommended by TCCOSW is the TMDL program prescribed by the federal Clean Water Act and over which EPA has ultimate oversight and approval authority. The commission believes that TMDLs are a valid approach to §26.177 and is pursuing the development of TMDLs in accordance with EPA directives. However, the commission believes that relying solely upon the TMDL program for §26.177 is inconsistent with the statute, which specifically identifies a state initiated program among a range of assessments and studies to be used to support activities under §26.177.

TGLO commented that in order for the state's §6217 (Coastal Zone Act Reauthorization Amendments) coastal non-point source pollution control program to meet federal approval, the measures under subsection (g) of that provision ("g" measures) must be implemented to restore and protect coastal water quality. TGLO suggested that "g" measures should only apply to cities in which the TNRCC identifies pollution to coastal waters; water pollution problems would be conclusively presumed corrected once the city demonstrated that it had widely implemented "g" measures or when a WPCAP is required, if the program provides for widespread implementation of the "g" measures. TGLO also commented that the reference to "the Coastal Management Act, Chapter 6217" in §216.23(4) should be changed to "§6217 of the Coastal Zone Act Reauthorization Amendments of 1990."

The commission responds that NOAA guidance provides that a state implement "g" measures for the category of non-point source pollution or alternatives that are as effective as the "g" measures. NOAA also allows states to focus their non-point source programs on areas with known non-point source water quality problems. The state has submitted the §26.177 program as part of its urban non-point source pollution control strategy and believes that it meets NOAA criteria as part of an effective and focused program. For urban non-point source problems that exist outside the scope of the §26.177 program, the commission will rely on other statutory authorities including, but not limited to, Texas Water Code, §26.121. The reference raised by the commenter will be changed in the rule.

COFW commented that it was not given the opportunity to participate in the development of the rules.

In addition to considering written and oral comments submitted during the public comment period, the commission and its staff are always willing to meet with any person or entity on a proposed rulemaking. The Texas Municipal League, which represents municipalities and their interests, and the Texas Cities Coalition on Stormwater, a group of 86 Texas cities that present and address concerns related to water quality in the state, asked to meet with staff to discuss the proposed rules. At their request, commission staff provided these groups with versions of the proposed rule as it was being developed. Updates on the development of the rule were also presented to the public at large at various regulatory forums. Commission staff pursued rulemaking using the standard provision of working with organizations and associations representing potentially impacted parties.

TCCOSW requested that the commission consider an alternative version of the rule that it submitted. COV also encouraged the alternative rule proposed by the TCCOSW over the commission proposed rule.

The commission responds that the alternative version of the rule proposed by TCCOSW has been considered and the specific recommendations contained in the alternative version of the rule are addressed individually in the commission's responses to comments on the proposed rule.

COP commented that "City" and "city's jurisdiction" are used interchangeably in the rules and asked whether the scope of compliance is limited to the city limits, the city's ETJ, or to regulatory jurisdiction.

The scope of applicability of Chapter 216 is limited to a city's corporate city limits. Compliance with a city's plan is applicable to the city's ETJ as well as within its corporate limits. However, to trigger the review, the pollution identified must be within the city's corporate boundaries. In accordance with §216.27(a), the city's efforts to alleviate the problem by submitting a water pollution control and abatement program may involve the city's ETJ to the extent the city deems necessary. Section §216.27(a) provides that if non-permitted pollution is identified within the city's corporate limits and the source of the non-permitted pollution is coming from the city's ETJ, the city may involve the ETJ to the extent necessary to control the source of non-permitted pollution that is identified within the city's boundaries.

COC commented that the city's costs of water quality and compliance monitoring should be included in the fiscal note.

The commission acknowledges that some cities could incur certain monitoring costs; however, monitoring would only be required of cities that have a population of at least 10,000 and where the commission has found water pollution attributable to non-permitted sources and have not corrected the water pollution problem on their own since the initial notice was provided five years earlier and must now submit a water pollution control and abatement plan. Monitoring would only be required of those discharges that the city deemed significant or as reasonably required by the commission which may vary from size, amount of discharge, and type of pollutant discharged. The costs to any one city that meets the applicability requirements will vary according to the plan the city submits, the level and extent of the non-permitted source pollution problem, size of the city, and the complexity of the plan. The actual costs to any affected city can only be determined on a site-specific basis. Staff cannot predict in advance how many cities would fall into this category of monitoring; however, staff does not anticipate the number being great. No changes will be made to the fiscal note.

TML commented that a city's actions to ensure compliance or bring legal enforcement could have a significant impact upon the economy, productivity, competition, jobs, or environment in a sector of the state. TCCOSW asserts that the commission's conclusions that the rulemaking is not a major environmental rule because the rule will not adversely affect the economy of the state, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state are in error, and that the commission must prepare a full RIA as part of the final rulemaking. TCCOSW maintains that the rulemaking is clearly a major environmental rule, since it's specific intent is to protect the environment. As a result of the rule, cities may be forced to stringently regulate land development and construction activities. This regulation will impose additional costs on development that could be significant. The change from pollution attributable to non-permitted sources to pollution not attributable to permitted sources alters the balance of and greatly exceeds the requirements of the statute. The commission also states that the rule is limited to cities with populations over 10,000 that have water pollution problem attributable to non-permitted sources, and do not have a federal stormwater permit; however, the text of the proposed rule does not provide an exemption for cities with federal stormwater permits.

The commission maintains that the rules do not meet the full definition of a "major environmental rule." The requirements of Government Code, §2001.0225, apply only to rules that meet the definition of a "major environmental rule." This definition contains two separate requirements that must both be met for the definition to apply: 1) the specific intent of the rule is to protect the environment or reduce risks to human health from environmental exposure; and 2) the rule may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the rule's intent is to protect the environment, this is not a major environmental rule because there is a reasonable expectation that the provisions of the rule will not adversely affect in a material way any of the sector's identified in the definition. The use of the word "may" indicates that whether the rule has an effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state is not a positive determination one way or the other. Rather, the inquiry is whether there is a reasonable expectation that the rule will result in a material adverse effect. A material adverse effect is one having real importance or great consequence. It is not a foregone conclusion that a city's actions in complying with this rule will be of great consequence or real importance. The mere possibility that a city's actions could have an impact on the economy of business or industry does not qualify this rule as a major environmental rule. Even if this rule qualified as a major environmental rule because it meets the definition and could be determined to positively have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state, §2001.0225 would still not apply. This proposed rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law because there is no federal law requiring or preempting the commission in its adoption of this rule. This proposal does not exceed an express requirement of state law because the rule and the water control and abatement program contemplated under §216.27 mirrors Texas Water Code, §26.177. This proposal does not exceed a requirement of a delegation agreement because there is no delegation agreement applicable to this issue. And, this proposal does not adopt a rule solely under the general powers of the agency, e.g., Texas Water Code, §5.103 and §5.105, but rather under a specific state law, i.e., Texas Water Code, §26.177. In light of the foregoing, the commission maintains that a full RIA is not required for this rule.

The adopted version of Chapter 216 now uses the phrase "pollution attributable to non- permitted sources" in accordance with §26.177 in order to avoid any confusion in the meaning or interpretation of the statute.

While the text of the rule does not contain a provision that expressly exempts cities with federal stormwater permits, the commission believes that §26.177 is aimed at non-permitted sources of water pollution. NPDES permits, Phase I or Phase II Stormwater, seek to address permitted sources. This state program shall not overlap or duplicate federal stormwater permitting programs to the extent that the federal program addresses sources of pollution.

TML commented that if a city must employ compliance and legal measures against private waste dischargers and employ land use restrictions, the rule has the potential to create a burden on private real property. COP commented that the rule will have an impact on private property that will place the burden directly on property owners or taxpayers. TCCOSW commented that the commission's evaluation is not limited to only burdens directly caused by the TNRCC's action; rather, the commission must evaluate direct and indirect burdens. Also, that because the commission acknowledges that cities may be required to regulate the activities of the general public, the commission is also acknowledging that the rule may impose burdens on private real property. Both TML and TCCOSW commented that a full TIA is required.

This rule does not impose a burden on private real property because private real property is not the subject of the regulation. This rule is aimed at requiring a city with non-permitted sources of pollution within its corporate boundaries to ameliorate the effects of that pollution. The commission has incorporated verbatim §26.177(b) in §216.27 of the rule. If and when non-permitted sources of pollution are identified, the city is free to craft any type of solution to remedy the problem within the confines of the rule, which is a reiteration of the statute. Land use restrictions are not mandated by the statute or the rule; therefore, the commission disagrees with the TML comment that the city must employ land use restrictions to achieve the objectives of the rule.

The commission also disagrees that a full TIA is required. Section 2007.043(b) requires the TIA to identify the burdens imposed on private real property and the benefits to society resulting from the proposed rule. The inquiry for the commission in preparing a TIA is whether the action will place a burden on private property that affects the right the property owner had before the existence of the regulation and which is the producing cause of a reduction of at least 25% in the market value of the affected property. The adoption of this rule does not place a burden on private property that restricts or limits the owner's right to property that would otherwise exist in the

absence of Chapter 216. There is no existing right to conduct activities or use private property in a manner that results in an unauthorized discharge of waste into or adjacent to waters of the state. A preexisting limitation on the use of all real property in this state is found in Texas Water Code, §26.121. Section 26.121 prohibits the discharge into or adjacent to any water in the state of sewage, municipal waste, recreational waste, agricultural waste, or industrial waste or any other waste which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any water of the state in the state. The commission rules in Chapter 216 do not exceed this preexisting prohibition; rather, they articulate measures that the city may be required to take to ensure compliance with Water Code, Chapter 26.

Many rules ultimately and indirectly burden property owners, but they do not burden property. Land use restrictions placed on property by a city is the decision of the city, not a mandate of Chapter 216 and this rule is not aimed at prohibiting a landowner from making use of his or her property.

The Private Real Property Preservation Act (the Act) specifically exempts actions taken by a municipality with the exception set out in §2007.003(a)(3). That is, except when a municipality takes action that has effect in the extraterritorial jurisdiction of the municipality that does not impose identical requirements or restrictions in the entire extraterritorial jurisdiction, it is exempt from the Act (Texas Government Code, §2007.003(b)). There is also an exemption from the Act under §2007.003(b)(4) which excludes from coverage an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by state law. As this rule will articulate measures the city must take to fulfill an obligation mandated by state law, the city is exempt from a challenge under the Act.

§216.21. PURPOSE AND POLICY COMMENTS

TML commented that the proposed rule changes the language of the statute and that this shifts the burden of proof from the TNRCC to the city and this result was not intended nor authorized by the statute. TML commented that the statute places the burden on the TNRCC–that the source of the problem be identified by TNRCC and that the TNRCC determine that the source is not already covered by a permit. TCCOSW also objected to the rules applicability as set out in §216.21(a) and §216.22(a). The change of the language found in the statute of the triggering finding from "water pollution is attributable to non-permitted sources" to the proposed rule language of "water pollution that is not attributable to permitted sources" could, it maintains, have serious consequences for the cities since under the proposed rule the commission could require preparation of a program if there was water pollution of unknown origin, unless the city could show that the pollution was not caused by a permitted source.

The commission responds that the proposed language does not literally nor intentionally shift the burden of proof onto cities. However, to avoid any confusion, the rule language will track the language contained in the statute. The commission's intent has always been that the executive director maintains the burden of proof in identifying the source of the water pollution and asserting that the source is not covered by a permit. The executive director will use all of the commission's water quality related programs and their data to make the determination related to this subchapter.

TCCOSW objected to the sentence in proposed §216.21(b) that states that an "unauthorized discharge is a violation of the Texas Water Code, §26.121." TCCOSW maintains that, generally, §26.121 of the Texas Water Code prohibits the discharge of "waste" and "pollutants"; unauthorized discharges not containing waste or pollutants are generally not violations of the Texas Water Code. Therefore, the sentence should be deleted.

The commission responds that it will amend the rule to clarify that an unauthorized discharge relates to a discharge of waste and pollutants as it is defined in the Texas Water Code.

§216.22. APPLICABILITY COMMENTS

TCCOSW urged the commission to articulate a clear and objective test for the applicability of these rules. To do this, TCCOSW commented that clear and objective criteria are needed to ensure consistency and predictability in applying the rules. TCCOSW also suggested that the TNRCC use a test that is based on language that has a more developed meaning, such as language from 40 CFR Part 130, and that is consistent with other water quality related programs such as the commission's Statewide Watershed Management Approach. The alternative rule proposal by TCCOSW specifies that §26.177 would be implemented when pollutant loadings from unpermitted sources in a city exceed the load allocation for such sources specified in a Watershed Action Plan for the waterbody.

The commission disagrees with the comment that specific criteria to be used to trigger the requirements of §26.177 should be stated in the rule. The criteria to be used to trigger the requirements of §26.177 will depend upon the circumstances that are present in a particular city. In individual circumstances, the commission will rely on the definition of pollution as set forth by the Texas Legislature. The commission will utilize available scientific methods to identify instances of pollution and to make determinations as to the causes and sources of pollution.

The commission also disagrees with the comment because it presumes that the federal TMDL requirements are the sole basis for §26.177, which the commission believes to be inconsistent with the statute. The commission further disagrees with the comment as it pertains to implementing the provisions of §26.177 based upon the development of TMDLs. The procedures recommended by TCCOSW are not consistent with procedures specified in EPA guidance on TMDLs. The TCCOSW procedures provide for §26.177 to be implemented when pollutant loadings from non-permitted sources exceed allocations for these sources specified in Watershed Action Plans. TMDL procedures specify that management programs such as §26.177 be used to achieve the load allocations established by a TMDL. Pollutant loadings from non-permitted sources which exceed the allocations established in a Watershed Action Plan would be cause for amending a water pollution control and abatement program established under §26.177 or other appropriate action.

TCCOSW objected to the language in §216.22(a) which states that "cities meeting applicability shall be required to satisfy applicable provisions of this subchapter upon receipt of notice issued by the executive director...." TCCOSW commented that this language could be interpreted to mean that municipalities must develop and implement programs immediately after the executive director determines applicability and long before the commission enters an order requiring the development of a program.

The commission disagrees with the comment. The rule establishes the procedures to be used by the commission to determine if a city should be required to develop and implement a water pollution control and abatement program. These procedures provide an opportunity for a city to correct the problem and a public hearing prior to requiring a city to develop and implement a water pollution control and abatement program.

TCCOSW further commented that applicability should not be triggered by the presence of sources over which a city has no regulatory jurisdiction. COC commented that a city should not be held responsible for pollutant loading caused for example by agricultural runoff. TML commented that a statement be added to the proposed rule stating that a program will not require a city to take action which it lacks authority to take. COP commented that the rule will place too much of a burden on cities by making cities responsible for stormwater runoff from areas that the city may not have control over, including agriculture.

The commission disagrees with the comment. These rules will not impose any requirement on a municipality for which the municipality has no statutory authority to implement or enforce. The commission recognizes that additional language in §216.22(a), relating to Applicability, will make the requirements clearer.

COC commented that the definitions provided in these proposed rules and the wording of §26.121(a)(2)(B) makes it unclear how a WPCAP differs from a Water Pollution and Abatement Plan.

A Water Pollution and Abatement Plan relates to a plan that a landowner must submit for review and approval prior to the commencement of construction on the Edwards Aquifer Recharge Zone to protect the quality of water in the aquifer. It would not cover surface water pollution from non-permitted sources across the state as provided by Texas Water Code, §26.177.

§216.23. DEFINITIONS COMMENTS

TCCOSW commented that "Non-Permitted Sources" should be defined in the rule and that the Legislature intended "non-permitted sources" to mean "non-point sources." TCCOSW recommended the following definition: "Non-Permitted Sources-Sources of water pollution that are not required to obtain water quality permits under Chapter 26 of the Texas Water Code, including generalized discharges of waste that are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater." COC commented that the definition for "Permitted sources" should be changed to "A source that discharges into or adjacent to waters." TCCOSW commented that the definition suffers from a number of serious problems and makes no sense at all. TCCOSW commented that Chapter 26 of the Water Code generally regulates the discharge of "waste" or "pollutants" not the discharge of "pollution." TCCOSW further commented that the definition does not make clear whether sources that are required to have permits, but do not, are considered "permitted sources."

The commission disagrees with the comments. Chapter 26 of the Texas Water Code, and specifically, §26.121, may relate to either a point or non-point source of water pollution. Therefore, a non-point source other than agricultural and silvacultural activities managed by the State Soil and Water Conservation Board may be required to obtain a permit under Chapter 26 of the Water Code. The commission responds that non-permitted source means a source for which there is no permit and over which a the city has jurisdiction to control. To reflect this, the commission has added a definition for non-permitted sources which explicitly states that the definition does not include discharges authorized by an NPDES or TPDES permit for municipal stormwater discharges but does include non-point sources of pollution, as those sources are defined in Chapter 220 of this title (relating to Regional Assessments of Water Quality), the federal Clean Water Act, and the Coastal Zone Act Reauthorization Amendments of 1990. These same references have been deleted from the definition of "Pollution" to avoid redundancy.

COC commented that the definition of "Pollution" should spell out whether the effects of agricultural runoff from farm fields, pastures, and other agricultural practices are to be included in this rule. TCCOSW objected to the definition and stated that although the definition tracks the Texas Water Code definition, the definition should either be deleted or refined for purposes of this rule. TCCOSW stated that the determination of whether water pollution exists should be made in reference to the surface water quality standards, which require a minimum amount of robustness in the assessment of water quality data in order to define pollution. TCCOSW recommended that if the TNRCC is to define "pollution" in the rules they should use the following: "Pollution: an excursion or numeric surface water quality criteria as established in Chapter 307 of this title (relating to Water Surface Quality Standards)."

The commission disagrees with the comments. Texas Water Code, §26.001 defines the terms used in Chapter 26 of the Code, including the term "Pollution" as it used in Texas Water Code, §26.177. For this reason, the rule tracks the statutory language.

COFW, COC, and COA commented that the definition of "Significant waste discharge" is too vague and broad. COFW also commented that the broadness of the definition could include an enforcement audit by the commission. COFW and COA also commented that prioritization criteria need to be established for determining what discharges are considered significant. COC also commented that the definition would make it difficult for a city to develop a method for identifying all of the significant waste discharges within a city. TCCOSW also objected to the definition because it is too vague. The term controls the scope of most of the substantive requirements imposed on cities, but yet provides no objectives test so that cities will know whether they are in compliance. Defining the term as in the proposed rule could extend the term to such things as runoff from residential yards and parking lots making identifying, monitoring, sampling, and controlling such a broad array of discharges unduly burdensome. The TCCOSW believes that the Legislature did not intend to include generalized discharges of waste, and so suggested that the term be limited to point sources that have been specifically identified as significant by a Watershed Action Plan.

The commission has reviewed the statutory language with attention being given to the comments on "Significant waste discharge." Although the term is not specifically defined in the statute, the commission has determined that the intent of the statute was to have this section relate to point sources, and that the inventory and monitoring required by the statute should relate to point source waste discharges that have or could have a significant impact in the quality or amount of total discharge into a receiving water. The definition has been changed, and the suggested definition provided by the TCCOSW has been

used. The definition for "Significant waste discharge" will read: "Significant waste discharge-Point source discharges of waste or pollutants to a receiving water that have been identified to cause pollution without regard to whether or not the discharges are authorized by the commission."

TCCOSW objected to the definition of "water pollution control and abatement programs," since it does not track the statutory language describing a water pollution control and abatement program. The definition goes beyond the requirements of the statute and requires cities to "prevent or correct water pollution problems." The scope of the required program is adequately described in proposed 216.27. The definition should be deleted.

The commission agrees with the comment and has deleted the definition of "Water pollution control and abatement program" from the final rule.

§216.24. WATER QUALITY ASSESSMENTS AND STUDIES COMMENTS

COFW and COA commented that atmospheric deposition of pollutants needs to be evaluated before cities are required to develop specific constituent programs, that it is important that the complexities of non-point water pollution are addressed in the rule, and that cities have the problems accurately defined prior to investing large amounts of time and money to solve problems. COA commented that water quality assessments and studies should produce accurate and sufficient data that will justify requiring a city to implement a WPCAP.

The commission agrees with the comments. The commission will utilize available scientific information, such as that cited in the comments, to identify instances of pollution and to make determinations as to the causes and sources of pollution.

CONRH commented that the rules do not adequately describe the conditions that would trigger a city to implement a WPCAP.

The commission disagrees with the comment. The conditions which could require a city to develop and implement a water pollution control and abatement program depend on the circumstances that are present in the city. The commission will rely on the definition of pollution as set forth by the Texas Legislature. The commission will utilize available scientific methods to identify instances of pollution and to make determinations as to the causes and sources of pollution.

TCCOSW objected to §216.24 because the proposed rule fails to appropriately limit the studies that can be used to trigger the WPCAP requirement. TCCOSW believes that only high quality, peer-reviewed, quantitative studies that focus a link between urban non-point source runoff and instream pollution such as a load allocation performed under 40 CFR §130.7 should be used to trigger the requirement. The rule should clearly point out that the studies must be quality assured and must link observed water quality impairment to non-permitted sources within a city. TCCOSW recommended that the TNRCC only use studies that serve as the basis for Watershed Action Plans, or other studies that establish TMDLs as the basis for triggering applicability.

The commission disagrees with the comment in part. The rule identifies specific commission programs and certain criteria that will be used by the executive director as the basis for requiring cities to develop and implement water pollution control and abatement programs. The commission believes that using TMDLs as the sole basis for §26.177 is inconsistent with the statute. The commission agrees that high-quality, quality assured studies should be used as the basis for §26.177.

The alternative rule proposed by TCCOSW recommended deleting provisions for including assessments and studies performed under the commission's State Water Quality Inventory, State Nonpoint Source Assessment, and TMDL programs to be used by the executive director to identify water pollution that is attributable to non-permitted sources in a city.

The commission disagrees with the comment. The programs omitted by the TCCOSW provide valuable information to support decisions by the executive director pertaining to 26.177.The TMDL program in particular has as its objective the generation of information on pollutant sources necessary to identify water pollution that is attributable to non-permitted sources in a city.

§216.25. NOTICE COMMENTS

TCCOSW commented that the heading of §216.25 should be changed from "Notice" to "Notice of Initial Determination"; such a heading would better describe the executive director's action. The TCCOSW also objected to §216.25(a)(4), which limits to five years the time period in which a city has to correct the problem. TCCOSW believes that the executive director's discretion to allow for a longer period of time should not be limited by regulation, and that voluntarily implemented programs will far surpass any requirement forced on cities by the commission. The TCCOSW recommended that a minimum time frame of at least five years be established by the rule.

The commission agrees with the comment, in part, and will change the heading as suggested to better describe the executive director's action of the notice. However, the executive director maintains that the five-year time period in which a city has to correct the problem on its own was established to be consistent with the commission's five-year basin cycle approach to water quality management that includes permitting, monitoring, and studying of water quality in water basins across the state provided under Texas Water Code, §26.0285, relating to Expiration of Permits Within Same Watershed, as well as a reasonable amount of time for any affected city to address non-permitted sources of pollution. The five-year basin cycle has been accepted by permittees in river basins as the method for best using the commission's resources for gathering information and data for processing permits in specific river basins. This cycle will also allow the commission to gather further information for determining whether the problems continue to exist or whether the city's actions have improved the situation. The executive director does recognize that certain case-by-case conditions may exist that my require an extension of time such as city's actions that are producing an improvement in water quality or the development of a TMDL in the water segment. In order to provide for this flexibility and clarify its intent, the commission has changed the wording in the second sentence of §216.25(a)(4) to read: The executive director may "extend" this time period when new or additional information or circumstances warrant such an "extension."

COC commented that additional water quality assessments to determine that a WPCAP is needed should fall on the state.

The additional water quality assessments and studies noted in §216.25(a)(3) are voluntary and performed by the impacted party at its own discretion. These studies–as long as they meet the executive director's approved quality assurance requirements that are common for all commission water quality

studies–can be used by a city to demonstrate its position that a water pollution control and abatement program is not needed for the city. The executive director may undertake additional studies on its own as authorized by §216.25(a)(3). The commission has made no change in response to this comment.

§216.26. PUBLIC MEETING HELD BY THE COMMISSION COMMENTS

TCCOSW commented that the heading of §216.26 should be changed from "Public Meeting Held by Commission" to "Final Determination of Applicability." TCCOSW also objected to §216.26(a) because the commission should require the executive director to only use studies conducted after the city has taken steps to correct the water quality problem

The commission agrees that the heading of §216.26 should be changed to "Final Determination of Applicability." Regarding the comment that the commission should require the executive director to only use studies conducted after the city has taken steps to correct the water quality problem, the commission believes that the rule accommodates this concern. Section 216.26(a) provides that the determination that a city still meets the criteria in §216.22(a) will be based on studies performed subsequent to the initial studies undertaken and from which the initial notice of pollution was generated. Logically, the commission would use subsequent studies to ensure that any efforts made by the city to ameliorate the problem would be evident. Moreover, the executive director will consider any measures taken by the city, but that may not be readily apparent or revealed in the subsequent studies performed. This will likely require a case-by-case analysis of a city's effort under the rule, but the commission believes the rules allow for this.

The alternative rule proposed by TCCOSW specifies considerations to be used by the executive director in determining if a city meets the criteria for developing and implementing a water pollution control and abatement program.

The commission disagrees with the comment. Considerations to be used by the executive director in determining if a city meets the criteria for developing and implementing a water pollution control and abatement program will depend upon the circumstances that are present in a particular city. In individual circumstances, the commission will rely on the definition of pollution as set forth by the Texas Legislature. The commission will utilize available scientific methods to identify instances of pollution and to make determinations as to the causes and sources of pollution.

TCCOSW suggested that the TNRCC consider its version of proposed §216.26 as an alternative to the rule proposed by the commission. Under the TCCOSW version, §216.26(a) would require the commission to give consideration to improvements that have resulted and that will result from the full implementation of the steps taken by the city after the initial determination of applicability to correct the problem; §216.26(d) would require that the executive director bear the burden of demonstrating that the city meets the criteria set forth in §216.22(a); and §216.26(f) would require the commission to enter an order specifying the pollutants and non-permitted sources of concern and the deadline for the submission of a Water Pollution Control and Abatement Program.

The commission agrees with the commenter in part and has changed the adopted version to reflect: that the commission will consider any improvements that have resulted or will result from allowing full implementation of steps taken by the city in its efforts to correct the problem; that the executive director shall bear the burden of demonstrating that the city meets the criteria set forth in §216.22(a); and that any order issued by the commission pursuant to §216.26 shall be specific as to the pollutants and non-permitted sources of concern and the deadline for the submission of a water pollution control and abatement program.

TCCOSW and COC commented that §216.26(d), which requires the city to publish notice of the TNRCC's public meeting, should be changed to require the commission to prepare and publish the notice. Also, that commission rules in 30 TAC §39.5 and §39.7 should not apply because the city is not an applicant in this situation.

The commission agrees that the TNRCC should bear the responsibility of publishing notice of the public meeting and has changed the rule to reflect that the notice will be published in the *Texas Register*. The reference to §39.5 and §39.7 has also been removed because the city is not an applicant in these proceedings.

TML urged the commission to change the wording of the rule to reflect that a public hearing shall be held and states that the commission has unilateral authority to refer the question of whether a water pollution control and abatement program should be required to SOAH, but does not grant authority to a city to contest the factual basis for the executive director's determination. TML also stated that the Texas Administrative Procedure Act (APA) requires that the city be given the opportunity to have this matter adjudicated by SOAH and that failure to conduct a contested case hearing would result in inadequate administrative record for any judicial review.

TCCOSW expressed the same concerns as the TML and believes that Texas law demands that cities be given an opportunity for a hearing because the rights of a city are being determined by an administrative agency based on specific factual determinations. TCCOSW echoed TML's concern regarding the lack of an administrative record available for judicial review.

CONRH is concerned that the city is deprived of an opportunity to request a contested case hearing.

Section 26.177, on its face, does not provide any guidance as to whether the public hearing mentioned is a contested case hearing. However, after reviewing the comments submitted by TML, TCCOSW, and CONRH, the commission believes that the use of the term "public meeting" in the rule is imprecise. The commission believes that the intent of the statute is to provide the city with the opportunity to appear before the commission at a commission agenda and have this matter considered by the commissioners of the TNRCC. To that end, the commission has changed the adopted version to reflect that the commission can, at a regularly scheduled meeting, upon its own motion or at the request of a party, conduct a contested proceeding and consider evidence and hear oral argument of the parties or refer the issue to SOAH for a contested case hearing conducted pursuant to the APA. The need for and the extent of information taken into consideration by the commissioners will be determined on a case-by-case basis by the Office of General Counsel.

All final decisions of the commissioners are appealable to District Court under Texas Water Code, §5.351, but §5.351 does not restrict these appeals to SOAH proceedings. There

is not always an administrative record stemming from a SOAH proceeding to accompany the appeal. This does not preclude an adequate record from being developed such that meaningful judicial review would be impossible.

TCCOSW objected to the provision of proposed §216.27(b) that states "or as may be reasonably required by the commission." This does not provide sufficient notice of what these additional requirements may be. TCCOSW further commented that reasonable requirements should be part of the rule.

The commission disagrees with the comment. The language in the rule is consistent with the statutory language. The requirements of a water pollution control and abatement program in a particular city will depend on the circumstances that are present in that city and what is necessary to address non-permitted sources of pollution. The statute imposes a test of "reasonableness" on the actions of the commission. Accordingly, the requirements specified by the commission will have to be "reasonably" related to the services and functions specified in the statute to be included in a water pollution control and abatement program for a city.

COFW commented that each city should be primarily responsible for determining which dischargers are placed in the inventory, and that the responsibility needs to be spelled out in the regulations. COA commented that cities should be primarily responsible for determining the inventory. COC commented that cities should not be required to take over the responsibilities of the state with regard to state or federally issued discharge permits or programs as would be required by this section requiring the development of an inventory.

The commission disagrees with the comment. The language in the rule is consistent with the statutory language in giving both the city and the commission a role in the development of the inventory of significant waste dischargers.

COFW and COA commented that each city should be primarily responsible for determining which dischargers are to be monitored. COA further commented that cities should also be primarily responsible for determining the nature and frequency of the monitoring. COC commented that the rule should specify how often and how monitoring should be done and what types of parameters should be monitored.

The commission disagrees with the comment. The language in the rule is consistent with the statutory language in giving both the city and the commission a role in determining which dischargers are to be monitored. The frequency of monitoring and the parameters to be monitored by a city implementing a water pollution control and abatement program will depend on the nature of the discharge. The magnitude of the discharge and the variability of the discharge will be considered in determining the frequency of the monitoring. Flow rates and constituent concentrations in the discharge will be considered in determining the types of parameters to be monitored.

COP argued that the requirement of cities to monitor sites "without regard to whether or not the discharges were authorized by the commission" will put the cities in a position to deal with dischargers that the commission has authorized, creating a double jeopardy situation for dischargers. COP continues that the rule ignores the issue of inadvertent or illegal wastewater discharges. COP requested that the rules either exempt wastewater discharges from monitoring and sampling and from anything associated with a water pollution abatement plan or for the commission to clearly state its intent to mirror the EPA position and let the cities provide water quality protection from wastewater treatment plants that do not meet the requirements of their discharge permits.

The commission disagrees with the comment. The language in the rule is consistent with the statutory language in requiring cities implementing water pollution control and abatement programs to monitor significant waste discharges within their jurisdiction.

COC commented that the commission should take the responsibility for determining permit requirements and coverage. COC continued that the rule does not specify what types of tests must be done. COA commented that cities should have authority to classify dischargers and to define "periodic" inspections for each class.

The commission disagrees with the comment. The language in the rule is consistent with the statutory language in giving both the commission and cities implementing water pollution control and abatement programs a role in determining the sampling, inspecting, and testing requirements for significant waste discharges within the jurisdiction of the affected city.

TCCOSW objected to provisions in §216.27(b)(4) which exceed the requirements set out in the statute requiring cities to cooperate with the commission in developing procedures to obtain compliance.

The commission agrees with the comment. Section 216.27(b)(4) has been modified to be more consistent with the language in the statute.

TCCOSW commented that clarification is needed on how much cooperation will be achieved.

The commission disagrees with the comment. The cooperation needed to obtain compliance by significant waste discharges will depend on the circumstances that are present in a particular city. The commission and affected cities will cooperate to the extent necessary to obtain compliance by the discharger using available scientific and administrative procedures.

TCCOSW believes that "cooperation" referenced in Texas Water Code, §26.177 is a reference to §26.175 (Cooperative Agreements) and to §26.0136 (Water Quality Management).

The commission disagrees with the comment. The commission believes that the reference to "cooperation" in §26.177 refers to the provisions in a water pollution control and abatement program for a city.

TCCOSW believes that the primary responsibility for investigating and obtaining compliance rests with the commission and not the city. COC commented that enforcement should remain the responsibility of the state.

The commission disagrees with the comment. The language in the rule is consistent with the statutory language in giving both the commission and cities implementing water pollution control and abatement programs a role in obtaining compliance for significant waste discharges.

COC commented that "reasonable and realistic plans" are too vague and that an approved method for developing plans with the commission is desirable.

The commission disagrees with the comment. Methods for developing plans to control and abate pollution from generalized

discharges in a city will depend on the circumstances that are present in that city and that are necessary to abate non-permitted sources in accordance with §26.177. Cities should consider available scientific and engineering methods in the development of these plans. Cities would be expected to utilize available technical literature and relevant regulatory guidance in the development of these plans.

TCCOSW objected to §216.27(b)(6), which states that the TNRCC may impose "other requirements as may be prescribed by commission rule," as this is the rule in which TNRCC should be imposing requirements. COA commented that the powers of commission are not defined.

Section 216.27(b)(6) tracks the language of the statute with the exception of the added words "to effectuate the purposes of the subchapter." The commission interprets the statutory language to be a general provision clause which acknowledges that there are other commission rules which may overlap or at some point affect persons complying with Chapter 216. For example, §216.26(d) of the proposed rule mentioned commission rules in §39.5 and §39.7. While the reference to those sections has been removed from §216.26(d), it illustrates that there may be other commission rules that are applicable to persons which may not be identified here.

COFW, COC, and COA asked why a WPCAP had to be signed and sealed by a registered professional engineer. COC asked how an engineer could certify that the plan is designed to abate and prevent water pollution. COC further commented that the requirement of having an engineer seal the program implied that cities will have to develop structural controls to storm water pollution prevention or abatement, and that unless structural controls are needed, an engineer's expertise may not be needed to develop a program. TCCOSW objected to the requirement that a registered professional engineer certify a city's program and recommended that this requirement be deleted from the rules or at least changed to a certification that the rules have been developed in accordance with the applicable rules. COC commented that the commission should provide a method to review the program with the city to confirm that the program is sufficient. COC continued that §216.27(b)(5) leaves too much room for interpretation by individual regulator and commented that a review and approval of a city program should be performed by the commission. COC also commented that a process for reviewing proposed "reasonable and realistic plans" plans for controlling generalized discharges with the commission would be desirable. TCCOSW commented that the heading for §216.8 should be changed from "Submittal of Water Pollution Control and Abatement Programs" to "Review and Approval of Water Pollution Control and Abatement Programs." TCCOSW objected to §216.28 because the rule does not provide for a review and approval process as required by §26.177(c). TCCOSW recommended a procedure similar to the review and approval of permit applications that addresses what happens if the executive director determines that a program is deficient and the city's recourse if it disagrees with the executive director's determination. TCCOSW continued that §216.8 should have the standards by which the executive director will judge a program.

The commission responds that a seal is required in order to accommodate the need to expedite the review and approval of the plans with limited agency resources and ensure that the plan is designed to meet applicable performance standards. The seal also ensures that the plan has been reviewed at a proper level of expertise, and that such expertise is evidenced by the state's licensing board. The rule has been clarified that the seal is applicable to only those engineering designs to abate water pollution. Cities that have professional engineering staff design their plans may indicate this and avoid hiring outside consultants.

§216.29. AMENDMENT PROCEDURES FOR WATER POLLUTION CONTROL AND ABATEMENT COMMENTS

TCCOSW objected to the amendment procedures. It further commented that cities should be given flexibility to change programs quickly and efficiently and that rules should spell out the procedure that the executive director must use to force a city to amend it's program. TCCOSW suggested that an amendment procedure similar to TNRCC's current procedure for a TNRCC initiated amendment to a water quality permit be developed for the rules.

The commission agrees that a city must be allowed flexibility in amending its program so that changing pollution problems and local budgetary constraints can be accommodated. The commission's proposed rule allows a city to amend its water pollution control and abatement program at any time by submitting an amended program to the executive director.

However, the commission also believes that the proposed rule is correct in stating that the executive director may require a city to amend its water pollution control and abatement plan if it is not adequately addressing non-permitted sources of pollution within the scope of the program. An order to amend would likely be the result of a petition filed by the executive director based on new or additional information or circumstances warranting an amendment. The rule has been changed to accommodate some TCCOSW's suggestions and to clarify the amendment procedures.

§216.30. APPEALS COMMENTS

Upon staff review of the proposed rule, the appeal provisions have been clarified to better identify who can appeal a city's action. The adopted version of §216.30 clarifies that persons affected by any ruling, order, decision, program, resolution, or other act of a city are those persons outside the corporate limits but limited to the extraterritorial jurisdiction of a city.

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103 and §26.011, which provide the commission with the authority to adopt rules necessary to carry out its powers and duties under the provisions of the Texas Water Code, and under §26.177, which provides the commission with the authority to establish rules providing the criteria for the establishment of water pollution control and abatement programs and the review and approval of those programs.

§216.21. Purpose and Policy.

(a) The purpose of this subchapter is to establish procedures and measures in accordance with Texas Water Code, §26.177(a) to address water pollution that is attributable to non-permitted sources in cities that have a population of 10,000 or more persons.

(b) An unauthorized discharge is a violation of Texas Water Code, §26.121. An unauthorized discharge relates to a discharge of waste and pollutants as it is defined in the Texas Water Code. Nothing in this subchapter is intended to limit or prevent the commission from abating or preventing the pollution of water in the state through permits, orders, or other enforcement actions authorized under the

Texas Water Code, Chapter 26, or other applicable state or federal law.

§216.22. Applicability.

(a) This rule applies to any city with a population of at least 10,000 persons, based on the most recent federal decennial census, and in which a water quality assessment report required by Texas Water Code, §26.0135 or other commission assessment or study, as described in §216.24 of this title (relating to Water Quality Assessments and Studies), has identified water pollution that is attributable to non-permitted sources, excluding sources over which a municipality does not have regulatory jurisdiction. Cities meeting applicability shall be required to satisfy applicable provisions of this subchapter upon receipt of notice issued by the executive director pursuant to §216.25 of this title (relating to Notice of Initial Determination).

(b) A city whose population falls below 10,000, based on the most recent federal decennial census, will no longer have a duty to satisfy the applicable provisions of this subchapter upon the executive director's receipt from the city of the most recent federal decennial census indicating that the population has fallen below 10,000.

(c) A Water Pollution Control and Abatement Program submitted under this subchapter is not a Water Pollution and Abatement Plan as provided by Texas Water Code, §26.121(a)(2)(B).

§216.23. Definitions.

Terms defined in Chapter 3 of this title (relating to Definitions) will have the same meaning when used in this subchapter unless the definition is specifically modified in this section.

(1) City–A municipality or city existing, created, or organized under the general, home rule, or special laws of this state.

(2) Extra territorial jurisdiction-An area outside the corporate limits of a municipality as defined in Local Government Code, §42.021.

(3) Non-permitted sources–Sources of water pollution that are not authorized to discharge pollution into or adjacent to waters in the state by a valid permit, general permit, or rule pursuant to Texas Water Code, Chapter 26, the federal Clean Water Act, or other applicable state or federal law. This definition includes, but is not limited to, non-point sources of pollution as those sources are defined and identified pursuant to Chapter 220 of this title (relating to Regional Assessments of Water Quality), the federal Clean Water Act, the Coastal Zone Act Reauthorization Amendments of 1990, §6217, and other applicable state and federal statutes, regulations, policies, and guidance. This definition does not include discharges authorized by an NPDES or TPDES permit for municipal stormwater discharges.

(4) Pollution–The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(5) Significant waste discharge–Point source discharges of waste or pollutants to receiving water that have been identified to cause pollution without regard to whether or not the discharges are authorized by the commission.

§216.24. Water Quality Assessments and Studies.

Water quality assessments and studies that may be used by the executive director to identify water pollution that is attributable to non-permitted sources shall consist of one or more of the following.

(1) State water quality inventory. The state program which assesses the quality of surface and ground waters resulting in a report describing the status of water quality in the state in accordance with the Federal Clean Water Act, §305(b).

(2) Clean rivers program. Watershed water quality assessments conducted in accordance with Texas Water Code, §26.0135.

(3) State nonpoint source assessment. The state program implemented in compliance with Federal Clean Water Act, §319(a), which identifies surface and ground waters in the state which cannot reasonably be expected to attain or maintain applicable water quality standards or the goals and requirements of the federal Clean Water Act without additional controls for nonpoint sources of pollution.

(4) Total maximum daily load. Pursuant to Clean Water Act, §303(d), states are required to develop total maximum daily loads for waters within the state for which the effluent limitations required by the Clean Water Act, §301(b)(1)(A) and (B) are not stringent enough to implement any water quality standard applicable to such waters.

(5) Other. Special studies, pilot projects, reports, or other quality assured assessments of water quality in the state prepared, approved, or accepted by the executive director that identify non-permitted sources of water pollution within cities, including information used by the executive director for the purpose of updating the state's list of impaired waters prepared in accordance with the federal Clean Water Act, §303(d).

§216.25. Notice of Initial Determination.

If it is determined by the executive director that a city has met the criteria set forth in §216.22(a) of this title (relating to Applicability) or the executive director is requiring the city to amend an existing water pollution control and abatement program, the executive director shall notify the city. This notice shall specify the following:

(1) the basis for the executive director's determination;

(A) that the city meets the criteria set forth in §216.22(a) of this title; or

(B) that the city's existing Water Pollution Control and Abatement Program should be amended;

(2) that the executive director may undertake additional water quality assessments and studies in the impacted area as set out in §216.24 of this title (relating to Water Quality Assessments and Studies);

(3) that the city may undertake additional water quality assessments and studies in the impacted area within its jurisdiction which comply with quality assurance requirements of the executive director; and

(4) the time period (not to exceed five years) within which the city may try to correct the problem. The executive director may extend this time period when new or additional information or circumstances warrant such an extension.

§216.26. Final Determination of Applicability.

(a) After expiration of the time period specified in §216.25(a)(4) of this title (relating to Notice of Initial Determination) , the executive director shall determine whether a city still meets the criteria set forth in §216.22(a) of this title (relating to Applicability) based on water quality assessments and studies set out in §216.24 of this title (relating to Water Quality Assessments and Studies) performed subsequent to the initial determination, taking into consideration any measures taken and improvements that have

resulted or that will result from allowing full implementation of the city's efforts to correct the problem.

(b) If the executive director determines that a city continues to meet the criteria set forth in §216.22(a) of this title, the executive director at a regularly scheduled meeting held by the commission shall recommend that the city be required to submit a Water Pollution Control and Abatement Program or, when appropriate, amend an existing Water Pollution Control and Abatement Program.

(c) Consideration at a regularly scheduled meeting of the commission shall not be required if the executive director and the city agree that the city will develop and implement a Water Pollution Control and Abatement Program, or amend an existing Program. In lieu of a public meeting, the city, based on an agreement with the executive director, may request that the commission issue an agreed order to submit a Program as described in §216.27 of this title (relating to Water Pollution Control and Abatement Programs) or an amendment to an existing Program as described in §216.29 of this title (relating to Amendment Procedures for Water Pollution Control and Abatement Programs).

(d) The burden of demonstrating that the city meets the criteria set forth in §216.22(a) of this title shall rest on the executive director.

(e) The executive director shall cause notice of the regularly scheduled meeting to be published in the *Texas Register* informing the public of the meeting and that the public has 30 days prior to the regularly scheduled commission meeting to provide written comment to the commission on whether the city should be required to develop and implement a Water Pollution Control and Abatement Program or amend an existing Water Pollution Control and Abatement Program.

(f) In considering the matter at the regularly scheduled meeting, the commission may:

(1) upon its own motion or upon the request of a party, conduct a contested case proceeding and consider evidence and hear oral argument of the parties, or refer the matter to SOAH for a contested case hearing conducted pursuant to the Administrative Procedure Act (APA) to determine whether the city continues to meet the criteria set forth in §216.22(a) of this title;

(2) determine that the city is not required to submit a Water Pollution Control and Abatement Program;

(3) determine that the city continues to meet the criteria set forth in §216.22(a) of this title and approve the executive director's recommendation that the city be required to develop, or where appropriate amend, and implement a Water Pollution Control and Abatement Program; or

(4) issue any other order the commission deems appropriate.

(g) Should the commission determine under subsection (f)(3) of this section that a Water Pollution Control and Abatement Program is required, the commission order shall specify the pollutants and non-permitted sources of concern and the deadline for the submission of a Water Pollution Control and Abatement Program.

(h) The regularly scheduled meeting held by the commission pursuant to this section shall satisfy the requirement of the public hearing mandated by Texas Water Code, §26.177.

(i) A commission order issued pursuant to subsection (f) of this section is a final and appealable order under Texas Water Code, §5.351. As a prerequisite to appeal, a motion for rehearing under §80.271 of this title (relating to Motion for Rehearing) must be filed within 20 days after the date the city or the city's attorney of record is notified of the commission's final decision or order under this subchapter.

§216.27. Water Pollution Control and Abatement Programs.

(a) The Water Pollution Control and Abatement Program of a city shall encompass the area within a city's municipal boundaries and, subject to Texas Water Code, §26.179 (relating to Designation of Water Quality Protection Zones in Certain Areas), may include areas within its extra-territorial jurisdiction which in the judgment of the city should be included to enable the city to achieve its objectives for the area within its territorial jurisdiction.

(b) The city shall include in the Program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city to address water pollution attributable to non-permitted sources, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the commission;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to paragraph (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the commission, and whether they should be covered by a permit from the commission;

(4) in cooperation with the commission, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings;

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater; and

(6) any additional services, functions, or other requirements as may be prescribed by commission rule to effectuate the purposes of this subchapter.

§216.28. Submittal of Water Pollution Control and Abatement Programs.

A Water Pollution Control and Abatement Program shall be submitted to the executive director of the commission in accordance with the order issued pursuant to §216.26 of this title (relating to Final Determination of Applicability). Those elements requiring engineering design in the Water Pollution Control and Abatement Program for the city shall be signed and sealed by a professional engineer licensed in the State of Texas who shall certify that the city's Program is designed to abate and prevent water pollution attributable to non-permitted sources located within the city.

§216.29. Amendment Procedures for Water Pollution Control and Abatement Programs.

(a) A city may amend the Water Pollution Control and Abatement Program for that city at any time by submitting an amended Water Pollution Control and Abatement Program to the

executive director of the commission. Those elements requiring engineering design in the amended Water Pollution Control and Abatement Program for the city shall be signed and sealed by a professional engineer licensed in the State of Texas who shall certify that the city's Program is designed to abate and prevent water pollution attributable to non-permitted sources located within the city.

(b) The commission, upon its own motion or in response to a petition filed by the executive director, may require a city to amend a Water Pollution Control and Abatement Program for that city when new or additional information or circumstances warrant such changes to effectuate the purposes of this subchapter.

(c) The provisions for notice of initial determination under §216.25 of this title (relating to Notice of Initial Determination) and final determination of applicability under §216.26 of this title (relating to Final Determination of Applicability) shall apply to an amendment of a Water Pollution Control and Abatement Program.

§216.30. Appeals.

Pursuant to Texas Water Code, §26.177(d), any person affected by any ruling, order, decision, ordinance, program, resolution, or other act of a city relating to water pollution control and abatement outside the corporate limits, within the extraterritorial jurisdiction of such city adopted pursuant to this subchapter or any other statutory authorization may appeal such action to the commission or district court. An appeal must be filed with the commission's chief clerk within 60 days of the enactment of the ruling, order, decision, ordinance, program, resolution, or act of the city. The issue on appeal is whether the action or program is invalid, arbitrary, unreasonable, inefficient, or ineffective in its attempt to control water quality, and the commission's order on the appeal will be based on whether the city's actions or programs meet these criteria. The commission or district court may overturn or modify the action of the city. If an appeal is taken from a commission ruling, the commission ruling shall be in effect for all purposes until final disposition is made by a court of competent jurisdiction so as not to delay any permit approvals.

This agency hereby certifies that the 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 February 17, 1999.

TRD-9900977
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: March 9, 1999
Proposal publication date: October 30, 1998
For further information, please call: (512) 239–1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 1. Executive Administration

Subchapter F. Procedures for Hearings

31 TAC §1.79

The General Land Office (GLO) adopts new §1.79 relating to Procedures for Formal Protests of Purchase Contracts, without changes to the proposed text as published in the January 15, 1999, issue of the *Texas Register* (24 TexReg 296). The text will not be republished.

The new rule is being adopted pursuant to a mandate set forth in Texas Government Code, §2155.076 that each state agency develop and adopt protest procedures for resolving vendor protest relating to purchasing issues.

No comments were received regarding adoption of this new rule.

The new section adopted under Texas Government Code, §2155.076, which requires each state agency to develop and adopt protest procedures for resolving vendor protests relating to purchasing issues.

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 February 16, 1999.

TRD-9900961
Larry R. Soward
Chief Clerk
General Land Office
Effective date: March 8, 1999
Proposal publication date: January 15, 1999
For further information, please call: (512) 305–9129

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 7. Division of Emergency Management

Subchapter A. Emergency Management Program Requirements

37 TAC §7.2, §7.3

The Texas Department of Public Safety adopts amendments to §7.2 and §7.3, concerning Emergency Management Program Requirements, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12880) and will not be republished.

The justification for the section will be rules that more accurately reflect policy and procedures relating to emergency management.

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.

No comments were received regarding adoption of the amendments.

The amendments are adopted 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.

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 February 22, 1999.

TRD-9901093
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: March 14, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

Subchapter B. Emergency Management Planning Requirements.

37 TAC §7.13

The Texas Department of Public Safety adopts an amendment to §7.13, concerning Emergency Management Planning and Preplanning Requirements, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12881) and will not be republished.

The justification for the amendments are rules that more accurately reflect statute and policy.

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.

No comments were received regarding adoption of the amendments.

The amendments are adopted 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.

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 February 22, 1999.

TRD-9901094
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: March 14, 1999
Proposal publication date: December 18, 1998
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 adopts amendments to §§7.25 and 7.27-7.29, concerning Emergency Management Operations, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12881) and will not be republished.

The justification for the amendments are rules that more accurately reflect policy and procedures relating to emergency management.

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. §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. §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.

No comments were received regarding adoption of the amendments.

The amendments are adopted 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.

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 February 22, 1999.

TRD-9901095
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: March 14, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

Subchapter D. Recovery and Rehabilitation Requirements

37 TAC §7.42

The Texas Department of Public Safety adopts an amendment to §7.42, concerning Recovery and Rehabilitation Requirements, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12882) and will not be republished.

The justification for this section will be rules that more accurately reflect policy and procedure relating to emergency management.

Language in §7.42 is amended to comport with relevant language in the 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.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 February 22, 1999.

TRD-9901096
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: March 14, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

37 TAC §7.45

The Texas Department of Public Safety adopts the repeal of §7.45, concerning Assistance Available, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12882) and will not be republished.

The justification for the repeal is that the section no longer exists and, therefore, serves no purpose.

No comments were received regarding adoption of the repeal.

The repeal is adopted 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.

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 February 22, 1999.

TRD-9901097
Dudley M. Thomas
Director
Texas Department of Public Safety
Effective date: March 14, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–2135

Part IX. Texas Commission on Jail Standards

Chapter 253. Definitions

37 TAC §253.1

The Texas Commission on Jail Standards adopts an amendment to §253.1, concerning definitions, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 94).

The amendment is being adopted due to a commission meeting held November 16, 1998, where jail administrators, architects and other jail associations were invited to discuss the proposed changes to construction standards. During that time it was indicated that a definition for the words "system" and "ward" should be included in the standard.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901062
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: March 14, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 463–5505

Chapter 257. Construction Approval Rules

37 TAC §217.9, §217.10

The Texas Commission on Jail Standards adopts amendments to §257.9 and §257.10, concerning construction approval rules, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 95).

The amendment to §257.9 is being adopted due to the commission adopted the Americans with Disabilities Act Accessibility Guidelines (ADAAG), §11.4.1 and §11.4.2 and Chapter 12 and the Texas Accessibility Standards effective August 1996. Since that time, ADAAG designations have been amended. The proposed change to this section will update the standard consistent with the latest interim final rules for courtroom holding cells and jail facilities.

Currently §257.10 requires plans be submitted to the elimination of Architectural Barriers (EAB) of the Texas Department of Licensing and Regulation for review. Adopting this amendment will still require the plans to be supplied to EAB for review but allow the county to begin construction immediately following jail standards review.

Both of these sections are part of the agency review process in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Stan-

dards with the authority to revise, amend, or change rules and procedures if necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901063
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: March 14, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 463–5505

37 TAC §257.11

The Texas Commission on Jail Standards adopts new §257.11, concerning construction approval rules, without changes to the proposed text as published in the January 22, 1999, issue of the *Texas Register* (24 TexReg 372).

During the meeting of November 16, 1998 to discuss proposed changes to construction rules, there was a concern that the current standards did not indicate when the changes would become effective. The adopted new section will indicate that facilities in planning or construction prior to the effective date of the standards adoption will not have to comply with the new changes.

This section is part of the agency review process in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167.

No comments were received regarding adoption of the new section.

The new section is adopted under Government Code, Chapter 511, §511.009(1), which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 22, 1999.

TRD-9901064
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: March 14, 1999
Proposal publication date: January 22, 1999
For further information, please call: (512) 463–5505

Chapter 269. Records and Procedures

Subchapter A. General

37 TAC §269.4

The Texas Commission on Jail Standards adopts an amendment to §269.4, concerning records and procedures, without changes to the proposed text as published in the January 1, 1999, issue of the *Texas Register* (24 TexReg 95).

The U.S. Supreme Court ruled on June 15, 1998 that prison inmates are protected by the Americans with Disabilities Act (ADA) in Yeskey *v* Pennsylvania. The courts in effect stated that the ADA applied to correctional facilities. The adopted change is resultant of that decision and will encompass all of Title II of the ADA instead of just subparts. Title II is comprised of the following headings: General, General Requirements, Employment, Program Accessibility, Communications, Compliance Procedures and Designated Agencies.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

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 February 22, 1999.

TRD-9901065
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: March 14, 1999
Proposal publication date: January 1, 1999
For further information, please call: (512) 463–5505

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part IX. Texas Department of Aging

Chapter 254. Operation of the Texas Department of Aging

The Texas Department on Aging adopts the repeal of existing §254.13 and simultaneously adopts new §254.13, concerning Compliance with Contractor Responsibilities, Rewards and Sanctions, without changes to the proposed text as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12902) The text of the rules will not be republished.

The adopted 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 purpose of the repeal and adoption of the new section was to substantially revise the existing rule. The new section outlines the contractor's responsibilities for compliance with con-

tractual requirements and establishes preventative maintenance measures by the Department to ensure program outcome and provide fiscal accountability. The new rule also includes new definitions that will clarify the terms specific to this chapter.

No comments were received regarding the repeal or the adoption of the new section.

40 TAC §254.13

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.

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 February 18, 1999.

TRD-9901015
Mary Sapp
Executive Director
Texas Department on Aging
Effective date: March 10, 1999
Proposal publication date: December 18, 1998
For further information, please call: (512) 424–6872

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 governing the operation of the Department.

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 February 18, 1999.

TRD-9901016
Mary Sapp
Executive Director
Texas Department on Aging
Effective date: March 10, 1999
Proposal publication date: December 18,1998
For further information, please call: (512) 424–6872

Review of Agency Rules

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Commission on Fire Protection

Title 37, Part XIII

The Texas Commission on Fire Protection will review and consider for readoption sections of Chapter 403, Criminal Convictions and Eligibility for Certification and Licensure, of Title 37, Part XIII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167.

Specifically, the following sections of Chapter 403, shall be reviewed: §401.3 Purpose; §403.3 Scope; §403.5 Access to Criminal History Record Information; §403.7 Criminal Convictions Guidelines; §403.9 Mitigating Factors; §403.11 Procedures for Suspension, Revocation, or Denial of a Certificate or License to Persons with Criminal Backgrounds.

As part of the review process, the commission is proposing the repeal of §§403.1, 403.3, 403.5, 403.7, 403.9, 403.11 and proposing new §§403.1, 403.3, 403.5, 403.7, 403.9, 403.11 and 403.15. The proposed repeal and new sections may be found in the Proposed Rules section of the *Texas Register*.

As required by §167, the Texas Commission on Fire Protection will consider, among other things, whether the reasons for adoption of these rules continue to exist. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Any questions pertaining to this notice of intention to review should be directed to Thomas R. Thompson, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286 or e-mail to info@tcfp.state.tx.us.

TRD-9901057
Thomas R. Thompson
General Counsel
Texas Commission on Fire Protection
Filed: February 22, 1999

Texas Higher Education Coordinating Board

Title 19, Part I

The Texas Higher Education Coordinating Board proposes to readopt Chapter 1, Agency Administration, in accordance with the Appropriations Act, §167.

The agency's reason for adopting the rules contained in this chapter continues to exist.

Comments on the proposed readoption may be submitted to Don W. Brown, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas, 78711.

TRD-9901126
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Filed: February 23, 1999

Texas Department of Human Services

Title 40, Part I

The Texas Department of Human Services files this notice of intention to review Title 40 TAC, Chapter 17 (relating to Tel-assistance Program), and Chapter 18 (relating to Nursing Facilities Administrators) pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

As required by §167, the Department will accept comments regarding whether the reason for adopting each of the rules in 40 TAC, Chapters 17 and 18 continues to exist. The deadline for the comments is 30 days after this publication in the *Texas Register*.

Any questions or written comments pertaining to this notice of intention to review Chapter 17 should be directed to Helen McMeen, Long Term Care Section, Texas Department of Human Services W-513, P.O. Box 149030, Austin, Texas, 78714-9030, or at (512) 490-0312.

Any questions or written comments pertaining to this notice of intention to review Chapter 18 should be directed to Renee Clack, Office of Program Integrity, Texas Department of Human Services W-513, P.O. Box 149030, Austin, Texas, 78714-9030, or at (512) 231-5821.

TRD-9901037

Paul Leche
General Counsel
Texas Department of Human Services
Filed: February 22, 1999

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Texas Commission on Jail Standards

Title 37, Part IX

The Texas Commission on Jail Standards proposes to review the following sections from Chapter 263 pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. The Commission has determined that no changes to this chapter are necessary at this time.

§263.1

§263.2

§263.3

§263.10

§263.11

§263.12

§263.13

§263.14

§263.15

§263.16

§263.17

§263.18

§263.19

§263.20

§263.21

§263.30

§263.31

§263.32

§263.33

§263.40

§263.41

§263.42

§263.50

§263.51

§263.52

§263.53

§263.54

§263.55

§263.56

§263.70

§263.90

Comments on the review of these proposed rules may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas, 78711.

TRD-9901061
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: February 22, 1999

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Texas State Board of Medical Examiners

Title 22, Part IX

The Texas State Board of Medical Examiners proposes to review Chapter 162 (§§162.1-162.3), concerning Supervision of Medical School Students, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The Texas State Board of Medical Examiners is contemporaneously proposing an amendment to §162.3 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018.

TRD-9901081
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: February 22, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners proposes to review Chapter 166 (§§166.1-166.6), concerning Physician Registration, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167.

The Texas State Board of Medical Examiners is contemporaneously proposing amendments to §166.2 and §166.4 elsewhere in this issue of the *Texas Register*.

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018.

TRD-9901078
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: February 22, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners reproposes the review of Chapter 173 (§173.1), concerning Applications, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. The rule review was originally proposed in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9583).

The Texas State Board of Medical Examiners is contemporaneously withdrawing the repeal of §173.1 elsewhere in this issue of the *Texas Register*. The repeal was originally proposed in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9521).

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018.

TRD-9901067
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: February 22, 1999

♦ ♦ ♦

The Texas State Board of Medical Examiners reproposes the review of Chapter 175 (§§175.1-175.4), concerning Schedule of Fees and Penalties, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167. The rule review was originally proposed in the September 18, 1998, issue of the *Texas Register* (23 TexReg 9583).

The Texas State Board of Medical Examiners is contemporaneously withdrawing the repeal of §§175.1-175.4 and new §§175.1-175.5 elsewhere in this issue of the *Texas Register*. The repeal and replacement of this chapter was previously published in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11543).

Comments on the proposed review may be submitted to Pat Wood, P.O. Box 2018, MC-901, Austin, Texas, 78768-2018.

TRD-9901066
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: February 22, 1999

♦ ♦ ♦

Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review Procedural Rules, Subchapter Q (relating to Post-Interconnection Agreement Dispute Resolution), §22.321 relating to Purpose; §22.322 relating to Definitions; §22.323 relating to Filing of Agreement; §22.324 relating to Confidential Information; §22.325 relating to Informal Settlement Conference; §22.326 relating to Formal Dispute Resolution Agreement; §22.327 relating to Request for Expedited Ruling; and §22.328 relating to Request for Interim Ruling Pending Dispute Resolution pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). Project Number 17709 has been assigned to this proceeding.

As part of this review process, the commission proposes amendments to §§22.322, 22.323, and 22.326. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. The commission will accept comments on the §167 requirement as to whether the reason for adopting these sections continues to exist in the comments filed on the proposed amendments.

The commission is not proposing any changes to §§22.321, 22.324, 22.325, 22.327 or 22.328. Comments regarding the §167 requirement as to whether the reason for adopting this section continues to exist 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 of this notice of intention to review. All comments should refer to Project Number 17709-Review of Subchapter Q relating to Post-Interconnection Agreement Dispute Resolution.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas, 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §22.321. Purpose.

16 TAC §22.322. Definitions.

16 TAC §22.323. Filing of Agreement.

16 TAC §22.324. Confidential Information.

16 TAC §22.325. Informal Settlement Conference.

16 TAC §22.326. Formal Dispute Resolution Agreement.

16 TAC §22.327. Request for Expedited Ruling.

16 TAC §22.328. Request for Interim Ruling Pending Dispute Resolution.

TRD-9901024
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 1999

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The Public Utility Commission of Texas files this notice of intention to review §23.5 relating to Cost of Copies of Public Records pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167). Project Number 17709 has been assigned to the review of this section.

As part of this review process, the commission is proposing the repeal of §23.5 and is proposing new §25.6 of this title (relating to Cost of Copies of Public Information) and §26.6 of this title (relating to Cost of Copies of Public Information) to replace this section. The proposed repeal and new rules may be found in the Proposed Rules section of the *Texas Register*. As required by §167, the commission will accept comments regarding whether the reason for adopting the rule continues to exist in the comments filed on the proposed new sections.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §23.5. Cost of Copies of Public Records.

TRD-9901020
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 1999

♦ ♦ ♦

Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission proposes to review §§535.1-535.4, 535.11–535.21, 535.31–535.35, 535.41, 535.42, and 535.51–535.53 of Chapter 535 in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of these sections continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas, 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

§535.1. License Required.

§535.2. Broker's Responsibility.

§535.3. Compensation Accepted by Salesperson.

§535.4. Compensation Paid by Salesperson.

§535.11. Real Estate Defined.

§535.12. General.

§535.13. Dispositions of Real Estate.

§535.14. Offers to Dispose of Real Estate.

§535.15. Negotiations.

§535.16. Listings.

§535.17. Appraisals.

§535.18. Auctions.

§535.19. Locating Property.

§535.20. Procuring Prospects.

§535.21. Unimproved Lot Sales; Listing Publications.

§535.31. Attorneys at Law

§535.32. Attorneys in Fact

§535.33. Public Officials

§535.34. Salespersons Employed by an Owner of Land and Structures Erected by the Owner.

§535.35. Employees Renting and Leasing Employer's Real Estate.

§535.41. Procedures.

§535.42. Jurisdiction and Authority.

§535.51. General Requirements.

§535.52. Individuals.

§535.53. Corporations and Limited Liability Companies.

TRD-9901139
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: February 24, 1999

State Securities Board

Title 7, Part VII

The State Securities Board (Agency), beginning March 1999, will review and consider for readoption, revision, or repeal Chapter 113, Registration of Securities; Chapter 114, Federal Covered Securities; Chapter 123, Administrative Guidelines for Registration of Open-End Investment Companies; Chapter 125, Minimum Disclosures in Church and Nonprofit Institution Bond Issues; Chapter 135, Industrial Development Corporations and Authorities; and Chapter 137, Administrative Guidelines for Regulation of Offers, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The rules to be reviewed are located in Title 7, Part VII, of the Texas Administrative Code.

The assessment made by the Agency at this time indicates that the reasons for readopting these chapters continue to exist.

The Agency's Board will consider, among other things, whether the reasons for adoption of these rules continue to exist and whether amendments are needed. Any changes to the rules proposed by the Agency's Board after reviewing the rules and considering the comments received in response to this notice will appear in the "Proposed Rules" section of the *Texas Register* and will be adopted in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001. The comment period will last for 30 days beginning with the publication of this notice of intention to review.

Comments or questions regarding this notice of intention to review may be submitted in writing, within 30 days following the publication of this notice in the *Texas Register*, to David Weaver, General Counsel, P.O. Box 13167, Austin, Texas, 78711-3167, or sent by facsimile to Mr. Weaver at (512) 305-8310. Comments will be reviewed and discussed in a future Board meeting.

TRD-9901111
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: February 22, 1999

Adopted Rule Reviews

Texas Department of Banking

Title 7, Part II

The Texas Department of Banking (department) has completed the review of Texas Administrative Code, Title 7, Chapter 12, Subchapters B-D, comprised of §12.31 and §12.32, regarding loans, §12.61, regarding investment limits, and §12.91, regarding other real estate owned, as noticed in the November 27, 1998, issue of the *Texas Register* (23 TexReg 11970). No comments were received regarding the substance of these rules or whether the reason for adopting these rules continues to exist.

The department re-adopts these sections, pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167, and finds that the reason for adopting these rules continues to exist. The rules were substantially rewritten and revised in 1996 to be in accordance with the recently enacted Texas Banking Act and federal regulations on this same topic that govern national bank competitors of state banks.

TRD-9901023
Everette D. Jobe
Certifying Official
Texas Department of Banking
Filed: February 19, 1999

Texas Commission on Jail Standards

Title 37, Part IX

The Texas Commission on Jail Standards adopts without changes as proposed in the January 1, 1999, issue of the *Texas Register* (24 TexReg 171), the review of the following sections from Chapter 251 pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167:

§251.1

§251.2

§251.3

§251.4

§251.5

§251.6

TRD-9901058

Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: February 22, 1999

The Texas Commission on Jail Standards adopts without changes as proposed in the January 1, 1999, issue of the *Texas Register* (24 TexReg 171), the review of the following sections from Chapter 255 pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167:

§255.1

§255.2

§255.3

§255.4

§255.5

TRD-9901059
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: February 22, 1999

The Texas Commission on Jail Standards adopts without changes as proposed in the January 1, 1999, issue of the Texas Register (24 TexReg 171), the review of the following sections from Chapter 257 pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167:

§257.1

§257.2

§257.3

§257.4

§257.5

§257.6

§257.7

§257.8

§257.9

§257.10

TRD-9901060
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Filed: February 22, 1999

Texas State Board of Medical Examiners

Title 22, Part IX

The Texas State Board of Medical Examiners adopts the review of Chapter 171 (§§171.1-171.9), concerning Institutional Permits, pursuant to the Appropriations Act of 1997, House Bill 1, Article IX, §167, published in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11669). The Texas State Board of Medical Examiners finds that the reason for adopting Chapter 171, Institutional Permits, continues to exist.

The Texas State Board of Medical Examiners contemporaneously proposes the repeal of §§171.1-171.9 and new §§171.1-171.6 elsewhere in this issue of the *Texas Register*. The repeal and replacement of this chapter was previously proposed in the November 13, 1998, issue of the *Texas Register* (23 TexReg 11533). The withdrawal of that version is contemporaneously published elsewhere in this issue of the *Texas Register*.

No comments were received regarding adoption of the review.

The Texas State Board of Medical Examiners concludes the review of Chapter 171, Institutional Permits.

TRD-9901073
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Filed: February 22, 1999

Texas Department of Public Safety

Title 37, Part I

The Texas Department of Public Safety (DPS) has completed the review of Chapter 7, Division of Emergency Management; Chapter 9, Public Safety Communications; and Chapter 13, Controlled Substances. Pursuant to the requirements of §167 of the Appropriations Act the DPS readopts the following: 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.

The DPS received no comments as to whether the reason for adopting the rules continues to exist. The DPS finds that the reason for adopting these rules continues to exist.

As part of this review process, the DPS proposed amendments to the following sections as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12880). The proposed amendments are §§7.2, 7.3, 7.13, 7.25, 7.27-7.29, and 7.42.

The DPS received no comments on the proposed amendments. The DPS finds that the reason for adopting these rules continues to exist.

As part of the review process, the DPS proposed to repeal §7.45, as published in the December 18, 1998, issue of the *Texas Register* (23 TexReg 12882).

The DPS received no comments on the proposed repeal.

TRD-9901092
Dudley M. Thomas
Director
Texas Department of Public Safety
Filed: February 22, 1999

Public Utility Commission of Texas

The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter N (relating to Decision and Orders), §22.261 relating to Proposals for Decision, §22.262 relating to Commission Action After a Proposal for Decision, §22.263 relating to Final Orders, and §22.264 relating to Rehearing as noticed in the November 27, 1998 *Texas Register* (23 TexReg 11972). The commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, §167 (§167)

and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the §167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed amendments to §22.262 and §22.264 as published in the *Texas Register* on November 27, 1998 (23 TexReg 11885). Central Power and Light Company, Southwestern Power Company, and West Texas Utilities Company, the Texas electric utility operating companies of the Central and South West Corporation (collectively, CSW) filed comments on the proposed amendments. These comments are summarized in the preamble for the adoption of the proposed amendments.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.261. Proposals for Decision.

§22.262. Commission Action After a Proposal for Decision.

§22.263. Final Orders.

§22.264. Rehearing.

TRD-9901004
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 18, 1999

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 22 TAC §831.51(b)(9)

Prenatal Genetic Screen

Name ____ Date ___________________

1. Will you be 35 years or older when your baby is born? Yes__No____

2. Have you, the baby's father, or anyone in either of your families ever had any of the following disorders.

   * Down's Syndrome (mongolism) Yes___No___

   * Other Chromosomal abnormality Yes___No___

   * Neural Tube defect, i.e., spina bifida (myelomeningocele or open spine), anencephaly Yes___No___

   * Hemophilia Yes___No___

   * Muscular Dystrophy Yes___No___

   * Cystic fibrosis Yes___No___

   If yes, indicate the relationship of the affected person to you or to the baby's father:___

   ____

   ____

   ____

   ____

3. Do you or the baby's father have a birth defect? Yes___No___

   If yes, who has the defect and what is it?______________________________

   ____

   ____

   ____

   ____

4. In any previous marriages, have you or the baby's father had a child, born dead or alive, with a birth a defect not listed in question 2 above? Yes___No___
   If yes, what was the defect and who had it?______________________________

   ____

   ____

5. Do you or the baby's father have close relatives with mental retardation? Yes___No___

If yes, indicate the relationship of the affected person to you or to the baby's father:_____
____

6. Do you or the baby's father, or a close relative in either of your families have a birth defect, any familial disorder, or chromosomal abnormality not listed above?
Yes ___No____
If yes, indicate the condition and the relationship of the affected person to you or to the baby's father: ____
____
____

7. In any previous marriages, have you or the baby's father had a stillborn child or three or more first trimester spontaneous pregnancy losses? Yes___No___
Have either of you had a chromosomal study? Yes___No___
If yes, indicate who and the results:____
____
____
____

8. If you or the baby's father are of Jewish ancestry, have either of you been screened for Tay-Sachs disease? Yes___No___
If yes, indicate who and the results:____
____
____
____

9. If you or the baby's father are black, have either of you been screened for sickle cell trait?
Yes___No___
If yes, indicate who and the results:____
____
____
____

10. If you or the baby's father are of Italian, Greek, or Mediterranean background, have either of you been tested for B-thalassemia? Yes___No___
If yes, indicate who and the results:____
____
____

11. If you or the baby's father are of Philippine or Southeast Asian ancestry, have either of you been tested for α-thalassemia? Yes___No___
If yes, indicate who and the results:____
____
____

12. Excluding iron and vitamins, have you taken any medications or recreational drugs since being pregnant or since your last menstrual period (include nonprescription drugs)? Yes___No___
If yes, give name of medication and time taken during pregnancy:____________________
____
____
____
____

(Any patient replying "YES" to questions should be offered appropriate counseling. If the patient declines further counseling or testing, this should be noted in the chart. Given that genetics is a field in a state of flux, alteration or updates to this form will be required periodically.)

Figure: TAC 25 §143.9(e)(2)

TYPE OF LIMITED CERTIFICATE	CLINICAL INSTRUCTION (# OF CLOCK HOURS)	CLINICAL EXPERIENCE (# OF CLOCK HOURS)
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Chiropractic	60	100
Podiatric	4	50

Figure 1: 31 TAC §65.72(b)(2)(B)

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

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Amberjack, greater.	1	32	No limit
Bass: Largemouth, smallmouth, spotted and Guadalupe bass.	5 (in any combination)		
Largemouth and Smallmouth bass.		14	No limit
Spotted and Guadalupe bass.		12	No limit
Bass, striped, its hybrids, and subspecies.	5 (in any combination)	18	No limit
Bass, white	25	10	No limit
Catfish: channel and blue catfish, their hybrids, and subspecies.	25 (in any combination)	12	No limit
Catfish, flathead.	5	18	No limit
Catfish, gafftopsail.	No limit	14	No limit
Cobia.	2	37	No limit
Crappie: white and black crappie, their hybrids, and subspecies.	25 (in any combination)	10	No limit
Drum, black.	5	14	30
Drum, red.	3*	20	28*
*Special Regulation: During a license year, one red drum over the stated maximum length limit may be retained when affixed with a properly executed Red Drum Tag, a properly executed Exempt Red Drum Tag or with a properly executed Duplicate Exempt Red Drum Tag and one red drum over the stated maximum length limit may be retained when affixed with a properly executed Bonus Red Drum Tag. Any fish retained under authority of a Red Drum Tag, an Exempt Red Drum Tag, a Duplicate Exempt Red Drum Tag, or a Bonus Red Drum Tag may be retained in addition to the daily bag and possession limit as stated in this section.			
Flounder: all species, their hybrids, and subspecies.	10*	14	No limit
*Special Regulation: The daily bag and possession limit for the holder of a valid Commercial Finfish Fisherman's license is 60 flounder, except on board a licensed commercial shrimp boat.			
Jewfish.	0		
Mackerel, king.	2	27	No limit
Mackerel, Spanish.	7	14	No limit
Marlin, blue.	No limit	114	No limit

Species	Daily Bag	Minimum Length (Inches)	Maximum Length (Inches)
Marlin, white.	No limit	81	No limit
Mullet: all species, their hybrids, and subspecies.	No limit	No limit	*
*Special regulation: During the period October through January, no mullet more than 12 inches in length may be taken from public waters or possessed on board a vessel.			
Sailfish	No limit	76	No limit
Saugeye	3	18	No limit
Seatrout, spotted.	10	15	No limit
Shark: all species, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Sheepshead.	5	12	No limit
Snapper, lane.	No limit	8	No limit
Snapper, red.	4*	15	No limit
*Special Regulation: The daily bag limit for red snapper is zero for captain and crew who operate a boat for pay or anything of value in accompanying or transporting any person engaged in fishing.			
Snapper, vermilion.	No limit	10	No limit
Snook.	1	24	28
Tarpon.	0		Catch and release only*.
*Special Regulation: One tarpon 80 inches in length or larger may be retained during a license year when affixed with a properly executed Tarpon Tag.			
Trout: rainbow and brown trout, their hybrids, and subspecies.	5 (in any combination)	No limit	No limit
Walleye.	5*	No limit	No limit
*Special regulation: Two walleye of less than 16 inches may be retained per day.			

Figure 2: 31 TAC §65.72(b)(2)(C)(i)

(C) Exceptions to statewide daily bag, possession, and length limits shall be as follows:

(i) The following is a figure:

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Bass: largemouth, smallmouth, spotted and Guadalupe bass, their hybrids, and subspecies.			
Lake Texoma (Cooke and Grayson)	5 (in any combination)	14	
In all waters in the Lost Maples State Natural Area (Bandera)	0	No Limit	Catch and release only.
Bass: largemouth and smallmouth			
Lake Toledo Bend (Newton, Sabine and Shelby).	8 (in any combination)	14	Possession Limit is 10.
Bass: largemouth.			
Conroe (Montgomery and Walker), Fort Phantom Hill (Jones), Granbury (Hood), Lost Creek (Jack), and Ratcliff (Houston).	5	16	
Lakes Fairfield (Freestone), San Augustine City (San Augustine), Calaveras (Bexar), O.H. Ivie (Coleman, Concho, and Runnels), Bright (Williamson), Cooper (Delta and Hopkins), Alan Henry (Garza), Aquilla (Hill), Bellwood (Smith), Casa Blanca (Webb), Old Mount Pleasant City (Titus), Rusk State Park (Cherokee), Welsh (Titus), Braunig (Bexar), Bryan (Brazos), and Gilmer (Upshur).	5	18	
Nelson Park Lake (Taylor) and Buck Lake (Kimble).	0	No Limit	Catch and release and only.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Purtis Creek State Park Lake (Henderson and Van Zandt), Gibbons Creek Reservoir (Grimes), and Raven (Walker).	0	No Limit	Catch and release only except that any bass 21 inches or greater in length may be retained in a live well or other aerated holding device and immediately transported to the Purtis Creek or Huntsville State Park, or Gibbons Creek weigh stations. After weighing, the bass must be released immediately back into the lake or donated to the ShareLunker Program.
Lakes Pinkston (Shelby), Waxahachie (Ellis), Bridgeport (Jack and Wise), Georgetown (Williamson), Caddo (Marion and Harrison), Burke-Crenshaw (Harris), Grapevine (Denton and Tarrant), Davy Crockett (Fannin) , and Madisonville (Madison).	5	14-18 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 18 inches in length.
Lakes Bastrop (Bastrop), Houston County (Houston), Nacogdoches (Nacogdoches), Mill Creek (Van Zandt), Joe Pool (Dallas, Ellis, and Tarrant), Walter E. Long (Travis), Timpson (Shelby), and Athens (Henderson), and Murvaul (Panola).	5	14-21 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 21 inches in length. No more than 1 bass 21 inches or greater in length may be retained each day.
Lakes Fayette County (Fayette), Monticello (Titus), and Ray Roberts (Cooke, Denton, and Grayson).	5	14-24 Inch Slot Limit	It is unlawful to retain largemouth bass between 14 and 24 inches in length. No more than 1 bass 24 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Fork (Wood, Rains and Hopkins)	5	16-23 Inch Slot Limit	It is unlawful to retain largemouth bass between 16 and 23 inches in length. No more than 1 bass 23 inches or greater in length may be retained each day. Beginning September 1, 2000, the upper limit of the slot will be 24 inches.
Bass: smallmouth.			
Lakes O. H. Ivie (Coleman, Concho, and Runnels), Belton (Bell and Coryell), Cisco (Eastland), Greenbelt (Donley), Oak Creek (Coke), Stillhouse Hollow (Bell), White River (Crosby), Whitney (Bosque, Hill and Johnson), Alan Henry (Garza), and Devil's River (Val Verde) from State Highway 163 bridge crossing near Juno downstream to Dolan Falls.	3	18	
Lake Meredith (Hutchinson, Moore, and Potter).	3	12-15 Inch Slot Limit	It is unlawful to retain smallmouth bass between 12 and 15 inches in length.
Bass: spotted			
Lake Alan Henry (Garza)	3	18	
Lake Toledo Bend (Newton, Sabine and Shelby).	8	12	Possession Limit is 10.
Bass: striped, its hybrids, and subspecies.			
Lake Toledo Bend (Newton, Sabine and Shelby).	5	No Limit	No more than 2 striped bass 30 inches or greater in length may be retained each day.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Texoma (Cooke and Grayson).	10 (in any combination)	No Limit	No more than 2 striped or hybrid striped bass 20 inches or greater in length may be retained each day. Striped or hybrid striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released. Possession limit is 10.
Red River (Grayson) from Denison Dam downstream to and including Shawnee Creek (Grayson).	5 (in any combination)	No Limit	Striped bass caught and placed on a stringer, in a live well or any other holding device become part of the daily bag limit and may not be released.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	2 (in any combination)	18	
Bass: striped and white bass, their hybrids, and subspecies.			
Lake Pat Mayse (Lamar) and Lake O'the Pines (Camp, Marion, Morris, and Upshur)	25 (in any combination)	10	No more than 5 striped, white, or hybrid striped bass 18 inches or greater in length may be retained each day.
Bass: white			
Lakes Conroe, Livingston, Limestone, Palestine, Somerville, Buchanan, Canyon, Georgetown, Inks, Lyndon B. Johnson, Marble Falls, and Travis.	25	12	
Lakes Texoma (Cooke and Grayson) and Toledo Bend (Newton, Sabine, and Shelby).	25	No Limit	
Catfish: channel and blue catfish, their hybrids, and subspecies.			

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Livingston (Polk, San Jacinto, Trinity, and Walker).	50 (in any combination)	12	Possession limit is 50. The holder of a commercial fishing license may not retain channel or blue catfish less than 14 inches in length.
Trinity River (Polk and San Jacinto) from the Lake Livingston dam downstream to the F.M. Road 3278 bridge.	10 (in any combination)	12	No more than 2 channel or blue catfish 24 inches or greater in length may be retained each day.
Lake Texoma (Cooke and Grayson).	15 (in any combination)	12	
Community fishing lakes, Bellwood (Smith), Dixieland (Cameron), and Tankersley (Titus).	5 (in any combination)	12	
Catfish: flathead			
Lake Texoma (Cooke and Grayson) and the Red River (Grayson) from Denison Dam to and including Shawnee Creek (Grayson).	5	20	
Crappie: black and white crappie, their hybrids and subspecies.			
Lake Toledo Bend (Newton, Sabine, and Shelby).	50 (in any combination)	10	Possession limit is 50. From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.
Lake Fork (Wood, Rains, and Hopkins) and Lake O'The Pines (Camp, Harrison, Marion, Morris, and Upshur).	25 (in any combination)	10	From December 1, through the last day in February, there is no minimum length limit. All crappie caught during this period must be retained.

Location (County)	Daily Bag	Minimum Length (Inches)	Special Regulation
Lake Texoma (Cooke and Grayson).	37 (in any combination)	10	Possession limit is 50.
Drum, red.			
Lakes Braunig and Calaveras (Bexar), Colorado City (Mitchell), Fairfield (Freestone), Nasworthy (Tom Green), and Tradinghouse Creek (McLennan).	3	20	No maximum length limit.
Shad: gizzard and threadfin shad.			
The Trinity River below Lake Livingston between Polk and San Jacinto Counties.	500 (in any combination)	No Limit	Possession Limit 1,000 in any combination.
Sunfish: Bluegill, redear, green, warmouth, and longear sunfish, their hybrids and subspecies.			
Purtis Creek State Park Lake (Henderson and Van Zandt).	25 (in any combination)	7	
Trout: Rainbow and brown trout, their hybrids, and subspecies.			
Guadalupe River (Comal) from the second bridge crossing on the River Road upstream to the easternmost bridge crossing on F.M. Road 306.	1	18	
Walleye.			
Lake Texoma (Cooke and Grayson).	5	18	

In Addition

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Ark-Tex Council of Governments

Request for Proposal

The Ark-Tex Council of Governments (ATCOG) is soliciting proposals for the provision of training under Title IIB of the Job Training Partnership Act (JTPA).

For the Title IIB Request for Proposal (RFP), allowable training activities may include, but are not limited to: Texas Academic Skills Program (TASP) and Texas Assessment of Academic Skills (TAAS) preparation; computer assisted instruction, basic education skills remediation; and/or English as a Second Language. The period of performance is June 1, 1999 - September 30, 1999. The deadline for proposal submission is 5:00 p.m., Friday, April 2, 1999.

Training must be provided by Texas Education Agency/Texas Higher Education Coordinating Board approved institutions that are either 1) accredited independent school districts, community colleges or post-secondary institutions, institutions of higher education, 2) private businesses, trade, technical or vocational schools certified by TEA, 3) the Texas State Technical College, or 4) education service centers.

Proposals shall be evaluated in terms of the following criteria: project implementation, cost of service and training staff/individuals served, project management, past performance, and other resources. The Ark-Tex Private Industry Council will score the proposals and make the selections. Respondents will be notified in writing of the date, time, and place of the meeting at which the proposals will be scored.

The service area includes the following counties in Texas: Bowie, Cass, Delta, Franklin, Hopkins, Lamar, Morris, Red River, and Titus.

In order to ensure that all respondents are provided sufficient assistance in completing proposals, a respondent's conference will be held at the Ark-Tex Council of Governments Conference Room, 122 Plaza West, Texarkana, Texas on Thursday, March 11, 1999, at 10:30 a.m.

Potential respondents may obtain a copy of the RFP, Scoring Guidelines and Procedures, and Project Scoring Criteria by contacting Cindy Wright, Ark-Tex Council of Governments, P.O. Box 5307, Texarkana, Texas 75505, or call (903) 832-8636.

TRD-9901112
James Fisher, Jr.
Executive Director
Ark-Tex Council of Governments
Filed: February 23, 1999

♦ ♦ ♦

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following projects(s) during the period of February 12, 1999, through February 19, 1999:

FEDERAL AGENCY ACTIVITIES:

Applicant: Gulf of Mexico Fishery Management Council; Project Number: 99-0051-F2; Description of Proposed Activity: Pursuant to the Magnuson Stevens Fishery Conservation and Management Act, the applicant proposes Amendment 16B to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. The amendment includes the following five (5) proposed actions: to set size limits for minor amberjack species, remove species that are not in the management unit, Florida compatible size limits for the entire Gulf of Mexico, Florida compatible bag limits for the entire Gulf of Mexico, and a recreational bag limit for speckled hind and warsaw grouper.

Applicant: Corps of Engineers - Gulf Intracoastal Waterway Channel to Palacios, Texas; Project Number: 99-0056-F2; Description of Proposed Activity: The applicant proposes to Maintenance Dredge the Gulf Intracoastal Waterway Channel to Palacios, Texas. Nine options for beneficial uses of dredged material have been identified and there appears to be no economically or environmentally viable beneficial use for the dredged material currently being excavated from the channel. All placement areas were identified and used as described in an Environmental Impact Statement or Environmental Assessment issued prior to the acceptance of the CMP. The applicant has identified Coastal Natural Resource Areas (CNRAs) in the project

area and determined the project activities will not adversely impact these CNRAs.

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-9901141
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: February 24, 1999

♦ ♦ ♦

Comptroller of Public Accounts

Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts and the Texas Prepaid Higher Education Tuition Board announce this notice of consultant contract award.

The consultant proposal request was published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4382).

The consultant will assist the Comptroller and the Texas Prepaid Higher Education Tuition Board with investment strategy reports and investment guidelines in connection with the administration of the state's prepaid higher education tuition program.

The contract is awarded to Watson Wyatt Investment Consulting, Inc., 4170 Ashford-Dunwoody Road, N.E., Suite 432, Atlanta, Georgia 30319. The total dollar value of the contract is not to exceed $125,000.00. The contract was executed December 10, 1998, and extends through December 9, 1999. Watson Wyatt will prepare an investment strategies report, which is due on May 11, 1999. Additionally, Watson Wyatt will prepare an annual report comparing the Texas Tomorrow Fund's actual performance with the fund's investment plan. The report is due twenty-one calendar days after the end of the state fiscal year. Additionally, Watson Wyatt will prepare quarterly reports presenting the Texas Tomorrow Fund's total return (after related fees are deducted) and the fund's allocation among asset classes. The quarterly reports are due within twenty-one days after the end of each fiscal quarter of the state through the term of the contract.

TRD-9901146
David R. Brown
Legal Counsel
Comptroller of Public Accounts
Filed: February 24, 1999

♦ ♦ ♦

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Articles 1D.003, 1D.009, and 1E.003, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.009, and 1E.003, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Articles 1D.003 and 1D.009 for the period of February 22, 1999-February 28, 1999 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by Articles 1D.003 and 1D.009 for the period of February 22, 1999-February 28, 1999 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Article 1E.003 for the period of March 1, 1999-March 31, 1999 is 10% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Article 1E.003 for the period of March 1, 1999-March 31, 1999 is 10% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-9901007
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 18, 1999

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Deep East Texas Council of Governments

Request for Proposals (Economic Development Strategy For DETCOG)

The Deep East Texas Council of Governments is seeking proposals from qualified vendors for the preparation and implementation of an economic development strategy. DETCOG anticipates entering into a contract to secure professional services for an economic development plan including three phases. These phases may be bid upon individually but a contractor is not limited to bidding on just one or two of the phases. Those phases include the following:

• Data Base Development

• Target Industry Study

• Marketing Plan for Each Study Group

This strategy will be developed for use as a regional promotion project. Detailed information to be provided should contain, but not be limited to the materials noted below.

PHASE I

DATA BASE DEVELOPMENT PROPOSAL

The overall objective of this element is to develop a database for the DETCOG region that supports location requirements of our target industry clientele. As a minimum, the data should contain:

• Population / projections as a region and on a county by county basis

• Geographic markets for finished products / services

• Raw material source data

• Service support required by industry group

• Transportation requirements for raw materials and finished products

• Infrastructure requirements of each target industry will include communication, water, sewer, electric and natural gas.

PHASE II

TARGET INDUSTRY STUDY PROPOSAL

The overall objective of this element is to identify 5-6 target industry groups that:

• Can most likely be recruited to East Texas (use area's raw materials and are in geographic proximity to finished goods markets)

• Are growth type industries

• Offer above average wages now paid in East Texas

• Tend to have a minimal environmental impact on the region

• Emerging industries (an over the horizon look should be given to identify industry types as may be appropriate for East Texas)

Industries should be identified by name, full address, and decision-maker if possible. A detailed explanation should be prepared on each target industry group justifying rational as to why the industry group is a fit for East Texas. Also to be included is a brochure format appropriate for use as a stand alone marketing piece.

PHASE III

MARKETING PLAN PROPOSAL

A marketing strategy and plan will be developed to provide the greatest impact for the dollar spent to market East Texas. This strategy will include:

• Marketing materials

• Identify publication and ads for advertisement

• Suggest a marketing budget

• Provide a schedule and follow - up procedure for responses to marketing efforts.

CONTRACTOR REQUIREMENTS

The proposal should include a proposed work program to develop the strategy, proposed staffing of the project, a summary of experience of staff members that will perform most of the work, overall qualifications of the consultant in studies of this nature. A summary of direct and related project experience, and estimated schedule for completing the work, and a fee range for accomplishing the scope of services.

Proposals should be submitted to:

Walter Diggles

Executive Director

DETCOG

274 E. Lamar

Jasper, Texas 75951

(409) 384-5704

Proposals should be received by 5:00 P.M. on Monday March 15, 1999.

TRD-9901104
Walter G. Diggles
Executive Director
Deep East Texas Council of Governments
Filed: February 22, 1999

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East Texas Council of Governments

Request for Proposal

The East Texas Workforce Development Area is soliciting individuals interested in serving as independent reviewers of proposals to be submitted to the East Texas Workforce Development Board for One Stop Career Development Center Operations and employment and training services through the Workforce Investment Act, the Temporary Assistance to Needy Families Program, the Welfare - to-Work Program and the Food Stamp Employment and Training Program. In addition, proposals for Job Training Partnership Program Summer Youth Model Projects and Remedial Classroom Training will be reviewed.

Local procurement policy requires that all proposals for delivery of services involving expenditures in excess of $75,000 be reviewed by a panel of three or more independent reviewers. This review process requires that the panel of independent reviewers be on site at a location in the ETCOG region for a period of two to four days depending upon the number of proposals and/or the complexity of the procurement. The East Texas Council of Governments, administrative entity for the East Texas Workforce Development Area, will be responsible for engaging the services of the independent reviewers.

The Person to be Contacted Regarding Submission of a Proposal

Individuals wishing to serve as independent reviewers should submit a resume with a letter of application to: Wendell Holcombe, Director of Workforce Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662

Individuals who previously responded to the Request for Qualifications for Independent Reviewers conducted for the Program Year 1998 One Stop career Centers procurement should submit notification of their availability to participate in the upcoming proposal review to the above address.

Closing Date for Receipt of Proposals

In order to be considered for this engagement, a response should be received by March 19, 1999. Responses will remain on file for subsequent procurements for a two-year period.

The Procedure by Which Subcontracts will be Awarded

Compensation for this engagement shall be $450 per day plus expenses. Selection of the reviewers shall be based upon professional experience with and knowledge of employment and training programs and the ability to commit the time required to complete the review process. (Knowledge of One Stop Career Center operations is preferred.) The current schedule for procurement contemplates that proposals for One Stop Career Center Operators be reviewed between April 7th through April 9th, 1999.

TRD-9901144
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: February 24, 1999

♦ ♦ ♦

Texas Education Agency

Notice of Public Hearing on the Draft Texas State Plan for Adult Education

The Texas Education Agency Division of Adult and Community Education will receive public comment on the draft Texas State Plan for Adult Education on March 8, 1999, at the Houston READ Commission Palm Learning Center, 5330 Griggs Road, Houston, Texas 77021. The hearing will begin at 9:00 a.m. and conclude at 12 noon.

Comments will be received on the plan components of needs assessment; description of allowable activities, including family literacy; performance indicators and annual evaluation; process and procedures for funding eligible providers; program strategies for various populations; integration with other adult education and training activities; direct and equitable access; programs for corrections and institutionalized; and state leadership activities.

Individuals planning to provide oral testimony must so state when registering. Each individual will be allowed three minutes for testimony. A written copy of the testimony is required. Testimony will be heard in the order of registration.

Written comments to be provided in lieu of oral testimony should be sent by mail to Dr. Deborah Stedman, Division of Adult and Community Education, Texas Education Agency, 1701 North Congress Avenue, Austin, TX 78701; by FAX to (512) 475-3661; or by e-mail to dstedman@tmail.tea.state.tx.us.

Additional information may be obtained from Meg Brown or Dr. Deborah Stedman, Adult and Community Education, Texas Education Agency, 1701 North Congress Ave., Austin, TX 78701 (512) 463-9294.

TRD-9901140
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: February 24, 1999

Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

Licensing Actions for Radioactive Materials

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Denton	Metro North Clinic	L05235	Denton	0	01/04/99
Houston	Leachman Cardiology Associates	L05229	Houston	0	02/05/99
Pasadena	Gulf Coast Cancer Center Inc	L05194	Pasadena	0	02/09/99
Throughout Texas	Momentum Design and Construction Inc	L05212	El Paso	0	02/02/99

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Abilene	Hendrick Medical Center	L02433	Abilene	58	02/01/99
Amarillo	Northwest Texas Healthcare System Inc dba NW Tx Hosp.	L02054	Amarillo	53	02/08/99
Baytown	Jacinto MRI and Diagnostic Center	L04808	Baytown	3	02/11/99
Bedford	Carter Bloodcare	L00630	Bedford	34	02/08/99
Borger	Phillips Chemical Company A Div.of Phillips Petroleum	L05181	Borger	1	02/11/99
College Station	Texas A & M University	L00448	College Station	97	02/11/99
Corpus Christi	Citgo Refining and Chemicals Inc	L00243	Corpus Christi	29	02/11/99
Corpus Christi	Riverside Hospital Inc dba Northwest Regional Hosp.	L02977	Corpus Christi	22	02/01/99
Corpus Christi	Costal Cardiology Association	L04754	Corpus Christi	8	01/28/99
Corpus Christi	Associates in Heart Disease dba Heart Clinic/Corpus	L05023	Corpus Christi	2	02/01/99
Dallas	Methodist Hospitals of Dallas - Radiology Services	L00659	Dallas	36	02/04/99
Dallas	Raytheon Company	L00946	Dallas	80	02/03/99
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	71	02/02/99
Dallas	Animal Radiology Clinic	L03535	Dallas	13	02/10/99
Dallas	Raytheon Company	L04096	Dallas	17	02/03/99
Dallas	Texas Oncology PA dba Sammons Cancer Center	L04878	Dallas	11	02/02/99
Gonzales	Gonzales Healthcare Systems dba Memorial Hospital	L03473	Gonzales	6	01/29/99
Houston	Syncor International Corporation	L01911	Houston	102	02/10/99
Houston	Testmaster Inc	L03651	Houston	12	02/04/99
Houston	Proportional Technologies Inc	L04747	Houston	9	02/09/99
Houston	QC Laboratories Inc	L04750	Houston	6	02/03/99
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	62	02/08/99
Lufkin	Piney Woods Healthcare System LLC dba Woodland Height	L01842	Lufkin	33	02/03/99
McAllen	Valley Heart Center	L05149	McAllen	4	02/12/99
Midland	Norm Decon Services LLC	L04917	Midland	7	01/29/99
Nacogdoches	Memorial Hospital	L01071	Nacogdoches	31	02/01/99
Odessa	Suresh N Gadasalli MD PA	L05156	Odessa	1	02/03/99
Palestine	Palestine Principal Healthcare Limited Partnership	L02728	Palestine	27	02/04/99
Palestine	Palestine Principal Healthcare Limited Partnership	L02728	Palestine	28	02/10/99

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Pasadena	Pasadena Paper Company	L00906	Pasadena	32	02/02/99
Port Arthur	Tenet Healthcare Ltd dba Park Place Medical Center	L01707	Port Arthur	38	02/01/99

San Antonio	US Diagnostic Inc dba San Antonio Diagnostic Imaging	L04968	San Antonio	12	02/10/99
San Antonio	US Diagnostic Inc dba San Antonio Diagnostic Imaging	L04968	San Antonio	13	02/11/99
Sunray	Diamond Shamrock Refining Company L P	L04398	Sunray	6	02/09/99
Temple	Wilsonart International	L02857	Temple	13	01/29/99
Temple	Wilsonart International	L02857	Temple	14	02/10/99
Texarkana	Alumax Mill Products Inc	L04663	Texarkana	8	02/12/99
Throughout Texas	MQS Inspection Incorporated	L00087	Houston	75	02/01/99
Throughout Texas	Western Atlas International Inc dba Baker Atlas	L00446	Houston	119	02/09/99
Throughout Texas	Fugro South Inc/Gulf Coast Testing Laboratories	L01474	Corpus Christi	24	02/03/99
Throughout Texas	Furgro South Inc/Gulf Coast Testing Laboratory	L01474	Corpus Christi	25	02/10/99
Throughout Texas	Ico Worldwide Inc	L01884	Houston	27	02/09/99
Throughout Texas	H B Zachry Company	L01995	San Antonio	17	02/05/99
Throughout Texas	Bix Testing Laboratories Inc	L02143	Baytown	90	02/03/99
Throughout Texas	Bix Testing Laboratories Inc	L02143	Baytown	91	02/09/99
Throughout Texas	Technical Welding Laboratory Inc	L02187	Pasadena	118	02/09/99
Throughout Texas	GCT Inspection Inc	L02378	South Houston	53	02/09/99
Throughout Texas	Catch-A-Fault	L02725	Denton	13	02/09/99
Throughout Texas	Lower Colorado River Authority	L02738	La Grange	26	02/03/99
Throughout Texas	Goolsby Testing Laboratories Inc	L03115	Humble	62	02/01/99
Throughout Texas	Triple G X-ray & Testing Labs Inc	L03136	Humble	23	02/01/99
Throughout Texas	Triple G X-ray & Testing Labs Inc	L03136	Humble	24	02/09/99
Throughout Texas	Reinhart and Associates Inc	L03189	Austin	32	02/11/99
Throughout Texas	Baker Oils Tools	L03272	Houston	20	02/08/99
Throughout Texas	D-Arrow Inspection Inc	L03816	Houston	60	02/01/99
Throughout Texas	Professional Service Industries Inc	L03924	Arlington	13	02/03/99
Throughout Texas	El Paso Inspection	L04599	El Paso	24	02/02/99
Throughout Texas	Gulf Coast Inspection Inc	L04934	Ingleside	4	02/01/99
Throughout Texas	Professional Service Industries Inc	L04947	Austin	6	02/01/99
Throughout Texas	Conam Inspection	L05010	Houston	16	02/12/99
Throughout Texas	Hi-Tech Testing Service Inc	L05021	Longview	19	02/02/99
Throughout Texas	Hi-Tech Testing Service Inc	L05021	Longview	20	02/10/99
Throughout Texas	N-Spec Quality Services Inc	L05113	Corpus Christi	3	02/09/99
Throughout Texas	M & G Inspection & Testing Incorporated	L05220	Houston	1	02/01/99
Throughout Texas	Non-Destructive Inspection Corporation	L02712	Lake Jackson	63	02/12/99
Throughout Texas	E I Dupont De Nemours & Co - Sabine River Works	L0005	Orange	64	01/29/99
Waco	Waco Cardiology Associates	L05158	Waco	1	02/08/99

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Lubbock	University Medical Center	L04719	Lubbock	24	01/29/99
Midland	P V Patel MD dba Physicians P V Patel and Associates	L04729	Midland	6	02/10/99
Paris	Physician Reliance Network Inc dba Paris Reg. Cancer	L04664	Paris	0	02/01/99
Pasadena	NDS Products Inc	L00991	Pasadena	37	02/09/99
Throughout Texas	Exxon Chemical Americas	L01135	Baytown	56	02/10/99

CONTINUED RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Throughout Texas	City of Fort Worth Department of Engineering	L01928	Fort Worth	17	02/09/99
Throughout Texas	Omalley Engineers	L02310	Brenham	15	02/02/99
Throughout Texas	Rhodes Testing	L04702	Longview	6	02/09/99

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
La Porte	Corpus Christi Inspection and Engineering Inc	L04379	La Porte	50	01/28/99
San Angelo	Combest Geoscience	L04652	San Angelo	7	02/11/99
The Woodlands	Houston Advanced Research Center	4706	The Woodlands	3	02/02/99
Throughout Texas	NDT Systems Inc	L02031	Houston	33	02/01/99
Throughout Texas	Curleys Inspection Service	L02437	Monahans	11	02/10/99
Throughout Texas	Daniel Valve Company	L03077	Houston	10	02/11/99
Weslaco	Texas A & M University-Kingsville Citrus Center	L01044	Weslaco	16	02/02/99

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation.*

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by Agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday-Friday (except holidays).

TRD-9901033
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 22, 1999

Notice of Request for Proposals for Projects to Provide Community Outreach Services for the Texas Special Supplemental Nutrition Program for Women, Infants, and Children

INTRODUCTION

The Texas Department of Health (department), Women, Infants and Children (WIC) Program, announces a Request for Proposals (RFP) for services to be performed during a 15- month period beginning July 1 of federal fiscal year 1999, continuing through all of federal fiscal year 2000, ending September 30, 2000. The grant is being funded by the Texas WIC Program and administered by the Outreach and Marketing Section of the Health Communications Division of the Bureau of Community Oriented Public Health (COPH). The RFP will be released on March 19, 1999.

GENERAL PURPOSE AND PROGRAM GOALS

The purpose of the funding is to increase WIC participation through community-based outreach activities, with a focus on groups most likely to be in need of WIC services but not receiving services. Participants include Medicaid enrollees who are pregnant or who have recently had children, migrant families, eligible pregnant women early in their first trimester, pregnant teenagers, and eligible children up to age five.

ELIGIBLE APPLICANTS

Eligible applicants include, but are not limited to nonprofit community agencies, organizations, and task forces; governmental entities (including city, county, and state); institutions of higher learning, independent school districts, and faith-based organizations.

AVAILABILITY OF FUNDS

A total of $500,000 will be available to fund approximately ten community projects. The funds were appropriated through the Texas Special Supplemental Nutrition Program for Women, Infants, and Children.

PROJECT AND BUDGET PERIODS

Contracts will be funded for 15 months beginning July 1, 1999, and ending September 30, 2000. There is no set cap on individual budgets.

REVIEW AND AWARD CRITERIA

Each application will first be screened for completeness and timeliness. Proposals which are deemed incomplete or arrive after the deadline will not be reviewed. Proposals will be reviewed by a team of reviewers. The proposals will be evaluated using the criteria and review process described in the RFP.

DEADLINE

Proposals prepared according to instructions in the RFP package must be received by the department by 5:00 p.m., Central Daylight Savings Time, on or before May 3, 1999.

TO OBTAIN A COPY OF THE REQUEST FOR PROPOSALS

To request of copy of the RFP, contact Amy Samet, Outreach and Marketing Specialist, Bureau of Community Oriented Public Health (COPH), Texas Department of Health, Health Communications Division, 1100 West 49th Street, Austin, Texas, 78756-3199, E-mail address amy.samet@tdh.state.tx.us, or fax (512) 406-0722.

TRD-9901031
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 22, 1999

Notice of Request for Proposals for Ryan White Title II Administrative Agency for Grant Administration in the El Paso Service Delivery Area

The Texas Department of Health (department) and the El Paso Human Immunodeficiency Virus (HIV) Care Consortium announce the availability of $1,071,278 in grant funds to provide outpatient health care and social services to persons with HIV and Acquired Immunodeficiency Syndrome (AIDS) within the El Paso HIV Services Delivery Area (HSDA).

Through a Request for Proposals (RFP) the El Paso HIV Care Consortium is seeking an administrative agency to provide grant administration of the above funds through a memorandum of understanding with the Consortium. On behalf of the Consortium, the administrative agency applies for and manages funds and programs for the provision of HIV services within the HSDA and provides administrative support to the consortium. The department will enter into contract with the selected administrative agency on or about September 1, 1999.

ELIGIBILITY

Eligible applicants are public or private nonprofit health care or social services organizations within the El Paso HSDA (counties of Brewster, Culberson, El Paso, Hudspeth, Jeff Davis, and Presidio). Agencies that have had state or federal contracts terminated or placed on probation within the last 24 months for deficiencies in fiscal or programmatic performance are not eligible to apply.

Applicants must demonstrate fiscal solvency and have appropriate fiscal management capacity and systems; adequate administrative and program management capacity; and the ability to work in a cooperative system of care within the HSDA to avoid duplication and provide quality, accessible services for persons with HIV.

TIME LINE FOR THE RFP PROCESS

March 18, 1999 (RFP Available to Public)

March 30, 1999 (Letters of Intent to Apply Due)

March 30, 1999 (Pre-Application Conference)

May 3, 1999 (Proposals Due)

June 3, 1999 (Award Decisions)

September 1, 1999 (Contract Start Date)

TO OBTAIN THE REQUEST FOR PROPOSALS

All requirements and information are contained in the RFP. Interested parties may obtain a copy of the RFP by contacting Ms. Anne O'Brien, HIV/AIDS Resource Center, 1505 Mescalero Drive, El Paso, Texas, 79925, Telephone (915) 772-3366.

TRD-9901032
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 22, 1999

Texas Department of Housing and Community Affairs

HOME Investment Partnerships Program; Notice of Fund Availability; HOME Rental Housing Development Funds Combined with Low-Income Housing Tax Credits

The Texas Department of Housing and Community Affairs (TDHCA), through its HOME Investment Partnerships (HOME) Program, announces the availability of funds for the development and support of decent, safe and affordable rental housing for low, very low, and extremely low-income households. TDHCA intends to make available approximately $1.5 million in HOME funds for eligible applicants that apply for and receive an allocation of tax credits during the 1999 Low-Income Housing Tax Credit allocation round. These funds will be distributed according to the rules and procedures as set forth in the HOME Investment Partnership Program Policies and Procedures for Rental Project Assistance when Combined with Low-Income Housing Tax Credits.

Eligible Activities:

Acquisition, Rehabilitation or New Construction of Multifamily rental housing. Types of eligible housing include: Multifamily Apartments, Fourplex(s), Elderly Housing, Single Room Occupancy, Residential Cooperative, Transitional Housing, or other developments eligible under the HOME and Low-Income Housing Tax Credit Programs;

Eligible Applicants:

(1) Nonprofit organizations;

(2) Units of general local government;

(3) For-profit housing development entities; and

(4) Public housing agencies

Requests for HOME Rental Housing Development applications, questions or requests for additional information may be directed to the HOME Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941, (512) 475-3109.

Applicants must submit one (1) original HOME Rental Housing Development application (only attachments) and one (1) copy of the Low-Income Housing Tax Credit application (only pages 1-24). Applicants must submit the applications in a 3-ring binder. There is no charge for submission of the HOME Rental Housing Development application.

HOME Rental Housing Development applications must be received by TDHCA no later than 5:00 p.m., April 30, 1999. Applications received after this time will not be considered for funding. Applications sent by facsimile will not be accepted. Applications should be mailed to: HOME Program, Texas Department of Housing and Community Affairs, P. O. Box 13941, 811 Barton Springs Road, Suite 400, Austin, Texas 78711-3941.

TRD-9901117
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 23, 1999

Texas Department of Human Services

Availability of 1998 Expenditure Report of Title XX Social Service Block Grant Funds

The Texas Department of Human Services has published a report describing the actual expenditures of Title XX Social Service Block Grant funds for fiscal year 1998. Free copies of the report are available to the public.

Contact Person: To obtain a copy of this report, write Bobby Halfmann, Chief Financial Officer, Texas Department of Human Services, W-421, P. O. Box 149030, Austin, Texas 78714-9030.

TRD-9901143
Paul Leche
Agency Liaison
Texas Department of Human Services
Filed: February 24, 1999

Texas Department of Insurance

Notices

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by Utica National Insurance Company of Texas proposing to use rates outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing a rate of -73% below the benchmark for only class codes 6451-6454 and 6481-6484; and -10% below the benchmark for all other class codes for all coverages and territories for commercial automobile insurance.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Art. 5.101, §3(h), is made with the Chief Actuary, Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9901102
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 22, 1999

The Commissioner of Insurance, or his designee, will consider approval of a rate filing request submitted by American Alternative Insurance Corporation proposing to use rates that are outside the flexibility band promulgated by the Commissioner of Insurance pursuant to TEX. INS. CODE ANN. art. 5.101, §3(g). They are proposing a rate for commercial automobile insurance of -30% below the benchmark for ambulance; -57.5% below the benchmark for fire departments with ambulance for all coverages and territories; and -15% below the benchmark for all other classes (including private passenger types on a commercial policy).

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Art. 5.101, §3(h), is made with the Chief Actuary, Philip Presley, at the Texas Department of Insurance, MC 105-5F, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

TRD-9901124
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: February 23, 1999

Texas Low-Level Radioactive Waste Disposal Authority

Notice of Contract Award

Under the provisions of Government Code, Chapter 2254, the Texas Low-Level Radioactive Waste Disposal Authority publishes this notice of a consulting services award for conducting a public policy study regarding privatization of the development and operation of a low-level radioactive waste management facility for Texas.

Publication requirements of the request for consultant proposal were waived by the Governor's Office of Budget and Planning under the emergency waiver provisions of Section 2254.025, Government Code, and a finding that the required fact exists was signed on February 17, 1999. An emergency was deemed to exist because the legislative leadership requested that the policy study be accomplished in time for the 76th Legislature to consider it in determining the future of low-level radioactive waste policy for the next biennium.

The consultant proposal contract was awarded to Research & Planning Consultants (RPC), 7600 Chevy Chase Drive, Austin, Texas 78752, 512/371-8166.

The total value of the contract will not exceed $60,000.00. The contract period begins on February 17, 1999, and will continue until April 30, 1999.

For additional information, contact Ruben Alvarado, Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar, Suite 300, Austin, Texas 78752, (512) 451-5292.

TRD-9901103
Lee H. Mathews
Deputy General Manager and General Counsel
Texas Low-Level Radioactive Waste Disposal Authority
Filed: February 22, 1999

Texas Natural Resource Conservation Commission

Applications for Concentrated Animal Feeding Operation Permits

The following notices were issued during the period of February 10 to February 23, 1999. No discharge of pollutants into the waters of the state is authorized by these permits. All waste and wastewater will be beneficially used on agricultural land.

Written public comments and requests for contested case hearings may be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, contact the Public Interest Counsel, MC 103, the same address. For additional information, please contact the Office of Public Assistance, Toll Free, at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Listed are the names of the applicants, the type of application (new permit, amendment, or renewal), the permit number, the type of facility, and the location of the facility.

ROEL STOKER, Route 3, Box 199C, Stephenville, Texas 76401; The facility is located on County Road 913 one-quarter of a mile south of the intersection of County Road 913 and U.S. Highway 67, this intersection being approximately seven miles east of Stephenville in Erath county, Texas; New Permit Number 04028.

A & A DAIRIES, INC. & JOHN DOLLINS, 9128 County Road 1127, Godley, Texas 76044; The existing facility is located on the northwest corner of the intersection of County Road 1127 and Farm-to-Market Road 2331 approximately two miles southwest of Godley in Johnson County, Texas; new Texas Pollution Discharge Elimination System (TPDES) Permit Number 03982.

MAHARD EGG FARM, INC., P.O. Box 248, Prosper, Texas 75078-0248; The existing facility is located on the east side of Coffey Road approximately one mile west of the intersection of Farm-to-Market Road 428 and Farm-to-Market Road 1385 near Aubrey in Denton County, Texas; new Texas Pollution Discharge Elimination System (TPDES) Individual Permit Number 04031.

JOE CORDELL, 129 West Mesquite, Dublin, Texas 76446; The facility is located on the south side of Farm-to-Market Road 847 approximately two miles east of the City of Dublin in Erath County, Texas; new Texas Pollution Discharge Elimination System (TPDES) Permit Number 04020.

BRYAN B. BERGER & HENRY J. NOVAK, P.O. Box 219, Flatonia, Texas, 78941-0219; The existing facility is located on the south side of County Road 401 approximately five miles southwest of the intersection of U.S. Highway 90 and State Highway 95 in Flatonia in Gonzales County, Texas.

PLAINVIEW DAIRY, LTD. CO., 3715 Lovers Lane, Roswell, New Mexico 88201; The proposed facility will be located at the southeast corner of the intersection of County Roads Y and 145. This intersection is one mile east of the intersection of County Road 145 and Farm-to-Market Road 400, which is 4 miles south of the City of Plainview in Hale County, Texas.

TRD-9901149
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 24, 1999

Correction of Error

Note: Due to a typographical error by the Texas Register, this correction notice originally published in the February 19, 1999, Texas Register (24 TexReg 1277) is being republished correctly.

The Texas Natural Resource Conservation Commission submitted proposed amendment for 30 TAC §§70.2, 70.5, 70.7–70.11, 70.51, 70.101, 70.102, and 70.104–70.106, published in the January 29, 1999, issue of the *Texas Register* (24 TexReg 498).

On page 501, parts of the first and second sentences were not underlined to indicate new language.

The proposed §70.10(c) should have been published as follows:

"(c) When an agreement is reached, the executive director shall publish the proposed agreed order in the *Texas Register* for public comment not later than the 30th day before the date on which the public comment period closes, under Texas Water Code, §7.075. Once the proposed agreed order is published, the executive director shall file the agreed order with the chief clerk so that all timely public comments will be received by the executive director before the commission meeting on which the item is set. The chief clerk shall then schedule the agreed order for consideration during a commission meeting under Chapter 10 of this title (relating to Commission Meetings). If the enforcement action is under the jurisdiction of SOAH, the judge shall remand the action to the executive director who will file the agreed order with the chief clerk for commission consideration. The judge is not required to prepare a proposal for decision or memorandum regarding the settlement.

Enforcement Orders

An agreed order was entered regarding HARRIS COUNTY FRESH WATER SUPPLY DISTRICT 1-A, Docket Number 1997-0819-

MWD-E; TNRCC Permit Number 11195-001; Enforcement ID Number 8921 on February 16, 1999 assessing $14,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney at (512) 239-6259 or Mike Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DIAMOND SHAMROCK REFINING COMPANY, L.P., Docket Number 1998-0601-IWD-E; Permit Number 01353; Enforcement ID Number 9154 on February 16, 1999 assessing $6,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AZIZOLAH REZAKHANI DBA LUBE KWIK, Docket Number 1998-0569-AIR-E; TNRCC ID Number DB-4770-J; Enforcement ID Number12360 on February 16, 1999 assessing $2,344 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tracy Harrison, Staff Attorney at (512) 239-1736 or Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LOUISIANA PACIFIC CORPORATION, Docket Number 1998-0641-AIR-E; Account Number HF-0011-W; Enforcement ID Number 434 on February 16, 1999 assessing $13,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding INDUSTRIAL PIPE AND PLASTICS, Docket Number 1998-0308-AIR-E; Account Nos. KA-0041-H and KA-0039-R; Enforcement ID Nos. 12735 and 10973 on February 16, 1999 assessing $10,500 in administrative penalties with $2,100 deferred.

Information concerning any aspect of this order may be obtained by contacting Tel Croston, Enforcement Coordinator at (512) 239-5717, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BENNIE MCGRIFF DBA BENNIE'S AUTOMOTIVE, Docket Number 1998-0768-AIR-E; Account Number DB-4868-O; Enforcement ID Number 12703 on February 16, 1999 assessing $1,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CLAY COOLEY DBA PINNACLE MOTORS, Docket Number 1998-0995-AIR-E; Account Number DF-0573-U; Enforcement ID Number 12859 on February 16, 1999 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PIRATES COVE WATER SUPPLY AND SEWER SERVICE CORPORATION, Docket Number 1998-0588-MWD-E; Expired Permit Number 12553-001; Enforcement ID Number 12572 on February 16, 1999 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF LUBBOCK, Docket Number 1998-0890-MWD-E; WQ Facility ID Number 10353-008; Enforcement ID Number 12786 on February 16, 1999 assessing $11,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MERICHEM-SASOL USA LLC, Docket Number 1998-0737-IHW-E; SWR Number 30595; Enforcement ID Number 1160 on February 16, 1999 assessing $7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tim Haase, Enforcement Coordinator at (512) 239-6007, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SPORTS & FITNESS CLUBS OF AMERICA, INC. DBA "Q" THE SPORTS CLUB, Docket Number 1998-0270-MWD-E; TNRCC ID Number 90101602; Enforcement ID Number 12055 on February 16, 1999 assessing $1,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COMMERCIAL MANUFACTURING CO., INC., Docket Number 1998-0125-IHW-E; SWR Number 37476; Enforcement ID Number 12019 on February 16, 1999 assessing $9,460 in administrative penalties with $1892 deferred.

Information concerning any aspect of this order may be obtained by contacting Sabelyn Pussman, Enforcement Coordinator at (512) 239-6061, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JAMES BREAUX DBA PEMCO EQUIPMENT CO., Docket Number 1998-0384-IHW-E; TNRCC ID Number 34763; Enforcement ID Number 12370 on February 16, 1999 assessing $8500 in administrative penalties with $1,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ANTHONY FOODS, Docket Number 1998-0979-PWS-E; PWS Number 0710073; Enforcement

ID Number 12789 on February 16, 1999 assessing $1,313 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 LONE STAR STEEL COMPANY, Docket Number 1998-0375-PWS-E; PWS Number 1720002; Enforcement ID Number 8369 on February 16, 1999 assessing $1,856 in administrative penalties with $371 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 FLEET FUELING DBA TEXACO FOOD MART #14, Docket Number 1998-0571-PST-E; PST Number 0009315; Enforcement ID Number 12568 on February 16, 1999 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. TAE PARK DBA EXXON TIGER MART, Docket Number 1998-1027-PST-E; Account Number 0070523; Enforcement ID Number 12782 on February 16, 1999 assessing $1,800 in administrative penalties with $360 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 MANSHERA, INC. DBA SUPER STAR #1, Docket Number 1998-0821-PST-E; PST ID Number 0039975; Enforcement ID Number 12581 on February 16, 1999 assessing $6,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAHMOUD HUSAINAT, Docket Number 1998-0537-PST-E; Enforcement ID Number 12825 on February 16, 1999 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Fleming, Enforcement Coordinator at (512) 239-5806, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HULEN STOP, INC., Docket Number 1998-0801-PST-E; TNRCC ID Number 0014932; Enforcement ID Number 12712 on February 16, 1999 assessing $4,375 in administrative penalties.

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.

A default order was entered regarding WOOD ISLAND CO-OP PROPERTY OWNERS ASSOCIATION, Docket Number 1997-0556-PWS-E; PWS Number 2270213; Enforcement ID Number 11439 on February 18, 1999 assessing $4,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Booker Harrison, Staff Attorney at (512) 239-4113 or Bhasker Reddi, Enforcement Coordinator at (512) 239-6646, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-9901123
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 23, 1999

Extension of Comment Period

In the January 29, 1999, issue of the *Texas Register* (24 TexReg 608), the Texas Natural Resource Conservation Commission (commission) published a proposed rule review of 30 TAC Chapter 101, concerning General Rules, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. The proposed rule review stated that the commission must receive all written comments by 5:00 p.m., March 1, 1999. The commission has extended the deadline for receipt of written comments to 5:00 p.m., March 15, 1999.

Comments may be submitted to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 98071-101-AI. For further information, please contact Beecher Cameron, Air Policy and Regulations Division, (512) 239-1495, or Alan Henderson, Air Policy and Regulations Division, (512) 239-1510.

TRD-9901145
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: February 24, 1999

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes 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 **April 4, 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 Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about 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 April 4, 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 Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing.**

(1) COMPANY: William Frank; DOCKET NUMBER: 98-0458-EAQ-E; ENFORCEMENT ID NUMBER: 12447; LOCATION: Jarrell, Williamson County, Texas; TYPE OF FACILITY: property owner; RULE VIOLATED: 30 TAC §213.4(a) by allowing excavation of limestone to occur on this site without submitting an Edwards Aquifer Protection Plan and without receiving TNRCC approval prior to construction; PENALTY: $1,000; STAFF ATTORNEY: M. Camille Morris, Litigation Division, MC 175, (512) 239-3915; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336.

(2) COMPANY: William E. Divin; DOCKET NUMBER: 98-0260-OSI-E; TNRCC ID NUMBER: 2325; LOCATION: 100 East Calhoun Street in Rice, Navarro County, Texas; TYPE OF FACILITY: on-site sewage; RULES VIOLATED: 30 TAC §285.20 and §285.58(a)(3), and Texas Health and Safety Code, §366.051(c) by failing to obtain the necessary TNRCC permit before beginning to repair the on-site sewage facilities; and 30 TAC §285.58(a)(6) and Texas Health and Safety Code, §366.004 by installing approximately 200 linear feet of conventional drainline into a Class IV soil without first performing a soil analysis; PENALTY: $1,500; STAFF ATTORNEY: Ali Abazari, Litigation Division, MC 175, (512) 239-5915; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, MC R-4.

(3) COMPANY: Bill C. Henderson, Sr; DOCKET NUMBER: 98-0761-OSS-E; INSTALLER CERTIFICATE NUMBER: 1087; ENFORCEMENT ID NUMBER: 12626; LOCATION: Montgomery County, Texas; TYPE OF FACILITY: on-site sewage disposal system; RULE VIOLATED: 30 TAC Chapter 285, in violation of Texas Health and Safety Code, §366.004 by installing an on-site sewage facility that does not meet the minimum criteria required; 30 TAC §285.11(f)(4)(D) by failing to implement an appropriate on-site sewage facility design for a small residential lot; 30 TAC §285.12(a)(2) by failing to construct an on-site sewage facility system as a watertight design; 30 TAC §285.13(c)(1) by failing to design and implement an appropriate soil absorption system at the Facility; 30 TAC §285.17 by installing an on-site sewage facility system at the Facility less than 75 feet from a lake; 30 TAC §285.58(a)(10) by abandoning, without just cause, an on-site sewage facility during the installation before or after the final inspection; DISCIPLINARY ACTION RECOMMENDED: six-month suspension of installer certificate of registration; PENALTY: $5,000; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023- 1486.

TRD-9901116
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 23, 1999

Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **April 4, 1999**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on April 4, 1999**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing.**

(1)COMPANY: A. N. Rusche Distributing Company; DOCKET NUMBER: 1998-1182-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 56410; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: gasoline dispensing station; RULE VIOLATED: 30 TAC §115.242(3)(A), (H), and (J), and the Act, §382.085(b), by failing to equip all pumps with nozzles certified by the California Air Resources Board, maintain the vapor processing vacuum unit in proper operating condition, and install gaskets on the vapor return for the regular and premium underground storage tanks (USTs); PENALTY: $2,160; ENFORCEMENT COORDINATOR: Anne Nyffenegger, (512) 239-2554; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2)COMPANY: Mr. Carl Birdsong dba Birdsong's Freeway America; DOCKET NUMBER: 98- 1142-PST-E; IDENTIFIER: Petroleum Storage Tank Identification Number 12950; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: convenience store with the retail sales of gasoline; RULE VIOLATED: 30 TAC §115.244, by failing to conduct daily and monthly inspections of the Stage II vapor recovery equipment; and 30 TAC §115.246, by failing to maintain records of the daily and monthly inspections; PENALTY: $1,250; ENFORCEMENT COORDINATOR: J. Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(3)COMPANY: Mr. Bruce Duncan dba Blackie's Pump Service; DOCKET NUMBER: 98-0836- SLG-E; IDENTIFIER: Enforcement Identification Number 12699; LOCATION: Spearman, Hansford County, Texas; TYPE OF FACILITY: sludge transporter; RULE VIOLATED: 30 TAC §312.143, by failing to deposit grit trap waste at

an authorized facility; and 30 TAC §312.145(a), by failing to manifest transport of grit trap waste on trip tickets; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(4)COMPANY: Bruce Foods Corporation; DOCKET NUMBER: 98-1178-AIR-E; IDENTIFIER: Account Number EE-0206-V; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline dispensing site; RULE VIOLATED: 30 TAC §115.252(2) and the THSC, §382.085(b), by transferring gasoline from a storage vessel which may ultimately be used in a motor vehicle in the El Paso area with a Reid Vapor Pressure greater than seven pounds per square inch absolute; PENALTY: $600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(5)COMPANY: The City of Groves; DOCKET NUMBER: 1998-0867-MWD-E; IDENTIFIER: Permit Number 10094-002; LOCATION: Groves, Jefferson County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10094-002 and the Code, §26.121, by failing to ensure that effluent discharged met the permitted effluent limits and by failing to prevent unauthorized discharges from the collection system; PENALTY: $21,250; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(6)COMPANY: City of Hidalgo; DOCKET NUMBER: 98-0456-MWD-E; IDENTIFIER: Permit Number 11080-001; LOCATION: Hidalgo, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.126, Permit Number 11080-001, and the Code, §26.121, by failing to obtain authorization to commence expansion construction when the facility reached 90% of capacity, by failing to maintain the biochemical oxygen demand individual grab permit limit of 100 milligrams per liter (mpl), the daily average flow limit of 0.407 milligrams per day, the biochemical oxygen demand daily average concentration limit of 30 mpl, and the biochemical oxygen demand daily average loading limit of 102 pounds per day, and by failing to prevent foam in the receiving stream; 30 TAC §317.3(e)(5) and §317.7(e), by failing to equip all lift stations with audible alarms and by failing to secure hazard signs; and 30 TAC §319.11, by failing to provide accurate flow, dissolved oxygen, pH, and ammonia nitrogen measurements; PENALTY: $0; ENFORCEMENT COORDINATOR: Nadine Hall, (956) 430-6034; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7)COMPANY: The City of Kerens; DOCKET NUMBER: 1998-0460-MWD-E; IDENTIFIER: Permit Number 10745-001; LOCATION: Kerens, Navarro County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10745-001 and the Code, §26.121, by allowing an unauthorized discharge of wastewater; PENALTY: $8,750; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(8)COMPANY: The City of O'Brien; DOCKET NUMBER: 1998-0486-PWS-E; IDENTIFIER: Public Water Supply Number 1040005; LOCATION: O'Brien, Haskell County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.106 and the THSC, §341.033(d), by failing to take routine and repeat bacteriological samples; 30 TAC §290.103(5), by failing to provide public notification of the failure to sample and of exceeding the maximum contaminant level (MCL) for coliform; and 30 TAC §290.105, by exceeding the MCL for coliform; PENALTY: $2,031; ENFORCEMENT COORDINATOR: Julie Talkington, (512) 239-0439; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(9)COMPANY: David Allen Coble; DOCKET NUMBER: 1998-1248-OSS-E; IDENTIFIER: Enforcement Identification Number 12988; LOCATION: near Vernon, Hardeman County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §285.58(a)(3) and (11) and the THSC, §366.051(c) and §366.054, by failing to notify the commission and obtain the necessary permitting authority before beginning the onsite sewage facility (OSSF) repairs and by failing to obtain necessary inspections after the OSSF construction; PENALTY: $600; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(10)COMPANY: Four-K Houston Property Company; DOCKET NUMBER: 98-1014-IWD-E; IDENTIFIER: Permit Number 02416; LOCATION: Katy, Waller County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by failing to submit a permit renewal application; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Claudia Chaffin, (512) 239-4717; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11)COMPANY: Mr. Jerry Hopkins; DOCKET NUMBER: 1998-1151-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 1971; LOCATION: Bellmead, McLennan County, Texas; TYPE OF FACILITY: bus maintenance garage; RULE VIOLATED: 30 TAC §334.401(a), by failing to possess a valid UST contractors certificate of registration prior to removing the USTs at the La Vega Independent School District bus fueling facility; PENALTY: $3,125; ENFORCEMENT COORDINATOR: James Jackson, (254) 751-0335; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12)COMPANY: Hunter Industries, Inc.; DOCKET NUMBER: 1998-1250-WR-E; IDENTIFIER: Enforcement Identification Number 12989; LOCATION: Taylor, Williamson County, Texas; TYPE OF FACILITY: construction contracting business; RULE VIOLATED: The Code, §;11.142, 11.1421, 11.1422, 11.081, and 11.121, by failing to obtain a permit from the commission prior to taking, diverting, or appropriating state water; PENALTY: $400; ENFORCEMENT COORDINATOR: Karen Berryman, (512) 239-2172; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(13)COMPANY: Mr. George Hogland dba Lester's Full Service; DOCKET NUMBER: 1998- 1063-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 12256; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b), by failing to provide proper release detection for the suction piping associated with UST systems and by failing to conduct a tank tightness test at least once each year; and 30 TAC §334.54(d)(1)(B), by failing to permanently remove a UST from service which had been temporarily out of service for longer than 12 months; PENALTY: $6,250; ENFORCEMENT COORDINATOR: James E. Jaggers, (806) 796-7092; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(14)COMPANY: Joe Cordell and John Heavyside dba Lledroc Farms West; DOCKET NUMBER: 98-0589-AGR-E; IDENTIFIER: Enforcement Identification Number 11716; LOCATION: Dublin, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.37 and the Code, §26.121, by allowing

an unauthorized discharge of tailwater runoff from the application field; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(15)COMPANY: Mirror Industries a.k.a. Finley Investments, Inc.; DOCKET NUMBER: 1998- 0947-IHW-E; IDENTIFIER: Solid Waste Registration Number 12444; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: electroplater; RULE VIOLATED: 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 Code of Federal Regulations (CFR) §262.34(a)(1)(ii), incorporating §265.193(a) - (f), by failing to install adequate secondary containment for two hazardous waste tanks; 30 TAC §335.69(a)(1)(B), §335.112(a)(9), and 40 CFR §262.34(a)(1)(ii), incorporating §265.192(a), (b), (d), (e), and (g), by failing to ensure that the foundation and structure of a tank system were adequate, obtain a professional engineer's certification of the tank system, test the tank for tightness, protect ancillary equipment from damage, and keep on file written statements from the persons which certified the design of the tank system; 30 TAC §335.62, §335.504, and 40 CFR §262.11, by failing to perform a hazardous waste determination on two wastes; 30 TAC §335.431(c) and 40 CFR §268.7(a), by failing to determine through testing or process knowledge whether wastes were restricted from land disposal; 30 TAC §335.6 and §335.502, by failing to notify the TNRCC of all industrial and hazardous wastes generated and all waste management units and by failing to convert waste codes to the new waste classification and coding system; 30 TAC §335.10(b)(22), by failing to record the waste classification code on manifests; 30 TAC §335.69(a)(1)(A) and (B), incorporating §335.112(a)(8) and (9), and 40 CFR §262.34(a)(1), by failing to perform daily tank inspections or weekly container storage area inspections; and 30 TAC §335.69(a)(4), incorporating §335.112(a)(1), and 40 CFR §262.34(a)(4), incorporating 40 CFR §265.16, by failing to provide documentation which demonstrated that personnel have completed the required initial training or annual reviews of the initial training; PENALTY: $18,432; ENFORCEMENT COORDINATOR: Anne Rhyne, (512) 239-1291; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16)COMPANY: New Braunfels General Store International; DOCKET NUMBER: 98-1274-AIR-E; IDENTIFIER: Account Number CS-0024-G; LOCATION: New Braunfels, Comal County, Texas; TYPE OF FACILITY: fiberglass products manufacturing plant; RULE VIOLATED: 30 TAC §122.130(a), §122.121, and the Act, §382.054 and §382.085(b), by failing to submit a timely federal operating permit application and by operating emission units at the site without a permit; PENALTY: $6,000; ENFORCEMENT COORDINATOR: David D. Turner, (210) 403-4032; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(17)COMPANY: Northwest Harris County Municipal Utility District Number 9; DOCKET NUMBER: 98-1012-MWD-E; IDENTIFIER: Permit Number 11948-001; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(2) and the Code, §26.121, by failing to submit a permit renewal application prior to the permit expiration date; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18)COMPANY: Olivas Aviation; DOCKET NUMBER: 1998-0804-PST-E; IDENTIFIER: Petroleum Storage Tank Facility Identification Number 16388; LOCATION: Fabens, El Paso County, Texas; TYPE OF FACILITY: aviation fueling; RULE VIOLATED: 30 TAC §334.50(a)(1)(A), by failing to have a method of release detection that is capable of detecting a release from any portion of the system that contains regulated substances; 30 TAC §334.51(b), by failing to have spill and overfill prevention equipment and tight-fill connections; and 30 TAC §115.247(2), by failing to provide documentation of a current exemption for Stage II; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Joyce Ford, (915) 778-9634; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(19)COMPANY: Petroleum Wholesale, Incorporated; DOCKET NUMBER: 1998-1041-AIR-E; IDENTIFIER: Account Number HG-0494-H; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: gasoline terminal; RULE VIOLATED: 30 TAC §115.216(a)(1), (2)(A) and (D), (7)(A), and the Act, §382.085(b), by failing to have readily available daily records of the total throughput of volatile organic compounds (VOCs) loaded at the terminal, records of continuous monitoring and recording of the exhaust gas temperature immediately downstream of a direct-flame incinerator, records showing the date and reason for any maintenance and repair of the required control devices and the estimated quantity and duration of VOC emissions during such activities, and records of the results of the required fugitive monitoring and maintenance program monitoring; PENALTY: $800; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(20)COMPANY: Dariush Khairkhah dba The Pit Pros; DOCKET NUMBER: 1998-1121-AIR-E; IDENTIFIER: Account Number DB-4948-P; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: motor vehicle inspection station; RULE VIOLATED: 30 TAC §114.50(e)(1) and the Act, §382.085(b), by issuing vehicle inspection certificates without completely and properly performing all required emissions testing; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Sheila Smith, (512) 239-1670; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(21)COMPANY: Ranger Excavating, Inc.; DOCKET NUMBER: 98-0965-AIR-E; IDENTIFIER: Account Number 90-6934-S; LOCATION: Leander, Williamson County, Texas; TYPE OF FACILITY: limestone quarry with rock crushers; RULE VIOLATED: 30 TAC §116.115(a), Permit Numbers R-2069 and R-6934A, and the Act, §382.085(b), by failing to spray with water or cover with a canvas or similar type covering the aggregate load of transport vehicles leaving the site and by failing to ensure that all abatement equipment was in good condition and operating properly; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Chris Smith, (512) 339-2929; REGIONAL OFFICE: 1921 Cedar Bend, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(22)COMPANY: Rex-Hide Industries, Inc.; DOCKET NUMBER: 98-0731-IWD-E; IDENTIFIER: Permit Number 01452; LOCATION: Tyler, Smith County, Texas; TYPE OF FACILITY: custom rubber extrusion plant; RULE VIOLATED: Permit Number 01452 and the Code, §26.121, by exceeding the permitted copper daily average discharge limits of 0.015 mpl and the permitted copper daily maximum discharge limits of 0.032 mpl; PENALTY: $3,750; ENFORCEMENT COORDINATOR: Claudia Chaffin, (512) 239-4717; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(23)COMPANY: Robco Properties, Ltd.; DOCKET NUMBER: 98-1013-EAQ-E; IDENTIFIER: Enforcement Identification Number 12818; LOCATION: near San Antonio, Medina County, Texas; TYPE OF FACILITY: residential development; RULE VIOLATED: 30 TAC §213.4(a), by failing to get prior TNRCC approval of an

Edwards Aquifer protection plan before initiating construction; and 30 TAC §290.51 and the THSC, §341.041, by failing to pay public health service fees; PENALTY: $800; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(24)COMPANY: South Texas Electric Cooperative, Inc.; DOCKET NUMBER: 98-0832-AIR-E; IDENTIFIER: Account Number VC-0026-O; LOCATION: Nursery, Victoria County, Texas; TYPE OF FACILITY: electric utility; RULE VIOLATED: 30 TAC §122.130(c)(1), §122.121, and the Act, §382.054 and §382.085(b), by failing to submit an application for a federal operating permit by the January 25, 1997 deadline and by failing to obtain permit authority for continued plant operation; PENALTY: $5,000; ENFORCEMENT COORDINATOR: Guadalupe Lopez, (512) 980-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(25)COMPANY: Jim Brazil dba Sterling Auto; DOCKET NUMBER: 98-1268-AIR-E; IDENTIFIER: Account Number HQ-0066-T; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.20(c)(1) and the Act, §382.085(b), by offering for sale a vehicle with missing or inoperable vehicle emission control devices; PENALTY: $500; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(26)COMPANY: Stratford By-Products; DOCKET NUMBER: 98-1168-AGR-E; IDENTIFIER: Enforcement Identification Number 13014; LOCATION: southeast of Stratford, Sherman County, Texas; TYPE OF FACILITY: livestock rendering; RULE VIOLATED: 30 TAC §321.56 and the Code, §26.121, by failing to properly dispose of solid waste materials; 30 TAC §321.57, by failing to prevent discharge of wastewater from the retention pond and storage tank; and 30 TAC §321.55, by failing to provide protection of groundwater by providing properly lined wastewater retention storage; PENALTY: $8,360; ENFORCEMENT COORDINATOR: Don Manning, (806) 353-9251; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(27)COMPANY: Thomas Brothers Grass, Ltd.; DOCKET NUMBER: 1998-1138-WR-E; IDENTIFIER: Enforcement Identification Number 12919; LOCATION: Granbury, Hood County, Texas; TYPE OF FACILITY: commercial grass farm; RULE VIOLATED: The Code, §11.081 and §11.121, by failing to obtain TNRCC authorization to divert and use state water in excess of 300 acre feet per year authorized under Certificate of Adjudication Number 12-4114, by irrigating approximately 254.13 acres not specified by Certificate of Adjudication Number 12-4114, by failing to apply for and obtain an authorized diversion point prior to diversion and use of state water, by failing to obtain authorization to amend Certificate of Adjudication Number 12-4062 to change the place of use, and by failing to obtain TNRCC authorization to amend Certificate of Adjudication Number 12- 4114 to establish additional diversion points; PENALTY: $1,250; ENFORCEMENT COORDINATOR: Pam Campbell, (512) 239-4493; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(28)COMPANY: Wayne Moerman dba Triple X Dairy; DOCKET NUMBER: 98-0931-AGR-E; IDENTIFIER: Permit Number 03669; LOCATION: Comanche, Comanche County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: Permit Number 03669 and the Code, §26.121, by failing to prevent an unauthorized discharge of tailwater from the facility's irrigation field; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Brian Lehmkuhle, (512) 239-4482; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(29)COMPANY: Tiffany Brick Company, L.P. dba US Brick; DOCKET NUMBER: 98-1266- AIR-E; IDENTIFIER: Account Number PA-0029-E; LOCATION: Mineral Wells, Palo Pinto County, Texas; TYPE OF FACILITY: clay brick manufacturing; RULE VIOLATED: 30 TAC §122.121, §122.130(b), and the Act, §382.085(b) and §382.054, by continuing to operate without a federal operating permit and by failing to submit a timely and complete abbreviated initial federal operating permit application; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Michael De La Cruz, (817) 469-6750; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(30)COMPANY: Village of Briarcliff; DOCKET NUMBER: 98-0827-PWS-E; IDENTIFIER: Public Water Supply Number 2270007; LOCATION: Spicewood, Travis County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(1), (m), and (p)(1), by failing to properly complete the monthly operation reports, initiate a maintenance program to facilitate cleanliness, and inspect the ground storage facilities annually; 30 TAC §290.103(5), by failing to notify the public regarding inadequate completion of the monthly operation reports; 30 TAC §;290.119(1) and (2), 290.46(e)(2), and 290.42(d)(8)(B), by failing to have properly functioning and calibrated continuous turbidity and disinfectant residual monitors or have a surface water operator on duty when the facility is in operation and by failing to measure and record settled water turbidity properly and provide a settled water turbidity of less than five nephelometric turbidity units; 30 TAC §290.44(d) and §290.46(u), by failing to maintain a minimum pressure of 35 pounds per square inch at each service connection; 30 TAC §290.42(d)(7)(B) and (I), (10)(C) and (D), and (13), by failing to provide chemical feed equipment that is easily adjustable to variations in the flow of water being treated and to apply chemicals in a manner which will ensure optimal finished water quality, equip each filter unit with a manually adjustable rate-of-flow controller, and provide an adequately equipped facility laboratory; 30 TAC §290.42(j), by failing to compile and keep up-to- date a thorough plant operations manual for operator review and reference; and 30 TAC §290.46(t) and §290.43(c)(6), by failing to maintain all water storage facilities in a watertight condition; PENALTY: $2,675; ENFORCEMENT COORDINATOR: Sabelyn Pussman, (512) 239-6061; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(31)COMPANY: Witco Corporation; DOCKET NUMBER: 98-0131-IHW-E; IDENTIFIER: Solid Waste Registration Number 31107; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: soap and detergent manufacturer; RULE VIOLATED: 30 TAC §335.6(c), by failing to update the Notice of Registration (NOR) regarding certain wastes and by failing to provide notification of all solid waste management units; 30 TAC §335.9(a)(2), by failing to report waste shipped off-site using the waste code on the manifest; 30 TAC §335.13(a), by failing to retain copies of two manifests; 30 TAC §335.69(a)(1)(B), by failing to provide secondary containment for NOR Unit 003, provide adequate secondary containment for NOR Unit 002, conduct annual leak tests or integrity inspections for NOR Units 002 and 003, and conduct and document in the facility's operating record daily tank system inspections for NOR Units 002, 003, and an unregistered hazardous waste tank; 30 TAC §335.431(c), by failing to retain copies of notices and certifications regarding restricted waste sent for land disposal; and 30 TAC §335.513, by failing to maintain the required waste classification documentation for wastes generated at the facility; PENALTY: $16,240; ENFORCEMENT COORDINA-

TOR: Susan Johnson, (512) 239-2555; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9901114
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 23, 1999

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 **April 4, 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 AOs 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 April 4, 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: Mr. Kenneth Haddad dba H and H Car Wash; DOCKET NUMBER: 98-0181- AIR-E; TNRCC ID NUMBER: EE-1091-H; ENFORCEMENT ID NUMBER: 313; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: car wash; RULE VIOLATED: 30 TAC §115.252 and Texas Health and Safety Code, §382.085(b) by storing fuel intended for use in a motor vehicle which had a Reid vapor pressure greater than 7.0 pounds per square inch absolute during the Reid vapor pressure control period, as documented during an inspection conducted on June 10, 1997; PENALTY: $1,000; STAFF ATTORNEY: Laura Kohansov, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633.

(2) COMPANY: Llano Estacado Winery, Incorporated; DOCKET NUMBER: 98-0142-MWD-E; ENFORCEMENT ID NUMBER: 12142; TNRCC ID NUMBER: 0003963-001; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: industrial wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(2) by failing to apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit; PENALTY: $5,000; STAFF ATTORNEY: John Peeler, Litigation Division, MC 175, (512) 239-3506; REGIONAL OFFICE: 4650 50th Street, Suite 600, Lubbock, Texas 79414-3509, (806) 796-7092.

(3) COMPANY: Sunpoint Aviation, Incorporated; DOCKET NUMBER: 98-0445-PST-E; TNRCC ID NUMBERS: 34409 AND 2275; ENFORCEMENT NUMBER: 12446; LOCATION: Longview, Gregg County, Texas; TYPE OF FACILITY: five underground storage tanks; RULES VIOLATED: 30 TAC §334.51(b)(2)(B) and §334.51(b)(2)(C) by failing to install spill containment equipment or overfill prevention equipment for the underground storage tank systems, 30 TAC §334.50(b)(1)(B)(I) by failing to conduct tank tightness tests at least once each year when utilizing a combination of tank tightness testing and inventory control as a release detection method; 30 TAC §334.50(d)(1)(B)(iii)(I) by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day; 30 TAC §334.50(d)(1)(B)(ii) by failing to reconcile inventory records on a monthly basis PENALTY: $13,500; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903)535-5100.

(4) COMPANY: Travis Vista Water and Sewer Supply Corporation; DOCKET NUMBER: 1998-0116-MWD-E; ENFORCEMENT NUMBER: 12116; LOCATION: 13101 Indigo Cove, Austin, Travis County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TNRCC Permit Number 11531-001 and Texas Water Code, §26.121 by failing to comply with the permitted daily average ammonia-nitrogen limit of 3.0 milligrams per liter from June through September 1997; PENALTY: $10,625; STAFF ATTORNEY: Tracy L. Harrison, Litigation Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(5) COMPANY: Triangle Industrial Services, Incorporated; DOCKET NUMBER: 1998-0713- IHW-E; ENFORCEMENT NUMBER: 12608; LOCATION: 14000 Interstate Highway 10 West, Orangefield, Orange County, Texas; TYPE OF FACILITY: industrial waste transport service; RULES VIOLATED: 30 TAC §335.2(b) by delivering hazardous waste to an unauthorized facility at 602 Lee Street, Port Neches, Texas; and 30 TAC §335.11(a) and (d) and 40 Code of Federal Regulations, §263.20(a) and (d) by failing to utilize the required manifests while accepting containers of hazardous waste for transport and while delivering hazardous waste from Port Arthur, Texas, to an unauthorized off-site facility at 602 Lee Street, Port Neches, Texas; PENALTY: $4,000; STAFF ATTORNEY: William Puplampu, Litigation Division, MC 175, (512) 239-0677; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77743-1892, (409) 898- 3838.

TRD-9901115
Paul C. Sarahan
Director, Litigation Division
Texas Natural Resource Conservation Commission
Filed: February 23, 1999

Notice of Petition for District Creations

The following Notices for creations of new districts were issued on February 11, 1999, pursuant to Article XVI, Section 59 of The Constitution of the State of Texas, Chapter 51 of the Texas Water Code, and 30 Texas Administrative Code Chapter 293.12.

COMMERCIAL LAKEWAY LIMITED PARTNERSHIP has Petitioned for creation of TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11. The proposed District's Internal Control Number is 101698-D01. The Petition has been signed by E. J. Santoro and states that: (1) the petitioners own a majority in value of the land

to be included in the proposed District; (2) all lienholders on the land to be included in the proposed District have consented to the creation of the proposed District; (3) the proposed District will contain approximately 369.714 acres located within Travis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of Lakeway, and is not within such jurisdiction of any other city. The Petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the Petition. According to the Petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $25,872,824.

COMMERCIAL LAKEWAY LIMITED PARTNERSHIP has Petitioned for creation of TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 12. The proposed District's Internal Control Number is 101698-D02. The Petition has been signed by E. J. Santoro and states that: (1) the petitioners own a majority in value of the land to be included in the proposed District; (2) all lienholders on the land to be included in the proposed District have consented to the creation of the proposed District; (3) the proposed District will contain approximately 472.21 acres located within Travis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of Lakeway, and is not within such jurisdiction of any other city. The Petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the Petition. According to the Petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $25,872,824.

COMMERCIAL LAKEWAY LIMITED PARTNERSHIP has Petitioned for creation of TRAVIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 13. The proposed District's Internal Control Number is 101698-D03. The Petition has been signed by E. J. Santoro and states that: (1) the petitioners own a majority in value of the land to be included in the proposed District; (2) all lienholders on the land to be included in the proposed District have consented to the creation of the proposed District; (3) the proposed District will contain approximately 645.53 acres located within Travis County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of Lakeway, and is not within such jurisdiction of any other city. The Petition further states that the proposed District will (1) construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the property in the proposed District; and (3) control, abate and amend local storm waters or other harmful excesses of waters, as more particularly described in an engineer's report filed simultaneously with the filing of the Petition. According to the Petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the petitioners, from the information available at this time, that the cost of said project will be approximately $38,850,000.

If a written hearing request is not filed during the 30-day comment period, which extends from the day after the date of the second newspaper publication, the Executive Director may approve the above applications. To request a hearing on one of the above applications, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the petitioner and the TNRCC Internal Control No.; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the granting of the request in a way not common to the general public; and (5) the location of your property relative to the proposed district's boundaries.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing on this application must be submitted in writing during the 30-day Notice period to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. Written public comments may also be submitted to the Chief Clerk's Office during the Notice period. For information concerning technical aspects of these application, contact Water Utilities District Administration, MC 152, at the same P. O. Box address above. For information concerning hearing procedures or citizen participation, contact Blas Coy, Public Interest Counsel, MC 103, at the same P. O. Box address above. Individual members of the public who wish to inquire about the information contained in these Notices, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9901122
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 23, 1999

Notice of Water Quality Applications

The following notices were issued during the period of February 16 to February 17, 1999.

Written comments and requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section below, within 30 days of the date issue date of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice.

Written hearing requests, public comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information below. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director

determines that there is a significant degree of public interest in the application. Written comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087. For additional information, please contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

Listed are the names of the applicants, the type of application (new permit, amendment, or renewal), the permit number, the type of facility, and the location of the facility.

VILLAGE OF BRIARCLIFF, HC 01, Box 24, Briarcliff, Texas 78669; The wastewater treatment facilities and disposal area are located approximately 3.8 miles northeast of the intersection of State Highway 71 and Farm-to-Market Road 2322 (Pace Bend Road) and approximately 0.4 mile northeast of the intersection of Farm-to-Market Road 2322 and Cat Hollow Club Drive in Travis County, Texas; Major amendment to Permit Number 13639-001.

NOLTEX L.L.C., 12220 Strang Road, La Porte, Texas 77571-9740; The plant site is located at 12220 Strang Road, approximately 0.5 miles east of the intersection of Strang Road and Sens Road, Harris County, Texas; New permit, Proposed Texas Pollutant Discharge Elimination System TPDES Permit Number 04029.

TRD-9901148
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 24, 1999

Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued January 26 - February 11, 1999.

Temporary Permit Number TP-8063 by Texas Utilities Pipeline Services for diversion of 1 acre-foot in a 1-year period for industrial and mining (boring under Red Oak Creek and hydrostatic testing) purposes. Water may be diverted from Red Oak Creek tributary o the Trinity River, Trinity River Basin for mining and industrial purposes at a point where Red Oak Creek crosses the TUPS ROW app. 3.5 miles NE of Palmer and 3.0 miles S of Ferris in Ellis County, Texas.

Temporary Permit Number TP-8064 by Torres Ready-Mix by diversion of 10 acre-feet in a 1-year period for mining (sand and gravel washing) use. Water may be diverted from the Nueces River, Nueces River Basin for mining purposes at a point where Nueces River crosses private property (consent acquired) app. 25 miles N of Crystal City and 7.0 miles N of La Pryor near FARM-TO-MARKET ROAD 1436 off U.S. 83 in Zavala County, Texas.

Temporary Permit Number TP-8065 by Odell Geer Construction Co., Inc. for diversion of 1 acre-foot in a 1-year period for industrial (highway construction) use. Water may be diverted from the Little River, Brazos River Basin for industrial purposes (highway construction) at a point where Little River crosses the ROW of FARM-TO-MARKET ROAD 437 app. 15 miles W of Cameron and 2 miles N of Val Verde in Milam County, Texas.

Temporary Permit Number TP-8066 by Hunter Industries, Inc. for diversion of 1 acre-foot in a 1-year period for industrial (highway construction) use. Water may be diverted from Plum Creek, tributary of San Marcos River, tributary of Guadalupe River, tributary of San Antonio River Basin for industrial purposes (highway construction) at a point where Plum Creek crosses the ROW of US 90 app. 15.5 mi. S of Lockhart and 2.5 mi. SE of Lulling in Caldwell County, Texas.

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-9901121
LaDonna Castanuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: February 23, 1999

North Central Texas Council of Governments

Request for Proposals

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant firm to assist with completion of a "before" and "after" assessment of the Dallas Area Rapid Transit (DART) Light Rail Starter System. Assistance in collection of the remaining data and summarization of the data into a useful format is requested.

Due Date.

Proposals must be submitted no later than 5:00 p.m. Central Time on Friday, March 12, 1999, to Julie Dunbar, Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, P.O. Box 5888, Arlington, Texas 76005–5888. For more information and copies of the Request for Proposals, contact Julie Dunbar, (817) 695–9240.

Contract Award Procedures.

The firm selected to perform this study will be recommended by a Project Review Committee (PRC). The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

Regulations.

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and

Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-9901098
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 22, 1999

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This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to select a consultant firm to provide services related to calibration and validation of a full, multimodal travel demand model system on Windows NT-based computers. The consultant's primary role is envisioned to be that of an expert travel model "coach" but may include direct responsibilities for specific components of the model system.

Due Date.

Proposals must be submitted no later than 5:00 p.m. Central Time on Friday, March 26, 1999, to Ken Cervenka, Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, P.O. Box 5888, Arlington, Texas 76005–5888. For more information and copies of the Request for Proposals, contact Ken Cervenka, (817) 695–9266.

Contract Award Procedures.

The firm selected to perform this study will be recommended by a Project Review Committee (PRC). The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue a contract award.

Regulations.

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

TRD-9901125
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: February 23, 1999

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Public Utility Commission of Texas

Notice of Application for Approval of Green Pricing Tariff

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on February 11, 1999, an application for approval of a green pricing tariff pursuant to the commission's order in Docket Number 17751 and pursuant to Substantive Rule §25.251. A summary of the application follows.

Docket Title and Number: Application of Texas New Mexico Power Company for Approval of Its Green Pricing Tariff Pursuant to the Commission's Order in Docket Number 17751, Docket Number 20472.

The Proceeding: Texas New Mexico Power Company (TNMP) filed its green pricing tariff in compliance with the Commission's Order in Docket Number 17751 and in accordance with P.U.C. Substantive Rule §25.251. The proposed tariff would be available to customers who qualify under the residential and general service rate schedules. The renewable energy price shall include the cost of all power needs (capacity, energy, and reserves for reliability) of the customer for the renewable energy portion subscribed to by the customer. The subscription amount and cost of the renewable energy premium shall be set out in the agreement for renewable energy service. The proposed renewable energy premium for residential customers during the billing months of May - October would be 0.0294625, and during the months of November - April would be 0.0364705. For general service customers the renewable energy premium would be 0.0318862 during the months of May - October and 0.0337777 during the months of November - April.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936- 7120 on or before March 12, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. This proceeding has been assigned Docket Number 20472.

TRD-9901021
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 1999

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Notice of Application for Approval of IntraLATA Equal Access Implementation Plan and Petition for Waiver of Certain Provisions of Public Utility Commission Substantive Rule §23.103(d)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on February 2, 1999, pursuant to P.U.C. Substantive Rule §23.103 for approval of an intraLATA equal access implementation plan and petition for waiver.

Project Number: Application of OpTel Telecom Inc. for Approval of IntraLATA Equal Access Implementation Plan and Petition for Waiver of Certain Provisions Under P.U.C. Substantive Rule §23.103(d). Project Number 20414.

The Application: OpTel Telecom Inc.'s (OpTel) proposed intraLATA equal access implementation plan will allow a telephone subscriber to select one primary interexchange carrier (PIC) for all 1+ and 0+

interLATA toll calls and either the same carrier or a different carrier for all 1+ and 0+ intraLATA toll calls. OpTel requests suspension of obligation or modification until May 1, 1999, of the requirement under P.U.C. Substantive Rule §23.103(d)(2) to implement intraLATA equal access no later than February 8, 1999.

OpTel also requests a waiver of the requirement that it file an intraLATA equal access plan no later than 180 days prior to offering in-region interLATA toll service. OpTel requests that the commission find that good cause exists to waive §23.103(d)(2)(C) so that OpTel may continue reselling long distance service in Texas as its intraLATA equal access plan is in the process of being approved and implemented.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the Public Utility Commission Office of Customer Protection at (512) 936-7120 on or before March 15, 1999. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All comments should reference Project Number 20414.

TRD-9901129
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 17, 1999, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154 - 54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of IP Communications Corporation for a Service Provider Certificate of Operating Authority, Docket Number 20520 before the Public Utility Commission of Texas.

Applicant intends to provide the entire range of voice grade and data telecommunications services to business and residential customers.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120 no later than March 10, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9901101
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 1999

Notices of Applications for Waiver and Extension of Filing Deadline Under Public Utility Commission Substantive Rule §23.103(f)

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of ten applications on February 12, 1999, for waiver and extension of the filing deadline contained in P.U.C. Substantive Rule §23.103(f).

Project Titles and Numbers: Application of Blossom Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20490; Application of XIT Rural Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20491; Application of West Texas Rural Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20492; Application of Southwest Arkansas Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20493; Application Wes-Tex Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20494; Application of South Plains Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20495; Application of Santa Rosa Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20496; Application of Tatum Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20497; Application of North Texas Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20498; and Application of Mid-Plains Rural Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20499. (Applicants)

The Applications: Applicants request a waiver and extension of the filing deadline contained in P.U.C. Substantive Rule §23.103(f) which allows a dominant certified telecommunications utility (DCTU) to impose an annual surcharge to recover certain costs associated with the implementation of intraLATA equal access. To impose a surcharge a DCTU must file with the commission by February 15 of each year an application for approval of a tariff imposing this surcharge. The amount of the surcharge is computed using a formula based on the total intraLATA toll minutes of use.

Applicants request the commission extend the filing deadline for application under P.U.C. Substantive Rule §23.103(f) from February 15, 1999 until September 15, 1999, in order to accumulate actual cost data to compute a proper division of the implementation costs between applicants and the intraLATA toll providers.

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 March 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. Please reference the appropriate project number.

TRD-9901132
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of twelve applications on Febru-

ary 12, 1999, for waiver and extension of the filing deadline contained in P.U.C. Substantive Rule §23.103(f).

Project Titles and Numbers: Application of Livingston Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20500; Application of Alenco Communications, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20501; Application of Brazos Telecommunications, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20502; Application of Brazos Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20503; Application Cap Rock Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20504; Application of Muenster Telephone Corp. of Texas for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20505; Application of Electra Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20506; Application of Peoples Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20507; Application of Riviera Telephone Company, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20508; Application of Comanche County Telephone Company, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20509; Application of Lipan Telephone Company for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20510; and Application of Cumby Telephone Cooperative, Inc. for Waiver and Extension of the Filing Deadline in P.U.C. Substantive Rule §23.103(f), Project Number 20511. (Applicants)

The Applications: Applicants request a waiver and extension of the filing deadline contained in P.U.C. Substantive Rule §23.103(f) which allows a dominant certified telecommunications utility (DCTU) to impose an annual surcharge to recover certain costs associated with the implementation of intraLATA equal access. To impose a surcharge a DCTU must file with the commission by February 15 of each year an application for approval of a tariff imposing this surcharge. The amount of the surcharge is computed using a formula based on the total intraLATA toll minutes of use.

Applicants request the commission extend the filing deadline for application under P.U.C. Substantive Rule §23.103(f) from February 15, 1999 until September 15, 1999, in order to accumulate actual cost data to compute a proper division of the implementation costs between applicants and the intraLATA toll providers.

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 March 15, 1999. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. Please reference the appropriate project number.

TRD-9901133
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

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Notices of Applications 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 December 21, 1998 and supplemental application on February 9, 1999, 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 Magic Valley Electric Cooperative, Inc. (MVEC) to Amend Certificated Service Area Boundaries (Service Area Exception) within Kenedy County, Docket Number 20270 before the Public Utility Commission of Texas.

The Application: In Docket Number 20270, MVEC requests a service area exception with Central Power and Light Company (CPL) in order to allow CPL to provide electric service to the ranch house, some cattle pens, and a water well for a single residential customer, who is requesting service. CPL has a line approximately two miles from the requested service whereas MVEC nearest line is approximately eight miles.

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 10 days of this notice. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9901022
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 19, 1999

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 16, 1999, 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. to Amend a Certificate of Convenience and Necessity to Construct a Proposed Transmission Line within Cooke County, Docket Number 20516 before the Public Utility Commission of Texas.

The Application: In Docket Number 20516, Brazos Electric Power Cooperative, Inc. (Brazos) requests approval to construct 6.3 miles of 138-kV (to be initially operated at 69-kV) transmission line, to be known as Salem Loop transmission line project within Cooke County. The proposed project is being constructed to improve service and reliability, due to considerable growth and development in the area. Currently, this area of Brazos' electrical system is served over long feeder lines from the Salem substation.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at PO 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-9901100
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 22, 1999

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for City of Hurst, Hurst, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for an Optional Features Addition to the Existing PLEXAR-Custom Service for City of Hurst in Hurst, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20525.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an optional features addition to the existing PLEXAR-Custom service for city of Hurst in Hurst, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Fort Worth exchange, and the geographic market for this specific PLEXAR-Custom service is the Dallas LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9901130
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 to provide SONET OC-3 Ring Connection with a DS3 Payload to ALCATEL in Plano.

Tariff Title and Number: GTE-Southwest, Inc.'s (GTE-SW) Notice of Intent to File a Customer-Specific Contract to Provide SONET OC-3 Ring Connection with a DS3 Payload to ALCATEL in Plano Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20513.

The Application: GTE-SW intends to file an application on or around February 22, 1999 to provide SONET OC-3 Ring Connection with a DS3 Payload to ALCATEL in Plano. This service is comprised of high speed, SONET-based services which provide connectivity between a customer-dedicated location and at least one telephone company service wire center. GTE-SW proposes to offer this service in the Plano, Texas exchange.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512)936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9901131
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an optional features addition to the existing PLEXAR-Custom service for SBC Communications in San Antonio, Texas

Tariff Title and Number: Southwestern Bell Telephone Company's Notice of Intent to File an Application for an Optional Features Addition to the Existing PLEXAR-Custom Service for SBC Communications in San Antonio, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 20544.

The Application: Southwestern Bell Telephone Company is requesting approval of its application for an optional features addition to the existing PLEXAR-Custom service for SBC Communications in San Antonio, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the San Antonio exchange, and the geographic market for this specific PLEXAR- Custom service is the San Antonio LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9901134
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule §23.28

Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after February 22, 1999, an application for approval of promotional rates pursuant to P.U.C. Substantive Rule §23.28.

Tariff Title and Number: Application of Brazos Telecommunications, Inc. for Approval of Promotional Rates Pursuant to P.U.C. Substantive Rule §23.28. Tariff Control Number 20485.

The Application: Brazos Telecommunications, Inc. (BTI) is requesting approval for a waiver of nonrecurring, installation charges for a promotional period. BTI will request a waiver of the installation charges for existing residential and business customers to subscribe to specific services, or packages during four specific time periods in 1999, as outlined in the application.

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, PO 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 Tariff Control Number 20485.

TRD-9900996
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

Notice is given to the public of the intent to file with the Public Utility Commission of Texas, on or after February 22, 1999, an application for approval of promotional rates pursuant to P.U.C. Substantive Rule §23.28.

Tariff Title and Number: Application of Brazos Telephone Cooperative, Inc. for Approval of Promotional Rates Pursuant to P.U.C. Substantive Rule §23.28. Tariff Control Number 20486.

The Application: Brazos Telephone Cooperative, Inc. (Brazos) is requesting approval for a waiver of nonrecurring, installation charges for a promotional period. Brazos will request a waiver of the installation charges for existing residential and business customers to subscribe to specific services, or packages during four specific time periods in 1999, as outlined in the application.

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, PO 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 Tariff Control Number 20486.

TRD-9900997
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

Notice of Proceeding to Modify ERCOT Transmission Rates for 1999 Pursuant to Substantive Rules §23.67

Notice is given to the public of the filing with the Public Utility Commission of Texas (the commission) on January 28, 1999, an order initiating a proceeding to modify the Electric Reliability Council of Texas (ERCOT) transmission rates for 1999 pursuant to Substantive Rule §23.67.

Docket Title and Number: Proceeding to Modify ERCOT Transmission Rates for 1999 Pursuant to Substantive Rule §23.67. Docket Number 20381.

The Proceeding: The commission's rule on transmission pricing calls for transmission rates to be based on the most-recent peak loads and the megawatt-mile impacts that are calculated from the projected loads and resources for the next summer season. The Electric Reliability Council of Texas (ERCOT) Independent System Operator (ISO) has received information on 1998 peak loads and projected 1999 loads and resources, and is in the process of calculating the megawatt - mile impacts associated with the 1999 loads and resources. Section 23.67(g) includes a transition mechanism that is to be adjusted each of the first three years that the transmission pricing under the rule is in effect. The pricing mechanism in Substantive Rule §23.67 was first applied in 1997, and an adjustment of the transition mechanism was applied in 1998. This proceeding is being initiated to establish the transmission customers, in the manner provided in P.U.C. Substantive Rules §23.67 and §23.70, to be effective in calendar year 1999.

Persons who wish to intervene in the proceeding, or comment upon the action sought, should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, PO 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 telephones (TTY) may contact the commission at (512) 936-7136. This proceeding has been assigned Docket Number 20381.

TRD-9900998
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

Public Notices of Amendments to Interconnection Agreements

On February 12, 1999, Southwestern Bell Telephone Company and e.spire, collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20480. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20480. 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 March 17, 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 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, PO 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 20480.

TRD-9900992
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

On February 12, 1999, Southwestern Bell Telephone Company and Winstar Wireless of Texas, Inc., collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20481. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20481. 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 March 17, 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 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, PO 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 20481.

TRD-9900993
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

On February 11, 1999, Southwestern Bell Telephone Company, Teleport Communications Houston, Inc. and TCG Dallas, collectively referred to as applicants, filed a joint application for approval of an amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 20482. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 20482. 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 March 17, 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 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, PO 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 20482.

TRD-9900994
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

Public Notices of Interconnection Agreements

On February 11, 1999, Southwestern Bell Telephone Company and SprintCom, 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 20483. 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 20483. 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 March 17, 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 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, PO 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 20483.

TRD-9900995
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 17, 1999

On April 2, 1999, CT Cube, Inc. (CT Cube) is scheduled to file its interconnection agreement with GTE Southwest, Inc. (GTESW) 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 interconnection agreement is to be filed pursuant to the arbitration award in Petition of CT Cube, Inc. for Arbitration to Establish an Interconnection Agreement with GTE Southwest, Inc. pursuant to Subst. R. §252(b) of the Telecommunications Act 1996. The petition for arbitration has been designated Docket Number 20028. The petition for arbitration and the underlying interconnection agreement will be available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement that is a result of arbitration. Pursuant to FTA §252(e)(2) the commission may reject any agreement resulting from an arbitration award if it finds that the agreement does not meet the requirements of §251, including the regulations prescribed by the commission pursuant to FTA §251, or the standards set forth in FTA §252(d). 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 30 days after it is submitted by the parties.

Pursuant to the commission's procedural rules, public comment is allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments regarding the agreement by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on CT Cube and GTESW. The comments should specifically refer to Docket Number 20028. Such comments shall be limited to whether the agreement meets the requirements of FTA and relevant portions of state law. The comments shall be filed by April 9, 1999. If the comments request rejection or modification of the agreement, the interested person must provide the following information:

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) does not meet the requirements of FTA §251, including any Federal Communications Commission regulation implementing FTA §251; or

b) is not consistent with the standards established in FTA §252(d); or

c) is not consistent with other requirements of state law.

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.

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, PO 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 20028.

TRD-9901127
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

Public Notice of Workshop Concerning a Permanent Industry Wide Solution for the Exchange of Billing Records

The staff of the Public Utility Commission of Texas plans to hold a workshop on, Tuesday, March 16, 1999, at 10:00 a.m. in the commission offices on a new project concerning a permanent industry wide solution for the exchange of billing records between competitive local exchange companies (CLECs) and incumbent local exchange companies (ILECs) for calls involving the use of unbundled network elements (UNEs) or ported numbers. In order for the commission to develop a workable industry wide solution, the participation of both ILECs and CLECs operating in Texas is critical. This new project is in response to the follow-up to Commission Recommendation Number 2 under Checklist Item Number 13 in Southwestern Bell Telephone Company's (SWBT's) §271 proceeding (Docket Number 16251). Specifically, the following issues and questions will be taken up in the workshop:

1. What are the alternative methods for a permanent solution for the exchange of billing records?

2. How should a permanent solution be designed to address the growing number of carriers expected to be involved in the transport and termination of calls using NEs or ported numbers?

The workshop will be held from 10:00 a.m. to 5:00 p.m. in the Commissioner's Hearing Room on the seventh floor of the William B. Travis Building at 1701 North Congress Avenue, Austin, Texas 78701. Participants should be prepared to discuss the issues identified in this notice. This project has been assigned Project Number 20537.

Persons who plan to attend the March 16, 1999 workshop should register with Jennifer Luckey at (512) 936-7349. If there are any questions, please contact Meena Thomas at (512) 936-7344 or Stephen Mendoza at (512) 936-7394.

TRD-9901128
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: February 23, 1999

South Plains Regional Workforce Development Board

Notice of Request for Proposals

The South Plains Regional Workforce Development Board is seeking proposals for the management and delivery of services for its Workforce Centers; incorporating at a minimum, the Workforce Investment Act (WIA) of 1998, Food Stamp Employment and Training (FSE&T), Title IIB of the Job Training and Participation Act (JTPA) and TANF/Choices programs. These programs will be operated in the South Plains fifteen-county local workforce development area (LWDA) of Bailey, Cochran, Crosby, Dickens, Garza, Floyd, Hale, Hockley, King, Lamb, Lubbock, Lynn, Motley, Terry and Yoakum. Workforce Centers are currently located in Lubbock, Levelland, Littlefield and Plainview.

The RFP will be released at 12:00 Noon, March 9, 1999.

To request a copy of the RFP, please contact Camille Williams, Planner, SPRWDB, PO Box 10227, Lubbock, TX 79401; Phone: (806) 744-1987; Fax (806) 744-5378; or E-mail to **Camille.Williams@twc.state.tx.us.**

The deadline to submit proposals is 5:00 PM, April 9, 1999.

To assist bidders in responding to this RFP, a Bidders' Conference will be held March 15, 1999 at 10:00AM in the Central Conference Room of the Lubbock Business Center, 1301 Broadway, Lubbock, TX 79401. The Bidders' Conference will **NOT** be the only opportunity for proposers to inquire about this RFP, nor is it mandatory, but is strongly recommended.

Inquiries about this RFP will be accepted until 5:00PM March 29, 1999. Responses to inquiries will be provided via fax or e-mail within three working days of receipt.

Proposals will be evaluated by a third party competitively-selected by the Board.

The South Plains Regional Workforce Development Board reserves the right to accept or reject any proposals.

TRD-9901034
Don McCullough
Executive Director
South Plains Regional Workforce Development Board

Filed: February 22, 1999

Sul Ross State University

Request for Proposals

Pursuant to Texas Government Code, Article 2254, Sul Ross State University, a Member of the Texas State University System, announces the solicitation for consultant services to advise and assist with the proposal development, management, and administration of Title III/V Grant from the United States Department of Education.

Project Summary: The purpose of these projects are to (1) expand educational opportunities for, and improve the academic attainment of, Hispanic students; and (2) expand and enhance the academic offerings, program quality, and institutional stability in educating the majority of Hispanic college students and helping large numbers of Hispanic students and other low-income individuals complete postsecondary degrees. The request for proposal calls for the responding consultants to detail in writing and support with documentation their knowledge and experience in the Title III/V areas.

Responses should be sent to Dr. Felipe Ortego, Director, HIS Title III/V Grant Project, Sul Ross State University, Highway 90 East, Alpine, Texas 79832. A copy of the request for proposal is available upon request from David C. Wilson, Director of Purchasing, Sul Ross State University, P.O. Box C-116, Alpine, Texas 79832, phone (915) 837-8045, fax (915) 837-8046. Proposals should be delivered in a sealed envelope plainly marked: "Attention HIS Title III/IV Project Director". Three copies of the responses are required and are to be postmarked no later than March 17, 1999. They should address in detail the various items set forth.

The Sul Ross State University Title III/V Development Team and the University Executive Committee will review the Consultants and their proposals. The University reserves the right to reject any and all proposals received in response to this request for proposals if it is determined to be in the best interest of the University to do so. All material submitted in response to this request becomes the property of the University and may be reviewed by other Consultants on the request for proposals after the official review of the proposals.

TRD-9901120
David C. Wilson
Purchasing Director
Sul Ross State University
Filed: February 23, 1999

Texas Department of Transportation

Notice of Contract Amendment

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (TxDOT) publishes this notice of a consultant contract amendment. The contract authorized a study that compares the cost for highway design work performed by TxDOT employees to that performed by consultant engineers. The consultant will collect and tabulate data and submit a written report documenting the findings along with recommendations for TxDOT consideration. The request for proposals appeared in the July 3, 1998, issue of the*Texas Register* (23 TexReg 7142). The notice of contract award appeared in the October 23, 1998 issue of the *Texas Register* (23 TexReg 10993), awarding the contract to PricewaterhouseCoopers, LLP, 600 Congress Avenue, Suite 1800, Austin, Texas, 78701.

The total value of the original contract was $199,870. The contract period was October 9, 1998 to February 19, 1999, with a final report due on or before January 15, 1999.

The contract amendment increases the maximum amount of the contract by $9,740.00 and authorizes an additional task in the scope of services. At the request of the state, the consultant is to conduct a workshop with external stakeholders involved in the study to explain the study methodology, investigations, preliminary findings, and recommendations. The amendment also changed the due date for a final report from January 15, 1999 to February 19, 1999.

TRD-9901006
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: February 18, 1999

Texas Workforce Commission

Request for Proposals/Texas Child Care Quarterly

The Texas Workforce Commission (TWC) invites proposals to select an independent contractor to plan, develop and produce the Texas Child Care Quarterly (TCCQ), a training and information journal for caregivers working with children. The mission of the TCCQ is to help parents and child care providers improve and enhance the quality of care given to children.

A. Authorization of Funding

TWC is contracting through procurement using federal funds authorized for quality improvement activities under the Child Care and Development Fund (CCDF).

B. Scope of Work

Contract Funds must be used to plan, develop and produce TCCQ, including: content development, production (photography and graphics, mailing, printing, and distribution of the magazine), and project coordination.

C. Eligible Applicants

Applicants must provide evidence of prior experience and expertise in content development, production and coordination of a similar publication, particularly in the area of child development.

D. Available Funding

Applicants may request up to $244,000 for the production, management and coordination of TCCQ.

E. Length of Contract

The contract period is for twelve (12) months and begins as soon as negotiations can be mutually completed and a contract can be executed.

F. Bidder's Conference and Written Questions

A mandatory bidder conference will be held March 15, 1999, at the TWC building located at 101 E. 15th Street (Congress and 15th) in room 644 from 9:00 a.m. until 12:00 noon. Applicants will not be eligible for consideration unless they attend.

Written questions concerning the RFP must be received by TWC by noon March 22, 1999. TWC will respond in writing by March 29,

1999. Applicants may not address questions to TWC on the RFP by any other means than in writing.

G. Selection, Notification, and Negotiation Process

Interested individuals may request an application packet by contacting Josie Bailey at (512) 936-3218.

Applicants will be reviewed and graded on a competitive basis by TWC. Detailed evaluation criteria will be included in the application packet. Incomplete applications are subject to rejection and disqualification by TWC. Grading criteria will be included in the application packet. Applications will be reviewed and ranked according to scores, their apparent ability to successfully conduct the project, and reviewed for past contracting performance with TWC. A designated person from the selected entity must be readily available to respond to inquires, prepare proposed amendments, and negotiate with TWC concerning budget and/or proposed programmatic revisions. If a designated person is not readily available to promptly respond to requested revisions, the applicant will be removed from consideration for a contract. TWC is not liable for any bidder costs associated with the RFP process.

The deadline for consideration of proposals is 5:00 p.m. CST, April 5, 1999. Mailed proposals must include a legible U.S. Postal Service postmark showing a date and time on or before the deadline. Metered mail is not acceptable unless it also includes an acceptable U.S. Postal Service postmark. Applications delivered by any other type of mail service or hand-delivered must arrive at TWC by the specified date and time. Mailing address: TWC; Program, Planning and Development Section; 101 E. 15th Street, Room #416T; Austin, TX 78778-0001; Attention: Ellen English, Program Director. Physical Address: TWC; Program, Planning and Development Section; 1117 Trinity, #416T; Austin, TX 78778-0001; Attention: Ellen English, Program Director.

TRD-9901099
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: February 22, 1999

Texas Youth Commission

Psychiatrist Services Sought

This request for psychiatrist consulting services proposals is filed in accordance with the provisions of the Government Code, Chapter 2254, Subchapter B.

The Texas Youth Commission (TYC) is seeking to contract with psychiatrists at each of the 13 TYC facilities throughout the state of Texas. These contracts will automatically be awarded to the present consulting psychiatrists, unless interested psychiatrists submit other competing bids. The contract period is for FY 2000/2001.

Service: (1) Evaluate and provide a diagnostic assessment of youth, recommend a treatment plan, perform medication reviews as per TYC policy, prescribe for and monitor those youth requiring psychotropic medication; (2) Attend TYC training sessions and conferences; (3) Participate in Mental Health Commitment hearings as necessary.

Compensation: (1) Total cost of services, based on an agreed hourly rate and for the number of hours of services actually provided at each facility. (2) To attend meetings at the Central Office in Austin, at the hourly rate for travel time to and from the meetings, not to exceed a pre-approved amount.

Area: Each psychiatrist will provide services at one of 15 TYC facilities: Brownwood State School - Brownwood, Texas; Brownwood Sanction Unit - Brownwood, Texas; Corsicana State Home - Corsicana, Texas; Crockett State School - Crockett, Texas; Evins Regional Juvenile Center - Edinburg, Texas; Gainesville State School - Gainesville, Texas; Giddings State School - Giddings, Texas; J. W. Hamilton Jr. State School - Bryan, Texas; Jefferson State School - Beaumont, Texas; Marlin Orientation & Assessment Unit - Marlin, Texas; McLennan County Correctional Facility, Mart, Texas; San Saba State School - San Saba, Texas; Sheffield Boot Camp - Sheffield, Texas; Victory Field Correctional Academy - Vernon, Texas; or West Texas State School - Pyote, Texas.

Time: To be determined by the needs of each individual facility.

Qualifications: (1) Licensed by the Texas State Board of Medical Examiners; (2) Controlled Substances Registration Certification and proof of professional medical malpractice insurance; (3) Experience in evaluation and providing diagnostic assessments as well as prescribing and monitoring Psychotropic medications; (4) Experience working with juvenile population - preferred.

A response to this proposal should be provided to George Willeford, M.D., Medical Director within 30 days of this notice. Include a description of how you meet the requirements listed above in your response. Dr. Willeford's address is P.O. Box 4260, Austin, Texas 78765, or send via fax to (512) 424-6300. Direct any questions concerning this proposal to Carole Williams at (512) 424-6331.

TRD-9901147
Steve Robinson
Executive Director
Texas Youth Commission
Filed: February 24, 1999

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