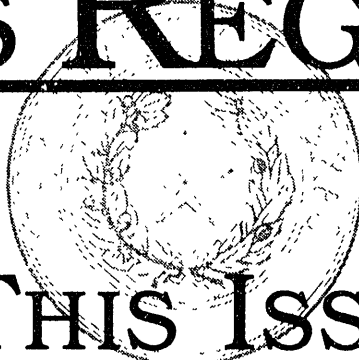


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TEXAS REGISTER



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How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, publishes on an annual basis.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each section is designated by a TAC number. For example in the citation 1 TAC §27.15.

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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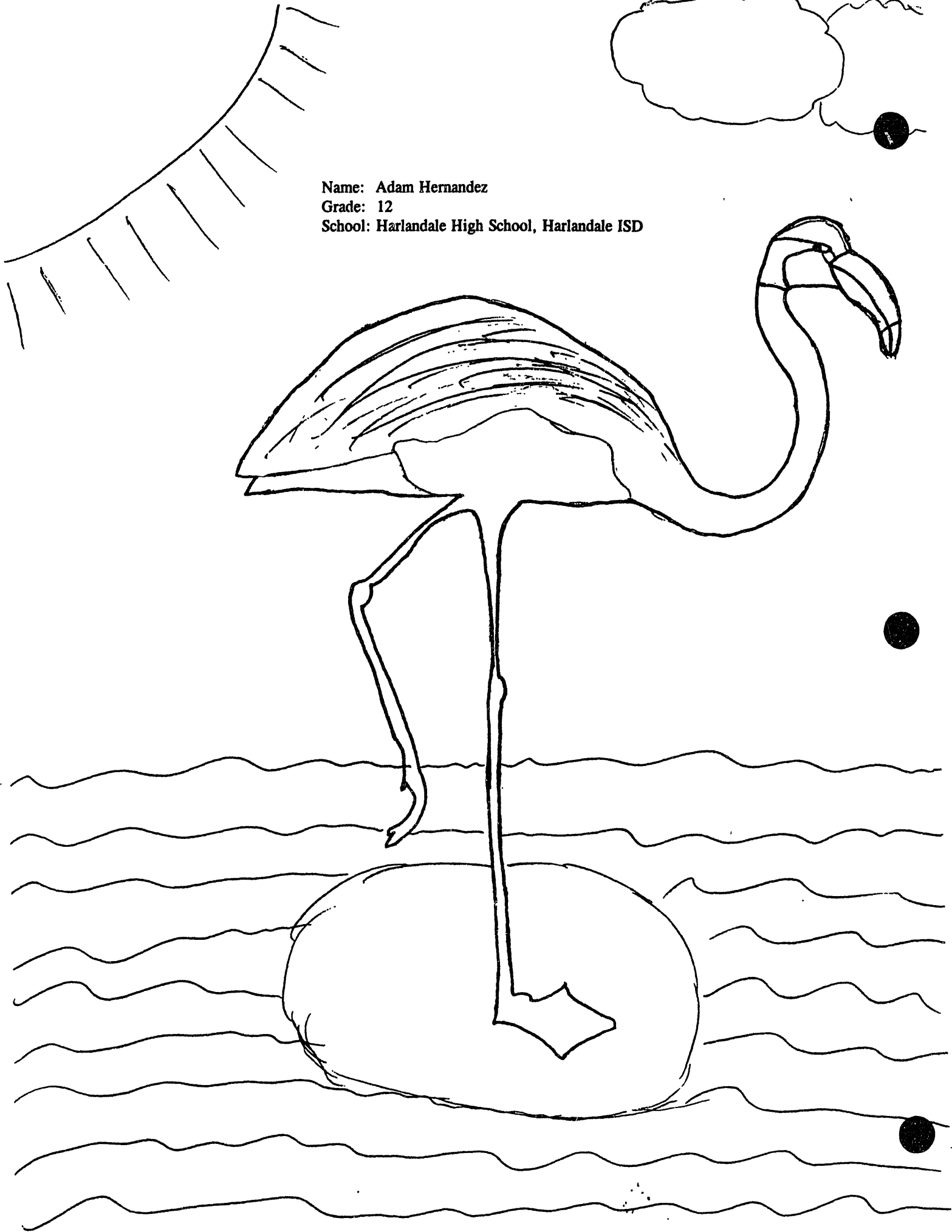
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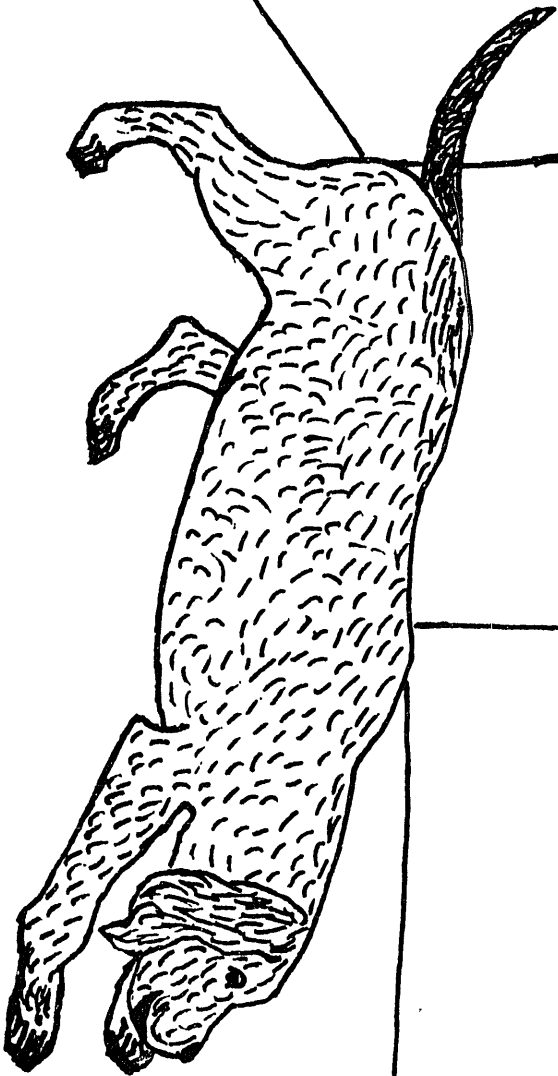
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The University of Texas Health Science Center at Houston (UTHSCH)

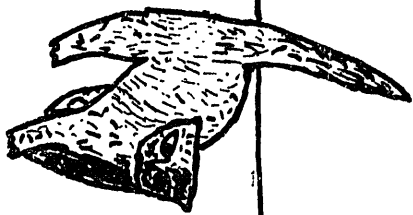
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Name: Adam Hernandez
Grade: 12
School: Harlandale High School, Harlandale ISD

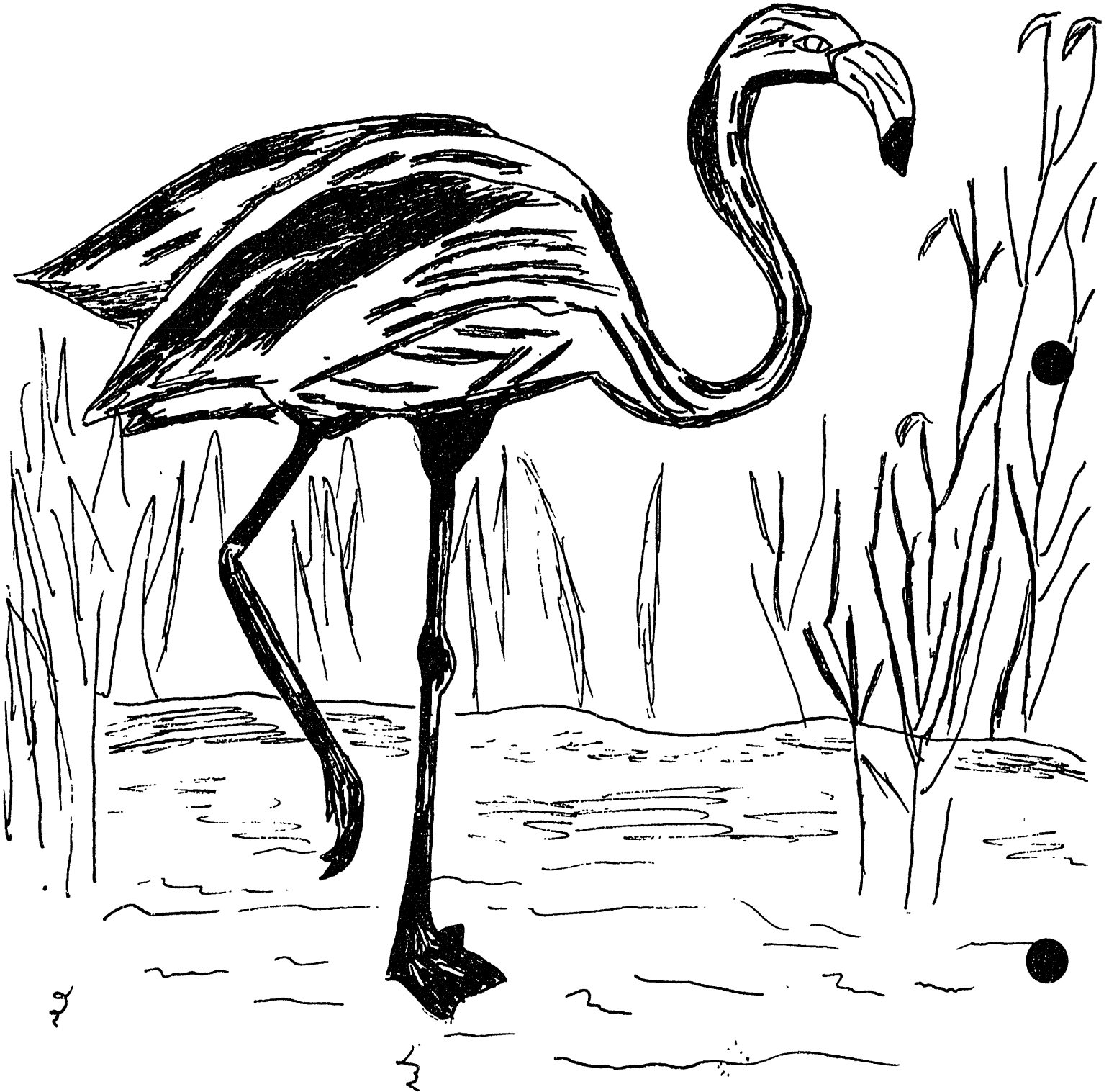


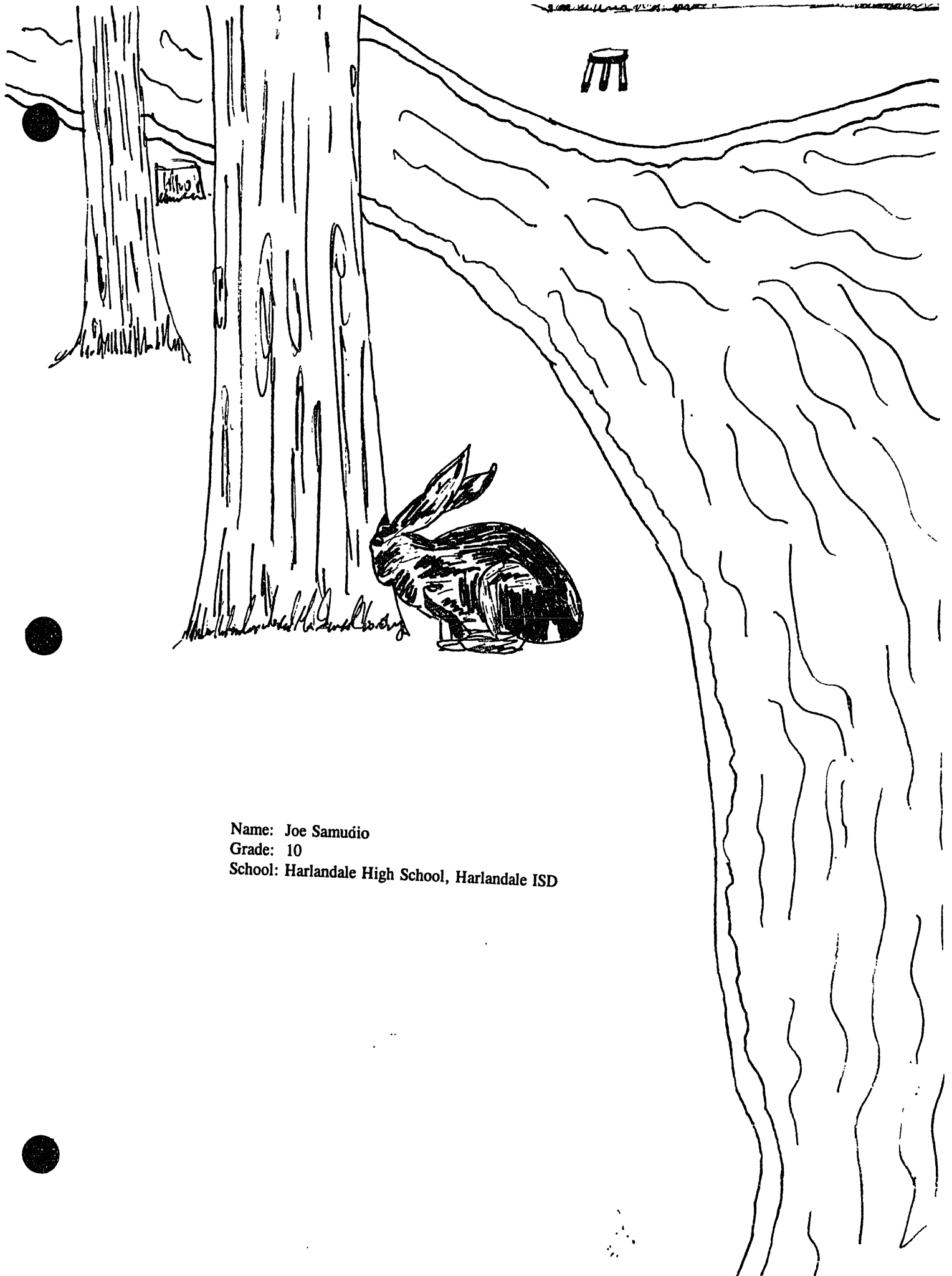


Name: Arnulfo Duran
Grade: 11
School: Harlandale High School, Harlandale ISD



Name: Sylvia Cantu
Grade: 11
School: Harlandale High School, Harlandale ISD

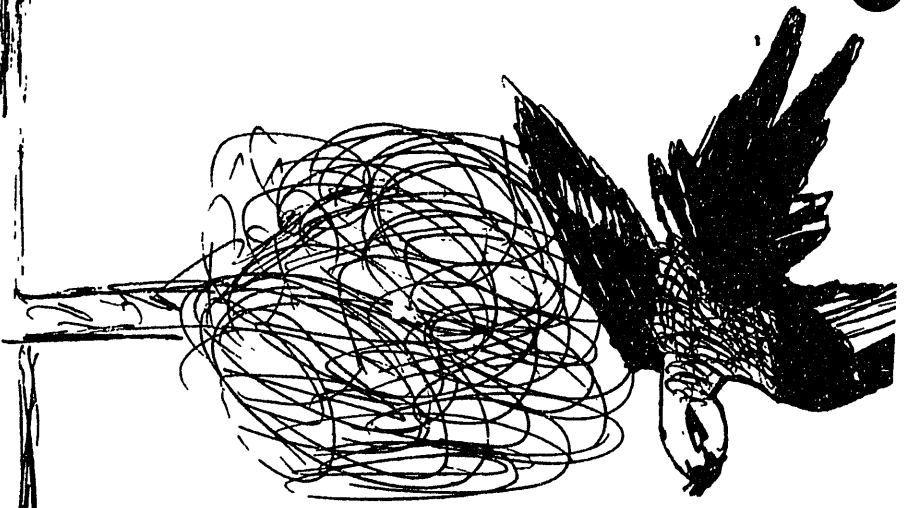




Name: Joe Samuóio
Grade: 10
School: Harlandale High School, Harlandale ISD



Name: Juan Hernandez
Grade: 10
School: Harlandale High School, Harlandale ISD



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.

Executive Order

GWB 95-1

Relating to Emergency Management

WHEREAS, the Legislature of the State of Texas has heretofore enacted the Texas Disaster Act of 1975, Chapter 418 et seq. of Vernon's Texas Codes Annotated to:

- (1) Reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made catastrophes, riots, or hostile military or paramilitary actions;
- (2) Prepare for prompt and efficient rescue, care and treatment of persons victimized or threatened by disaster;
- (3) Provide a setting conducive to the rapid and orderly restoration and rehabilitation of persons affected by disaster;
- (4) Clarify and strengthen the roles of the Governor, state agencies, and local governments in the prevention of, preparation for, response to, and recover from disasters;
- (5) Authorize and provide for cooperation and coordination of activities relating to hazard migration, emergency preparedness, incident response, and disaster recovery by agencies and officers of this state, and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;
- (6) Provide a comprehensive emergency management system for Texas that is a coordinated effort to make the best possible use of existing organizations and resources within government and industry, and which includes provisions for actions to be taken at all levels of government before, during, and after the onset of an emergency situation;
- (7) Assist in the prevention of disasters caused or aggravated by inadequate planning for and regulation of public and private facilities and land use; and
- (8) Provide the authority and mechanism to respond to an energy emergency; and,

WHEREAS, under §418.013, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, the Governor is expressly authorized to establish by executive order an EMERGENCY MANAGEMENT COUNCIL composed of the heads of state agencies, boards, and commissions and representatives of organized volunteer groups to advise and assist the Governor in all matters relating to disaster preparedness, emergency services, energy emergencies, and disaster recovery; and,

WHEREAS, FURTHER UNDER §418.041, Texas Disaster Act of 1975, Vernon's Codes Annotated, a DIVISION OF EMERGENCY MANAGEMENT is established in the Office of the Governor and the Director of the DIVISION OF EMERGENCY MANAGEMENT is to be appointed by and serve at the pleasure of the Governor; and

WHEREAS, with the aid and assistance of the EMERGENCY MANAGEMENT COUNCIL and DIVISION OF EMERGENCY MANAGEMENT, the Governor may recommend that cities, counties, and other political subdivisions of the state undertake appropriate emergency management programs and assist and cooperate with the those developed at the state level;

NOW, THEREFORE, I, George W. Bush, Governor of Texas, under the authority vested in me, do hereby create and establish the EMERGENCY MANAGEMENT COUNCIL, to be composed of the Chief Executive Officers of the following state agencies, boards, commissions, and organized volunteer groups:

Adjutant General's Department

American Red Cross

Department of Information Resources

General Land Office

General Services Commission

Governor's Division of Emergency Management

Public Utility Commission of Texas

Railroad Commission of Texas
State Aircraft Pooling Board
State Auditor's Office
State Comptroller of Public Accounts
Texas Attorney General's Office
Texas Commission on Fire Protection
Texas Department of Agriculture
Texas Department of Commerce
Texas Department of Criminal Justice
Texas Department of Health
Texas Department of Housing and Community Affairs
Texas Department of Human Services
Texas Department of Insurance
Texas Department of Mental Health and Mental Retardation
Texas Department of Public Safety
Texas Department of Public Transportation
Texas Education Agency
Texas Employment Commission
Texas Engineering Extension Service
Texas Forest Service
Texas Natural Resource Conservation Commission
Texas Parks and Wildlife Department
Texas Rehabilitation Commission

The specific duties and responsibilities of each member of this group shall be as designated in the State Emergency Management Plan and Annexes thereto. Each member of the group may designate a staff member representative to the COUNCIL.

I further hereby designate the Director of the Texas Department of Public Safety to serve as chairperson of the COUNCIL and as Director of the DIVISION OF EMERGENCY MANAGEMENT granted to me under the Texas Disaster Act of 1975 in the administration and supervision of the Act, including, but not limited to, the power to accept from the federal government, or any public or private agency or individual, any offer of services, equipment, supplies, materials, or funds as gifts, grants, or loans for the purposes of emergency services or disaster recovery, and may dispense such gifts, grants, or loans for the purposes for which they are made without further authorization other than as contained herein. The Director shall establish emergency operations areas to be known as Disaster Districts which shall correspond to the boundaries of the Texas Highway Patrol Districts and Sub-Districts and shall establish in each a Disaster District Committee composed of representatives of the state agencies, boards, and commissions having membership on the COUNCIL. The Highway Patrol Commanding Officer of each Highway Patrol District or Sub-District shall serve as Chairperson of the Disaster District Committee and report to the Director on matters relating to disasters and emergencies. The Chairperson shall be assisted by the COUNCIL representatives assigned to that DISTRICT, who shall provide guidance, counsel, and administrative support as may be required.

The COUNCIL is hereby authorized to issue such directives as may be necessary to effectuate the purpose of the Texas Disaster Act of 1975, as amended, and is further authorized and empowered to exercise the specific powers enumerated in the Act.

Further, in accordance with §418.102, §418.105 Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, and published rules of the DIVISION OF EMERGENCY MANAGEMENT, I hereby designate the Mayor of each municipal corporation and the County Judge of each county in the state as the Emergency Management Director for each such political subdivision. The County Judge and Mayor shall serve as the Governor's designated agents in administration and supervision of the Texas Disaster Act of 1975, and may exercise the powers, on an appropriate local scale, granted the Governor therein. The Mayor and County Judge may each designate an Emergency Management Coordinator who shall serve as assistant to the presiding officer of the political subdivision for emergency management purposes when so designated.

By the authority vested in me under §418.014, Texas Disaster Act of 1975, Vernon's Texas Codes Annotated, I further hereby authorize each political subdivision of the state to establish in the county in which they are sited, interjurisdictional agencies by intergovernmental agreement, supported as needed by local City Ordinance or Commissioner's Court Order, in cooperation and coordination with the DIVISION OF EMERGENCY MANAGEMENT of the Governor's Office. In compliance with §418.101, Vernon's Texas Codes Annotated, the presiding officer of each political subdivision shall promptly notify the DIVISION OF EMERGENCY MANAGEMENT of the manner in which it is providing or securing an emergency management program and the person designated to head that program.

This executive order supersedes Executive Order AWR-94-14, and shall remain in effect until modified, amended or rescinded by me.
Issued in Austin, Texas, on February 17, 1995.

TRD-9502089

George W. Bush
Governor of Texas

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 use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 22. EXAMINING BOARDS

Part VII. Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

Chapter 141. Definitions and Procedures

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee) with the approval of the Texas Board of Health (Board) proposes the repeal of existing §§141.1-141.13, 141.15, 141.17-141.22, 141.24, 141.26-141.31, and 141.35-141.38; and new §§141.1-141.18, concerning the committee's regulation and licensure of fitters and dispensers of hearing instruments. The repealed sections are the rules promulgated by the Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids, which was abolished by Acts 1993, 73rd Legislature, Chapter 441, §29, effective September 1993. The new sections establish regulations for the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments for the regulation and licensure of licensed fitters and dispensers of hearing aids as required by Texas Civil Statutes, Article 4566-1.04. Generally, the new sections define terms commonly used in the profession; set the standards for licensure as a fitter and dispenser of hearing instruments; establish procedures for application, examination, licensure, continuing education, and complaint submittal; and provide procedures for denial, revocation or suspension of a license certificate.

These sections are proposed to define what an individual must do to become licensed as a fitter and dispenser of hearing instruments. Specifically, the new sections cover: definitions, the committee, licensees and the committee, consumer information, application procedures, processing procedures, issuance of permits, issuance of licenses, reciprocity, filing of a bond, surrender of a license or permit, renewal of a license, continuing education requirements, examinations, conditions of sale, complaints and violations, and formal hearings.

Bernie Underwood, C.P.A., Chief of Staff, Associateship for Health Care Quality and Stan-

dards, has determined that for the first five-year period the sections will be in effect the fiscal implications for state government are anticipated to be negligible. The cost and process of administering the program will be generated by revenues from fees. There will be no fiscal implications for local government as a result of enforcing or administering the sections as proposed.

Ms. Underwood has determined that for each year of the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcing the sections will be continued protection of the health, safety, and welfare of the citizens of Texas from the harmful effects if fitter and dispensers of hearing instruments is practiced by incompetent persons. The proposed sections will assure that fees are set in sufficient amounts to cover the cost of regulation and enforcement. The anticipated cost to persons who are required to comply with the sections as proposed are set in the statute. There is no anticipated cost or effect on small businesses. There will be no anticipated effect in local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Public Comments will be accepted for 30 days after publication of the sections in the *Texas Register*. In addition, public hearings have been scheduled as follows: March 6, 1995, 10-Noon, Houston, Houston Medallion Hotel, March 13, 1995, 10-Noon, Midland, Midland Hilton, March 20, 1995, 10-Noon, Dallas, Dallas Medallion, and March 27, 1995, 10-Noon, Austin, Austin North Hilton and Towers.

- 22 TAC §§141.1-141.13, 141.15, 141.17-141.22, 141.24, 141.26-141.31, 141.35-141.38

(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 Board of Examiners in the Fitting and Dispensing of Hearing Aids or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Civil Statutes, Article 4566-1.04, which requires the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to

adopt rules, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4566.

§141.1. *Supervision.*

§141.2. *Measurement of Human Hearing.*

§141.3. *Human Hearing Acuity.*

§141.4. *Environmental Noise Level.*

§141.5. *Adjustment of Hearing Aid.*

§141.6. *Filling Vacancies.*

§141.7. *Terms of Officers.*

§141.8. *Duties of the Board.*

§141.9. *Committee on Applications.*

§141.10. *Inspectors.*

§141.11. *Procedures for Action by the Board.*

§141.12. *Investigations by the Executive Director.*

§141.13. *Actions of Executive Director.*

§141.15. *Applications.*

§141.17. *Mailing Notice of Examination.*

§141.18. *Temporary Training Permit*

§141.19. *Written Submission of Complaints.*

§141.20. Evidence of Permanent Business Address.

§141.21. Examination Question.

§141.22. Ethics on Examination.

§141.24. Authority to Adopt Procedural Rules.

§141.26. Notification of Business Name Change.

§141.27. Hearing Procedure.

§141.28. Person (Texas Civil Statutes Article 4566-1.11(f)).

§141.29. Description of New Hearing Aids.

§141.30. Person (Texas Civil Statutes Article 4566-1.15(a)).

§141.31. Mail Sales Prohibited.

§141.35. Training Guidelines.

§141.36. Requirements for Licensure.

§141.37. Reciprocal Arrangements.

§141.38. Board Organization and Meetings.

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

Issued in Austin, Texas, on February 22, 1995.

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Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Earliest possible date of adoption: March 31, 1995

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**Chapter 141. Fitting and
Dispensing of Hearing
Instruments**

• **22 TAC §§141.1-141.18**

The new sections are proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules, with the approval of the Texas Board of Health, that are reasonably

necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4566.

§141.1. Purpose. The purpose of this chapter is to implement the provisions of Texas Civil Statutes, Articles 4566-1.01 et seq, concerning the licensure and regulation of fitters and dispensers of hearing instruments.

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

Act-Texas Civil Statutes, Articles 4566-1.01 et seq, relating to the licensing of persons authorized to fit and dispense hearing instruments.

APA-Administrative Procedure Act.
Applicant-A person who applies for licensure under the Act.

Apprentice permit-A permit issued by the committee to a person who meets the requirements of Articles 4566-1.09A et seq, Texas Civil Statutes.

Bill of sale-See definition for written contract for services.

Board-The Texas Board of Health.
Committee-The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

Contract-See definition for written contract for services.

Contested case-A proceeding in accordance with Administrative Procedure Act (APA) in this chapter, including but not restricted to rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the committee after an opportunity for an adjudicative hearing.

Continuing education-Education intended to maintain and improve the quality of professional services in the fitting and dispensing of hearing instruments, to keep licensees knowledgeable of current research, techniques, and practices, and provide other resources which will improve skills and competence in the fitting and dispensing of hearing instruments.

Daily supervision-Regularly scheduled monitoring of daily activities of the apprentice permit holder.

Department-The Texas Department of Health.

Direct supervision-The physical presence of the supervisor any time a temporary training permit holder is engaged in services relating to the fitting, dispensing, and sales of hearing instruments.

Fitting and dispensing hearing instruments-The measurement of human hearing by the use of an audiometer, or by any means, for the purpose of making selections, adaptations, or sales of hearing instru-

ments. The term includes the making of impressions for earmolds to be used as a part of the hearing instrument and any necessary post-fitting counseling for the purpose of fitting and dispensing hearing instruments.

Formal hearing-a hearing or proceeding in accordance with this chapter, including a contested case as defined in this section.

License-A license issued by the committee under Texas civil Statutes, Articles 4566-1.01 et seq, and this chapter to a person authorized to fit and dispense hearing instruments.

Licensee-Any person licensed by the committee.

Person-An individual, corporation, partnership, or other legal entity.

Sell or sale-A transfer of title or the right to use by lease, bailment, or any other contract. For the purpose of Texas Civil Statutes, Articles 4566-1.01 et seq, the term "sell" or "sale" shall not include sales at wholesale by manufacturers to persons licensed under this Act, or to the distributors for distribution and sale to persons licensed under Texas Civil Statutes Articles 4566-1.01 et seq, and this chapter.

Sponsor-Provider of a continuing education activity.

Stationary acoustical enclosure-A prefabricated room known as an audiometric test booth, suite, or sound-treated room.

Supervisor-A supervisor is a person licensed by this committee as a licensed hearing instrument dispenser who:

(A) meets the qualifications established by Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter;

(B) has an established place of business;

(C) is responsible for direct supervision and education of a temporary training permit holder; or

(D) is responsible for daily supervision of an apprentice permit holder.

Temporary training permit-A permit issued by the committee to persons authorized to fit and dispense hearing instruments only under the direct supervision of a person who holds a license under Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter.

Working days-Working days are Monday through Friday, 8:00 a.m. to 5:00 p.m.

Written contract for services-A written agreement or bill of sale, between the licensee and purchaser of a hearing instrument as set out in §141.16(c) of this title (relating to Conditions of Sale).

30-day trial period—The period in which person may cancel the purchase of a hearing instrument.

§141.3. The Committee.

(a) Meetings. Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act, the Government Code, Chapter 551.

(b) Transaction of official business.

(1) The committee may transact official business only when in a legally constituted meeting with a quorum present. Five members of the committee constitute quorum.

(2) The committee shall not be bound in any way by any statement or action on the part of any committee or staff member except when a statement or action is pursuant to specific instructions of the committee.

(3) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter.

(c) Agendas.

(1) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of committee business which have been approved for discussion by the president.

(2) The official agenda of a meeting shall be filed with the Texas Secretary of State required by law.

(d) Minutes.

(1) The minutes of a committee meeting are official only when affixed with the original signatures of the president and the executive director.

(2) Drafts of the minutes of each meeting shall be forwarded to each member of the committee for review and comments or corrections prior to approval by the committee.

(3) The official minutes of the committee meetings shall be kept in the office of the executive director and shall be available to any person desiring to examine them.

(e) Elections.

(1) At the meeting held nearest to August 31 of each year, the committee shall elect a president and a vice-president.

(2) A vacancy which occurs in the office of vice-president may be filled at any regular meeting as required.

(f) Officers.

(1) President. The president:

(A) shall preside at all meetings at which he or she is in attendance and perform all duties prescribed by law or this chapter; and

(B) is authorized by the committee to make day-to-day minor decisions regarding committee activities in order to facilitate the responsiveness and effectiveness of the committee.

(2) Vice-president. The vice-president shall:

(A) perform the duties of the president in the absence or disability of the president; and

(B) serve as president until a successor is appointed should the office of the president become vacant.

(g) Subcommittees.

(1) The committee or the president may establish subcommittees deemed necessary to carry out committee responsibilities.

(2) The president shall appoint members of the committee to serve on subcommittees.

(3) Subcommittees shall make regular reports to the committee.

(4) Subcommittees may direct all reports or other materials to the executive director for distribution.

(5) Subcommittees shall meet when called by the subcommittee chairperson or when directed by the committee.

(h) Executive director. The executive director shall:

(1) keep the minutes on proceedings of the committee and shall be custodian of the files and records of the committee unless another custodian is designated by the committee;

(2) exercise general supervision over persons employed in the administration of the act. The executive director may delegate responsibilities to other staff members when appropriate;

(3) be responsible for the investigation of complaints and for the presentation of formal complaints;

(4) be responsible for all correspondence for the committee and obtain, assemble, or prepare reports and information that the committee may direct, or as authorized or required by the department or other agency with appropriate statutory authority;

(5) have the responsibility of assembling and evaluating materials submitted for approval as set out in §141.7 of this title (relating to Processing Procedures). Final determination shall be made by the executive director with regard to approval of applications for licensure. Determinations made by the executive director, that propose denial of licensure are subject to the approval of the applications committee of the committee; and

(6) serve as the administrator of licensure examinations or designate a substitute to serve.

(i) Reimbursement for expenses.

(1) A committee member is entitled to per diem and transportation expenses as provided by the latest General Appropriations Act.

(2) Payment to committee members of per diem and transportation expenses shall be on official state vouchers which have been approved by the executive director.

(j) Official records of the committee.

(1) Requests for committee records may be made under the Texas Open Records Act, the Government Code, Chapter 552. Records which are public may be reviewed by inspection, duplication, or both upon written request.

(2) When any person's request for records would be unreasonable disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the applicant will be provided the option of receiving duplicate copies at the requestor's cost.

(3) Applicable cost of duplication shall be paid by the applicant at the time of or before the duplicated records are sent or given to the applicant. The charge for copies shall be the same as set by the department for copies.

(k) Impartiality. Any committee member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee or permit holder shall so declare this to the committee and shall not participate in any committee proceedings involving that applicant, licensee, or permit holder.

(l) Applicants with disabilities.

(1) The committee shall comply with the Americans with Disabilities Act.

(2) Applicants with disabilities shall inform the committee 30 days in advance of any special accommodations needed.

§141.4. Licensees and the Committee.

(a) All licensees are bound by the provisions of the Act and this chapter.

(b) A licensee shall have the responsibility of reporting alleged violations of the Act or this chapter to the committee office.

(c) A licensee shall keep his or her committee file updated by notifying the committee in writing of changes of name, highest academic degree granted, address, telephone number, and employment. The committee is not responsible for lost, misdirected, or undelivered mail.

(d) A licensee shall cooperate with the committee by furnishing required documents or information and by responding to a request for information from or a subpoena issued by the committee or its authorized representative.

(e) A licensee shall comply with any order by the committee relating to the licensee.

(f) A licensee shall not interfere with a committee investigation by the willful misrepresentation of facts to the committee or its authorized representative or by the use of threats or harassment against any person.

(g) A licensee shall not file a complaint with the committee in bad faith.

§141.5. Consumer Information. A license shall:

(1) inform each consumer of the name, address, and telephone number of the committee office for the purpose of reporting violations of Texas Civil Statutes, Articles 4566-1.01 et seq, or this chapter on:

(A) each written contract for services; and

(B) a sign prominently displayed in the primary place of business;

(2) display the license certificate and current renewal card issued by the committee in a prominent place in the primary location of practice;

(3) not display a license certificate or current renewal card issued by the committee which has been reproduced or is expired, suspended, or revoked; and

(4) not make any alterations on a license certificate or renewal card issued by the committee.

§141.6. Application Procedures.

(a) Purpose. The purpose of this section is to set out the application procedures for examination and licensure.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official State Committee of Examiners in the Fitting and Dispensing of Hearing Instrument (committee) forms.

(2) The committee will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form(s).

(3) The committee shall send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed within 60 days after the date of notice shall be invalid; however, by written request to the committee an applicant may request that his or her application be kept active for an additional year. Deficient applications will be retained for one year; however, after that year an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

(c) Fees paid to the committee by applicants are not refundable except in accordance with §141.7 of this title (relating to Processing Procedures).

(d) Remittances submitted to the committee in payment of fees may be in the form of a cashier's check or money order.

(e) The fees for administering Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter shall be as follows:

- (1) temporary training permit-\$200;
 - (2) examination fee-\$250;
 - (3) apprentice permit-\$300;
 - (4) licensure fee-\$220;
 - (5) licensure renewal fee-\$440;
- and
- (6) duplicate document fee-\$50.

§141.7. Processing Procedures. Committee staff shall comply with the following procedures in processing applicants for a temporary training permit, apprentice permit, license, and renewal of a regular license.

(1) The following periods of time shall apply from the date of a receipt of an application and applicable fee until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a completed

application. The time periods are as follows:

(A) letter of acceptance of application-20 working days; and

(B) letter of application deficiency-20 working days.

(2) The following periods of time shall apply from the receipt of all documentation necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial end on the day notice of the proposed decision is mailed to the applicant. The time periods are as follows:

(A) letter of approval for examination-20 working days;

(B) initial letter of approval for a license-90 working days; and

(C) letter of denial of a license-30 working days after presentation to the subcommittee and its subsequent action thereon.

(3) The period of time from the receipt of the application for renewal of a regular license until the renewal card is issued or written notice is given that the application is deficient and additional specific information is required shall be 20 working days. The regular license renewal may be issued in lieu of notice of acceptance. The period of time from the receipt of the last time necessary to complete the application for renewal until issuance of the renewed license or notification of denial of renewal shall be 14 working days. The committee is not responsible for lost, misdirected, or undelivered mail.

(4) The materials required for application are as follows.

(A) Application form. The application form shall contain:

(i) specific information regarding personal data, birth date, place of employment, other state licenses and certifications held, felony, and misdemeanor convictions, educational background, supervised experience and references;

(ii) a statement that the applicant has read Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter and agrees to abide by them;

(iii) the applicant's permission to the committee to seek any information or references it deems necessary to determine the applicant's qualifications;

(iv) a statement that the applicant, if issued a temporary training permit, apprentice permit or license, shall return the license to the committee upon revocation or suspension of the license;

(v) a statement that the applicant understands that fees submitted are not refundable;

(vi) a statement that the applicant understand that materials submitted to the committee become the property of the committee and are not returnable (unless prior arrangements have been made) ;

(vii) a statement that the information in the application is truthful and that the applicant understands that providing false information of any kind may result in denial of the application and failure to be granted any license or permit, or the revocation of any license or permit issued;

(viii) a statement that if issued any license or permit the applicant shall keep the committee advised of his or her current mailing address;

(ix) the applicant's dated and notarized signature; and

(x) the dated and notarized signature of the supervisor or supervisors who can formally attest to the applicant's direct supervised experience.

(B) Supervised experience form. The supervised experience forms must be completed by the temporary training permit holder and the supervisor or supervisors and contain:

(i) the name of the temporary training permit holder;

(ii) the name, address, and licensure status of the temporary training permit holder's supervisor or supervisors;

(iii) the name and address of the business or organization where the practicum experience was gained;

(iv) the inclusive dates and types of supervised experience and the total number of hours of experience;

(v) the supervisor's notarized signature; and

(vi) the temporary training permit holder's notarized signature.

(C) Education records. Applicants must submit:

(i) a photocopy which has been notarized as a true and exact copy of an unaltered:

(I) official diploma or official transcript indicating graduation from high school; or

(II) certificate of high school equivalency issued by the appropriate education agency; or

(ii) official diploma or official transcripts from an accredited college or university indicating a college degree was obtained.

(D) Applicant's affidavit. The facts in the application shall be sworn to by the applicant before a notary.

(5) Applications may be denied as follows.

(A) The committee may deny an application if the applicant:

(i) has not completed the requirements in this section;

(ii) has failed to remit any applicable fees required in §12 of Texas Civil Statutes, Articles 4566-1.01 et seq;

(iii) has failed or refused to properly complete or submit any application form(s) or endorsements, or deliberately presented false information on the application form and any other form or document required by the department to verify the applicant's qualifications;

(iv) has been in violation of Texas Civil Statutes, Articles 4566-1.01 et seq, or any other applicable provision of this chapter;

(v) has been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a fitter and dispenser of hearing instruments as set out in Texas Civil Statutes, Articles 4566-1.01 et seq; or

(vi) holds a license, certificate, registration, or permit to practice fitting and dispensing of hearing instruments in another state or jurisdiction and that license, certificate, registration, or permit has been suspended, revoked, or otherwise restricted by the licensing entity in that state or jurisdiction for reasons relating to the person's professional competence or conduct which could adversely affect the health and welfare of a client.

(B) If after review the executive director determines that the application should be denied, the executive director shall ask the applications subcommittee to renew the application. The applications subcommittee shall take one of the following actions:

(i) If the subcommittee concurs that the application should be denied, they shall instruct the executive director to give the applicant written notice of the reason for the denial and the opportunity for a formal hearing.

(I) The formal hearing, if requested, shall be conducted in accordance with the provisions of the Administrative Procedures Act, Government Code, Chapter 2001.

(II) If the applicant fails to respond within ten days after the receipt of the notice of opportunity for hearing, or if the applicant notifies the executive director that the hearing is waived, the committee shall deny the application.

(ii) If the subcommittee determines that the application should be approved, the executive director shall approve the application.

§141.8. Issuance of Permits.

(a) Temporary training permit.

(1) The length of the training may not be shorter than 200 days. The training period begins on the date of the issuance of the temporary permit.

(2) The committee shall issue a temporary training permit to an applicant who:

(A) has filed an application form and temporary training permit fee;

(B) has met all of the academic requirements for licensure.

(3) The temporary training permit must be done under the supervision of an individual who holds a valid license, from the committee, to fit and dispense hearing instruments in the State of Texas.

(4) A person shall obtain and maintain a temporary training permit prior to person receiving supervision.

(5) A temporary training permit holder shall maintain a temporary training permit during his or her supervised practicum experience.

(6) The supervising fitter and dispenser of hearing instruments must submit a written notification of termination of supervision to the committee and the temporary training permit holder within ten days of cessation of supervision. The committee notification of termination of supervision shall include:

(A) the name, temporary training permit number, and signature of the supervisor and the name and license number of the supervisee;

(B) a statement that supervision has terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the temporary training permit holder has complied with the requirements of this chapter.

(7) The temporary training permit holder shall apply to the committee for transfer of supervision within 60 days of notification of termination to the committee. One extension of 60 days of the transfer of the supervision requirements may be granted upon written request to the committee by the temporary training permit holder.

(8) A temporary training permit holder shall be required to have at least 150 hours of directly supervised practicum that shall include the following:

(A) 25 hours of pure tone air conduction, bone conduction, and speech audiometry with both recorded and live voice;

(B) 25 hours of hearing instrument evaluation including should field measurements with recorded and live voice;

(C) 20 hours of instrument fittings with actual consumers;

(D) 10 hours of earmold orientation types, uses, and terminology;

(E) 15 hours of earmold impressions and otoscopic examinations of the ear;

(F) 15 hours of troubleshooting of defective hearing instruments;

(G) 20 hours of case history with actual consumers;

(H) 10 hours of the laws governing the licensing of persons fitting and dispensing hearing instruments and Federal Food and Drug Administration and Federal Trade Commission regulations relating to the fitting and dispensing of hearing instruments; and

(I) 10 hours of supplemental work in one or more of the areas described in subparagraphs (A)-(H) of this paragraph.

(b) Apprentice permit.

(1) A temporary training permit holder who has taken all parts of the exami-

nation given by the committee and has passed all parts of the examination with a score of 70% or greater shall be issued an apprentice permit to fit and dispense hearing instruments. An apprentice permit remains valid for one year unless it is extended by the committee for an additional period not to exceed six months.

(2) The committee shall issue an apprentice permit to an applicant who:

(A) has filed an application form and apprentice permit fee; and

(B) has taken and passed all parts of the examination with a score of 70% or greater.

(3) The supervisor shall periodically conduct a formal evaluation of the applicant's progress in the development of professional skills.

(4) A supervisor of an apprentice permit holder is responsible for services to the consumer that may be performed by the apprentice permit holder. The supervisor must ensure that all services provided are in compliance with this Texas Civil Statutes, Articles 4566-1.01 et seq, and this chapter.

(5) The apprenticeship must be done under the supervision of an individual who holds a valid license, from the committee, to fit and dispense hearing instruments in the State of Texas.

(6) Prior to the issuance of an apprentice permit, the supervisor's affidavit form must be filed with the committee office.

(7) The apprentice permit holder shall complete 18 hours of classroom continuing education in one or more of the following approved subjects:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

(D) pure tone audiometry, including air conduction testing and bone conduction testing;

(E) live voice and recorded voice speech audiometry;

(F) masking when indicated for air conduction, bone conduction, and speech;

(G) recording and evaluation of audiogram and speech audiometry to de-

termine the candidacy for hearing instruments;

(H) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance;

(I) taking of earmold impressions;

(J) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(K) anatomy and physiology of the ear;

(L) counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(M) use of an otoscope for the visual observation of the entire ear canal; and

(N) laws, rules, and regulations of this state and the United States.

(8) The supervisor must submit written notification of cessation of supervision to the committee and the apprentice permit holder within ten days of cessation of supervision. Notification of termination of supervision shall include:

(A) the name, apprentice permit number, signature of the supervisor and the name and license number of the apprentice permit holder;

(B) a statement that supervision has been terminated;

(C) the reason for termination;

(D) the date of termination of supervision; and

(E) a statement indicating whether the supervisor and the apprentice permit holder have complied with the requirements of this chapter.

(9) The apprentice permit holder shall apply for transfer of supervision within 60 days of notification of termination to the committee. Upon the apprentice permit holder's written request to the committee, one extension of 60 days of the transfer of supervision requirement may be granted.

(10) The dated and notarized signature of the supervisor or supervisors

who can formally attest to the apprentice permit holder's daily supervised experience.

(11) The supervised experience forms must be completed by the apprentice permit holder and the supervisor or supervisors and contain:

(A) the name of the apprentice permit holder;

(B) the name, address, and licensure status of the apprentice permit holder's supervisor or supervisors;

(C) the name and address of the business or organization where the apprentice permit holder practices;

(D) the inclusive dates of the supervised experience;

(E) the supervisor's notarized signature; and

(F) the apprentice permit holder's notarized signature.

(c) Other conditions for supervised experience for temporary training permit or apprentice permit.

(1) A temporary training permit holder or an apprentice permit holder may be employed on a salary basis or be a consultant or volunteer.

(2) The full professional responsibility for the fitting and dispensing of hearing instruments and related activities of a permit holder shall rest with the permit holder's supervisor.

(3) A supervisor may not supervise more than two permit holders of any type at one time.

(4) A supervisor may delegate training activities to another supervisor or licensees for the supervision of a temporary training permit holder. The supervisor shall be responsible for the day-to-day supervision of a trainee. The supervisor shall also be ultimately responsible for services provided to a consumer by the temporary training permit holder. A supervisor shall not delegate the responsibility of supervision.

(5) A permit holder may not pay licensee providing supervision of the permit holder for the supervised experience.

§141.9. Issuance of Licenses.

(a) Application form. The committee will send a licensure form to each applicant who has satisfactorily fulfilled all requirements for licensure. The applicant must complete the form and return it to the committee office with the licensure fee.

(b) License certificate. Upon receiving the licensure form and fee, the committee shall issue to the licensee, a license certificate which indicates the licensee's name and license number.

(1) Regular licenses shall be signed by the committee members and be affixed with the seal of the committee.

(2) Temporary training permits and apprentice permits shall be signed by the committee president and executive director.

(3) Any license certificate or renewal card issued by the committee remains the property of the committee and must be surrendered to the committee on demand.

(c) Replacement card. The committee will replace a lost, damaged, or destroyed license certificate or renewal card upon a written request from the licensee and payment of a duplicate document. Requests must include a notarized statement detailing the loss or destruction of the licensee's original license or card or be accompanied by the damaged certificate or card.

(d) Duplicate card. Upon the written request and payment of a duplicate document fee by a licensee, the committee will provide a licensee with a duplicate certificate for a second place of practice which is designated in a licensee's file.

§141.10. *Reciprocity.* In determining whether the licensing requirements of another jurisdiction are equivalent to or higher than Texas, the following criteria shall be considered by the committee:

- (1) written examination;
- (2) practical examination;
- (3) temporary training permit;
- and
- (4) apprentice permit.

§141.11. Filing of a Bond.

(a) A licensee may not fit and dispense hearing instruments until he or she has filed and maintained a bond or a surety in lieu of a bond in the amount of \$10,000 with the committee.

(b) The bond must be received on or before the 60th day from the date of issuance of the license.

(c) One extension of 60 days may be granted upon approval from the committee.

§141.12. Surrender of a License or Permit.

(a) Surrender by licensee or permit holder.

(1) A licensee or permit holder may at any time voluntarily offer to surren-

der his or her license or permit for any reason.

(2) The license or permit may be delivered to the committee office by hand or certified mail.

(3) If there is not complaint pending, the committee office may accept the surrender and void the license or permit.

(b) Formal disciplinary action.

(1) When a licensee or permit holder has offered the surrender of his or her license or permit after a complaint has been filed, the committee shall consider whether to accept the surrender of the license or permit.

(2) When the committee has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a committee order accepting the surrender may be prepared.

(3) Surrender of a license or permit without acceptance by the committee, or a licensee's or permit holder's failure to renew or extend the license or permit shall not deprive the committee of jurisdiction against the licensee or permit holder under the act or any other statute.

(c) Reinstatement. A license which has been surrendered may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

§141.13. Renewal of License.

(a) General

(1) A regular license must be renewed annually.

(2) A person who holds a regular license must have fulfilled any continuing education requirements prescribed by the committee in order to renew a license.

(3) Each person who holds a regular license is responsible for renewing the license and shall not be excused from paying late renewal fees or renewal penalty fees.

(4) The committee shall deny the renewal of the license of a licensee who is in violation of Texas Civil Statutes, Articles 4566-1.01 et seq or this chapter at the time of application for renewal

(5) A person whose license has expired shall return his or her license certificate to the committee.

(6) A persons whose license has expired shall not practice the fitting and dispensing of hearing instruments.

(7) the deadlines established for renewals, late renewals, and license renewal penalty fees in this chapter are based on the postmarked date of the documentation submitted by the licensee if legible and on the

date stamped at the Texas Department of Health if the postmark is not legible.

(8) The committee shall deny renewal if required by the Education Code, §57.491, relating to defaults on guaranteed student loans.

(b) Staggered renewals. The committee shall use a staggered system for license renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) Licensure fees will be prorated if the licensee's initial renewal date is determined by the committee to have occurred less than 12 months after the original date of licensure.

(3) Prorated fees may be rounded off to the nearest dollar.

(c) License renewal.

(1) At least 45 days prior to the expiration of a regular license, the committee will send notice to a licensee that includes:

(A) the expiration date of the license;

(B) a schedule of the renewal and late fees; and

(C) the number of hours needed to complete any continuing education requirements.

(2) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide:

(A) current addresses;

(B) telephone numbers; and

(C) information regarding continuing education that has been completed.

(3) The committee shall not renew a license until it receives the:

(A) completed license renewal form;

(B) renewal fee;

(C) required documents; and

(D) the license has complied with applicable continuing education requirements.

(4) The committee shall issue a renewal certificate to a licensee who has met all the requirements for renewal. The licensee must display the renewal certificate in association with the license.

(5) The license of a person who made a timely and sufficient request for renewal of his or her license does not expire until the application for renewal is finally determined by the committee, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the committee's order or a late date fixed by order of a reviewing court.

(6) A license that is not revoked or suspended as a result of formal hearing shall be renewed provided that all other requirements are met.

(7) In the case of delay in the license renewal process because of a formal hearing, late fees and penalty fees shall not apply.

(8) Each license to fit and dispense hearing instruments shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually on payment of the renewal fee.

(9) A person may renew an unexpired license by paying the required renewal fee to the committee before the expiration date of the license.

(10) If a person's license has been expired for not more than 90 days, the person may renew the license by paying the required renewal fee and a fee that is one-half of the examination fee for the license to the committee.

(11) If a person's license has been expired for more than 90 days but less than two years, the person may renew the license by paying all unpaid renewal fees and a fee that is equal to the examination for the license to the committee.

(12) If a person's license has been expired for two years or more, the person may not renew the license. The person may obtain a new license by submitting to re-examination and complying with the requirements and procedures for obtaining an original license.

(13) Before a license can be renewed, the committee shall require certification that all testing equipment, both portable and stationary, used by the licensee has been calibrated within one year prior to the renewal date.

(14) Before a license can be renewed, a licensee must demonstrate compliance with the requirements of continuing education established by the committee under the Texas Civil Statutes, Articles 4566-1.14A et seq.

(15) Fitting and dispensing a hearing instrument without a current license as provided by this subsection shall be subject to the same penalties as fitting and dispensing a hearing instrument without a license.

(16) Before a license can be renewed, the licensee must submit a copy of the written contract for services employed by the licensee.

§141.14. Continuing Education Requirements.

(a) Purpose. The purpose of this section is to establish the continuing education requirements which a licensee must complete every year for the renewal of a regular license. These requirements are intended to maintain and improve the quality of professional services in fitting and dispensing of hearing instruments provided to the public and to keep the licensee knowledgeable of current research, techniques and practices, and to provide other resources which will improve skill and competence in the fitting and dispensing of hearing instruments.

(b) General requirements. The committee shall require that a fitter and dispenser licensed under this Act and this chapter complete 20 clock-hours of continuing education each year. For purposes of this section:

(1) each year runs concurrently with the effective date of a license issued under the Act and this chapter;

(2) a clock hour shall be 60 minutes of attendance; and

(3) no more than 5 clock hours of the 20 clock-hours required may be obtained from a course sponsored by a manufacturer.

(c) Exemption by examination. A licensee may take the state examination given by the committee or its designee, upon written request to the committee. A licensee who pays the examination fee and passes the examination shall be exempt from the continuing education requirement for the year that the test is taken.

(d) Credit hours for publications. A licensee may be credited with continuing education credit hours for a published book or article written by the licensee that contributes to the licensee's professional competence.

(1) No more than five credit hours for preparation of a publication may be claimed by a licensed holder in an annual reporting period.

(2) the continuing education subcommittee may grant credit hours based on the degree that the published book or

article advanced knowledge regarding the fitting and dispensing of hearing instruments.

(e) Non compliance. A licensee who has not complied with the continuing education requirements of this section may not be issued a renewal license unless the licensee:

(1) has served in the regular armed forces of the United States during any part of the 12 months before the annual reporting date;

(2) submits proof from an attending physician that the licensee suffered a serious disabling illness or physical disability that prevented compliance with the requirements of this section during the 12 months before the annual reporting date; or

(3) was licensed for the first time during the 12 months before the annual reporting date.

(f) Attendance. A licensee shall provide written proof of attendance and completion of an approved course on a form prescribed by the committee.

(g) Renewal period for continuing education. Continuing education requirements for renewal shall begin on the first day of a licensee's renewal year and end on the last day of the licensee's renewal year.

(h) Course categories. Continuing education shall be acceptable if the education falls in one or more the following categories:

(1) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of fitting and dispensing of hearing instrument and are conducted by persons qualified within their respective professions by appropriate state license or certification where state licensure or certification exists, or in states outside of Texas where licensure or certification does not exist by completion of a degree in audiology or a related field and certification by their respective professional associations if such certification exists;

(2) completion of academic courses at an accredited institution in areas supporting development of skills and competence in the fitting and dispensing of hearing instruments; and

(3) participation or teaching in programs directly related to the fitting and dispensing of hearing instruments (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by an accredited college or university.

(i) Requests for credit. Individuals and organizations may initiate requests for committee approval and hour credit of spe-

cific programs for continuing education credit at least 30 days prior to the first scheduled presentation.

(1) Each licensee is responsible for providing the information necessary for the committee to make a determination of the applicability of the program to the continuing education requirements.

(2) Sponsors may initiate their own requests and when approval is obtained, shall announce, prior to the commencement of the continuing education activity, the number of hours approved and the content of the continuing education activity as submitted and pre-approved by the committee. When approval is requested by a sponsor, the sponsor shall provide each participant with written documentation of participation which shall set forth that participant's name, the number of approved continuing education hours, the title and date(s) of the program as approved by the committee, and the signature of the sponsor.

(j) Evaluation of continuing education programs. Each continuing education program submitted by a licensee or approved sponsor will be evaluated on the basis of the following criteria:

(1) relevance of the subject matter to increase or support the development of skills and competence in the fitting and dispensing of hearing instruments or in areas of studies or disciplines related to fitting and dispensing of hearing instruments;

(2) objectives of specific information and skills to be learned;

(3) subject matter, educational methods, materials, and facilities utilized, including the frequency and duration of sessions, and the adequacy to implement learner objectives; and

(4) sponsorship and leadership of program including:

(A) the name of the sponsoring individual(s) or organization(s);

(B) program leaders, if different from sponsor(s); and

(C) contact person if different from the preceding.

(k) Academic requirements. Completion of academic work shall be in accordance with subsection (j) of this section. Official transcripts from accredited school showing completion of hours in appropriate areas for which the licensee received at least a passing grade is required.

(l) Approved credit. The committee shall credit continuing education experience as follows.

(1) Parts of programs which meet the criteria of this section shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(2) Teaching in programs which meet the committee's criteria as set out in this section shall be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hour credits for preparation for each hour taught. No more than 10 of the 20 hours of required continuing education can be credited under this option, and credit may be granted for the same presentation or program not more than twice during any continuing education period. The remaining hours of continuing education required in each renewal period must be obtained under another of the available options in accordance with paragraphs (1) or (3) of this subsection.

(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the committee shall be credited on the basis of 15 clock-hours of credit for each semester hour, ten clock-hours of credit for each quarter hour completed and for which a passing grade was received as evidenced on an official transcript.

(m) Reporting. The requirements for reporting continuing education shall be as follows.

(1) A licensee may submit the required report at any time. Continuing education must be reported and approved prior to renewal at the end of the renewal period. Each licensee is responsible for ensuring that the committee receives timely notice of the licensee's completion of continuing education activities.

(2) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

(A) for a program attended, signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency;

(B) for teaching or consultation in approved programs, a letter on the sponsoring agency's letterhead giving the name of the program, location, dates, and subjects taught and indicating total clock-hours credited;

(C) for completion of work from accredited schools, an official transcript showing course credit with at least a passing grade; or

(D) for official verification of a course at a regionally accredited academic institution, a letter form the dean of the academic institution or professor which includes the actual number of clock-hours attended.

(n) Disapproved credit. The committee will not give continuing education credit to any licensee for:

(1) education incidental to the regular professional activities of a licensee such as knowledge gained through experience or research;

(2) organization activity such as serving on committees or councils or as an officer in a professional organization;

(3) any program which does not fit the types of acceptable continuing education in this section.

(o) Mandatory continuing education. The mandatory 5 of the 20 required continuing education hours will be conveyed in the committee newsletter and renewal packet.

§141.15. Examination.

(a) Purpose. This section sets out provisions governing the administration, content, grading, and other procedures for examination in the fitting and dispensing of hearing instruments.

(b) Application for examination.

(1) The committee shall notify the applicant whose application has been approved at least 45 days prior to the next scheduled examination. Applications which are received incomplete or late may cause the applicant to miss the examination deadline. This notice shall include the examination registration form.

(2) An examination registration form must be completed and returned to the committee office by the applicant with the required examination fee and any requests for special accommodations at least 30 days prior to the date of the examination.

(c) Examination.

(1) The examination shall consist of a written section and a practical section. The examination will consist of the following areas as they relate the fitting and dispensing of hearing instruments:

(A) basic physics of sound;

(B) structure and function of hearing instruments;

(C) fitting of hearing instruments;

(D) pure tone audiometry, including air conduction testing and bone conduction testing;

(E) live voice and recorded voice speech audiometry;

(F) masking when indicated for air conduction, bone conduction, and speech;

(G) recording and evaluation of audiograms and speech audiometry to determine the candidacy for hearing instrument;

(H) selection and adaption of hearing instruments, testing of hearing instruments, and verification of aided hearing instrument performance.

(I) taking of earmold impressions;

(J) verification of hearing instrument fitting and functional gain measurements using a calibrated system;

(K) anatomy and physiology of the ear;

(L) post-counseling and aural rehabilitation of an individual with a hearing impairment for the purpose of fitting and dispensing hearing instruments;

(M) use of an otoscope for the visual observation of the entire ear canal; and

(N) laws, rules, and regulations of this state and the United States.

(2) The examination may not test knowledge of the diagnosis or treatment of any disease or injury to the human body.

(d) Failure of examination.

(1) An applicant who fails an examination may retake the failed portion or portions of the examination after payment of an additional examination fee. The applicant must be re-examined within 12 months of the unsuccessful examination.

(2) If the applicant fails the second examination, the committee may require the applicant to submit evidence of satisfactory completion of additional courses of study prescribed by the committee.

(3) The examinee has 30 days after notification of failing the examination

to request in writing that the committee furnish the examinee with an analysis of that person's performance on the examination.

§141.16. Conditions of Sale.

(a) Compliance with other state and federal regulations. A licensee or permit holder under this Act shall:

(1) adhere to the Federal Food and Drug Administration regulations in accordance with 21 Code of Federal Regulations (CFR) §801.420 and §801.421;

(2) receive a written statement before selling a hearing instrument that is signed by a physician or surgeon duly licensed by the Texas State Board of Medical Examiners, who specializes in diseases of the ear and states that the consumer's hearing loss has been medically evaluated during the preceding six-month period and that the consumer is age 18 or older, the licensee may inform the consumer that the medical evaluation requirement may be waived as long as the licensee:

(A) informs the consumer that the exercise of the waiver is not in the consumer's best health interest;

(B) does not encourage the consumer to waive the medical evaluation; and

(C) gives the consumer an opportunity to sign this statement: "I have been advised by (licensee's or permit holder's name) that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician or surgeon who specializes in diseases of the ear) before purchasing one or more hearing instruments. I do not wish to receive a medical evaluation before purchasing a hearing instrument";

(3) not sell a hearing instrument to a person under 18 years of age unless the prospective user, parent, guardian has presented to the licensee or permit holder a written statement signed by a licensed physician specializing in diseases of the ear that states that the consumer's hearing loss has been medically evaluated and the consumer may be considered a candidate for a hearing instrument. The evaluation must have taken place within the preceding six months; and

(4) advise consumers who appear to have any of the following otologic (hearing) conditions to consult promptly with a physician:

(A) visible, congenital or traumatic deformity of the ear;

(B) history of active drainage from the ear within the previous 90 days;

(C) history of sudden or rapidly progressive hearing loss within the previous 90 days;

(D) acute or chronic dizziness;

(E) unilateral hearing loss of sudden or recent onset within the previous 90 days;

(F) audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz;

(G) visible evidence of significant cerumen accumulation or a foreign body in the ear canal; and

(H) pain or discomfort in the ear.

(b) Guidelines for a 30-day trial period.

(1) It is the intent of these guidelines that all consumers be informed of a 30-day trial period by written contract for services and all charges associated with such trial period be included in this written contract for services, which shall include the name, address, and telephone number of the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments.

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

(c) Written contract for services to consumer-consumer protection. Upon the sale of any hearing instrument(s), the licensee or permit holder shall provide the consumer with a signed, written contract for services containing the following:

(1) the date of sale;

(2) the make, model, and serial number of the hearing instrument(s);

(3) the name, address, and telephone number of the principal place of business of the licensee;

(4) a statement that the hearing instrument is new, used, or reconditioned;

(5) the terms of any guarantee or express warranty made to the consumer with respect to the hearing instrument(s);

(6) a copy of the written forms (relating to waiver forms);

(7) a statement on or attached to the written contract for services, in no smaller than ten-point bold type, as follows: "The consumer has been advised at the outset of his relationship with the undersigned fitter and dispenser of hearing instruments that any examination or representation made by a licensed fitter and dispenser of hearing instruments in connection with the fitting and selling of the hearing instrument(s) is not an examination, diagnosis or prescription by a person duly licensed and qualified as a physician or surgeon authorized to practice medicine in the State of Texas and, therefore, must not be regarded as medical opinion or advice";

(8) a statement on the face of the written contract for services, in no smaller than ten-point bold type, as follows: "If you have a complaint against a licensed fitter and dispenser of hearing instruments, you may contact the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, 1-800-942-5540";

(9) the licensee's or permit holder's printed name, signature and license or permit number;

(10) the supervisory arrangement reflected on a written contract for services by signature of both the permit holder and licensee with both the permit holder's license number and the licensee's license number; and

(11) the date of the follow-up appointment within the 30-day trial period.

(d) Terms of sale.

(1) There shall be a full and complete disclosure of the cost of financing the purchase of hearing instruments.

(2) The written contract for services shall state:

(A) the complete terms of service, including cost of service, and what services are available;

(B) by whom, and for how long such service will be provided, includ-

ing house or office calls, when applicable; and

(C) the terms of aftercare fitting.

(3) If the initial price of the hearing instrument(s) furnished is reduced by trade-in allowance or discount, the written contract for services shall conspicuously state:

(A) the initial price of the aid before trade-in allowance or discount;

(B) the amount of the trade-in allowance or discount; and

(C) the final price to the consumer.

(e) Record keeping. It is the licensee's responsibility to keep records on every consumer to whom the licensee renders service in connection with the fitting and dispensing of hearing instruments. Such records shall be preserved for at least five years after the fitting and dispensing of the hearing instrument(s) to the consumer. If other hearing instruments are subsequently fitted and dispensed to that consumer, cumulative records must be maintained for at least five years after the latest fitting and dispensing of the hearing instrument(s) to that consumer. The records must be available for the committee's inspection and will include but not be limited to the following:

(1) consumer's case history;

(2) source of referral and appropriate documents;

(3) medical evaluation or waiver of evaluation;

(4) copies of writing contracts for services and receipts executed in connection with the fitting and dispensing of each hearing instrument provided;

(5) a complete record of hearing tests, hearing test results, and services provided, including follow-up appointment within the 30-day trial period;

(6) all correspondence specifically related to services provided to the consumer or the hearing instrument(s) fitted and dispensed to the consumer; and

(7) a complete record of tests and test results shall be available for the consumer.

(f) Audiometers and audiometric testing devices.

(1) Audiometers and audiometric testing devices shall meet the current standards of the American National Standards Institute (ANSI §3. 6-1989), or as

otherwise specified by the Texas Department of Health (department).

(2) Current audiometer or audiometric testing device calibration records shall be maintained with each audiometer or audiometric testing device. Audiometer or audiometric testing device calibration records and data shall be maintained for inspection by the department for a period of three years.

(g) Audiometric testing not conducted in a stationary acoustical enclosure.

(1) A notation shall be made on the hearing test if testing was done in a stationary acoustical enclosure.

(2) Ambient noise level of location of audiometric testing, if not done in a stationary acoustical enclosure, shall include a notation on the hearing test of the following items:

(A) type(s) of equipment used to determine ambient noise level;

(B) model and serial number of equipment used to determine ambient noise level; and

(C) date of last calibration of equipment used to determine ambient noise level.

(3) If audiometric testing is not conducted in a stationary acoustic enclosure the test environment shall have a dBA equivalent maximum allowable ambient noise level of 56.7 dBA.

(4) If a dBA equivalent is not being used, the octave band criteria for allowable ambient noise levels are as follows:

(A) 500Hz-39.5 dBA;

(B) 1000Hz-46.5 dBA;

(C) 2000Hz-48.0 dBA;

(D) 4000Hz-54.5 dBA; and

(E) 6300Hz-56.7 dBA.

§141.17. Complaints and Violations.

(a) Disciplinary action; notices.

(1) The committee may refuse to issue or renew a license, revoke, or suspend a license or permit, may probate disciplinary action, or may issue a reprimand to a person who has:

(A) violated any provision of the Act;

(B) violated any rule adopted by the committee;

(C) engaged in false, misleading or deceptive practices in competitive bidding or advertising; or

(D) been convicted of a misdemeanor that involved moral turpitude or a felony.

(2) Prior to initiation of formal proceeding to refuse to issue or renew a license, revoke or suspend a license or permit, probate disciplinary action, or issue a reprimand to a permit holder or licensee, the committee or its designee shall give written notice to the licensee, permit holder, or applicant by certified mail, return receipt requested, of the facts or conduct alleged to warrant the action, including the complainant's name if appropriate; and the licensee, permit holder, or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter, as required by Texas Civil Statutes §2001.054(c)(2).

(3) If refusal to issue or renew a license, probation of disciplinary action, or reprimand of a person, refusal of application for examination, denial revocation, suspension of a license or permit or applicant is proposed, the committee shall give written notice by certified mail, return receipt requested, of the basis for the proposal and that the licensee, permit holder, or applicant must request, in writing, a formal hearing within ten days of receipt of the notice, or the right to a hearing shall be waived and the committee may refuse to issue or renew a license, revoke or suspend a license or permit; probate disciplinary action, or reprimand a licensee or permit holder.

(4) Receipt of a notice described under paragraph (1), (2), or (3) of this subsection is presumed to occur on the tenth day after the notice is mailed to the last address known to the committee unless another date is reflected on a United States Postal Service return receipt.

(b) Power to sue. The committee may institute a suit in its own name and avail itself of any other action, proceeding, or remedy authorized by law to enjoin the violation of Texas Civil Statutes, Article 4566. The suit is in addition to any other action, proceeding, or remedy authorized by law.

(c) Reporting alleged violations.

(1) Any licensee, permit holder, person, or committee member wishing to report an alleged violation of the Fitters and Dispensers of Hearing Instruments Act (Act) or the rules shall notify the executive director. The initial notification may be in

writing, by telephone, or by personal visit to the committee office.

(2) Upon receipt of a complaint, the executive director shall send an acknowledgement letter to the complainant with an official form which the complainant shall be asked to complete and return the form to the committee before further action can be taken. The executive director may accept an anonymous complaint if there is sufficient information for investigation.

(3) A complaints subcommittee shall be appointed to work with the executive director to:

(A) review each complaint and determine whether the complaint fits within the category of a complaint affecting the health and safety of clients or other persons;

(B) ensure that complaints are not dismissed without appropriate consideration;

(C) ensure that a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(D) resolve the issues of the complaint which arise under the Act or this chapter.

(4) The executive director shall request a notarized response from the licensee or permit holder against whom the alleged violation has been filed and gather information required by the complaints subcommittee.

(5) If the complaints subcommittee determines that there are insufficient grounds to support the complaint, the subcommittee shall dismiss the complaint and give written notice of the dismissal to both the licensee or permit holder against whom the complaint has been filed and the complainant.

(6) If it is determined that there are facts which may establish a violation of the Act or rules, the matters in question shall be investigated.

(7) At each 90-day interval, following the receipt of the complaint until the complaint is finally resolved or closed, the committee shall notify a complainant of the status of his or her complaint unless the notice would jeopardize an undercover investigation.

(8) The committee shall address all complaints in a timely manner. After review of each complaint, the executive director shall establish a schedule for conducting each phase of the complaint procedure not later than the 30th day after

the date the complaint is received. The schedule shall be kept in the information file for the complaint. A change in the schedule must be noted in the complaint information file.

(9) The executive director shall notify the complaints subcommittee if a change extends the time prescribed for resolving the complaint.

(d) Licensing of persons with criminal backgrounds.

(1) The purpose of this subsection is designed to set out guidelines and criteria for the eligibility of persons with criminal backgrounds to obtain and retain licenses or permits.

(2) The committee may consider the felony conviction of a licensee, permit holder or applicant as grounds for the disciplinary action against the licensee, permit holder, or applicant and may review the conviction.

(3) The committee may suspend or revoke an existing license or permit, disqualify a person from receiving a license or permit, or deny to a person the opportunity to be examined for a license or permit because of a person's conviction of a felony or misdemeanor involving moral turpitude, if the crime directly relates to the duties and responsibilities of a licensee. In considering whether a criminal conviction directly relates to the profession of fitting and dispensing of hearing instruments, the committee shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purpose for requiring a license or permit to practice the fitting and dispensing of hearing instruments;

(C) the extent to which a license or permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensee or permit holder.

(4) In determining the present fitness of a person who has been convicted of a crime, the following shall be considered:

(i) the extent and nature of the person's past criminal activity;

(ii) the age of the person at the time of the commission of the crime;

(iii) the amount of time that has elapsed since the person's last criminal activity;

(iv) the conduct and work activity of the person prior to and following the criminal activity;

(v) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release;

(vi) other evidence of the person's present fitness, including letters of recommendation from:

(I) prosecution;

(II) law enforcement;

(III) correctional officers who:

(-a-) prosecuted;

(-b-) arrested; or

(-c-) had custodial responsibility for the person;

(IV) the sheriff and chief of police in the community where the person resides; and

(V) any other persons in contact with the convicted person;

(vii) recommendations of the prosecution, law enforcement, and correctional authorities as required under this Act shall be secured and provided to the committee by the applicant to the extent possible; the licensee, permit holder or applicant shall also furnish proof in such form as may be required by the committee that he or she has maintained a record of steady employment and has supported his or her dependents and has otherwise maintained record of good conduct and 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.

(5) The following felonies and misdemeanors relate to the license or permit because these criminal offenses may indicate an inability or a tendency to be unable to perform as a licensee or permit holder:

(A) the misdemeanor of knowingly or intentionally practicing fitting and dispensing of hearing instruments without a license;

(B) an offense involving moral turpitude;

(C) a misdemeanor involving deceptive business practices;

(D) the offense of assault or sexual assault;

(E) the felony offense of insurance claim fraud;

(F) a misdemeanor and/or felony offense under various titles of the Texas Penal Code concerning:

(i) Title 5 offenses against the person;

(ii) Title 7 offenses against property;

(iii) Title 9 offenses against public order and decency;

(iv) Title 10 offenses against public health, safety, and morals; and

(v) Title 4 offenses of attempting or conspiring to commit any of the offenses in subparagraphs (A)-(D) of this paragraph or clauses (i)-(iv) of this subparagraph;

(G) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a licensee or permit holder including violations of federal laws, laws of other states and laws of other nations.

(6) The executive director shall give written notice to a person with a criminal background that the committee intends to take disciplinary action after a hearing in accordance with the hearing procedures in §141.18 of this title (relating to Formal Hearings).

(e) Suspension, temporary suspension, probation, denial or revocation of a license or permit, or reprimand of a licensee or permit holder.

(1) If the committee suspends a license or permit, the suspension shall remain in effect for the period of time stated in the order or until the committee determines that the reason for the suspension no longer exists.

(2) If a suspension overlaps a license renewal date, the suspended fitter and dispenser of hearing instruments shall comply with the renewal procedures in this chapter; however, the suspension shall remain in effect pursuant to paragraph (1) of this subsection.

(3) Upon revocation or suspension of a license, a licensee shall return his or her license certificate to the committee.

(4) Upon revocation or suspension of a license, a licensee shall return his or her license certificate to the committee.

(f) Default orders.

(1) If the right to a hearing is waived under §141.17(a) of this title (relating to Complaints and Violations) or this chapter, the committee shall consider an order taking disciplinary action as described in written notice to the licensee, permit holder, or applicant.

(2) The licensee, permit holder, or applicant and the complainant shall be notified of the date, time, and place of the committee meeting at which the default order will be considered.

(3) Upon an affirmative majority vote, the committee shall enter an order imposing appropriate disciplinary action.

(g) Monitoring of licensees.

(1) The executive director shall maintain a complaint tracking system.

(2) The committee may require each licensee, permit holder, or applicant that has had disciplinary action taken against his or her license or permit to submit regularly scheduled reports. The report, if required, shall be scheduled at intervals appropriate to each individual situation.

(3) The executive director shall review the reports and notify the complaints subcommittee if the requirements of the disciplinary action are not met.

(4) The complaints subcommittee may consider more severe disciplinary proceedings if noncompliance occurs.

§141.18. Formal Hearings.

(a) Purpose. This section covers the formal hearing procedures and practices that will be used by the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, or appropriate subcommittee thereof in the handling of denials, suspensions, probations, and revocations of a license or permit, reprimands of a licensee or permit holder and requirements of additional continuing education for a licensee or permit holder and implements the contested case provisions of the Administrative Procedure Act (APA), the Government Code, Chapter 2001, and this section.

(1) The committee or appropriate subcommittee on its own motion or on request from a licensee, permit holder or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provisions of the APA, and this section.

(2) If the licensee, permit holder or applicant fails to appear or be represented at the scheduled hearing, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate

disciplinary action may be taken by the committee.

(b) Recording the hearing. The hearing examiner will keep either a stenographic or other taped record of the hearing proceeding. In the event an independent contract court reporter is utilized in the making of the record of the proceedings, the committee shall bear the cost of the per diem or other appearance fee for the reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APA. In those cases when a tape recording of the formal hearing is made, the hearing examiner shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the committee necessitating the forwarding of the record to a court of law, the committee may assess the cost of the transcript to the appealing party.

(c) Action after the hearing.

(1) Reopening of hearing for new evidence.

(A) The committee upon recommendation of the hearing examiner may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing. The committee may refer the matter to the hearing examiner to accept the new evidence and alter his or her proposal for decision as necessary.

(B) The committee will reopen a hearing to include such new evidence as part of the record if the committee deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(C) Notice and procedural requirements will be the same as for the original hearing.

(2) Pleading after close. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the executive director. The party filing such instrument shall provide copies of the same to all other parties of record by first-class United States mail or personal services and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(3) Final orders or decisions.

(A) The final order or decision will rendered by the committee. The committee may refuse to issue or renew a license, suspend, or revoke a license or permit; or may probate disciplinary action, or may issue a reprimand to a licensee or permit holder as it deems appropriate and lawful. A decision of the committee may include any requirement to be imposed upon the licensee or applicant which is related to the individual's practice as a licensee and is deemed by the committee to be appropriate and lawful.

(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.

(C) All final orders shall be signed by the president of the committee;

(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.

(4) Motion for rehearing. A motion for rehearing shall be governed director by the APA, the Government Code, Chapter 2001, and shall be addressed director to the committee and filed with the executive director.

(5) Appeals. All appeals from final committee orders or decisions shall be governed by the APA, the Government Code, Chapter 2001, and communications regarding any appeal shall be to the executive director of the committee.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502219

Susan K. Steeg
General Counsel
Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Earliest possible date of adoption: March 31, 1995

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

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Chapter 143. Consumer
Information and Complaints

• 22 TAC §143.1

(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 Texas Board of Examiners in the Fitting and

Dispensing of Hearing Aids or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee) with the approval of the Texas Board of Health (Board) proposes the repeal of existing §143.1, concerning consumer information and complaints guidelines for a 30-day trial period.

The proposed repeal will remove obsolete rules.

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

Ms. Underwood also has determined that for each year of the first five-year period the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal will be the removal of obsolete rules. There is no cost to small businesses or persons to comply with the repeal. There will be no anticipated effect in local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Public Comments will be accepted for 30 days after publication of the section in the *Texas Register*. In addition, public hearings have been scheduled as follows: March 6, 1995, 10-Noon, Houston, Houston Medallion Hotel, March 13, 1995, 10-Noon, Midland, Midland Hilton, March 20, 1995, 10-Noon, Dallas, Dallas Medallion, and March 27, 1995, 10-Noon, Austin, Austin North Hilton and Towers.

The repeal is proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules actions, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4566.

§143.1. Guidelines for a 30-Day Trial Period.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502217

Susan K. Steeg
General Counsel
Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Earliest possible date of adoption: March 31, 1995

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

Chapter 145. Continuing Education

• 22 TAC §145.1

(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 Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments (Committee) with the approval of the Texas Board of Health (Board) proposes the repeal of existing §145.1, concerning general requirements for continuing education for licensed fitters and dispensers of hearing aids.

The proposed repeal will remove obsolete rules.

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

Ms. Underwood has determined that for each year of the first five-year period the repeal as proposed is in effect, the public benefit anticipated as a result of enforcing the repeal will be the removal of obsolete rules. There is no cost to small businesses or persons to comply with the repeal. There will be no anticipated effect in local employment.

Comments on the proposal may be submitted to Bobby D. Schmidt, Executive Director, State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6784. Public Comments will be accepted for 30 days after publication of the section in the *Texas Register*. In addition, public hearings have been scheduled as follows: March 6, 1995, 10-Noon, Houston, Houston Medallion Hotel, March 13, 1995, 10-Noon, Midland, Midland Hilton, March 20, 1995, 10-Noon, Dallas, Dallas Medallion, and March 27, 1995, 10-Noon, Austin, Austin North Hilton and Towers.

The repeal is proposed under Texas Civil Statutes, Article 4566-1.04, which require the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments to adopt rules actions, with the approval of the Texas Board of Health, that are reasonably necessary for the proper performance of its duties under the Act.

This action implements Texas Civil Statutes, Article 4566.

§145.1. General Requirements for Continuing Education.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502218

Susan K. Steeg
General Counsel
Texas Board of Examiners
in the Fitting and
Dispensing of Hearing
Aids

Earliest possible date of adoption: March 31, 1995

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

Part XIX. Polygraph Examiners Board

Chapter 395. Code of Operating Procedure for Polygraph Examiners

• 22 TAC §395.10

The Polygraph Examiners Board proposes an amendment to §395.10, requiring the polygraph examiner to advise the polygraph subject the results of the polygraph examination and provide an opportunity for the subject to explain the charted responses. The amendment is proposed pursuant to Texas Civil Statutes, Article 4413(29cc), §6(a), which allows the Board the authority to issue regulations consistent with the provisions of the Polygraph Examiners Act.

Bryan M. Perot, executive officer, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Perot also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the polygraph industry will be more closely regulated in areas that the Board determines to be critical. 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 Bryan M. Perot, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

Texas Civil Statutes, Article 4413(29cc), §6(a) is affected by this proposal.

§395.10. *Opportunity to Explain Any Questionable Responses.* The polygraph examiner shall not render a verbal or written adverse opinion, based on chart analysis until the subject has had an opportunity to explain any questionable responses on the chart(s) [chart].

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

Issued in Austin, Texas, on February 8, 1995.

TRD-9502122

Bryan M. Perot
Executive Officer
Polygraph Examiners
Board

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 465-2058

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 403. Other Agencies and the Public

Subchapter C. Determination of Rates for Support, Maintenance, and Treatment

• 25 TAC §§403.71-403.77

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

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§403.71-403.77, concerning determination of rates for support, maintenance, and treatment. The repeal is proposed contemporaneously with the proposal of new sections of Chapter 403, Subchapter C, in this issue of the *Texas Register*.

The proposed repeal would allow for the proposal of new sections which would clarify the department's rate determination policies and procedures.

Leilani Rose, director, Financial Services, has determined that for the first five-year period the repeals would be in effect there would be no additional fiscal cost to state or local government. There will be no significant local economic impact. There will be no effect on small businesses.

Sally Anderson, deputy commissioner, Management and Support Services, has determined that the public benefit is the clarification of the department's rate determination policies and procedures. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Linda Logan, Director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeals are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

The proposal would affect the Texas Health and Safety Code, Chapters 533, 552, and 593.

§403.71. Purpose.

§403.72. Applicability.

§403.73. Definitions.

§403.74. Determination of Rates.

§403.75. Administrative Appeals from Rate Determination Based Upon Ability to Pay.

§403.76. Administrative Hearing to Contest Charges for Support, Maintenance, and Treatment Before Filing Notice of Lien.

§403.77. Exhibits.

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

Issued in Austin, Texas, on February 21, 1995.

TRD-9502148

Ann Utley
Chairman, Texas MHMR
Board
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 206-4516

• 25 TAC §§403.71-403.79

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§403.71-403.79, concerning determination of rates for support, maintenance, and treatment. The new sections are proposed contemporaneously in this issue of the *Texas Register* with the proposed repeal of existing Chapter 403, Subchapter C, concerning the same sections, which the proposed new subchapter would replace.

The proposed new sections would reflect the recommendations of the Senate Health and Human Services Committee to remove the \$170 per month limit charged to parents of minors at department mental retardation facilities and apply the same fee schedule to parents of minors at mental health facilities. The policy of assessing rates charged to clients and spouses of clients in mental health facilities would also apply to clients and spouses of clients in mental retardation facilities. The rate computation chart for adult clients in mental health facilities would be revised to clarify that there is no maximum

rate of charge, other than the maximum rate for support, maintenance, and treatment currently in effect for each facility. A rate computation chart for clients in mental retardation facilities who receive work earnings would be added to reflect current practice. Language would also be added regarding written notification of determined rates and reviews of determined rates following changes in property ownership or income.

A hearing officer, rather than the executive deputy commissioner, would be responsible for making findings of fact and conclusions of law when a rate has been appealed. The decision by the hearing officer would be final and no longer appealable through the commissioner. The duplicative procedures of appealing a determined rate and contesting charges prior to filing a lien would be reduced to one procedure. Several definitions would be added to clarify new terms in the subchapter.

Leilani Rose, director, Financial Services, has determined that there will be no additional fiscal cost to state or local government or small businesses as a result of administering the sections as proposed. Additional state revenues resulting from the proposed revisions will not exceed \$11,000 per year.

Sally Anderson, deputy commissioner, Management and Support Services, has determined that the public benefit is the clarification of the department's rate determination policies and procedures and the assurance of reimbursement for state services by parents who can afford to help pay for services for their minor children. There will be no significant local economic impact. A very small number of individuals or families may experience additional costs as a result of the proposed revisions. The number of families is estimated at 23 and the additional cost is estimated to average \$1,200 per year for this small number of families.

Comments on the proposed new sections may be submitted to Linda Logan, Director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The new sections are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

The proposal would affect the Texas Health and Safety Code, Chapters 533, 552, and 593.

§403.71. Purpose. The purpose of this subchapter is to provide basic rules and procedures to be followed by the Reimbursement and Revenue Enhancement personnel of the department in determining rates charged to clients, spouses or parents of clients, and clients' guardianship, estate, or trust, based upon their ability to pay, for the client's inpatient or residential support, maintenance, and treatment in a department facility in accordance with the applicable

statutes and in a manner that is fair and equitable to the client and to the state.

§403.72. Applicability. The provisions of this subchapter apply to all facilities of the Texas Department of Mental Health and Mental Retardation that provide inpatient or residential services.

§403.73. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Appellant—The person appealing a determined rate.

Client—Any person who is admitted to a facility of the department and who is provided support, maintenance, and treatment as an inpatient or resident (i.e., a person to whom a bed is assigned) by such facility including any person who is admitted to a facility of the department for the purpose of receiving a determination of mental retardation pursuant to the Texas Health and Safety Code, §593.005.

Department—The Texas Department of Mental Health and Mental Retardation.

Facility—Any state hospital, state school, state center, or other entity which is now or hereafter made a part of the department.

Hearing officer—The attorney assigned by the department's Hearings Office to conduct the hearing for an appeal of a determined rate.

Person responsible for payment—The client, the client's spouse/parent, or other person legally responsible for paying the costs of support, maintenance, and treatment for the client, either individually, in a representative capacity, or other legal capacity.

Reimbursement manager—The person in charge of the Reimbursement Office at a facility.

Responsible entity—A client's guardianship (not the guardian), estate, or trust.

SMT—Support, maintenance, and treatment.

§403.74. Determination and Notification of Rates.

(a) Assessment of rates for services charged to parents of minor clients.

(1) Rates charged to parents of minor clients for SMT provided by department facilities, as authorized by the Texas Health and Safety Code, §552.017 and §593.075, are determined in the following manner:

Figure 1: 25 TAC 403.74(a)(1).

(2) A judgment in a divorce proceeding that provides for support payments does not limit the rate that may be set, nor does the judgment exempt either parent from liability for SMT charges of the client.

(3) Failure of a parent to provide current income information may result in a determined rate equal to the facility's current maximum rate of providing SMT for a client.

(b) Assessment of rates for services charged to adult clients and spouses of clients or other responsible entities.

(1) Clients and their spouses or other responsible entity who possess sufficient property to reimburse the state for the cost of the client's SMT and who are able to pay the cost shall be charged the maximum rate which is currently applicable to the particular facility and to the type of care provided. Clients and their spouses or other responsible entities whose property is not sufficient to reimburse the state for the cost of the client's SMT and who are not able to pay the cost shall be charged less than the maximum rate, based upon their ability to pay as determined in accordance with this section.

(2) The following provisions apply to the determination of a rate for the SMT of a client who is a beneficiary of a trust or trusts.

(A) In accordance with the Texas Health and Safety Code, §552.018 and §593.081, no portion of the corpus or income of a trust or trusts, with an aggregate principal amount not to exceed \$50,000, of which a client is the beneficiary, shall be considered to be the property of such person or the person's estate, and no portion of the corpus or income of such trust shall be liable for the SMT of such person, regardless of the person's age.

(B) A trust or trusts established prior to January 1, 1978, for a person with mental retardation and which otherwise meet the requirements of the law and this section shall be deemed entitled to the benefit of this section in the same manner as if such trust or trusts had been established on or after January 1, 1978. A trust or trusts established for a person with mental illness and which otherwise meets the requirements of the law and this section shall be deemed entitled to the benefit of this section for charges for services provided on and after September 1, 1989.

(C) The ascertainment of income and principal with respect to any trust or trusts subject to this section and the apportionment of the receipts and expenses of such trust or trusts shall, unless otherwise legally directed, be governed by the Texas Trust Act, Texas Property Code, §§111.001, et seq.

(D) If a client is a beneficiary of a trust or trusts with an aggregate

principal amount which exceeds \$50,000, only that portion of the corpus of such trust or trusts which exceeds \$50,000, and the income attributable to such excess corpus, shall be liable for the SMT of the client.

(i) If a client is a beneficiary of two or more trusts with an aggregate principal amount which exceeds \$50,000, that portion of the corpus of the trust or trusts established first in time which equals \$50,000, and the income attributable to such corpus, shall be exempt from liability for the SMT of the client.

(ii) If a client is a beneficiary of a trust or trusts with an aggregate amount which increases from an amount which is equal to or less than \$50,000, to an amount which exceeds \$50,000, that portion of the corpus of such trust or trusts which exceeds \$50,000, and the income attributable to that excess portion of the corpus, shall be liable for the SMT of the client from the date on which the aggregate principal amount of such trust or trusts exceeds \$50,000 and shall continue to be liable for the SMT provided until the aggregate principal amount of such trust or trusts does not exceed \$50,000.

(E) In order to qualify for the exemption granted by the Texas Health and Safety Code, §552.018 and §593.081, a trust must be created by a written instrument and a copy of the trust instrument must be provided to the department. A trustee of such a trust shall, upon request, provide the department with a current financial statement which reflects the value of the trust estate.

(F) The following are not entitled to the exemption granted by statutes:

(i) a guardianship established pursuant to the Texas Probate Code;

(ii) a trust established pursuant to Chapter 142, Texas Property Code;

(iii) the facility custodial account established pursuant to the Texas Health and Safety Code, Chapter 551;

(iv) the provisions of a divorce decree or other court order relating to child support obligations;

(v) an administration of a decedent's estate; or

(vi) an arrangement whereby funds are held in the registry or by the clerk of a court.

(G) The collection of charges assessed against any portion of the corpus or income of a trust or trusts liable for the SMT of a client may be deferred in the discretion of the department when the

deferral of such collection is deemed to be in the best interest of the State of Texas.

(3) In addition to income as described in paragraph (4) of this subsection, other factors to be considered in establishing a rate are:

(A) the ownership of real and personal property;

(B) expected duration of the client's stay in the facility;

(C) insurance coverage;

(D) benefits from governmental and nongovernmental agencies and institutions; and

(E) exceptional financial hardship.

(4) Income is considered in the determination of rates.

(A) The following rate computation chart is used as a guide in establishing rates for the SMT provided clients of department mental health facilities: Figure 2: 25 TAC 403.74(b)(4)(A).

(B) The following rate computation chart is used as a guide in establishing rates for the SMT provided clients of department mental retardation facilities who receive work earnings: Figure 3: 25 TAC 403.74(b)(4)(B).

(c) Absences from facility. The day of admission, death, or return from an absence is considered a full day at the facility. The day of discharge, transfer, or departure is considered a full day away from the facility. Except when payment is prohibited by law or contract, charges continue:

(1) for the entire period of an absence when the client remains under the care, custody, and control of facility personnel;

(2) for the entire period when the client is furloughed by the facility to an inpatient medical facility and charges for the medical services are not paid by a third-party payor; and

(3) for the first three days of any other absence from the facility from which a return is planned.

(d) Revision of rates. A new rate may be determined each time the reimbursement manager receives information indicating a change in property ownership or income.

(e) Notification of rate. When a rate has been determined for the SMT of a

client, the person responsible for payment is notified in writing of the determined rate. The notice shall include:

(1) the name of the client receiving SMT from the facility;

(2) the rate determined to be charged per month;

(3) the source of funds upon which the determined rate was based;

(4) the effective date of the rate;

(5) a statement of the recipient's right to appeal if the recipient disagrees with the rate and information on how to initiate an appeal;

(6) instructions to notify the facility's reimbursement manager if property ownership or income changes; and

(7) information on possible payments from a third party payor.

§403.75. Appeal Process.

(a) If the person responsible for payment disagrees with the rate determined, then the person may appeal such rate.

(b) A person intending to appeal the determined rate shall notify the reimbursement manager at the facility which is providing SMT to the client of his/her intent to appeal. The reimbursement manager shall immediately supply the person with:

(1) a copy of this subchapter with the areas relevant to appealing indicated;

(2) a property and financial statement form, referred to in §403.77 of this title (relating to Exhibits) as Exhibit A; and

(3) a Notice of Appeal form, referred to in §403.77 of this title (relating to Exhibits) as Exhibit B.

(c) A person initiates the appeal by completing, signing, and sending the forms (referred to in subsection (b) of this section) to: Hearings Office, Texas Department of Mental Health and Mental Retardation, Box 12668, Austin, Texas 78711-2668.

(d) The hearing officer shall set the hearing date no less than 10 calendar days nor more than 30 calendar days following receipt of the completed forms by the Hearings Office and notifies the person appealing (the appellant) by certified mail of the hearing date.

(e) Appellants may appear on their own behalf, be represented by an attorney authorized to practice law in the State of Texas, or waive their right to appear in person or be represented. Staff from the department's Reimbursement and Revenue Enhancement Division represent the department in all appeals.

(f) The appellant may choose to have the hearing officer:

(1) conduct the hearing in Austin, Texas, with the appellant (and/or representative) and the department representative(s) present;

(2) conduct the hearing by telephone conference with the appellant (and/or representative) and the department representative(s); or

(3) make a decision based solely upon evidence provided by the appellant and the department representative(s), without the presence of anyone involved.

(g) The hearing officer shall:

(1) make findings of fact and conclusions of law, separately stated, in writing;

(2) sustain, reduce, or increase the rate under appeal; and

(3) notify in writing the appellant and the department representative(s) of this decision and the facts upon which the decision was made within 30 calendar days of the hearing.

(h) The decision of the hearing officer is final and is the last step in the appeal process.

§403.76. Filing Notice of Lien.

(a) Whenever a staff member of the department's Reimbursement and Revenue Enhancement Division proposes to file a notice of lien, under the Texas Health and Safety Code, §533.004, the staff member shall, 30 calendar days prior to filing the written notice of the lien with the county clerk, notify by certified mail the person responsible for payment of the intention to file a lien. The notice shall contain:

(1) a copy of the unpaid charges along with the statutory procedures regarding the filing of liens;

(2) a copy of this subchapter with the areas relevant to appealing indicated;

(3) a property and financial statement form, referred to in §403.77 of this title (relating to Exhibits) as Exhibit A;

(4) a Notice of Appeal form, referred to in §403.77 of this title (relating to Exhibits) as Exhibit B; and

(5) if appropriate (i.e., the recipient had previously been granted a hearing to appeal the determined rate for which he/she has unpaid charges), a statement that the recipient has exhausted his/her appeal process.

(b) If the person whom a lien is to be filed against had previously been granted a hearing to appeal the rate for which he/she

has unpaid charges, then the person has exhausted his/her appeal process and the department may proceed to file the notice of lien after 30 calendar days of initial notice of intent to file a lien as described in subsection (a) of this section.

(c) If the person whom a lien is to be filed against has not requested a hearing to appeal the rate for which there are unpaid charges, then the person may follow the procedures outlined in §403.75 of this title (relating to Appeal Process) to appeal the determined rate.

(1) An appeal must be initiated within 20 calendar days of receipt of the notice of lien to stay the filing of the lien.

(2) If the decision of the hearing officer in the appeal sustains the determined rate, then the department may proceed to file the notice of lien anytime following 30 calendar days after initial notice of intent to file a lien as described in subsection (a) of this section.

(d) If the person whom a lien is to be filed against believes the department has calculated the unpaid charges in error, then the person shall notify the department staff member whose name appears on the notice of intent to file a lien. The person shall provide documentation supporting his/her claim of error to the department's Reimbursement and Revenue Enhancement Division. If personnel of the department's Reimbursement and Revenue Enhancement Division demonstrate that the calculations are correct, then the department may proceed to file the notice of lien after 30 calendar days of initial notice of intent to file a lien as described in subsection (a) of this section.

§403.77. *Exhibits.* The following exhibits are referred to in this subchapter:

- (1) Exhibit A-Property and Financial Statement forms; and
- (2) Exhibit B-Notice of Appeal form.

§403.78. *References.* Reference is made to the following statutes:

- (1) Texas Health and Safety Code, §593.005;
- (2) Texas Health and Safety Code, §552.017 and §593.075;
- (3) Texas Health and Safety Code, §552.018 and §593.081;
- (4) Texas Trust Act, Texas Property Code, §§111.001 et seq;
- (5) Texas Probate Code;
- (6) Texas Property Code, Chapter 142;

(7) Texas Health and Safety Code, Chapter 551; and

(8) Texas Health and Safety Code, §533.004.

§403.79. *Distribution.* This subchapter shall be distributed to:

(1) all members of the Texas Board of Mental Health and Mental Retardation;

(2) management and program staff of Central Office;

(3) superintendents and directors of all state facilities; and

(4) upon request, to any client, a client's parent/spouse, person responsible for payment, or any interested party.

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

Issued in Austin, Texas, on February 21, 1995.

TRD-9502145

Ann Utley
Chairman, Texas MHMR
Board
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 206-4670

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty

Subchapter E. Texas Catastrophe Property Insurance Association

• 28 TAC §5.4501

The Texas Department of Insurance proposes an amendment §5.4501, concerning the adoption by reference of a revised manual of rules governing the writing of windstorm and hail insurance by the Texas Catastrophe Property Insurance Association (TCPIA). Pursuant to the Catastrophe Property Insurance Pool Act (Article 21.49 of the Insurance Code), the TCPIA was created by the Texas legislature in 1971 and is composed of all property insurers authorized to transact property insurance in Texas. The purpose of the TCPIA is to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. Currently the TCPIA provides this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers,

Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy Counties. It is necessary to revise the current TCPIA rules manual to provide a new rule relating to the charging of minimum earned premium on windstorm and hail insurance policies issued by the TCPIA. The new rule is needed to establish a minimum earned premium to be retained by the TCPIA in the event a policy issued by the TCPIA is cancelled by the policyholder. The current manual, which became effective on January 1, 1994, was a complete revision of previous manual rules, and this rule was inadvertently omitted from this revised version. However, the rule previously provided that the TCPIA could retain a minimum of \$25 in earned premium in the event a TCPIA policy was cancelled. The proposed amendment increases this minimum earned premium amount to \$50. This increase is necessary because of the increased expense of issuing a TCPIA policy. In addition to the increase in minimum earned premium, an amendment is proposed to provide an exception to the proposed minimum earned premium rule. This proposed amendment requires the actual unearned premium to be refunded to the policyholder in the event of cancellation of the policy by the TCPIA. This exception ensures that for property that is not insurable by the TCPIA the full unearned premium is returned to the policyholder. The proposed rule would be included as subsection L in the General Rules section (section I) of the manual. The proposed rule reads: "The minimum earned premium per policy shall be \$50. Exception: In the event of cancellation of the policy by the TCPIA, the actual unearned premium must be refunded." The revised manual would become effective May 1, 1995.

Lyndon Anderson, associate commissioner, property and casualty program, has determined that for each year of the first five years the new section will be in effect, there will be no fiscal implications to state or local government nor to small business as a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Anderson also has determined that for each year for the first five years the proposed section is in effect, the public benefit anticipated as a result of enforcing the section is a reduction in the expenses of the TCPIA for policies canceled by insureds that do not produce sufficient earned premium to offset the expense of issuing the policies. Savings in expenses of the TCPIA allow for more premium dollars to be available for payment of losses and reduce the expenses-of-operation component considered in the benchmark rate setting process for premiums charged by the TCPIA.

Comments on the proposal must be submitted within 30 days after publication of the proposed section in the *Texas Register* to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC #113-1C, Austin, Texas, 78714-9104. An additional copy of the comment is to be submitted to Lyndon Anderson, Associate Commissioner, Property and Casualty Program, Texas Department of Insurance, P.O. Box 149104, MC #103-1A, Austin, Texas, 78714-9104. Any request for a public hearing on this proposal

should be submitted separately to the Office of the Chief Clerk.

The amendment is proposed pursuant to the Insurance Code, Articles 21.49, 1.02, 1.03A, and the Government Code §§2001.004 et seq. Article 21.49, §5A authorizes the Commissioner of Insurance to issue, after notice and hearing, any orders which are considered necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates, and policy forms. Article 21.49, §8 authorizes the Commissioner of Insurance to approve, modify, or disapprove every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing proposed for use by the TCPA. Article 21.49, §5A and §8, by their terms delegate the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, as amended by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Chapter 685, §1.01, effective September 1, 1993), a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A, as enacted by the 73rd Texas Legislature in House Bill 1461 (Acts 1993, 73rd Legislature, Chapter 685, §1.03, effective September 1, 1993), provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code §2001.004 et seq (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state agency.

The following article of the Insurance Code is affected by this rule: -Article 21.49.

§5.4501. Rules and Regulations for Texas Catastrophe Property Insurance Association (association). The Texas Department of Insurance adopts by reference a rules manual for the association as amended effective May 1, 1995 [January 1, 1994]. Copies of the rules manual may be obtained by contacting the Property/Casualty Division, Mail Code 103-1A, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502215 Alcilia M. Fechtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

Earliest possible date of adoption: March 31, 1995

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter I. Validation Procedures

• 34 TAC §9.4011

(Editor's Note. The following proposed amendment is being re-published in this issue due to technical problems that occurred in the February 17, 1995, issue of the Texas Register (20 TexReg 1111) The earliest date of adoption remains March 17, 1995. Note: The figures to this rule are not be re-published, please refer to the Tables and Graphics Section of the February 17, 1995, issue of the Texas Register (20 TexReg 1147)

The Comptroller of Public Accounts proposes an amendment to §9.4011, concerning adoption of the *Manual for the Appraisal of Timberlands*, to be effective for the 1995 tax year. These amendments are necessary to establish for chief appraisers and property owners the methods and procedures for qualifying and appraising timberland.

The amendments discuss the methods and procedures for qualifying timberland. In addition, the manual addresses the application process, discusses the methods for determining a change of use has occurred on timberland, details the calculation of the additional tax due after a change of use determination, and establishes the procedures and methods for the productivity appraisal of timberland.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there would be no fiscal impact on the state. There could be a fiscal impact in the approximately 52 counties that have timberland. The impact on these local governments would depend upon appraisal methods used by the county appraisal districts and could result in a positive or negative fiscal impact depending upon the appraisal method currently being used.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding the methods to be used by appraisal districts when appraising timberland. The fiscal implications for small businesses located in the 52 counties containing timberland would depend upon the appraisal methods being used by the county appraisal districts in the affected counties. There is no anticipated significant economic cost to the public.

Comments on the amendment may be submitted to Joe Vogel, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendments are proposed under the Tax Code, §23.73, which requires the comptroller to develop procedures for verifying that land qualifies for 1-d-1 timber appraisal and setting forth the method of appraising qualified land, and §5.03, which gives the comptroller authority to adopt rules setting forth minimum standards for administration and operation of an appraisal district.

The amendment implements the Tax Code, Chapter 23, Subchapter E.

§9.4011. Appraisal of Timberlands.

(a) The Comptroller of Public Accounts [State Property Tax Board] adopts *Manual for the Appraisal of Timberland* [by reference "Guidelines for the Valuation of Timberlands" to be effective May 10, 1983]. This document is published in booklet format by and is available from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528 [State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761].

(b) Until 1979, local governments taxed Texas timberland on its market value the price a buyer would pay for it in an ordinary market transaction. Forest land owners viewed the state's property tax policies as impediments to timber production. High property taxes on timber often forced owners to harvest prematurely, and timber growers had no incentive to replant after harvest. Concerned that taxes could become so high that timber producers would be forced to abandon or strip the land, voters in 1978 approved a constitutional amendment, Article VIII, § 1-d-1, permitting appraisal based on the use value of timberland (timberland-use appraisal). The new constitutional amendment took effect in 1979. In enacting the Property Tax Code that year, the Legislature adopted §§23.71-79, implementing § 1-d-1 for timber use appraisal.

(c) The Property Tax Code assigns most timberland-use appraisal responsibilities to the chief appraiser. However, §23.73 and §23.75 direct the comptroller to develop a timberland-use appraisal manual and application and distribute them to appraisal districts. Section 23.73 also directs the comptroller to develop procedures for verifying that land qualifies for timberland-use appraisal. This manual sets out both appraisal procedures and eligibility requirements. The procedures and methods described in the manual are required; appraisal districts are required by law to follow them. However, the manual's tables and examples are for illustrative purposes only. Appraisers must use the manual's procedures and current information from authorized sources to calculate timber use values. These calcu-

lations must be made each year. Appraisal districts are not required to use these numbers unless the manual states otherwise, provided they use the manual's methods to perform the appraisal.

(d) Typically, the word timber describes wood used to build objects or to make other commercial products, such as paper and furniture. A forest product is made in the primary timber processing stage lumber is a forest product. Wood pulp, which is residue from the primary processing stage, is also a forest product. In this manual, the word timber includes trees in their natural state that are grown to produce forest products.

(1) Forest property in Texas varies in many ways. A pine plantation may have trees just over a year old, while another tract of pine may have much older trees. One owner may have abused and severely eroded a tract, while another owner may carefully manage a tract. Low-value hardwoods may be the only timber on one tract, while other tracts have valuable pine trees. Some land is naturally irrigated, while other land is dry. The degree of intensity with which timber producers manage the land also differs. Some Texas timberland receives custodial care, while other land is intensively managed. Finally, some land may require little management for a few years, then need sophisticated, intensive management for several years. For example, a timber growing operation that is between thinning operations needs little management, but final harvest and preparation for planting timber seedlings require intensive management. These variations among timber growing operations make determining eligibility for timberland-use appraisal a challenging task for a chief appraiser. The chief appraiser must be familiar with the timber operations in the immediate area and the forest region of which the appraisal district is a part.

(2) The Texas Constitution permits timberland-use appraisal only if the property and its owner meet specific requirements defining timber use. Land won't qualify simply because it has timber standing on it. Casual uses such as a timber growth that is principally for aesthetic or recreational purposes does not qualify. The Property Tax Code, §23.72, sets the standards for determining whether land qualifies. To qualify land for timberland-use appraisal, a property owner must show the chief appraiser that the land meets the §23.72 standard. To do so, the property owner must apply for the appraisal and give the chief appraiser the information necessary to determine if the land qualifies. The owner also must notify the chief appraiser of any changes in the land's status.

(3) This section explains each eligibility requirement for chief appraisers and property owners. Brief descriptions of each requirement appear in subparagraphs (A)-(F) of this paragraph.

(A) Timberland appraisal applies to the land and the timber standing on it, not to other property connected with the land.

(B) The land must be currently and actively devoted to timber production.

(C) The land must be used principally for timber production. The owner must have an intent to produce income.

(D) The land must be devoted to timber production to the degree of intensity that is typical in the area.

(E) The land must have been dedicated principally to agriculture or timber production for any five of the preceding seven years.

(F) The property owner must file a timely and valid application form.

(4) Timber appraisal applies only to land and the timber standing on it. It does not apply to improvements on land or to minerals. Buildings and structures such as barns, sheds, or other out buildings must be appraised separately at market value. Fences, however, are appurtenances and are not appraised separately.

(A) Land beneath out-buildings and other improvements related to timberland use qualifies for the special appraisal because the owner uses it in the timber producing operation.

(B) Oil, gas, or any hard mineral must be appraised separately at market value. Harvested timber in the owner's hands on January 1 is personal property and taxed separately from the land.

(C) Some man made alterations of, or additions to, timberland are appraised as part of the land. These appurtenances to the land canals, water wells, roads, stock tanks, and other similar reshaping of the soil are included in the value of the land and are not separately appraised.

(5) Under the Property Tax Code, land must be "currently and actively devoted to timber use to qualify for timberland-use appraisal. Unlike other types of property, the land need not qualify on January 1. If timber use is not evident on January 1, the chief appraiser should grant timberland-use appraisal if the owner can show that the land will be devoted to active timber production for the bulk of the calendar year for which he or she is applying.

(A) Determining if the owner is currently and actively devoting land to timber production is often a difficult task. Consider the following situations.

(i) The chief appraiser may not be able to see signs of activity when a timber operation is young, even though the owner may have spent a great deal of time, money, and effort to start the operation and is currently and actively devoting the land to timber use.

(ii) A chief appraiser may not be able to see management activity at the time of inspection if the owner has not harvested for some time.

(iii) The chief appraiser may not be able to find evidence of active devotion if the size of the tract means that management activities take place away from the roads that give the chief appraiser access to the land.

(B) The current and active use question is complicated because there are stages of timber production during which little management of the land is needed. In some cases, forest land on which timber is being allowed to grow may be currently and actively devoted to timber production.

(C) The following are some indications of current, active devotion, regular harvesting:

(i) a forest management plan; records showing timber management activity;

(ii) the owner receives TRe, (Texas Reforestation Foundation) FIP, (Forestry Incentive Program) or SIP (stewardship incentive program) or other cost sharing funds for using approved timber management practices;

(iii) the owner has documents showing that others have asked to purchase the timber; the owner has attempted to salvage damaged or killed timber that continues to have value;

(iv) the property is a Registered Tree Farm;

(v) the owner is a member of a county or local timber grower's association; the owner participates in forestry extension activities; and

(vi) the owner is working with a consulting forester.

(D) The owner of a tract that is getting little or no management should have a timber management plan signed by the preparing forester; the plan should include a recommendation to let the timber grow or to let it grow with minimum management, such as pest control. In addition, owners of very marginal tracts may not be able to afford a privately developed forest management plan or may be on the waiting list to have a plan developed by a public agency. In this case, the chief appraiser should look for other evidence of current and active devotion.

(6) Land used primarily to produce timber may qualify for timberland-use appraisal. If the owner uses the land for more than one purpose, the principal use must be growing timber. While timber production must be the primary use of the land, other compatible uses do not prevent land from qualifying if timber remains the primary use. For example, an owner may use land principally to grow timber and lease it for hunting.

(A) The chief appraiser must determine all the uses to which the owner puts the land and decide which use is the primary one. If any use is incompatible with timber production, or if it replaces timber production as the primary use of land, the land is not principally devoted to timberland use and cannot qualify for timberland-use appraisal.

(B) The primary use test is particularly important for timberland because the kind of intensive management required to grow agricultural crops is not necessary to grow timber. This less visible management activity can make finding the land's primary use a difficult job. However, most landowners who use their land primarily to produce timber engage in similar management activities. Keeping in mind that each owner will manage differently, a chief appraiser facing a primary use question should look for signs of the common activities, listed in clauses (i) - (xi) of this subparagraph.

(i) Is the owner able to produce records showing timber management activity? Some records that show timber management activity are documents showing the timber has been har-

vested, canceled checks, contracts of sale, and land leases.

(ii) The owner operates under a current, written forest management plan. A forest management plan must be developed for the present time. An outdated plan is of no use as a management document. The plan also should be in writing and signed by the forester who prepared it. The existence of a management plan, however, does not always mean the owner uses the land primarily for timber production. The owner should be able to show that he or she is using or intends to use the plan for timber production.

(iii) The owner receives TRe, (Texas Reforestation Foundation) FIP, (Forestry Incentive Program) or SIP (stewardship incentive program) cost sharing funds for using approved timber management practices. The Texas Forest Service coordinates the FIP, and SIP programs. TRe is a privately funded cost-sharing program for reforestation and timber stand improvement. Can the owner produce documents showing that others have asked to purchase the timber?

(iv) Has the owner attempted to salvage damaged or killed timber that continues to have value? If so, timber is likely to be the owner's principal use of the land.

(v) A registered tree farm is privately owned, protected, and managed timberland. Timberland must meet several qualifications for certification as a registered tree farm: private ownership, management for growth and repeated timber crop harvests, adequate protection from fire, insects, disease, and destructive grazing. In addition, the owner's harvesting practices must assure prompt reforestation with desirable trees. A registered tree farm is inspected by professional foresters before it may qualify for the program. Each registered tree farm is reinspected periodically. Most registered tree farms are easily recognized by the green diamond-shaped TREE FARM marker placed in front of the property.

(vi) Is the owner a member of a county or local timber growers association?

(vii) Does the owner participate in a forest industry landowner assistance program? Many firms in the forest products and the pulp and paper industry have entered into agreements with private timberland owners to manage their timber in exchange for first chance to buy the timber when it is ready to harvest.

(viii) The owner is a member of the Texas Forestry Association.

(ix) Does the owner participate in forestry extension activities? The Texas Agricultural Extension Service offers periodic programs for timberland owners. These programs cover forest management practices.

(x) If the owner engages in other land uses or activities, these are secondary to and compatible with the owner's use of the land to raise timber.

(xi) Has the owner contracted with or hired a private consulting forester to help manage his or her timber? What were the results of this collaboration? Is the owner operating on the written advice of a consulting forester?

(C) A chief appraiser may establish a policy to follow reasonable and carefully developed guidelines for determining primary use. Establishing guidelines requires the chief appraiser to become familiar with timber activity in the area. Guidelines, however, should serve only as a trigger for more investigation they should never be arbitrarily or automatically applied. For example, a chief appraiser whose guidelines require a management plan should never automatically deny timber appraisal to an owner who does not have a plan. Instead, the chief appraiser should use the lack of a plan as a trigger to more closely investigate the application.

(i) Guidelines that are applied arbitrarily or by rote can reach wrong results. For example, the property owner with no forest management plan may actually be managing the land more actively and intensely than other owners who have management plans. This land should qualify if its use meets all other qualification requirements. On the other hand, an owner who has a fully developed plan may not be following through with it. This owner's land should not qualify unless he or she shows other relevant evidence of primary use.

(ii) Land that has timber on it, but that is incapable of producing at least 20 cubic feet of fiber per acre per year cannot be used principally for production of timber. Experts agree that this land does not warrant management of the existing timber resources for commercial timber production or development of the land resource for timber production. The reverse, however, is not true. Land that is capable of producing 20 cubic feet of fiber per acre per year is not necessarily used principally to produce timber. That the land has this capability means only that the owner can use

this land principally for timber production if the owner chooses to do so.

(7) The owner must use the land with an intent to produce income. Like the degree of intensity test, this test excludes those owners who are not producing timber and who are trying to use productivity appraisal to avoid paying property taxes on the land's market value. Whether the owner has an intent to produce income is a fact question for the chief appraiser to decide.

(A) To qualify, the owner is not required to prove that the land has produced income in the current year. Timberland does not produce income on a regular basis because the time between harvests is long. At the time of qualification, however, the owner must show evidence of an intent to produce income. Land that does not produce income (in this context, income means net income) during the time in which a prudent manager intending to produce income would have produced income may not qualify. Further, an owner probably has no real intent to produce income if, over time, he or she has no expenses directly related to the timber operation.

(B) The chief appraiser may use expense receipts, canceled checks, or contemporaneous accounts of expenses, labor, and income to determine the owner has expenses directly related to timber production. An owner seeking to produce income usually will keep these types of records.

(C) Evidence of intent to produce income includes: actual production of income through sale of timber; letters or other documents showing that others wish to purchase the timber; a contract of sale; receipts, canceled checks, and other evidence that the owner has had expenses or income related to the timberland's use; attempts to salvage timber that has value but that is damaged or dead; and using a consulting forester to help manage the land.

(8) To qualify for timberland-use appraisal, forest land must be used to the degree of intensity typical for the area. The degree of intensity test measures if timberland is managed in the current year to the extent typical for timber operations. The previous section described whether a particular use was primarily to produce timber. To receive a timberland-use appraisal, the land must also be used for timber purposes to the degree of intensity typical in the area. The degree of intensity test is intended to exclude from timberland-use appraisal

land on which token timber activity occurs simply to get tax relief.

(A) The law doesn't set degree of intensity standards. The chief appraiser must develop standards after carefully investigating the area's typical timber operations. After thoroughly studying the area, the chief appraiser may set minimum degree of intensity standards.

(B) The chief appraiser should never apply minimum degree of intensity standards arbitrarily they are a trigger for a more careful review of the application. For example, if the minimum standards require at least 10 acres of land and the applying owner has nine acres, the application should not be denied simply because the land does not meet minimum standards. The chief appraiser should instead carefully review the application and inspect the property to determine if the land qualifies.

(C) To set degree of intensity standards, the chief appraiser should analyze each type of tree farm in the area. This analysis should break down the typical steps in producing timber and attempt to specify how much time, labor, equipment, and so on is typical for each level. The sources listed in Appendix A, subsection (g), may help the chief appraiser determine the typical input levels.

(i) Degree of intensity standards will vary from one timber growing area and operation to another. The degree of intensity typical for an industrial producer is usually different from that typical for a non-industrial producer. Commercial producers usually have more land, so they need to put more into the operation than a non-commercial producer. The chief appraiser's degree of intensity standards should recognize these types of differences between operations.

(ii) In most cases, property owners must prove that they are following the common production steps for their type of operation and putting in typical amounts of labor, management, and investment. However, a timber growing operation is not disqualified simply because it differs from the typical operation in some respect. Appraisers should not, for example, disqualify a labor-intensive tree farm because most comparable operations are capital-intensive. Nor should an owner who is clearly meeting the degree of intensity test be disqualified because the operation has some element of the degree of intensity test missing. The total effort finally determines whether a given timber growing

operation qualifies, not the level of each separate "input.

(iii) The degree of intensity test applies to the year of the appraisal only it does not apply to the historical use (time period) requirement. Land used principally for timber for five of the preceding seven years may qualify although it was not used to the typical degree of intensity during those years. Owners must show only that they met the degree of intensity requirement for the years in which they qualify for timberland-use appraisal.

(9) The five out of seven years use requirement is self-explanatory. Use principally for timber in any five of these seven years qualifies land for timberland-use appraisal. A property owner also can point to a history of agricultural use that would qualify the land for agricultural appraisal in meeting the five-year test. Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify. As long as either timber or agriculture was the principal use in the preceding years, the land qualifies although that use may not have met the degree of intensity requirement in all or some of those years.

(10) An application for timberland-use appraisal on a form provided by the appraisal district and adopted by the comptroller is valid. The appraisal district may copy the comptroller's form and offer it to local property owners.

(A) An appraisal district may use a form that substantially complies with the comptroller's form that is it has the same language in the same order as the comptroller form if the district has written approval from the comptroller. The comptroller will not approve an appraisal district form unless the form has the same elements and asks for the same information as the comptroller form. The comptroller will not approve a form that asks for any information not required by the agency's form.

(i) These rules do not permit appraisal districts to add additional questions to the initial application. If, however, the initial application is valid but does not contain all the information the district needs to rule on an application, the chief appraiser may require the applicant to give additional information. This procedure is described later in this section.

(ii) Where the district offers its own form, the applicant may choose between the comptroller application form and the district's form. An

applicant may not be denied the appraisal because he or she chooses to use the comptroller form. The applicant must completely provide all information requested by the comptroller form an incomplete application is not valid.

(iii) Property owners must file applications with the chief appraiser in the appraisal district where the land is located. Taxpayers whose land is appraised by more than one appraisal district must file an application in each district.

(iv) A property owner may file a single application form covering all tracts within an appraisal district. Owners need not file a separate form for each tract so long as they provide sufficient information to show that all tracts qualify under the law.

(v) The chief appraiser should encourage owners to file a single form if they are managing several tracts as a unit. The chief appraiser must view the entire timber growing operation as a unit not with respect to the activities on each individual parcel. The single application form notifies the appraisal district of the operation's unity.

(B) An application must be postmarked or filed no later than midnight, April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. The property owner must request an extension before the filing deadline. The chief appraiser should grant an extension in writing. The Property Tax Code does not define good cause. However, it is commonly something the applicant can not control. Illness or injury and an inability to transact normal business for a period that effectively prevents filing on time is usually good cause. Being out of town on business or vacation or simply forgetting about the filing deadline is not good cause.

(C) A property owner who misses the deadline may file a late application until the appraisal review board approves records for that year (usually about July 20). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10% of the difference between the tax if imposed at market value and the tax imposed at the timber productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

(i) Chief appraisers must note the penalty in the appraisal

records. They also must send the property owner written notice of the penalty and explain the reasons. A sample form for this notice appears as Form Two. The tax assessor adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.

(ii) A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.

(D) If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for timberland-use appraisal in that tax year.

(E) Once the application is filed and approved under timberland-use appraisal requirements, the land continues to receive timberland-use appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant.

(F) If the land's eligibility ends or its ownership changes, the property owner must notify the appraisal office in writing before the next May 1. If the owner fails to do so, one or more penalties will apply. If the land remains under the same ownership and the owner fails to inform the appraisal district that the land is no longer eligible for timberland-use appraisal, either because the land is no longer in timberland use or because the degree of intensity has fallen below that typical for the area, the property owner must pay a penalty equal to 10% of the difference between the taxes imposed under the timberland use and the taxes that would have been imposed under the new use. This penalty applies for each year the property received the incorrect appraisal, but for no more than 10 years.

(i) If the property erroneously receives timberland-use appraisal because a new owner failed to file an application or because an owner's use of the land no longer qualifies, the chief appraiser must calculate the difference between the land's market value and its timberland use value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received timberland-use appraisal, plus a 10% penalty on these taxes. This additional tax and penalty

may not cover a time period exceeding 10 years. In the year the chief appraiser discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.

(ii) For example, if a timber producer reduces the scale of the operation and timber is no longer the land's principal use, the land will not be eligible for timberland-use appraisal. If the landowner fails to notify the appraisal district and, therefore, receives timberland-use appraisal, the land is back assessed. For each year in question (not to exceed 10 years), the owner must pay the difference between the taxes based on timberland-use appraisal and the taxes based on market value, plus a 10% penalty on that difference. Because the land has not been taken completely out of timberland use, it is not subject to rollback taxes.

(iii) When a penalty is imposed, the chief appraiser must notify the property owner. This notice must explain the procedures for protesting the penalty. The chief appraiser notes the penalty in the appraisal records, and the tax assessor adds the penalty to the property's annual tax bill.

(G) The chief appraiser must review each application and decide whether to: approve it and grant timberland-use appraisal; disapprove it and ask for more information; or deny the application. The chief appraiser must determine the validity of all timely filed applications before turning all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.

(i) The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. Property owners who were denied timberland-use appraisal may file a protest with this board. Taxing unit officials who believe special appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the review board.

(ii) The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. The chief appraiser must notify the applicant in writing within five days of an application's denial. This notice must explain the reasons for the denial and the procedures for protest.

(H) If the initial application form is valid but does not contain all the information needed to determine if the land qualifies, the chief appraiser may

request additional information. The chief appraiser may request only additional information that is necessary to determine if the land qualifies for timberland-use appraisal.

(i) Information contained in income statements and income tax returns, land lease rates, and lease agreements is not necessary to determine whether the land qualifies other less invasive evidence of qualification exists. If the chief appraiser asks an owner for this type of information, the request should clearly state that the owner is not required to give the information to qualify for timberland-use appraisal.

(ii) The applicant must provide additional information within 30 days after the date of the request or the application will be denied. If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

(I) If a chief appraiser denies an application, a notice of the denial must be delivered to the applicant within five days. The notice must explain the procedures for protesting to the appraisal review board.

(11) Even if land meets all the preceding conditions, some situations may block approval of an application.

(A) Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet the criteria applicable to all land and must meet one of the following: the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or the land must have been devoted principally to agricultural use continuously for the preceding five years.

(B) Property Tax Code, §23.77(2) and (3) provide that some kinds of foreign ownership make the land ineligible for timberland-use appraisal. Under the law, if the property owner is a non-resident alien (a non-United States citizen who does not reside in the United States), the land can not qualify. Similarly, the law states that a corporation can not qualify its land if a non-resident alien, foreign government, or both control the corporation.

(i) The Texas Supreme Court has held, however, that Property Tax Code §23.56(3), barring foreign corporate and governmental ownership from qualifying land for agricultural appraisal unconstitutionally violates the Texas

Constitution's guarantee of equal protection. See: *HL Farms v. Self*, 877 S.W.2d 288 (Tex. 1994). Although the Court's opinion did not address the ineligibility of non-resident aliens (§23.56(2)), its reasons for holding subdivision (3) unconstitutional also applies to the non-resident's eligibility for agricultural appraisal.

(ii) *HL Farms* did not address timber appraisal, but the law making timberland-use appraisal unavailable to foreign owners is identical to the agricultural appraisal law. Property Tax Code §23.77(2) and (3) is identical to §23.56(2) and (3), Property Tax Code. Because of the similarity between the agricultural appraisal and the timberland-use appraisal sections, a court is likely to hold that *HL Farms* applies to timberland. Therefore, a chief appraiser should seek the advice of an attorney if the appraiser is confronted with an application for timber appraisal submitted by a foreign owner.

(12) In some cases, timberland qualified for productivity appraisal will not be taxed on its productivity value. A minimum floor on value was created when the legislature adopted timberland-use appraisal. Its purpose was to ensure that a taxing unit with a large amount of timberland would not suffer a serious decrease in its tax base. So, the Property Tax Code provides that the minimum taxable value of qualified timberland is the market value assigned to the land by the taxing unit in 1978.

(A) The Tax Code requires a unit's tax assessor to compare the total productivity value for the parcel with the unit's 1978 value for the parcel. If the total productivity value is less than the total 1978 value, the unit's assessor must substitute the 1978 value for the entire parcel.

(B) If the nature of the parcel has changed, the assessor must use historical value to reconstruct what the entire parcel's value would have been in 1978. For example, if a parcel includes more land in the current year than it did in 1978, the assessor may not substitute a 1978 per acre average for the new acreage. Instead, a unit's assessor must use historical data to determine what the 1978 value for the entire tract would have been for the unit.

(C) A unit that did not exist in 1978, or that did not levy an ad valorem tax in 1978 may not substitute a 1978 value for the land's productivity value. The law permits only substitution of the 1978 value "for the unit." A unit that did not exist or that had no property

tax in 1978 has no market value to substitute for the productivity value.

(D) The tax assessor must determine or reconstruct a 1978 value for each unit for which the assessor collects taxes. Each unit's 1978 value must be applied separately from that of other units. The law does not provide for an average 1978 value that is applied for all units that had a 1978 value. Nor does it provide for a historical reconstruction that combines the taxing units having a value in 1978.

(13) An owner may waive his right to timberland-use appraisal. By barring the land from receiving productivity appraisal, the waiver insures that a taxing unit may depend on a certain level of tax revenue. This certainty may be critical to the survival of small taxing units or those that are in debt. A waiver is effective for 25 years. Land may not qualify for timberland-use appraisal for the duration of the waiver. A change in ownership does not revoke the waiver. An owner may file a waiver on land that does not qualify for timberland-use appraisal. A waiver may be filed with some or all the units that tax the property.

(A) A waiver filed before May 1 becomes effective when it is filed. For good cause, the chief appraiser may extend the May 1 deadline for 60 days. These waivers become effective the year following the filing year.

(B) To revoke a waiver, the owner must file an application for revocation with the governing body of each taxing unit where the waiver is effective. The unit's governing body must vote to approve the revocation and make a finding the unit's debt obligations will not be affected.

(e) The law imposes a "rollback" tax on timberland when the owner stops using it for timber. The rollback tax is a penalty for taking the land out of timber production. This penalty is commonly called a rollback because it recaptures the taxes that would have been paid had the property been taxed at market value for each year covered by the rollback. This section discusses timber rollbacks, explains what triggers a timber rollback, and shows how to calculate the rollback tax. The law imposes a rollback tax on timberland when it is taken out of timber use. The rollback tax equals the difference between the taxes the owner actually paid in the five years preceding the change in use and the taxes the owner would have paid on the property's market value. Technically, the tax is a new, additional tax imposed by law on the date

the cessation or change of use occurs. It has its own delinquency date, and it does not exist until the event that triggers the rollback occurs. The property owner can trigger the rollback by ending timber operations or diverting the property to a non-timber use. Selling the property does not trigger the timber rollback. If the property owner diverts only part of a property to a non-timber use, the rollback tax only applies to the changed portion. The chief appraiser determines if and when the change of use occurs and must send the owner written notice of the determination. If the owner does not protest the determination or the appraisal review board decides the use has changed, the tax assessor will calculate the amount of the additional tax due, add the appropriate amount of interest, and send a rollback tax bill.

(1) A change of use is a physical change. The owner must stop using the land for timber production. If the owner continues to use the land for timber but does not maintain the degree of intensity typical for the area or timber is no longer the land's principal use, the land may lose its eligibility for timberland-use appraisal without suffering a rollback.

(A) Reduced intensity that results from the owner's free choice will cause a loss of timberland-use appraisal. Reduced intensity resulting from necessity will not. If the land remains in timber use, however, neither kind of reduction will trigger a rollback. Suppose, for example, that a timber grower who has been receiving timberland-use appraisal gets tired of the operation. The grower clear cuts his land, does not plant new trees, and shows no intention of doing so. Because the owner has stopped all timber activity, timberland-use appraisal will be lost and the land will suffer a rollback. Filing documents to plat land does not trigger a rollback. Only evidence that the actual use of the land has changed triggers the rollback. Plat documents provide some evidence but must be accompanied by physical change, such as ceasing timber operations or installing utilities. Even in that case, the change of use may affect only part of the platted land.

(B) An owner who is required to reapply for timber use appraisal but who fails to do so may lose his eligibility, but will not suffer a rollback. Rollback requires an affirmative change of use. Failure to reapply alone does not signal an affirmative use change.

(C) Special situations, such as severe fires, droughts, or freezes can

extend the normal time land can remain out of timber production. In such cases, the land remains eligible for timberland-use appraisal until the owner clearly shows an intent to give up timber use permanently.

(D) This principle also applies when damage is done to part of a tract. If a fire destroys 500 acres of a 3,000 acre forest, forcing the owner to stop timber use on the 500 acres, the owner should continue to receive timberland-use appraisal on the destroyed part of the tract. In years of severe drought, many timber growing operations fail. The owner invested money in the failed operation, so planting may be delayed until money to start a new operation is available. Here as well, the land should continue to qualify until the owner clearly shows that timber production will no longer take place on the land.

(E) Chief appraisers must use great care in determining when a change of use triggers a rollback. Rollback is a serious economic penalty that should not be imposed when circumstances beyond a property owner's control cause an abnormally long, but temporary, suspension of timber production. Appraisers must keep in mind that change of use issues are often unclear and require a delicate balance between fair applications of the law and good decisions based on the facts of each situation.

(F) Some changes of use do not trigger a rollback. Changing from timber use to an agricultural use that qualifies land for 1-d or 1-d-1 appraisal does not trigger a rollback use. Property condemned or sold for right of way will not be rolled back even if its use changes. Filing a waiver of special appraisal will not trigger a rollback if the use does not change.

(2) On determining either that timber use has stopped or that the land has been diverted to a non-timber use, the chief appraiser must send the owner written notice of the determination. The notice is adopted by the comptroller. The notice must explain the owner's right to protest the determination. The owner may protest the change of use decision by filing a protest with the appraisal review board within 30 days after the notice is mailed. The appraisal review board must hear a timely protest even if appraisal records have been approved for the year.

(3) If land changes to a non-qualifying use from a qualifying one after the appraisal review board has approved the appraisal records, the land is back

assessed for the difference between the property's market value and its timber use value. The assessor sends a supplemental bill for taxes on the added value. This amount becomes delinquent on the same date as the original tax bill for the property. If those taxes have been paid, the supplemental bill becomes delinquent on February 1 of the year following the date the bill is mailed or the first day of the next following month that allows the property owner 21 days to pay the tax, whichever is later.

(4) The rollback covers the five calendar years preceding the current year. If the use changes in 2005, the rollback covers 2004, 2003, 2002, 2001, and 2000. The preceding years are based on the use from January through December and not on the tax collection periods. The rollback tax itself is the difference between the taxes paid under timberland-use appraisal and the total taxes that would have been paid on the market value of the land.

Figure 1: 34 TAC 9.4011(f)(4).

(A) The assessor must add 7.0% annual interest on these amounts from the date they would have become due. The due date for each year is the date tax bills were mailed that year. Discounts for early payment do not apply to rollback taxes discounts apply only to ordinary property taxes.

(B) Because the assessor computes interest from the date the difference would have become due to the date the change of use occurs, some proration will be necessary. Assuming that the use changed November 1, 1999, and that the assessor mailed tax bills on October 1 each year, the interest is calculated as follows: Interest runs from October 1, 1998 to November 1, 1999, or 1 year and 32 days. The formula for calculating rollback tax interest is:

Figure 2: 34 TAC 9.4011(f)(4)(B)

(i) Interest runs from October 1, 1997, to November 1, 1999, or 2 years and 32 days. The formula for calculating the interest is:

Figure 3: 34 TAC 9.4011(f)(4)(B)(i)

(ii) Interest runs from October 1, 1996, to November 1, 1999, or three years and 32 days. The formula for calculating the interest is:

Figure 4: 34 TAC 9.4011(f)(4)(B)(ii)

(iii) Interest runs from October 1, 1995, to November 1, 1999, or three years and 32 days. The formula for calculating the interest is:

Figure 5: 34 TAC 9.4011(f)(4)(B)(iii)

(iv) Interest runs from October 1, 1994, to November 1, 1999, or

three years and 32 days. The following table illustrates the formula for calculating the interest:

Figure 6: 34 TAC 9.4011(f)(4)(B)(iv)

(v) The total rollback tax and interest due are \$2,625.01.

(vi) The interest can be prorated using number of days only. For example, 1995's interest runs for 1,492 days (4 years = .07 x (1,492 + 32 days from October 1 to November 1)). This interest is computed by multiplying: $\$430 \times .07 \times (1,492 + 365) = \123.04 .

(5) The five-year rollback period may include years when the property did not qualify for timber use appraisal. If the property had been taxed on market value in 2003, the rollback tax would have been computed for 2004, 2002, 2001, and 2000.

(6) The rollback tax is due when the rollback tax bill is mailed. It becomes delinquent if not paid before the February 1 that is at least 20 days after the tax bill is mailed. For example, if the bill is mailed on January 9, it becomes delinquent on the next February 1 because there are 20 days between February 1 and January 9. However, if the bill is mailed January 30, it becomes delinquent the February of the following year. On the delinquency date the entire amount begins to draw penalty and interest at the same rate as delinquent taxes.

(A) A tax lien attaches to the land on the date the use changes. The lien covers payment of the additional tax, interest, and any penalties.

(B) If land is sold at about the same time the use changes, the buyer and seller may dispute liability. Under the law, the person who has title to the property on the date the use changes is personally liable for the rollback, but the lien may be foreclosed against the land regardless of who is liable for taxes. Tax certificates on land that receives timberland-use appraisal must note the appraisal and state that the land may be subject to additional taxes.

(7) Exemptions that apply to ordinary property taxes do not apply to rollback taxes. Even if the land might be exempt from ordinary taxes in the new owner's hands, the rollback tax still becomes due if that owner takes the property out of timber use. In most cases, the owner will be personally liable for the rollback tax, and the tax lien can be enforced against the property. Where the state or a political subdivision buys the land and changes the use, the rollback will be triggered but the lien cannot be

foreclosed. The tax can not be collected unless the governmental entity chooses to pay it. However, the lien against the land continues and could be enforced against a later buyer.

(f) The productivity value of an acre of timberland equals the average annual net income a prudent manager could earn from growing timber over the five-year period preceding the appraisal's effective year, divided by a statutory capitalization rate. Net income has two parts: gross income and cost of production. Gross income is calculated by computing the potential average annual quantity of timber growth per acre and multiplying this amount by timber's average annual market price for that year. This computation is performed for each year of the five-year period. The average annual cost (production cost) of producing this timber in each of the five years is subtracted from gross income to find net income for the year. Average annual net income is computed by averaging net income for each year of the five-year period. This five-year average annual net income is then divided by the statutory capitalization rate to produce the productivity value of timber.

(1) Timberland's productivity value is calculated in nine basic steps: step one: classify timberland into three forest types; step two: classify timberland into four soil types; step three: calculate average annual timber growth; step four: convert timber growth into units for calculating gross income; step five: calculate average annual timber prices; step six: calculate maximum potential average annual gross income of timber growth; step seven: calculate average annual costs of producing timber; step eight: calculate net income of timber growth; and step nine: capitalize net income by statutory rate and apply productivity values to timber acreage. This part of the manual prescribes the methodology chief appraisers are required to use to calculate timberland's productivity value. Appendix B contains tables that illustrate this methodology, and the text frequently refers to these tables. Chief appraisers must use regional data in their timber appraisals. Texas has two timber regions: northeast and southeast. Figure 11, Appendix B, contains a map of east Texas counties showing the boundaries of the northeast and southeast timber regions. Chief appraisers must use regional data that correspond to their county's location.

(2) Property Tax Code, §23.71, requires chief appraisers to use information from the United States Department of Agriculture (USDA) Forest Service, United States Geological Survey, the United States Department of Agricul-

ture (USDA) Soil Conservation Service, the Texas Forest Service, and Texas colleges and universities to determine forest types, soil types, average growth, and timber prices.

(A) These sources are mandatory; however, a chief appraiser may hire a consulting forester or other timber expert to help make decisions concerning the data and the appraisal. Appendix A, subsection (g), describes these sources.

(B) Before using any published data, chief appraisers should check with the relevant agency for updates before developing timber appraisals. For example, the USDA Forest Service may periodically revise its 1992 published Texas timber survey numbers. Chief appraisers wishing to use the survey data should check with the Texas Forest Service for updates before developing timber appraisals for any given year.

(3) The sale price of timber varies, depending on the timber type. To appraise timberland properly, the chief appraiser must identify the type of trees on the land. Chief appraisers should begin the appraisal process by classifying timberland according to forest type. There are three basic forest types: pine, hardwood and mixed. Each forest type is defined as:

(A) Pine (and other commercial softwood) timberland includes all forested areas in which the trees are predominantly green throughout the year. These trees, which remain green and do not lose their leaves throughout the year are called evergreens. Generally, timbered areas where pine and other commercial softwoods make up more than two-thirds of the trees free to grow are in this category. Trees free to grow are those that are not covered by brush or other trees that prevent them from getting the sunlight necessary to grow.

(B) Hardwood timberland includes all forested areas with a predominance of deciduous trees. These trees lose their leaves at the end of the frost-free season. Stands where hardwoods are more than two-thirds of the trees free to grow are usually in this category.

(C) Mixed timberland includes all forested areas where both evergreen and deciduous trees are growing and neither predominates. An area is classified as mixed when evergreen and deciduous trees each make up more than one-third of the trees.

(D) Chief appraisers may use aerial photographs and forest type maps from one of the sources listed in Appendix A, subsection (g), to determine forest type.

(4) Property Tax Code, §23.71, requires chief appraisers to classify all timber-producing areas in their districts into four soil types. This statutory requirement does not always match available data. So, a chief appraiser must follow expert advice to derive four soil types from the data. Both the USDA Forest Service and USDA Soil Conservation Service (SCS) have developed systems for classifying soils based on their capacity to produce commercial timber. These two systems are similar. Both are reliable. There is one major, practical, difference between the two soil classification systems: the USDA Soil Conservation Service-defined soil types are mapped, while those defined by the USDA Forest Service are not.

(A) The USDA Forest Service classifies all commercial timberland into five site classes based on the land's capacity to grow commercial wood crops. The USDA Soil Conservation Service's classification system is based on the concept of site index. For clarity, this part uses the term soil types to refer to both the USDA Forest Service's site classes and the USDA SCS's site index.

(B) The USDA Forest Service has defined these five soil types as follows: land capable of producing more than 165 cubic feet per acre per year; land capable of producing 121-165 cubic feet per acre per year; land capable of producing 85-120 cubic feet per acre per year; land capable of producing 50-84 cubic feet per acre per year; and land capable of producing less than 50 cubic feet per acre per year.

(C) To comply with the Property Tax Code, chief appraisers using the USDA Forest Service's system must reduce these five soil types to four. The over 165 cubic feet soil type may be combined with the 121-165 cubic feet soil type to produce the mandatory four soil types. In this manual, the combined soil type is called the over 120 cubic feet soil type.

(i) The USDA Soil Conservation Service's classification system designates the productive capacity of a forest site based on the height of the tallest trees at an arbitrarily chosen age. For example, if the average height attained by the tallest trees in a fully

stocked stand at the age of 50 years is 75 feet, the soil type is 75 feet.

(ii) Texas timber experts generally agree that the USDA SCS soil type data can be grouped into ranges that are roughly comparable with USDA Forest Service's soil types. Figure 7 shows both SCS and USDA soil types.

Figure 7: 34 TAC 9.4011(g)(4)(C)(ii)

(iii) The significance of this general comparability between the two soil typing systems is that the chief appraiser may use USDA Forest Service timber growth data with SCS county soil classification maps in the timber appraisal process. The two systems' similarity also is quite useful in developing soil productivity multipliers used to compute potential average annual timber growth.

(iv) The SCS has maps showing its soil types (site indexes) for all timberland within each county. The Texas Agricultural Extension Service at Texas A&M University has developed maps showing forest types within the four soil type ranges listed above for all timberland within each timber-producing county.

(5) The USDA Forest Service completed its most recent survey of Texas timberland in 1992. Chief appraisers may use these survey data to compute average annual growth. The 1992 survey data are available in two publications.

(A) For southeast Texas counties, see John F. Kelly, Patrick E. Miller and Andrew J. Hartsell, *Forest Statistics for Southeast Texas Counties--1992*, USDA Forest Service, Southern Forest Experiment Station, New Orleans, LA. Resource Bulletin SO-172, Nov. 1992.

(B) For northeast Texas counties, see John F. Kelly, Patrick E. Miller and Andrew J. Hartsell, *Forest Statistics for Northeast Texas Counties--1992*, USDA Forest Service, Southern Forest Experiment Station, New Orleans, LA. Resource Bulletin SO-171, Nov. 1992.

(C) Figure 12, Appendix B, contains summary growth data from the 1992 Texas survey. The Texas Forest Service prepared these data. The Texas Forest Service, located in College Station, maintains Texas Forest survey data collected by the USDA Forest Service. Data are presented for four forest products for each of three forest types and four soil types for each Texas timber region. Chief appraisers may calculate the average annual growth per acre by forest type

within each region using these data.

(D) The following discussion centers on the computations necessary to calculate the average growth per acre of pine sawtimber in pine forests in southeast Texas. Appendix B's figures or tables reflect this focus, which is for illustration purposes only. The chief appraiser must calculate average growth per acre for each timber type in the appraisal district. The first step is in this computation is to calculate the average annual amount of pine sawtimber grown on an average acre in southeast Texas. Figure 13 (Table Two), Appendix B, uses Figure 12 (Table One) data to show how to calculate this amount. To do this first calculation, the number of plots in each soil type is multiplied by the average amount of sawtimber that grew on those plots as measured by the USDA Forest Service. Next, the result of each calculation for the four different site classes is added and the result divided by the total number of plots in all four soil types. This calculation provides the average annual amount of pine sawtimber grown on the average acre of pine forest in southeast Texas.

(E) Regardless of its forest type, the average acre of timberland in Texas grows timber that's used to make four different product types: Pine sawtimber; hardwood sawtimber; pine pulpwood; hardwood pulpwood. In other words, the average pine forest produces pine sawtimber, but it also produces some hardwood sawtimber, some pine pulpwood, and some hardwood pulpwood. So, using the same procedure used in Table 2, the chief appraiser calculates for pine land the average annual amount of hardwood sawtimber, pine pulpwood and hardwood pulpwood grown on the average acre of pine forest. The chief appraiser must calculate these product types for all forest types in this area. Figure 14 (Table 3), Appendix B, presents the results of these calculations.

(6) To determine the potential income of timber growth, the timber appraiser must multiply average sawtimber selling prices by estimated sawtimber growth. The USDA Forest Service expresses its sawtimber growth data as board feet, measured in the international 1/4 inch log rule. The Texas Forest Service expresses its sawtimber prices as board feet, measured in the Doyle log rule. So, to determine timber growth's potential income, the appraiser must convert the USDA Forest Service's board feet estimates of sawtimber growth from the international 1/4 inch log rule to the Doyle log rule.

(A) The differences in growth data measurements and selling price measurements require the chief appraiser to develop conversion factors that change one measurement into the other. A log rule conversion table helps the chief appraiser develop conversion factors.

(i) There are dozens of recognized log rules in the United States, and each is based on various assumptions about tree taper, lumber shrinkage, cutting methods, and waste.

(ii) A good discussion of numerous log rules is available in Frank Freese, *A Collection of Log Rules*, General Technical Report FPL-1, USDA Forest Service Forest Products Laboratory, Madison, Wis. no date.

(B) A log rule conversion table contains factors for converting board feet from one log rule to another by tree diameter class. Figure 15 (Table Four); Appendix B, shows how to develop a conversion factor for pine and hardwood sawtimber in southeast Texas. Those who developed this pine sawtimber conversion factor used two sources. One source was published data from the 1992 USDA Forest Service survey of Texas timber. The second source was a set of conversion factors developed by the USDA Forest Service and based on data gathered from the southeastern regions of the United States (including Texas). Figure 15's (Table Four's) conversion factors are widely used in the southern United States and in Texas. These conversion factors are reproduced in Table 35 of the following publication: David L. Williams and William C. Hopkins, *Converting Factors for Southern Pine Products*, LSU Agricultural Experiment Station, Bulletin 626, May 1968, 89 pages.

(C) The first two columns in Figure 15 (Table Four) are reproduced from the USDA Forest Service 1992 survey publications. The third column, headed percent of total volume shows volume for each diameter class as a percent of total volume. For example, in diameter class 9-10.9 inches, the reported volume (2,654.10) million board feet is divided by total volume, (22,166.50) million board feet, to produce the percentage figure of 0.1197. The fourth column, headed conversion factor, is reproduced from Table 35 in *Converting Factors for Southern Pine Products*. The percentage and conversion factor for each of the table's diameter classes are multiplied to produce the weighted contribution shown in the fifth column. Finally, these

weighted contributions are added to produce the weighted conversion factor.

(i) Currently, the individual conversion factors shown in Figure 15's (Table Four's) fourth column are widely recognized as reliable for Texas timber. These factors are highly likely to be appropriate for appraising all timber in Texas, and this manual strongly recommends chief appraisers use them. Chief appraisers may use other log rule conversion factors, but only if a knowledgeable timber expert advises them that another factor is more appropriate for the appraisal district than Figure 15's (Table 4's).

(ii) For example, the Texas Forest Service publishes sawtimber conversion factors for harvested timber. In addition, the publication referenced above, *Converting Factors for Southern Pine Products*, contains a good discussion of conversion factors. This publication, however, does not state how each set of conversion factors is applicable to particular timber characteristics. So, an expert's advice is mandatory for the chief appraiser seeking to depart from using Figure 15's (Table 4's) conversion factors.

(D) The next step in the average annual growth conversion process is to convert sawtimber growth volumes shown in Figure 14 (Table 3) from board feet in the international 1/4 inch log rule to board feet measured in the Doyle log rule. Appraisers complete this conversion by multiplying the sawtimber volumes calculated in Figure 14 (Table 3) by the weighted conversion factors for southeast Texas found in Figure 15 (Table 4).

(i) The results of this calculation are shown in Figure 16 (Table 5), Appendix B. For example, the chief appraiser multiplies 316.69 board feet of pine sawtimber (from Figure 14 (Table 3)), measured in international 1/4 inch log rule, by the weighted conversion factor of 0.62068 (from Figure 15 (Table 4)) to get 196.56 board feet of pine sawtimber, measured in the Doyle log rule. Next, the appraiser multiplies 16.63 board feet of hardwood sawtimber by 0.67578 to get 11.24 board feet of hardwood sawtimber, measured in the Doyle log rule.

(ii) In addition, the pulpwood growth volumes shown in Figure 14 (Table 3) need to be converted from cubic feet into cords because pulpwood prices are usually reported in cords. The chief appraiser may use conversion factors provided by the Texas Forest Service in its bi-monthly publication, *Texas Timber Price Trends*. In the September-October, 1994 edition of *Texas Timber Price Trends*, the sug-

gested conversion factors for pine pulpwood and hardwood pulpwood are 81 and 80, respectively. The results of these calculations also are presented in Figure 16 (Table 5).

(E) Step 4's last task is to convert the sawtimber board feet measurements to thousand board feet. The appraiser can complete this amount by dividing the board feet volumes by 1,000, as shown in Figure 16 (Table 5). Figure 17 (Table 6), Appendix B, is a summary of the annual average growth of an acre of pine, expressed as forest products. The average acre of pine forest land in southeast Texas, as shown by Table 6, produces annually: 0.197 MBF (thousand board feet) of pine sawtimber; 0.33 cords of pine pulpwood, 0.011 MBF of hardwood sawtimber; and 0.03 cords of hardwood pulpwood.

(F) The chief appraiser's computations for sawtimber and pulpwood in northeast Texas are identical to those required for pine.

(7) To determine the average annual potential gross income from an acre of timber, a chief appraiser multiplies the quantity of timber grown by its average annual price, or stumpage price. The chief appraiser must calculate average annual stumpage prices for each year of a five-year period for each of the four forest products.

(A) A readily available source of stumpage price data is the Texas Forest Service, located in College Station, Texas. The Texas Forest Service collects timber prices from its bi-monthly surveys of forest industries, consulting foresters, government agencies and large landowners and publishes the results in its publication *Texas Timber Price Trends*. On request, the Texas Forest Service will provide summaries of average annual stumpage prices by region. *Texas Timber Price Trends* reports stumpage price data for pine and hardwood sawtimber sales, pine and hardwood pulpwood sales and other miscellaneous sales. The publication reports stumpage price data by the two Texas timber regions, not by county.

(B) Step Five requires the chief appraiser to calculate average annual stumpage prices. The law uses the term average in a generic sense. Consequently, average annual stumpage prices may be calculated as either unweighted average prices or weighted average prices, depending on the data.

(C) Chief appraisers must consider various statistical issues before

deciding whether to use weighted or unweighted average stumpage prices. These issues are:

- (i) sample representativeness,
- (ii) accuracy of survey responses, and
- (iii) the relationship between timber sales prices and sales sizes.

(D) In general, stumpage price data must meet each of three basic requirements before the chief appraiser may use a weighted average to calculate average annual stumpage prices: a random sample that is representative of all potential timber transactions; a reasonable assurance that reported selling prices are not overstated or understated; stumpage prices per thousand board feet should not change in a statistically significant manner as sales sizes change.

(E) In light of these statistical issues, the chief appraiser will confront fewer problems by using unweighted average prices than by using weighted prices. Unweighted averages are probably less influenced by biases than weighted average prices. Most chief appraisers will use Texas Forest Service price data because TFS is currently the only source (permitted by the Tax Code) that collects prices. Analysis of TFS price data shows that use of unweighted average prices is more appropriate for the timber appraisal process than use of the weighted average. So, chief appraisers who wish to use weighted prices instead of unweighted prices should take great care to determine that the conditions for using weighted prices are met. Figure 18 (Table 7), Appendix B, contains unweighted average stumpage prices for each year of the 1988-1992 period. These averages were computed from data collected by the Texas Forest Service.

(8) Step Six is the process of calculating an average annual maximum potential gross income of timber growth. In Step Six, the manual refers to average annual maximum potential gross income of timber growth as gross income. The steps for calculating timber's average gross income are: computing average annual potential gross income; calculating soil productivity multipliers; using soil productivity multipliers to adjust average annual timber growth to maximum potential growth; and computing average annual maximum potential gross income.

(A) Step Six's first calculation requires finding gross income by multiplying the quantity of each of the

four timber products produced by the product's price for each year of the five-year period. Figure 19 (Table 8), Appendix B, shows this calculation for an average acre of pine in southeast Texas. These estimates of gross income are not by themselves suitable for timber appraisal. Because soil quality affects timber growth, the chief appraiser must adjust each estimate of gross income to reflect different soil quality.

(B) The chief appraiser must develop productivity multipliers to adjust the average gross income of timber to match four different soil productivity types. Productivity multipliers may be computed from either USDA Forest Service data or from a combination of USDA Forest Service data and USDA SCS data. Step Six's discussion focuses on USDA Forest Service data.

(C) The USDA Forest Service data needed for this computation are: the most recent forest survey data for Texas; and data contained in the Boyce Study, conducted by the USDA Forest Service. The Boyce Study named after one of its authors, determined in 1975 the average annual maximum amount of timber that could be produced on an acre of loblolly pine east of the Mississippi River in each of four soil productivity types. See: Stephen G. Boyce, Joe P. McClure and Herbert S. Sternitzke, Biological Potential for the Loblolly Pine Ecosystem East of the Mississippi River, USDA Forest Service, Southeastern Forest Experiment Station, Ashville, NC. Research Paper SE-142, Oct. 1975.

(D) A soil productivity class is a group of soils that have the potential to grow similar quantities of forest crops during the same time period. The soil productivity types used in the Boyce Study correspond roughly to the soil type ranges defined in Step Two. Soil productivity types are shown in Figure 8.

Figure 8: 34 TAC 9.4011(g)(8)(D)

(E) Based on the soil types classified as shown in the table above, Boyce Study results are shown in Figure 9.

Figure 9: 34 TAC 9.4011(g)(8)(E)

(F) The potential annual timber growth classes are estimates of the maximum potential growth of an acre of loblolly pine in each soil productivity class, under ideal conditions. Figure 20 (Table 9), Appendix B, shows how the average annual maximum potential

growth of an average acre of pine forest in southeast Texas is computed. The top part of the table lists acres by soil type for each county in southeast Texas. The bottom part of Figure 20 (Table 9) shows the results of multiplying the acreage in each soil type in each county by the growth potentials developed in the Boyce Study. The potential of 200 shown in the bottom part of Figure 20 (Table 9), Appendix B, was extrapolated from the data in the Boyce Study. For example, the 174.7 acres in soil type class 120-165 in Angelina County are multiplied by 163 (the growth potential for that soil type). The result is 28,476.1 cubic feet. This calculation is carried out for all soil types in each county. The resulting products are added to produce 898,890 cubic feet total. The total is divided by the total number of acres, 6,632.1, to generate an estimate of the average annual maximum potential timber growth of an acre of pine in southeast Texas of 135 cubic feet per acre per year. This number comes from the top part of Figure 20 (Table 9).

(G) Figure 21 (Table 10), Appendix B, shows how to calculate soil productivity multipliers for the four productivity types for southeast Texas. Chief appraisers compute these productivity multipliers by dividing the growth potentials from the Boyce Study by the growth potential for Texas. To compute the productivity multiplier for class II, for example, the chief appraiser divides 123 by 135, to generate a productivity multiplier of 0.91. If a chief appraiser is using USDA Forest Service data to compute productivity multipliers, the productivity multipliers for northeast Texas should be calculated in a similar manner.

(H) Figure 22 (Table 11), Appendix B, shows chief appraisers how to apply productivity multipliers to the average annual maximum potential gross income estimates, developed in Figure 19 (Table 8). In 1992, for example, the potential gross annual income of \$55.58 is multiplied by the productivity multiplier for each productivity class to generate an average annual maximum potential gross income for an average acre of pine growth by productivity class. Chief appraisers may use data from the USDA Soil Conservation Service to compute productivity multipliers, if these data are more appropriate for their respective counties.

(9) Texas law defines timber production costs as reasonable management costs and other reasonable expenses directly attributable to producing timber. The costs of producing timber are expenses related to establishing, owning,

protecting, maintaining, improving, harvesting, and selling timber. These expenses cover professional services, site preparation, tree planting and seeding, timber improvement, protection against fire, insects and disease, prescribed burning, maintenance of property boundaries, road construction and maintenance, measurements of standing timber, selling costs, property taxes, equipment use, mileage traveled to/from property for timber management, and personnel supervision and administration.

(A) The cost of producing timber varies by forest type, soil productivity, and management intensity. It also varies by two groups of timber producers, industrial timber growers and non-industrial timber growers.

(B) As defined as by the USDA Forest Service, industrial timber growers are forest companies and individuals who own timberland and operate wood-using plants. Non-industrial timber growers are individuals and entities other than forest companies or farmers. Because industrial growers usually manage their forest lands more intensively, per acre management costs are often higher on industrial lands.

(C) Chief appraisers must estimate an average annual timber cost for the average acre in their counties for each year of the preceding five-year period. Appraisers should weight each year's average annual cost by the number of industrial and non-industrial acres in the county or school district.

(i) For non-industrial timber grower's cost data, chief appraisers may survey their county's non-industrial timber growers and/or use the average non-industrial timber growers' costs developed for the Comptroller's Office by the Texas Agricultural Experiment Station (TAES). TAES derived its non-industrial timber growers' costs from responses to surveys of non-industrial timber growers. These average annual costs were weighted by acreage and were computed for both northeast and southeast Texas.

(ii) To find cost data for industrial timber growers, chief appraisers may either survey industrial timber growers in their counties or rely on consulting foresters to estimate the appraisal district's forest-type activities and their respective costs.

(iii) Industrial timber acreage and non-industrial timber acreage are available by county in the USDA publications of the 1992 Texas forest sur-

vey findings. See: Table 2 in the USDA Forest Service's 1992 Texas forest survey findings publications.

(iv) Figure 23 (Table 12), Appendix B, shows average annual industrial timber growers' and non-industrial timber growers' costs for a hypothetical county for each year of a five-year period, along with industrial timber grower and non-industrial timber grower acreage by soil productivity class.

(D) The next task required to develop average costs per acre is to adjust this average cost estimate for each productivity class. Timber on more productive land is often managed more intensively, resulting in higher costs per acre. Adjusting average annual costs per acre for productivity classes is analogous to adjusting average annual growth per acre to productivity classes, which is discussed in Step Six, paragraph (8) of this subsection.

(i) There are no readily available data showing typical forest management practices and typical costs, as required by law, for each type of activity within different productivity classes. Forestry experts and forestry personnel at TAES have developed cost proration factors to reflect different costs per acre per productivity class that would result in reasonable positive net incomes for various productivity classes and forest types.

(ii) Current cost proration factors for forest types within productivity classes are reproduced in Figure 10.

Figure 10: 34 TAC 9.4011(g)(9)(D)(ii)

(iii) As shown in this chart, the cost proration factor for Pine III is 1.00. Pine III is considered to be fairly typical of an acre of non-industrial forest land in east Texas. Pine II is considered to be typical of an acre of industrial forest land. The other proration factors were developed to reflect productivity class cost differences relative to Pine II and Pine III.

(E) Figure 24 (Table 13) shows the results of applying the four cost proration factors for pine to the industrial and non-industrial costs shown in Table 12.

(F) To calculate the average annual net income per acre for each soil productivity class for both industrial and non-industrial growers, the appraiser must subtract the average annual cost per acre for each soil productivity class from the maximum potential aver-

age annual gross income per acre. See: Figures 22 and 24 (Tables 11 and 13), Appendix B. The results are the average annual net income for each of the four different productivity classes. Appendix B, Figure 25 (Table 14) shows these computations for a hypothetical county.

(10) To complete the timber appraisal process, chief appraisers should develop a weighted average net income for each soil productivity class, capitalize this average net income and apply the productivity values to the timber acreage in their counties. Figure 26 (Table 15) shows how this is done for a hypothetical county. In soil productivity class I, for example, the chief appraiser multiplies \$33.59 per acre by 78,900 industrial acres and \$35.42 per acre by 20,000 non-industrial acres. These two products are added and divided by the sum of industrial and non-industrial acreage. The resulting number is \$33.96, which is weighted net income for the average acre of pine in soil productivity class 1 in southeast Texas.

(A) The productivity value of an acre of timberland is determined by dividing the weighted net income per acre for each productivity class by the capitalization rate mandated by Property Tax Code, §23.74. The law sets the capitalization rate at the interest rate specified by the Federal Land Bank of Houston (Now the Farm Credit Bank of Texas) on December 31 of the preceding year, plus 2 1/2 percentage points. Chief appraisers also may contact the Property Tax Division of the Comptroller's Office for information.

(B) Figure 26 (Table 15) also shows the results of dividing the weighted net income per acre in each soil productivity class by a hypothetical capitalization rate of 11%. The table shows these results for both industrial and non-industrial growers.

(i) In soil productivity class I, for example, the chief appraiser divides \$33.96, the weighted net income per acre, by 0.11, the capitalization rate, to get \$308.73, the productivity value of the average acre of pine forest in soil productivity class I in southeast Texas.

(ii) Finally, the chief appraiser multiplies \$308.73 by 98,900 acres, the total industrial and non-industrial acres in soil productivity class I. As shown in the table, the result is \$30,533,397, which is the total productivity value of timberland in soil productivity class I in this hypothetical county.

(iii) The chief appraiser should perform these calculations for

each soil productivity class in the county. These are also shown in Figure 26 (Table 15). The total value of pine forest timberland in this hypothetical county is \$97,979,133. The chief appraiser also should perform identical calculations for other forest types in the county.

(g) This subsection is entitled Appendix A. Chief appraisers are solely responsible for determining timber productivity values within their respective counties. To do so, they must get information on forest types, soil types, average growth and average prices from sources listed in the Property Tax Code. While the following sources provide information on which to base determinations, it is the chief appraiser who bears ultimate responsibility for determining timberland productivity value.

(1) The SCS is the federal agency charged with inventorying and classifying the nation's soils. This agency has comprehensive information about the productive capacity of soils that is helpful when defining soil productivity classes. Much of this information is plotted on aerial photographs.

(A) The SCS has detailed soil surveys of most Texas timber counties. The SCS classifies forested regions of the country based on their suitability for timber production. In addition, the SCS develops several measures that are helpful in evaluating an area for potential timber growth.

(B) A state agency, the Texas Forest Service (TFS) has branch offices throughout the state's timber region. TFS foresters help timber growers prepare management plans, giving priority to those with long-term timber production goals who are interested in using approved management practices, including cost-sharing. TFS headquarters are located in College Station, where the agency publishes a bi-monthly report of timber stumpage prices, called Texas Timber Price Trends. In addition, TFS publishes an annual report of timber harvests called Harvest Trends. This publication shows harvest information for each product and for each timber-producing county in Texas. Finally, the TFS has data about timber growth that the agency develops in cooperation with the United States Department of Agriculture Forest Service.

(i) The TFS publishes a list of consulting foresters approved by the TFS for referral to the public. The lists are titled Professional Management's Service Referral List and Stewardship Plan Referral List. These foresters pro-

vide professional forest management services to timber owners. They are all graduate foresters who have cooperated with the TFS in its efforts to implement forest management practices through their consulting services. They do not purchase timber or forest land for any forest industry. They charge a fee for their services, usually either a set rate or a percentage of timber sale proceeds.

(ii) A chief appraiser may use a consulting forester to help sort through and analyze the data required for timber appraisal. The chief appraiser's primary sources of information must be the statutory sources listed in this manual. However, the chief appraiser may use a consulting forester to help resolve issues involving these statutory, primary data sources.

(2) The USDA Forest Service is a branch of the United States Department of Agriculture. This agency has helpful information about average timber growth and soil types. The Forest Service periodically surveys east Texas timber to develop growth information. Summaries of these data at the county level are published. USDA Forest Service survey data are also maintained by the Texas Forest Service.

(3) The United States Geological Survey periodically publishes land use/land cover maps, which classify forest types in a format useful for timberland appraisal. The agency has negatives of panchromatic (showing all colors in the visible color spectrum) aerial photographs and positive transparencies of color-infrared aerial photographs. Chief appraiser should be sure these maps are up-to-date before relying on them.

(4) Local college and university agricultural departments often have information not available from the other sources.

(h) Appendix B contains Figures 12-26 (Tables 1-15).

Figure 11: 34 TAC 9.4011(i)

Figure 12: 34 TAC 9.4011(i)

Figure 13: 34 TAC 9.4011(i)

Figure 14: 34 TAC 9.4011(i)

Figure 15: 34 TAC 9.4011(i)

Figure 16: 34 TAC 9.4011(i)

Figure 17: 34 TAC 9.4011(i)

Figure 18: 34 TAC 9.4011(i)

Figure 19: 34 TAC 9.4011(i)

Figure 20: 34 TAC 9.4011(i)

Figure 21: 34 TAC 9.4011(i)

Figure 22: 34 TAC 9.4011(i)

Figure 23: 34 TAC 9.4011(i)

Figure 24: 34 TAC 9.4011(i)

Figure 25: 34 TAC 9.4011(i)

Figure 26: 34 TAC 9.4011(i)

Part III. Teacher Retirement System of Texas

Chapter 29. Benefits

Retirement

• 34 TAC §29.17

The Teacher Retirement System of Texas (TRS) proposes new §29.17, clarifying the latest date for the commencement of benefits.

Wayne Fickel, controller, Teacher Retirement System, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fickel also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that TRS will remain a qualified plan under Federal law. 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 may be submitted to Wayne Blevins, Executive Director, Teacher Retirement System, 1000 Red River, Austin, Texas 78701-2698, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Government Code, Chapter 825, §825. 102, which authorizes the teacher Retirement System to adopt rules for the administration of the funds of the retirement system.

The Government Code, Chapter 825 is affected by this proposed rule.

§29.17. Latest Date for Commencement of Benefits. A member's benefits shall be distributed, or commence to be distributed to the member, no later than April 1 of the year following the calendar year in which such member:

(1) attains age 70 1/2; or

(2) terminates employment and applies for retirement, whichever of this paragraph or paragraph (1) of this section occurs later. Distributions to the member and the member's beneficiary shall be made in accordance with the Internal Revenue Code, §401(a)(9), 26 United States Code, §401(a), including §401(a)(9)(D) thereof relating to incidental death benefits.

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

Issued in Austin, Texas, on February 21, 1995.

TRD-9502166

Wayne Blevins
Executive Director
Teacher Retirement
System of Texas

Proposed date of adoption: March 31, 1995

For further information, please call: (512) 370-0506

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 421. Standards for Certification

• 37 TAC §421.5

The Texas Commission on Fire Protection proposes an amendment to §421.5, concerning standards for certification. The amendment to this section provides clarification of the definition of "college credits" to include courses presented through the National Emergency Training Center and recognized by the American Council on Education.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The change may increase the number of individuals seeking higher levels of certification at \$20 each. There are no facts on which to estimate the number of additional certifications. There will be no fiscal implications for local government.

Mr. Fiero also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the additional route for meeting college hour requirements for higher levels of certification will encourage more fire protection personnel to take courses from the National Emergency Training Center (including NFA and EMI courses) resulting in a more skilled and knowledgeable fire service. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish standards for advanced fire protection personnel positions.

The Texas Government Code, §419.022 is affected by this proposed amendment.

§421.5. Definitions.

- (a) (No change.)

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

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

(8) College Credits—Credits earned for studies satisfactorily completed at an accredited institution of higher education, or courses delivered through the National Emergency Training Center residency programs, and recommended for college credit by the American Council on Education (ACE). [learning in a program leading to an academic degree.]

- (9)-(26) (No change.)

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

Issued in Austin, Texas, on February 16, 1995.

TRD-9502173

Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 918-7184

Chapter 425. Fire Protection Instructors

Subchapter A. Fire Service Instructor Certification

• 37 TAC §425.3

The Texas Commission on Fire Protection proposes an amendment to §425.3, concerning minimum standards for basic fire service instructor certification. The amendment to subsection (a)(2)(B) adds the word "fire" to clarify the type of protection training required.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fiero 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 clarification of fire service instructor certification requirements. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection

with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes.

The Texas Government Code, §419.028 is affected by this proposed amendment.

§425.3. Minimum Standards for Basic Fire Service Instructor Certification.

(a) In order to be certified as a Basic Fire Service Instructor the individual must:

- (1) (No change.)

(2) have a minimum of three years full time experience relating to fire protection in one or more or any combination of the following:

- (A) (No change.)

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities;

- (3)-(7) (No change.)

- (b) (No change.)

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

Issued in Austin, Texas, on February 16, 1995.

TRD-9502174

Jack Woods
General Counsel
Texas Commission on Fire Protection

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For further information, please call: (512) 918-7184

Subchapter C. Fire Education Specialist Certification

• 37 TAC §425.303

The Texas Commission on Fire Protection proposes an amendment to §425.303, concerning minimum standards for basic fire education specialist certification. The amendment to subsection (a)(1)(B) adds wording to provide clarity of the text and correct a typographical omission.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fiero 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 clarification of fire education specialist certification requirements. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes.

The Texas Government Code, §419.028 is affected by this proposed amendment.

§425.303. Minimum Standards for Basic Fire Education Specialist Certification.

(a) In order to be certified as a Basic Fire Education Specialist the individual must:

(1) be a full-time, full paid employee of a department of a state agency, an education institution or political subdivision providing fire protection training and have a minimum of three years full-time experience in one or more or any combination of the following:

(A) (No change.)

(B) a department of a state agency, an education institution or political subdivision providing fire protection training;

(2)-(5) (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 authority to adopt.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502175 Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 427. Certified Training Facilities

• 37 TAC §427.3

The Texas Commission on Fire Protection proposes an amendment to §427.3, concerning training facilities. The amendment changes the wording to clarify the minimum resources that are required for certification as a certified training facility.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fiero 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 clarification of facilities required for live fire training for various disciplines of fire protection personnel trained at the approved academy. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment 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, §419.028(2), which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

The Texas Government Code, §419.028 is affected by this proposed amendment.

§427.3. Facilities. The following minimum resources, that are applicable to the curricula, are required for certification as a certified training facility. These facilities may be combined or separate utilizing one or more structures. In either event the facilities must be available and used by the instructor and trainees.

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

(5) A structure [building] suitable for interior live fire training and meeting the requirements of the basic [Basic Fire Suppression] curriculum pertaining to the particular discipline(s) which the training facility is approved to teach, shall be available for use by the instructors to teach interior live fire training. NFPA 1403, Standard on Live Fire Training Evolutions in Structures shall be used as a guide when conducting interior live fire training.

(6) Facilities to conduct exterior live fire training as required by the basic curriculum pertaining to the particular discipline(s) which the training facil-

ity is approved to teach, shall be available for use by the instructors to teach exterior live fire training. [applicable chapter of the Commission Certification Curriculum Manual adopted in Chapter 443 of this title.]

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

Issued in Austin, Texas, on February 16, 1995.

TRD-9502176 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 918-7184

Chapter 431. Minimum Standards for Fire and Arson Investigator

• 37 TAC §431.7

The Texas Commission on Fire Protection proposes an amendment to §431.7, concerning minimum standards for fire and arson investigator certification. The amendment changes the prerequisite for an Advanced Fire and Arson Investigator certificate to an Intermediate Fire and Arson Investigator certificate to correct a typographical error.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fiero 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 clarification of requirements for advanced fire and arson investigator certification. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

The Texas Government Code, §419.022 is affected by this proposed amendment.

§431.7. Minimum Standards for Advanced Fire and Arson Investigator Certification.

(a) Applicants for Advanced Fire and Arson Investigator must complete the following requirements:

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

(3) hold as a prerequisite an Intermediate [Advanced] Fire and Arson Investigator certificate;

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

(b) (No change.)

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

Issued in Austin, Texas, on February 16, 1995.

TRD-9502177 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 918-7184

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Chapter 435. Firefighter Safety

• 37 TAC §435.7

The Texas Commission on Fire Protection proposes new §435.7, concerning fire department staffing studies. The proposed new section provides for assistance by maintaining information pertinent to fire department staffing studies.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of administering the section. The actual cost to the state will vary depending on the volume of material on staffing studies made available under this rule. Based on an estimate of \$10 per packet for copying and postage and 50 requests per year, there will be an estimated cost of \$500 per year. There will be no fiscal implications for local government.

Mr. Fiero also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the new rule provides fire departments and other interested persons with information pertinent to staffing studies that can aid in evaluating the needs of fire departments at no cost. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The new section is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection

with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(4), which provides the commission with authority to assist in performing staffing studies for fire departments.

The Texas Government Code, §419.022 is affected by this proposed new section.

§435.7. Fire Department Staffing Studies.

(a) Texas Government Code, §419.022(a)(4), provides that the commission may "on request, assist in performing staffing studies of fire departments." Staffing studies must take into consideration all the objectives and missions of the fire department. The commission does not have the resources or the staff to directly assist in performing the necessary tasks to perform a staffing study. Many staffing studies have been developed that can be used to assist in evaluating the needs of a fire department.

(b) A city should ultimately decide on the level of fire protection it is willing to provide to its citizens. The city and fire department should, as a minimum, address the needs of prevention, investigation and suppression as outlined in the appropriate NFPA Standards. That decision should be based on facts, the safety of its citizens, and the safety of the fire fighters providing that protection.

(c) The commission will assist by maintaining information pertinent to fire department staffing. The information shall be maintained in the Ernest A. Emerson Fire Protection Resource Library at the Texas Commission on Fire Protection. Copies shall be made available, free of charge, to anyone requesting such information to the extent permitted by copyright laws.

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

Issued in Austin, Texas, on February 16, 1995.

TRD-9502178 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 918-7184

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Chapter 437. Fees

• 37 TAC §437.15

The Texas Commission on Fire Protection proposes an amendment to §437.15, concerning fees for proficiency examination. The amendment clarifies the amount of the fee to be charged for a performance skills examination administered at a training facility, and the

amount of the fee to be charged at Austin, or another place designated by the commission.

James Fiero, fire protection personnel advisory committee chairman, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fiero 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 clarification of the examination fee requirements. 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 Michael E. Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.026(b), which provides the commission with authority to set and collect a fee for each examination given to fire protection personnel.

The Texas Government Code, §419.026 is affected by this proposed amendment.

§437.15. Fees-Proficiency Examination.

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

(c) A fee of \$15 shall be charged for each proficiency performance skills examination administered at a training facility providing field proctors. If the proficiency performance skills examination is administered at Austin, or another place designated by the commission, a fee of \$50 shall be charged. [A fee of \$50 shall be charged for each proficiency performance skills examination.]

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

Issued in Austin, Texas, on February 16, 1995.

TRD-9502179 Jack Woods
General Counsel
Texas Commission on Fire Protection

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 918-7184

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. [Long Term Care] Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter T. Administration • 40 TAC §19.1918

The Texas Department of Human Services (DHS) proposes an amendment to §19.1918, concerning disclosure of ownership, in its Nursing Facility Requirements for Licensure and Medicaid Certification (formerly Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification) rule chapter. The purpose of the proposal is to amend subsection (b) to substitute DHS for the Texas Department of Health and to add to subsection (b)(4) the requirement that the facility must provide written notice of change in facility administrator, director of nursing, or medical director to DHS within 30 days of the time of the change. Subsections (d) and (e) are deleted. Subsection (d) will be replaced by §19.210 of this title (relating to Change of Ownership), which DHS proposed in the September 30, 1994, issue of the *Texas Register* (19 TexReg 7765). Subsection (e) will be replaced by §19.2308 of this title (relating to Change of Ownership), which DHS proposed in the October 21, 1994, issue of the *Texas Register* (19 TexReg 7765).

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Raiford 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 clear rules concerning change-reporting requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Long-Term Care Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-386, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities; the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil

Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024 and 32.001-32.042.

§19.1918. Disclosure of Ownership.

(a) (No change.)

(b) The facility must provide written notice to the Texas Department of Human Services (DHS) [Texas Department of Health] at the time of change if a change occurs in:

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

(4) the facility's administrator, medical director, or director of nursing. This notice must be provided within 30 days.

(c) (No change.)

(d) The ownership of a facility shall be fully disclosed to the state licensing agency. In the case of corporate ownership, the corporation shall:

(1) provide a copy of the certificate of authority of articles of incorporation, as appropriate, and a copy of the corporate bylaws;

(2) provide to the licensing agency the name and address of the individual or agent authorized to provide service in Texas; and

(3) provide to the licensing agency a list of all individuals exercising management or control of the corporation.

(e) Refer to §19.2008 of this title (relating to Change of Ownership) for additional requirements.]

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502212

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: May 1, 1995

For further information, please call: (512) 450-3765



TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Advisory Committees

• 43 TAC §1.82, §1.83

The Texas Department of Transportation proposes amendments to §1.82 and §1.83, concerning department advisory committee operations and procedures and advisory committee responsibilities.

Texas Civil Statutes, Article 46c-3, requires the Texas Transportation Commission to appoint a six-member Aviation Advisory Committee to advise the commission and the Texas Department of Transportation on aviation matters. Texas Civil Statutes, Article 6673h, requires the commission to appoint a Bicycle Rules Advisory Committee to advise the commission and the department on the development of rules for bicyclists' use of the state highway system. Texas Civil Statutes, Article 6673h, provided that on passage of initial rules regarding bicycle road use, the Bicycle Rules Advisory Committee was to be abolished.

Section 1.82 is amended to provide that Aviation Advisory Committee members be appointed for three-year staggered terms.

Section 1.82 and §1.83 are amended to abolish the Bicycle Rules Advisory Committee in accordance with Texas Civil Statutes, Article 6673h. Bicycle road use rules were adopted by the commission on December 21, 1994, and thus, the department's rules concerning the Bicycle Rule Advisory Committee are obsolete and should be deleted.

Tom Griebel, assistant executive director, Multimodal Transportation, has determined that for the first five years the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Griebel has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Griebel also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be to maximize the effectiveness of the Aviation Advisory Committee, to facilitate continuity of its responsibilities, and to remove obsolete provisions. 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 Thomas A. Griebel, Assistant Executive Director, Multimodal Transportation, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on March 30, 1995.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9:00 a.m., on Monday, March 13, 1995, in Room 101, Building 200, 200 East Riverside Drive, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

The amendments are proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Civil Statutes, Article 46c-3, which require the Texas Transportation Commission to appoint a six-member Aviation Advisory Committee to advise the commission and the Texas Department of Transportation on aviation matters, and Texas Civil Statutes, Article 6673h, which require the commission to appoint a Bicycle Rules Advisory Committee to advise the commission and the department on the development of rules for bicyclists' use of the state highway system and provides that on passage of initial rules regarding bicycle road use, the Bicycle Rules Advisory Committee was to be abolished.

Texas Civil Statutes, Article 46c-3 and Article 6673h are affected by the amendments.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) Applicability. This section applies to statutory advisory committees.

(b) Membership.

(1) Aviation.

(A) The commission will appoint the members of the aviation advisory committee to staggered terms of three years, unless sooner removed at the discretion of the commission, with two members' terms expiring August 31 of each year.

(B) The commission will appoint six members in August, 1996 for initial terms as follows: two to serve terms expiring August 31, 1997, two to serve terms expiring August 31, 1998, and two to serve terms expiring August 31, 1999.

(C) Existing members shall serve until the commission appoints new members under subparagraph (B) of this paragraph. [Except as provided in paragraphs (2) and (3) of this subsection, the commission will:

(A) appoint advisory committee members for a two-year term; and

(B) appoint members to serve the balance of any term upon the occurrence of a vacancy.]

(2) Environmental and Public Transportation. Members of the Environmental and Public Transportation Advisory Committees shall be appointed and shall serve pursuant to Texas Civil Statutes, Article 6663b and Texas Civil Statutes, Article 6673g, respectively.

[(3) Members of the Bicycle Rules Advisory Committee shall serve until the committee is abolished as provided by Texas Civil Statutes, Article 6673h.]

(3) Officers.

[(4)] Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c)-(h) (No change.)

§1.83. Statutory Advisory Committees.

[(a) Bicycle Rules Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6673h, the Bicycle Rules Advisory Committee seeks to provide the commission with insight from the perspective of bicyclists. The primary mission of the committee is to advise the commission on the development of rules for bicyclists use of the state highway system. By involving representatives of the public and of bicyclists, the department helps ensure effective communication with the bicycle community, and that the bicyclist's perspective will be fully considered in the development of bicycles road use rules.

(2) Duties. The committee shall:

(A) advise the commission on the adoption of rules regarding bicycle road use on the state highway system; and

(B) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet annually and as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee shall be abolished upon final adoption of bicycle road use rules by the commission.]

(a)[(b)] Environmental Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6673g, the Environmental Advisory Committee provides a forum for the exchange of information between the department, the commission and committee members representing the general public and the environmental community. Advice and recommendations expressed by the committee provide the department and the commission with greater insight with regard to environmental issues; thus, facilitating the department's and the commission's goal of ensuring that environmental considerations are fully integrated into department and commission rules and policies.

(2) Duties. The committee shall:

(A) advise the commission on rules of the department that may affect the environment;

(B) become informed and knowledgeable of the department's environmental activities, and the environmental policies, and rules which govern the department's operations;

(C) communicate to the department any views or recommendations of the committee regarding the department's environmental policies, rules, and procedures;

(D) communicate the roles, mission, and environmental policies of the department in order to promote a better understanding of the department throughout the general public and environmental community; and

(E) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet:

(A) as necessary, at the call of its chair, but not exceeding once each month;

(B) at the request by the commission; and

(C) as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

(b)(c) Aviation Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 46c-3, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

(c)(d) Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6663b, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state

public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; and

(C) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet:

(A) as necessary, at the call of its chair, but not exceeding once each month;

(B) at the request of the commission; and

(C) as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

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

Issued in Austin, Texas, on February 21, 1995.

TRD-9502169

Diane L. Northam
Legal Executive Assistant
Texas Department of
Transportation

Earliest possible date of adoption: March 31, 1995

For further information, please call: (512) 463-8630

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

- 25 TAC §§98.104, §98.105

The Texas Department of Health has withdrawn the emergency effectiveness of amendments to §98.104 and §98.105, concerning the HIV and STD Control. The text of the emergency amendments appeared in the December 9, 1994, issue of the *Texas Register* (19 TexReg 9705). The effective date of this withdrawal is March 14, 1995.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502225 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: March 14, 1995

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XV. Texas Low-Level Radioactive Waste Disposal Authority

Chapter 451. Disposal Site Management and Operation

Subchapter B. Waste Acceptance

- 31 TAC §§451.21-451.28

The Texas Low-Level Radioactive Waste Disposal Authority has withdrawn from consideration for permanent adoption a proposed new §§451.21-451.28 which appeared in the September 30, 1994, issue of the *Texas Register* (19 TexReg 7763). The effective date of this withdrawal is February 21, 1995.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502144 Lee H. Mathews
Deputy General Manager
and General Counsel
Texas Low-Level
Radioactive Waste
Disposal Authority

Effective date: February 21, 1995

For further information, please call: (512) 451-5292



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long Term Care Nursing Facility

Requirements for Licensure and Medicaid Certification

Subchapter T. Administration

- 40 TAC §19.1918

The Texas Department of Human Services (DHS) has withdrawn from consideration the proposed repeal of §19.1918, concerning disclosure of ownership, in its Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification rule chapter. The text of the proposed repeal appeared in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8349). The effective date of the withdrawal is February 22, 1995.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502211 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: February 22, 1995

For further information, please call: (512) 450-3765



Handwritten notes in cursive script, including a date '11/15/08' and illegible text.

Name: Fabian G. Velez
Grade: 12
School: Harlandale High School, Harlandale ISD



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 231. Administration

General Practice and Procedure

- 22 TAC §231.17, 231.20, 231.32, 231.50

The Board of Vocational Nurse Examiners adopts amendments to §§231.17, 231.20 and 231.32 and new §231.50, without changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 274).

The amendments are adopted to clarify language and bring the sections up to date. Section 231.50 is adopted to comply with House Bill 1009, §5, Acts of the 73rd Legislature. The adoption of these rules provides for clarification of the duties of the president and secretary of the Board, minutes of the Board and provides specific information of charges for copies of public information.

No comments were received regarding adoption of these rules.

The amendments and new rule are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502114 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Chapter 233. Education

The Board of Vocational Nurse Examiners adopts amendments to §233.1, concerning Definitions, §233.26, concerning Clinical Facility, and §233.71, concerning System of Grading, without changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 275).

Rule 233.1 is adopted to provide a definition for Director Affidavit as it is required in the application for licensure by examination and endorsement. Rule 233.26 is being adopted to clarify that clinical facilities do not require a survey visit or board approval as it is not cost effective or necessary for programs other than newly approved programs. Rule 233.71 is adopted to remove the indication that a grade 70% is a "C".

No comments were received regarding adoption of the amendments.

Definitions

- 22 TAC §233.1

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502115 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Operation of a Vocational Nursing Program

- 22 TAC §233.26

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in

effect the purposes of the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502116 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Vocational Nursing Education Standards

- 22 TAC §233.71

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502117 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Chapter 239. Contested Case Procedure

The Board of Vocational Nurse Examiners adopts amendments to §§239.1, 239.11, 239.22, 239.24, 239.25, 239.33, 239.53 and new §239.18 and §239.19. Section 239.33 is adopted with changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 276). Sec-

tions 239.1, 239.11, 239.22, 239.24, 239.25, 239.53, and new §239.18 and §239.19 are adopted without changes and will not be republished.

In §239.33(a) the subsection was reworded to read "not subject to disclosure, subpoena, or other means of legal compulsion". The word "discovery" was inadvertently omitted in the proposal. Subsection (a) (1) "his or her" was changed to "their". The rules are adopted for clarification and to substitute Texas Government Code for Administrative Procedure Act.

New §239.18 addresses penalties and sanctions the board may impose and §239.19 addresses the fines the board has authority to assess.

No comments were received regarding adoption of the amendments and new rules.

Definitions

• 22 TAC §239.1

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502118 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Enforcement

• 22 TAC §§239.11, 239.18, 239.19

The amendment and new sections are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502119 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Hearings Process

• 22 TAC §§239.22, 239.24, 239.25, 239.33

The amendments are adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide 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.

§239.33. Release of Information.

(a) A complaint and investigation concerning a licensee/applicant and all information and materials compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Texas Government Code Annotated, Chapter 552-Open Records and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this information may be disclosed to:

(1) the nurse being investigated and/or their authorized representative;

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

(4) peer assistance programs approved by the board under the Health and Safety Code, Annotated, Chapter 467;

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

(b) The filing of formal charges against a licensee/applicant by the board, the nature of those charges, disciplinary proceedings of the board, and final disciplinary actions, including warnings and reprimands, by the board are not confidential and are subject to disclosure in accordance with Texas Government Code Annotated, Chapter 552-Open Records.

(c) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502120 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

Reinstatement Process

• 22 TAC §239.53

The amendment is adopted under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and

regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502121 Marjorie A. Bronk
Executive Director
Board of Vocational Nurse
Examiners

Effective date: March 14, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 835-2071

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

• 25 TAC §98.104, §98.105

The Texas Department of Health (department) adopts amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program, without changes to the proposed text as published in the January 6, 1995, issue of the *Texas Register* (20 *TexReg* 59).

The amended sections implement the provisions of the "Communicable Disease Prevention and Control Act," Health and Safety Code, §85.063, Subchapter C, concerning the Texas HIV Medication Program. The program assists hospital districts, local health departments, public or nonprofit hospitals and clinics, nonprofit community organizations, and HIV-infected individuals in the purchase of medications approved by the Texas Board of Health (board) that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand coverage of the program to include Ganciclovir, Megestrol Acetate and Azithromycin for eligible participants.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Health and Safety Code, §85.063, which provides the board with the authority to adopt rules concerning the Texas HIV Medication Program; and under 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502224 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: March 15, 1995

Proposal publication date: January 6, 1995

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

Chapter 169. Veterinary Public Health

The Texas Department of Health (department) adopts the repeal of existing §§169.1, 169.2, and 169.11-169.13, concerning transportation of dead animals and meat and poultry inspection, without changes to the proposed text as published in the September 16, 1994, issue of the *Texas Register* (19 TexReg 7225).

The sections cover identifying vehicles transporting dead animals/administrative penalties; federal regulations on meat and poultry inspection; meat inspection; and administrative penalties.

The repeals are necessary to move the sections to a more appropriate location in the Texas Administrative Code. These sections are adopted under Chapter 169 titled "Veterinary Public Health." A portion of the department's Bureau of Veterinary Public Health was combined with the Division of Food and Drug to become the Bureau of Food and Drug Safety (BFDS). Under BFDS, the Meat Safety Assurance Division is responsible for rules regulating the transportation of dead animals, and meat and poultry inspection. Therefore, these sections are being adopted under a new Chapter 221, titled "Meat Safety Assurance."

No comments were received regarding adoption of the repeals.

Transporting Dead Animals

• 25 TAC §169.1, §169.2

The repeals are adopted under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502220 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: March 15, 1995

Proposal publication date: September 16, 1994

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

Meat and Poultry Inspection

• 25 TAC §§169.11-169.13

The repeals are adopted under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502221 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: March 15, 1995

Proposal publication date: September 16, 1994

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

Chapter 221. Meat Safety Assurance

The Texas Department of Health (department) adopts new §§221.1, 221.2, and 221.11-221.13, concerning transportation of dead animals and meat and poultry inspection. Section 221.11 is adopted with changes to the proposed text as published in the September 16, 1994, issue of the *Texas Register* (19 TexReg 7225). Sections 221.1, 221.2, 221.12, and 221.13 are adopted without changes and will not be republished.

The sections specifically cover identifying vehicles transporting dead animals/administrative penalties; federal regulations on meat and poultry inspection; meat inspection; and administrative penalties.

These new sections presently exist in 25 TAC §§169.1, 169.2, and 169.11-169.13 under Chapter 169 titled "Veterinary Public Health." A portion of the department's Bureau of Veterinary Public Health was combined with the Division of Food and Drug to become the Bureau of Food and Drug Safety (BFDS). Under BFDS, the Meat Safety Assurance Division is responsible for rules regulating the transportation of dead animals, and meat and poultry inspection. As appropriate, the new sections are being adopted under a new

chapter, titled "Meat Safety Assurance" more appropriately located in the Texas Administrative Code.

New §221.11 adopts by reference the most recent federal regulations concerning meat and poultry inspection. These federal regulations are preemptive and the State of Texas is required, through its cooperative agreement with the United States Department of Agriculture, to follow the federal regulations. This section includes all the most current federal regulations which the department is required to follow and reflects the departmental reorganization name changes. In addition, this section will enable the department to maintain the mandated "equal to" status required by United States Department of Agriculture.

Editorial changes were made for clarification purposes.

No comments were received regarding adoption of the new sections.

Transporting Dead Animals

• 25 TAC §§221.1, §221.2

The new sections are adopted under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502222 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: March 15, 1995

Proposal publication date: September 16, 1994

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

Meat and Poultry Inspection

• 25 TAC §§221.11-221.13

The new sections are adopted under the Health Safety Code, §433.008, which provides the Commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the Commissioner of Health.

§221.11. *Federal Regulations on Meat and Poultry Inspection.*

(a) The Texas Department of Health adopts by reference Title 9, Code of

Federal Regulations, Parts 301-381 titled "Mandatory Meat Inspection, Voluntary Inspections and Certification Services, and Mandatory Poultry Products Inspection," as amended.

(b) Copies of these regulations are indexed and filed in the Division of Meat Safety Assurance, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756 and are available for public inspection during regular working hours.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502223

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: March 15, 1995

Proposal publication date: September 16, 1994

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

TITLE 28. INSURANCE Part II. Texas Workers' Compensation Commission

Chapter 102. Practice and Procedures

• 28 TAC §§102.5, 102.8, 102.9

The Texas Workers' Compensation Commission adopts amendments to §§102.5, 102.8, and 102.9, concerning electronic submission of data to and from the commission, without changes to the proposed text as published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9097). Amendments to §§124.1, 124.2, and 124.4, are being simultaneously adopted in this issue of the *Texas Register*. The amendments allow the commission to require that claim data currently submitted on Forms TWCC-1/21 be transmitted to TWCC electronically. The requirements for electronic submission set out in these amendments apply to insurance carriers as that term is defined in the Texas Labor Code, §401.011(27).

The commission will use record layouts developed in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC), several other states and several national carriers. These records consist of the carriers-reported First Report of Injury (IAIABC 148 record layout) and the Subsequent Report (IAIABC A49 record layout) data. These reports correspond to the TWCC-21, Payment of Compensation or Notice of Refused/Disputed Claim, and the TWCC-1, First Report of Injury.

The amendments will result in improved business processes in the following manner: receipt of data in a timely and more efficient

manner will allow the commission to process claims and provide quality customer support to all parties in the workers' compensation system; processing claims faster allows TWCC customer support staff to more promptly advise injured workers of their rights and obligations under the law and to ensure that the proper level of benefits are being paid; assisting the injured worker early in the process helps to reduce disputes or allows dispute resolution at an earlier and lower level thereby reducing costs to the system; an increase in data accuracy and quality by reducing the number of times data is handled and keypunched into various systems through the workers' compensation processes; increased data accuracy via system edits by the sender before transmission and by TWCC upon receipt; accurate, reliable, and quality data will improve reports that must be provided to various entities; and timeliness of filing will reduce compliance violations.

Requiring electronic submission of claims data is aligned with the goals and improvements of the workers' compensation system at the national level. TWCC has participated with the International Association of Industrial Accident Boards and Commissions (IAIABC) over the past year to develop national standards for reporting workers' compensation data. In conjunction with the IAIABC, several states, carriers, third party administrators, and servicing agents attend monthly technical development meetings to develop and resolve issues at the national level. Major carriers involved in the IAIABC project are: ITT Hartford, CIGNA, Liberty Mutual, Kemper, SAFECO, Travelers, Wausau, Zurich American, plus TPAs or servicing vendors Crawford & Company, EDS, First Image, and Frank Gates Co. There are 46 states involved in the Electronic Data Interchange (EDI) project either in production, piloting, test/pilot (expected soon), participating, or using the IAIABC formats for system design. Several are piloting or in production with at least one carrier.

These amendments also help facilitate the Sunset Commission's recommendations to streamline the claims process by letting insurance companies report workers' injuries electronically.

Comments were received on the proposed amendments from ITT Hartford, the Texas Workers' Compensation Insurance Fund, and Southwestern Bell Corporation.

All commenters expressed overall support for the proposed amendments, while offering suggestions for revision of the amendments.

The following comments were received regarding the proposed amendments to §§102.5, 102.8, 102.9, as well as §§124.1, 124.2, and 124.4. Comments to both chapters of rules are included because the revisions to the two chapters are so intertwined.

COMMENT: Commenters suggested (regarding §124.4 (b)) that it would be more appropriate and timely to notify the claimant/legal beneficiary when action is taken by a carrier that reduces or terminates payment of income or death benefits, rather than on a monthly basis. Also, the reference to §129.4 would not be necessary.

RESPONSE: The commission agrees. The proposed amendment to §124.4(b) has been revised to read: "If a carrier reduces or terminates the payment of income or death benefits, the carrier shall notify the claimant/legal beneficiary by a notice or letter with content prescribed by the commission. This notice/letter is required no later than the tenth day after the date the carrier has taken the action and shall state fully the reason(s) for such action. This statement must contain sufficient substantive information to enable the claimant/legal beneficiary to understand the carrier's position on the claim. A statement that simply states the carrier's position with phrases such as "abandoned medical treatment", "compensation in dispute", or "liability is in question" with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

COMMENT: Section 124.2 and §124.4 state that the commission will prescribe the "content" of the form or letter provided to the claimant/legal beneficiary. The content should be the same as or a subset of the data submitted electronically to TWCC.

RESPONSE: The commission disagrees. The commission feels that the rules do not need to be amended to reflect this level of detail. While the commission's goal is that the data elements required on the notices and letters will be limited to data elements that are captured electronically, additional free text is required on the letter to explain to the claimant in easy to understand terms what action the carrier is taking concerning payment of benefits. A standard notice/letter format will eliminate the carriers having to send confusing and hard-to-understand forms to the claimant, reducing unnecessary communications between all parties. Also, this will reduce the need to maintain additional state specific forms.

COMMENT: Suggest that §102.5 specify the procedures for acknowledging acceptance or rejection of records.

RESPONSE: The commission disagrees. The commission feels that the rules do not need to be amended to reflect this level of detail. The acknowledgement procedure and record layouts are defined in specifications, instructions, advisories and communications from the commission.

COMMENT: The commission should consider the lead time carriers will need in order to make programming changes and/or train personnel.

RESPONSE: The commission agrees with the statement, but disagrees that this is a point to be included in the rules. Any changes will be based on specifications developed through the Texas EDI Task Group and/or the National IAIABC Technical Development Committee. Companies will be given a sufficient lead time to comply.

COMMENT: One commenter noted that carriers may be required to report more information than what is currently captured on the TWCC-21 form.

RESPONSE: This is correct. Although the electronic data elements on the 148 and A49 record layouts are similar and correspond closely to the TWCC-21, there is not a one-

to-one, 100% correlation. The 148/A49 electronic record layouts will ultimately replace the hard-copy paper TWCC-21. This is appropriate, given the goal of receiving the data necessary to the commission's operation, in a more efficient manner.

COMMENT: One commenter expressed dissatisfaction that their company, a major participant in the EDI project, was inadvertently omitted from the preamble.

RESPONSE: The commission agrees that the omitted company is a major participant in the Electronic Data Interchange project and should have been included in the preamble. The commission apologizes for the omission, and has added ITT Hartford to the list in the preamble to the adopted amendments.

COMMENT: One commenter expressed concern that the rules do not explain that the initial participation for the EDI project is on the basis of a pilot program.

RESPONSE: The commission disagrees. The commission feels that this is not an item for the rules. The commission is aware of the complexity of the EDI project and does not expect full and immediate production. The January 31, 1995 date stated in the proposed rule allows the commission flexibility to accommodate the various EDI pilots/production commencements. Note that this date has been adjusted in the Chapter 124 rules to March 15, 1995 in order to comply with statutory requirements regarding filing adopted rules with the *Texas Register*.

The amendments are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Labor Code, §402.042(b)(11), which allows the executive director of the commission to prescribe the form, manner, and procedure for transmission of information to the commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502055

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Effective date: March 15, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 440-3700

Chapter 108. Fees

• 28 TAC §108.1

The Texas Workers' Compensation Commission adopts new §108.1, concerning charges for copies of public records. The new rule is adopted with changes to the proposed text as published in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8939).

The new rule is adopted to comply with House Bill 1009, 73rd Legislature, 1993 which mandates each state agency to promulgate rules specifying the charges the agency will establish for copies of public information. The charges listed in the new rule are in accordance with the recently approved General Services Commission rules specifying the costs and methods that a state agency may use to recover the costs of providing copies of public records; the charges specified were calculated to equal but exceed the agency's costs for providing copies. The charges approved by the General Services Commission have been determined in accordance with accepted cost methodologies adopted by the Council on Legislative Government. The new rule establishes a framework within which the commission may recover the cost to provide copies of public records to persons requesting the copies. The rule also provides that the commission may waive these charges under certain circumstances, and authorizes the executive director of the commission to determine whether a public benefit exists on a case-by-case basis.

The new rule provides a mechanism by which the commission will be able to recover costs for providing copies of public records in circumstances where such a practice would provide the most benefit to the commission and the state. Consistent with Texas General Services Commission approval, the Texas Workers' Compensation Commission has previously charged for copies of public records.

The new rule also provides for more efficient resource utilization, since the commission will be able to recover costs for providing copies of public records as a result of uniform procedures throughout state government for recovery of costs associated with providing public information.

The Texas Workers' Compensation Commission maintains a separate fee schedule for obtaining copies of workers' compensation claimant files, which are confidential under the Texas Labor Code, and for costs of audits and reviews required within the commission's regulatory authority.

Comments were received regarding the proposed new rule from the Freedom of Information Foundation of Texas (FOIFT) and Common Cause of Texas.

Both commenters, while generally in support of the proposed new rule, suggested some revisions. The commission agrees with the commenters' suggestions and has revised the proposed new rule accordingly.

The following comments were received regarding the proposed new rule.

COMMENT: In subsection (c)(2), the cost of copies of 51 pages or more of standard-size copies of readily available records should be changed to be in accordance with the new guidelines provided by the General Services Commission.

RESPONSE: The commission agrees. The proposed rule has been revised to reflect the guidelines provided by the General Services Commission.

COMMENT: In subsection (c)(3), the cost of standard-size copies of not readily available records should be changed to be in accordance with the new guidelines provided by the General Services Commission.

RESPONSE: The commission agrees. The proposed rule will be revised to reflect the guidelines provided by the General Services Commission.

The commission also deleted the phrase "by the tenth calendar date after the date of receiving the written request", in subsection (b)(5)(B), because there are certain exceptions which allow the request to be made at a later date. Similarly, the commission added the phrase "or if the commission seeks clarification", because that is sometimes the basis for the request for an Attorney General Opinion.

The word "requires" in subsection (h) was changed to "involves", because the Open Records Act does not require that an agency "create" information.

The new rule is adopted under the provisions of §5 of Acts 1993, 73rd Legislature, Chapter 428, House Bill 1009; the Government Code, §§552.230, 552.261, and 552.263; and the Texas Labor Code, §402.061 and §402.064. House Bill 1009 and the Government Code sections authorize the agency to promulgate reasonable rules of procedure under which public records may be inspected efficiently, safely, and without delay, and require the agency to prescribe rules specifying the charges the agency will make for copies of public records. The Texas Labor Code, §402.061 authorizes the commission to adopt rules as necessary for the implementation and enforcement of the Texas Workers' Compensation Act. The Texas Labor Code, §402.064 authorizes the commission to set reasonable fees for services provided to persons requesting services from the commission.

§108.1. Charges for Copies of Public Records.

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

(1) Letter of Certification—A letter signed and sealed by the executive director of the commission, or stamped and sealed by his delegate, attesting to authenticity of attached document(s).

(2) Readily Available Records—Records that already exist in printed form, or information that is stored electronically and is ready to be printed or copied without requiring any programming, or information that already exists on a microfiche or microfilm, but not information that requires a substantial amount of time to locate or prepare for release, for example, as a result of required redaction for the purpose of deleting information that is confidential by law.

(3) Standard-size copy—A printed impression on one side of a piece of

paper that measures up to 8 1/2 inches by 14 inches. A piece of paper that is printed on both sides shall be counted as two copies. A copy of a public record made available to a requestor in any other available format is not a standard-size copy.

(b) Public Record Requests. The Texas Labor Code, §402.021 provides that the Open Records Act applies to a record of the commission or the Texas Workers' Compensation Research Center. Except where limited by law, the following provisions will apply to all requests for review of the commission's public records pursuant to the Texas Government Code, Chapter 552.

(1) All public records requests shall be treated equally.

(2) All public records requests and appointments for inspection must be in writing and should be directed to the Office of Executive Communication, the commission's public records coordinator.

(3) A request for official records shall include the name, address and telephone number of the requestor, and a detailed description of the records in sufficient detail to permit efficient gathering of the requested information.

(4) The commission shall make every reasonable effort to provide the information in the manner requested and in a reasonable time without disruption of normal business activities.

(5) The following requirements apply to confidentiality of records.

(A) The commission will not provide records considered to be confidential by law or otherwise prohibited from release under the Texas Government Code, the Texas Labor Code or other provisions of law, unless the requestor is legally eligible for such information. The commission will comply with all copyright laws.

(B) If the commission considers that the requested records fall within an exception under the Government Code, and that the records should be withheld, the commission will ask for an opinion from the attorney general about whether the records are within that exception, if there has not been a previous determination on that issue or if the commission seeks clarification.

(C) Confidential claim files, arbitrator lists, and requests for information excepted from disclosure in the Texas Government Code, Chapter 552, will not be made available except under a court order, Attorney General directive, or other legal process.

(6) The following requirements apply to examination of information.

(A) Records access for purposes of inspection will be available by appointment only and will only be available during the regular business hours of the commission.

(B) A person requesting to examine commission records in the offices of the commission must complete the examination without disrupting the normal operations of the commission and not later than the tenth day after the date that the records are made available to the person. Upon written request by the requestor within the ten-day period, the commission will extend the examination period by increments of ten days, not to exceed a total of 30 days.

(C) A person may not remove any commission record from the offices of the commission. If the requestor desires a copy of information after examination of commission records, copies will be provided by commission staff and the requestor will be charged in accordance with this section.

(D) If the safety of any public record or the protection of confidential information is at issue, or when compliance with a request for inspection would be unduly disruptive to the ongoing business of the commission, physical access may be denied and the option of receiving copies of the records at the fees stated in this section shall be provided.

(E) In response to requests for inspection, the commission shall not charge for making available for inspection readily available information maintained in standard-size form. The commission may charge for preparing and making available information that is maintained in other than standard size and not readily available. Preparation may involve retrieval of information from a database or redaction of confidential information. In such cases, the commission may recover the cost of personnel time.

(7) The provision of copies of records or the inspection of records may be delayed or interrupted by the commission if the records are in active use by the commission, or are in storage. The period of interruption will not be charged against the requestor's ten day period to examine the records. If the information is unavailable because it is in active use or in storage, the requestor shall receive written notification of the delay and, if necessary, the office of executive communication will arrange a subsequent appointment for inspection of records when the information is available for inspection or duplication.

(8) Costs of duplication shall be the responsibility of the requesting party in accordance with the fees imposed by this section. Fees are due and payable at the commission at the time of receipt of the copies of public records. However, if mail, expedited, or fax delivery is requested, fees are due in advance.

(9) When a particular request will involve considerable time and resources, the commission will advise the requesting party of what may be involved and will provide an estimate of the date of completion and the charges that may result.

(10) If the anticipated charges under this section exceed \$100, the commission may require a bond for payment of costs or cash prepayment equal to the total anticipated charges prior to the requested information.

(11) The commission may, in its discretion, waive fees if it serves a general public purpose. The executive director of the Texas Workers' Compensation Commission is authorized to determine whether a public interest benefit exists to the general public on a case by case basis.

(c) Copy Charge.

(1) Copy charges for standard-size copies—The charge for standard-size paper copies reproduced by means of an office machine copier or a computer printer is \$0.10 per page.

(2) If certification of copies is requested, a letter of certification will be provided for an additional charge of \$1.00, which will be added to the computed fee for each requested letter of certification. Several pages copied from a single file may require only one letter of certification.

(3) Copy charges for non-standard copies will be as follows:

(A) Audiotape—\$1.00 each;

(B) Videotape—\$2.50 each;

(C) Diskette—\$1.00 each;

(D) Magnetic Tape (2400 Reel-to-reel) —\$10.00 each;

(E) Magnetic Tape Cartridge (Type 3480)—\$10.00 each;

(F) Paper—\$.50 each; and

(G) Duplication of Photographic Images—\$5.00 per image plus commercial photo reproduction costs and postage.

(d) Personnel Charge.

(1) The charge for personnel costs incurred in processing a request for public information is \$15 an hour, which is the average hourly cost, including fringe benefits, to the state for classified state employees as of May 31, 1993. This charge will be prorated as appropriate.

(2) A personnel charge will not be billed in connection with complying with requests that are for 50 or fewer pages of readily information in standard-size form.

(e) Overhead Charge.

(1) In response to a request for information that is not readily available or which is in excess of 50 pages of readily available information, the commission may include in the charges direct and indirect costs, in addition to the personnel charge, at a rate of 20% of the personnel charge. This overhead charge covers such costs as depreciation of capital assets, rent, maintenance and repair, utilities and administrative overhead.

(2) An overhead charge will not be billed in connection with requests for copies of 50 pages or less of information that is readily available in standard-size form.

(f) Remote Document Retrieval Charge. The actual cost of retrieving a document from an off-site storage location will be charged. If a remote retrieval charge is assessed, no personnel charge will be assessed.

(g) Computer Resource Charge.

(1) A computer resource charge is a computer utilization charge for computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources, which might include, but is not limited to, some or all of the following: central processing units (CPUs), servers, disk drives, local area networks (LANs), printers, tape drives, other peripheral devices, communication devices, software, and system utilities.

(2) Computer Resource Charges are as follows:

(A) Mainframe Service--Rate of \$17.50 per minute;

(B) Midrange Service--Rate of \$3.00 per minute; and

(C) PC or LAN Service--Rate of \$.50 per minute.

(3) The charge made to recover the computer utilization is the actual time the computer takes to execute a particular program at the applicable rate.

(h) Programming Time. If a particular request involves the entry of data in

order to execute an existing program or creation of a new program so that information may be accessed, an additional charge of \$26 per hour will be added to the computed fee for the programmer's time. This charge will be prorated as appropriate.

(i) Miscellaneous Supplies. The actual cost of miscellaneous supplies, such as labels, boxes, and other supplies used to produce the requested information will be added to the total charge for public information.

(j) Expedited Handling. A \$25 expedited handling charge will be added to requests which require completion on a priority basis.

(k) Delivery Charge.

(1) U.S. Mail. When requested copies of public records are to be mailed, the actual cost of postage and supplies will be added to the computed fee.

(2) Overnight Courier. When requested copies of public records are to be sent by overnight courier or other expedited delivery service, the cost of the service will be added to the computed fee unless the requestor furnishes a recipient delivery number for use by the commission in delivering the copies to the carrier.

(3) Faxing. The charge for faxing copies is \$.10 per page for local telephone delivery, \$.50 per page for telephone delivery within the same area code, and \$1.00 per page for telephone delivery to a different area code. The commission may not be required to fax 20 or more pages of information and may require another form of delivery.

(l) Annual Re-evaluation of Charges. The charges set forth in this section may be revised annually in accordance with the Texas General Services Commission's annual re-evaluation and update for charges for public records.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502057

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Effective date: March 10, 1995

Proposal publication date: November 15, 1994

For further information, please call: (512) 440-3700

Chapter 124. Carriers: Required Notices and Mode of Payment

• 28 TAC §§124.1, 124.2, 124.4

The Texas Workers' Compensation Commission adopts amendments to §§124.1, 124.2, and 124.4, concerning electronic submission of data to and from the commission, with changes to the proposed text as published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9098). Amendments to §§102.5, 102.8, and 102.9 are being simultaneously adopted in this issue of the *Texas Register*. The amendments allow the commission to require that claim data currently submitted on forms TWCC-1/21 be transmitted to TWCC electronically. The requirements for electronic submission set out in these amendments apply to insurance carriers as that term is defined in the Texas Labor Code, §401.011(27).

The commission will use record layouts developed in conjunction with the International Association of Industrial Accident Boards and Commissions (IAIABC), several other states and several national carriers. These records consist of the carriers-reported First Report of Injury (IAIABC 148 record layout) and the Subsequent Report (IAIABC A49 record layout) data. These reports correspond to the TWCC-21, Payment of Compensation or Notice of Refused/Disputed Claim, and the TWCC-1, First Report of Injury.

The amendments will result in improved business processes in the following manner: receipt of data in a timely and more efficient manner will allow the commission to process claims and provide quality customer support to all parties in the workers' compensation system; processing claims faster allows TWCC customer support staff to more promptly advise injured workers of their rights and obligations under the law and to ensure that the proper level of benefits are being paid; assisting the injured worker early in the process helps to reduce disputes or allows dispute resolution at an earlier and lower level thereby reducing costs to the system; an increase in data accuracy and quality by reducing the number of times data is handled and keypunched into various systems through the workers' compensation processes; increased data accuracy via system edits by the sender before transmission and by TWCC upon receipt; accurate, reliable, and quality data will improve reports that must be provided to various entities; and timeliness of filing will reduce compliance violations.

Requiring electronic submission of claims data is aligned with the goals and improvements of the workers' compensation system at the national level. TWCC has participated with the International Association of Industrial Accident Boards and Commissions (IAIABC) over the past two years to develop national standards for reporting workers' compensation data. In conjunction with the IAIABC, several states, carriers, third party administrators, and servicing agents attend monthly technical development meetings to develop and resolve issues at the national level. Major carriers involved in the IAIABC project are: ITT Hartford, CIGNA, Liberty Mutual, Kemper, SAFECO, Travelers, Wausau, Zu-

rich American, and other carriers, plus TPAs or servicing vendors Crawford & Company, EDS, First Image, and Frank Gates Co. There are 46 states involved in the Electronic Data Interchange (EDI) project either in production, piloting, test/pilot (expected soon), participating, or using the IAIABC formats for system design. Several are piloting or in production with at least one carrier.

These amendments also help facilitate the Sunset Commission's recommendations to streamline the claims process by letting insurance companies report workers' injuries electronically.

Comments were received on the proposed amendments from ITT Hartford, the Texas Workers' Compensation Insurance Fund, and Southwestern Bell Corporation.

All commenters expressed overall support for the proposed amendments, while offering suggestions for revision of the amendments.

The following comments were received regarding the proposed amendments to §§102.5, 102.8, 102.9, as well as §§124.1, 124.2, and 124.4. Comments to both chapters of rules are included because the revisions to the two chapters are so intertwined.

COMMENT: Commenters suggested (regarding §124.4 (b)) that it would be more appropriate and timely to notify the claimant/legal beneficiary when action is taken by a carrier that reduces or terminates payment of income or death benefits, rather than on a monthly basis. Also, the reference to §129.4 would not be necessary.

RESPONSE: The commission agrees. The proposed amendment to §124.4(b) has been revised to read: "If a carrier reduces or terminates the payment of income or death benefits, the carrier shall notify the claimant/legal beneficiary by a notice or letter with content prescribed by the commission. This notice/letter is required no later than the tenth day after the date the carrier has taken the action and shall state fully the reason(s) for such action. This statement must contain sufficient substantive information to enable the claimant/legal beneficiary to understand the carrier's position on the claim. A statement that simply states the carrier's position with phrases such as "abandoned medical treatment", "compensation in dispute", or "liability is in question" with no further description of the factual basis for the action taken does not satisfy the requirements of this section."

COMMENT: Section 124.2 and §124.4 state that the commission will prescribe the "content" of the form or letter provided to the claimant/legal beneficiary. The content should be the same as or a subset of the data submitted electronically to TWCC.

RESPONSE: The commission disagrees. The commission feels that the rules do not need to be amended to reflect this level of detail. While the commission's goal is that the data elements required on the notices and letters will be limited to data elements that are captured electronically, additional free text is required on the letter to explain to the claimant in easy to understand terms what action the carrier is taking concerning payment of benefits. A standard notice/letter format will eliminate the carriers having to send confusing and hard-to-understand forms to the

claimant, reducing unnecessary communications between all parties. Also, this will reduce the need to maintain additional state specific forms.

COMMENT: Suggest that §102.5 specify the procedures for acknowledging acceptance or rejection of records.

RESPONSE: The commission disagrees. The commission feels that the rules do not need to be amended to reflect this level of detail. The acknowledgement procedure and record layouts are defined in specifications, instructions, advisories and communications from the commission.

COMMENT: The commission should consider the lead time carriers will need in order to make programming changes and/or train personnel.

RESPONSE: The commission agrees with this statement, but disagrees that this is a point to be included in the rule. Any changes will be based on specifications developed through the Texas EDI Task Group and/or the National IAIABC Technical Development Committee. Companies will be given a sufficient lead time to comply.

COMMENT: One commenter noted that carriers may be required to report more information than what is currently captured on the TWCC-21 form.

RESPONSE: This is correct. Although the electronic data elements on the 148 and A49 record layouts are similar and correspond closely to the TWCC-21, there is not a one-to-one, 100% correlation. The 148/A49 electronic record layouts will ultimately replace the hard-copy paper TWCC-21. This is appropriate, given the goal of receiving the data necessary to the commission's operation, in a more efficient manner.

COMMENT: One commenter expressed dissatisfaction that their company, a major participant in the EDI project, was inadvertently omitted from the preamble.

RESPONSE: The commission agrees that the omitted company is a major participant in the Electronic Data Interchange project and should have been included in the preamble. The commission apologizes for the omission, and has added ITT Hartford to the list in the preamble to the adopted amendments.

COMMENT: One commenter expressed concern that the Rules do not explain that the initial participation for the EDI project is on the basis of a pilot program.

RESPONSE: The commission disagrees. The commission feels that this is not an item for the Rules. The commission is aware of the complexity of the EDI project and does not expect full and immediate production. The January 31, 1995 date stated in the proposed Rule allows the commission flexibility to accommodate the various EDI pilots/production commencements. Note that this date has been adjusted in the Chapter 124 rules to March 15, 1995 in order to comply with statutory requirements regarding filing adopted rules with the *Texas Register*.

The amendments are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Labor Code, §402.042(b)(11), which allows

the executive director of the commission to prescribe the form, manner, and procedure for transmission of information to the commission.

§124.1. *Written Notice of Injury Defined.*

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

(e) Effective March 15, 1995, the insurance carrier shall submit Carrier-reported First Report of Injury information in the format, form and manner prescribed by the commission.

(f) The commission shall prescribe the form, format, and content of any required electronic submission through instructions, specifications, and Electronic Data Interchange trading partner agreements.

§124.2. *Notice of Initiation of Compensation.*

(a) Each insurance carrier shall report to the commission and to the claimant/legal beneficiary, in a format, form, and manner prescribed by the commission, the initial payment of income or death benefits to the claimant/beneficiary, within ten days of:

(1) the issuance of a check, or other negotiable instrument; or

(2) the transfer of funds electronically to the claimant's/beneficiary's account.

(b) Effective March 15, 1995, each insurance carrier shall submit information to the commission in the format, form, and manner prescribed by the commission. With the initial payment of income or death benefits, a notice or letter with content prescribed by the commission will be sent by the carrier to the claimant/legal beneficiary.

(c) The commission shall prescribe the form, format, and content of any required electronic submission through instructions, specifications, and Electronic Data Interchange trading partner agreements.

§124.4. *Notice of Reduction or Termination of Compensation.*

(a) The carrier shall notify the commission in the format, form, and manner prescribed by the commission, of any reduction or termination of income or death benefits, including the basis for the action, not later than the 10th day after the date the carrier has taken the action. When the reason for the reduction or termination is a settlement with a third party, or a court judgment, the carrier shall file a copy of the executed settlement or approved judgment within 20 days of receipt.

(b) If a carrier reduces or terminates the payment of income or death benefits, the carrier shall notify the

claimant/legal beneficiary by a notice or letter with content prescribed by the commission. This notice/letter is required no later than the tenth day after the date the carrier has taken the action and shall state fully the reason(s) for such action. This statement must contain sufficient substantive information to enable the claimant/legal beneficiary to understand the carrier's position on the claim. A statement that simply states the carrier's position with phrases such as "abandoned medical treatment", "compensation in dispute", or "liability is in question" with no further description of the factual basis for the action taken does not satisfy the requirements of this section.

(c) Effective March 15, 1995, each insurance carrier shall submit information to the commission in the format, form, and manner prescribed by the commission.

(d) The commission shall prescribe the form, format, and content of any required electronic submission through instructions, specifications, and Electronic Data Interchange trading partner agreements.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502056

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Effective date: March 15, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 440-3700

Chapter 164. Extra-Hazardous Employer Program

• 28 TAC §§164.1, 164.13, 164.14

The repeals are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and §§411.041-411.049, which requires the commission to identify extra-hazardous employers and oversee the development and implementation of accident prevention programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502058

Susan Cory
General Counsel
Texas Workers'
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Commission

Effective date: March 10, 1995

Proposal publication date: December 20, 1994

For further information, please call: (512) 440-3700

The Texas Workers' Compensation Commission (the "commission") adopts new §164.1 and §164.14, the simultaneous repeal of existing §164.1 and §164.14, the repeal of §164.13, and amendments to §§164.2-164.12, concerning the Extra-Hazardous Employer Program. New §164.1 and new §164.14 are adopted with changes to the proposed text as published in the December 20, 1994, issue of the *Texas Register* (19 TexReg 10073), as corrected in the January 10, 1995, issue of the *Texas Register* (20 TexReg 173). The repeal of existing §§164.1, 164.13, and 164.14, and the amendments to §§164.2-164.12 are adopted without changes and will not be republished. The changes consist of: a revision to §164.14(e)(4), in response to a comment received (described in the summary of comments and responses portion of this preamble); and, in §164.1(b)(10), the addition of the word "last" to the second sentence in the definition of occupational diseases, so that the sentence reads: "The occupational disease will be included on the record of the employer under which the last exposure occurred." The last change was made to be consistent with the statute.

As required by the Government Code, §2001.033(1), the commission's reasoned justification is set out in this preamble which discusses the reasons why the new rules, amendments, and repeals are necessary; the factual, policy, and legal bases for the rule; a summary of comments received; names of interested groups or associations that commented and whether they are for or against adoption of the new rules, amendments, and repeals; and the reasons why the agency disagrees with the comments, submissions, and proposals.

These new rules, amendments, and repeals are adopted in order to fulfill the directives in the Texas Labor Code, §§411.041-411.049, which requires the commission to identify extra-hazardous employers and develop and implement accident prevention programs. Labor Code §411.041 requires the commission to develop a program to identify extra-hazardous employers. The program must include analysis of injury frequency (§411.041(a)). The statute further provides that an employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry is an extra-hazardous employer (§411.041(b)). The statute requires notification to the employer and the insurance carrier (§411.042). Employers designated as extra-hazardous must within 30 days obtain a safety consultation from the commission, the carrier, or an approved professional source. The safety consultant is to perform a hazard survey and, along with the employer, develop an accident prevention plan. The employer is to implement the plan, and is to be monitored by the commission (§411.043). The commission is to conduct a follow-up inspection, and certify compliance with the plan or other acceptable measures, or continue monitoring

(§411.045 and §411.047). An employer may request a hearing to contest the commission's findings. (§411.049). The commission adopted the existing Chapter 164 rules to comply with these statutory requirements. Experience with the program has identified various revisions which should be made to clarify the calculation and process for affected employers, to simplify the calculation and process, and to ensure that the division's time and resources are properly directed among various employers.

The repeals, new rules and amendments are adopted in order to change the method of computation used in identifying extra hazardous employers and incorporate numerous lessons learned from experience to date with the program. The computation is changed from the current rules to replace the fatality index with a fixed threshold value for all employers who have experienced a fatality, and reduce the variable threshold value for employers without a fatality. The grounds for a hearing based on injuries caused by third parties unrelated to the workplace and beyond the control or jurisdiction of the employer have been eliminated in favor of a screening procedure that allows the commission's Health and Safety Division ("division") to eliminate from the computation or convert to injuries, fatalities that meet specific criteria. The employer's basic right to a hearing is not impaired.

These rules as revised will implement the extra-hazardous program required by statute in a manner which is fair and reasonable to employers of all sizes and all businesses and industries. As previously noted, the commission's experience with the program has identified various revisions which should be made to clarify the calculation and process for affected employers, to simplify the calculation and process, and to ensure that the division's time and resources are properly directed among various employers. The revisions which channel certain issues out of the hearing process and into an administrative division process should result in savings in time and expenses for affected employers and the commission, while still affording employers an opportunity for hearing on unresolved matters. The public benefit resulting from the program will be a reduction in the number of accidents and the associated financial and human cost. Experience to date of employers completing the program shows an average injury rate reduction of 60%.

The commission interprets the first sentence of §411.041 as mandating the use of injury frequencies in designating extra-hazardous employers but also permitting the use of other factors. Further, the commission interprets the second sentence of §411.041 as requiring the designation of employers whose injury frequencies substantially exceed the expected rate in their business or industry, but as not limiting the commission's authority to designate other employers extra-hazardous as well. The commission believes it is proper and appropriate to use a lower threshold for an employer with a fatality for several reasons. One is the limited resources available to the commission and a belief that the commission should put emphasis on employers with a fatality, to achieve the most impact from the program. Second, this decision is

supported by a theory known as the Heinrich model: for every major injury an employer has, there are 29 minor injuries and 300 near misses. Thus, the number of fatalities an employer has is an indicator of the number of other minor injuries and near misses suffered by the employer, or the potential number. Finally, the use of a lower threshold counterbalances the lack of data about all injuries suffered by an employer. Section 411.041 allows the commission to make use of more than one type of injury frequency or factor in designating employers. Workplaces in which fatalities occur are the most dangerous to Texas employees and most in need of the assistance offered by the extra-hazardous employer program.

The rules as revised achieve the following statutory and policy objectives:

- (1) to identify extra-hazardous employers (§411.041(a) and §164.1 and §164.14);
- (2) to include analysis of injury frequency (§411.041(a) and §164.1 and §164.14);
- (3) to designate as extra-hazardous an employer whose injury frequencies substantially exceed those that may reasonably be expected in that employer's business or industry (§411.041(b) and §164.1 and §164.14);
- (4) to decrease the frequency of employee accidents and deaths (Joint Select Committee on Workers' Compensation Insurance, *Report to the 71st Texas Legislature*, pp. 4, 6, 9, 12-13);
- (5) to provide a fair and reasonable program of designation of employers;
- (6) to make efficient use of the commission's time and financial resources;
- (7) to provide an alternative to designation for small employers, while still achieving increased safety and decreased accidents (§164.1);
- (8) to provide a definitive basis for removal of a fatality from the calculation (§164.14);
- (9) to simplify the process and provide an administrative, cost-saving process for removal of a fatality from the calculation (§164.2);
- (10) to retain threshold values which will preclude the identification of an employer with a single lost time injury or occupational disease during the audit period (§164.1 and §164.14);
- (11) to establish threshold values that will preclude the identification of an employer whose injury rate does not exceed their expected injury rate for their industry (§164.1 and §164.14);
- (12) to establish a separate threshold value for an employer with a fatality so that an employer is not identified based on a fatality if the employer's injury frequency does not substantially exceed the expected injury rate for their industry (§164.1 and §164.14);
- (13) to simplify and clarify the basis for designation, the process for designation, and the requirements after designation (§§411.041-411.049 and §§164.1-164.8, §164.11, §164.14);

(14) to provide definitions for terms used in the rules, for clarification (§164.1);

(15) to provide definitive sources of data (§164.1);

(16) to provide opportunity for a hearing to contest the commission's findings (§411.049 and §164.2);

(17) to provide notice to employers and carriers (§411.042 and §164.2);

(18) to clearly establish the qualifications for an approved professional source so persons will know whether they qualify (§411.043 and §164.9);

(19) to clarify the process for processing applications for approved professional source status and establish a process for removal from the list by the commissioners (§411.043 and §164.9 and §164.10);

(20) to require an approved professional source to keep up-to-date and provide for removal to an inactive list (§411.043 and §164.10);

(21) to require identification of hazardous conditions or practices (§411.043 and §164.3);

(22) to clarify the requirements for the hazard survey and report, and the due dates (§411.043 and §164.3);

(23) to require formulation of an accident prevention plan (§411.043 and §164.4);

(24) to clarify the requirements and due date for the accident prevention plan (§411.043 and §164.4);

(25) to hold approved professional sources accountable for their signatures on an accident prevention plan (§164.4);

(26) to provide for consultations by the division (§411.043 and §164.11);

(27) to require employer compliance with the accident prevention plan or other acceptable corrective measures (§§411.045, 411.046, and 411.047 and §§164.5-164.8);

(28) to provide for follow-up inspections by the division (§411.045, §164.5 and §164.5);

(29) to certify compliance or continue monitoring of the employer (§411.045 and §411.047 and §§164.5-164.8); and

(30) to provide for recovery of commission costs (§411.048 and §164.12)).

The commission carefully and fully analyzed all the facts and arguments presented, and those known to the commission through its experience in administering the extra-hazardous program (including the results of the various APA hearings considering whether a specific fatality should or should not be included in an employer's calculation, the commission's inability to hold an approved professional source accountable, and the differing opinions as to the meaning of certain parts of the current rules). In accordance with the statutory requirements, the revised rules balance the need to meet the commission's mandated objective of decreased injuries and fatalities with the need to make efficient use of limited resources available to the commission to implement this and other programs. The resulting rules are in

accord with all statutory objectives and requirements as well as commission policy and the facts before the commission.

The commission's program is not preempted by the federal Occupational Safety and Health Act of 1970 ("the OSH Act"). The OSH Act expressly does not "supersede or in any manner affect any workmen's compensation law or enlarge or diminish or affect in any other manner the common law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, diseases, or death of employees arising out of, or in the course of, employment." (Emphasis added) 29 U.S.C. §653(b)(4).

The extra-hazardous program is an integral part of the workers' compensation law (Joint Select Committee on Workers' Compensation Insurance, *Report to the 71st Texas Legislature*, pp. 4, 6, 9, 12-13), and is clearly a law with respect to injuries, diseases, or death of employees arising out of or in the course of employment. This program is therefore exempt from preemption under §653(b)(4).

In addition, pursuant to the OSH Act, §18(a), the Act does not "prevent any state agency or court from asserting jurisdiction under State law over any occupational safety or health issue with respect to which no [federal] standard is in effect." 29 U.S.C. §667(a). OSHA has not promulgated standards in the field of safety and health programs, but has promulgated only "voluntary safety and health program guidelines ..." Volume 54, Number 16 *Federal Register*, January 26, 1989 at p. 3906. With no federal standard in place, §18(a) provides that there is no preemption. Finally, the commission's rules do not set standards, but are outcome oriented. Although the rules require an employer to have a plan, the statute and the rules allow the employer to implement "other acceptable corrective measures" (§411.045). The determining factors at the time of the division's follow-up inspection are whether some type of hazard abatement has been implemented and whether the injury rate is at or below the expected rate. No supplementation of any existing standards is contemplated and no new standards are set.

A discussion of the provisions of the various rules as revised follows.

New §164.1 (Existing §164.1 is repealed.)

New §164.1 provides definitions of the words and terms used in the program, specifies the calculation used to determine extra-hazardous employer status, requires the commissioners to establish by rule the threshold values used in the calculation, and provides an opportunity for the employer to verify the data used in the computation prior to notification of extra-hazardous employer status. The amendments to this rule add some needed definitions, and clarify sources of data and method of calculation so employers subject to the rule have a clear understanding of both. A revision to the proposed text of subsection (b)(10) adds the word "last" to the second sentence of the definition of "occupational disease". That sentence now reads: "The occupational diseases will be included on the record of the employer under which the last exposure occurred."

(1) For the purposes of the program, an employer is a public or private entity defined by the employer's Federal Employer Identification Number (FEIN) and four-digit Standard Industrial Classification (SIC) code. This codifies existing practice. The definition of an employer subject to the program is moved from §164.13 to this rule. The phase-in for the various definitions of employer have been eliminated, as all of the phase-in periods have lapsed.

(2) The employer's SIC code is specified as the SIC Code derived from the *Standard Industrial Classification Manual*, current edition, published by the Office of Management and Budget, and assigned to the employer by the Texas Employment Commission (TEC). This provides a definitive source for SIC codes and recognizes the TEC as the authority for SIC codes in Texas.

(3) The source of the employer's highest employment during the audit period, for use in the computation, is clarified as the highest figure reported to TEC or substantiated by employer payroll documents. This provides a definitive source for the employment figure, but still allows an employer to refute the TEC employment figure with payroll documents.

(4) The term "injuries", as used in the computation, is clarified to mean the total number of lost time injuries, occupational diseases, and fatalities. This provides clarification for those subject to the rule.

(5) The source and method of determining the expected injury rate is clarified and consolidated. The information is split between §164.1 and §164.14 in the current rules. Beginning in 1992, the U.S. Department of Labor Bureau of Labor Statistics ("BLS"), in its publication, *Survey of Occupational Injuries and Illnesses*, reported rates for lost workdays cases with days away from work. These are the rates used by the revised rules, when available, as they most closely match the commission's lost time injuries. Previously used were the BLS statistics on "lost workday cases", which included restricted work activity as well as days-away-from-work cases. The new rule clearly articulates the sources and procedure currently in use.

(6) The audit period is defined as the 12-month period used in determining the factual data on which the identification is based.

(7) A fatality is defined as the death of an employee from a work related injury or occupational disease, excluding those fatalities that meet the screening criteria in new §164.14. The screening criteria are discussed under new §164.14. This definition is necessary to implement the screening criteria discussed below.

(8) The procedures for including an occupational disease in the computation are clarified. An occupational disease will be included on the record of the employer under which the exposure occurred. The occupational disease will be included in the audit period during which it was reported. The exposure need not have occurred during the audit period. This clarification is needed because an occupational disease often involves the situation of employment by one employer at the time of first exposure and employment by another

employer at the time of first reporting or disability. The definition provides an easily understood standard for determining when and for which employer an occupational disease will be counted, and prevents double counting of the disease for more than one employer.

(9) Lost time injuries are defined as injuries (excluding occupational diseases and fatalities) resulting in greater than seven days of lost time. This is not changed from the current rule.

(10) The use of a fatality index in the current computation is replaced with a single, separate threshold value for all employers with one or more fatalities. This simplifies the computation. For employers with no fatalities, the current table of threshold values in §164.14 is retained with the threshold values for employers with ten or more employees reduced to broaden the scope of the program. Values for both sets of thresholds will be selected such that no employer will be identified as an extra-hazardous employer who has only one lost time injury or occupational disease reported during the audit period nor will an employer be identified as extra-hazardous whose injury rate does not exceed their expected injury rate, even if the employer has suffered a fatality. The threshold for employers that experience at least one fatality will be lower than that for employers with no fatalities. Under the current rules, an employer whose injury rate did not exceed their expected injury rate could be identified as extra-hazardous if the employer had suffered a fatality. This change is made so this will not occur under the revised rules.

(11) An employer whose identification is based solely on one fatality and whose total employment in all SIC codes is less than 20 may obtain a full OSHCON consultation from the division in lieu of being identified as an extra-hazardous employer. A single fatality will affect a small employer's injury rate calculation proportionately more than it would affect a larger employer. For this reason, the revised rules allow a small employer whose injury rate exceeds its expected rate, to obtain a full OSHCON consultation from the division in lieu of being identified as an extra-hazardous employer. This allows a small employer to avoid being designated as extra-hazardous based on a single fatality, but still implements the safety provisions which will help to reduce injuries and fatalities for the employer.

(12) The calculation used to determine extra-hazardous employer status has been simplified. The employer's injury rate is divided by the expected injury rate and the result compared to the appropriate threshold value. If the ratio exceeds the threshold level, the employer is extra-hazardous. In all instances, the identified employer's injury rate will exceed the expected injury rate by more than the amount determined by the commissioners and specified in new §164.14. This simplified calculation will enable those subject to the rules to easily determine their status under the rules.

(13) Prior to notification, the employer will be provided the opportunity to verify the FEIN, SIC code, employment data, and injury records that will be used in the computation. The employer will also have the opportunity

to provide documentation on any fatalities. The division will use the information in screening the fatalities using the criteria in new §164.14. The current rules also allow for pre-identification verification of data. The revised rules add a provision allowing the commission staff to evaluate data provided regarding a fatality and to determine whether the fatality meets the screening criteria and should be excluded from the computation or converted from a fatality to an injury count. This process has not been delegated to the agency staff in the current rules, and has resulted in numerous requests for a hearing pursuant to the Administrative Procedure Act. These APA hearings have resulted in the exclusion of various fatalities from the calculation. The revised rules make use of the experience gained from these hearings to establish an administrative procedure in lieu of always having to go to an APA hearing, which is costly in time and expenses both to the commission and to employers.

Amendments to §164.2:

Section 164.2 is amended to clarify the matters that can be resolved through an administrative review by the division as specified in subsection (b) (4). This allows the division to deal administratively with matters that should have been resolved prior to notification, but which did not come to light until after the notification was made. This includes the ability to exclude, or convert to injuries, fatalities that meet the criteria in §164.14. If the issue cannot be resolved administratively, the employer will be offered the opportunity for a hearing. Additionally, subsection (b)(5) is amended to delete the grounds for a hearing based on injuries caused by third parties unrelated to the workplace and beyond the control or jurisdiction of the employer. Fatalities caused by third parties and by circumstances beyond the control or jurisdiction of the employer are provided for in the screening criteria of new §164.14. Injuries in categories in §164.14(e) are included in the expected injury rate statistics to which the employer's injury rate is compared. Again, this process was not delegated to the agency staff in the current rules, and has resulted in numerous requests for a hearing pursuant to the Administrative Procedure Act. These APA hearings have resulted in the exclusion of various fatalities from the calculation. The revised rules make use of the experience gained from these hearings to establish an administrative procedure in lieu of always having to go to an APA hearing, which is costly in time and expenses both to the commission and to employers. The employer still has the right to request a hearing if the administrative process does not resolve the matter.

Amendments to §164.3:

Section 164.3 is amended to clarify the timely filing of the hazard survey report and the limits of extensions of time that may be granted to accomplish the initial consultation. There has been some confusion regarding the date on which a consultation was considered to be "complete" under the current rules, and thus when a report was due.

Amendments to §164.4:

Section 164.4 is amended to clarify the development and content of the accident preven-

tion plan as specified in subsection (a). The employer is responsible for the development and submission of the plan with the assistance of an approved professional source ("APS"). The signature of the approved professional source on the plan certifies that the plan meets the format prescribed by the commission. This provision was added because there had been some dispute as to the meaning of the signature of an APS, especially where the survey work is done by one person and signed by another. An APS must be held accountable for the plans which the APS signs. An individual responsible for each component must be specified in the plan, as well as the specific interval at which the recurring components must be accomplished. Experience has shown that these are necessary elements for a successful program.

Additionally, §164.4(e) is amended to specify that an employer who disagrees with the accident prevention plan must propose alternative measures to meet the objectives of the program. This closes a gap in the current rules as to what happens when the employer disagrees with the consultant. The reference to a hearing to resolve disputes over the content of the accident prevention plan is deleted because it is not required by statute.

Amendments to §§164.5, 164.6, 164.8, 164.11, and 164.12:

The amendments to §§164.5, 164.6, 164.8, 164.11, and 164.12 contain only minor clarifications and/or updates of references to the Texas Labor Code. There are no substantive changes from the text of these rules as they existed before these revisions.

Amendments to §164.7:

Section 164.7 is amended to clarify the title of the rule, changing it to read: "Removal From 'Extra-Hazardous Employer' Status And Placement In Monitor Status". Subsection (b) is amended to refer the meaning of the phrase "the injury frequency that may reasonably be expected in that employer's business or industry" back to the meaning of the term "expected injury rate" in new §164.1(b)(7). Additionally, subsection (d) is amended to clarify the actions taken at the end of the monitor period. All of these revisions aid the affected employer in understanding the requirements of the rules.

Amendments to §164.9:

Section 164.9 is amended to bring the requirement for an approved professional source application forward to subsection (a) from the current §164.9(e) and to clarify the educational requirements and define occupational health and safety experience. This will enable applicants to better determine if they meet the necessary qualifications.

Section 164.9 also contains the following amendments:

(1) Current subsection (c) is moved forward to precede current subsection (b) since it is the primary criteria for qualification as an approved professional source.

(2) Subsection (b), now subsection (c), is amended to clarify the requirements for qualification under this subsection, so applicants may better determine if they meet the necessary qualifications. This subsection is also

revised to delete the current subsection (b)(6) providing for use of a certified training program to qualify as an approved professional source, because no such programs exist nor are they likely to.

(3) A new subsection (d) is added to define occupational health and safety experience as used to evaluate qualifications for an approved professional source, so applicants may better determine if they meet the necessary qualifications.

(4) Current subsection (d), now subsection (e), is amended to add a requirement for an approved professional source to attend an annual approved professional source update seminar in order to remain on the active approved professional source list. This will ensure that approved professional sources stay current on the issues relevant to their services.

(5) Finally, subsection (g) is amended to delete the reference to a hearing if the applicant is not approved by the division, because a hearing is not required by statute.

Amendments to §164.10:

(1) Clarification that only the commissioners can remove an approved professional source ("APS") from the list of approved professional sources. This clarifies the process for an APS facing possible removal from the list.

(2) A new subsection (a)(5) is added to provide for the removal of an approved professional source who approves an accident prevention plan that does not meet the criteria prescribed by the commission. This is necessary to hold an APS accountable and to uphold the integrity of the plan and thus of the program.

(3) A new subsection (b) is added to provide the mechanics of notifying an approved professional source that the division intends to recommend to the commissioners that the consultant be removed from the list and the procedure the approved professional source may follow to request a hearing. This subsection replaces the current subsection (e). This clarifies the process for an APS facing possible removal from the list.

(4) A new subsection (c) is added to specify that only the commissioners may remove an approved professional source from the list of approved professional sources and provide the mechanics of issuing an order of deletion. This also clarifies the process for an APS facing possible removal from the list.

(5) A new subsection (g) is added to provide a procedure for reinstatement of an approved professional source removed under new subsection (a)(5). Again, this also clarifies the process for an APS facing possible removal from the list.

(6) A new subsection (h) is added to provide that an approved professional source who does not comply with the provision of subsection (e), pertaining to attending an annual update seminar, will be placed on an "inactive" list by the division and be prohibited from conducting Extra-Hazardous Employer Program consultations. This is necessary to ensure the integrity of APS plans, and thus of the program.

(7) Finally, a new subsection (i) provides for the reinstatement of an approved professional source placed on the inactive list under the provisions of subsection (h) of this rule. This clarifies the process for an APS placed on the inactive list.

Repealed §164.13:

Section 164.13 (relating to Applicability) is repealed and reserved for future use. The phase-in provisions provided in the current rule have been completed and the final applicability conditions incorporated in new §164.1(b)(2).

New §164.14 (Existing §164.14 is repealed.):

New §164.14 provides threshold values established by the commissioners in accordance with §164.1(d).

(1) Subsections (a) and (b) establish the threshold levels used in calculations under §164.1. The use of a fatality index in the current rules is replaced with a single, separate threshold value for all employers with one or more fatalities. This simplifies the computation. For employers with no fatalities, the current concept of a variable threshold set based on employer size was retained, with the threshold values for employers with ten or more employees reduced to broaden the scope of the program and to lower the amount by which an employer may exceed the expected rate for the employer's business or industry. Values for both sets of thresholds were selected such that no employer will be identified as an extra-hazardous employer who has only one lost time injury or occupational disease reported during the audit period; nor will an employer be identified as extra-hazardous whose injury rate does not exceed their expected industry injury rate, even if the employer has suffered a fatality. The threshold for employers that experience at least one fatality will be lower than that for employers with no fatalities. Under the current rules, an employer whose injury rate did not exceed their expected injury rate for the employee's industry could be identified as extra-hazardous if the employer had suffered a fatality. The changes were made so this will not occur under the revised rules.

(2) Subsection (c) specifies the initial 12-month audit period under the revised rules and provides for subsequent audit periods at three month intervals. It also provides for annual review by the commissioners for authorization to continue the notification cycles for an additional year. This clarifies what constitutes the first audit period under the revised rules and provides a mechanism for annual review of the program by the commissioners.

(3) Subsection (d) provides criteria to be used by the division to exclude fatalities involving heart attacks, other diseases of life, homicides, and suicides from the computation. If the circumstances surrounding the fatality are not clear, the fatality will be included in the computation and the employer may exercise his or her right to a hearing. The current rules do not provide for this administrative process, resulting in numerous requests for a hearing pursuant to the Administrative Procedure Act. These APA hearings have resulted in the exclusion of various fatalities from the calculation. The re-

vised rules make use of the experience gained from these hearings to establish an administrative procedure in lieu of always having to go to an APA hearing, which is costly in time and expenses both to the commission and to employers.

(4) Finally, subsection (e) provides criteria to be used by the division to convert to injuries, for use in the computation, fatalities caused by third party vehicle accidents (including vehicle/pedestrian accidents), common carrier accidents, natural events, and circumstances beyond the control or jurisdiction of the employer. Again, the current rules do not provide for this administrative process, resulting in numerous requests for a hearing pursuant to the Administrative Procedure Act. These APA hearings have resulted in the exclusion of various fatalities from the calculation. The revised rules make use of the experience gained from these hearings to establish an administrative procedure in lieu of always having to go to an APA hearing, which is costly in time and expenses both to the commission and to employers. In response to a comment, the commission changed the word "may" to "will" in the last sentence of (e)(4).

The commission carefully and fully analyzed all the facts presented and the statutory objectives and requirements in formulating these revisions to the Extra-Hazardous Employer Program rules (28 TAC, Chapter 164).

Full and objective analysis and consideration was given to all comments received, as evidenced by the revisions made from the new rules, amendments, and repeals as proposed, and the responses to comments in the following paragraphs of this preamble. The factual, statutory, and policy bases for parts of the rules which received comments, are described in these responses.

Comments on the proposed new rules, amendments, and repeals were received from The Southland Corporation; and Mitchell Energy Corporation.

The following groups and/or individuals submitted comments which suggested changes to the new rules, repeals, and amendments as proposed, but did not specifically state whether they were in overall support or opposition to the rule: The Southland Corporation and Mitchell Energy Corporation.

A summary of the comments received and the commission responses are as follows.

Comment received regarding §164.2.

COMMENT: Subsection (b)(4): The requirement for a request for an administrative review to be filed within ten days of receipt of the notification does not provide the employer adequate time to review all pertinent records. The commenter suggested it should be changed to a 20 day time limit, stating such an extension will not detrimentally effect the process.

RESPONSE: The commission disagrees. Section 164.1(e) provides that the employer will be given the opportunity to verify the data used in the identification before the notification is made. The division offers the employer two weeks to respond to the request for verification, and extensions to that time are

granted for good cause. The notification then takes place some time after that. The data elements presented to the employer for verification are the same data elements considered under an administrative review, so the employer has more than ten days to review pertinent records. Also, extending the time frame to 20 days for requesting an administrative review would seriously impact the employer's ability to obtain a safety consultation and have the initial report submitted to the division within 30 days of notification as required by §164.3.

Comments received regarding §164.14.

COMMENT: A commenter suggested that in subsection (e)(4), *Circumstances Beyond Control or Jurisdiction of the Employer*, the following text be added: add "a fatal injury that occurs as a result of deliberate misconduct by an employee may be classified by the TWCC as an injury rather than a fatality for the purposes of the computation in 28 TAC §164.1(c)." Believes it is possible for a responsible employer, one that diligently trains its employees in safe work practices and provides all proper safety equipment, supervision and specific instructions on job performance, to have an employee fatally injured because that employee deliberately disregards the instructions. The employer may have no record of previous employee misconduct that could lead the employer to question the employee's intent to follow instructions. The commenter believes such a situation is beyond the control of the employer and should be treated as such.

RESPONSE: The commission acknowledges the concerns but believes the proposed rule, as presently stated, gives the division sufficient authority to classify a fatality as an injury in cases like this, based upon the employer's total accident prevention plans and evidence of enforcement of those plans.

COMMENT: Also regarding subsection (e)(4), *Circumstances Beyond Control or Jurisdiction of the Employer*, another commenter stated that the paragraph as presently written was ambiguous, and suggested that "will" be substituted for "may" in the last sentence so that it reads: "Where the employee, employer or employment environment was involved in the fatality and verifiable information was provided indicating preventive programs were in place and enforced, the fatality will be excluded."

RESPONSE: The commission acknowledges the intent of the paragraph could be clarified, and has changed the last sentence to read: "Where the employee, employer or employment environment was involved in the fatality and verifiable information was provided indicating preventive programs were in place and enforced, that fatality will be counted as an injury."

COMMENT: Regarding subsection (b), a commenter stated that the threshold level (x) for employers that have one or more fatalities is 1.3 and is not adjusted according to employer size. It appears that small/medium size employers will be identified unfairly with such a threshold level. The commenter recommended the threshold level (x) for employers with one or more fatalities should be adjusted

according to employer size as reflected in 164. 14(a).

RESPONSE: The commission disagrees. The commissioners selected a single threshold value for those employers experiencing a fatality to ensure that any employer identified for the program has an injury rate above that expected for that employer's business or industry. The threshold level (x) of 1.3 does that. Any employer identified with this threshold would have an injury rate of more than 30% above that expected for that employer's business or industry.

• 28 TAC §§164.1-164.12, 164.14

The new rules and amendments are adopted under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and §§411.041-411.049, which require the commission to identify extra-hazardous employers and oversee the development and implementation of accident prevention programs.

§164.1. Criteria For Identifying Extra-Hazardous Employers.

(a) The Texas Workers' Compensation Commission (the commission) shall identify employers subject to the Texas Labor Code, §411.041, as extra-hazardous based on criteria established by the commission in Chapter 164 of this title (relating to Extra-Hazardous Employer Program). Each employer identified, continued, or monitored shall have the right to administrative review of the findings of the commission by the Workers' Health and Safety Division (the division). In addition, each employer identified, continued in the program or monitored shall have the right to request a hearing to contest the findings of the commission.

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

(1) Employer—A public or private entity defined by the employer's Federal Employer Identification Number (FEIN) and four-digit Standard Industrial Classification (SIC) code.

(2) Employer subject to the program—Every employer who has workers' compensation insurance coverage to the extent that any finding as to extra-hazardous employer status made during such coverage shall continue, even if such coverage is terminated, until such status is removed pursuant to this chapter. In addition, this chapter applies to every employer who is not required to have such coverage and does not have such coverage and employs five or more non-exempt employees.

(3) Standard Industrial Classification (SIC) Code—The SIC Code derived from the *Standard Industrial Classification Manual*, current edition, published by the

Office of Management and Budget, and assigned to the employer by the Texas Employment Commission (TEC).

(4) **Employment(E)**—Highest employment recorded during the audit period by the employer in any pay period, for the applicable SIC code, as reported to TEC or substantiated by employer payroll documents.

(5) **Injuries(I)**—The employer's total number of injuries, including lost time injuries, occupational diseases, and fatalities. The category of no lost time injuries will be included when provided by rule.

(6) **Rate(R)**—The employer's injury rate normalized to the number of injuries per 100 employees, for the specified audit period, using the formula $(I/E) \times 100$.

(7) **Expected Injury Rate (R_{expected})**—An employer's expected injury rate per 100 employees for the applicable SIC code from the following source: From the most current edition of the Bureau of Labor and Statistics (BLS) publication *Survey of Occupational Injuries and Illnesses* available to the commission when the audit period is initiated, using Table 1, Injuries and Illnesses, Lost Workday Cases with days away from work column, and using data for the four digit SIC if available; if not, then the three digit SIC if available; if not, then the two digit SIC. If applicable data is not available from the BLS publication, then from the most current edition of the National Safety Council publication *Work Injury and Illness Rates* available to the commission when the audit period is initiated, using the Cases Involving Days Away From Work and Deaths column, and using data for the four digit SIC if available; if not, then the three digit SIC if available; if not, then the two digit SIC. If applicable data is not available for a specific SIC code from these two sources, the commission will develop an expected rate for the SIC code based on comparison of hazard exposures for the SIC code with the hazard exposures for a SIC code with an established injury rate. Irrespective of source, when the published SIC code rate is less than 1.0, an expected rate of 1.0 will be used.

(8) **Audit Period**—The 12-month period to be used for obtaining employment data and for counting injuries, including occupational diseases and fatalities as specified in §164.14 of this title (relating to Values and Criteria Assigned for Computation of Extra-Hazardous Employer Identification).

(9) **Fatality**—The death of an employee from a work-related injury or occupational disease.

(10) **Occupational diseases**—Occupational diseases reported to the commission during the audit period. The

occupational disease will be included on the record of the employer under which the last exposure occurred. The occupational disease will be included in the audit period during which it was reported. The exposure need not have occurred during the audit period.

(11) **Lost Time Injuries—Injuries** (excluding occupational diseases and fatalities) resulting in greater than seven days of lost time. Injuries with lost time of greater than one day, but less than eight days, will be included when provided by rule.

(12) **No Lost Time Injuries—Medical-only injuries** with impairment, but no lost time (excluding occupational diseases).

(13) **Threshold Level (X)**—Specified in §164.14 and established so as to insure that an identified employer's injury frequency substantially exceeds that which may reasonably be expected in the employer's business or industry. Values for both thresholds will be selected such that no employer will be identified as an extra-hazardous employer who has only one lost time injury or occupational disease reported during the audit period nor will an employer be identified as extra-hazardous whose R does not exceed R_{expected} .

(c) The following calculation shall be used to determine extra-hazardous employer status. An individual employer's rate of injuries per 100 employees, for the specified audit period, calculated using the formula: $R = (I/E) \times 100$. The computed R is divided by the expected injury rate (R_{expected}) and the result compared to the threshold level established in §164.14. If the ratio is greater than the threshold value, the employer is extra-hazardous.

(d) The commissioners will by rule establish the threshold values as specified in subsection (b)(13) of this section.

(e) Prior to notification, the employer will be given the opportunity to verify FEIN, SIC code, employment, and injury data.

(f) An employer whose identification is based solely on one fatality and whose total employment in all SIC codes is less than 20 may be excluded from identification for the program.

(1) An employer tentatively identified will be advised by certified mail at the employer's principal place of business that the employer has been tentatively identified for the program, and that the employer may voluntarily request a full OSHCON consultation from the division.

(2) If the employer requests a full OSHCON consultation within 30 days of receipt of the tentative identification and receives the consultation within 90 days of the notification, the employer will not be

identified for the Extra-Hazardous Employer Program.

(3) If the employer does not request and receive a full OSHCON consultation, the employer will be identified for the Extra-Hazardous Employer Program.

(4) An employer tentatively identified for the program may request an administrative review of the facts used in the tentative identification as addressed in §164.2 of this title (relating to Notice to "Extra-Hazardous Employers").

§164.14. Values and Criteria Assigned for Computation of Extra-Hazardous Employer Identification.

(a) The following Threshold Levels (X) will be used in the identification of employers that have no fatalities:

(1) 1,000 or more employees, the threshold is 1.6;

(2) 500-999 employees, the threshold is 1.7;

(3) 150-499 employees, the threshold is 1.8;

(4) 50-149 employees, the threshold is 2.5;

(5) 20-49 employees, the threshold is 5.0;

(6) 10-19 employees, the threshold is 10;

(7) 5-9 employees, the threshold is 20;

(8) 4 employees, the threshold is 25;

(9) 3 employees, the threshold is 34;

(10) 2 employees, the threshold is 50; and

(11) 1 employee, the threshold is 100.

(b) The value of the Threshold Level (X) for employers that have one or more fatalities is 1.3.

(c) The initial 12-month audit period to be used for counting employment and injuries is September 1, 1993 through August 31, 1994. Subsequent 12-month audit periods will advance by three months for each audit period. The Extra-Hazardous Employer Program will be reviewed at least once each year at the January public meeting, beginning January 1996, for authorization by the commissioners to continue the notification cycles for the next year.

(d) Fatal injuries that meet the following screening criteria will be excluded from the computation by the division.

(1) Heart Attacks. A fatality resulting from a heart attack that has been

successfully controverted and/or shown on a death certificate or autopsy report as the cause of death will not be used in the computation. This includes: cardiac arrest, cardiopulmonary arrest, ischemic heart disease, atherosclerotic coronary artery disease, myocardial infarction, and arteriosclerotic coronary artery disease. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable. If the fatality is found to not be within the course and scope of employment (compensable) the fatality will be excluded.

(2) Other Diseases of Life. A fatality resulting from a disease of life unrelated to the employment that has been successfully controverted and/or shown on a death certificate or autopsy report as the cause of death will not be used in the computation. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable.

(3) Homicide. A fatal injury resulting from a homicide that did not result from the employment environment will not be used in the computation. To satisfy this criteria, information must be provided that clearly establishes the homicide as a personal matter or random occurrence and not directed at the employee as an employee or because of the employment. If there was workers' compensation insurance, and the homicide was the result of a personal matter, the carrier must have controverted the claim. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable.

(4) Suicide. A fatal injury resulting from a suicide will not be used in the computation. To satisfy this criteria, a death certificate plus a police report, and/or insurance investigation must be provided that clearly indicates that the death was a suicide with no indication that it was related to employment. If there was workers' compensation insurance, the carrier must have controverted the claim. If the controversion was challenged for any reason, the TWCC dispute resolution process must have been exhausted and the death found to be non-compensable.

(e) Fatal injuries that meet the following screening criteria will be converted to injuries by the division and used in the computation.

(1) Third Party Vehicle Accidents (includes vehicle/pedestrian accidents). A fatal injury resulting from a vehicle accident caused by a third party without contribution by the employer, or the

employment environment will be included in the computation as an injury rather than as a fatality. In order to satisfy this criteria information should be provided that clearly indicates that the accident was caused by the employee, the employer, or the employment environment (such as faulty equipment). Documentation of successful subrogation of cost to a third party is acceptable verification of third party liability.

(2) Common Carrier Accidents. A fatal injury that occurred while the employee was a passenger on a common carrier will be included in the computation as an injury rather than as a fatality. In order to satisfy this criteria, documentation should be provided showing that the employee was a passenger on the common carrier at the time of the accident and was not involved in causing the accident. Documentation of successful subrogation of cost to a third party is acceptable as verification.

(3) Natural Events. A fatal injury arising out of an act of God, unless the employment exposed the employee to a greater risk of injury from an act of God than ordinarily applies to the general public and whose occurrence or severity could not have been foreseen by a prudent employer will be included in the computation as an injury rather than as a fatality. In order to satisfy this criteria, a documented account of the circumstances surrounding the accident, preferably by an outside source such as law enforcement authorities, OSHA, or an insurance investigator, should be provided that shows the event's occurrence or severity could not have been foreseen and/or that reasonable and prudent actions by the employer would not have prevented it.

(4) Circumstances Beyond the Control or Jurisdiction of the Employer. A fatality resulting from circumstances beyond the control or jurisdiction of the employer will be included in the computation as an injury rather than a fatality. Where the employee, employer, or employment environment was involved in the fatality and verifiable information was provided indicating preventive programs were in place and enforced, the fatality will be excluded.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502139

Susan Cory
General Counsel
Texas Workers'
Compensation
Commission

Effective date: March 14, 1995

Proposal publication date: December 20, 1994

For further information, please call: (512) 440-3700

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing-Witness Allowances

• 34 TAC §§5.71-5.74

The Comptroller of Public Accounts adopts the repeal of §§5.71-5.74, concerning claims processing-witness allowances, without changes to the proposed text as published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 215).

The sections are being repealed because they are no longer consistent with the various statutes that govern witness allowances. Those statutes were amended by House Bill 1952, 73rd Legislature, 1993.

The comptroller does not believe that new sections are needed to reflect this legislation. The witness allowance statutes now provide much more detail than previously, and the comptroller's general rules about the processing of payment documents in the uniform statewide accounting system will sufficiently cover witness allowance payments.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, §2101.035, which authorizes the comptroller to adopt rules for the effective operation of the uniform statewide accounting system.

The repeals implement the Government Code, §2101.035.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 21, 1995.

TRD-9502214

Martin Cherry
Chief, General Law
Comptroller of Public
Accounts

Effective date: March 15, 1995

Proposal publication date: January 13, 1995

For further information, please call: (512) 463-4028

**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part XIII. Texas
Commission on Fire
Protection**

**Chapter 421. Standards for
Certification**

• 37 TAC §421.1

The Texas Commission on Fire Protection adopts an amendment to §421.1, concerning standards for certification, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8844).

The justification for the amendment is that local governments will be able to budget and plan for rule changes.

The amendment provides that rules finally adopted before May 1st, should go into effect January 1st, of the following year and rules finally adopted after May 1st, should go into effect no sooner than one year from January 1st, of the following year, unless the committee recommends a sooner effective date for issues such as health and safety or undue hardship.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.023, which provides the commission with authority to establish a fire protection personnel advisory committee.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-8502180 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 918-7184

**Chapter 423. Fire Suppression
Subchapter A. Minimum Stan-
dards for Structure Fire Pro-
tection Personnel Certifica-
tion**

• 37 TAC §§423.1, 423.3, 423.5

The Texas Commission on Fire Protection adopts amendments to §§423.1, 423.3, and 423.5, concerning structural fire protection personnel, without changes to the proposed text as published in the November 8, 1994,

issue of the *Texas Register* (19 TexReg 8844).

The justification for the amendments is that the new curriculum approval process limiting curriculum changes to an annual basis will aid training academies in planning and budgeting.

The amendments delete language in §423.1 concerning adoption by reference of the curriculum to accommodate the final adoption of the new curriculum approval process in adopted new chapter 443 concerning the certification curriculum manual. Subsection (h) adds the provision that applicants for certification from another jurisdiction with accreditation from the International Fire Service Accreditation Congress are deemed to have equivalent training. Changes to §423.3 and §423.5 provide clarification that old or new National Fire Academy courses can be used for higher levels of certification.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel and for advanced positions; and Texas Government Code, §419.032(d) which provides the commission with authority to adopt rules relating to presentation of evidence of training in another jurisdiction equivalent in content and quality and authorizing the commission to waive any certification requirement for an applicant with a license from another state having certification requirements equivalent to those of this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-8502181 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 918-7184

**Subchapter B. Minimum Stan-
dards for Aircraft Crash and
Rescue Fire Protection Per-
sonnel**

**• 37 TAC §§423.201, 423.203,
423.205, 423.207**

The Texas Commission on Fire Protection adopts amendments to §§423.201, 423.203, 423.205, and 423.207, concerning aircraft rescue and fire protection personnel certification, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9475).

The justification for the amendments is that aircraft rescue fire protection personnel that respond to structure fires on or off airport property will be properly trained and the new curriculum approval process limiting curriculum changes to an annual basis will aid training academies in planning and budgeting.

The amendment to §423.201 provides that aircraft rescue and fire protection personnel who also perform structure fire suppression duties must also be certified as structure fire protection personnel. The amendments to §423.203 delete language concerning adoption by reference of the curriculum to accommodate the new certification curriculum approval process outlined in new Chapter 443 concerning the Certification Curriculum Manual. Finally, amendments to §423.205 and §423.207 add language allowing credit for higher levels of certification for old or new National Fire Academy courses.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; 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; and Texas Government Code, §419.038, which provides the commission with authority to adopt minimum standards for aircraft fire protection personnel certification.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-8502182 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 918-7184

**Subchapter C. Minimum Stan-
dards for Marine Fire Pro-
tection Personnel**

• 37 TAC §423.301

The Texas Commission on Fire Protection adopts the repeal of §423.301, concerning minimum standards for marine fire protection personnel certification, without changes to the proposed text as published in the September 6, 1994, issue of the *Texas Register* (19 TexReg 6988). The repealed section is replaced by a new section dealing with the same subject matter. The repeal is effective January 1, 1996.

The justification for the repeal is to replace it with a new section that will allow for consis-

tency of the certification requirements for marine fire protection personnel with other fire suppression disciplines. In addition, potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency and local fire departments can eliminate duplication of training costs.

The repealed section is replaced by new sections that establish requirements for marine fire protection personnel certification in a format that is consistent with other disciplines including completion of an approved marine fire protection personnel curriculum and completion of an examination requirement

No comments were received regarding adoption of the repeal

The repeal is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502184 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date. January 1, 1996

Proposal publication date: September 6, 1994

For further information, please call: (512) 918-7184

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• 37 TAC §§423.301, 423.303,
423.305, 423.307, 423.309

The Texas Commission on Fire Protection adopts new §§423.301, 423.303, 423.305, 423.307, and 423.309, concerning minimum standards for marine fire protection personnel certification, with changes to the proposed text as published in the September 6, 1994, issue of the *Texas Register* (19 TexReg 6988). The changes consist of changing the effective date in §423.301(a) and §423.303(a) to January 1, 1996.

The justification for the new sections is that certification requirements (including an examination to determine competency) for marine fire protection personnel will be consistent with other fire suppression disciplines. In addition, potential applicants for certification from other jurisdictions will have specific guidelines by which the commission staff will determine equivalency. Finally, local fire departments can eliminate duplication of training costs for employees who have previously received training required for structural fire protection personnel certification.

The new sections establish requirements for marine fire protection personnel certification

in a format consistent with other disciplines including completion of an approved marine fire protection personnel curriculum and completion of an examination requirement. The new curriculum reduces the number of hours for marine fire protection training from 285 hours to 90 hours by eliminating subjects covered in the basic fire suppression curriculum required for structure certification. The new standard for basic marine certification therefore requires eligibility for structure certification as a prerequisite. In addition, the new sections more clearly delineates the class of persons for whom certification is required by limiting the requirements to fire fighters who work aboard a fire boat with a minimum pumping capacity of 2,000 gallons per minute. The new sections also includes guidelines for the evaluation of military and out-of-state training for marine fire protection personnel consistent with similar guidelines for structure fire fighters. Finally, the new sections include provisions for higher levels of marine certification with requirements consistent with other disciplines.

Comments received from the Port of Houston Authority are summarized as follows: The effective date in §423.301(a) and §423.303(a) should be changed to January 1, 1996. The prohibition of assignment to marine fire suppression duties prior to training in §423.301(d) would constitute an undue hardship if it required a trainee to be removed from a fire boat responding to a call. Training facility requirements in §423.303(b)(2)(A) would be unreasonable if a burn building is required for a marine training facility.

The commission agrees that the effective date of the new chapter should be changed to January 1, 1996. The commission further agrees that the rules as adopted would not require removal of a marine fire protection personnel trainee from a fire boat responding to a call provided it is fully manned with certified personnel and the trainee is used only in a non-suppression role, such as communications. Finally, the training facility requirements as adopted require only equipment and facilities appropriate to the basic marine fire protection curriculum which does not include a burn building.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; the 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; and Texas Government Code, §419.037, which provides the commission with authority to adopt requirements for marine fire protection personnel certification.

◆ ◆ ◆
§423.301. *Minimum Standards For Marine Fire Protection Personnel.*

(a) The effective date of this section shall be January 1, 1996.

(b) Marine Fire Protection Personnel are employees of a local governmental

entity who work aboard a fire boat with a minimum pumping capacity of 2,000 gallons per minute, and fights fires that occur on or adjacent to a waterway, waterfront, channel, or turning basin.

(c) All full time, full paid employees of any local government entity, who are assigned marine fire protection duties must be certified by the commission within two years from the date of their employment in a marine fire protection personnel position.

(d) As a minimum, all personnel must have completed all requirements specified in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel) prior to being assigned to marine fire suppression duties.

(e) All personnel holding any level of Marine Fire Protection Personnel certification shall be required to comply with the continuing education specified in §441.11 of this title (relating to Continuing Education Requirements for Marine Fire Protection Personnel).

◆ ◆ ◆
§423.303. *Minimum Standards For Basic Marine Fire Protection Personnel Certification.*

(a) The effective date of this subchapter shall be January 1, 1996. Training programs that are intended to satisfy the requirements for Basic Marine Fire Protection Personnel certification, that are started after the effective date of this subchapter, must meet the curriculum, competencies, and hour requirements of this subchapter. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain basic Marine Fire Protection Personnel certification the individual must:

(1) hold or be eligible to hold basic structure fire protection personnel certification;

(2) complete a training program specific to marine fire protection consisting of one of the following:

(A) complete the commission approved Basic Marine Fire Protection Curriculum of at least 90 total hours as specified in Chapter 3, of the commission's document titled "Commission Certification Curriculum Manual", as approved by the commission in accordance with Chapter 443, of this title (relating to Certification Curriculum Manual). The commission approved marine fire protection curriculum must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Minimum Standards for Training Facilities); or

(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Basic Marine Fire Protection Curriculum; or

(C) A military training program that has been submitted to the commission for evaluation and found to be equivalent to the commission approved Basic Marine Fire Protection Curriculum.

(3) successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 3 (pertaining to Marine Fire Protection) of the Commission's Certification Curriculum Manual for Paid Fire Protection Personnel.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time marine fire protection personnel may be certified as a marine fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(e) If a person holds a current certification as a part-time marine fire protection personnel, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

§423.305. Minimum Standards For Intermediate Marine Fire Protection Personnel.

(a) Applicants for Intermediate Marine Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Marine Fire Protection Personnel Certification as defined in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification).

(2) acquire one of the following combinations of college education or training points, and the listed years of fire protection experience, which may include the training points and the years of experience used to qualify for all lower levels of Marine Fire Protection Personnel Certification:

(A) 20 training points and at least eight years of service; or

(B) 20 training points which includes at least 15 college semester hours in fire science subjects and at least seven years of service; or

(C) 40 training points and at least six years of service; or

(D) 40 training points which includes at least 15 college semester hours in fire science subjects and at least five years of service; or

(E) An associate degree or 60 training points and at least four years of service; or

(F) An associate degree or 60 training points, either of which includes at least 15 college semester hours in fire science subjects and at least three years of service; or

(G) A baccalaureate degree or an associate degree in Fire Science or 120 training points and at least two years of service.

(3) As part of the training specified in paragraph (2) of this section, complete the courses listed in one of the following options:

(A) Option Number 1—Successfully complete six semester hours of fire science from an approved Fire Protection Degree Program from the following courses:

(i) Fire Administration I, or a course that meets the following course description—Organization and management of a fire department. Topics include budgeting, maintenance of records and reports, and management of fire department officers. Personnel administration, distribution of equipment and personnel, and relations of government agencies to fire protection areas. Fire Service Leadership as viewed from the company officer's position; or

(ii) Fire Fighting Tactics and Strategy, or a course that meets the following course description—Essential elements in analyzing the nature of fire and determining the requirements to fight a fire. Efficient and effective utilization of manpower, equipment and apparatus. Pre-planning, conflagration problems, fire ground organization problem-solving related to fire ground decision making and attack tactics and strategy. Use of mutual aid and large scale command problems; or

(iii) Hazardous Materials I, or a course that meets the following course description—Characteristics and

behavior of various materials that burn or react violently are studied. Flammable liquids, combustible solids, and gases are included. Storage, transportation, and handling are covered. Emphasis is on emergency situations and methods of control.

(B) Option Number 2—Complete a minimum of 80 hours of instruction in any National Fire Academy resident program. This training must be in addition to any training used to qualify for Basic Marine Fire Protection Personnel Certification.

(C) Option Number 3—Complete a minimum of 80 hours in the following National Fire Academy off-campus courses:

(i) Incident Command System (ICS) (16 hours);

(ii) Initial Response to Hazardous Materials Incidents: Basic Concepts (12 hours) and Recognizing and Identifying Hazardous Materials (3 hours);

(iii) Initial Response to Hazardous Materials incidents: Concept Implementation (16 hours);

(iv) Instructional Techniques for Company Officers (12 hours);

(v) Public Fire Education Planning (12 hours);

(vi) Pesticide Challenge (12 hours);

(vii) Conducting Basic Fire Prevention Inspections (12 hours);

(viii) Fire/Arson Detection (12 hours);

(ix) Managing Company Tactical Operations: Preparation (12 hours);

(x) Managing Company Tactical Operations: Command Decision Making (12 hours);

(xi) Managing Company Tactical Operations: Tactics (12 hours); It is recommended, by the NFA, that the Managing Company Tactical Operations Series be taken in the sequence listed.

(D) Option Number 4—Successfully complete three semester hours of the courses listed in option #1 and 40 hours of the courses listed in option number 3.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Marine Fire Protection Personnel Certification.

(c) If a National Fire Academy off campus course(s) is discontinued or is replaced by a new course, the old or the new course may be used toward requirements for certification.

(d) Non-traditional credit awarded at the college level, such as credit by experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification. Credit will not be given for repeating a course or courses of similar content.

§423.307. Minimum Standards For Advanced Marine Fire Protection Personnel Certification.

(a) Applicants for Advanced Marine Fire Protection Personnel certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Marine Fire Protection Personnel Certification as defined in §423.305 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification).

(2) acquire one of the following combinations of college education or training points, and the listed years of fire protection experience, which may include the training points and the years of experience used to qualify for all lower levels of Marine Fire Protection Personnel Certification:

(A) 40 training points and at least 12 years of service; or

(B) 40 training points which includes at least 15 college semester hours in fire science subjects and at least ten years of service; or

(C) An associate degree or 60 training points and at least 12 years of service; or

(D) An associate degree or 60 training points, either of which includes at least 15 college semester hours in fire science subjects and at least six years of service; or

(E) A baccalaureate degree or an associate degree in Fire Science or 120 training points and at least four years of service;

(F) A baccalaureate degree or 120 training points either of which must include at least 15 college semester hours in fire science subjects and at least three years of service.

(3) As a part of the training specified in paragraph (2) of this subsection, complete the courses listed in one of the following options:

(A) Option Number 1—Successfully complete six semester hours in fire science from an approved Fire Protection Degree Program from the following courses:

(i) Fire Administration II, or a course that meets the following course description—Insurance rates and ratings, preparation of budgets, administration and organization of training in the fire department; city water requirements, fire alarm and communication systems; importance of public relations, report writing and record keeping are stressed; measurements of results, use of records to improve procedures, and other related topics; legal aspects relating to fire prevention and fire protection with stress on municipal and state agencies; design and construction of fire department buildings; or

(ii) Fire Safety Education, or a course that meets the following course description—Physical, chemical, and electrical hazards and their relationship to loss of property and life. Study of codes, laws, problems, and cases. Detailed examination of the physical and psychological variables related to the occurrence of casualties. Safe storage, transportation, and handling techniques are stressed to eliminate or control potential risks; or

(iii) Building Construction, or a course with the following course description—Fundamental consideration and exploration of building construction and design with emphasis on fire resistance of building materials and assemblies, exposures, and related data focused on fire protection concerns; elements of structural collapse and failure during a fire are included; or

(iv) Building Codes, or a course with the following course description—An in-depth study of the National Fire Protection Association's Life Safety Code. An introduction to other model codes and the fire codes as they relate to building design; or

(v) Building Codes and Construction, or a course with the following course description—The fire resistance of building construction is considered. Included are building materials, assemblies, and exposures. Both local and national laws and guidelines are reviewed. Model building codes and the life safety code are also studied.

(B) Option Number 2—Complete a minimum of 80 hours of instruction in any National Fire Academy on-campus resident program. This training must be in addition to any training used to qualify for Intermediate Marine Fire Protection Personnel Certification.

(C) Option Number 3—Complete a minimum of 80 hours in the following National Fire Academy off-campus courses:

(i) Building Construction for Fire Suppression Forces—Principles, Wood and Ordinary Construction (12 hours);

(ii) Building Construction for Fire Suppression Forces—Principles, Non-Combustible and Fire Resistive Construction (12 hours);

(iii) Firefighter Safety and Survival: The Company Officer's Responsibility (16 hours);

(iv) Firefighter Health and Safety: Program Implementation & Management (16 hours);

(v) Fire Service Management (12 hours);

(vi) Leadership I: Strategies for Company Success (12 hours);

(vii) Leadership II: Strategies for Personal Success (12 hours);

(viii) Leadership III: Strategies for Supervisory Success (12 hours);

(ix) Fire Supervision—Increasing Team Effectiveness (12 hours);

(x) Fire Supervision—Increasing Personal Effectiveness (12 hours);

(xi) Infection Control for Emergency Response Personnel: The Supervisors Role and Responsibilities (12 hours)

(D) Option Number 4—Successfully complete three semester hours of the courses listed in option #1 and 40 hours of the courses listed in option number 3.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Marine Fire Protection Personnel Certification.

(c) If a National Fire Academy off campus course(s) is discontinued or is replaced by a new course, the old or the new course may be used toward requirements for certification.

(d) Non-traditional credit awarded at the college level, such as credit by experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification. Credit will not be given for repeating a course or courses of similar content.

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Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 427. Certified Training Facilities

• 37 TAC §427.15

The Texas Commission on Fire Protection adopts an amendment to §427.15, concerning training facilities, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8847).

The justification for the amendment will be to ensure that training academies conduct written comprehensive tests for all disciplines of fire protection personnel certification taught by the academy.

The amendment changes the wording referencing "basic firefighter curriculum" to "training curriculum" to clarify that the curriculum used by training facilities includes all training curricula for each certification, and provide consistent comprehensive testing by academies.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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, §419.028(1), which provides the commission the authority to certify facilities operated for training fire protection personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jack Woods
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Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 429. Minimum Standards for Fire Inspectors

• 37 TAC §§429.3, 429.5, 429.7

The Texas Commission on Fire Protection adopts amendments to §§429.3, 429.5, and

429.7, concerning minimum standards for basic fire inspector certification, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8847).

The justification for the amendments is that the new curriculum approval process limiting curriculum changes to an annual basis will aid training academies in planning and budgeting. The change to NFA course requirements avoids unnecessary duplication of training costs. In addition, the limitation of the college route for basic certification to courses relevant to fire protection and prevention (without an associate degree requirement) encourages additional training of fire protection personnel for the benefit of the community served by those personnel.

The amendment to §429.3 allows for the implementation of the new curriculum approval process and removes the requirement of an associate degree for basic certification. The amendments to §429.5 and §429.7 allow credit for old or new NFA courses for higher levels of certification.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 431. Minimum Standards for Fire and Arson Investigator

• 37 TAC §§431.3, 431.5, 431.7

The Texas Commission on Fire Protection adopts amendments to §§431.3, 431.5, and 431.7, concerning fire and arson investigator, with changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8848).

The change in §431.3 consists of adding language in subparagraph (b)(3)(D) that allows a course substitution for Building Construction,

consistent with similar language for Basic Fire Inspector Certification.

The justification for the amendments is that the new curriculum approval process limiting curriculum changes to an annual basis will aid training academies in planning and budgeting. The change to NFA course requirements avoids unnecessary duplication of training costs. In addition, the limitation of the college route for basic certification to courses relevant to fire protection and prevention (without an associate degree requirement) encourages additional training of fire protection personnel for the benefit of the community served by those personnel.

The changes to §431.3 allow for the implementation of the new curriculum approval process and removes the requirement for an associates degree for basic certification. The changes to §431.5 and §431.7 allow credit for old or new NFA courses for higher levels of certification.

Comments regarding the proposal were received from representatives of the Austin Fire Department and the Testing Advisory Committee. The commenters were in favor of eliminating the degree requirement for the college alternative for basic fire and arson investigator certification, but recommended allowing course substitution of "Building Codes and Construction" for "Building Construction" as is permitted for basic fire inspector certification.

The commission agrees with the commenters and finally adopts the amendments to §431.3 with changes to allow the course substitution.

The amendments are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

§431.3. Minimum Standards for Basic Fire and Arson Investigator Certification

(a) (No change.)

(b) In order to be certified by the commission as a Basic Fire and Arson Investigator an individual must:

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

(3) complete a commission approved basic fire and arson investigator program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) within one year from the date of initial appointment to the position. An approved basic fire and arson investigation program shall consist of one of the following:

(A) completion of the commission approved Basic Fire and Arson Investigator Curriculum of at least 122 total

hours, as specified in Chapter 5, of the commission's document titled "Commission Certification Curriculum Manual", as approved by the commission in accordance with Chapter 443, of this title, (relating to Certification Curriculum Manual); or

(B) (No change.)

(C) successful completion of an out of state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire and Arson Investigator Curriculum as specified in Chapter 5, of the commission's document titled "Commission Certification Curriculum Manual";

(D) successful completion of the following college courses: Arson Investigator I-three semester hours; Arson Investigator II-three semester hours; Hazardous Materials I-three semester hours; Building Construction-three semester hours; Fire Protection Systems-three semester hours; Total semester hours-15. The three semester hour course "Building Codes and Construction" may be substituted for Building Construction.

(c) (No change.)

§431.5. Minimum Standards for Intermediate Fire and Arson Investigator Certification.

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

(c) If a National Fire Academy off campus course is discontinued and is replaced by a new course, the old or new course may be used toward requirements for certification.

(d) (No change.)

§431.7. Minimum Standards for Advanced Fire and Arson Investigator Certification.

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

(c) If a National Fire Academy off campus course is discontinued and is replaced by a new course, the old or new course may be used toward requirements for certification.

(d) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9502190 Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 437. Fees

• 37 TAC §437.11

The Texas Commission on Fire Protection adopts an amendment to §437.11, concerning copy fees, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8849).

The justification for the amendment is that obsolete language for copy charges is deleted which conflicted with agency wide rules for copy charges adopted in Chapter 405 of this title consistent with General Services Commission guidelines.

The changes to this section correspond with the new Chapter 405 adopted by the commission regarding agency wide copy charges.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Civil Statutes, Article 6252-17a, §9(A)(b), which require each state agency to specify by rule the changes the agency will make for copies of public records.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9502191 Jack Woods
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 adopts an amendment to §439.3, concerning examinations for certification, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8849).

The justification for the amendment is the elimination of cost, time lost and undue hardship resulting from testing deemed unnecessary by the commission.

This amendment allows for persons who continuously held aircraft rescue and fire protection personnel certification between April 1,

1993, and the effective date of this proposal, who completed the basic fire suppression program, but were not certified, to receive a basic structural fire protection personnel certification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, 419.032(b), concerning basic certification examinations and continuing education programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 443. Certification Curriculum Manual

• 37 TAC §443.5

The Texas Commission on Fire Protection adopts new §443.5, concerning Effective Dates of Curricula or Changes to Curricula Required by Law or Rule, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9477).

The justification for the new section will be the annual implementation of curriculum changes will aid local governments in budgeting and planning for training costs.

The new section provides for annual changes only to curricula approved by the commission unless a safety consideration is found by the advisory committee.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt 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.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512)
918-7184

◆ ◆ ◆
**Chapter 447. Part-Time Fire
Protection Employee**

◆ ◆ ◆
• 37 TAC §447.1

The Texas Commission on Fire Protection adopts an amendment to §447.1, concerning minimum standards for part-time fire protection employees, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8850).

The justification for the amendment will be the cost and time required to provide duplication of ECA training deemed unnecessary is eliminated.

The amendment allows a full-time full paid fire fighter to obtain a part-time certification by possessing training equivalent to the Texas Department of Health ECA certification.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.0321, which provides that the commission shall create a separate certification class for part-time fire protection employees.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512)
918-7184

◆ ◆ ◆
**Chapter 471. Standards for
Volunteer Certification**

◆ ◆ ◆
• 37 TAC §§471.1, 471.3, 471.5

The Texas Commission on Fire Protection adopts amendments to §471.1 and §471.3, and new §471.5, concerning standards for volunteer certification, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9477).

The justification for the amendments and new section will be to coordinate election of officers for the Volunteer Fire Fighter Advisory Committee to coincide with new appointments; to provide guidelines for effective dates that aid in budgeting and planning by local governments; and to expand the certification and training of volunteers to include other disciplines of volunteer fire protection personnel providing protection to communities in Texas.

The amendments to §471.1 change the election of officers from the meeting following October 1st to the meeting following February 1st of each year and establish guidelines for effective dates of rule changes. The term volunteer fire fighter is changed to volunteer fire protection personnel throughout the sections. Finally, new section 471.5 concerning definitions is added to replace a repealed section concerning the same subject matter to add a definition of "recognition of training," to delete the definition of "module," and to omit the numbering of definitions.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9502195

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512)
918-7184

◆ ◆ ◆
• 37 TAC §471.5

The Texas Commission on Fire Protection adopts the repeal of §471.5, concerning definitions relating to standards for volunteer certification, without changes to the proposed text as published in the September 2, 1994, issue of the *Texas Register* (19 TexReg 6895).

The justification for the repeal is to replace obsolete language in the definitions pertaining to volunteer fire protection personnel certification.

The repealed section is replaced by a new section relating to the same subject matter that adds new definitions and deletes the numbering of definitions.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9502196

Jack Woods
General Counsel
Texas Commission on Fire
Protection

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Proposal publication date: September 2, 1994

For further information, please call: (512)
918-7184

◆ ◆ ◆
**Chapter 472. Volunteer
Certification Curriculum
Manual**

◆ ◆ ◆
• 37 TAC §§472.1, 472.3, 472.5,
472.7, 472.9

The Texas Commission on Fire Protection adopts new §§472.1, 472.3, 472.5, 472.7, and 472.9, concerning certification curriculum manual, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8850).

The justification for these sections is to aid local governments in budgeting and planning for training by limiting curriculum changes to an annual basis. In addition, the requirement of conformance of curricula to NFPA standards provides consistency with a national standard and provides groundwork for accreditation by the International Fire Service Accreditation Congress for the commission's volunteer certification program.

The new sections provide for a new certification curriculum approval process which maintains the requirement of approval by the commission and the Volunteer Fire Fighter Advisory Committee. In addition, the new approval process provides for annual changes only unless a safety consideration is found and requires the committee and commission to address new or revised National Fire Protection Association standards pertaining to the curricula. There is no automatic change to a curriculum without committee and commission approval.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection

with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9502197 Jack Woods
General Counsel
Texas Commission on Fire
Protection

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For further information, please call: (512) 918-7184

Chapter 473. Volunteer Fire Fighter

- 37 TAC §§473.1, 473.3, 473.5,
473.7, 473.9

The Texas Commission on Fire Protection adopts amendments to §473.1 and new §§473.3, 473.5, 473.7, and 473.9, concerning volunteer fire fighter certification, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8851).

The justification for these sections is that the availability of higher levels of certification for volunteer fire fighter encourages volunteer personnel to seek additional training and benefits the communities served by those persons by providing better fire protection.

The amendments to §473.1 conform the section to statutory changes regarding requirements for persons receiving certification by the State Firemen's and Fire Marshals' Association after September 1, 1993. New §§473.3, 473.5, and 473.7 add voluntary standards for higher levels of volunteer fire fighter certification (including intermediate, advanced, and master levels) which track the requirements for paid structural fire protection personnel. New §473.9 replaces repealed §473.5 concerning the same subject matter that is renumbered for administrative convenience.

No comments were received regarding the amendments and new section.

The amendments and new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502198 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 918-7184

- 37 TAC §473.3, §473.5

The Texas Commission on Fire Protection adopts the repeal of §473.3 and §473.5 concerning adoption by reference and maintaining certification for volunteer fire fighters, without changes to the proposed text as published in the September 2, 1994, issue of the *Texas Register* (19 TexReg 6895).

The justification for the repeal is that the sections are renumbered to allow organization of sections pertaining to basic and higher levels of volunteer fire fighter certification in a manner that is easily understood by the public.

The repealed sections are being replaced by new sections with the same subject matter that have been renumbered for administrative convenience.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502199 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: September 2, 1994

For further information, please call: (512) 918-7184

Chapter 476. Volunteer Fire Fighter Investigator

- 37 TAC §§476.1, 476.3, 476.5,
476.7, 476.9

The Texas Commission on Fire Protection adopts new §§476.1, 476.3, 476.5, 476.7, and 476.9, concerning volunteer fire investigator, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8854).

The justification for the new sections is increased fire protection for communities served by volunteer fire investigation personnel that receive training required for certification.

The new sections provide volunteer fire investigation personnel the opportunity to become certified at levels from basic through master levels. The requirements for the various levels track the requirements for paid fire investigator certification. New §476.3(b)(2) allows certification at the basic level of persons holding certification as fire or arson investigator from the State Firemen's and Fire Marshals' Association prior to January 1, 1994.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502200 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 918-7184

Chapter 478. Volunteer Fire Inspector

- 37 TAC §§478.1, 478.3, 478.5,
478.7

The Texas Commission on Fire Protection adopts amendments to §§478.1, 478.3, 478.5, and 478.7, concerning Volunteer Fire Inspector, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9479).

The justification for these sections is a possible increase in the number of persons seek-

ing fire inspector certification through the college route by making it more accessible (by requiring only fire prevention and fire protection courses and no associate degree) which may indirectly improve fire prevention in communities served by volunteer fire inspection personnel. In addition, the annual implementation schedule for curriculum changes aids local governments in budgeting and planning for training.

The amendment to §478.1 requires a person who holds a certificate that has been inactive for more than a year to retake the commission examination. The amendment to §478.3 deletes language concerning adoption by reference of the inspector curriculum in order to accommodate the proposal of a new curriculum approval process in new chapter 472 concerning Volunteer Certification Curriculum Manual and removes the requirement for an associate degree for basic certification. The amendments to §478.5 and §478.7 allow either old or new National Fire Academy courses to be used toward higher levels of certification.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502201 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆
• 37 TAC §478.11

The Texas Commission on Fire Protection adopts the repeal of §478.11, concerning adoption by reference, without changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8857). The repeal is proposed to provide for the new curriculum approval process under the proposed new chapter 472 entitled Volunteer Certification Curriculum Manual.

The justification for the repeal is to replace it with a new chapter that will allow for better budget and planning for training.

The repealed section is replaced by a new chapter concerning the new curriculum approval process which maintains the requirement of approval by the commission and the

Volunteer Fire Fighter Advisory Committee.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502202 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 479. Examinations for
Volunteer Fire Fighter
Certification

• 37 TAC §§479.1, 479.3, 479.5,
479.7, 479.9, 479.11

The Texas Commission on Fire Protection adopts the repeal of §§479.1, 479.3, 479.5, 479.7, 479.9, and 479.11, concerning examinations for volunteer certification, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9480).

The justification for the repeal of these sections is to provide a clearer understanding of certification testing for volunteer fire protection personnel in a manner consistent with testing of paid personnel.

The repealed sections are replaced by new sections dealing with the same subject matter which conform to the volunteer examinations to changes in procedures for examinations for paid fire protection personnel.

No comments were received regarding adoption of the repeals.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502204 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆
• 37 TAC §§479.1, 479.3, 479.5,
479.7, 479.9, 479.11, 479.13

The Texas Commission on Fire Protection adopts new §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11 and 479.13, concerning examinations for volunteer certification, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9481).

The justification for this section is to provide a clearer understanding of certification testing for volunteer fire protection personnel in a manner consistent with testing of paid personnel.

The new sections replace repealed sections dealing with the same subject matter and conform to the volunteer examinations to changes in procedures for examinations for paid fire protection personnel.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502203 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆
Chapter 485. Volunteer Fire
Fighter Continuing Education

• 37 TAC §§485.3, 485.5, 485.9,
485.11

The Texas Commission on Fire Protection adopts amendments to §485.3 and §485.5 and new §485.9 and §485.11, concerning volunteer certification continuing education, with-

out changes to the proposed text as published in the November 8, 1994, issue of the *Texas Register* (19 TexReg 8857).

The justification for these sections is to assure the public that the competency of certified volunteer fire inspection and investigation personnel is maintained through continuing education, and to provide a uniform expiration date of volunteer certification.

The amendments to §485.3 specify the renewal date to be October 31, of each year. The amendment to §485.5 adds a provision that 20 hours of continuing education renews all commission volunteer certificates held by an individual. The new §485.9 and §485.11

provide for the continuing education of volunteer fire inspection personnel and volunteer fire investigation personnel respectively.

No comments were received regarding adoption of the amendments and new sections.

The amendments and new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and 419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502205

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: March 15, 1995

Proposal publication date: November 8, 1994

For further information, please call: (512) 918-7184

◆ ◆ ◆

TABLES AND 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 1: 25 TAC 403.74(a)(1) indicates that this material is located in rule 403.74 under subsection (a), paragraph (1).

The parents of a client who is under 18 years of age shall pay, if able to do so, the portions of the cost of SMT for that client as may be applicable under the following formula:

If the amount shown as "Net Taxable Income" of the parents as reported on their latest current financial statement or on their latest federal income tax return, at the election of the parent, is:	The monthly rate of charge per client shall be:
Less than \$4,000	\$ 0
4,000-4,999	\$10
5,000-5,999	20
6,000-6,999	30
7,000-7,999	40
8,000-8,999	50
9,000-9,999	60
For each additional \$1,000 of taxable income	Add \$10

Figure 2: 25 TAC 403.74(b)(4)(A) indicates that this material is located in rule 403.74 under subsection (b), paragraph (4), subparagraph (A).

Gross family monthly income: Less \$400 per month for each income producing member of the family, \$100 per month for each nonincome-producing member of the family (exclude client), except when a nonincome-producing member of the family is attending a college or university, \$200 per month may be deducted.

If the balance is between:	The monthly rate is between:
	As agreed, not to exceed \$25
\$ 0-249	25-75
250-499	75-125
500-749	125-175
750-999	175-225
1,000-1,249	225-275
1,250-1,499	275-325
1,500-1,749	325-375
1,750-1,999	375-425
2,000-2,249	425-475
2,250-2,499	475-525
2,500-2,749	525-575
2,750-2,999	
formula continues in increments of \$250	formula continues in increments of \$50

Figure 3: 25 TAC 403.74(b)(4)(B) indicates that this material is located in rule 403.74 under subsection (b), paragraph (4), subparagraph (B).

The following table is based solely upon projected monthly income from work earnings.

If the projected monthly income from work earnings is between:	The monthly rate charged against work earnings is:
\$ 0-65	\$ 0
66-75	5
76-85	10
86-95	15
96-110	25
111-125	35
126-140	45
141-160	60
161-180	75
181-200	90
For each additional \$20	Add \$15



Name: Robert Garcia
Grade: 11
School: Harlandale High School, Harlandale ISD

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Thursday, April 13, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code Annotated, §76.116(a)(1) (Vernon Supplement 1995) and 4 Texas Administrative Code, §7.22 by Fred Morales doing business as Morales Industries.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: February 21, 1995, 11:38 a.m.

TRD-9502134

Texas Cosmetology Commission

Saturday, February 25, 1995, 10:00 a.m.

Texas Cosmetology Commission Hearing Room, 5717 Balcones Drive

Austin

Revised Agenda

Management Strategic Planning Meeting (Staff Session Only)

AGENDA:

Call to order; introductions; discussion of auditor report updates and recommendations.

Contact: Alicia C. Watson, 5717 Balcones Drive, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674.

Filed: February 21, 1995, 1:13 p.m.

TRD-9502140

Texas Department of Criminal Justice

Wednesday, March 1, 1995, 6:00 p.m.

Auditorium, Aramco Services Company, 9009 South Loop West

Houston

Parole/Release Policies Committee

AGENDA:

- I. Introduction by committee chair
- II. Comments by elected officials
- III. Review of good conduct time practices
- IV. Recommendation to Board of Criminal Justice
- V. Adjourn

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: February 21, 1995, 3:57 p.m.

TRD-9502162

Texas Education Agency (TEA)

Friday, February 24, 1995, 1:45 p.m.

Room 209 West Tower, Hyatt-Regency DFW, Dallas-Fort Worth (DFW) Airport, International Parkway at DFW Airport

DFW Airport

Emergency Revised Agenda

State Board of Education (SBOE)

AGENDA:

Friday, February 24, 1995: The SBOE will interview candidates for the position of Commissioner of Education. These interviews will be held in executive session in accordance with the Texas Government Code, §551.074.

This meeting will continue on Saturday, February 25, 1995, at 9:00 a.m. and on Sunday, February 26, 1995, at 10:00 a.m. (Agendas are posted separately.)

Reason for emergency: The agency finds it is of urgent public necessity for the SBOE to hold an emergency meeting on Friday, February 24 to provide adequate time for the SBOE to interview candidates for the position of Commissioner of Education. The current posting for these interviews for February 25-26 anticipated interviews; however, on February 18, the SBOE selected nine candidates to be interviewed. The two-day meeting originally posted will not allow sufficient time to interview the nine candidates; therefore, it is necessary to begin the

interviews on Friday, February 24. The SBOE anticipates submitting the name of a nominee for Commissioner to the governor by February 28, 1995.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: February 21, 1995, 4:29 p.m.

TRD-9502164

Saturday-Sunday, February 25-26, 1995, 9:00 a.m. and 10:00 a.m., respectively.

Room 209, West Tower, Hyatt Regency DFW, Dallas-Fort Worth (DFW) Airport, International Parkway at DFW Airport
DFW Airport

Emergency Revised Agenda

AGENDA:

This meeting is a continuation from Friday, February 24, 1995, at 1:45 p.m. (Agendas are posted separately.)

Saturday, February 25, 1995: The SBOE will continue to interview candidates for the position of Commissioner of Education. These interviews will be held in executive session in accordance with the Texas Government Code, §551.074.

Sunday, February 26, 1995: The SBOE will continue to interview candidates for the position of Commissioner of Education. These interviews will be held in executive session in accordance with the Texas Government Code, §551.074. Following the executive session, the board will reconvene in open session to take action and announce the candidate selected to nominate for Commissioner of Education.

Reason for emergency: The agency finds it is of urgent public necessity for the SBOE to hold an emergency meeting on Friday, February 24 to provide adequate time for the SBOE to interview candidates for the position of Commissioner of Education. The current posting for these interviews for February 25-26 anticipated six interviews; however, on February 18, the SBOE selected nine candidates to be interviewed. The two-day meeting originally posted will not allow sufficient time for the SBOE to interview the nine candidates; therefore, it is necessary to begin the interviews on Friday, February 24. The SBOE anticipates submitting the name of a nominee for Commissioner to the governor by February 28, 1995.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: February 21, 1995, 4:29 p.m.

TRD-9502163

Monday, March 6, 1995, 9:30 a.m.

1-104-Texas Education Agency, 1701 North Congress Avenue

Austin

Commissioner's Statewide Committee on Site-Based Decision Making (SBDM)

AGENDA:

Discuss on-going subcommittee work on plans

Presentations on SBDM Research

Update on agency legislative initiatives and training related to SBDM

Contact: Deborah Nance, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9716.

Filed: February 21, 1995, 10:19 a.m.

TRD-9502129

◆ ◆ ◆ Finance Commission of Texas

Friday, March 3, 1995, 9:00 a.m.

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

AGENDA:

I. Call the meeting to order, review and approval of minutes of previous meeting;

II. Discussion and review of Finance Commission matters; discussion of and possibly vote on the hiring of a Consumer Credit Commissioner, update on building repairs;

III. Hear report from the Office of Consumer Credit Commissioner on industry status, departmental operations, discuss legislative activity;

IV. Hear report from the Savings and Loan Department on industry status, departmental operations, discuss and vote to adopt a final rule, 7 TAC §77. 71; discuss legislative activity;

V. Hear report from the Banking Department on industry status, departmental operations, discuss legislative activity; and adjourn;

VI. Reconvene in executive session; and adjourn.

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1300.

Filed: February 21, 1995, 3:00 p.m.

TRD-9502156
◆ ◆ ◆

Texas Commission on Fire Protection

Thursday-Friday, March 2-3, 1995, 9:00 a.m.

12675 North Research

Austin

Fire Protection Personnel Advisory Committee

AGENDA:

Call to order. Discussion and approval of previous minutes. Overview, staff briefing of agenda items. Election of officers. New matters from members and public for future meeting. Report from the Testing Committee. Discussion and possible action concerning memorandum of understanding with Texas Department of Health and Texas Commission on Law Enforcement Officer Standards and Education relating to criminal history checks and reciprocity; on changes to National Fire Academy and college course requirements for higher levels of certification for all disciplines of fire protection personnel; on possible changes to 37 TAC Chapter 435 concerning Fire Fighter Safety; changes to 37 TAC Chapter 439 concerning Examinations; public comments concerning rules pending before the Texas Commission on Fire Protection relating to departments regulated under Government Code, Chapter 419, Subchapter B; and on future meeting dates, agenda items, and locations.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: February 21, 1995, 2:50 p.m.

TRD-9502153

Saturday-Sunday, March 4-5, 1995, 9:00 a.m.

12675 North Research

Austin

Volunteer Fire Fighter Advisory Committee

AGENDA:

Call to order. Discussion and approval of previous minutes. New matter from members and the public. Election of officers. Discussion and possible action on: proposed revisions to the Basic Volunteer Fire Fighter Curriculum; 37 TAC Chapter 471; 37 TAC Chapter 472; 37 TAC Chapter 473; 37 TAC Chapter 475; 37 TAC Chapter 476; 37 TAC Chapter 477; 37 TAC Chapter 478; 37 TAC Chapter 479; 37 TAC Chapter 481; 37 TAC Chapter 483; 37 TAC Chapter 485; 37 TAC Chapter 487; suggestions for increasing communication with volunteer fire fighters about the Commission volunteer certification program; and future meeting dates, times, and agenda items.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: February 21, 1995, 2:50 p.m.

TRD-9502152

◆ ◆ ◆
Texas Department of Health

Friday, March 10, 1995, 9:30 a.m.

Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

Kidney Health Care Advisory Committee

AGENDA:

The committee will meet to discuss and possibly act on: Kidney Health Care budgetary issues (status of fiscal year (FY) 1994 budget; status of 1995 budget; status of FY 1996-1997 budget request; and status of request for emergency funding); division updates (statistical reports; reimbursable drug list); old business (Harris County lawsuit); and new business (rules revisions; and develop guidelines for public comment).

Contact: Manuel Zapata, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7796. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 21, 1995, 4:37 p.m.

TRD-9502158

◆ ◆ ◆
Statewide Health Coordinating Council

Wednesday, March 1, 1995, 9:00 a.m.

Dr. May Owen Conference Room, Tenth Floor, Texas Medical Association, 401 West 15th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of minutes from the January 26, 1995 meeting; legislative priorities (state leadership health priorities for Texas; higher education issues; and guns/violence/gun safety issues); selection of filed legislation to support; Medicaid white paper; and next meeting date and agenda planning.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 21, 1995, 4:37 p.m.

TRD-9502159

Wednesday, March 1, 1995, 3:30 p.m.

Dr. May Owen Conference Room, Tenth Floor, Texas Medical Association, 401 West 15th Street

Austin

Rules Committee

AGENDA:

The committee will discuss and possibly act on: proposed rulemaking for the council; and next meeting date and agenda planning.

Contact: Trish O'Day, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: February 21, 1995, 4:37 p.m.

TRD-9502160

◆ ◆ ◆
Texas Department of Insurance

Wednesday, March 3, 1995, 8:30 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-94-2092.E

Request for appeal hearing by L. S. Mitchell from cancellation of policy by the Texas Workers' Compensation Insurance Fund (continued from February 13, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: February 21, 1995, 2:06 p.m.

TRD-9502143

Friday, March 3, 1995, 10:00 a.m.

333 Guadalupe Street, Room 1264, Tower One

Austin

Texas HMO Solvency Surveillance Committee

AGENDA:

1. Call to order
2. Approval of February 10, 1995 minutes
3. Staff report
4. Review of overall HMO industry
5. Executive session consultation with attorney regarding contemplated litigation, Texas Government Code, §551.071
6. Reconvene to open session
7. Adjourn

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: February 22, 1995, 4:26 p.m.

TRD-9502245

◆ ◆ ◆
Texas State Library and Archives Commission

Thursday, March 9, 1995, 6:00 p.m.

Austin Club, 110 East Ninth Street

Austin

AGENDA:

1. Reception for candidates for position of director and librarian

Contact: William D. Gooch, P.O. Box 12967, Austin, Texas 78711-2927, (512) 463-5460.

Filed: February 23, 1995, 8:39 a.m.

TRD-9502265

Friday, March 10, 1995, 9:00 a.m.

1201 Brazos, Room 314, State Archives and Library Building

Austin

AGENDA:

1. Closed session to interview candidates for director and librarian

Contact: William D. Gooch, Box 12927, Austin, Texas 78711-2927, (512) 463-5460.

Filed: February 23, 1995, 8:39 a.m.

TRD-9502266

Friday, March 10, 1995, 6:30 p.m.

Austin Club, 110 East Ninth Street

Austin

AGENDA:

1. Dinner with candidates for director and librarian

Contact: William D. Gooch, Box 12927, Austin, Texas 78711-2927, (512) 463-5460.

Filed: February 23, 1995, 8:39 a.m.

TRD-9502267

Saturday, March 11, 1995, 9:00 a.m.

1701 North Congress Avenue, William B. Travis Building, Room 1100

Austin

AGENDA:

1. Public question and answer sessions with individual candidates for director and librarian

Contact: William D. Gooch, Box 12927, Austin, Texas 78711-2927, (512) 463-5460.

Filed: February 23, 1995, 8:39 a.m.

TRD-9502268

Saturday, March 11, 1995, 4:00 p.m.

1201 Brazos, Room 314, State Archives
and Library Building

Austin

AGENDA:

1. Approval of minutes of February 17 meeting
2. Closed session to discuss candidates for director and librarian
3. Selection of director and librarian
4. Committee reports

Contact: William D. Gooch, Box 12927,
Austin, Texas 78711-2927, (512) 463-5460.

Filed: February 23, 1995, 8:39 a.m.

TRD-9502269

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**Texas Department of Licens-
ing and Regulation**

Wednesday, March 1, 1995, 9:00 a.m.

920 Colorado, E. O. Thompson Building,
Third Floor

Austin

Inspections and Investigations, Manufactured
Housing

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Louis Kaufhold doing business as Texas Mobile Home Movers for violation of the Texas Civil Statutes, Article 5221f, §§4(b), 7(e)(1), and 7(i), 16 Texas Administrative Code (TAC), §69.121(c) and §69.28(a), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: February 21, 1995, 2:38 p.m.

TRD-9502151

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**Texas State Board of Medi-
cal Examiners**

Thursday, March 2, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Disciplinary Process Review Committee

AGENDA:

1. Call to order
2. Roll call
3. January 1995 enforcement report
4. February 1995 enforcement report
5. Executive session to review selected files, two year old hearing cases, and cases dismissed by informal settlement conferences. Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code, as related to Article 4495b, §§2.07(b), 4.05(d), 5.06(s)(1), and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134,
Austin, Texas 78714-9134, (512) 834-7728,
Ext. 402, Fax: (512) 834-4597.

Filed: February 22, 1995, 4:29 p.m.

TRD-9502248

Thursday, March 2, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Joint Meeting of Reciprocity and Examination Committees

AGENDA:

- call to order
- roll call
- Discussion regarding Federal of State Medical Boards Credentials Survey
- Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code for private consultations between the Board and its attorney with respect to pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 149134,
Austin, Texas 78714-9134, (512) 834-7728,
Ext. 402, Fax: (512) 834-4597.

Filed: February 22, 1995, 4:29 p.m.

TRD-9502249

Thursday, March 2, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Reciprocity Committee

AGENDA:

- Call to order
- Roll call
- Review of December 1994 SPEX statistics
- Review of endorsement applicants to be considered for permanent licensure
- Review of letters from Grenada and the Dominican Republic regarding eligibility to practice in the country of graduation
- Review of licensure applicants referred to the Reciprocity Committee by the executive director for determinations of eligibility for licensure:

1:30 p.m.—Ifor John Wynn Roberts, M.D.,
Laura Langley, M.D., Elmer Lawrence
Treat, M.D., Bruce Morris Weinraub, M.D.

2:30 p.m.—Mark Richard Rose, M.D.,
Nahim Mohammad Pearose, M.D., Albert
P. Fleury, M.D.

Executive session under the authority of the
Open Meetings Act, §551.071 of the Gov-
ernment Code and Article 4495b, §2.07(b)
and 2.09(o), Texas Civil Statutes.

Contact: Pat Wood, P.O. Box 149134,
Austin, Texas 78714-9134, (512) 834-7728,
Ext. 402, Fax: (512) 834-4597.

Filed: February 22, 1995, 4:29 p.m.

TRD-9502246

Thursday, March 2, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Examination Committee

AGENDA:

- 1:00 p.m.
- Call to order
- Roll call
- Review of licensure applicants: Joyce M. Liegel, M.D., Joseph Renteria Luna III, M.D., Myron C. Harrison, M.D.

2:00 p.m.

Review of licensure applicants: James M. Hurly, M.D., John Preston McDaniel, M.D., Myron Lyle Shank, M.D., Radhakrishna Murty Vemulapalli, M.D.

Review of the December 1994 USMLE
Step 3 and Texas Medical Jurisprudence
Examination results

Review of examination applicants complete
for consideration of licensure

Review of current status of USMLE Step 3

Contact: Pat Wood, P.O. Box 149134,
Austin, Texas 78714-9134, (512) 834-7728,
Ext. 402, Fax: (512) 834-4597.

Filed: February 22, 1995, 4:29 p.m.

TRD-9502247

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**Texas Council on Offenders
with Mental Impairments**

Monday, March 6, 1995, 10:00 a.m.

209 West 14th Street, TDCJ-Price Daniels
Building, Fifth Floor Conference Room

Austin

Executive Committee

AGENDA:

- I. Introductions
- II. Public Comments

- III. Approval of minutes
- IV. M.O.U. discussion
 - * TDMHMR, MHMR centers
 - * TDOA, TDHS
 - * TRC, TDHS, TDH, TCB, TCD&HI
- V. Fiscal Year 1995 issues document
- VI. Committee reports
 - * Planning/legislative
 - * Program/Research
 - * Finance
- VII. Council agenda
- VIII. Executive Director report

Adjournment

Each item above includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: February 21, 1995, 4:33 p.m.

TRD-9502165

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Texas Natural Resource Conservation Commission

Thursday, March 2, 1995, 10:00 a.m.

Corpus Christi Convention Center, Bayfront Plaza, Room 225

Corpus Christi

Scientific/Technical Advisory Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

- I. Call to order/introduction/minutes
- II. Program update
- III. Discussion of characterization projects for the fiscal year 1996 draft work plan
- IV. Approval and discussion of draft fiscal year 1996 work plan
- V. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: February 22, 1995, 2:53 p.m.

TRD-9502238

Monday, March 6, 1995, 4:30 p.m.

Citgo Refinery, 1802 Nueces Bay Boulevard, Nueces Bay Building

Corpus Christi

Local Governments Advisory Committee and the Citizens Advisory Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

- I. Call to order/introduction/minutes
- II. Program update
- III. Presentation of fiscal year 1996 work plan development schedule and budget
- IV. Discussion/approval of draft fiscal year 1996 public outreach component
- V. Briefing on interim-final priority problems list
- VI. Briefing on all-conference workshop
- VII. Briefing on proposed revisions to freshwater release interim-order
- VIII. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: February 22, 1995, 2:40 p.m.

TRD-9502237

Thursday, March 23, 1995, 10:00 a.m.

TNRCC, 12124 Park 35 Circle, North IH-35 at Yager Lane, Building A, Room 110

Austin

AGENDA:

On an application by Rexene Corporation to renew Air Quality Permit Number 5611 authorizing the continued operation of a styrene plant. The existing plant is located at 2400 South Grandview, in Odessa, Ector County, Texas.

Contact: Paul Mix, Mail Code 163, P.O. Box 1308, Austin, Texas 78711, (512) 239-1564.

Filed: February 22, 1995, 8:06 a.m.

TRD-9502172

Tuesday, March 28, 1995, 10:00 a.m.

TNRCC, 12124 Park 35 Circle, North IH-35 at Yager Lane, Building A, Room 310A

Austin

AGENDA:

On an application by W. A. McKenzie Asphalt Company to amend Air Quality Permit Number R-207 authorizing the use of additives at their asphalt concrete plant. The plant is located on Highway 224 East, northeast of Greenville in Hunt County, Texas.

Contact: Alex Berksan, P.O. Box 13087, Austin, Texas 78711, (512) 239-1595.

Filed: February 22, 1995, 2:54 p.m.

TRD-9502239

Thursday, March 30, 1995, 10:00 a.m.

TNRCC, 12124 Park 35 Circle, North IH-35 at Yager Lane, Building C, Room 107W

Austin

AGENDA:

On an application by Elk Corporation to amend their existing Air Quality Permit Number 5900 to authorize construction and operation of a second mat products manufacturing line and to increase the allowable emission rates for various compounds. Their plant is located at 202 Cedar Road in Ennis, Ellis County, Texas.

Contact: Matthew Baker, Mail Code 163, P.O. Box 13087, Austin, Texas 78711, (512) 239-1091.

Filed: February 22, 1995, 11:49 a.m.

TRD-9502228

Thursday, April 6, 1995, 10:00 a.m.

Room 131E, Building C, 12124 Park 35 Circle, TNRCC Park 35 Office Complex, West Side of North IH-35

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on Application Number 21-3184A submitted by Enrique S. Palomo and wife, Francis Palomo to amend their Certificate of Adjudication 21-3184A which authorizes: (1) maintenance of an existing dam and exempt reservoir on Spring Creek, tributary of Hondo Creek, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin (2) impoundment therein of 42 acre-feet of water (3) diversion and use of not to exceed ten acre-feet of water per annum from the reservoir to irrigate a maximum of five acres of land located approximately 16 miles west-southwest of Bandera, Texas. Diversion is authorized from the perimeter of the reservoir at a maximum rate of 0.22 cfs (100 gpm). Applicants are requesting an amendment to Certificate Number 21-3184 to: (1) increase the annual diversion amount by 200 acre-feet, from ten acre-feet to 210 acre-feet, (2) increase the diversion rate by 0.85 cfs, from 0.22 cfs to 1.07 cfs (480 gpm), (3) increase the irrigated area to 1050 acres out of a group of tracts totaling 2076.2 acres, and (4) add a second diversion point on the perimeter of an existing, exempt, 64 acre-foot reservoir on Spring Creek about 200 feet downstream from the 42 acre-foot reservoir.

Contact: Bill Ehret, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: February 22, 1995, 9:10 a.m.

TRD-9502210

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Polygraph Examiners Board

Monday, March 6, 1995, 6:30 p.m.

5805 North Lamar Boulevard, DPS Training Building, Classrooms C and D

Austin

AGENDA:

March 6, 1995, 6:30 p.m.—Proposed new rule 391.3(17)(A)(B); approval of TAPE Clinical Polygraph Committee Report.

Contact: Bryan M. Perot, P.O. Box 4087, Austin, Texas 78773, (512) 465-2058.

Filed: February 23, 1995, 8:38 a.m.

TRD-9502263

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Texas Department of Protective and Regulatory Services

Wednesday, March 8, 1995, 10:00 a.m.

701 West 51st Street, Fourth Floor, West Tower, Conference Room 460W

Austin

Adult Protective Services Advisory Committee

AGENDA:

Welcome and review agenda, presentation and adoption of proposed working rules, summary of public hearing testimony on facility rules, lunch (catered) presentation on appropriations and legislative update, work groups meet, work group reports and election of officers, and next steps.

Contact: Mary Chavez, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3213.

Filed: February 21, 1995, 11:56 a.m.

TRD-9502138

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Texas State Board of Examiners of Psychologists

Thursday-Friday, March 23-24, 1995, 8:00 a.m.

9101 Burnet Road, Suite 212

Austin

AGENDA:

The Board will meet to consider public comments; minutes from the last meeting; a presentation from the General Counsel on the Open Meetings Act; the Attorney General Opinion on Hypnotherapy, Biofeedback, Psychotherapy and Hypnosis for Health Care Purposes; legislative/legal matters; policies and procedures; and reports from the chair of the Board, the executive director, and the following committees: Opinion and Tone, Psychological Associate Advisory Committee, Written Examinations, Oral Examination, Personnel, Budget, Evaluation, Newsletter, NAFTA, Continuing Education, Reciprocity, Public Information, Information Technology, Complaint and Enforcement, Rules and Applications. The Board will also consider Agreed Board

Orders for approval, dismissals of allegations for ratification, proposed rules, adopted rules, and a Proposal for Decision on George Wawrykow, Ph.D., issued by the State Office of Administrative Hearings. The Board will hold an executive session to seek legal advice, and the Board will plan for the next meeting.

Contact: Rebecca E. Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: February 22, 1995, 2:39 p.m.

TRD-9502235

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Public Utility Commission of Texas

Thursday, February 23, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Emergency Revised Agenda

Administrative

AGENDA:

In addition to the previously submitted agenda, the Commissioners will discuss in executive session and possibly take action in open meeting regarding Third Court of Appeals Cause Number 3-93-00222-CV, West Texas Utilities and Public Utility Commission v. Office of Public Utility Counsel and City of Abilene.

Reason for Emergency: The Third Court of Appeals issued its opinion and judgment in Cause Number 3-93-00222-CV on February 15, 1995. Prompt Commission discussion and possible action is necessary to meet the March 2, 1995, deadline for filing motion for rehearing in Cause Number 3-93-00222-CV.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 21, 1995, 2:06 p.m.

TRD-9502142

Friday, March 3, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 13520—Petition of Lufkin-Conroe Telephone Exchange, Inc. for authority to recover lost revenues and cost of implementing expanded local calling service between GTE's new Waverly exchange and LCTX's Montgomery, Grangerland, Riverbrook, Conroe, Cut-N-Shoot, Lake Conroe and Walden exchanges.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 21, 1995, 11:39 a.m.

TRD-9502136

Tuesday, April 11, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled in Docket Number 13851—Deep East Texas Electric Cooperative, Inc.'s petition for authority to revise its large power-special schedule LP-S rate.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 21, 1995, 11:40 a.m.

TRD-9502137

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Texas Guaranteed Student Loan Corporation

Thursday, March 2, 1995, 2:00 p.m.

Stouffer Hotel, 9721 Arboretum Boulevard, Room 636

Austin

Executive Committee

AGENDA:

1. Approval of minutes:

Meeting of June 24, 1994

Meeting of September 15, 1994

2. Adjourn to executive session

Interim evaluation of the President

3. Resume regular session

Action, if any, on items arising from executive session

4. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: February 21, 1995, 2:54 p.m.

TRD-9502155

Friday, March 3, 1995, 9:30 a.m.

13809 North Highway 183, Suite 301

Austin

Board of Directors

AGENDA:

1. Approval of minutes of January 6, 1995

2. Chair's report

3. NSLC contract and request for approval
 4. Budget amendment
- Internal Audit Fiscal Year 1995 Plan
Collection Incentive Plan
5. President's report
- Insurance benefits
Legislative updates
Federal
- Texas

6. Adjourn to executive session
- Interim evaluation of the President
Facilities lease discussion
Consultation with attorney on litigation issues
7. Resume regular session
- Action, if any, on items arising from executive session
8. Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: February 21, 1995, 2:54 p.m.

TRD-9502154

Teacher Retirement System of Texas

Friday, March 3, 1995, 1:30 p.m.

1000 Red River, Fifth Floor Board Room
Austin

Retirees Advisory Committee

AGENDA:

Call to order; introduction of guests; approval of minutes of January 27, 1995, meeting; legislative update; status report regarding health insurance for active public school employees; staff recommendations for TRS-Care for 1996 plan year; public comments; consideration of staff recommendations for TRS-Care for 1996 plan year; and administrative remarks.

Contact: Stanford Blake, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6456.

Filed: February 22, 1995, 4:49 p.m.

TRD-9502260

The Texas A&M University System, Board of Regents

Monday, February 27, 1995, 2:00 p.m.

Hirshfeld-Moore House, 814 Lavaca
Austin

System Policies Committee

AGENDA:

Discuss and review existing and proposed bylaws of the Board of Regents, Ethics Policy for members of the board, and policies of the Texas A&M University System. The committee will take any action it deems necessary and appropriate on the bylaws, regents ethics policy and policies of the system.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: February 22, 1995, 8:06 a.m.

TRD-9502171

Monday, February 27, 1995, 3:00 p.m.

Hirshfeld-Moore House, 814 Lavaca

Austin

Board of Regents

AGENDA:

Adoption of revised, amended, and new policies of the Texas A&M University System; adoption of revised bylaws of the Board of Regents; adoption of revised Ethics Policy for the Board of Regents; authorization for the Chancellor to pursue merger with East Texas State University Complex; authorize execution of the surety takeover agreement, award construction contract and appropriate funds to complete the renovation of the Office of Graduate Programs at Prairie View A&M University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: February 22, 1995, 8:06 a.m.

TRD-9502170

Texas Department of Transportation

Wednesday, March 8, 1995, 3:00 p.m.

Hyatt Regency Austin, 208 Barton Springs Road, Hill Country B and C

Austin

Public Transportation Advisory Committee

AGENDA:

Approve minutes. Briefing on Commission meetings. Report on public transportation legislative issues. Briefing on statewide transit study. Report on public transportation management system. Briefing on Division's Public Transportation Strategic Plan and Implementation Plan.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: February 21, 1995, 10:19 a.m.

TRD-9502130

The University of Texas

Thursday, March 2, 1995, 11:30 a.m.

Highway 271 at Highway 155, Room 116

Tyler

Health Center at Tyler Animal Research Committee

AGENDA:

Approval of minutes

Chairman report

Veterinarian report

Old business

New business

Adjournment

Contact: Cindy Pessink, P.O. Box 2003, Tyler, Texas 75710, (903) 877-7012.

Filed: February 23, 1995, 9:23 a.m.

TRD-9502271

Regional Meetings

Meetings Filed February 21, 1995

The Austin Travis County MHMR Center Executive Committee met at 1430 Collier Street, Executive Conference Room, Austin, February 23, 1995, at 4:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9502108.

The Central Plains Center for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, February 23, 1995, at 6:00 p.m. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9502148.

The Central Texas Council of Governments Executive Committee will meet at 302 East Central, Belton, February 28, 1995, at 11:00 a.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9502157.

The Concho Valley Quality Work Force Planning will meet at 5014 Knickerbocker Road, San Angelo, March 1, 1995, at 4:00 p.m. Information may be obtained from Catherine Cordova, P.O. Box 61276, San Angelo, Texas 76906, (915) 944-9666. TRD-9502131.

The Lubbock Regional MHMR Center Board of Trustees-Program Committee met

at 1602 Tenth Street-Board Room, Lubbock, February 22, 1995, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9502149.

The Lubbock Regional MHMR Center Board of Trustees-Resource Committee met at 1602 Tenth Street-Board Room, Lubbock, February 23, 1995, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9502150.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center of the Convention Center Complex, San Antonio, February 27, 1995, at 1:30 p.m. Information may be obtained from Janet A. Kennison, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9502135.

The Southwest Milam Water Supply Corporation Board met at 114 East Cameron, Rockdale, February 27, 1995, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9502141.

The Upper Leon River Municipal Water District (Emergency Meeting.) Board of Directors met at the General Office located off of FM 2861, Lake Proctor Dam, Comanche, February 23, 1995, at 6:30 p.m. (Reason for Emergency: President's day holiday was February 20th and did not get agenda filed prior to that date which allowed less than required 72 hours. Information may be obtained from Gary D. Lacy, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258. TRD-9502147.

The West Central Texas Council of Governments Private Industry Council will meet at 1025 East North Tenth Street, Abilene, March 2, 1995, at 10:00 a.m. Information may be obtained from Mary Ross, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9502132.

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**Meetings Filed February 22,
1995**

The Brazos Valley Quality Work Force Planning will meet at 715 University Drive, College Station, February 28, 1995, at 11:30 a.m. Information may be obtained from Patty Groff, 301 Post Office Street, Bryan, Texas 77801-2142, (409) 821-2505. TRD-9502234.

The East Texas Council of Governments JIPA Board of Directors will meet at the Roy H. Laird Country Club, 1306 Houston Street, Kilgore, March 2, 1995, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9502207.

The Golden Crescent Private Industry Council (Revised Agenda.) met at 2401 Houston Highway, Victoria, February 22, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9502227.

The Leon County Central Appraisal District Board of Directors met at 103 North Commerce, Corner of Highways 7 and 75, Leon County Central Appraisal District Office, Centerville, February 27, 1995, at 7:30 p.m. Information may be obtained from

Larry Buchanan, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD-9502242.

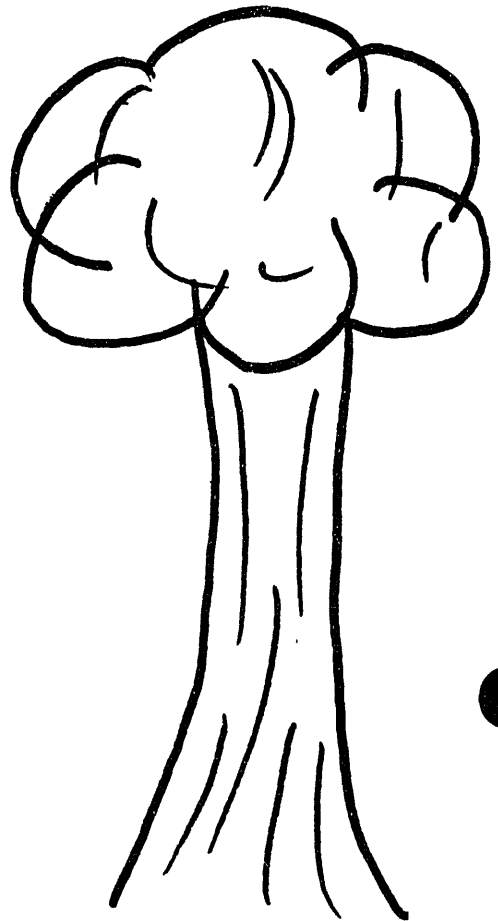
The Lower Colorado River Authority General Manager Contract Review Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, February 27, 1995, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9502244.

The Lubbock Regional MHMR Center Board of Trustees met at 1602 Tenth Street, Board Room, Lubbock, February 27, 1995, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9502231.

◆ ◆ ◆
**Meetings Filed February 23,
1995**

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Second Floor, Community Room, Dallas, March 1, 1995, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9502264.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee met at the International Conference Center, Convention Center Complex, San Antonio, February 27, 1995, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9502272.



Name: Jessica Munoz
Grade: 12
School: Harlandale High School, Harlandale ISD



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.

Office of the Attorney General Notice of Selection-Contract Award

In accordance with Texas Civil Statute, Texas Government Code, §2254.030, the Office of the Attorney General (OAG) files this report announcing the award of a contract for professional services to Advanced Risk Management Techniques Inc., 23701 Birtcher Drive, Lake Forest, California, 92630-1783.

The Request for Proposal was published in the November 15, 1994, issue of the *Texas Register* (19 TexReg 9043). Advanced Risk Management Techniques Inc., is to perform an Actuarial Analysis of the State of Texas' self-insured workers' compensation program, as of August 31, 1994, so as to assist the OAG in determining prospective funding recommendations for future fiscal periods and provide recommendations to the OAG for implementing case reserves for workers' compensation claims in compliance with Governmental Accounting Standards Board (GASB) Statement Number 10.

The contract is for an amount not to exceed \$35,000. The beginning date of the contract is February 13, 1995, and the ending date is August 31, 1995. The due date for the contracted vendor's report is August 31, 1995.

For further information, please contact Alvin Miller, Director of the Workers' Compensation Division, at (512) 475-1440.

Issued in Austin, Texas, on February 16, 1995.

TRD-9502037

Jerry Benedict
Assistant Attorney General
Office of the Attorney General

Filed: February 17, 1995

Texas Department of Commerce Request for Information to Operate State- Wide Title III Rapid Response Services

In accordance with the Job Training Partnership Act (JTPA), Public Law 97-300 as amended August 6, 1992, the Texas Department of Commerce (Commerce) announces a revision of the Request for Information (RFI) to operate State-wide Title III Rapid Response Services on behalf of the State. Commerce is soliciting proposals to provide an array of services as a part of a state-wide system for Rapid Response services under the JTPA Title III program. The Dislocated Worker Training and Employment Program is authorized under Title III of the JTPA as

amended by the Omnibus Trade and Competitiveness Act of 1988.

This is an open-ended procurement process to solicit proposals of interest and ability to provide an array of services as part of a state-wide partnership system for Rapid Response as defined in the act as amended, in §314(b). Due to the nature of Rapid Response, procurement of potential service providers must be accomplished in advance of actual layoffs in order to activate contracts and implement service provision within the necessary time constraints.

Detailed information regarding the project format is set forth in the Request for Information instructions which will be available on or about February 28, 1995, at the following location: Texas Department of Commerce, Work Force Development Division, 211 East Seventh Street, Suite 1000, P.O. Box 12728, Austin, Texas 78711.

The deadline for receipt of proposals to be considered during this evaluation period will be Monday, March 27, 1995. Responses received after this deadline will be retained and reviewed for consideration during the next review process in the fall of 1995. A Proposers' Conference will be held on Friday, March 10, 1995 beginning at 10:00 a.m., at the following location: Texas Department of Commerce 211 East Seventh Street, Southwest Tower Building, First Floor Conference Room, Austin, Texas 78701.

All interested parties are invited to attend. Persons with disabilities who plan to attend this conference and who may need auxiliary aids or services should contact Bill Norrid at (512) 936-0366 or TDD: (512) 936-0555, at least two days before the conference so that appropriate arrangements can be made.

Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior performance with criteria. This RFP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserves the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas.

The Texas Department of Commerce is an equal opportunity employer/program. Auxiliary aids and services will be made available to individuals with disabilities if requested.

For further information regarding this notice or to obtain copies of the RFI instructions, please contact by mail or fax a request to: Bill Norrid, Texas Department of Commerce, Work Force Development Division, 211 East Seventh Street, Suite 1000, P.O. Box 12728, Austin, Texas 78711, Fax: (512) 936-0313, TDD: (512) 936-0555.

Issued in Austin, Texas, on February 21, 1995.

TRD-9502209 Deborah C. Kastrin
Executive Director
Texas Department of Commerce

Filed: February 22, 1995

◆ ◆ ◆
Texas Feed and Fertilizer Control Service
Correction of Error

The Feed and Fertilizer Control Service adopted amendments to §61.21, and §61.22, concerning labeling of commercial feed. The rules appeared in the February 14, 1995, issue of the *Texas Register* (20 TexReg 1013).

Due to submission the following errors existed.

On page 1015 in §61.22(4)(E)(v), "A mineral guarantee is not required;" should read "A mineral guarantee is not required:" change from a semi-colon to a colon.

On page 1015 in §61.22(4)(E)(v)(l), the decimal is unclear as it falls in the sentence. It should read "and contains not more than 6.5% total minerals...".

On page 1016 in §61.22(4)(E)(vi)(II)(-h-), a semi-colon is typed after the word "be" which should not be there. Also, on the same page in (III)(-a-) (-8-), a semi-colon is typed after the word "be" which should not be there.

On page 1017 in §61.22(8)(A) it reads "Net weight must be expressed both in English and in SI units." The statement should end in a colon, not a period. It should read "Net weight must be expressed both in English and in SI units: ".

At the end of §61.22(page1018) and also at the end of §63.9(page 1019), the area code is incorrect on the telephone number to call for further information. It should be (409) 845-1121.

◆ ◆ ◆
Finance Commission of Texas
Correction of Error

The Finance Commission of Texas submitted an open meeting, which appeared in the February 17, 1995, issue of the *Texas Register* (20 TexReg 1195).

Due to publication error the address was incorrect, it should read "Finance Commission Building, 2601 North Lamar Boulevard, Third Floor".

Texas Department of Health
Correction of Error

The Texas Department of Health adopted new §§1.221-1.227. The rules appeared in the July 5, 1994, issue of the *Texas Register* (19 TexReg 5169).

The definition for "private organization" was adopted with changes, however, it was not published in the *Texas Register*. The adopted definition should read: "Private organization—A private organization which exists to further the purposes and duties of the Texas Department of Health."

◆ ◆ ◆
Texas Department of Insurance
Amendment to the Plan of Operation for the Texas Workers' Compensation Insurance Fund

The Commissioner of Insurance, or his designee, will consider approval of a filing made by the Texas Workers' Compensation Insurance Fund ("Fund") pursuant to Texas Insurance Code, Article 5.76-3, Section 5 pertaining to the Plan of Operation for the Texas Workers' Compensation Insurance Fund. The amendment proposed to the Plan of Operation deals with the Fund's treatment of accounts which are represented by an insurance agent.

A copy of the filing is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request a copy of the filing, please contact Angie Arizpe (512) 322-4147, (refer to reference number W-0295-4).

This filing is subject to Department approval without a hearing unless an objection is filed with Nancy Moore, Deputy Commissioner Workers' Compensation, Texas Department of Insurance, Mail Code 202-1A, P.O. Box 149092, Austin, Texas 78714-9092 within 20 days after publication of this notice.

Issued in Austin, Texas on February 21, 1995.

TRD-9502125 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: February 21, 1995

◆ ◆ ◆
Texas Department of Mental Health and Mental Retardation
Request for Proposals

The Texas Department of Mental Health and Mental Retardation (TDMHMR) is requesting proposals to design and operate an innovative pilot program incorporating the principles of person-centered support to provide community based services for up to three individuals currently residing at facilities operated by Richmond State School. Person-centered approaches to supporting individuals who present challenging behavior represent a shift from program based models that rely solely on medical or behav-

ioral technology. The pilot program will be located in the Galveston area. Proposals must include a comprehensive package of residential services and supports using person-centered values and positive behavioral strategies to include: twenty-four hour on-site supervision, necessary habilitation, vocational training, and treatment. Proposals will be evaluated using those principles as guides.

To receive a copy of the Request for Proposal (RFP) packet or to request additional information, contact Robert E. Welsh, Coordinator of Special Services, TDMHMR, P.O. Box 12668, Austin, Texas 78711-2668, (512) 206-4661.

A preproposal conference will be conducted at 10:00 a.m., Monday, March 6, 1995, in Ballroom B of the Hobby Airport Hilton, 8181 Airport Boulevard Houston, Texas (713) 645-3000. Attendance at the conference is not mandatory in order to bid on the project.

Submission of Proposal:

Six copies of all proposal documents shall be sealed and submitted as offerer's response no later than 9:30 a.m. on March 20, 1995 to:

Texas Department of Mental Health and Mental Retardation in care of Richmond State School 2100 Preston Richmond, Texas 77469-1419, ATTENTION: ROBERT E. WELSH, COORDINATOR OF SPECIAL SERVICES

Proposals received after the stated deadline will be rejected and returned to bidder unopened. Bidder selects means of responding to Request for Proposal (RFP) and as such, bears sole responsibility for receipt by the Coordinator of Special Services of proposal by previously mentioned deadline.

Bids will be opened and recorded at 10:00 a.m., March 20, 1995 in the Richmond State School, 2100 Preston, Richmond, Texas.

TDMHMR reserves the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interests of the consumers.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502226 Ann K. Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and
Mental Retardation

Filed: February 22, 1995

Texas Natural Resource Conservation Commission

Applications for Permits to Appropriate Public Waters of the State of Texas

HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 189 for a minor amendment to Permit Number 12237-01 to authorize a decrease in the discharge of treated domestic wastewater effluent from a final volume not to exceed an average flow of 3,600,000 gallons per day to a final volume not to exceed an average flow of 810,000 gallons per day. The proposed amendment will enforce more stringent requirements as needed, in order to meet existing applicable rules and regulations. The wastewater treatment plant is approximately 1,300 feet north of the point where Kuykendahl Road crosses Harris County

Flood Control ditch and approximately 2,400 feet north-northwest of the intersection of Kuykendahl Road and Ella Boulevard in Harris County, Texas.

CITY OF CARRIZO SPRINGS, for a minor amendment to Permit Number 10145-01 to authorize a decrease in the discharge of treated domestic wastewater effluent from an interim and final volume not to exceed an average flow of 2,500,000 gallons per day to a final volume not to exceed an average flow of 990,000 gallons per day. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment plant is 0.5 mile northeast of the intersection of U.S. Highway 83 and State Highway 85 in the City of Carrizo Springs in Dimmit County, Texas.

Approval of City of Temple to Transfer Water CCN Number 10047 from Taylors Valley Water Supply Corporation; Amend Water CCN Number 11435; Cancel Water CCN Number 10047 in Bell County, Texas. (Application Number 30668-S, Albert Holck)

Approval of Bexar Metropolitan Water District to Transfer Water CCN Number 11392 from Chaparral Water Utility Company, Inc.; Amend Water CCN Number 10675; and Cancel Water CCN Number 11392 in Bexar County, Texas. (Application Number 30667-S, Guillermo Zevallos)

Approval of Hill Country Water Supply Corporation to Amend Water CCN Number 12485 in Hays County, Texas. (Application Number 30663-C, Albert Holck)

Issued in Austin, Texas, on February 17, 1995.

TRD-9502084 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: February 17, 1995

Applications for Waste Disposal Permits

Notices of Applications for waste disposal permits issued during the period of February 13th to February 17, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If

no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

GENE BRADLEY, the cattle feedlot; is on the east side of FM Road 1055 approximately four and one half miles south of the intersection of FM Road 1055 and State Highway 86 and four miles southwest of the City of Dimmitt in Castro County, Texas; new; 03778.

CITY OF BAYTOWN; the Central Wastewater Treatment Facilities; the wastewater treatment facilities are at 1709 West Main Street in Harris County, Texas; renewal; 10395-02.

CITY OF COLORADO CITY; Colorado City Wastewater Treatment Plant; the interim I treatment facility is at 700 East Central Avenue, two blocks east of State Highway 163 at the intersection of East Central Avenue and Washington Street in Mitchell County, Texas. The effluent in the interim I phase is discharged via pipeline to the Colorado River Below Lake J. B. Thomas in Segment Number 1412 of the Colorado River Basin; the interim II and final phase wastewater treatment facilities and irrigation sites are approximately 1.6 miles south-southeast of the Interim I facilities and 1.7 miles east of the intersection of State Highway 163 and FM Road 1229 in Mitchell County, Texas. The plant site holding ponds and irrigation area are located in the drainage area of the Colorado River below Lake J. B. Thomas in Segment Number 1412 of the Colorado River Basin; amendment; 10077-01.

FOUR E DAIRY, INC.; the dairy; is on the north side of County Road 251, approximately one mile east of the intersection of the county road and FM Road 1295, in Lavaca County, Texas; new; 03771.

CITY OF DRISCOLL; the wastewater treatment facilities; are northeast of Driscoll, approximately 2,400 feet northeast of the intersection of FM Road 665 and U.S. Highway 77, approximately 2,600 feet southeast of the U.S. Highway 77 crossing of Petronilla Creek in Nueces County, Texas; renewal; 11541-01.

CITY OF FLORESVILLE; the wastewater treatment plant; is at the intersection of Standish Street and Goliad Street in the City of Floresville in Wilson County, Texas; renewal; 10085-01.

CITY OF PALESTINE; the Town Creek Wastewater Treatment Facilities; are approximately four miles southwest of the intersection of State Highway 256 and U.S. Highway 84-79 at the confluence of Basset Creek and Town Creek, southwest of the City of Palestine in Anderson County, Texas; amendment; 10244-01.

ROBERT E. PINE; the wastewater treatment facility and subsurface disposal site are approximately 2.8 miles north of the Intersection of State Highway 6 and County Road

48 and 0.3 miles south of the American Canal on County Road 48 in Brazoria County, Texas; new; 13735-01.

CITY OF PINELAND; the wastewater treatment facilities; are at the intersection of Thomas Street and Transmission Boulevard in the City of Pineland approximately 1.25 miles southeast of the intersection of U.S. Highway 96 and FM Road 83 in Sabine County, Texas; renewal; 10249-01.

CITY OF PORT LAVACA; the Biardone Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 0.25 mile northwest of the State Highway 238 crossing of Little Chocolate Bayou in Calhoun County, Texas; renewal; 10251-02.

SAN ANTONIO WATER SYSTEM; the Leon Creek Wastewater Treatment Facilities; are approximately one mile west of the intersection of Mauermann Road and Pleasanton Road in Bexar County, Texas; amendment; 10137-03.

SAN ANTONIO WATER SYSTEM; the Dos Rios Wastewater Treatment Facilities; are on Valley Road near the confluence of the San Antonio and Medina Rivers, approximately one mile west of Interstate 37 and 2 1/4 miles east of FM Road 1937 in Bexar County, Texas; amendment; 10137-33.

U.S. ARMY CORPS OF ENGINEERS; the Brockdale Park Wastewater Treatment Facilities; the plant site is approximately 2.3 miles northeast of the intersection of FM Road 1378 and FM Road 2514 on the west side of Lavon Lake in Brockdale Park in the City of Wylie, Collin County, Texas; new; 12050-01.

U.S. ARMY CORPS OF ENGINEERS; the Pebble Beach Park Wastewater Treatment Facilities; the wastewater treatment facilities are in Pebble Beach Park, on the east side of Lake Lavon, at a point approximately 1.9 miles west of the intersection of State Highway 78 and FM Road 1778 in Collin County, Texas; renewal; 12058-01.

UNITED STATES DEPARTMENT OF THE ARMY; a vehicle and aircraft washrack at West Fort Hood; the plant site is within the boundaries of Fort Hood, Bell County, Texas; renewal; 02230.

WARM SPRINGS REHABILITATION FOUNDATION, INC.; the Gonzales Warm Springs Rehabilitation Hospital Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 1,000 feet south of the intersection of FM Road 1586 and FM Road 2091, at a point 2.0 miles west of U.S. Highway 183 in Gonzales County, Texas; renewal; 10943-01.

LLOYD WOLF, SR.; the dairy; is southwest of Windthorst on the west side of Wolf Road, approximately one and a half miles south of the intersection of the county road and FM Road 2581. This intersection is approximately one and a half miles west of the intersection of FM Road 2581 and U.S. Highway 281, in Archer County, Texas; new; 03757.

PPG INDUSTRIES, INC.; operation of an existing container storage area for the storage of industrial and hazardous waste; the applicant has also applied for a Class 3 Modification to authorize removal of the container storage area for one 20-cubic yard roll-off bin from the permit; the wastes managed at this facility are generally described as ignitable, acutely hazardous, and toxic and are generated on-site from the manufacture of phosgene, chloroformates, and organic carbonates; the facility is located at 1901 Avenue H and 16th Street on a 34-acre tract of land

approximately 1/4 mile west of State Highway 146 in La Porte, Harris County, Texas; renewal; HW-50009; 60-day notice.

RED RIVER ARMY DEPOT; an industrial solid waste storage and processing facility for the management of Class I hazardous waste; the facility manages hazardous wastes which are classified as ignitable, toxic, corrosive, acutely hazardous, toxicity characteristic, and reactive; the wastes are generated on-site from military maintenance and supply operations; the facility is located on a 14,000-acre tract of land, a quarter mile south of exit #206 on U. S. Interstate Highway 30 near Hooks, approximately 18 miles west of Texarkana, Bowie County, Texas; amendment; HW-50178; 45-day notice.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502085 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: February 17, 1995

Notice of Contested Case Hearing

Pursuant to the provisions of 30 TAC §116.412, notice is hereby given that an Examiner for the Texas Natural Resource Conservation (TNRCC) will conduct a public hearing to consider whether the Executive Director's Emergency Executive Order to authorize the repair of a ruptured gas pipeline and the loading of coker naphtha at the company's marine dock at the facility located at 12000 Lawndale, Houston, Harris County, Texas facility of LYONDELL-CITGO REFINING COMPANY LTD. should be affirmed, modified or denied and set aside.

The public hearing in the Emergency order is scheduled for Thursday, March 9, 1995 at the TNRCC Park 35 Office Complex in Room 315H of Building A at 9:00. This hearing has been continued to Friday, March 17, 1995 in Room 315H in Building A, 12124 Park 35 Circle, Austin, Texas.

Issued in Austin, Texas, on February 22, 1995.

TRD-9502208 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: February 22, 1995

Notice of Opportunity to Comment on Permitting Action

Application for Permits to Appropriate Public Waters of the State

Notices of application for permits to appropriate Public Waters of the State of Texas issued during the period of January 30, 1995 through February 15, 1995:

CITY OF YORKTOWN; Application Number 5294A to amend Water Use Permit Number 5294 pursuant to §11.122, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq. Permit currently authorizes applicant to divert not to exceed 15 acre-feet of water per annum from an existing exempt reservoir on Yorktown Creek, Guadalupe River Basin, into a proposed off-channel reservoir to maintain said reservoir for in-place recreational purposes

and to consumptively use two acre-feet in maintaining this reservoir. All other water not consumed is to be returned to Yorktown Creek. Applicant seeks to amend permit by deleting off-channel reservoir, diversion and return flow portions of the permit in lieu of authorization to construct and maintain an on-channel 2.44 acre-foot capacity reservoir on Yorktown Creek, tributary of Fifteen Mile Creek, tributary of Coleta Creek, tributary of the Guadalupe River, Guadalupe River Basin in DeWitt County, Texas for in-place recreational use. Said reservoir is immediately downstream of the existing on-channel reservoir authorized under the permit. Reservoir will have a surface area of 0.49 acres and a capacity of 2.44 acre-feet at an elevation of 255.7 feet above mean sea level.

TEXAS UTILITIES MINING COMPANY; Application Number 5510 for a permit pursuant to Texas Water Code, §11.121, and TNRCC Rules 30 TAC §§295.1, et seq to construct and maintain a dam creating a reservoir (Pond L-1) on an unnamed tributary of Piney Creek, tributary of White Oak Creek, tributary of the Sulphur River, Sulphur River Basin. Dam and reservoir would be used for sediment control purposes at the applicant's Monticello B-2 Area Mine in Titus County, approximately 4 miles northwest of Mount Pleasant, Texas. No diversions or withdrawals of the impounded surface waters is requested. Reservoir will have a surface area of 10.3 acres and a capacity of 172 acre-feet at the principal spillway elevation of 375 feet above mean sea level. Pond L-1 was previously authorized under Permit Number 5285 issued on July 18, 1990. Permit Number 5285 authorized construction of two impoundments, Ponds L-1 and J-2, within Sulphur River Basin portion of Monticello B-2 Area Mine. Due to changes in their surface water control plans within the mining area, design configuration, size, and location of Pond L-1 have been modified in comparison with the original design approved in 1990. Pond L-1 was not built within the time frame stipulated in Permit Number 5285, and authorization to do so under Permit Number 5285 has expired.

WALNUT CREEK MINING COMPANY; Application Number 5512 for a permit pursuant to Texas Water Code, §11.121, and TNRCC Rules 30 TAC §§295.1, et seq to construct and maintain a dam creating a reservoir (Pond SPC-27) on an unnamed tributary of Walnut Creek, tributary of the Little Brazos River, tributary of the Brazos River, Brazos River Basin. Reservoir will be located approximately ten miles northwest of Franklin, Texas in Robertson County, and will be used for sediment control at the applicant's Calvert Lignite Mine. Reservoir will have a surface area of 18.3 acres and a capacity of 94.3 acre-feet at a normal operating elevation (sediment pool elevation) of 329.0 feet above mean sea level.

ROBERT A. MEZGER and wife, FRANCIS F. MEZGER; Application Number 12-2281B to amend Certificate of Adjudication Number 12-2281, as amended, pursuant to Texas Water Code, §11.122, and TNRCC Rules 30 TAC §§295.1, et seq. Certificate of Adjudication Number 12-2281 authorized diversion and use of seven acre-feet of water per annum from North Bosque River, Brazos River Basin, to irrigate 20 acres of land in Bosque County, Texas; diversion rate 1.34 cfs (600 gpm); priority of owner's right, April 30, 1960. Certificate amended once to increase: annual appropriation to 218 acre-feet of water, number of acres of land which are authorized for irrigation to 87.5 acres, and maximum diversion rate to 2.67 cfs. Amendment also included special conditions: owners authorized diversion of water only when flow of North

Bosque River equals or exceeds 3.5 cfs (1570 gpm) at reference device installed immediately below authorized diversion point, the amended portion of certificate shall expire and become null and void on December 31, 1994 unless owners apply for and subsequently granted extension for another term or in perpetuity (original certificate authorizations were not affected by the term of amendment), and priority date is October 1, 1984 on additional water rights granted by amendment (priority date remained April 30, 1960 for original certificate authorizations). Applicants are now seeking to amend Certificate of Adjudication Number 12-2281, as amended, by: deleting flow restriction associated with first amendment; by deleting term associated with first amendment, and authorizing first amendment in perpetuity.

UNITED STATES DEPARTMENT OF INTERIOR, Bureau of Reclamation; Application Number 5509 for a permit pursuant to Texas Water Code, §11.121, and TNRCC Rules 30 TAC §§295.1, et seq in the Nueces River Basin and the San Antonio-Nueces Coastal Basin, San Patricio County, Texas. The Bureau of Reclamation (Bureau) has proposed the Rincon Bayou-Nueces Wetlands Restoration and Enhancement Project to demonstrate the benefits of introducing periodic freshwater inflows into a coastal estuary by means of a wetland marsh system. The Bureau's application seeks authorization to redirect occasional flood flows which occur above elevation two feet mean sea level (msl) in the Nueces River to enhance wetland areas (on a more frequent basis) in the Rincon Bayou Watershed. This is to be accomplished by lowering (notching) an 80 foot section of the bank of the Nueces River to redirect flood flows. Normal bank elevation in this vicinity is approximately (varies) elevation 7 feet msl. The bottom of the notch will be at elevation 2 feet msl. Applicant also seeks authorization for construction of two overflow channels so that flood water will be redirected and its distribution enhanced. Flood water from the Nueces River will flow into the Nueces River overflow channel then into Rincon Bayou. Flood flows directed into Rincon Bayou will then be distributed further into wetland areas by the Rincon Bayou overflow channel. The incision (notch) in the bank of the Nueces River will engage when flow in the river is greater than (>) 10 cfs. Flood flows above 10 cfs will be redirected and transferred from the Nueces River Basin to the San Antonio-Nueces Coastal Basin via this method.

TAYLOR GOLF COURSE, INC.; Application Number 5515 for a permit pursuant to Texas Water Code, §11.121, and TNRCC Rules 30 TAC §§295.1, et seq to divert and use 50 acre-feet of water per annum from Mustang Creek, tributary of Brushy Creek, tributary of the San Gabriel River, tributary of the Brazos River, Brazos River Basin, to be pumped into 3 off-channel reservoirs for subsequent irrigation of a golf course. The reservoirs will be called A, B, and C as they lay from north to south, respectively. The total surface area of the three reservoirs is 0.93 acre and the total capacity is 7.44 acre-feet. All three reservoirs are located in the Parthina Coursey Survey, Abstract 131. The reservoirs will be connected hydrologically and will be operated as a system. The water will be piped from the stream into one or all of the three reservoirs as needed for maintenance of the reservoirs. Diversion from the reservoirs will occur as needed to irrigate 40 acres of land (golf course) located within the city limits of Taylor and approximately 18 miles east of Georgetown, in Williamson County, Texas.

HIDE-A-WAY LAKE CLUB, INC.; Application Number 05-4724A to amend Certificate of Adjudication Number 05-4724 pursuant to Texas Water Code, §11.122, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, et seq. The certificate currently authorizes applicant to: maintain on Hubbard Branch, tributary of Duck Creek, tributary of Old Sabine River Channel, tributary of Sabine River, Sabine River Basin, an existing dam and reservoir (Number 1) and impound therein not to exceed 1,715 acre-feet of water, and an existing dam and reservoir (Number 2) and impound therein not to exceed 1,101 acre-feet of water, and to divert and use not to exceed 180 acre-feet of water per annum from Reservoir Number 1 to irrigate a maximum of 60 acres of land in Smith County, Texas, with diversion from the perimeter of the reservoir at a maximum rate of 133.cfs (600 gpm), and to use the water impounded in the reservoirs for recreational purposes. Applicant seeks to divert an additional 179.42 acre-feet of water per annum from Reservoir Number 1, consisting of: 169.88 acre-feet for irrigation of 57.5 acres of new golf course in the Stephen Coleman Survey, Abstract Number 217, Smith County, Texas, and 9.54 acre-feet for irrigation of a 4.17-acre practice range in the J. J. Smith Survey, Abstract 883, Smith County, Texas; and increase the maximum diversion rate from Reservoir Number 1 from 1.33 cfs (600 gpm) to 1.56 cfs (700 gpm). Part of the new golf course extends across the divide from the Sabine River Basin into the Neches River Basin.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address and daytime phone number; the application number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests or requests for hearing are filed, the Executive Director will approve the application 30 days after newspaper publication of the notice of application, or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Office of the Chief Clerk-Mail Code 105, no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, or by mail to the following address: Office of the Chief Clerk-Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502083

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: February 17, 1995

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**Provisionally-Issued Temporary Permits
to Appropriate State Water**

The following permits listed were issued during the period of February 13-17, 1995

Application Number TA-7393 by J. H. STRAIN and SONS, INC. for diversion of five acre-feet of water in a six-month period for industrial use. Water may be diverted from the IH 20 crossing of Mexia Creek, approximately five miles east of Baird, Callahan County, Texas, Brazos River Basin.

Application Number TA-7394 by VALERO TRANSMISSION, L.P. for diversion of 1 acre-foot of water in a one-year period for industrial use (hydrostatic test water). Water may be diverted via a pipeline easement, approximately 20 miles north of Houston, Harris County, Texas, San Jacinto River Basin.

Application Number TA-7395 by BALLENGER CONSTRUCTION COMPANY for diversion of one acre-foot of water in a one-year period for industrial use (highway construction). Water may be diverted from the drainage ditch at SH 100, approximately ten miles northeast of Brownsville, Cameron County, Texas, Nueces-Rio Grande Basin.

Application Number TA-7396 by JAMES H. HEIN for diversion of ten acre-feet of water in a one-year period for mining use (gas wells). Water may be diverted approximately 21 miles east of Highway Number 83 and Mangana Hein Road located approximately 27 east southeast of Laredo, Webb County, Texas, Rio Grande Basin.

Application Number TA-7397 by MITCHELL ENERGY CORPORATION for diversion of two acre-feet of water in a one-year period for mining use (oil and gas well drilling). Water may be diverted from the stream crossing at FM 1438, approximately 15 miles southwest of Denton, Denton County, Texas, Trinity River Basin.

Provisionally-Issued Temporary permits to appropriate state water are issued for a period of not more than one year and authorize the use of not more than ten acre-feet of water. 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 previously listed 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 cancelled without notice and hearing. No further diversions may be made pending a full

hearing as provided in 30 TAC §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (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, (512) 239-3300.

Issued in Austin, Texas, on February 17, 1995.

TRD-9502082

Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation
Commission

Filed: February 17, 1995

◆ ◆ ◆
Public Notice

The Texas Natural Resource Conservation Commission (TNRCC) Evaluation of Visibility Trends in Big Bend and Guadalupe Mountains National Parks: Availability of Documents for Public Review.

The Federal Clean Air Act of 1977 required states to implement visibility plans at national parks having over 2,500 acres. The United States Environmental Protection Agency (EPA) published regulations and guidance in 1980, and the former Texas Air Control Board published a visibility State Implementation Plan (SIP) in 1987 for two national parks in Texas. One of the main provisions of the SIP is for Texas to evaluate air quality visibility every three years.

Big Bend and Guadalupe Mountains National Parks are the two affected areas in the State of Texas. The requirements are to inform the public and the EPA of any new industrial air emissions within and surrounding the park boundaries. The Texas Natural Resource Conservation Commission (TNRCC) has consulted with the appropriate federal lands manager, the National Park Service (NPS), and has prepared documents for distribution to the public. For further information or to receive copies of the reports please contact Sam Wells at (512) 239-1441.

Today's action does not require any official testimony or public hearings. The TNRCC does not have any air-permitted facilities within 100 kilometers of the two national parks, so no regulatory actions are proposed. However, the TNRCC is working with the NPS to identify why regional haze has become more prevalent during the last ten years. The distinction between industrial source impairment and regional haze is important because the Federal Clean Air Act does not require control measures for long-range haze transport.

The information package will contain a list of the federal requirements, a TNRCC letter sent to the NPS, a letter of response from NPS's Denver office, a formal letter to the EPA regarding the three-year grant objectives, and a mailing questionnaire in the case that future study documents are desired, since the NPS has not finalized its regional haze study at this point in time. If substantial comments are received from the public, staff will forward the responses to Dan Pearson, Executive Director of the TNRCC, for further consideration, responses, and action.

Issued in Austin, Texas, on February 21, 1995.

TRD-9502161

Kevin McCalla
Acting Director, Legal Division
Texas Natural Resource Conservation
Commission

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Public Utility Commission of Texas
Notice 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 Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract for Billing and Collection Services.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of Customer-Specific Contract for Billing and Collection Services with Hellyer Communications, Inc. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Number 13948.

The Application. Southwestern Bell Telephone Company is requesting approval of Customer-Specific Contract for Billing and Collection Services with Hellyer Communications, Inc. The geographic service market for this specific service is anywhere within the state of Texas where Hellyer Communications, Inc. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 21, 1995.

TRD-9502213 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: February 22, 1995

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Railroad Commission of Texas
Correction of Error

The Railroad Commission of Texas proposed new §§5.102-5.123, 5.125-5.147. The rules appeared in the February 7, 1995, issue of the *Texas Register* (20 TexReg 816).

Due to submission the following error was published.

Section 131(b)-(20 TexReg 824) In the last sentence, reference is made to §5.145 of this title (relating to Records). This should be §5.142.

The Railroad Commission of Texas proposed new §§5.201-5.246. The rules appeared in the February 7, 1995, issue of the *Texas Register* (20 TexReg 833).

Due to submission the following errors were published.

Section 5.221(b)-(20 TexReg 841) In the last sentence, reference is made to §5.242 of this title (relating to Maintenance, Preservation, and Destruction of Records). It should read §5.241(b) of this title (relating to Records Required).

Section 5.234(c)(3)(B)-(20 TexReg 846) The last line makes reference to paragraph (2)(B) of this section. It should refer to paragraph (2)(B) of this subsection.

Section 5.246(c)(3)-(20 TexReg 849) In the last sentence it states, "pursuant to this subparagraph," but should be "pursuant to this paragraph."

Section 5.246(c)(5)-(20 TexReg 850) Reference is made to Texas Administrative Code §1.27 (relating to Motions). The Title number was left off. It should read 16 Texas Administrative Code.

The following instances relate to misspelled words:

Section 5.241(b)(3)-(20 TexReg 848) The last part of the sentence reads "must be retained by each motor bus company for at least two years." The word lease should be replaced with the word least.

Section 5.246(a)(2)-(20 TexReg 849) In the first sentence the word inn should be in.

On page 848, due to publication error "\$5.244. Forms." appear to be part of §5.243.

◆ ◆ ◆
Texas Rehabilitation Commission
Intent to Award Grants to the Children's
Habilitation Center and the Walsh
Company

The Texas Rehabilitation Commission announces its intention to award a grant on behalf of the Texas Planning Council for Developmental Disabilities to the Walsh Company, to continue support to the Program for the activity "Partners in Policymaking."

The Walsh Company, submitted a proposal in response to a Request for Proposals for Support for Training Activities reposted in the *Texas Register* on August 9, 1991 (16 TexReg 4376). That RFP invited proposals for a grant project that would provide support and assistance to the Program for coordination of the activity entitled "Partners in Policymaking." Pursuant to the aforementioned RFP, in August 1992, a replacement award was made to the Walsh Company due to an emergency. Another award was granted in July 1994. The Texas Planning Council for Developmental Disabilities intends to award a grant to the Walsh Company, to continue their support of the "Partners in Policymaking" training activity because of their experience and contributions towards the success of that program.

Description of Project. The project will provide support and assistance to the Program for coordination of the activity entitled "Partners in Policymaking." The project will provide support functions related to training sessions and special assignments for people with developmental disabilities and their family members. The Program will maintain final authority for dates, content, and agendas of each event, determination of topics and presenters, and approval of all payments. The grantee will provide staff resources for support activities, such as acquiring meeting space and facilities, coordinating registration, coordinating equipment needs, processing timely reimbursements to participants, facilities, and presenters, and arranging travel and transportation for presenters and participants.

Terms and Funding. The project will be funded for three years. The initial budget period will be from July 1, 1995 to June 30, 1996. The award is not to exceed \$450,000 in year one, \$445,000 in year two, and \$454,000 in year three. Funding is contingent on the availability of funds and satisfactory performance.

For information on any aspect of this announcement, contact: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

Issued in Austin, Texas, on February 21, 1995.

TRD-9502208

Charles W. Schlessner
General Counsel
Texas Rehabilitation Commission

Filed: February 22, 1995

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Teacher Retirement System of Texas Report of Balance Sheet, Actuarial Valuation, and Unfunded Liabilities

The Texas Government Code, §825.108, requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than March 1 of each year. The report must contain the balance sheet of the retirement system as of August 31 of the preceding fiscal year and an actuarial valuation of the system's assets and liabilities, including the extent to which the system's liabilities are unfunded.

TRS is publishing the following report as required by statute.

December 30, 1994

Wyatt

BOARD OF TRUSTEES
Teacher Retirement System of Texas

Summary of Actuarial Report Requested by State Auditor

The State Auditor's Office has requested that we summarize the results of the actuarial valuation of the Teacher Retirement System of Texas as of August 31, 1994. The actuarial valuation report reveals that the Teacher Retirement System of Texas is an actuarially sound system based on the current actuarial assumptions and that the present actuarial value of assets (\$38.8 billion) plus the contributions required by the law in the future will be sufficient to meet the payments to the present active and retired members and their beneficiaries.

The actuarial assumptions and methods used in this valuation are those adopted by the board based on the 1990 and 1993 Experience Studies:

1. Mortality for the retired members is based on the 1983 Group Annuity Mortality Table for males with a two-year setback in age and the 1983 Group Annuity Mortality Table for females with a one-year setback in age. An extensive study of actual mortality experience of retired members under the system indicates that these mortality tables are appropriate.

2. Mortality for active members is based on a table constructed from the actual experience of the Teacher Retirement System of Texas.

3. Disability, retirement, and withdrawal rates are based on actual experience of the Teacher Retirement System of Texas. Retirement and withdrawal rates take a select and ultimate form.

4. An investment return assumption of 8%, compounded annually, is used with regard to computations for retired persons and for active members. An interest rate of 8.38%, compounded annually, is used with regard to the 1976 legislative increase for retired members; a rate of 9.56%, compounded annually, is used with regard to the 1977 legislative increase; a rate of 10.30%, compounded annually, is used with regard to the 1979 legislative increase; and a rate of 14.32%, compounded annually, is used with regard to that portion of the two 1981 legislative increases which was not funded by reserves released from the Retired Reserve Account.

5. The salary scale for projecting future salaries is based on the actual 1990-1993 experience of the Teacher Retirement System of Texas and consists of a step-rate/promotional salary scale table plus a general salary increase assumption of 4%.

6. The actuarial value of assets is determined by recognizing total market value return in excess of (less than) the current assumption rate, 20% per year over five years.

7. Funding of the unfunded actuarial accrued liability is based on the excess of assumed future state contributions over the amount of such contributions required to fund the normal cost of benefits provided by the system. Basing the normal cost for the system on a study of all new entrants hired in the period from 1985 through 1990, the normal cost is 11.13% of payroll (6.40% by members plus 4.73% by the state), which is 2.58% of payroll less than the total contributions being paid by the members and by the state. It is assumed that the excess amount of 2.58% of payroll contributed by the state will be utilized to fund the unfunded actuarial accrued liability of \$825 million (as shown on the actuarial balance sheet) over a period of 2.2 years in the future, assuming that payroll grows at an aggregate compound rate of 6% per year. All funding calculations assume that the state contribution rate will remain at 7.31%.

Based on the above assumptions and the actuarial results shown in the report, it is our opinion that the Teacher Retirement System of Texas is actuarially sound and if the payroll in the future increases at the rate of 6%, compounded annually, the unfunded actuarial accrued liability of \$825 million will be amortized over a period of 2.2 years in the future.

Respectfully submitted,
THE WYATT COMPANY

Richard B. Mallett

Richard B. Mallett, FSA
Actuary

W. Michael Carter

W. Michael Carter, FSA
Actuary

Actuarial Balance SheetSHOWING PRESENT AND PRIOR YEAR ASSETS AND LIABILITIES AFTER ACTUARIAL
ADJUSTMENTS TO RETIRED RESERVE ACCOUNT (Actuarial Valuation as of August 31, 1994)

ACTUARIAL ASSETS	August 31,	
	1994	1993
Present Assets at Actuarial Value:		
Retired Reserve Account (Actuarially Determined)	\$ 14,626,226,262	\$ 13,574,432,820
1975 Benefit Increase Reserve Subaccount	(14,190,514)	(9,195,542)
1977 Benefit Increase Reserve Subaccount	63,606,807	63,696,346
1979 Benefit Increase Reserve Subaccount	50,558,014	49,661,554
1981 Benefit Increase Reserve Subaccount	186,142,497	179,660,741
Member Savings Account	9,054,895,581	8,279,078,259
State Contribution Account	9,290,493,006	6,778,350,267
Expense Accounts and Miscellaneous	381,971,189	160,787,387
TOTAL PRESENT ASSETS	\$ 33,639,602,842	\$ 29,076,469,832
Adjustment to Book Value Due to Actuarial Asset Valuation Method	5,203,240,394	6,102,218,598
TOTAL ACTUARIAL VALUE OF PRESENT ASSETS	\$ 38,842,843,236	\$ 35,178,688,430
Prospective Assets:		
Present Value of Future Contributions by Present Members	\$ 10,743,241,857	\$ 10,576,333,809
Present Value of Future Normal Costs Contributed by the State	7,939,927,185	10,014,466,077
Unfunded Actuarial Accrued Liability	825,224,477	3,440,297,245
TOTAL PROSPECTIVE ASSETS	\$ 19,508,393,519	\$ 24,031,097,131
TOTAL ACTUARIAL ASSETS	\$ 58,351,136,755	\$ 59,209,785,561
ACTUARIAL LIABILITIES		
	1994	1993
Present Value of Benefits Presently Being Paid:		
Benefits other than Legislative Increases for Retired Members		
Service Retirement Benefits	\$ 13,747,232,598	\$ 12,719,682,159
Disability Retirement Benefits	462,181,812	449,153,094
Death Benefits	311,721,912	298,453,339
Present Survivor Benefits	106,090,540	106,944,238
TOTAL BASIC RESERVES	\$ 14,626,226,262	\$ 13,574,432,820
Benefits Provided Retired Members by 1975 Legislative Increase		
Service Retirement Benefits	\$ 16,859,544	\$ 19,586,400
Disability Retirement Benefits	418,968	462,000
Death Benefits	1,059,000	1,171,900
TOTAL 1975 INCREASE RESERVES	\$ 18,337,512	\$ 21,219,600
Benefits Provided Retired Members by 1977 Legislative Increase		
Service Retirement Benefits	\$ 24,530,532	\$ 27,623,340
Disability Retirement Benefits	838,500	909,408
Death Benefits	1,305,060	1,414,392
TOTAL 1977 INCREASE RESERVES	\$ 26,674,092	\$ 29,947,140
Benefits Provided Retired Members by 1979 Legislative Increase		
Service Retirement Benefits	\$ 15,644,784	\$ 18,092,832
Disability Retirement Benefits	398,364	441,756
Death Benefits	911,196	1,008,012
TOTAL 1979 INCREASE RESERVES	\$ 16,954,344	\$ 19,542,600

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Actuarial Valuation, and Unfunded
Liabilities-[graphic-fig3]

	August 31,	
	1994	1993
Benefits Provided Retired Members by 1981 Legislative Increases		
Service Retirement Benefits	\$ 94,022,748	\$ 95,289,936
Disability Retirement Benefits	2,572,644	2,569,692
Death Benefits	3,191,304	3,090,300
TOTAL 1981 INCREASE RESERVES	\$ 99,786,696	\$ 100,949,928
TOTAL PRESENT VALUE OF BENEFITS PRESENTLY BEING PAID	\$ 14,787,978,906	\$ 13,746,092,088
Present Value of Benefits Payable in the Future to Present Active Members:		
Service Retirement Benefits	\$ 38,200,077,432	\$ 40,400,778,138
Disability Retirement Benefits		
Disability Prior to Vesting	\$ 4,148,941	\$ 3,625,147
Disability After Vesting	1,373,438,767	1,376,492,921
TOTAL DISABILITY BENEFITS	\$ 1,377,586,108	\$ 1,380,118,068
Refunds of Contributions on Withdrawal	\$ 1,984,499,721	\$ 1,920,980,631
Death and Survivor Benefits		
Two Times Pay	\$ 252,026,029	\$ 224,172,590
Refund of Contributions	4,518,600	4,136,809
Five Year Annuity	130,684,803	132,981,000
Life Annuity	434,147,546	437,794,368
Survivor Benefit	25,234,102	22,860,080
TOTAL DEATH BENEFITS	\$ 846,611,099	\$ 821,944,847
TOTAL ACTIVE MEMBER LIABILITIES	\$ 42,408,773,360	\$ 44,523,821,684
Present Value of Benefits Payable in the Future to Present Inactive Members:		
Terminated Vested Participants		
Retirement Benefits	\$ 70,055,941	\$ 55,914,818
Death Benefits	1,785,973	1,628,920
TOTAL TERMINATED VESTED BENEFITS	\$ 71,841,914	\$ 57,543,738
Refunds of Contributions to Terminated Non-vested Members	\$ 7,971,605	\$ 6,247,821
Future Survivor Benefits Payable on Behalf of Present Annuitants	\$ 476,180,118	\$ 456,033,456
Reserve for ERS/TRS Transfer	\$ 183,800,000	\$ 229,105,400
TOTAL INACTIVE LIABILITIES	\$ 739,793,537	\$ 748,930,415
Other Liabilities and Reserves:		
Reserve for Expenses, Benefits, and Accounts Payable	\$ 414,590,952	\$ 190,941,374
TOTAL OTHER LIABILITIES	\$ 414,590,952	\$ 190,941,374
TOTAL ACTUARIAL LIABILITIES	\$ 58,351,136,755	\$ 59,209,785,561

Issued in Austin, Texas, on February 21, 1995.

TRD-9502167 Wayne Blevins
Executive Director
Teacher Retirement System of Texas

Filed: February 21, 1995

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Request for Proposals

The Teacher Retirement System of Texas (TRS) is issuing a request for proposals (RFP) to assist TRS in employing an executive director, the chief administrator of TRS. TRS will engage a consultant to advise and assist the agency in an extensive search for candidates for the position, identifying qualified persons interested in accepting the position, recommending five such persons to the Search Committee of the Board of Trustees for consideration, and conducting background checks, evaluating, and developing descriptive portrayal portfolios for each of the recommended candidates.

In identifying and evaluating candidates the consultant must work closely with the Search Committee of the Board of Trustees to develop and apply approved criteria and qualifications for the position. The consultant must report regularly on its progress and be available through a designated contact to consult with TRS by telephone, in writing, or in person as requested during the contract period.

Activities under an accepted proposal should begin on or about April 12, 1995, and should terminate on or about June 9, 1995.

Persons who respond to the RFP (applicants) should obtain a copy of the complete RFP, which may be obtained by writing or calling Mary Godzik, Secretary to the Search Committee of the Board of Trustees, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411.

Answers to questions about the RFP may be obtained in writing from Mary Godzik, Secretary to the Search Committee of the Board of Trustees, Teacher Retirement System of Texas, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411.

The deadline for receipt of proposals in response to the RFP is 5:00 p.m., March 15, 1995.

To be considered, applicants should demonstrate superior recognized expertise in conducting searches for chief executives and senior administrators for large corporations, pension plans, trust funds, state agencies, or similar institutions.

Proposals must include complete descriptions of services and activities to be undertaken, the costs of such services and activities, and the relevant experiences and qualifications of the applicant.

The RFP encourages applicants to include different levels of services at varying costs.

A successful proposal will be selected based upon the conformance of the proposal with the RFP; an evaluation of the quality and appropriateness of the proposal; an evaluation of the experience, qualifications, and capability of the applicant; and the cost of the services and activities.

TRS reserves the right to reject any or all proposals submitted. The selected consultant must execute a contract

acceptable to TRS. TRS specifically reserves the right to vary any or all provisions set forth at any time prior to the execution of the contract where TRS deems it to be in the best interest of TRS. TRS shall not be responsible for costs of applicants in responding to the RFP or in negotiating project terms.

Issued in Austin, Texas, on February 21, 1995.

TRD-9502168 Wayne Blevins
Executive Director
Teacher Retirement System of Texas

Filed: February 21, 1995

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**The University of Texas Health
Science Center at Houston
(UTHSCH)**

Request for Proposal

The University of Texas Health Science Center at Houston (UTHSC-H) hereby provides notice of invitation of offers of consulting services. The UTHSC-H Office of Public Affairs is seeking proposals to contract with a private management consultant/research firm to assist in the evaluation and market analysis of the monthly subscriber-supported newsletter "The University of Texas Lifetime Health Letter" (LHL). This management consulting firm will be required to obtain additional data, provide an independent and unbiased view of the market for subscriber-paid health newsletters to evaluate the economic operations, and to suggest ways in which the operation can be improved.

Specifically the University will want the successful firm to research, report and analyze the following:

Size and definition of the subscription health/newsletter market for the past three years in total and by major segment;

Projections of the market over the next three years, including segment changes and trends;

Market analysis of key competitors to the LHL;

Market share trends (three years retrospective; three years prospective) by paid and unpaid newsletter competitors;

Trends affecting profitability retention and acquisition of subscribers;

Identify key market forces and describe their likely effects on the LHL as well as suggest various measures that could help the LHL achieve a profitable operation (newsletter economics);

For further information, or to obtain a complete proposal package, contact Doug Bowerman, Procurement Officer, UTHSC-H, P.O. Box 20036, Houston, Texas 77225, (713) 792-4894.

An original and four copies of the original proposal must be submitted to UTHSC-H prior to 3:00 p.m., on March 17, 1995. Proposals received thereafter will not be considered and will be returned unopened. Proposals should be sent to Doug Bowerman at the address previously listed. Selected respondents may be requested to conduct on-site presentations, at their expense, to clarify and expand upon items provided in their bid. The UTHSC-H will evaluate all offers of consulting services received prior to the closing date based on relevant experience related to this

project, general experience and competence in managed care consulting, cost and timeliness. Therefore, experience in another state or states will be acceptable however, preference will be given to a consultant whose principal place of business is within the state of Texas.

Issued in Austin, Texas, on February 16, 1995.

TRD-8502007

Arthur H. Dilly
Executive Secretary to the Board of
Regents
University of Texas Health Science Center
at Houston (UTHSCH)

Filed: February 16, 1995

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