

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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
Part I. Texas Department of Human Services
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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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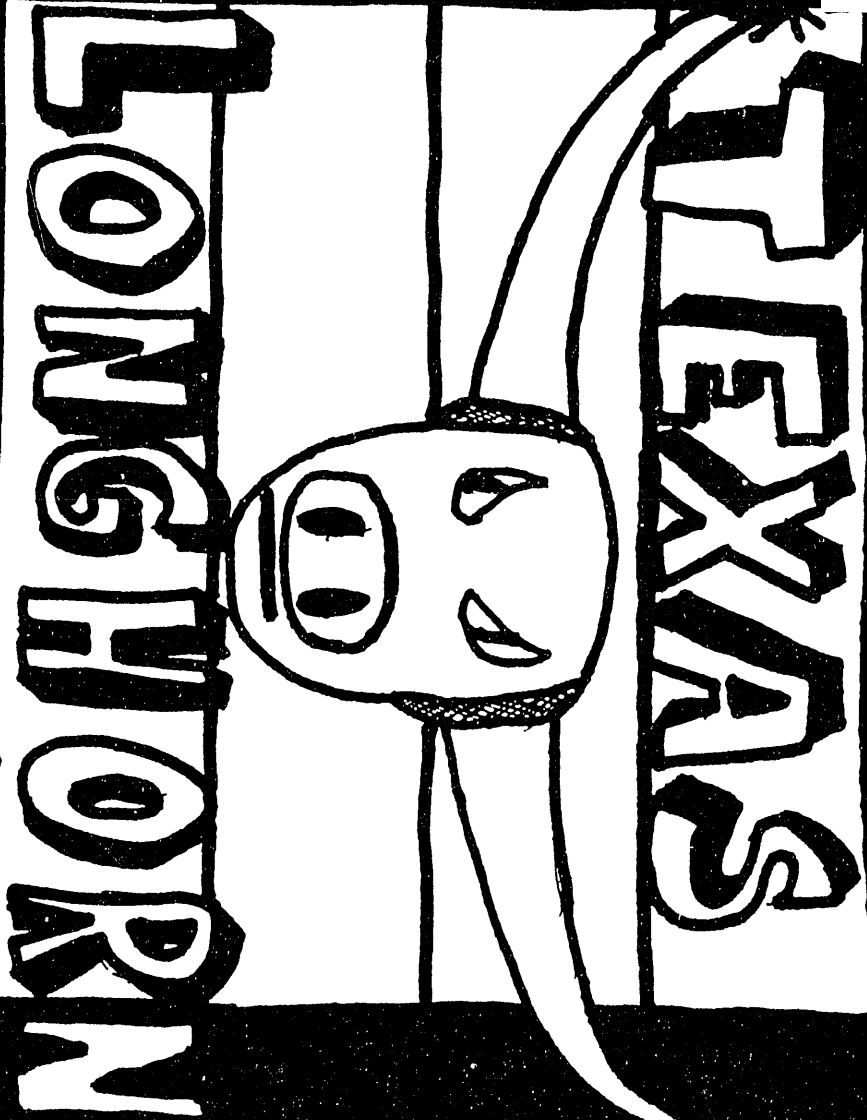
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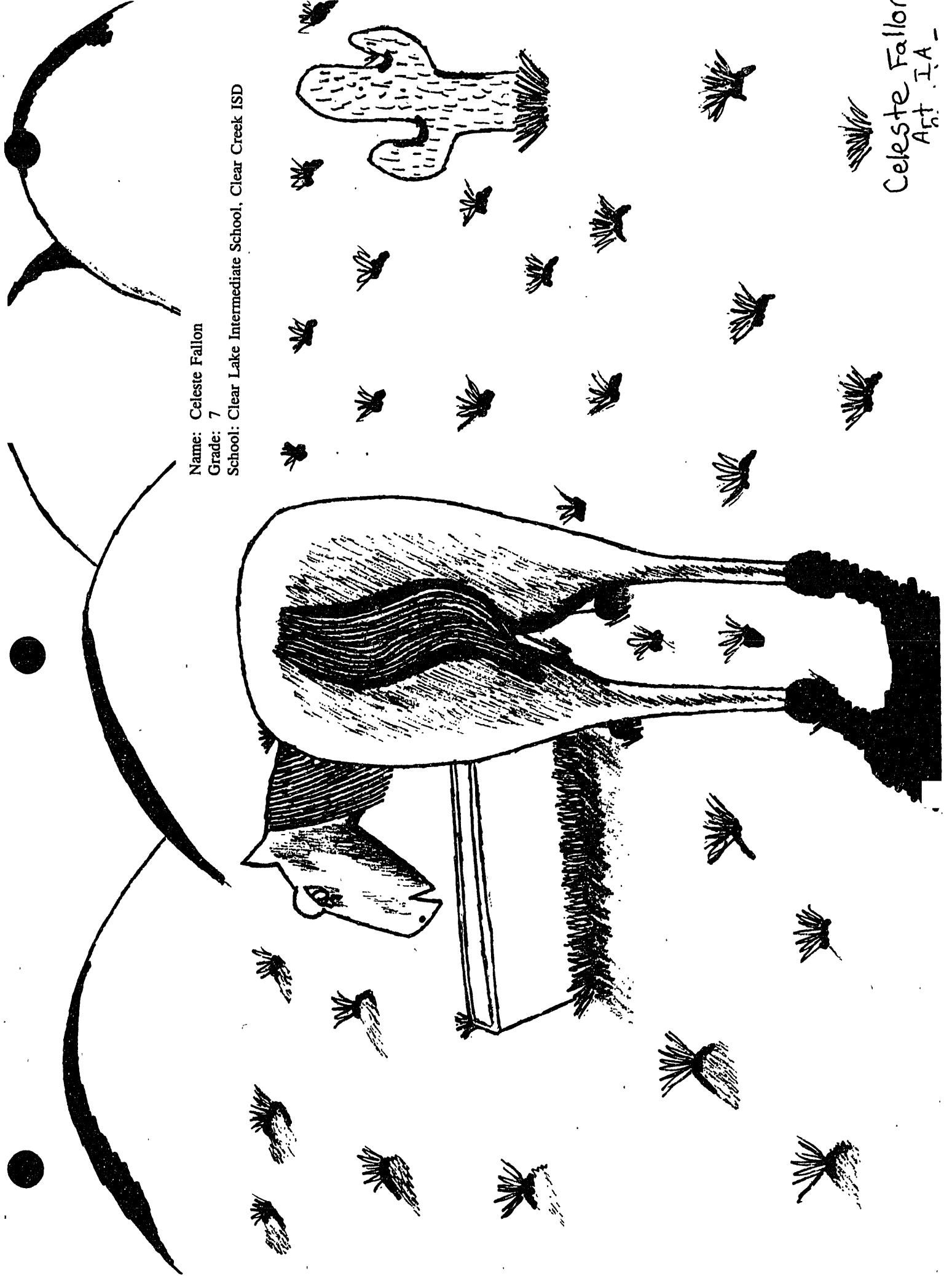


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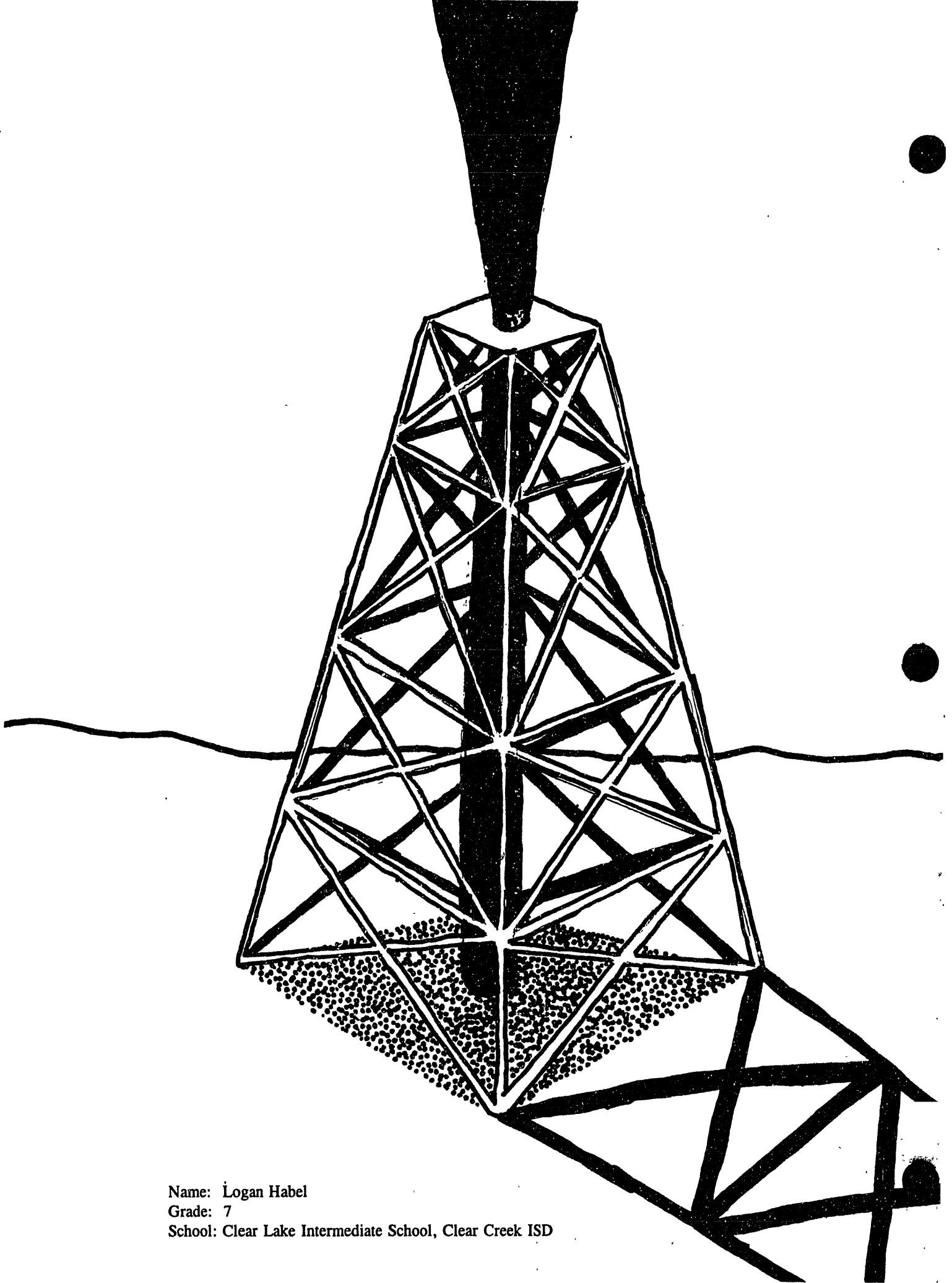
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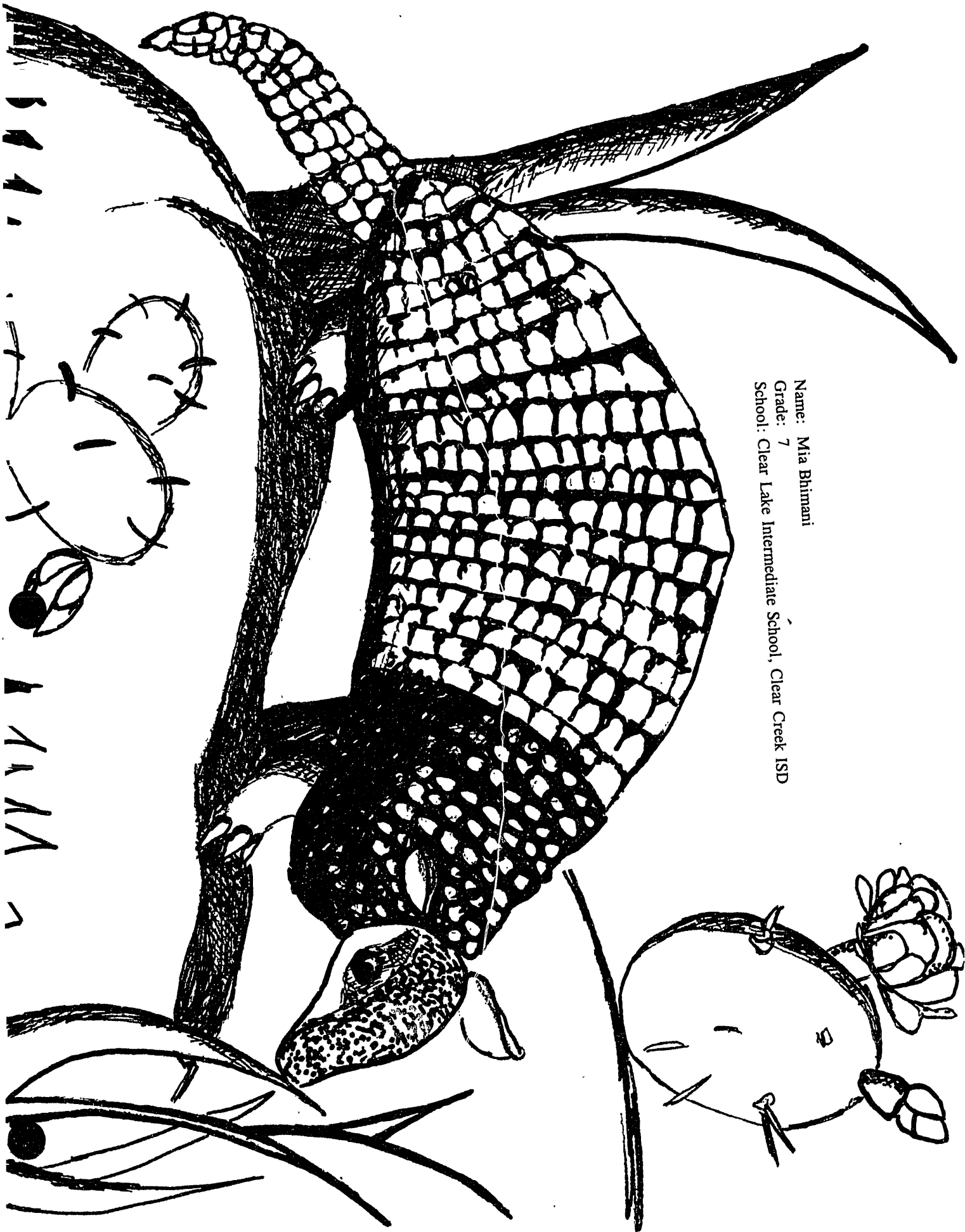


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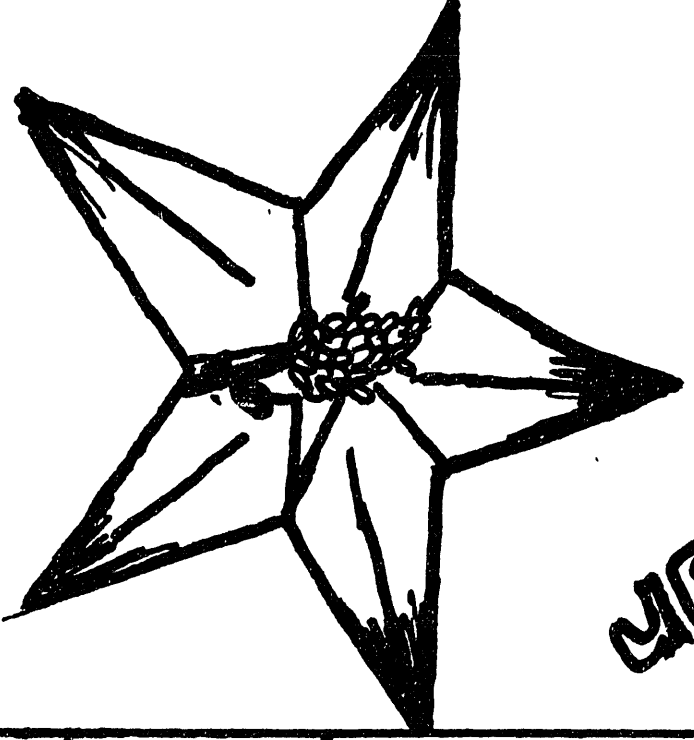
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PROPOSED RULES

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 4. AGRICULTURE

Part III. Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Chapter 61. Commercial Feed Rules

General Provisions

• 4 TAC §6.1, §61.2

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes amendments to §61.1 and §61.2 to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

Dr. George W. Latimer, Jr., the Texas State Chemist, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Latimer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections are necessary to implement the new law. 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 Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995, beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter A, §141.001 and §141.002 is affected by these proposed amendments.

§61.1. Definitions. Except where otherwise provided, the terms and definitions adopted by the Association of American Feed Control Officials in the last published edition of the annual Official Publication are hereby adopted by reference as the terms and definitions to control in this title. The publication is available from the Association of American Feed Control Officials. In addition, the following words and terms, when used in this title, shall have the following meanings, unless the context clearly indicates otherwise.

Annual Products-Commercial feed product packaged in individual containers of five pounds or less only.

Bagged-Enclosure of feed in any container.

[Customer-formula feed-A mixture of commercial feed or feed material, all or part of which is furnished by the person who processes, mixes, mills, or otherwise prepares the mixture and which is mixed according to the specific instructions of the purchaser. Customer-formula feed may be derived from a registered feed that has been altered by the deletion, addition, or substitution of one or more ingredients that may or may not affect the chemical analysis. The term includes special formula feed and made-to-order feed.

[Distribute-Sell, offer for sale, expose for sale, barter, exchange, transfer possession or title, or otherwise supply.

[Ingredient-A constituent material of a commercial feed.

[Label-A display of written, printed, or graphic matter on or affixed to a container, invoice, or delivery slip.]

Pet Food-Any commercial feed prepared and distributed for consumption by a dog or cat or an animal normally maintained in a cage or tank in or near the household(s) of the owner such as, but not limited to, gerbils, hamsters, birds, fish, snakes and turtles.

[Purchaser-A person who buys or

otherwise acquires a commercial feed, customer-formula feed, or custom-mill service.

[Registrant-A person who registers a commercial feed under the Act.]

Salvage-When applied to an ingredient or combination of ingredients, refers only to those products that have been damaged by natural causes, such as fire, water, hail, or windstorm, or by conveyance mishap. Does not apply to recovered production line products which are suitable for reprocessing.

Weed seeds-Those seeds declared prohibited or restricted noxious weed seeds by the Texas Agriculture Code, §61.008 [§19.3 of this title] (relating to Noxious Weed Seeds).

§61.2. Commercial Feed.

(a) All feed materials are considered commercial feeds, except:

(1) those exempted under the Act, §141.002(c), referring to [concerning] commercial feed; and

(2) (No change.)

(b) Commercial feeds may not contain:

(1) any adulterants as listed in the Act, §141.148, referring to [concerning] distribution of adulterated feed; or

(2) (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 College Station, Texas, on September 26, 1995.

TRD-9512320

Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

Licensing [Permitting and Registration]

• 4 TAC §61.11, §61.14

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes an amendment to §61.11 and new §61.14, to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

Dr. George W. Latimer, Jr., the Texas State Chemist, has determined that for the first five-year period the sections are in effect the income from a one-time licensing fee amounting to \$115,000 in the first year will be offset by about \$75,000 in increased change-over costs. In out years, there are no significant additional costs or savings to the Office. There are no financial implications for other state or local government as a result of enforcing or administering the sections.

Dr. Latimer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections are necessary to implement the new law so the overall financial impact on small business cannot be determined. There will be an additional one-time cost of \$75. However, the one reason for changes in the Law was to facilitate marketing of commercial feeds in the state and reduce paperwork. If these goals are realized, there will be a net savings to all feed manufacturers. 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 Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995 beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The amendment and new section are proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter B, §§141.012, 141.023, and 141.025, is affected by these proposed amendment and new section.

§61.11. Application for Licensing [Registration].

(a) A facility shall not be granted a license unless and until:

(1) it has filed a completed application form and other information necessary for the conduct of the Service's business; and

(2) paid the appropriate fees. [Each brand and product name of a commercial feed must be registered before it may be distributed.]

(b) No facility shall distribute commercial feed in Texas until it has received affirmative notification of its licensing either originally or as amended. [The labeling information required to accompany bagged or bulk commercial feed by the Texas Commercial Feed Act, §141.051 or §141.052, concerning labeling of commercial feed shall be submitted with all applications for registration.]

(c) Applicants for licenses shall submit the following additional information on a form to be provided by the Service:

(1) Facilities distributing ingredients or commercial feeds for which safety and efficacy data have not previously been submitted to and approved by the Service and/or the FDA, facilities distributing medicated feeds, facilities distributing products normally exempt, but adulterated, so that control by the Service is necessary, including, but not limited to, mycotoxin-containing ingredients and feeds, feeds incorporating animal litter-labels of all such products unless the exact same label has already been submitted by another facility.

(2) Facilities distributing annual products—a list of all such products to be distributed from that facility and labels unless the exact same label has already been submitted by another facility.

(3) Facilities must provide the Service with a means to identify that facility's product uniquely in the marketplace. [The Service may require the applicant to present evidence of authorization to use a registered trademark or other labeling reference as a condition for the registration of a product.

[(d) The Service may require the applicant to submit evidence satisfactory to the Service respecting the safety and efficacy of a commercial feed prior to the approval of a registration application and label for the feed if it contains any additive (including drugs, special purpose and/or non-nutritive additives) not previously recognized as safe and effective by the United States Food and Drug Administration for its labeled use or does not possess GRAS animal status.

[(e) The net weight shall be provided as a condition for registration of specialty products packaged and marketed in containers weighing one pound or less whose net contents are declared on the label of the product in conformity with the United States Fair Packaging and Labeling

Act, 15 United States Code, §§1415 et seq. and regulations promulgated thereunder].

§61.14. Licensing of Distributors and Guarantors. Persons distributing commercial feed not manufactured in their own facility may or may not require a license under §61.11 of this title (relating to Application for Licensing), but shall provide the license number and name of any facility manufacturing their products.

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 College Station, Texas, on September 26, 1995.

TRD-9512321 Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

Labeling

• 4 TAC §§61.21-61.23

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes amendments to §§61.21-61.23 to alter those sections to conform more closely with labeling changes recommended by the Association of American Feed Control Officials as prescribed in the Feed Control Act, §141.004.

Dr. George W. Latimer, Jr., the Texas State Chemist, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Latimer also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the changes in the labeling requirements that are needed to reflect agreements on a national level to clarify label copy for consumers. 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 Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995 beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter C, §§141.051-141.055, is affected by these proposed amendments.

§61.21. *General Label Restrictions.*

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

(c) A trademark or trade name owned by another person may form part of the labeling of a commercial feed provided that:

(1) the trademark, in the opinion of the Service, contributes significantly in conveying to the purchaser important information respecting a distinctive characteristic of the product; [and]

(2) the display of the trademark or trade name is no more conspicuous than the display of the name of the registrant or guarantor of the product or other required information, i.e., its style, size and color of print makes it no more likely to be read than the accompanying/surrounding word(s), statement(s) or other required information;[.]

(3) the user of the trademark has permission from the "owner" to use the trademark.

(d)-(f) (No change.)

§61.22. *Labeling of Commercial Feed.* Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this chapter on the principal display panel of the product with the following general format, unless otherwise specifically provided.

(1) Purpose statement.

(A) (No change.)

(B) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, specie and purpose while being consistent with the category of animal class defined in this subparagraph which may include, but is not limited to including, the weight range(s), sex or ages of the animal(s) for which the feed is manufactured.

(i)-(ii) (No change.)

(iii) Beef Cattle.

(I) Calves (birth to weaning) [Birth to Weaning];

(II) Cattle on Pasture (may be specific as to production stage, i.e., stocker, feeder, replacement heifers, brood cows, bulls, etc.) [Weaned Animals on Pasture];

(III) Feedlot Cattle [Animals].

(iv)-(viii) (No change.)

(C) The indication for animal classes(es) and specie(s) is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal classes(es) or specie(s).

(D) A purpose statement of a premix limited to use in the further manufacture of commercial feed may state "For the Manufacture of Commercial Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds.

(E) The purpose statement of single purpose ingredient blend limited to use in the further manufacture of commercial feed, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may state "For Further Manufacturing of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

(2) (No change.)

(3) Drug additives, when present.

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

(D) The label shall display active drug ingredient statement listing:

(i) (No change.)

(ii) the amount of each ingredient. [stated in terms of percent by weight, except that:]

(4) Guarantees-Crude Protein, Non-Protein Nitrogen, Amino Acids, Crude Fat, Crude Fiber, Acid Detergent Fiber, Calcium, Phosphorus, Salt and Sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are

listed in a sequence that provides a consistent grouping of the units of measure.

(A) Poultry.

(i) Chickens and Turkeys-complete feeds and supplements for all animal classes:

(I) Minimum percentage of crude protein;

(II) Minimum percentage of lysine;

(III) Minimum percentage of methionine;

(IV) Minimum percentage of crude fat;

(V) Maximum percentage of crude fiber;

(VI) Minimum and maximum percentage of calcium;

(VII) Minimum percentage of phosphorus;

(VIII) Minimum and maximum percentage of salt (if added);

(IX) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(ii) Ducks and Geese-complete feeds and supplements for all animal classes:

(I) Minimum percentage of crude protein;

(II) Minimum percentage of crude fat;

(III) Maximum percentage of crude fiber;

(IV) Minimum and maximum percentage of calcium;

(V) Minimum percentage of phosphorus;

(VI) Minimum and maximum percentage of salt (if added);

(VII) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(B) Swine—complete feeds and supplements for all animal classes:

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of lysine;

(iii) Minimum percentage of crude fat;

(iv) Maximum percentage of crude fiber;

(v) Minimum and maximum percentage of calcium;

(vi) Minimum percentage of phosphorus;

(vii) Minimum and maximum percentage of salt (if added);

(viii) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) Minimum selenium in parts per million (ppm);

(x) Minimum zinc in parts per million (ppm).

(C) Beef Cattle.

(i) Complete Feeds and Supplements—all animal classes:

(I) Minimum percentage of crude protein;

(II) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(III) Minimum percentage of crude fat;

(IV) Maximum percentage of crude fiber;

(V) Minimum and maximum percentage of calcium;

(VI) Minimum percentage of phosphorus;

(VII) Minimum and maximum percentage of salt (if added);

(VIII) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(IX) Minimum percentage of potassium;

(X) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(ii) Mineral Feeds (if added):

(I) Minimum and maximum percentage of calcium;

(II) Minimum percentage of phosphorus;

(III) Minimum and maximum percentage of salt;

(IV) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(V) Minimum percentage of magnesium;

(VI) Minimum percentage of potassium;

(VII) Minimum copper in parts per million (ppm);

(VIII) Minimum selenium in parts per million (ppm);

(IX) Minimum zinc in parts per million (ppm);

(X) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

(D) Dairy Cattle.

(i) Complete Feeds and Supplements—all animal classes:

(I) Minimum percentage of crude protein;

(II) Maximum percentage of crude equivalent protein from non-protein nitrogen (NPN) when added;

(III) Minimum percentage of crude fat;

(IV) Maximum percentage of crude fiber;

(V) Maximum percentage of acid detergent fiber (ADF);

(VI) Minimum and maximum percentage of calcium;

(VII) Minimum percentage of phosphorus;

(VIII) Minimum selenium in parts per million (ppm);

(IX) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(ii) Mixing and Pasture Mineral Feeds (if added):

(I) Minimum and maximum percentage of calcium;

(II) Minimum percentage of phosphorus;

(III) Minimum and maximum percentage of salt;

(IV) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(V) Minimum percentage of magnesium;

(VI) Minimum percentage of potassium;

(VII) Minimum selenium in parts per million (ppm);

(VIII) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

(E) Veal and Herd Replacement Milk Replacer.

(i) Minimum percentage of crude protein;

- (ii) Minimum percentage of crude fat;
- (iii) Maximum percentage of crude fiber;
- (iv) Minimum and maximum percentage of calcium;
- (v) Minimum percentage of phosphorus;
- (vi) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(F) Fish Complete Feeds and Supplements.

- (i) Minimum percentage of crude protein;
- (ii) Minimum percentage of crude fat;
- (iii) Maximum percentage of crude fiber;
- (iv) Minimum percentage of phosphorus.

(G) Rabbit Complete Feeds and Supplements—all animal classes:

- (i) Minimum percentage of crude protein;
- (ii) Minimum percentage of crude fat;
- (iii) Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 percentage units);
- (iv) Minimum and maximum percentage of calcium;
- (v) Minimum percentage of phosphorus;
- (vi) Minimum and maximum percentage of salt (if added);
- (vii) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;
- (viii) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(H) Equine.

- (i) Complete Feeds and Supplements—all animal classes:
 - (I) Minimum percentage of crude protein;
 - (II) Minimum percentage of crude fat;

(III) Maximum percentage of crude fiber;

(IV) Minimum and maximum percentage of calcium;

(V) Minimum percentage of phosphorus;

(VI) Minimum copper in parts per million (ppm);

(VII) Minimum selenium in parts per million (ppm);

(VIII) Minimum zinc in parts per million (ppm);

(IX) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(ii) Mineral—all animal classes:

(I) Minimum and maximum percentage of calcium;

(II) Minimum percentage of phosphorus;

(III) Minimum and maximum percentage of salt (if added);

(IV) Minimum and maximum percentage of sodium (guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee);

(V) Minimum copper in parts per million (ppm);

(VI) Minimum selenium in parts per million (ppm);

(VII) Minimum zinc in parts per million (ppm);

(VIII) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(I) Goat and Sheep Complete Feeds and Supplements—all animal classes:

(i) Minimum percentage of crude protein;

(ii) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) Minimum percentage of crude fat;

(iv) Maximum percentage of crude fiber;

(v) Minimum and maximum percentage of calcium;

(vi) Minimum percentage of phosphorus;

(vii) Minimum and maximum percentage of salt (if added);

(viii) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) Minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm);

(x) Minimum selenium in parts per million (ppm);

(xi) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(J) Feeds for Other Animal Classes and Species not specifically mentioned in this section:

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of crude fat;

(iii) Maximum percentage of crude fiber;

(iv) Minimum and maximum percentage of calcium;

(v) Minimum percentage of phosphorus;

(vi) Minimum and maximum percentage of salt (if added);

(vii) Minimum and maximum percentage of total sodium shall be guaranteed when total sodium exceeds that furnished by the maximum salt guarantee;

(viii) Other Minerals.

(ix) Vitamins;

(x) Total sugars as invert;

(xi) Microorganisms.

(K) Grain Mixtures with or without Molasses.

- (i) Minimum percentage of crude protein;
- (ii) Minimum percentage of crude fat;
- (iii) Maximum percentage of crude fiber;
- (iv) Total sugars as inverted.

(L) A commercial feed (e.g., vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

(5) Feed ingredients.

(A) The feed ingredients statement for a commercial feed shall include the name of each ingredient in the feed or the collective term for each grouping of feed ingredients contained in the feed, unless exempted under subparagraph (J) of this paragraph.

(B) The name of each ingredient or grouping of ingredients listed shall be the:

- (i) official term for the ingredient or grouping of ingredients adopted by the Association of American Feed Control Officials in its official publication, adopted by reference in §61.1 of this title (relating to Definitions);
- (ii) the common or usual name for the ingredient; or
- (iii) a name approved by the Service.

(C) When a collective term for a group of ingredients is used on the label of a feed:

- (i) individual ingredients within that group shall not be listed on the label; and
- (ii) the Service may require the manufacturer to provide a listing of the individual ingredients within the group that are or have been used in the product as distributed in this state.

(D) Tentative definitions for feed ingredients shall not be used until adopted as an official definition by the Association of American Feed Control Officials, unless no official definition exists or the ingredient has a commonly accepted name that requires no definition (e.g., sugar).

(E) All names of all ingredients must be in type of the same size and all guaranteed analyses must be in the same size and style, but not necessarily in the same size and style as the ingredients. Both names and guarantees must be of a size easily read by the average person under ordinary conditions.

(F) The sources of added vitamins may be stated in the ingredients statement.

(G) No reference to quality or grade of an ingredient shall appear in the ingredients statement.

(H) The term "dehydrated" may precede the name of any product that has been artificially dried.

(I) When the term "iodized" is used in connection with a feed ingredient, the ingredient shall contain not less than 0.007% iodine uniformly distributed.

(J) Exemptions:

(i) Carrier ingredients in products used solely as drug and vitamin premixes need not be named in the ingredients statement if:

- (I) any changes in the carrier will not affect the purposes of the premix;
- (II) the carrier ingredient is recognized by the Service as being safe;
- (III) the carrier will not affect the safety, potency or efficacy of the finished product.

(ii) Single ingredient feeds are not required to have an ingredient statement.

(6) Directions for use and cautionary statements.

(A) All feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall have included on their label directions for use and cautionary statements which shall:

- (i) be adequate to enable safe and effective use of the product for its intended purposes by users with no special knowledge of the purposes and use of such articles; and

(ii) include, but not limited to, all information prescribed by the Code of Federal Regulations, Title 21.

(B) All feeds supplying particular dietary needs or for supplementing or fortifying the diet or ration with any vitamin, mineral, or other dietary nutrient or compound shall have included on their label adequate directions for use and any cautionary statement necessary for their safe and effective use.

(i) All mixed feeds containing urea or other non-protein nitrogen products shall have included on their label:

(I) the statement "Warning: (or "Caution:") Use as Directed" followed by adequate directions for the safe use of the feed if the equivalent protein from non-protein nitrogen in the feed exceeds one-third of the total crude protein, or more than 8.75% of the equivalent protein is from non-protein nitrogen; and

(II) a separate maximum guarantee for non-protein nitrogen originating from the addition of a mineral.

(ii) Premixes, concentrates or supplements containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

(iii) All directions for use required by this subparagraph shall be printed in a size of type such that the directions will be read and understood by ordinary persons under customary conditions of purchase and use.

(iv) This subparagraph shall apply to all invoiced, labeled customer-formula and labeled feeds.

(v) Feeds, such as medicated feeds, which are required to be labeled with adequate feeding directions and cautionary statements irrespective of the provisions of this subparagraph, shall not be required to bear duplicate feeding directions or cautionary statements on their labels if such statements as are otherwise required are sufficient to ensure the safe and effective use of the product due to the presence of non-protein nitrogen.

(C) Fluorine bearing phosphatic materials shall have included on

their label the statement: "Caution-Mix at the rate to not raise the fluorine content in a total ration (exclusive of roughage) above the following levels:

- (i) 0.004% for breeding and dairy cattle;
- (ii) 0.009% for slaughter cattle;
- (iii) 0.006% for sheep;
- (iv) 0.01% for lambs;
- (v) 0.015% for swine; and
- (vi) 0.03% for poultry."

(7) The name and principal mailing address of the person responsible for distributing the feed.

(A) The principal mailing address shall include the street address, city, state, and zip code; provided, however, that the street address may be omitted if the address is listed in a current city directory or telephone directory.

(B) The labeling may bear the name of the purchaser as well as the person, provided the product is for in-plant use and not for resale.

(C) The labeling may bear the name of the distributor as well as the person, provided that the guarantor of the product is specifically stated.

(8) Quantity Statement

(A) Net weight and/or net liquid volume must be expressed both in English and in SI units:

(i) when the quantity statement is expressed in net pounds, the corresponding SI units shall be in kilograms and vice-versa;

(ii) when the quantity statement is expressed in net quarts or gallons, the corresponding SI unit shall be in liters and vice-versa;

(iii) when the quantity statement is expressed in net avoirdupois ounces or net fluid ounces, the corresponding SI units shall be in grams and milliliters respectively and vice-versa;

(iv) any fractional number which arises expressing the net weight in both systems shall be limited to two decimal places and the number rounded down.

(B) All dry and liquid bulk shipments shall declare net weight only.

(C) Net contents other than net weight or net volume shall be expressed as the sum total of the smallest individual unit in the container going to the final customer.

(D) Measurement.

(i) Net weights of packages dry and liquid bulk shall be determined directly from scales or for bulk liquids only as calculated from volume and specific gravity/density.

(ii) Conformance to weight guarantee shall be judged solely by use of certified scale defined in accordance with Texas Department of Agriculture standards.

(iii) Dip-sticks, uncertified/uncalibrated meters or sight gauges shall not be used to estimate volume. Scales not certified in accordance with the Texas Department of Agriculture standards shall not be used for net weights.

(iv) Net weights shall meet both the English and SI statements on the label.

(v) Conformance to guarantee of number shall be judged by count of intact individual units.

(9) Expression of Guarantees.

(A) The guarantees for crude protein, amino acids and crude fat shall be in terms of minimum percentage.

(B) The guarantees for crude fiber and acid detergent fiber shall be in terms of maximum percentage.

(C) The percentage of equivalent protein from non-protein nitrogen shall be guaranteed as follows:

(i) In feeds designated for ruminants-

(I) Complete feeds, supplements, and concentrates containing more than 5.0% protein from natural sources shall bear the following statement of guarantee: "Crude protein, minimum percent (This includes not more than percent equivalent protein from non-protein nitrogen.)"

(II) Mixed feed concentrates and supplements containing less than 5.0% protein from natural sources may bear the following statement of guarantee: "Equivalent crude protein from non-protein nitrogen, minimum percent."

(III) Ingredient sources of non-protein nitrogen, such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or any other basic non-protein nitrogen ingredient shall bear the following statement of guarantee: "Nitrogen, minimum percent. Equivalent crude protein from non-protein nitrogen, minimum percent."

(IV) Liquid feed supplements shall bear the following statement of guarantee: "Crude protein not less than percent (This includes not more than percent equivalent protein from non-protein nitrogen.)"

(ii) Feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein containing urea or other non-protein nitrogen products shall be labeled as follows: Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such. Crude protein, minimum percent. (This includes not more than percent equivalent crude protein which is not nutritionally available to (species of animal for which feed is intended)).

(D) The guarantees for minerals shall be expressed as follows.

(i) Commercial feeds containing calcium, phosphorus and/or salt shall include a guaranteed analysis of the following minerals in the following order:

(I) minimum and maximum percentage of calcium (Ca);

(II) minimum percentage of phosphorus (P);

(III) minimum and maximum percentages of salt (NaCl), when required; and

(IV) such other minerals as may be required by subclause (IV) of this clause.

(ii) Other minerals shall be expressed as follows:

(I) If the quantity statement is by weight:

(-a-) guarantees for minimum potassium, magnesium and maximum fluoride when used shall be stated in terms of percentage.

(-b-) Other minimum mineral guarantees shall be stated in percentage when used when the concentration is 1.00% (10,000 ppm) or greater; below 10,000 ppm these guarantees shall be expressed in ppm.

(II) If the quantity statement is in tablet, capsules, granules, liquids or boluses, then the guarantee is in mg per unit consistent with quantity statement and directions for use.

(III) When calcium, salt and sodium guarantees are given in the guaranteed analysis, such guarantees shall conform to the following.

(-a-) When the minimum is 5.0% or less, the maximum shall not exceed the minimum by more than one percentage point.

(-b-) When the minimum is above 5.0%, the maximum shall not exceed the minimum by more than 20% and in no case shall the maximum exceed the minimum by more than five percentage points.

(IV) Naturally occurring mineral phosphatic materials for feeding purposes shall be labeled with a guaranteed analysis of the minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(E) If made, the guarantees for vitamins shall be expressed as follows.

(i) The minimum vitamin content of commercial feeds and feed supplements shall be stated on the label in milligrams per pound or units consistent with the quantity statement and with the directions for use, except that:

(I) vitamin A, other than precursors of vitamin A, shall be stated in international units per pound;

(II) vitamin D₃, in products offered for poultry feeding, shall be stated in international chick units per pound;

(III) vitamin D, for other uses, shall be stated in terms of international units per pound;

(IV) vitamin E shall be stated in international units per pound;

(V) vitamin B₁₂ shall be stated in milligrams or micrograms per pound;

(VI) oils and premixes containing vitamins A, D and/or E may be labeled to show vitamin content in terms of units per gram.

(ii) Guarantees for vitamin content on the label of a commercial feed shall state the guarantees as menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B₆, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid and/or carotene.

(F) The guarantees for antibiotics shall be expressed in terms of percent by weight, except that:

(i) antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton (total) of commercial feed;

(ii) antibiotics present at more than 2,000 grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed;

(iii) labels for commercial feeds containing growth promotion and feed efficiency levels of antibiotics which are to be fed continuously as the sole ration are not required to make quantitative guarantees, except as specifically noted in the Code of Federal Regulations (CFR), Title 21;

(iv) the amount of a drug or antibiotic may be expressed in terms of milligrams per pound where the dosage given in the feeding directions is given in milligrams.

(G) The analysis shall include the minimum percentage total sugars as invert on products being sold for their molasses content or products containing more than 16% sugars.

(H) The analysis shall include the maximum percent moisture on liquid feed supplements and liquid ingredients containing more than 20% moisture.

(I) Microorganisms need not be guaranteed when the commercial feed is intended for a purpose other than to furnish these substances and no other specific label claims are made. When guaranteed, the units shall be colony forming units (CFU) per gram if directions for use are in grams or in CFU per pound when directions for use are in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

(J) Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, international units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.

(K) The sliding scale method of expressing guarantees (e.g., "protein is 15%-18%, etc.") is prohibited.

(L) Unless otherwise provided by this section, guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, and crude fiber will be in terms of percentage by weight.

(M) Commercial, registered brand, or trade names are not permitted for use in a statement of guarantee, unless followed by a parenthetical statement giving the technical name of the ingredient.

(N) Exemptions are as follows.

(i) Guarantees for vitamins are not required for commercial feed which is neither formulated nor in any manner represented as a vitamin supplement.

(ii) Guarantees for crude protein, crude fat, and crude fiber are not required for commercial feed not intended to furnish these substances, or for feeds in which these substances are of minor significance to the primary purpose of the product (e.g., drug premixes, mineral or vitamin supplements, or molasses).

(iii) Liquid ingredients need not be guaranteed to show maximum moisture content when moisture is the difference between the guarantee element and 100% or when the moisture content of the ingredient is less than 20%.

(iv) Whole feed-grain, unprocessed in any manner save mechanical blending or mixing with other batches of the same whole kernel feed-grade grain, need not provide guarantees for protein, fat, and fiber.

(v) A mineral guarantee is not required:

(I) when the feed or feed ingredient is intended for non-food

producing animals and contains less than 6.5% total minerals; and

(II) when the feed or feed ingredient is not represented nor does it serve as a principle source of that mineral to the animal.

[(4) Guaranteed analysis of the feed:

[(A) The guaranteed analysis of the feed shall include the following items in the following order, unless exempted in accordance with subparagraph (E) of this paragraph.

[(i) The amount of crude protein shall be expressed as a minimum percentage.

[(ii) The percentage of equivalent protein from non-protein nitrogen shall be guaranteed as follows:

[(I) Complete feeds, supplements, and concentrates containing more than 5.0% protein from natural sources shall bear the following statement of guarantee: "Crude protein, minimum percent (This includes not more than percent equivalent protein from non-protein nitrogen.)"

[(II) Mixed feed concentrates and supplements containing less than 5.0% protein from natural sources may bear the following statement of guarantee: "Equivalent crude protein from non-protein nitrogen, minimum percent."

[(III) Ingredient sources of non-protein nitrogen, such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or any other basic non-protein nitrogen ingredient shall bear the following statement of guarantee: "Nitrogen, minimum percent. Equivalent crude protein from non-protein nitrogen, minimum percent."

[(IV) Liquid feed supplements shall bear the following statement of guarantee: "Crude protein not less than percent (This includes not more than percent equivalent protein from non-protein nitrogen.)"

[(iii) The percentage of crude fat shall be expressed as a minimum.

[(iv) The percentage of crude fiber shall be expressed as a maximum.

[(v) The guarantees for minerals shall be expressed as follows.

[(I) Commercial feeds containing calcium, phosphorus and/or salt shall include a guaranteed analysis of the following minerals in the following order:

[(a) minimum and maximum percentage of calcium (Ca);

[(b) minimum percentage of phosphorus (P);

[(c) minimum and maximum percentages of salt (NaCl), when required; and

[(d) such other minerals as may be required by subclause (IV) of this clause.

[(II) Minerals, except salt, shall be guaranteed in terms of percentage of the element.

[(a) Guarantees for minimum potassium, magnesium and maximum fluoride shall be stated in terms of percentage.

[(b) Other minimum mineral guarantees shall be stated in percentage when the concentration is 1.00% (10,000 ppm or greater; below 10,000 ppm these guarantees be expressed either in percentage or in ppm as long as the system used is consistent among these minerals on a given product label and among the product labels.

[(III) When calcium and/or salt guarantees are given in the guaranteed analysis, such guarantees shall conform to the following.

[(a) When the minimum is 5.0% or less, the maximum shall not exceed the minimum by more than one percentage point.

[(b) When the minimum is above 5.0%, the maximum shall not exceed the minimum by more than 20% and in no case shall the maximum exceed the minimum by more than five percentage points.

[(IV) Naturally occurring mineral phosphatic materials for feeding purposes shall be labeled with a guaranteed analysis of the minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

[(vi) The guarantees for vitamins shall be expressed as follows.

[(I) If made, guarantees for minimum vitamin content of commercial feeds and feed supplements shall be stated on the label in milligrams per pound of feed, except that:

[(a-) vitamin A, other than precursors of vitamin A, shall be stated in international units per pound;

[(b-) vitamin D₃, in products offered for poultry feeding, shall be stated in international chick units per pound;

[(c-) vitamin D, for other uses, shall be stated in terms of international units per pound;

[(d-) vitamin E shall be stated in international units per pound;

[(e-) vitamin B₁₂ shall be stated in milligrams or micrograms per pound;

[(f-) oils and premixes containing vitamins A, D and/or E may be labeled to show vitamin content in terms of units per gram.

[(II) If made, guarantees for vitamin content on the label of a commercial feed shall state the guarantees as menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B₆, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid and/or carotene.

[(vii) The analysis shall include the minimum percentage total sugars as invert on products being sold for their molasses content or products containing more than 16% sugars.

[(viii) The analysis shall include the maximum percent moisture on liquid feed supplements and liquid ingredients containing more than 20% moisture.

[(ix) Microorganisms need not be guaranteed when the commercial feed is intended for a purpose other than to furnish these substances and no other specific label claims are made. When guaranteed, the units shall be colony forming units (CFU) per gram if directions for use are in grams or in CFU per pound when directions for use are in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

[(x) Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, international units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.

[(B) The sliding scale method of expressing guarantees (e.g., "protein is 15%-18%, etc.") is prohibited.

[(C) Unless otherwise provided by this section, guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber, and minerals will be in terms of percentage by weight.

[(D) Commercial, registered brand, or trade names are not permitted for use in a statement of guarantee, unless followed by a parenthetical statement giving the technical name of the ingredient.

[(E) Exemptions are as follows.

[(i) Guarantees for vitamins are not required for commercial feed which is neither formulated nor in any manner represented as a vitamin supplement.

[(ii) Guarantees for crude protein, crude fat, and crude fiber are not required for commercial feed not intended to furnish these substances, or for feeds in which these substances are of minor significance to the primary purpose of the product (e.g., drug premixes, mineral or vitamin supplements, or molasses).

[(iii) Liquid ingredients need not be guaranteed to show maximum moisture content when moisture is the difference between the guarantee element and 100% or when the moisture content of the ingredient is less than 20%.

[(iv) Whole feed-grain, unprocessed in any manner save mechanical blending or mixing with other batches of the same whole kernel feed-grade grain, need not provide guarantees for protein, fat, and fiber.

[(v) A mineral guarantee is not required:

[(I) when the feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total minerals; and

[(II) when the feed or feed ingredient is not represented nor does it serve as a principle source of that mineral to the animal.

[(vi) Complete feeds and supplements which declare an animal class and conform to the specific guaranteed analysis listed in subclauses (I) to (XII) (X) of this clause.

[(I) Poultry.

[(a) Chickens and Turkeys—all classes:

[(1) Minimum percentage of crude protein;

[(2) Minimum percentage of lysine;

[(3) Minimum percentage of methionine;

[(4) Minimum percentage of crude fat;

[(5) Maximum percentage of crude fiber;

[(6) Minimum and maximum percentage of calcium;

[(7) Minimum percentage of phosphorus;

[(8) Minimum and maximum percentage of salt (if added);

[(9) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

[(b) Ducks and Geese—all classes:

[(1) Minimum percentage of crude protein;

[(2) Minimum percentage of crude fat;

[(3) Maximum percentage of crude fiber;

[(4) Minimum and maximum percentage of calcium;

[(5) Minimum percentage of phosphorus;

[(6) Minimum and maximum percentage of salt (if added);

[(7) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

[(II) Swine—all animal classes.

[(a) Minimum percentage of crude protein;

[(b) Minimum percentage of lysine;

[(c) Minimum percentage of crude fat;

[(d) Maximum percentage of crude fiber;

[(e) Minimum and maximum percentage of calcium;

[(f) Minimum percentage of phosphorus;

[(g) Minimum and maximum percentage of salt (if added);

[(h) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

[(i) Minimum selenium in parts per million (ppm);

[(j) Minimum zinc in parts per million (ppm).

[(III) Beef Cattle.

[(a) Complete Feeds and Supplements—all animal classes:

[(1) Minimum percentage of crude protein;

[(2) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

[(3) Minimum percentage of crude fat;

[(4) Maximum percentage of crude fiber;

[(5) Minimum and maximum percentage of calcium;

[(6) Minimum percentage of phosphorus;

[(7) Minimum and maximum percentage of salt (if added);

[(8) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

[(9) Minimum percentage of potassium;

[(10) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

Feeds (if added):

- [(b-) Mineral
 - [(1-) Minimum and maximum percentage of calcium;
 - [(2-) Minimum percentage of phosphorus;
 - [(3-) Minimum and maximum percentage of salt;
 - [(4-) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

- [(5-) Minimum percentage of magnesium;

- [(6-) Minimum percentage of potassium;

- [(7-) Minimum copper in parts per million (ppm);

- [(8-) Minimum selenium in parts per million (ppm);

- [(9-) Minimum zinc in parts per million (ppm);

- [(10-) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

[(IV) Dairy Cattle.

[(a-) Complete Feeds and Supplements:

- [(1-) Minimum percentage of crude protein;

- [(2-) Maximum percentage of non-protein nitrogen (NPN) when added;

- [(3-) Minimum percentage of crude fat;

- [(4-) Maximum percentage of crude fiber;

- [(5-) Maximum percentage of acid detergent fiber (ADF);

- [(6-) Minimum and maximum percentage of calcium;

- [(7-) Minimum percentage of phosphorus;

- [(8-) Minimum selenium in parts per million (ppm);

- [(9-) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

[(b-) Dairy Mixing and Pasture Mineral with Vitamins (if added):

- [(1-) Minimum and maximum percentage of calcium;

- [(2-) Minimum percentage of phosphorus;

- [(3-) Minimum and maximum percentage of salt;

- [(4-) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

- [(5-) Minimum percentage of magnesium;

- [(6-) Minimum percentage of potassium;

- [(7-) Minimum selenium in parts per million (ppm);

- [(8-) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

[(V) Veal and Herd Replacement Milk Replacer.

- [(a-) Minimum percentage of crude protein;

- [(b-) Minimum percentage of crude fat;

- [(c-) Maximum percentage of crude fiber;

- [(d-) Minimum and maximum percentage of calcium;

- [(e-) Minimum percentage of phosphorus;

- [(f-) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

[(VI) Fish Complete Feeds and Supplements.

- [(a-) Minimum percentage of crude protein;

- [(b-) Minimum percentage of crude fat;

- [(c-) Maximum percentage of crude fiber;

- [(d-) Minimum percentage of phosphorus.

[(VII) Rabbit Complete Feeds and Supplements (all animal classes).

- [(a-) Minimum percentage of crude protein;

- [(b-) Minimum percentage of crude fat;

- [(c-) Minimum and maximum percentage of crude fiber;

- [(d-) Minimum and maximum percentage of calcium;

- [(e-) Minimum percentage of phosphorus;

- [(f-) Minimum and maximum percentage of salt (if added);

- [(g-) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

- [(h-) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

[(VIII) Equine Complete Feeds and Supplements (all animal classes).

- [(a-) Minimum percentage of crude protein;

- [(b-) Minimum percentage of crude fat;

- [(c-) Maximum percentage of crude fiber;

- [(d-) Minimum and maximum percentage of calcium;

- [(e-) Minimum percentage of phosphorus;

- [(f-) Minimum copper in parts per million (ppm);

- [(g-) Minimum selenium in parts per million (ppm);

- [(h-) Minimum zinc in parts per million (ppm);

[-(i)- Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

[(IX) Goat and Sheep Complete Feeds and Supplements (all animal classes) .

[-(a)- Minimum percentage of crude protein;

[-(b)- Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

[-(c)- Minimum percentage of crude fat;

[-(d)- Maximum percentage of crude fiber;

[-(e)- Minimum and maximum percentage of calcium;

[-(f)- Minimum percentage of phosphorus;

[-(g)- Minimum and maximum percentage of salt (if added);

[-(h)- Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

[-(i)- Minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm);

[-(j)- Minimum selenium in parts per million (ppm);

[-(k)- Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

[(X) All Animal Classes and Species-Grain Mixtures with or without Molasses.

[-(a)- Minimum percentage of crude protein;

[-(b)- Minimum percentage of crude fat;

[-(c)- Maximum percentage of crude fiber.

[(5) Feed ingredients.

[(A) The feed ingredients statement for a commercial feed shall include the name of each ingredient in the feed or the collective term for each grouping of feed ingredients contained in the feed, unless exempted under subparagraph (J) of this paragraph.

[(B) The name of each ingredient or grouping of ingredients listed shall be the:

[(i) official term for the ingredient or grouping of ingredients adopted by the Association of American Feed Control Officials in its official publication, adopted by reference in §61.1 of this title (relating to Definitions);

[(ii) the common or usual name for the ingredient; or

[(iii) a name approved by the Service.

[(C) When a collective term for a group of ingredients is used on the label of a feed:

[(i) individual ingredients within that group shall not be listed on the label; and

[(ii) the Service may require the manufacturer to provide a listing of the individual ingredients within the group that are or have been used in the product as distributed in this state.

[(D) Tentative definitions for feed ingredients shall not be used until adopted as an official definition by the Association of American Feed Control Officials, unless no official definition exists or the ingredient has a commonly accepted name that requires no definition (e.g., sugar).

[(E) All names of all ingredients must be in type of the same size and all guaranteed analyses must be in the same size and style, but not necessarily in the same size and style as the ingredients. Both names and guarantees must be of a size easily read by the average person under ordinary conditions.

[(F) The sources of added vitamins may be stated in the ingredients statement.

[(G) No reference to quality or grade of an ingredient shall appear in the ingredients statement.

[(H) The term "dehydrated" may precede the name of any product that has been artificially dried.

[(I) When the term "iodized" is used in connection with a feed ingredient, the ingredient shall contain not less than 0.007% iodine uniformly distributed.

[(J) Exemptions:

[(i) Carrier ingredients in products used solely as drug and vitamin premixes need not be named in the ingredients statement if:

[(I) any changes in the carrier will not affect the purposes of the premix;

[(II) the carrier ingredient is recognized by the Service as being safe;

[(III) the carrier will not affect the safety, potency or efficacy of the finished product.

[(ii) Single ingredient feeds are not required to have an ingredient statement.

[(6) Directions for use and cautionary statements.

[(A) All feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall have included on their label directions for use and cautionary statements which shall:

[(i) be adequate to enable safe and effective use of the product for its intended purposes by users with no special knowledge of the purposes and use of such articles; and

[(ii) include, but not limited to, all information prescribed by the Code of Federal Regulations, Title 21.

[(B) All feeds supplying particular dietary needs or for supplementing or fortifying the diet or ration with any vitamin, mineral, or other dietary nutrient or compound shall have included on their label adequate directions for use and any cautionary statement necessary for their safe and effective use.

[(C) Feeds containing urea or other non-protein nitrogen products.

[(i) All mixed feeds containing urea or other non-protein nitrogen products shall have included on their label:

[(I) the parenthetical statement: "(For Ruminants Only)" printed directly below the brand or product name for the feed;

[(II) the statement "Warning: (or "Caution:") Use as Directed" followed by adequate directions for the safe use of the feed if the equivalent protein from non-protein nitrogen in the feed exceeds one-third of the total crude protein, or more than 8.75% of the equivalent protein is from non-protein nitrogen; and

[(III) a separate maximum guarantee for non-protein nitrogen originating from the addition of a mineral.

[(ii) All directions for use required by this subparagraph shall be printed in a size of type such that the directions will be read and understood by ordinary persons under customary conditions of purchase and use.

[(iii) This subparagraph shall apply to all invoiced, labeled customer-formula and registered brand labeled feeds.

[(iv) Feeds, such as medicated feeds, which are required to be labeled with adequate feeding directions and cautionary statements irrespective of the provisions of this subparagraph, shall not be required to bear duplicate feeding directions or cautionary statements on their labels if such statements as are otherwise required are sufficient to ensure the safe and effective use of the product due to the presence of non-protein nitrogen.

[(D) Fluorine bearing phosphatic materials shall have included on their label the statement: "Caution-Mix at the rate to not raise the fluorine content in a total ration (exclusive of roughage) above the following levels:

[(i) 0.004% for breeding and dairy cattle;

[(ii) 0.009% for slaughter cattle;

[(iii) 0.006% for sheep;

[(iv) 0.01% for lambs;

[(v) 0.015% for swine; and

[(vi) 0.03% for poultry."

[(7) The name and principal mailing address of the manufacturer or person responsible for distributing the feed.

[(A) The principal mailing address shall include the street address, city, state, and zip code; provided, however, that the street address may be omitted if the address is listed in a current city directory or telephone directory.

[(B) The labeling may bear the name of the purchaser as well as the manufacturer, provided the product is for in-plant use and not for resale.

[(C) The labeling may bear the name of the distributor as well as the manufacturer, provided that the guarantor of the product is specifically stated.

[(8) Net Weight.

[(A) Net weight must be expressed both in English and in SI units:

[(i) when the net weight is expressed in pounds, the corresponding SI units shall be in kilograms and vice-versa;

[(ii) when the net weight is expressed in ounces, the corresponding SI units shall be in grams;

[(iii) any fractional number which arises expressing the net weight in both systems shall be limited to two decimal places and the number rounded down.

[(B) Measurement.

[(i) Packages, dry and liquid bulk shall be determined directly from scales or for bulk liquids only as calculated from volume and specific gravity/density.

[(ii) Conformance to weight guarantee shall be judged solely by use of certified scale defined in accordance with Texas Department of Agriculture standards.

[(iii) Dip-sticks, uncertified/uncalibrated meters or sight gauges shall not be used to estimate volume. Scales not certified in accordance with the Texas Department of Agriculture standards shall not be used for net weights.

[(iv) Net weights shall meet both the English and SI statements on the label.]

§61.23. Labeling of Customer-Formula Feed.

(a) If a customer-formula feed is identified by a label under the Act, §141.053(a), the label, in addition to the requirements of that section, shall bear the following information:

(1) (No change.)

(2) If the feed is derived from a [registered] feed that has been altered, the label shall include:

(A) the label of the [registered] feed from which the product was derived; and

(B) (No change.)

(b) If a customer-formula feed is identified by label under the Act, §141.053(b), concerning the labeling of customer-formula feed, the following shall apply:

(1) This alternate method of labeling customer-formula feed shall be ac-

complished [accompanied] by use of forms prescribed by the Service and signed by both the seller and the purchaser.

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

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

Issued in College Station, Texas, on September 26, 1995.

TRD-9512322

Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

Changes in Licensing

• 4 TAC §61.25

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes new §61.25, to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

Dr. George W. Latimer, Jr., the Texas State Chemist, 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.

Dr. Latimer 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 the rules that are necessary to implement the new law so the overall financial impact on small business cannot be determined; however, costs are expected to be small. 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 Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160, or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995 beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter B, §§141.021, 141.023, and 141.025, is affected by this proposed new section.

§61.25. Redesignation of Facility.

(a) A facility shall notify the Service to amend its license if, after licensing, it wishes:

(1) to distribute additional annual product(s);

(2) to distribute an ingredient or commercial feed not previously distributed in the state for which safety and efficacy data have not previously been submitted to and approved by the Service;

(3) to distribute products normally exempt, but subject to control by the Service, including, but not limited to, aflatoxin-containing corn above 20 ppb; products incorporating poultry litter;

(4) to change ownership;

(5) to change physical location;

or

(6) to change name.

(b) Facilities subject to subsection (a)(1) of this section must complete the Small Package Registration form provided by the Service.

(c) Facilities subject to subsection (a)(2) and (3) of this section must provide:

(1) a copy of the label unless the exact same label has been submitted by another licensed facility;

(2) means of identifying the facilities' production if the product is produced at another licensed facility.

(d) The Service will amend the license to reflect the changes:

(1) at no additional license fee to those subject to subsection (a)(1)-(3) of this section if notification is received within 30 calendar days of the distribution of the product;

(2) at \$75:

(A) for those subject to subsection (a)(1)-(3) of this section if receipt of notification is after 30 calendar days;

(B) for those subject to subsection (a)(4)-(6) of this section.

(e) Facilities subject to subsection (a)(4)-(6) of this section which have not completed licensing by the effective date of change shall not distribute in the state.

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 College Station, Texas, on September 26, 1995.

TRD-9512323

Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

◆ ◆ ◆
• 4 TAC §61.29

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes new §61.29, to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

Dr. George W. Latimer, Jr., the Texas State Chemist, 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.

There is no additional cost to small business. 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 Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995 beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter C, §§141.051-141.055, is affected by this proposed new section.

§61.29. Label Review.

(a) The Service shall provide, at no cost, written label review when the requestor represents a facility licensed to distribute the product in Texas.

(b) The Service shall supply a detailed report or label mark-up of changes necessary, if any, to bring the label into compliance with the Texas Commercial Feed Act, §141.051 or §141.052.

(1) Implementation of those changes shall be solely the responsibility of the requestor.

(2) Despite any report by the Service, compliance with appropriate labeling regulations shall be solely the responsibility of the guarantor of the product label.

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 College Station, Texas, on September 26, 1995.

TRD-9512324

Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

◆ ◆ ◆
Adulterants [Penalties]

• 4 TAC §61.61

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes an amendment to §61.61, to clarify its responsibilities under the Feed Control Act.

Dr. George W. Latimer, Jr., the Texas State Chemist, 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.

Dr. Latimer 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 rules are necessary to clarify the Services needed to ensure feeds distributed in the state are effective for their stated purpose and are safe for introduction into the food chain. There will be an unknown cost to small business to develop safety and efficacy data if not already available, but costs, while not known, are limited.

Comments on the proposed changes may be submitted to Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995, beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter G, §141.147 and §141.148, is affected by the proposed amendment.

§61.61. Poisonous or Deleterious Substances.

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

(d) The Service may require evidence satisfactory to the Service respecting the safety and efficacy of any commercial feed distributed in Texas.

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 College Station, Texas, on September 26, 1995.

TRD-9512326 Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

Appeals and Rehearings

• 4 TAC §61.85

(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 Feed and Fertilizer Control Service/Office of the Texas State Chemist or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes repeal to §61.85.

Dr. George W. Latimer, Jr., the Texas State Chemist, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Dr. Latimer also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be that the rule is unnecessary because it repeats a section of the Texas Feed Control Act.

Comments on the proposed changes may be submitted to Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995, beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter E, §141.104, is affected by this proposed repeal.

§61.85. Notice of Opportunity.

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 College Station, Texas, on September 26, 1995.

TRD-9512327 Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

Good Manufacturing Practices

• 4 TAC §61.86

The Office of the Texas State Chemist, Feed and Fertilizer Control Service proposes new §61.86, to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

Dr. George W. Latimer, Jr., the Texas State Chemist, 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.

Dr. Latimer 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 rules are necessary to implement the new law. There should be no increased costs to small business since they must follow the requirements of 21 Code of Federal Regulation 1.225 if they operate in interstate commerce. Costs to others cannot be estimated, but is believed to be limited.

Comments on the proposed changes may be submitted to Dr. George W. Latimer, Jr., by mail at Office of the Texas State Chemist, P.O. Box 3160, College Station, Texas 77841-3160 or fax: (409) 845-1389.

Because of the interest expressed in the rules, Dr. Latimer anticipates a request will be made for an open meeting. Therefore, such a meeting has been scheduled for November 1, 1995 beginning at 10:00 a.m. and continuing until all are heard. A standard notice has been sent to the *Texas Register*.

The new section is proposed under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

The Texas Agriculture Code, Chapter 141 of the Texas Commercial Feed Control Act, Subchapter G, §141.149, is affected by the proposed section.

§61.86. Regulation of Medicated Feed Mills. The Service adopts by reference the most recent regulations promulgated under 21 CFR (Code of Federal Regulations) Chapter 1, Part 225, which establishes current good manufacturing practices for medicated feeds.

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 College Station, Texas, on September 26, 1995.

TRD-9512328 Dr. George W. Latimer, Jr.
State Chemist
Texas Feed and Fertilizer
Control Service/Office
of the Texas State
Chemist

Proposed date of adoption: January 1, 1996

For further information, please call: (409) 845-1121

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

Chapter 1. Architects

Subchapter A. Scope; Definitions

• 22 TAC §1.9

The Texas Board of Architectural Examiners proposes an amendment to §1.9, concerning signatures on expenditure vouchers. The amendment is being proposed to expedite voucher processing when the Executive Director is absent.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Hendricks 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 the expedition of processing of expenditure vouchers. The effect on small businesses would be accelerated payment of invoices during the absence of the Director. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§1.9. Officers and Employees. As prescribed by law, the governor shall appoint a chairman, the board shall elect a vice-chairman and secretary-treasurer. The chairman shall hold office until replaced by the governor. The vice-chairman and secretary-treasurer shall hold office until their successors have been elected and qualified.

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

(6) The board authorizes the executive director [and director of programs or administrative technician IV] to sign expenditure vouchers, or in the absence of the executive director, those employees the executive director authorizes, in writing, and have signature cards on file at the Comptroller of Public Accounts.

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

Issued in Austin, Texas, on September 25, 1995.

TRD-9512282 Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

Subchapter B. Registration

• 22 TAC §§1.21, 1.23, 1.25

The Texas Board of Architectural Examiners proposes amendments to §§1.21, 1.23, and 1.25, to avoid duplication of applications. Since the applicants have to process their Intern Development Program file through the National Council of Architectural Registration Boards, this keeps them from having to duplicate information with our board office. The amendments will prevent applicants from submitting the same material to the board offices and the National Council of Architectural Registration Boards.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Hendricks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be simplification of the application process for candidates. There will be no effect on small businesses. 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 Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendments are proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendments do not affect any other statute.

§1.21. Eligibility.

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

(d) Effective February 2, 1994, applicants for the 1995 and subsequent Architect Registration Examination administrations shall process [IDP] application records through the National Council of Architectural Registration Boards (NCARB) and not through the board office.

§1.23. Forms and Instructions. Application forms and instructions will be furnished by the National Council of Architectural Registration Boards, 1735 New York Avenue, N.W., Suite 700, Washington, DC 20006. [upon request] The [forms required must be properly and completely executed, and returned over the signature of the] applicant must request the National Council of Architectural Registration Boards to transmit completed applications with all required supporting documentation [and fees] to the board office.

§1.25. Processing.

(a) All applications and supporting documentation for examinations shall be submitted to the board, through NCARB, no later than the following dates:

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

(b) Applications must be post-marked no later than the listed date, [or hand delivered to the board office no later than 5:00 p.m. that date.] except when that date falls on a Saturday or Sunday, in which case the date shall be the following Monday.

(c) The board shall accept a post-mark date as evidence of intent to submit an application by the deadline. [Proprietary postage meter dates will not be accepted as evidence of intent to make timely submission if contradicted by postal service post-mark dates.]

(d) [When received incomplete or without required fees, applications will be returned for completion and resubmittal.] Upon receipt of the completed application from NCARB the board office will notify the applicant of the required fee and deadline date for payment of the fee.

(e) When received [complete and accompanied by required fees,] applicants will be entered into the board records. When the required fee has been received, information submitted will be verified and evaluated, and subsequent submittals may be required of the applicant.

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 September 25, 1995.

TRD-9512283 Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

Subchapter C. Examinations

• 22 TAC §1.45

The Texas Board of Architectural Examiners proposes an amendment to §1.45, concerning the conditions for administration of the Architect Registration Examination. The amendment will clarify the process if the results of the examination cannot be provided to the candidate.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide the candidates with the retake of examination process should the agency be unable to provide examination results. 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 Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249a, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§1.45. Conditions.

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

(c) If, for any reason, Texas Board of Architectural Examiners

(TBAE) is unable to provide the candidate with the results of the examination, TBAE shall have no liability beyond authorizing the applicant to retake the examination, with the examination fee waived, at the next regularly scheduled examination date.

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 September 25, 1995.

TRD-9512276 Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

Chapter 3. Landscape Architects

Subchapter A. Scope: Definitions

• 22 TAC §3.9

The Texas Board of Architectural Examiners proposes an amendment to §3. 9, concerning signatures on expenditure vouchers. The amendment is being proposed to expedite voucher processing when the Executive Director is absent.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Hendricks 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 the expedition of processing of expenditure vouchers. The effect on small businesses would be accelerated payments of invoices during the absence of the Director. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§3.9. *Officers and Employees.* As prescribed by law, the governor shall appoint a

chairman, the board shall elect a vice-chairman and secretary-treasurer. The chairman shall hold office until replaced by the governor. The vice-chairman and secretary-treasurer shall hold office until their successors have been elected and qualified.

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

(6) The board authorizes the executive director [and director of programs or administrative technician IV] to sign expenditure vouchers, or in the absence of the executive director, those employees the executive director authorizes, in writing, and have signature cards on file at the Comptroller of Public Accounts.

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

Issued in Austin, Texas, on September 25, 1995.

TRD-9512286 Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

Subchapter C. Written Examinations

• 22 TAC §3.45

The Texas Board of Architectural Examiners proposes an amendment to §3. 45, concerning the conditions for administration of the Landscape Architect Registration Examination. The amendment will clarify the process if the results of the examination cannot be provided to the candidate.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide candidates with the retake of examination process should the agency be unable to provide examination results. 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 Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statute.

§3.45. *Conditions*

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

(c) If, for any reason, Texas Board of Architectural Examiners (TBAE) is unable to provide the candidate with the results of the examination, TBAE shall have no liability beyond authorizing the applicant to retake the examination, with the examination fee waived, at the next regularly scheduled examination date.

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 September 25, 1995.

TRD-9512277 Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

Subchapter E. Fees

• 22 TAC §3.86

The Texas Board of Architectural Examiners proposes an amendment to §3. 86, regarding Reciprocal Transfer fees. This amendment increases the fees the agency must charge in order to increase revenue for increased appropriations.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an increase in revenue as shown: 1996, \$1,575; 1997, \$1,650; 1998, 1,725; 1999, \$1,800; 2000, \$1,875.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that it will allow the agency to be more responsive to requests from the public due to the upgrading of the information resources system. It will also allow the agency to furnish the public updated consumer information. The effect on small businesses would be that the agency could process information more efficiently. The cost to persons who are required to comply with the section as proposed would be a one time increase in reciprocal application fees in the amount of \$75.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Exam-

iners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249c, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§3.86. Reciprocal Transfer Fee. Applicants requesting registration in Texas by reciprocity from other states must remit an application fee in the amount of \$[25] 100. This fee is non-refundable. If the applicant holds a Council of Landscape Architecture Registration Boards (CLARB) council certificate the application fee is waived. If the application is approved, a certificate of registration will be issued upon receipt of an initial registration fee in the amount of \$100.

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 September 25, 1995.

TRD-9512288

Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

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Chapter 5. Interior Designers
Subchapter A. Scope; Definitions

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• 22 TAC §5.9

The Texas Board of Architectural Examiners proposes an amendment to §5. 9, concerning signatures on expenditure vouchers. The amendment is being proposed to expedite voucher processing when the Executive Director is absent.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Hendricks 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 the expedition of processing of vouchers. The effect on small businesses would be accelerated payment of invoices during the absence of the Director. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§5.9. Officers and Employees. As prescribed by law, the governor shall appoint a chairman, the board shall elect a vice-chairman, and secretary-treasurer. The chairman shall hold office until replaced by the governor. The vice-chairman and secretary-treasurer shall hold office until their successors have been elected and qualified.

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

(6) The board authorizes the executive director [and director of programs or administrative technician IV] to sign expenditure vouchers, or in the absence of the executive director, those employees the executive director authorizes, in writing, and have signature cards on file at the Comptroller of Public Accounts.

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

Issued in Austin, Texas, on September 25, 1995.

TRD-9512284

Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

◆ ◆ ◆
Subchapter C. Examinations

◆ ◆ ◆
• 22 TAC §5.55

The Texas Board of Architectural Examiners proposes an amendment to §5. 55, concerning the conditions for administration of the National Council for Interior Design Qualification. The amendment will clarify the process if the results of the examination cannot be provided for the candidate.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide candidates with the retake of examination process should the agency be unable to provide examination results. 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 Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with the authority to promulgate rules.

The proposed amendment does not affect any other statute.

§5.55. Conditions.

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

(c) If, for any reason, Texas Board of Architectural Examiners (TBAE) is unable to provide the candidate with the results of the examination, TBAE shall have no liability beyond authorizing the applicant to retake the examination, with the examination fee waived, at the next regularly scheduled examination date.

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 September 25, 1995.

TRD-9512278

Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

◆ ◆ ◆
Subchapter E. Fees

◆ ◆ ◆
• 22 TAC §5.92

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

The Texas Board of Architectural Examiners proposes the repeal of §5.92, regarding registration without examination fee. This repeal is necessary to comply with the cut off date of August 31, 1994, set by the Texas State Legislature for Grandfather applications.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Ms. Hendricks has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal as proposed will be all future candidates will now be required to pass

the registration exam to better protect the public health, safety, and welfare. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The repeal is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed repeal does not affect any other statute.

§5.92. Registration Without Examination Fee.

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 September 25, 1995.

TRD-9512285

Cathy L. Hendricks,
ASID/IIDA
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

• 22 TAC §5.93

The Texas Board of Architectural Examiners proposes an amendment to §5. 93, regarding application and examination fees. This amendment increases the fees the agency must charge in order to increase revenue for increased appropriations.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an increase in revenue as shown: 1996, \$7,800; 1997, \$8,125; 1998, \$8,450; 1999, \$8,775; 2000, \$9,100.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that it will allow the agency to be more responsive to requests from the public due to the upgrading of the information resources system. It will also allow the agency to furnish the public updated consumer information. The effect on small businesses would be that the agency could process information more efficiently. The cost to persons who are required to comply with the section as proposed would be a one time

increase in candidate application fees in the amount of \$65.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§5.93. Application and Examination Fees. All applicants for registration by examination must remit \$[10] 75 with their original application. When approved as a candidate, additional notices will require payment of examination or record maintenance fees as prescribed by the board.

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 September 25, 1995.

TRD-9512287

Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

• 22 TAC §5.97

The Texas Board of Architectural Examiners proposes an amendment to §5. 97, regarding reciprocal transfer fees. This amendment increases the fees the agency must charge in order to increase revenue for increased appropriations.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an increase in revenue as shown: 1996, \$375; 1997, \$375; 1998, \$450; 1999, \$450; 2000, \$525.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that it will allow the agency to be more responsive to requests from the public due to the upgrading of the information resources system. It will also allow the agency to furnish the public updated consumer information. The effect on small businesses would be that the agency could process information more efficiently. The cost to persons who are required to comply with the section as proposed would be a one time increase in reciprocal application fees in the amount of \$75.

Comments on the proposal may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Texas Civil Statutes, Article 249e, which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

The proposed amendment does not affect any other statute.

§5.97. Reciprocal Transfer Fee. Applicants requesting registration in Texas by reciprocity from other states must remit an application fee in the amount of \$[25] 100. This fee is not refundable. If the application is approved, a Certificate of Registration will be issued upon receipt of an initial registration fee in the amount of \$100.

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 September 25, 1995.

TRD-9512358

Cathy L. Hendricks
Executive Director
Texas Board of
Architectural Examiners

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 305-8535

Part XV. Texas State Board of Pharmacy

Chapter 309. Generic Substitution

• 22 TAC §309.2, §309.3

The Texas State Board of Pharmacy proposes amendments to §309.2 and §309.3, concerning Definitions and Prescription Drug Orders. The amendments, if adopted, will set procedures for the electronic transmission of prescriptions from practitioner to pharmacy.

Fred S. Brinkley Jr., R.Ph., M.B.A., has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brinkley also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the protection of the public health through the establishment of standards for electronic transmission of prescriptions from practitioner to pharmacy. 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.

A public hearing on the proposed rules will be held at 1:30 p.m., November 14, 1995, at 1812 Centre Creek Drive, Room 203, Austin, Texas. Written comments on the proposal may be submitted to Gay Dodson, Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The amendments are proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542-1), §17(b)(4), which specifies that the Board has the responsibility for the adoption of rules regulating a prescription drug or medication order transmitted by electronic means; and §16(a), which specifies that the Board has the authority to adopt rules for the proper administration and enforcement of the Act.

The statute affected by these amendments: Texas Civil Statutes, Article 4542a-1.

§309.2. Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Any term not defined in this section shall have the definition set out in the Act, §5 and §40.

Data communication device—An electronic device that receives electronic information from one source and transmits or routes it to another (e.g., bridge, router, switch, or gateway).

Electronic prescription drug order—A prescription drug order which is transmitted by an electronic device to the receiver (pharmacy) over telephone lines.

Original prescription—The:

(A) original written prescription drug orders; or

(B) original verbal or electronic prescription drug orders reduced to writing either manually or electronically by the pharmacist.

§309.3. Prescription Drug Orders.

(a) Written prescription drug orders.

(1) (No change.)

(2) Authorization for substitution.

(A) Generic substitution.

(i) A pharmacist may dispense a generically equivalent drug product if:

(I)-(III) (No change.)

(IV) the practitioner or practitioner's agent does not clearly indicate that the verbal or electronic [FAX] prescription drug order shall be dispensed as ordered.

(ii)-(iv) (No change.)

(B) (No change.)

(b) (No change.)

(c) **Electronic [FAX] prescription drug orders.**

(1) The practitioner or practitioner's agent shall note any substitution instructions on the electronic [facsimile (FAX)] prescription drug order. Such electronic [FAX] prescription drug order may follow the two-line format indicated in subsection (a)(1)(A) of this subsection, or any other format that clearly indicates the substitution instructions.

(2) If the practitioner or practitioner's agent does not clearly indicate on the electronic [FAX] prescription drug order that the prescription shall be dispensed as ordered, the pharmacist may substitute a generically equivalent drug product.

(d) (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 September 25, 1995.

TRD-9512298

Fred S. Brinkley, Jr.,
R.Ph., M.B.A.
Executive Director
Texas State Board of
Pharmacy

Proposed date of adoption: February 6, 1996

For further information, please call: (512) 832-0661

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Care

EMS Training and Course Approval

• 25 TAC §157.33, §157.38

The Texas Department of Health (department) proposes amendments to §157.33 and §157.38 concerning EMS personnel and provider certification.

Specifically, §157.33 provides for the roll-out of the new EMS curriculum which will be mandatory in 1996. Section 157.38 broadens the reporting categories for continuing education and removes redundant language. A new chart has been formulated to cover the requirements.

The amendments are needed to clarify existing certification and licensing requirements and to address current educational standards.

Gene Weatherall, Bureau Chief, Bureau of Emergency Management has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state and local government as a result of enforcing or administering the sections.

Mr. Weatherall also has determined that for each year of the first five years the sections are in effect, the public will benefit from increased educational standards for EMTs. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There will be no impact on local employment.

Comments on the proposed rules may be submitted to Gene Weatherall, Chief, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700. Comments will be accepted for 30 days after publication of these rules in the *Texas Register*. A public hearing will be held Wednesday, October 11, 1995, at 10:00 a.m. in K-100, Lecture Hall, Texas Department of Health, 1100 West 49th Street, Austin, Texas.

The amendments are proposed under Health and Safety Code, Chapter 773, which provides the Board of Health with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Board of Health, the Department of Health, and the Commissioner of Health.

The codes and/or articles affected are Health and Safety Code, Chapter 773, §§773.045, 773.047, 773.055, 773.056, 773.057, 773.0571, and 773.061, and Health and Safety Code §12.001.

§157.33. Emergency Medical Technician Training.

(a) Course curricula.

(1) The minimum curricula for the Emergency Medical Technician (EMT) training course shall be the 1984 Department of Transportation (DOT) Basic Training program for EMT-Ambulance, except that for courses starting after September 1, 1996, the minimum curricula shall be the 1994 Department of Transportation (DOT) EMT-Basic National Standard Curriculum, and the current Federal Emergency Management Agency document titled "Recognizing and Identifying Hazardous Materials" (HazMat), 1993 which are adopted by reference.

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

(2) Objectives pertaining to the use of the pneumatic antishock garment (PASG) shall be optional until September 1, 1996, when they will become part of the mandatory curriculum for courses starting after that date. Teaching of this optional skill shall be at the discretion of the course coordinator.

(3) The automated external defibrillator (AED) curriculum as adopted by reference in §157.31 of this title (relating to Automated External Defibrillator Training Course) is optional until September 1, 1996, when it shall become a mandatory part of the EMT curriculum for courses starting after that date, and shall be taught only with the approval of an emergency medical services (EMS) medical director or course medical director and shall be in addition to the didactic [100] hours of instruction in paragraph (4) of this subsection and in addition to the clinical and field internship requirements in paragraphs (5) and (6) of this subsection.

(4) The course shall include a minimum of 100 hours of didactic instruction on the approved curricula. For courses starting after September 1, 1996, the hours will increase to 120.

(5) In addition to the [100] hours of didactic instruction in paragraph (4) of this subsection, the student shall be required to complete a minimum of 20 hours of clinical, in-hospital training. A minimum of eight hours are required in the emergency department. The remaining hours may be completed in other clinical areas of the hospital.

(6)-(8) (No change.)

(b) (No change.)

(c) Course approval criteria.

(1) (No change.)

(2) Approval of an EMT training course application shall be dependent upon:

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

(E) having a medical director for all courses starting after September 1, 1996.

(d) (No change.)

(e) EMT completion course.

(1) (No change.)

(2) The minimum curriculum for the EMT Completion Training Course shall be the Texas Department of Health EMT Completion Training Course, 1991, until September 1, 1996, when it shall be the 1994 version which is adopted by reference. Copies of this curriculum may be reviewed during normal working hours in the library of the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(3) Objectives pertaining to the use of the pneumatic antishock garment (PASG) shall be optional except in courses starting after September 1, 1996, when they will become part of the mandatory

curriculum. Teaching of this optional skill shall be at the discretion of the course coordinator.

(4) The AED curriculum as adopted by reference in §157.31 of this title is optional except in courses starting after September 1, 1996, when they will become a mandatory part of the EMT curriculum, and shall be taught only with the approval of an EMS medical director or course medical director and shall be in addition to the 60 hours of instruction in paragraph (5) of this subsection and in addition to the clinical and field internship requirements in paragraphs (6) and (7) of this subsection.

(5) The course shall include a minimum of 60 hours of didactic instruction on the approved curriculum except for courses starting after September 1, 1996, when the hours will increase to 80.

(6) In addition to the [60] hours of didactic instruction in paragraph (5) of this subsection, the student shall be required to complete a minimum of 20 hours of clinical, in-hospital training. A minimum of eight hours are required in the emergency department. The remaining hours may be completed in other clinical areas of the hospital.

(7)-(13) (No change.)

§157.38. Continuing Education.

(a) (No change.)

(b) Hour requirements. CE is a requirement of §157.45 of this title (relating to Recertification). A contact hour shall consist of 50 consecutive minutes of attendance and participation in an approved CE experience. Credit hours for CE activities will only be awarded for the two-year time period in which they are completed; and if participating in a graded activity, only if the individual receives a grade of "C" or better, or "Pass" in a "Pass/Fail" grading system.

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

(c) Content requirements. Candidates at each certification level shall at a minimum accrue [the following CE] hours in department-approved CE in the following content areas [during a two-year CE period].

[(1) At each certification level, at least 80% of required CE hours shall be accrued from the Texas Department of Health (department)-approved content areas with specified minimum hour requirements successfully completed.]

[(2) The remaining 20% of required hours shall be accrued from any department-approved content areas.]

[(3) Department-approved content areas with specified minimum hour requirements for each certification level are as follows.]

FIGURE 1: 25 TAC §157.38(c)

(d) CE course approval criteria. [General criteria necessary for consideration of CE program approval. CE programs shall receive prior approval from the department if state CE credit is desired.] A CE provider shall meet the following criteria [for consideration of CE program approval].

(1) The program shall be pre-approved by the department.

(2)[(1)] The program shall be at least one contact hour in length.

(3)[(2)] Learner objectives shall be written and be the basis for determining content and evaluation.

(4)[(3)] The target audience for the program shall be identified.

(5) [(4)] The content shall be relevant to identified topic areas, and be related to and consistent with, program objectives.

(6)[(5)] The instructor shall be knowledgeable and competent in the subject matter taught. There shall be documentation of the instructor's expertise in the content area.

(7)[(6)] Learning experiences shall be appropriate to achieve the objectives of the program. Principles of adult education shall be used in the design of the program.

(8)[(7)] A schedule shall be provided which identifies the content areas covered and the number of contact hours awarded in each content area.

(9) [(8)] Facilities and educational resources shall be adequate to implement the program.

(10) A written test with a minimum of a "Pass/Fail" grading system which covers the entire scope of learner objectives will be provided except for conferences and authorship.

(11) [(10)] The grading system shall be appropriate for the type of program presented.

(12)[(9)] A [An] program evaluation tool shall be utilized which provides the participant an opportunity to comment on:

(A) achievement of the objectives;

(B) teaching effectiveness of each instructor;

(C) relevance of content presented to stated objectives;

(D) effectiveness of teaching methods; and

(E) appropriateness of physical facilities and educational resources.

(e) Types of CE programs and additional specific criteria necessary for consideration of CE approval.

(1) (No change.)

(2) Ongoing CE programs provided by department-approved EMS initial training programs, licensed EMS providers, registered first responder organizations, hospitals accredited by the Joint Commission for the Accreditation of Healthcare Organizations (JCAHO), or accredited educational institutions that have met the course approval criteria in subsection (d) of this section.

(A) Approved EMS certification training programs that are categorized by the department as an Annual Program or JCAHO accredited hospitals, may receive approval for a two-year ongoing CE program upon completion and approval of a biennial CE application.

(B) Licensed EMS providers or registered first responder organizations who have a documented quality assessment plan with CE as part of their improvement plan and have a state certified coordinator, instructor, or medical director who is responsible for the CE program, may receive approval for a two-year ongoing CE program upon completion and approval of a biennial CE application.

[(C) Acceptance of programs for CE credit shall depend on the provision of an appropriate and adequate written evaluation tool that covers the entire scope of objectives taught, with a minimum of a "Pass/Fail" grading system, in addition to the criteria listed in subsection (d) of this subsection. CE credit shall only be awarded if the individual receives a passing score.]

[(D) Criteria for approval shall be subject to review and audit as part of a site visit of an EMS certification program or during a spot inspection of a licensed provider.]

[(E) If a CE program is found to be deficient in meeting the approval criteria upon audit, then pre-approval for the remaining period shall be revoked. After deficiencies have been corrected, each CE credit hour shall be individually approved by the department prior to presentation for the remainder of the two-year period.]

(3) National or state standardized courses and conferences.

(A) National and state standardized courses such as Advanced Cardiac Life Support (ACLS), Basic Trauma Life Support (BTLS), Prehospital Trauma Life Support (PHTLS), Pediatric Advanced Life Support (PALS), and Pediatric Prehospital Provider Course (PPPC), all of which must have an adequate evaluation tool which covers the entire scope of objectives taught as part of the program, will be listed with pre-approved credit hours assigned. [A minimum of "Pass" on a "Pass/Fail" grading system shall be achieved and documented before credit can be awarded.] An approved CE activity list of these programs shall be maintained by the department.

(B) (No change.)

(4) [Instructor directed] Directed activities, single or multiple offering [of the same activity], which is not included in paragraphs (1)-(3) of this subsection.

(A) A program which is offered one or more times, such as a workshop, or seminar, shall complete all criteria listed in subsection (d) of this section and shall be approved prior to the delivery of the single activity or the initial delivery of the multiple offering activity. [Acceptance of programs for CE credit shall depend on the provision of an appropriate and adequate written evaluation tool that covers the entire scope of objectives taught, with a minimum of a "Pass/Fail" grading system. CE credit shall only be awarded if the individual receives a passing score.]

(B)-(C) (No change.)

[(D) If the multiple offering CE program is found to be deficient in meeting the approval criteria upon audit, then pre-approval for the remaining time period shall be revoked. After deficiencies have been corrected, then each CE credit hour for the remainder of the two-year period shall be individually approved before delivery. If a multiple offering CE program is found to be deficient upon audit on more than one occasion, that program shall not be allowed to have pre-approval for more than one course at a time in the future.]

(5) Formal refresher courses. A refresher course shall:

(A) be provided by a department-approved EMS initial training program;

(B) meet the CE course approval criteria as in subsection (d) of this section;

(C) meet at least the minimum content area hour requirements for the applicable certification level as in subsection (c) of this section; and

(D) offer skills proficiency verification.

(6) [(5)] Independent study. [Individualized instruction.] Independent study such as CE articles in professional journals, ongoing serial productions or interactive computer programs shall: If applicable to appropriate content areas, independent home study such as CE articles in EMS journals, CE packages from professional associations, and ongoing serial productions such as video magazines may count for up to 50% of the required CE hours per two-year period. Interactive programmed instruction such as computer programs, may count for all of the required CE hours per two years, if applicable to appropriate content areas. All individualized instruction programs shall:]

(A) be pre-approved by the department [receive approval prior to delivery];

(B) be developed by a professional group such as an educational institution, corporation, professional association or other approved provider of continuing education;

(C) involve the learner by requiring an active and appropriate response to the educational materials presented;

(D) provide a test as in subsection (d)(10) of this section [depend on the provision of an appropriate and adequate written evaluation tool that covers the entire scope of objectives taught, with a minimum of a "Pass/Fail" grading system. CE credit will only be awarded to the individual if that person achieves and documents a passing score]; and

(E) provide a record of completion which complies with subsection (f) of this section concerning records indicating completion of the program.

(7) [(6)] Authorship.

(A) A candidate may receive CE credit for development and publication of a manuscript in a periodical.

(B) The number of CE credit hours awarded for each article shall be determined by the department.

(C) CE credit will be awarded in the appropriate content areas as related to the manuscript. [Fifteen percent of the total CE hours required per two years may be obtained through this means.]

(D) Credit for publication will be awarded only once per two-year CE time period and the candidate must, upon audit, submit a letter from the publisher indicating acceptance or a copy of the published work.

(8)[(7)] Academic courses.

(A) Upon review by the department, a [A] candidate may receive CE credit for academic courses within the specified content areas for each level of certification.

(B) Completion of academic course work shall be credited on the basis of up to 15 CE contact hours for each semester hour successfully completed, within appropriate content areas. Less than 15 hours may be awarded if the academic course content is only partially applicable to content areas.

(C) When approved, the candidate shall receive notification from the department of acceptance of academic hours and amount of CE credit awarded. [Candidates shall achieve and document a grade of "C" or better, or a "Pass" in a "Pass/Fail" grading system. Upon audit, the individual shall be able to present an official transcript documenting this score.]

(9)[(8)] Instruction in approved initial training and continuing education courses.

[(A)] EMS personnel instructing in an approved initial training course or in an approved CE program may apply the contact hours of actual teaching to the appropriate content areas during the two-year CE period.

[(B)] Additional hours earned above the acceptable hours per content area can not be used for subsequent periods.]

(10) [(9)] CE by optional examination.

(A) Candidates may receive CE credit for passing the National Registry of Emergency Medical Technicians written and practical examination for their current level of EMS personnel certification.

(B) Passing the examination shall be credited on the basis of 20 contact hours for EMT level, 30 contact hours for EMT-I level, and 40 contact hours for EMT-P level. CE credit for passing the National Registry examination shall be an option only once during the four-year certification period.

[(C)] If the candidate fails either the written examination, practical skills examination, or both, they shall retest in accordance with National Registry of Emergency Medical Technicians criteria.]

[(D)] If the candidate fails to pass the National Registry of Emergency Medical Technicians retest examination, or does not retest, no CE credit will be awarded. The candidate shall complete the required CE hours by a mechanism other than optional examination.]

(f) (No change.)

(g) Reporting requirements. Continuing education requirements shall be fulfilled and reported on a two-year cycle. Implementation of this section was effective [shall begin] on September 1, 1994.

(1) Certificants with a certification expiration date before September 1, 1996, shall comply with the two-year reporting requirements after becoming recertified.

(2) Certificants with a certification expiration date after September 1, 1996, shall comply with the two-year reporting requirements for the last two years of the current certification period.

(3) Certificants with a certification expiration date on or after September 30, 1998, shall be responsible for reporting at both two-year cycles in their four-year certification period. [Certificants who have at least two years remaining in their certification period shall comply with the two-year reporting requirement for the last two years of the certification period. Certificants who have less than two years remaining in their certification period shall comply with the reporting requirement after becoming recertified.]

(h) (No change.)

(i) Responsibilities of individual certificant.

(1) (No change.)

(2) Each certificant shall be responsible for maintaining their own CE records. These records shall document completion as evidenced by course certificates, verification letters written on official letterhead, or academic transcripts, to include notification from the department of

the number of hours accepted, and shall include faculty names, titles, dates, content, number of clock hours, and grades of "Pass/Fail", if applicable. The burden of proof of CE participation/completion shall rest solely on the certificant. [EMS providers may choose to duplicate these records as a service to their EMS personnel.]

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

(5) Certificants attending approved national or state conferences/courses shall be responsible for distributing the CE hours within the appropriate content areas for the level of certification if the content areas have not been preassigned [and in accordance with the approved CE list in subsection (e) of this section].

(j) Audit.

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

(5) If any deficiencies are found during an audit, pre-approval for the remaining period shall be revoked. After deficiencies have been corrected, each CE presentation shall have pre-approval for the remainder of the two-year period or until such time as the ongoing program status has been reinstated.

(k) (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 September 27, 1995.

TRD-9512348

Susan K. Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

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

◆ ◆ ◆
Part II. Texas Department
of Mental Health and
Mental Retardation

Chapter 401. System
Administration

Subchapter B. Interagency
Agreements

• 25 TAC §401.47

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of 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 §401.47, concerning memorandum of understanding: continuity of care for mentally ill and mentally retarded offenders.

The statutory authority for the section was repealed in Senate Bill 252, Acts 1993, 73rd Legislature, Chapter 488, §3. The same bill created the Texas Health and Safety Code, §614.013, which mandated a memorandum of understanding (MOU) relating to similar matters; that MOU was adopted in §401.59, concerning continuity of care for offenders with mental impairments. The adoption was published in the February 17, 1995, issue of the *Texas Register* (20 TexReg 1140.)

Donald C. Green, chief financial officer, has determined that for each year of the first five-year period the repeal is in effect, there will be no significant fiscal impact on state or local government.

Don Gilbert, commissioner, has determined that for each year of the first five years that the repeal as proposed is in effect, the public benefit will be the existence of a concise and relevant body of policy documents. 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.

Questions about the content of the proposal may be directed to Liz Shelby, Special Programs, Mental Retardation Services. Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The repeal is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and with Texas Human Resources Code, §41.0011, which requires the MOU to be adopted by rule.

This repeal would affect the Texas Government Code, §501.091 (repealed) and Senate Bill 252, Acts 1993, 73rd Legislature, Chapter 488, §3.

§401.47. Memorandum of Understanding: Continuity of Care for Mentally Ill and Mentally Retarded Offenders.

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 September 27, 1995.

TRD-9512336 Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: November 3, 1995

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

• 25 TAC §401.58

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §401.58 of Chapter 401, Subchapter B, concerning Interagency Agreements. The new section adopts by reference rules of the Texas Department of Human Services (TDHS) in 40 TAC §72.501 (relating to Memorandum of Understanding Concerning the Capacity Assessment of Persons Who are Elderly and Persons with Mental Retardation and/or Developmental Disabilities).

The TDHS rule constitutes a memorandum of understanding (MOU) with TDMHMR as required by the Texas Health and Safety Code, §533.044, as amended by House Bill 869 of the 74th Legislature. The statute specifies that the MOU must require the use of a uniform assessment tool to assess whether a person who is receiving services in a facility operated or regulated by TDHS or TDMHMR and is elderly, has mental retardation, or has a developmental disability needs a guardian of the person or estate, or both, or other decision-making assistance provided by law. The MOU specifies the assessment tool to be utilized, the facilities that must use the assessment tool, the circumstances under which facilities must use the assessment tool, pilot testing of the assessment tool, and an annual review of the MOU.

TDMHMR recently withdrew the proposal of a similar section which adopted by reference a similar MOU with TDHS and the Texas Department of Health (TDH) which was published in February 7, 1995, issue of the *Texas Register* (20 TexReg 875). The withdrawal, published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6319), resulted from the amendments to the authorizing statute by House Bill 869 which removed TDH from the participation.

Donald C. Green, chief financial officer, has determined that for each year of the first five-year period the section as proposed is in effect the pilot project authorized by the MOU is sufficiently limited in size that it will not cause substantial cost to state or local government as a result of administering the project.

Don Gilbert, commissioner, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the provisions of the MOU is the adoption of a rule consistent with the requirements of state law, as well as the availability of a mechanism to identify consumers who require assistance, either through guardianship or other means, in making certain types of decisions about their personal care and treatment, daily living and safety, and/or finances and property. 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.

Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication. Questions regarding the content

of the proposal may be directed to Ms. Logan.

The new section is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and with §533.044, which requires the MOU to be adopted by rule.

The section would affect the Texas Health and Safety Code, §533.044.

§401.58. Uniform Assessment Tool for Assessing Decision-making Capacity.

(a) Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts by reference rules of the Texas Department of Human Services (TDHS) in 40 TAC §72.501 (relating to Memorandum of Understanding Concerning the Capacity Assessment of Persons Who are Elderly and Persons with Mental Retardation and/or Developmental Disabilities).

(b) The MOU between TDMHMR and TDHS is required by the Texas Health and Safety Code, §533.044.

(c) Copies of the MOU are filed in the Office of Policy Development, TDMHMR, 4405 North Lamar Boulevard, Austin, Texas 78756, and may be reviewed during regular business hours.

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 September 27, 1995.

TRD-9512335 Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: November 3, 1995

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

◆ ◆ ◆
Chapter 406. ICF/MR
Programs

Subchapter H. Dental Program

• 25 TAC §406.351, §406.352

(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 §406.351 and §406.352, governing the dental program in the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program in Texas. The repeals are proposed

contemporaneously with the proposal of new sections of Chapter 406, Subchapter H, in this issue of the *Texas Register*.

The proposed repeals would allow for the proposal of new sections which would transfer the state operating agency functions for the ICF/MR Dental Program from TDHS to TDMHMR.

Don Green, Chief Financial Officer, has determined that for each of the first five years the repeals as proposed, would be in effect there will be no fiscal impact to state or local governments. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined that the public benefit is the adoption of new rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for the ICF/MR program. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the repeals 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 Health and Safety Code, §532.015(a), which provides the Texas Department Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§406.351. Program Basis.

§406.352. Eligibility.

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 September 27, 1995.

TRD-9512342

Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

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

◆ ◆ ◆ • 25 TAC §§406.351-406.381

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§406.351-406.381 of Chapter 406, Subchapter H, governing the dental program in the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program in

Texas. The new sections would replace §§406.351-406.352 of existing Chapter 406, Subchapter H, governing the dental program, which are proposed contemporaneously for repeal in this issue of the *Texas Register*.

The proposed sections are substantially the same as provisions in rules of the Texas Department of Human Services (TDHS) contained in 40 TAC §§27.805, 27.807, 27.809, 27.811, 27.813, 27.815, 27.817, 27.819, 27.821, 27.823, 27.825, 27.827, 27.829, 27.831, 27.833, 27.835, 27.837, 27.839, 27.841, 27.843, 27.845, 27.847, 27.849, 27.851, 27.853, 27.855, 27.857, 27.859, 27.861, and 27.863 governing the same matters. The TDHS sections are referenced in existing §406.351.

The primary difference between the documents is that references to TDHS have been changed to reference TDMHMR and the Texas Department of Health (TDH), as appropriate, as part of the transfer of ICF/MR state operating agency functions from TDHS to TDMHMR. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency.

Don Green, chief financial officer, has determined that the sections as proposed are substantially the same as those currently used by TDHS. Mr. Green has determined that for each of the first five years the sections as proposed would be in effect, there will be no fiscal impact to state or local governments. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined the public benefit is the adoption of rules that will enable the department, as the mental retardation authority for the state, to assume policymaking responsibility for the ICF/MR dental program. There will be no effect on small businesses. There is no significant economic cost to persons who are required to comply with the sections as proposed.

Questions about the content of the proposal may be directed to Mr. McKenney. Written comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department of 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 Health and Safety Code, §532.015(a), which provides the Texas Department Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposed new sections would affect Texas Civil Statutes, Article 4413(502), §16.

§406.351. Program Basis.

(a) For the purpose of this subchapter, the term "department" means the Texas Department of Mental Health and Mental Retardation.

(b) Intermediate Care Facilities for the Mentally Retarded (ICF/MR) must ensure that individuals receiving Medicaid services in their facilities receive comprehensive dental services, as specified in 42 Code of Federal Regulations (CFR) §483.460. The Texas Department of Health (TDH) reimburses participating dental providers for services to individuals who are 21 years old or older and who are covered by the ICF/MR Medicaid program through the department's ICF/MR dental program. Services to persons under age 21 who are receiving ICF/MR services are reimbursed through the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Dental Program in accordance with the provisions of this subchapter.

§406.352. Eligibility. To be eligible for the ICF/MR dental program, a person must:

- (1) be a current Texas recipient of Title XIX ICF/MR services;
- (2) have a current Texas Medical Care Identification Card that indicates eligibility with a "Y" or an "R" in the ICF/MR dental blank, or have a Medicaid Verification Letter;
- (3) be 21 years old or older; and
- (4) reside in a community-based ICF/MR.

§406.353. Confidentiality of Records.

(a) The information contained in the individual's clinical record is confidential. Medicaid regulations prohibit the disclosure of information without the individual's consent.

(1) Information may be provided to service providers only with the prior written consent of the individual, the parent of a minor, the legal guardian, or another responsible party.

(2) Lists of names and addresses of individuals may be provided to service providers only with appropriate written consent.

(3) Contracted agencies performing certain administrative functions for the ICF/MR dental program may receive confidential information without consent. These agencies are bound by the same standards of confidentiality as the department and must provide effective safeguards to ensure confidentiality.

(b) If an agency or a person who has not contracted with the department to provide services requests information directly from the service provider, that agency or person must provide written consent as required in subsection (a)(1) of this section.

(c) Statistical information or other general information that does not identify individuals is not subject to the restrictions specified in subsections (a) and (b) of this section.

(d) An individual may choose to release any information.

§406.354. Freedom of Choice.

(a) Individuals receiving ICF/MR dental program services have the right to choose from participating providers of dental treatment services.

(b) The facility must furnish complete information about available services, advice about how to obtain these services, and a full explanation of the individual's right to freely choose service providers as specified in subsection (a) of this section.

(c) The facility must advise the individual of the right to request a hearing conducted by TDH if the individual believes that the right to freely choose providers has been abridged without due process.

§406.355. Allowable Services and Limitations. The ICF/MR dental program pays only for medically necessary covered and allowable services as specified by the department.

§406.356. Dental Examination and Treatment. The ICF/MR dental program provides emergency, preventive, therapeutic, and orthodontic dental services.

§406.357. Emergency Services.

(a) Emergency dental services are those procedures necessary to control bleeding, relieve pain, and eliminate acute infection; operative procedures that are required to prevent the imminent loss of teeth; and treatment of injuries to the teeth or supporting structures. Prior authorization is not required for emergency dental services. Emergency claims exceeding \$80 are subject to review and reduction of payment if the nature of the emergency is not clearly documented. Only one emergency claim a day may be submitted for each individual.

(b) Based on the definition of emergency services approved by the Council of Dental Health of the American Dental Association, routine restorative procedures are not considered emergency procedures.

(c) The Texas Department of Health may increase the maximum fee by publishing a new maximum in the *Texas Register*.

§406.358. Preventive Services. Preventive dental services include an examination, oral prophylaxis, and a topical fluoride application.

§406.359. Therapeutic Services. Therapeutic dental services include, but are not limited to, pulp therapy for permanent and primary teeth; restoration of carious permanent and primary teeth; maintenance of space; and limited provision of removable prostheses when masticatory function is impaired, when an existing prosthesis is unserviceable, or when aesthetic considerations interfere with employment or social development.

§406.360. Orthodontic Services.

(a) Orthodontic services are limited to treatment of:

- (1) retained deciduous teeth;
- (2) crossbite therapy;
- (3) facial accidents involving severe traumatic deviations;
- (4) cleft palates with gross malocclusion that will benefit from early treatment; and
- (5) severe, handicapping malocclusion with a minimum score of 26 as measured on the Handicapping Labio-Lingual Deviation (HLD) Index. Only permanent dentition cases are allowable.

(b) Cosmetic orthodontia is not covered.

§406.361. Eligibility for Orthodontic Services. To qualify for orthodontic services, the individual must be at least 21 years old and receiving ICF/MR services on the date that the prior authorization request is submitted and on the date that orthodontic appliances are first applied.

§406.362. Application for Participation.

(a) Dentists who are licensed and authorized by the Texas State Board of Dental Examiners (TSBDE) and who reside and practice in the United States may apply for participation as providers. Private and public agencies that employ dentists also may apply to become providers in their communities.

(b) If an individual who is eligible for ICF/MR dental services requires emergency dental services while out of state, the requirement that the provider have a Texas dental license and current registration with the Texas Board of Dental Examiners may be waived as long as the provider is a licensed dentist in the state where the services are rendered and as long as he is authorized to provide Title XIX services in that state.

(c) To request provider enrollment application forms for the ICF/MR dental program, dentists, private dental agencies,

and public nonprofit dental agencies contact Provider Enrollment, National Heritage Insurance Company, 11044 Research Boulevard, Building C, Austin, Texas 78759-5239.

§406.363. Requirements for Participation.

(a) Requirements for participation are stated in the provider agreement signed between the provider and TDH.

(b) Providers must render services in accordance with the reimbursement policies and operational instructions established by the department, and in compliance with the "Rules and Regulations Relating to the Practice of Dentistry" set forth by TSBDE.

(c) Participation in the program is voluntary.

(d) The provider agreement is not transferable or assignable.

(e) Each provider must notify TDH or NHIC of all changes in the provider's telephone number(s) or office mailing address(es).

(f) If the TSBDE revokes or suspends a dental provider's license, the provider must notify TDH and NHIC and stop providing ICF/MR dental services. A provider placed on probation by TSBDE may continue to participate in the ICF/MR dental program during the probationary period except when:

(1) the conduct for which the provider has been placed on probation is related to fraud or abuse of Medicaid or other federally funded state health programs, or

(2) the provider's conduct or practice has caused or could cause harm to ICF/MR dental program Medicaid recipients or other patients.

§406.364. Orthodontic Provider Participation.

(a) To provide orthodontic services under the ICF/MR dental program, dentists must be licensed by the TSBDE and be enrolled in the ICF/MR dental program as providers of orthodontic services.

(b) The NHIC associate dental director must authorize all orthodontic treatment. Providers must submit the following documentation with each request for prior authorization:

(1) properly occluded and trimmed dental models,

(2) cephalometric radiograph with tracing models,

(3) completed and scored Handicapping Labio-Lingual Deviation (HLD) sheet with diagnosis of angle class,

- (4) facial photographs,
- (5) treatment plan,
- (6) full series of radiographs or a panorex, and
- (7) additional pertinent information as determined by the provider or requested by the NHIC associate dental director.

(c) The NHIC associate dental director returns all submittals to the provider.

(d) If a case is not approved, the provider may file a claim and receive payment to defray the costs of the diagnostic materials necessary to obtain the prior authorization. However, the provider may receive payment for no more than two denials out of ten cases he submitted.

§406.365. Post-payment Review.

(a) The NHIC associate dental director performs on-site utilization reviews.

(b) At the provider's expense, the provider must submit study models and diagnostic work-up information on patients with questionable review results.

§406.366. Termination of a Provider Agreement. The agreement between the provider and TDH for provision of ICF/MR dental services may be terminated in the following circumstances.

(1) The agreement may be terminated voluntarily by either party by giving 30 days notice in writing to the other party.

(2) If the provider is suspended or has his license revoked by the TSBDE, the agreement is void on the date of the state board's action.

(3) The department terminates the agreement if a provider is convicted for fraud in the program.

(4) The agreement may be terminated by either party for breach of the agreement. A termination for breach of the agreement is effective when the other party receives written notice of the termination or on a later date specified in the notice.

(5) The department and the provider may end the agreement if federal or state laws or other requirements are amended or judicially interpreted in a way that would make it unfeasible or impossible for either party to fulfill the agreement, or if either party is unable to agree on changes necessary for the substantial continuation of the agreement. Any respective accrued interests up to the date of termination must be settled equitably.

§406.367. Maximum Payment.

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

(1) Usual fee—The fee a provider usually charges private-pay individuals for a service.

(2) Maximum fee—The highest fee that the NHIC pays for an allowable procedure. NHIC shall advise participating providers in writing of the maximum fee schedule when the provider is enrolled in the program and whenever maximum fees change.

(3) Adjusted fee—The fee derived when the NHIC associate dental director adjusts the charge for a dental procedure that has a payment limitation as specified in the chart of allowable services, procedure codes, and limitations included in the Early and Periodic Screening, Diagnosis, and Testing (EPSDT) dental services section of NHIC's Provider Procedures Manual. The NHIC associate dental director adjusts payment for a specific dental procedure below the maximum fee for the procedure when TDH has partially paid for service on the same tooth or when the degree of difficulty, as determined by a review of the x-rays or itemized laboratory statement, does not justify the maximum fee.

(b) Payments for dental services rendered in the ICF/MR dental program are the lowest of:

- (1) the provider's usual fee,
- (2) the maximum fee listed on the fee schedule, or
- (3) the adjusted authorized fee.

§406.368. Charges to ICF/MR.

(a) The dental provider may charge the ICF/MR only for services that are not covered by the ICF/MR dental program.

(b) Dental providers must not charge for Medicaid-covered services for which payment was denied because of claim-filing errors or because of late filing.

(c) Dental providers must not charge for missed appointments.

§406.369. Payment of Claims.

(a) Under the agreement with TDH, the provider must accept payment as payment in full for services.

(b) TDH reimburses providers for services properly rendered in accordance with applicable laws, regulations, operational instructions, and the provider agreement. TDH may withhold or suspend payment for services that are not properly rendered.

(c) The ICF/MR dental program makes no payment for services that are available under any other Texas Medical Assistance Program.

(d) In case of the provider's death, TDH pays a completed claim only after the executor of the estate signs it.

§406.370. Change to Another Provider.

(a) A change of provider may be made for one or more of the following reasons.

(1) Treatment by a specialist, such as a pedodontist, oral surgeon, or endodontist, is indicated.

(2) The provider does not want to continue treatment with a particular recipient because of missed appointments, a lack of appointment time, or a personality conflict.

(3) The individual prefers a provider nearer to his home or place of employment.

(4) The individual does not want to continue treatment with the provider because of conflicts with the provider.

(b) A provider may initiate a change of provider for the two reasons specified in subsection (a)(1)-(2) of this section. If arrangements have been made with another provider or a specific specialist, the referring provider notes the name of the provider and a brief reason for the referral when the claim for the initial exam is submitted for payment.

(c) The provider receiving the referral examines the individual and notes on his claim form the referring dentist's name, address, or Medicaid number. The provider checks the individual's eligibility for ICF/MR dental services and completes the treatment unless prior authorization is necessary.

(d) A recipient may initiate a change of provider for the two reasons specified in subsection (a)(3)-(4) of this section. The individual or the facility notifies the initial provider, and the initial provider then submits his claim for payment of services.

(e) If the combined total payment allowed by Medicaid for both providers is less than \$300 and if none of the services requires x-rays for prior authorization, the second provider is not required to obtain prior authorization. This requirement applies whether the provider or the individual initiated the change to another provider.

§406.371. Time Limits, Return, and Denial of Claims.

(a) The ICF/MR dental program denies payment when the following time limits for submitting claims are not met.

(1) Dental services claims must be submitted to the NHIC within 90 days of the service date, with an additional allowance of five days for mail time.

(2) If a service is billed to another insurance resource, the NHIC claim must be filed within 90 days of the disposition by the other resource.

(3) If a service is billed to a third-party resource but the third party does not respond, the NHIC claim must be filed within 12 months of the service date. However, the claim must not be submitted to NHIC sooner than 110 days after the third-party billing.

(b) If the services of a treatment plan cannot all be completed within the 90-day filing limit, the provider must complete a claim form for the completed services and request authorization for the uncompleted services. The provider submits the claim and the authorization request together to NHIC. As appropriate, NHIC pays for the completed services and authorizes the remaining services.

(c) To reconsider a claim that has been denied because additional information is needed, NHIC must receive the needed information within 180 days of the date of NHIC's remittance and status report.

(d) NHIC must receive all claims appeals and requests for adjustments within 180 days of the claim's disposition date. The disposition date is the date on the remittance and status report on which the claim appears.

(e) NHIC denies claims for any of the following reasons:

(1) the individual is not eligible for ICF/MR dental services;

(2) the services billed are not allowable procedures in the ICF/MR dental program;

(3) the claim is submitted after the 90-day time limit;

(4) a duplicate claim has already been submitted, or the claim is for dental services already paid;

(5) the services required, but did not receive, prior authorization;

(6) services were provided by a nonparticipating or a suspended provider;

(7) required information is missing from the claim; or

(8) the lifetime limitations on certain procedures have been exhausted.

§406.372. Dental Problems Discovered by the Utilization-review Dentist.

(a) If a utilization-review dentist finds an obvious need for additional dental care with no absence of service to date, a claim for the additional, medically necessary care may be submitted.

(b) The claim must indicate that the need for additional treatment was discovered by utilization review.

(c) The individual must still be eligible for the ICF/MR dental program.

(d) When required, prior authorization must be obtained for the additional procedure. When obtaining prior approval, the provider indicates that the need for additional treatment was discovered by utilization review.

(e) If a procedure requires x-rays for prior authorization, the x-rays must be submitted with the prior authorization request. The provider writes "discovered by utilization review" at the top of the claim when submitting it for prior authorization.

§406.373. Utilization of Peer Review or Grievance Committees.

(a) The ICF/MR dental program has agreed with the Texas Dental Association that, when appropriate, the program may rely on local peer review or grievance committees to resolve disputes:

(1) including complaints and questions about the quality of service; and

(2) involving individuals receiving services, providers, and the program.

(b) Any one of the parties specified in subsection (a)(2) of this section may utilize either type of committee to try to settle a dispute. The dispute resolution process is initiated by contacting the NHIC associate dental director. The associate dental director contacts the president of the local dental society or peer review committee and requests that the committee meet to resolve the problem.

(c) Individuals receiving ICF/MR services, providers, department staff, or NHIC may also contact the local dental society or peer review committee directly if they consider it necessary.

§406.374. Utilization of Texas State Board of Dental Examiners. Dental services under the ICF/MR dental program must be performed by the provider except for work normally expected to be done by a dental hygienist, a dental assistant, or a commercial or office dental laboratory when denture service is involved. The TSBDE Rules and Regulations, Section V, outlines the scope of work that dental auxiliary personnel can perform. The TSBDE "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f), outlines the

scope of work that can be performed by dental technicians. Any suspected or reported deviations from these practices must be reported to the TSBDE.

§406.375. Types of Reviews. The department conducts prepayment and postpayment utilization reviews of participating dental providers.

§406.376. Notification to Provider about Utilization Review. The provider is entitled to prior notification of ICF/MR dental program utilization reviews.

§406.377. Provider Cooperation. The provider must not contact, examine, or treat individuals to be reviewed, except for emergency services, from the time of notification until after the review. The provider must have each individual's office records, including x-rays, available for the reviewing dentist.

§406.378. Report of Findings. ICF/MR dental program utilization review staff must notify the provider in writing of the review findings. The provider must also be notified of any administrative action to be taken by TDH. The notification may occur after an action taken by another professional dental or governmental organization.

§406.379. Classification of Review Findings.

(a) Review findings are classified as acceptable, questionable, or unacceptable. A review finding is classified as acceptable if:

(1) the tangible service discrepancy rate is five percent or less; and

(2) the monetary discrepancy rate is three percent or less; and

(3) the overall quality of the work performed complies with the TSBDE "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f).

(b) A review finding is classified as questionable if:

(1) the tangible service discrepancy rate is greater than 5.0% but less than 10%; or

(2) the monetary discrepancy rate is greater than 3.0% but less than 6.0%; or

(3) the quality of the work for a specific dental procedure(s) did not comply with the TSBDE "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f).

(c) A review finding is classified as unacceptable if:

(1) the tangible service discrepancy rate is greater than ten percent; or

(2) the monetary discrepancy rate is greater than 6.0 percent; or

(3) the overall quality of the work performed for all dental procedures did not comply with the TSBDE "Laws Relating to the Practice of Dentistry," Texas Civil Statutes, Article 4551(f).

§406.380. Restitution of Overpayments. If, during the review, exceptions are found which indicate overpayment for services rendered or payment for services not rendered, the department requires restitution. The provider must reimburse the TDH for all amounts owed as a result of overpayments and payments for services not rendered. The amount of money to be repaid includes the dollar value of the discrepancies in the claims reviewed. The amount also includes a dollar value derived by applying the monetary discrepancy rate to all of the provider's other treatment claims paid during the period under review.

§406.381. Administrative Actions.

(a) If discrepancies or irregularities are found during the review, the TDH may take one or more administrative actions. These actions include, but are not limited to, the following:

- (1) recoupment of funds;
- (2) referral to a professional dental advisory and review committee for review and recommendation;
- (3) probation;
- (4) referral to peer review committee for review and recommendation;
- (5) termination of the provider agreement;
- (6) referral to the Texas State Board of Dental Examiners; and
- (7) referral to the Texas Attorney General's Medicaid Fraud Control Unit.

(b) If TDH takes adverse action against a provider, the provider has a right to a formal hearing as specified in rules of TDH in 25 TAC §§1.21-1.55.

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 September 27, 1995.

TRD-9512343

Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: November 3, 1995

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

◆ ◆ ◆
Chapter 408. Standards and Quality Assurance

Subchapter A. Standards of the Texas Department of Mental Health and Mental Retardation—Quality Assurance

• 25 TAC §§408.1-408.10

(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 §§408.1-408.10 of Chapter 408, Subchapter A, concerning standards of the Texas Department of Mental Health and Mental Retardation-quality assurance.

The sections are no longer necessary to effect compliance with the various standards to which the department already subscribes. Any new standards with which the department may wish to assure compliance will be adopted as separate subchapters.

Donald C. Green, chief financial officer, has determined that for each year of the first five-year period the repeals as proposed are in effect, there will be no significant fiscal implications for state or local government.

Don Gilbert, commissioner, has determined that for each year of the first five years that the repeals as proposed are in effect, the public benefit will be the existence of a concise and relevant body of policy documents. 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.

Questions about the content of the proposal may be directed to Liz Shelby, Special Programs, Mental Retardation Services. Written comments on the proposal may be sent to Linda Logan, Director, Policy Development, Texas Department of 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, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority.

The repeals would affect the Texas Health and Safety Code, Chapter 533,

§408.1. Purpose.

§408.2. Application.

§408.3. Definition.

§408.4. Scope.

§408.5. Standards of Care.

§408.6. Governing Body.

§408.7. Director of Standards and Quality Assurance.

§408.8. Program Reviews.

§408.9. References.

§409.10. Distribution.

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 September 27, 1995.

TRD-9512334

Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: November 3, 1995

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

Subchapter N. Memorandum of Understanding

• 30 TAC §305.521

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to 30 TAC §305.521, concerning the adoption by reference of a Memorandum of Understanding (MOU) between the Texas General Land Office (GLO) and the TNRCC.

The purpose of the proposed new amendment is to facilitate funding of the Galveston Bay Program of the TNRCC by the Coastal Protection Fund of the GLO. The 74th Texas Legislature, 1995, passed the Texas General Appropriations Act for 1996-1997 and, therein, appropriated funds to the Texas General Land Office from the Coastal Protection Fund. The legislature specifically referenced the GLO duties in Rider 20 to the Texas General Appropriations Act for 1996-1997 di-

recting an appropriation from the Coastal Protection Fund to implement the Galveston Bay Program. The Water Quality Act of 1987, §320, established the Galveston Bay National Estuary Program, which is implemented by the Galveston Bay Program of the TNRCC. The Galveston Bay Program developed the Galveston Bay Plan to address threats to Galveston Bay arising from pollution, development and overuse, and to enhance ecosystem-based management of Galveston Bay. The 74th Legislature specifically directed that the GLO and the TNRCC, in consultation with the Galveston Bay Advisory Council, jointly administer the Galveston Bay Program. The appropriation was made contingent upon the execution of a memorandum of understanding between the GLO and the TNRCC. Section 5.104 of the Texas Water Code requires the TNRCC to adopt by rule any MOU that it enters into with any other state agency. New §305.521 adopts by reference MOU between the commission and other state agencies. The amendment adds the MOU between the TNRCC and the GLO.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period this section as proposed is in effect, there will be fiscal implications as a result of administration and enforcement of the section. The effect on state government will be expenditure of \$750,000 annually for operation of the Galveston Bay Program as authorized under the General Appropriations Act (House Bill 1, Acts of the 74th Legislature, 1995). There are no anticipated effects on revenues to state revenues. While the identification of matching funds from local governments is a requirement of House Bill 1, no direct costs to local governments as a result of adoption of this MOU are anticipated. The availability of state funding for projects under the Galveston Bay Program may be used to leverage matching federal dollars and result in some costs savings to local governments.

Mr. Minick also has determined that for the first five years this section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with this section will be enhanced. Specifically, the public may benefit from coordination of natural resource planning related to the Galveston Bay System, more cost-effective implementation of the Galveston Bay Plan, and improvement in pollution prevention, natural resource preservation and public health protection in the Galveston Bay area. There are no anticipated economic costs to any person, including small businesses, anticipated as a result of compliance with this section as proposed.

Written comments on the proposal should mention Rule Log Number 95164-305-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 201, Post Office Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information concerning this proposal, please contact Rick Ruddell, Water Planning and Assessment Division, (512) 239-4476.

This amendment is proposed under the Texas Water Code (Vernon 1992) §5. 103, which provides the TNRCC with the authority to adopt any rule necessary to carry out the powers and duties of the Texas Water Code and other laws of this state.

In addition, this amendment is proposed under the Texas Water Code, §5. 104, which requires the TNRCC to adopt by rule any MOU between the TNRCC and any other state agency. No other statutes are affected by this proposal.

§305.521. *Adoption of Memoranda of Understanding by Reference.* The following memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Natural Resource Conservation [Water] Commission, Legal Division, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600 [463-8069].

(1) (No change.)

(2) the memorandum of understanding between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of non-hazardous wastewater that contains radioactive constituents; [and]

(3) the memorandum of understanding (effective February, 1992) between the Texas Department of Transportation and the Texas Water Commission, which concerns primarily the assessment of water quality impacts resulting from certain transportation projects; and [.]

(4) the memorandum of understanding (effective August 16, 1995) between the Texas General Land Office and the Texas Natural Resource Conservation Commission, which concerns the joint administration and implementation of the Galveston Bay Program.

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 September 25, 1995.

TRD-9512332

Kevin McCalla
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 239-4640

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 83. Contracted Youth Services

• 37 TAC §83.12

The Texas Youth Commission (TYC) proposes an amendment to §83.12, concerning start-up funds. The amendment establishes specific allowable and unallowable expenses for contracts with start-up funds. It provides for an audit before the closing out of a contract and release of a letter of credit.

John Franks, Director of Finance, 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. Franks 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 increased accountability for use of state funds. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.037, which provides the Texas Youth Commission with the authority to enter into agreements with appropriate public or private agencies for the separate care and treatment of persons subject to the control of the commission.

The proposed rule implements the Human Resource Code, §61.034.

§83.12. *Start-Up Funds.*

(a) Policy. The Texas Youth Commission (TYC) awards start-up funds as an established method of developing additional private contract care programs to meet the demand for services for the youth in TYC care. All start-up funds paid to contract care agents over and above payments for services must be awarded through a competitive request for proposal process.

(b) Rules.

(1) Explanation of Terms Used.

(A) (No change.)

(B) Request for proposal is a document used in a competitive procurement [bid] process for selecting a qualified and competent service provider.

(C)-(E) (No change.)

(F) Contract for service is an agreement between service agent and TYC which provides care for TYC youth for a specified daily rate. [that establishes an enforceable legal relationship between the two parties.]

(G) Letter of credit is a guarantee by a service agent's bank that in the event of default on the contract for services by service agent payment will be made when the proper documents are tendered to the service agent's bank by TYC.

(H) Default is the failure to perform a legal obligation required by contract.

(2) Restrictions.

(A) Start-up funds may not exceed a reasonable value per new bed. The start-up funds are awarded in consideration of the contract for services and the new beds made available for TYC youth.

(B) All start-up funds must be expended and request for reimbursement made within the first twelve months of the contract for services.

[(A) Start-up funds may be awarded only when there is a critical need for services which cannot be met by existing programs.

[(B) Start-up funds may be awarded only if TYC cannot identify service agents willing to start programs without financial assistance.

[(C) Start-up funds may not exceed a reasonable value for a contractually guaranteed number of beds for the initial contract period. The start-up funds are awarded in consideration of the contract for services]

(C)[(D)] Start-up funds are paid monthly based on the expenditures reflected in the agent's monthly expenditure report and in accordance with the approved start-up budget.

(D) Invoices or appropriate documentation must be submitted with all requests for payment. No expenditures will be reimbursed unless within the approved budget.

[(E) Payments for equipment and renovation items are initiated by submission of invoice or other documentation along with an expenditure report.

[(F) No repayment of start-up funds is required except in the case of default.

[(G) Each Request for Proposal (RFP) states a maximum amount of start-up funds and guaranteed payments which may be awarded based on type of program, specific location and size of the program.]

(E) Start-up funds will be competitively evaluated and awarded based on the total cost of services including the per diem rate, guaranteed beds and all related financial conditions and obligations.

(F)[(H)] The RFP requires that start-up funds are requested through a proposed budget with narrative justifications. The RFP restricts the request to those funds necessary to make the program operational. Unjustified amounts will not be awarded. [Funds will not be used for the purchase of real property, i.e. land, buildings, but may be awarded for building renovations which are critical to the program operation.]

[(I) Guaranteed fixed monthly payments may be awarded for a given number of beds to ensure the availability of services determined to be critical to the needs of the agency.]

(3) Allowable and Unallowable Costs.

(A) Allowable costs.

(i) Salaries necessary to start-up of program;

(ii) travel expense, not to exceed state limits;

(iii) training;

(iv) purchase of equipment;

(v) TYC approved renovations to program sites;

(vi) rental of buildings, vehicles or equipment; and

(vii) other appropriate reasonable and necessary direct costs.

(B) Unallowable costs.

(i) Entertainment expense;

(ii) purchase of real property, i.e. land, buildings;

(iii) any cost relating to preparation of proposal, including letter of credit;

(iv) overhead or indirect costs;

(v) items not described in proposed budget and narrative; and

(vi) operating capital or cash reserves.

(4)[(3)] Monitoring.

[(A) The director of community services shall appoint TYC staff to act as monitors for any programs awarded start-up funds.]

(A)[(B)] TYC monitors the start-up progress in accordance with the terms of the start-up funding agreement, the contract for services and the bidder's final proposal as approved by the agency.

(B) [(C)] TYC start-up monitoring commences from the date of the funding agreement to the end of the initial contract for services. [date the program begins operation].

(C)[(D)] The TYC staff responsible for start-up monitoring signs all purchase vouchers for start-up funds and ensures that appropriate goods and services are received.

(D) TYC shall conduct a financial audit of all start-up funding contracts prior to close out and release of letter of credit.

(5) [(4)] Security.

(A) Start-up funds are secured through a letter of credit and a lien on property and equipment, when applicable.

(B) The letter of credit may [should] have a decreasing monthly balance based on the contracted months of service beginning with the first operational month.

(6)[(5)] Default.

(A) In the event of default, the amount of start-up funds which should be repaid is based on the total start-up funds paid less the amount of start-up funds earned up to the date of default.

(B) Start-up funds are earned based on the number of months of service for the contracted number of beds actually rendered up to the point of default.

(7)[(6)] Payment for Contracted Services.

(A) The contract for services does not provide for advance payments. Contract agents are expected to have a minimum of one month's operating capital available from other sources in order to secure the financial stability of the program. Additional funds necessary to operationalize a program should be requested in the start-up funding budget.

(B) Contracts for services shall not guarantee payment for more than 90% of the contracted average daily population (ADP).

[(C)] Contracts for services must not exceed the approved rate structure for the services required by the level of care system. Additional services beyond Health and Human Services Commission's recommended levels of care requirements may be negotiated at a supplemental rate.]

(C)[(D)] The start-up funding agreement shall establish a maximum time frame allowable within which a program must become operational.

(D)[(E)] The start-up funding agreement and the contract for services dates shall establish a service period after the program becomes operational.

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 September 27, 1995.

TRD-9512345 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: November 3, 1995

For further information, please call: (512) 483-5244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Case Management

• **40 TAC §48.3902, §48.3903**

The Texas Department of Human Services (DHS) proposes amendments to §48.3902 and §48.3903, concerning recertification and

denial, reduction, and termination of benefits, in its Community Care for Aged and Disabled (CCAD) chapter. The purpose of the amendments is to clarify that CCAD services may be terminated when the client or someone in the client's home threatens the health or safety of DHS staff or when the behavior of the client or someone in the client's home prevents DHS staff from determining eligibility for services or monitoring the services; to clarify that "repeatedly fails to comply" with service delivery provisions means more than three times; and to change the period in which an applicant must comply with certain requirements from "within the past 12 months if services were terminated for these two reasons" to "whenever services are terminated for these two reasons."

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that DHS will be in compliance with civil rights 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 sections.

Questions about the content of the proposal may be directed to Frances Barraza at (512) 450-3216 in DHS's Long Term Care Services section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-533, 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 amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments implement §§22.001-22.024 and §§32.001-32.041 of the Human Resources Code.

§48.3902. Recertification.

(a) (No change.)

(b) An applicant whose services were terminated in the past due to his [last 12 months because he] or someone in his home being a threat to [threatened] the health or safety of the client, department staff, or provider agency staff may be authorized services if the applicant [the applicant/person in the home] signs a form authorizing release of information, and:

(1) The applicant/person in the home who posed the threat has been treated or is receiving treatment by a licensed or

certified physician, psychiatrist, or psychologist and can furnish a letter saying that he is no longer a threat to himself or others [the client, department staff, or provider agency staff]; or

(2) The applicant/person in the home allows a collateral contact with his physician, psychiatrist, or psychologist, and the contact indicates that the applicant is no longer a threat to himself or others [the client, department staff, or provider agency staff]; or

(3) The person in the home who posed the threat no longer poses the threat [resides in the home].

§48.3903. Denial, Reduction, and Termination of Benefits.

(a) An applicant or client may request an appeal of any decision that denies, reduces, or terminates his benefits. The effective date of the action depends on the situation, as shown in the following table: Figure 1: 40 TAC §48.3903(a)

(b)-(e) (No change.)

(f) [If a client refuses to comply with his service plan, the caseworker and the client may adjust it within the CCAD service requirement limitations.] If the client repeatedly and directly or knowingly and passively condones the behavior of someone in his home and thus, refuses (more than three times) to comply with service delivery provisions [his service plan], the caseworker may terminate services. Refusal to comply with service delivery provisions [a service plan] includes actions by the client or someone in the client's home that prevent determining eligibility, carrying out the service plan, and monitoring the services [carrying out the service plan]. Before services are terminated, the client is entitled to receive written notification that his services will be terminated if he does not comply with service delivery provisions or if he continues to condone someone's behavior that results in non-compliance with service delivery provisions [his service plan]. Also before services are terminated, a referral to APS is made if the client is abused, neglected, or exploited by the person who prevents delivery provisions. Services continue pending the outcome of the Adult Protective Services (APS) investigation. If an applicant's services were terminated in the past due to [12 months because of] his failure to comply with his service plan, the applicant must agree to cooperate with DHS staff to facilitate service delivery [the proposed service plan developed when he reapplies].

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 September 27,
1995.

TRD-9512337

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: January 1, 1996

For further information, please call: (512)
438-3765

◆ ◆ ◆

Name: Shannon Morgan
Grade: 12
School: China Spring High School, China Spring 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 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 355. Research and Planning Fund

Subchapter A. General Research and Planning

• 31 TAC §§355.1-355.5, 355.8, 355.10

The Texas Water Development Board (the Board) adopts amendments to Chapter 355, Research and Planning Fund with a minor change to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6301). Amendments to §§355.1, 355.4, and 355.8 expand the use of the research and planning fund to include aquifer storage and recovery planning. Amendment to §355.2 adds a definition for aquifer storage and recovery planning. Amendment to §355.3 increases the number of grant categories from three to four. Amendment to §355.5 defines the criteria to evaluate aquifer storage and recovery planning projects. Amendment to §355.10 identifies funding limitations for aquifer storage and recovery planning projects at 50% grants. A minor change in §355.5(4)(A) replaces the word planing with the word planning.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Water Code, §§6.101, 11.153(e), and 15.403, which requires the Board to adopt rules to carry out the purposes of the Texas Water Code.

§355.1. General. This subchapter shall govern the board's use of the research and planning fund to provide money for water research, flood control planning, regional planning for water resources, and aquifer storage and recovery planning.

§355.2. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless

the context clearly indicates otherwise. Words defined in the applicable provisions of the Texas Water Code, Chapter 15, and not defined here shall have the meanings provided by such chapter.

Aquifer storage and recovery planning—The process of determining the feasibility of aquifer storage and recovery projects prior to implementation of pilot projects for storage of appropriated water in aquifers and subsequent retrieval of such waters for beneficial use.

§355.3. Legal and Fiscal Information. As funds become available, and needs are identified, the executive administrator will publish notice in the *Texas Register* requesting applications from eligible applicants for grants in one or more of the four categories. Applicants shall submit application(s) in the form and in the numbers prescribed by the executive administrator. The executive administrator may request additional information needed to evaluate the application, and may return any incomplete applications. Applicants may also submit and the executive administrator may also consider applications at any time, depending on availability of funds and demonstrated need.

§355.4. Eligibility. Any person may apply for research grants, but only political subdivisions may apply for flood control, regional planning grants, and aquifer storage and recovery planning grants. Funding of projects shall be at the discretion of the board from funds in the research and planning fund.

§355.5. Criteria. Applications will be evaluated by the executive administrator, considering, at a minimum, the following criteria.

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

(4) Aquifer storage and recovery planning project criteria:

(A) degree to which proposed planning duplicates previous or ongoing planning;

(B) overall project organization and budget;

(C) adequacy of water conservation plan and commitment to water conservation; and

(D) feasibility level scope of project.

§355.8. Notice Requirements. For flood protection, regional planning projects, and aquifer storage and recovery planning projects, applicants must notify all cities, counties, non-profit water supply corporations, regional planning agencies, and all districts and authorities created under the Texas Constitution, Article III, Chapter 52, or Article XVI, Chapter 59, in the planning area by certified mail that an application for planning assistance is being filed with the board. The notice shall include the name and address of the applicant and the name of the applicant's manager or official representative; and brief description of the planning area; the purposes of the planning project; the board's name, address, and the name of a contact person with the board; a statement that any comments must be filed with the executive administrator and the applicant within 30 days of the date on which the notice is mailed. Prior to action by the board, the applicant must provide one copy of the notice sent to affected political subdivisions, a list of the political subdivisions to which notice was sent, and the date on which the notice was sent. The board may not act on such application before the end of the 30-day notice period unless all political subdivisions to which notice is required to be sent agree in writing to waive the notice period.

§355.10. Funding Limitations.

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

(g) Grants for aquifer storage and recovery planning shall be limited to 50% of the total cost of the project.

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 September 27, 1995.

TRD-9512341

Craig D. Pedersen
Executive Administrator
Texas Water Development
Board

Effective date: October 18, 1995

Proposal publication date: August 18, 1995

For further information, please call: (512) 463-7981

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**TITLE 37. PUBLIC
SAFETY AND CORREC-
TIONS**

**Part VII. Texas
Commission on Law
Enforcement Officer
Standards and Education**

**Chapter 211. Administrative
Division**

◆ ◆ ◆
• 37 TAC §211.19

The Texas Commission on Law Enforcement Officer Standards and Education ("commission") adopts an amendment to §211.19, concerning published and unpublished documents, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5482). The amendment to §211.19 authorizes the issuance of copies of documents to the general public and establishes a cost schedule for such documents. The commission provides published documents on a cost recovery basis, while unpublished documents, such as those that may be requested under the Open Records Act, are subject to the cost schedule established by the General Services Commission in compliance with Government Code, Chapter 552, §552.261.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, Chapter 415, §415.010(1) and (5), which provides the commission with the authority to pass rules for the administration of Chapter 415; under the Texas Government Code, Chapter 552, §552.261; and under Texas Government Code, Chapter 2001.

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 September 25, 1995.

TRD-9512281

Edward T. Laine
Chief, Professional
Standards and
Administrative Division
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: October 30, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 450-0188

◆ ◆ ◆
• 37 TAC §211.31

The Texas Commission on Law Enforcement Officer Standards and Education ("commission") adopts new §211.31, concerning the adoption of a memorandum of understanding with the Texas Council on Offenders with Mental Impairments and the Texas Commission on Jail Standards as required by statute, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5482). The memorandum of understanding establishes methods for identifying offenders in the criminal justice system who are mentally impaired, elderly, physically disabled, terminally ill, or significantly ill; developing procedures for the exchange of information relating to such offenders; and adopting rules and standards that assist in the development of a continuity of care and services program for such offenders.

No comments were received regarding adoption of the new rule.

The new section is adopted under the Texas Government Code, Chapter 415, §415.010(1), which provides the commission with the authority to pass rules for the administration of Chapter 415; under the Texas Health and Safety Code, Chapter 614, §614.016; and under Texas Government Code, Chapter 2001.

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 September 25, 1995.

TRD-9512280

Edward T. Laine
Chief, Professional
Standards and
Administrative Division
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: October 30, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 450-0188

◆ ◆ ◆
• 37 TAC §211.85

The Texas Commission on Law Enforcement Officer Standards and Education ("commission") adopts an amendment to §211.85, concerning the issuance of a mental health officer proficiency certificate as provided for in Texas Government Code, §415.037, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5483). The amendment to §211.85 outlines the qualifications and application procedure for the mental health officer proficiency certificate. The amendment also authorizes the commission to charge fees for the issuance of proficiency certificates. Additionally, §211.85 requires five specific courses for issuance of an intermediate jailer proficiency certificate, and four specific courses for the intermediate peace officer certificate.

During the public comment period, the commission received comments from the Hewitt Police Department concerning the proliferation of certificates the commission currently offers, noting that certifications may be too specialized and misleading. In response to this comment, the commission cites the Texas Government Code, §415.037, which authorizes the Commission to offer this certification.

The amendment is adopted under the Texas Government Code, Chapter 415, §415.010(1) and (5), which provides the commission with the authority to pass rules for the administration of Chapter 415, and §415.037, which authorizes the commission to issue this certification; under the Texas Government Code, Chapter 552, §552.261; and under Texas Government Code, Chapter 2001.

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 September 25, 1995.

TRD-9512279

Edward T. Laine
Chief, Professional
Standards and
Administrative Division
Texas Commission on Law
Enforcement Officer
Standards and
Education

Effective date: October 30, 1995

Proposal publication date: July 25, 1995

For further information, please call: (512) 450-0188

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance, at a public hearing under Docket Number 2172 held at 9:00 a.m., September 22, 1995, in Special Master's Hearing Room 102 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted a form filing by the Texas Department of Transportation for a revised surety bond form entitled "Motor Transportation Broker Bond, Form 1897 9/95" (Bond). The bond is a requirement of Article 911m, Texas Civil Statutes, Chapter 6 Title 25, General Laws, acts of the Seventy Fourth Legislature, Regular Session 1995. The form was filed in the Chief Clerk's Office on August 25, 1995.

The authority to regulate motor transportation brokers has been moved from the Texas Railroad Commission to the Texas Department of Transportation which requires the following revision to the Bond: The obligee on the Bond has been changed to the Texas Department of Transportation. References to the statute in the Bond have been revised to reflect Article 911m, Texas Civil Statutes, Chapter 6 Title 25, General Laws, acts of the Seventy Fourth Legislature, Regular Session 1995. There was one other minor revision to the Bond changing "KNOW ALL MEN BY THESE PRESENTS:" to "KNOW ALL PERSONS BY THESE PRESENTS:".

The full text of the surety bond form filing (Reference Number O-0895-27), was published in the September 1, 1995, issue of the *Texas Register* (19 TexReg 6818).

The Texas Department of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15, and 5.97.

The full text of the surety bond form entitled "Motor Transportation Broker Bond", as adopted by the Texas Department of Insurance is filed with the Chief Clerk under (Reference Number O-0895-27) and is incorporated by reference by Commissioner Order Number 95-0991.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

The Texas Department of Insurance hereby certifies that the adopted form filing referenced herein has been reviewed by legal counsel and found to be within this agency's authority to adopt.

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 September 27, 1995.

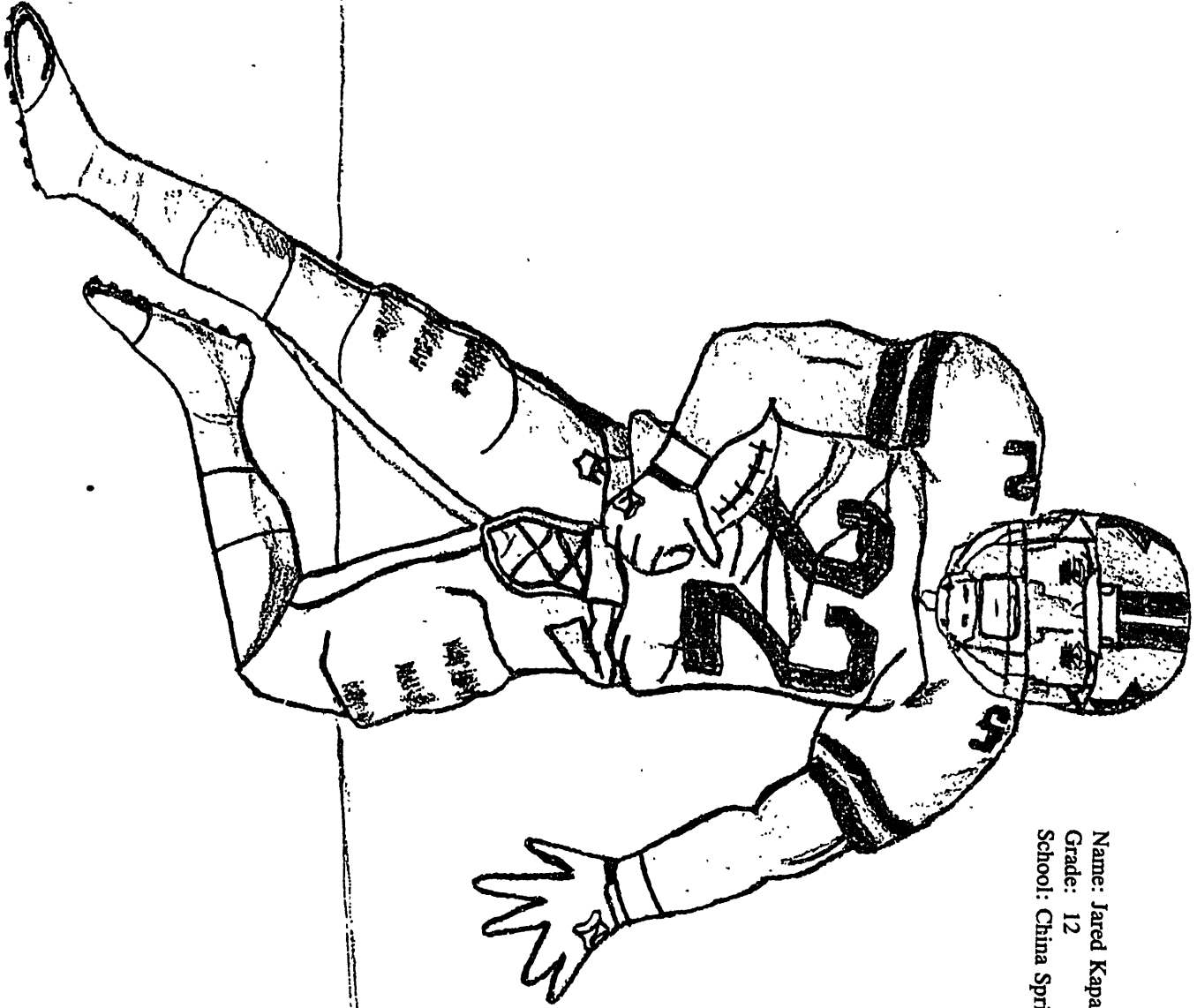
TRD-9512339

Alicia M. Fochtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

Effective date: October 18, 1995

For further information, please call: (512) 463-6328

◆ ◆ ◆



Name: Jared Kaparik
Grade: 12
School: China Spring High School, China Spring ISD

Jared Kaparik
#23

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 §157.38(c)

CONTENT AREA	PARAMEDIC MINIMUM	EMT - I MINIMUM	EMT MINIMUM	ECA MINIMUM
Preparatory (General patient assessment; shock; airway management; general pharmacology)	8	8	4	2
Trauma	10	7	4	3
Cardiovascular	8	3	2	1
Medical Emergencies	11	11	10	4
Special Patients (Geriatric; Pediatric; Neonatal; OB/GYN; Behavioral)	11	7	4	2
*Minimum Content Hours	48	36	24	12
**Additional CE Hours	32	24	16	8
Total Hours	80	60	40	20

* Minimum content hours also meet formal refresher course requirements.

** Additional CE hours may include: rescue/extrication; communications; emergency driving; docum/medical/legal; management; administration; education; and content area subject matter.

Figure 1 for 40 TAC 48.3903(a)

If

Termination or reduction is because the client lost his eligibility as an income-eligible, failed to qualify as an income-eligible after a verbal referral, failed to meet the client needs assessment score or medical criteria for the service, repeatedly (**more than three times**) **directly or knowingly and passively condoned the behavior of someone in his home and thus, refused to follow [the] service delivery provisions [plan], experienced a change in his need for the specific service, or failed to pay fees for services,**

Termination is because the client lacks AFDC, SSI, Medicaid or food stamp eligibility,

Termination is because the client lacks physician's orders for the service,

Termination or reduction is because of budgetary constraints or changes in federal law or state regulations, and services are reduced or terminated for an entire categorical client group,

Termination is because the client or someone in his home threatens the health or safety of others, or because the client threatens his own health or safety.

Then

The action is effective 12 days from the date of the notice unless the action is appealed. In the event of appeal, services continue until the hearing officer gives a decision. The cost of providing services during this period is subject to recovery by the department from the client. Services to clients in residential care facilities are terminated five days after the hearing officer gives his decision.

Services continue only to the end of the month that the client is determined ineligible, even if the action is appealed.

Services continue only through the date the previous orders end, even if the action is appealed.

Services continue only through the date of termination of a categorical client group, even if appealed.

Services may be terminated immediately under the following conditions:

A client receiving residential care, adult foster care, day activity and health services, [congregate meals,] or special services to persons with disabilities threatens his own health or safety or that of others; or

Someone in the client's home or a client receiving emergency response services, home-delivered meals, family care, primary home care, or special services to persons with disabilities threatens the **Texas Department of Human Services' (DHS's) staff or provider's health or safety.**



Name: JT McElwrath
Grade: 12
School: China Spring High School, China Spring ISD

JT McElw

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Monday, November 6, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in SOAH Docket Number 475-95-1170; Public Utility Commission Docket Number 14245-Complaint of Montgomery County against Lufkin-Conroe Telephone Exchange, Inc.

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: September 27, 1995, 8:40 a.m.

TRD-9512331

Monday, December 11, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in SOAH Docket Number 473-95-1169; petition of Southwestern Public Service Company for findings of special circumstances and for associated waivers.

(Public Utility Commission Docket Number 14499)

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: September 27, 1995, 2:26 p.m.

TRD-9512365

Wednesday, March 4, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A hearing on the merits on remand is scheduled for the above date and time in SOAH Docket Number 473-95-1181 (PUC Docket Number 7952)-complaint of Metro-Link Telecom, Inc. against Southwestern Bell Telephone Company, Inc.

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: September 28, 1995, 8:37 a.m.

TRD-9512372

Texas Department of Agriculture

Thursday-Friday, October 5-6, 1995, 2:30 p.m. and 9:00 a.m., respectively.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Texas Agriculture Finance Authority

AGENDA:

Thursday, October 5

Discussion on: Loan guaranty application for Colorado County Rice Mill, Inc., loan guaranty application for Strube Packing Company, loan guaranty application for Cotton Unlimited, Inc., loan guaranty application for Moda Knitting Mills, Ltd., The Living Christmas Tree, Inc., revisions of the credit policy for the Loan Guaranty Program, amendment to the resolution for the Farm and Ranch Finance Program, Proposition 3 (constitutional amendment), Revenue Bond Program.

Friday, October 6

Discussion and action on: Minutes of last meeting; loan guaranty application for Colorado County Rice Mill, Inc., loan guaranty application for Strube Packing Company, loan guaranty application for Cotton Unlimited, Inc., loan guaranty application for Moda Knitting Mills, Ltd., revisions to the credit policy for the Loan Guaranty Program, an amendment to the authorizing resolution for the Farm and Ranch Finance Program, Revenue Bond Program, Proposition 3 (constitutional amendment), next meeting date.

Discussion on: Portfolio of the Loan Guaranty Program;

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: September 27, 1995, 3:52 p.m.

TRD-9512369

Texas Appraiser Licensing and Certification Board

Friday, October 6, 1995, 1:00 p.m.

Room 235-A, 1101 Camino La Costa
Austin

Enforcement Committee

AGENDA:

Friday, October 6, 1995

Call to order; discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning complaint files numbered 94-029, 95-003, 95-005, 95-008, 95-011, 95-012, 95-013, 95-015, 95-019-95-032, and 96-001-96-005; executive session for consultation with, and advice from, legal counsel with respect to pending or contemplated litigation or settlement offers, pursuant to Texas Government Code, §551.071; reconvene in public session; and adjourn.

Contact: Renil C. Liner, P.O. Box 12188,
Austin, Texas 78711-2188, (512) 465-3950.

Filed: September 27, 1995, 2:26 p.m.

TRD-9512364

Coastal Coordination Council

Thursday, October 5, 1995, 9:00 a.m.

State Capitol Extension, Room E1.028,
1400 Congress Avenue

Austin

AGENDA:

I. Call to order and administration of oath of office to the new gubernatorial appointees

II. Opening remarks and introduction of new Council members

III. Approval of minutes of the June 19, 1995, meeting

IV. Report from the Council task force on the permitting assistance process for individuals and small business

V. Report from the Council task force on thresholds and rule certification

VI. Council rules

a. Discussion of rules

b. Public comment

c. Adoption

VII. Coastal Management Program document

a. Discussion of document

b. Public comment

c. Approval for submission to the Governor

VIII. Discussion and approval of implementation schedule for Coastal Coordination Council rules

IX. Adjourn

Contact: Janet Fatheree, 1700 North Congress Avenue, Room 617, Austin, Texas 78701, (512) 463-5385.

Filed: September 26, 1995, 4:40 p.m.

TRD-9512319

Community Nutritional Task Force

Thursday, October 5, 1995, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 835

Austin

AGENDA:

I. Call to order

II. Agency reports on resources they can contribute to the project

III. Discuss general development of the garden project, including presentations by interested entities

IV. Public comment

V. Adjourn

Contact: Leda Roselle, 1700 North Congress Avenue, Room 837, Austin, Texas 78701, (512) 463-6279.

Filed: September 27, 1995, 10:29 a.m.

TRD-9512352

Texas Commission on Fire Protection

Tuesday-Thursday, October 10-12, 1995,
9:00 a.m.

12675 North Research Boulevard

Austin

Funds Allocation Advisory Committee

AGENDA:

I. Approval of minutes of previous meeting.

II. Discussion of monitoring reports.

III. Discussion and possible action on applications for financial assistance.

IV. Discussion and possible action on the interest rate to be used for loans under the Fire Department Emergency Board.

V. Discussion and possible action on changes to the rules of the Fire Department Emergency Program.

VI. Discussion and possible action regarding changes to the instructions, application,

and contract for the Fire Department Emergency Program.

VII. Discussion of report on acquisition of resources and distribution of same.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78753, (512) 918-7100.

Filed: September 28, 1995, 9:36 a.m.

TRD-9512380

Tuesday-Friday, October 10-13, 1995,
1:00 p.m. (Tuesday) and 9:00 a.m. (Wednesday-Friday), respectively.

12675 North Research Boulevard and 6121 IH-35 North

Austin

Commission

AGENDA:

Budget and Strategic Plan subcommittees will meet October 10. Executive sessions under §551.071(2) and §551.074 of the Texas Government Code. Discussion/possible action involving: legal advice; personnel matters; appointment of personnel; process of employment and evaluation of executive director. Recognition of former commission members. Discussion/possible action regarding proposed Executive Appraisal System. Report from Budget and Strategic Plan subcommittees and discussion and possible action on recommendations. Discussion/possible action on: Sunset Advisory Commission self-evaluation report; authority of agency staff to communicate on behalf of the commission; policy on use of agency resources by commissioners; solicitations or applications for gifts, contributions, or grants; agency electronic communications; appointments to advisory committees; need for an advisory committee to develop recommendations regarding fire prevention education; proposed amendment to 37 TAC §401.11; proposed adoption of 37 TAC §407.1. Report on Docket Number 411-95-0119. Matters from the: Fire Protection Personnel Advisory Committee; Volunteer Fire Fighter Advisory Committee; Funds Allocation Advisory Committee; Fire Alarm Advisory Council. Discussion/possible action regarding status of study of feasibility of statewide fire code. Report on Firemen's Training School Advisory Board. Matters from the executive director. New matters from the public. Attendance at a reception and dinner. Discussion/possible action on future meeting dates.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: September 28, 1995, 9:36 a.m.

TRD-9512379

Wednesday-Thursday, October 20-21,
1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Fire Protection Personnel Advisory Committee

AGENDA:

Call to order.

Discussion and possible action concerning rules pending before the Texas Commission on Fire Protection relating to paid fire protection personnel, part-time fire protection employees, and local fire departments regulated under Government Code, Chapter 419, Subchapter B.

Discussion and possible action on future meeting dates, agenda items, and locations.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: September 28, 1995, 9:36 a.m.

TRD-9512381

Office of the Governor

Wednesday, October 4, 1995, 10:00 a.m.

12th and Congress Avenue, Capitol Extension Auditorium, E1.004

Austin

Transition Oversight Committee on Workforce Development-Working Group

AGENDA:

1. Convene meeting
2. Conduct organizational activity
3. Discussion session with private industry councils, councils of government, service delivery areas, and other local entities regarding the new workforce delivery system.
4. Adjourn

Contact: Richard Evans, 201 East 14th Street, #210, Austin, Texas 78701, (512) 463-1823.

Filed: September 26, 1995, 1:50 p.m.

TRD-9512307

Texas Health Reinsurance System

Wednesday, October 25, 1995, 9:00 a.m.

333 Guadalupe Street, Room 1250A, Tower I

Austin

AGENDA:

Amended Agenda: Board of Directors Meeting

I. Call to order

II. Discussion and take possible action on approving the minutes of the last board meeting

III. Participation by the public

IV. Discussion and report from TDI staff

V. Discussion and report from the Actuarial Committee

A. Review and take possible action on rates of the system

B. Discuss and take possible action on an interim assessment for the system

VI. Discussion and report from the Operations Committee

VII. Discussion and take possible action on communications to and from reinsured carriers

VIII. Any further business

IX. Setting the agenda, date and location for next board meeting

X. Adjourn

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 26, 1995, 10:40 a.m.

TRD-9512306

Texas Higher Education Coordinating Board

Tuesday, October 10, 1995, 10:00 a.m.

Chevy Chase Office Complex, Building Five, Room 5.200, 7745 Chevy Chase Drive

Austin

Family Practice Residency Advisory Committee

AGENDA:

Discussion of the Physician Education Loan Repayment Program (PELRP).

Contact: Stacey Silverman, P.O. Box 12788, Austin, Texas 78711, (512) 483-6206.

Filed: September 28, 1995, 9:26 a.m.

TRD-9512375

Wednesday, October 25, 1995, 3:00 p.m.

Chevy Chase Office Complex, Building Five, Room 5.200, 7745 Chevy Chase Drive

Austin

Access and Equity Committee

AGENDA:

Address the rule which governs the Minority Doctoral Incentive Program which has been fine-tuned to conform with the statute.

Contact: Betty James, P.O. Box 12788, Austin, Texas 78711, (512) 483-6140.

Filed: September 28, 1995, 9:26 a.m.

TRD-9512374

Texas Department of Licensing and Regulation

Thursday, October 5, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the complainant's dispute of the department's determination regarding the claim filed against the Auctioneer Recovery Fund, and the complainant's request that the hearings examiner determine the amount due, in accordance with Texas Civil Statutes Annotated, Article 8700, §5C, 16 Texas Administrative Code (TAC), Chapter 67, and the Texas Government Code, Chapter 2001 (APA).

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: September 26, 1995, 3:25 p.m.

TRD-9512309

Texas Lottery Commission

Friday, October 6, 1995, 9:15 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

Bingo Advisory Committee

AGENDA:

According to the complete agenda, the Bingo Advisory Committee will call the meeting to order; consideration and possible approval of the minutes of the September 6, 1995 meeting; report by the Bingo Advisory Committee secretary and possible discussion of the September 12, 1995 Texas Lottery Commission meeting; consideration and possible action on procedures concerning public comment to be received by the Bingo Advisory Committee at their meetings; consideration and possible action on communications, written or otherwise, received by members of the Bingo Advisory Committee regarding concerns of the interpretation of statutes and rules including but not limited to bingo pulltabs and electronic cardminding devices; public comment will be received by the Bingo Advisory Com-

mittee from 11:00 a.m. to 12:30 p.m., each comment will be limited in duration from three to five minutes; consideration and possible action on the interpretation of laws and Texas Lottery's Commission staff's proposed rules relating to bingo, including but not limited to bingo pulltabs and electronic cardminding devices and their effect on charities conducting bingo; consideration and possible action relating to the definition and services or activities of a system service provider as described in House Bill 3021, 74th Legislature, Regular Session; consideration and possible designation of future Bingo Advisory Committee meetings, and adjournment.

For ADA assistance, call Rene McCoy at (512) 371-4823 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 16630, Austin, Texas 78761-6630, (512) 323-3791.

Filed: September 28, 1995, 9:37 a.m.

TRD-9512382

Texas Natural Resource Conservation Commission

Wednesday, October 4, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised Agenda

AGENDA:

The commission will meet in closed session to discuss pending litigation and related legal matters concerning Tejas Testing. The commission may meet in open session to take any official action concerning these legal matters, including action on the contracts.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 26, 1995, 3:49 p.m.

TRD-9512130

Wednesday, October 4, 1995, 11:30 a.m.

10100 Burnet Road, J. J. Pickle Research Campus, Room Number 1.138

Austin

Revised Agenda

AGENDA:

The commission will meet in closed session to discuss their duties and roles as commissioners and closed session to discuss the duties and roles of the executive director, and in open session to consider the commission's goals, priorities, and policies, the duties and roles of the commission's executive

management, including its deputy directors and other senior management, and the management culture conducive to achievement of the agency's priorities.

The commission may also meet in open session to consider their duties and roles, and the duties and roles of the executive director.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: September 26, 1995, 3:49 p.m.

TRD-9512311

Thursday, October 19, 1995, 10:00 a.m.

Environmental Pollution Control-Auditorium, 7411 Park Place

Houston

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on a petition made to the Texas Natural Resource Conservation Commission by ratepayers of Parkway Municipal Utility District appealing a sewer rate increase effective March 15, 1995. SOAH Docket Number 582-95-1110.

Contact: Susan Prior, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: September 28, 1995, 8:57 a.m.

TRD-9512373

Monday, October 23, 1995, 10:00 a.m.

TNRCC, Building A, Room 310A and D, 12124 Park 35 Circle

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application made to the Texas Natural Resource Conservation Commission by Phillips Gordon, Receiver, doing business as Hazy Hills Water Supply for a water rate increase effective September 1, 1995, for its service area located in Travis County, Texas. SOAH Docket Number 582-95-1100.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: September 28, 1995, 9:30 a.m.

TRD-9512376

Tuesday, October 31, 1995, 10:00 a.m.

TNRCC, Building C, Room 131E, 12124 Park 35 Circle

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative

Hearings on an application made to the Texas Natural Resource Conservation Commission by Ascension Capital Corporation doing business as Big Eddy for a water rate increase effective June 15, 1995, for its service area located in Smith County, Texas. SOAH Docket Number 582-95-1085.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: September 28, 1995, 9:32 a.m.

TRD-9512377

Texas Property and Casualty Insurance Guaranty Association

Thursday, October 5, 1995, 9:00 a.m.

9420 Research Boulevard, Echelon III, Suite 400

Austin

Board of Directors

AGENDA:

The Texas Property and Casualty Insurance Guaranty Association Board of Directors will meet to call the meeting to order, hear public participation, approve minutes of the July 20, 1995 meeting, discuss and take possible action on Board Committee updates (Finance and Audit, Legal and Claims, Legislative, Nominating), line of credit presentation, briefing on work flow projections and current claims update, executive session, discussion and possible action on items discussed in executive session, and discussion and possible action on a date for the next regular meeting of the Board of Directors.

Contact: Marvin Kelly, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345-9335.

Filed: September 27, 1995, 9:27 a.m.

TRD-9512340

Public Utility Commission of Texas

Tuesday, October 10, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled for the above date and time in Docket Number 14712-Complaint of Dr. Richard and Gerri-Lynn Siegelman against Houston

Lighting and Power Company.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 26, 1995, 4:12 p.m.

TRD-9512312

Texas Senate

Wednesday, October 4, 1995, 10:00 a.m.

1100 Congress Avenue, Lieutenant Governor's Committee Room, State Capitol

Austin

Senate Administration Committee

AGENDA:

Complete agenda:

1. To consider presentations regarding interim charge to Administration Committee concerning technology study.

Contact: Myra Schmidt, 1100 Congress Avenue, Austin, Texas 78701, (512) 463-0350.

Filed: September 26, 1995, 5:04 p.m.

TRD-9512330

Boards for Lease of State-Owned Lands

Monday, October 9, 1995, 10:00 a.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Board for Lease of Texas Parks and Wildlife Department

AGENDA:

Approval of previous board meeting minutes; consideration of bids received at the October 3, 1995 oil, gas and other minerals lease sale; executive session—pending or contemplated litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: September 27, 1995, 9:59 a.m.

TRD-9512347

University Interscholastic League

Wednesday, October 4, 1995, 1:30 p.m.

Thompson Conference Center, 26th at Red River

Austin

Waiver Review Board

AGENDA:

AA. Request for waiver of Parent Residence Rule by Glenn Bankston, Mason High School

BB. Request for waiver of Parent Residence Rule by Denise Kubena, Dempner High School, Sugar Land, Texas

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: September 28, 1995, 8:36 a.m.

TRD-9512371

Texas Youth Commission

Thursday, October 5, 1995, 8:00 a.m.

4900 North Lamar Boulevard, Rooms 1420-1430

Austin

Board

AGENDA:

Approval of resolution requesting transfer of a correctional facility from the Texas Department of Criminal Justice (action)

Approval of interagency cooperation contract for conversion of the TDCJ San Saba N-Group Facility (action)

Review of state auditor's report on contract administration and management's response. (action)

Report on TYC/TJPC Joint Board Committee activities (action)

Statistical summary/report on youth populations (information)

Approval of research study by the Texas Mediation Initiative (action)

Review of employer grievance report (information)

Contact: Steve Robinson, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-5244.

Filed: September 27, 1995, 11:44 a.m.

TRD-9512355

Regional Meetings

Meetings Filed September 26, 1995

The Northeast Texas Municipal Water District (Emergency Meeting.) Board of Directors met at Highway 250 South, Hughes Springs, September 28, 1995, at 10:00 a.m. (Reason for emergency: District

believes application in violation of adjudication process for the Basin in 1986 and the Cypress Basin Operating Agreement in 1972.) Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9512308.

Meetings Filed September 27, 1995

The Austin-Travis County MHRM Center will meet at 1430 Collier Street, Austin, October 4, 1995, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9512366.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at 1706 East 29th Street, Bryan, October 3, 1995; at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9512360.

The Capital Area Rural Transportation System (CARTS) CARTS Board of Directors will meet at 2010 East Sixth Street, Austin, October 6, 1995, at 9:00 a.m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas 78702, (512) 389-1011. TRD-9512357.

The Dawson County Central Appraisal District Board of Directors will meet at 1806 Lubbock Highway, Lamesa, October 4, 1995, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9512363.

The East Texas Council of Governments JTPA Board of Directors will meet at 1306 Houston Street, Kilgore, October 4, 1995, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9512354.

The Education Service Center, Region XIII Board of Directors will meet at 5701 Springdale Road, Board Room 205, Austin, October 6, 1995, at 12:30 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9512370.

The Harris County Appraisal District Agricultural Advisory Board will meet at 2800 North Loop West, Eighth Floor, Houston, October 4, 1995, at 1:30 p.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77092, (713) 957-5291. TRD-9512368.

The Nolan County Central Appraisal District Board of Directors will meet at Betty's Breakfast, Oak Street, Sweetwater,

October 10, 1995, at 7: 00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9512349.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Task Force will meet in B Room, Municipal Plaza Building, corner of Main and Commerce, San Antonio, October 4, 1995, at 4:00 p.m. Information may be obtained from Charlotte A. Roszelle, 434

South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9512356.

The Trinity River Authority of Texas Executive Committee will meet at 5300 South Collins Street, Arlington, October 4, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9512367.



Meetings Filed September 28, 1995

The Dallas Central Appraisal District Board of Directors (Regular Meeting) will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, October 4, 1995, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9512378.



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.

Comptroller of Public Accounts Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist the Comptroller in connection with systems development review of the Integrated Tax System Project. The consultant will review the project plan, the project's organizational structure, and risk management plan, and provide assistance in developing project performance measures. The consultant must be able to perform the stated work or to facilitate the completion of that work while at the same time transferring information and techniques to establish a quality assurance program in the Systems Development Division. The successful proposer will be expected to begin performance of the contract on or about December 4, 1995.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the referenced address on Tuesday, October 3, 1995, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the referenced address prior to 4:00 p.m. (CZT) on Friday, October 13, 1995.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Monday, October 30, 1995. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final selection. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP-October 3, 1995, 4:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due-October 13, 1995, 4:00 p.m. (CZT); Proposals Due-October 30, 1995, 4:00 p.m. (CZT); and Contract Execution-November 20, 1995, or soon thereafter as possible.

Issued in Austin, Texas, on September 27, 1995.

TRD-9512333

Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: September 27, 1995

Texas Department of Health Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency and Desist Order issued September 6, 1995, to Capital Imaging Centers, 4207 James Casey, Suite 111, Austin, Texas 78745, holder of Certificate of Mammography Systems Number M00387.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on September 26, 1995.

TRD-9512292

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: September 26, 1995

Public Hearing-Emergency Medical Services

The Texas Department of Health (department) will be conducting a public hearing regarding the proposed Emergency Medical Services (EMS) rules concerning EMS personnel certification and provider licensing as published in the September 29, 1995, issue of the *Texas Register*. The hearing will be held on Wednesday, October 11, 1995 in the Lecture Hall, Room K-100, at the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199.

For information on the public hearing or the proposed rules, please contact Pam West in the Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700.

Issued in Austin, Texas, on September 26, 1995.

TRD-8512313

Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: September 26, 1995

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Texas Department of Insurance
Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2184 on October 24, 1995, at 1:30 p.m. at the Seabrook City Community House, 1210 Anders, Seabrook, Texas, to consider a petition to designate parts of the cities of Seabrook and La Porte as catastrophe areas eligible for residential property and commercial property insurance coverage through the Texas Catastrophe Property Insurance Association (TCPIA). The petition was originally filed in August of 1994 by some 40 citizens of Seabrook. A hearing was held under Docket Number 2130 on December 14, 1994, at the La Porte City Hall to take public testimony on windstorm insurance availability problems in Seabrook, La Porte, and nearby Galveston Bay coastal communities. Following that hearing, the August 1994 petition was amended on June 28, 1995, to include only the portion of the city of Seabrook located east of State Highway 146. The City of La Porte City Council joined the amended petition on September 5, 1995, requesting that the portion of the city of La Porte located east of State Highway 146 be designated as a catastrophe area served by the TCPIA. All interested parties are invited to attend the hearing and testify for or against the petition. The hearing will continue until all witnesses have had an opportunity to speak.

The Commissioner is authorized pursuant to the Insurance Code, Article 21.49, §3(h) to designate a city or a county as a catastrophe area to be served by the TCPIA upon determination, after notice of not less than ten days and hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within that city or county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. The 74th Texas Legislature amended Article 21.49 §3(h) in House Bill 2593 (Acts 1995, 74th Legislative, Part 4724, Chapter 944, §1, effective September 1, 1995) to provide that a part of a city or a part of a county could also be designated as a catastrophe area eligible for coverage by the TCPIA.

The TCPIA was created by the Texas Legislature in 1971 to provide a method whereby adequate windstorm, hail, and fire insurance may be obtained in certain designated portions of the State of Texas. Currently, the TCPIA provides windstorm and hail insurance to residents of 14 coastal counties who are unable to obtain such coverage in the voluntary market.

Anyone wishing to present testimony on this matter is requested to complete a witness card which will be available at the meeting site prior to the hearing.

Issued in Austin, Texas, on September 27, 1995.

TRD-8512338

Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: September 27, 1995

**Texas Natural Resource Conservation
Commission**

Correction of Error

The Texas Natural Resource Conservation Commission adopted new §§263.1-263.12. The rules appeared in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7300).

Due to submission the following errors were published.

The title of Chapter 263 reads "Processing of Application, Evaluation of Request for Contested Case Hearing." The title should be corrected to read "Final Approval by the Executive Director, Evaluation of Request for Contested Case Hearing."

Section 265.85, entitled "Form of Subpoena" contains a sentence which reads "[t]he heading of the subpoena shall be "The Texas Natural Resource Conservation Commission." The sentence should be corrected to read "[t]he heading of the subpoena shall be "The State Office of Administrative Hearings." Further, the third sentence reads "[i]t shall be signed by the chief clerk, but need not be under the seal of the commission and the date of issuance shall be noted thereon." The sentence should be corrected to read "[i]t shall be signed by the judge, but need not be under the seal of SOAH and the date of issuance shall be noted thereon."

Section 337.4 is entitled "Filing and Service Procedures for Documents, Notice." Subsection (1) contains a cross-reference to "§337.53 of this title (relating to Amending the Proposal for Decision)." The cross-reference should be corrected to read "§337.53 of this title (relating to Pleadings Following Proposal for Decision (PFD))."

Section 337.53, entitled "Pleadings following Proposal for Decision (PFD)" contains a cross-reference to "§337.51." The cross-reference should be corrected to read "§337.52."

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Notice of Cancellation

The Texas Natural Resource Conservation Commission announces the postponement until further notice of the public hearing concerning the DRAFT reports for Total Maximum Daily Loads (TMDL) for Total Copper, Total Silver, Total Lead, Total Zinc, Total Arsenic, and Total Mercury in the San Jacinto River Tidal, Houston Ship Channel, and Buffalo Bayou in the San Jacinto River Basin (Segments 1001, 1005, 1006, 1007, 1013, 1014, 1016, and 1017). The public hearing notice was published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6697) and had been scheduled for 6:00 p.m., October 12, 1995, Houston-Galveston Area Council Office, 3555 Timmons Lane, Second Floor, Room A, Houston, Texas.

The hearing is being postponed because the reports were prepared almost one year ago, and were based on data collected during 1988 through 1993. The reports have been found to be inconsistent with more recent data. The Commission intends to revise the reports extensively to reflect additional information now available. When the reports have been suitably updated, another public hearing will be scheduled to receive comments and testimony.

However, any parties that may have prepared comments in anticipation of the postponed hearing may submit them to the Commission at any time, and such comments will be considered as part of the report revision process. Written comments concerning the DRAFT TMDL reports should be addressed to Charles Marshall, TNRCC, Water Planning and Assessment Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Questions concerning the reports or public hearing may be directed to Mr. Marshall by calling (512) 239-4532, or to Larry Koenig by calling (512) 239-4533.

Commission staff will be present at the public hearing location, as previously scheduled and indicated above, to explain postponement of the public hearing to any parties which may not receive this notice. Any written comments submitted at that time will also be accepted and considered as part of the report revision process.

Issued in Austin, Texas, on September 27, 1995.

TRD-9512344 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: September 27, 1995

Public Notice-Advertisement for PST Case Management Contracts

The Responsible Party Remediation (pellRPR) Section of the Petroleum Storage Tank (PST) Division of the Texas Natural Resource Conservation Commission (TNRCC) seeks to enter into contracts for Leaking Petroleum Storage Tank (LPST) case management. An Invitation For Bid (IFB) package soliciting bids for this purpose is being prepared by the RPR Section.

When complete, the IFB package will be mailed automatically to any company listed under Class 926 on the General Services Commission (GSC) bid list. If you are not on the GSC bid list but would like to receive this IFB package when it becomes available, please call or fax your request to Theresa Littlejohn at (512) 239-2200 or FAX (512) 239-2216.

The RPR Section is seeking input from interested parties regarding the participation in these contracts by firms which currently perform PST field work, and may be in competition with other firms performing PST field work. Requiring such firms to establish separate, affiliate corporations with separate employees and corporate administration for the purpose of PST oversight is one approach. TNRCC would like input regarding this approach, the degree of separation which should be required, and what controls should be in place to ensure that the separation exists, and what corporate relationships between the affiliate and the original corporation could be acceptable.

The TNRCC will consider suggestions submitted in writing and faxed to the TNRCC contact listed on or before October 5, 1995; however, TNRCC will not formally respond to such comments. Suggestions should not be submitted in person or by telephone, because the TNRCC will not discuss any aspect of the IFB (including these suggestions), with individual potential bidders.

Issued in Austin, Texas, on September 27, 1995.

TRD-9512346 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation
Commission
end list>
Filed: September 27, 1995

Texas Department of Protective And Regulatory Services Invitation for Consultant Proposal Requests

Under the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Department of Protective and Regulatory Services requests the submission of proposals leading to the award of a contract for a consultant to provide advice and recommendations regarding the department's cost reimbursement methodology for 24-hour child care providers. The objective of this project is to review available data and develop any additional information and strategies necessary to establish an efficient, equitable and accurate method of reimbursing service providers for necessary 24 hour child care costs.

The firm selected as a Consultant will be responsible for providing a report to the Department containing analysis and recommendations, based on review of empirical data, that address the following topics: Opportunities to incorporate and promote cost containment strategies within the methodology; potential financial incentives and disincentives that encourage adherence to the department's objectives as well as the development of the services most desired by the State; availability of specific, relevant data regarding the historical costs, at each level of care, incurred to provide services; the impact of retention of maintenance payments by child placing agencies on the rate setting methodology and on the ability to meet the basic needs of children under Title IV-E, Foster Care; documentation and justification of the growth of administrative costs and of variations in administrative costs among providers; potential for prospective methodologies that anticipate predictable cost variations; and, the feasibility of developing a reimbursement model that accurately funds the multiple, diverse service providers within the State.

The firm awarded a contract will be the respondent whose proposal conforms to this Request and is deemed to be most advantageous to the Department. Factors considered in awarding a contract will include: experience of the offeror and skills of the key personnel in the review of cost reimbursement methodologies; successful participation in large scale analytical projects; proposed approach; demonstrated ability to meet project deadlines within the project budget; and a demonstrated understanding of the project needs. The Department reserves the right to accept or reject any or all proposals submitted. Proposals must remain valid for acceptance and may not be withdrawn for a period of 180 days after the proposal closing date.

Proposals must be submitted to the department prior to 4:00 p.m., Tuesday, October 31, 1995. Proposals received thereafter will not be considered and will be returned unopened. Proposals must be submitted to the attention of Deborah Williams at the address indicated in this notice.

For further information, or to obtain a complete proposal package, contact Deborah Williams, Contracts Management Specialist, Texas Department of Protective and Regulatory Services, John H. Winters Building, P.O. Box 149030, Fifth Floor, East Tower, 701 West 51st Street, Austin, Texas 78714-9030, (512) 438-4350.

Issued in Austin, Texas, on September 26, 1995.

TRD-9512329 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Protective and
Regulatory Services

Filed: September 26, 1995

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Public Utility Commission of Texas
Notice of Application for Change in
Depreciation Rates

Notice is given to the public of filing with the Public Utility Commission of Texas an application on September 18, 1995, for approval of depreciation and amortization rate changes pursuant to the Public Utility Regulatory Act of 1995 (PURA), Texas Civil Statutes, Article 1446c-0, §3.151(a) (Vernon Supplement 1995). The following is a summary of the nature of the application.

Docket Title and Number. APPLICATION OF CENTURY TELEPHONE OF LAKE DALLAS, INC. FOR A CHANGE IN DEPRECIATION RATES, Docket Number 14731, before the Public Utility Commission of Texas.

The Application. Century Telephone of Lake Dallas, Inc. requests approval of certain changes in depreciation rates; more specifically, to amortize a projected reserve deficiency in its digital switching account over a five-year period.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before October 26, 1995.

Issued in Austin, Texas, on September 25, 1995.

TRD-9512264 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 25, 1995

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Office of the Secretary of State
Change in *Texas Register* Publication
Schedule

The Third Quarterly Index scheduled for publication on Tuesday, October 10, 1995, will be published instead on Friday, October 13, 1995. This schedule change means there will be a rule filing deadline on Wednesday, October 4, but none on Monday, October 9, 1995. An updated publication schedule for the remainder of 1995 is printed in the back of this issue.

Southwest Texas State University
Consultant Contract Award

Southwest Texas State University (SWT), in accordance with provisions of the Government Code, Chapter 2254, Subchapter B, announces the awarding of a consultant contract to a consulting firm based in Washington, D.C. The solicitation for proposals was published in the July 25, 1995, issue of the *Texas Register* (20 TexReg 5536).

The consultant will represent and assist the university in developing projects deemed important to the University, assist the University in obtaining funding for university projects, and provide consulting and representation as directed by Southwest Texas State University.

Three proposals were received in response to this solicitation for proposals. These proposals were from The Advocacy Group, 1350 I Street, N.W., Suite 680, Washington, D.C. 20005; Patton Boggs, L.L.P., 2550 M Street, N.W., Washington, D.C. 20037-1350; and The McAdam Group, Inc., 1029 Vermont Avenue, N.W., Suite 800, Washington, D.C. 20005.

The consultant awarded the contract was: The Advocacy Group, 1350 I Street, N.W., Suite 680, Washington, D.C. 20005.

The consultant contract begins September 1, 1995 and ends August 31, 1996, with the option to renew. The fee estimate is \$45,600, excluding expenses. Reports and documents will be submitted as required.

Issued in San Marcos, Texas, on September 18, 1995.

TRD-9512043 William A. Nance
Vice President for Finance and Support
Services
Southwest Texas State University

Filed: September 20, 1995

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Texas Workers' Compensation
Commission
Correction of Error

The Texas Workers' Compensation Commission proposed an amendment to §133.206, concerning the spinal surgery second opinion process. The rule appeared in the September 19, 1995, issue of the *Texas Register* (20 TexReg 7453).

Subsection (c)(9) of the rule contains an error as submitted. The next to the last sentence in (c)(9) should read: "At the conclusion of a hearing conducted under the provisions of Chapter 145 or Chapter 148 of this title, the hearing officer shall propose a decision to the commission for final consideration and decision by the commission."