

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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

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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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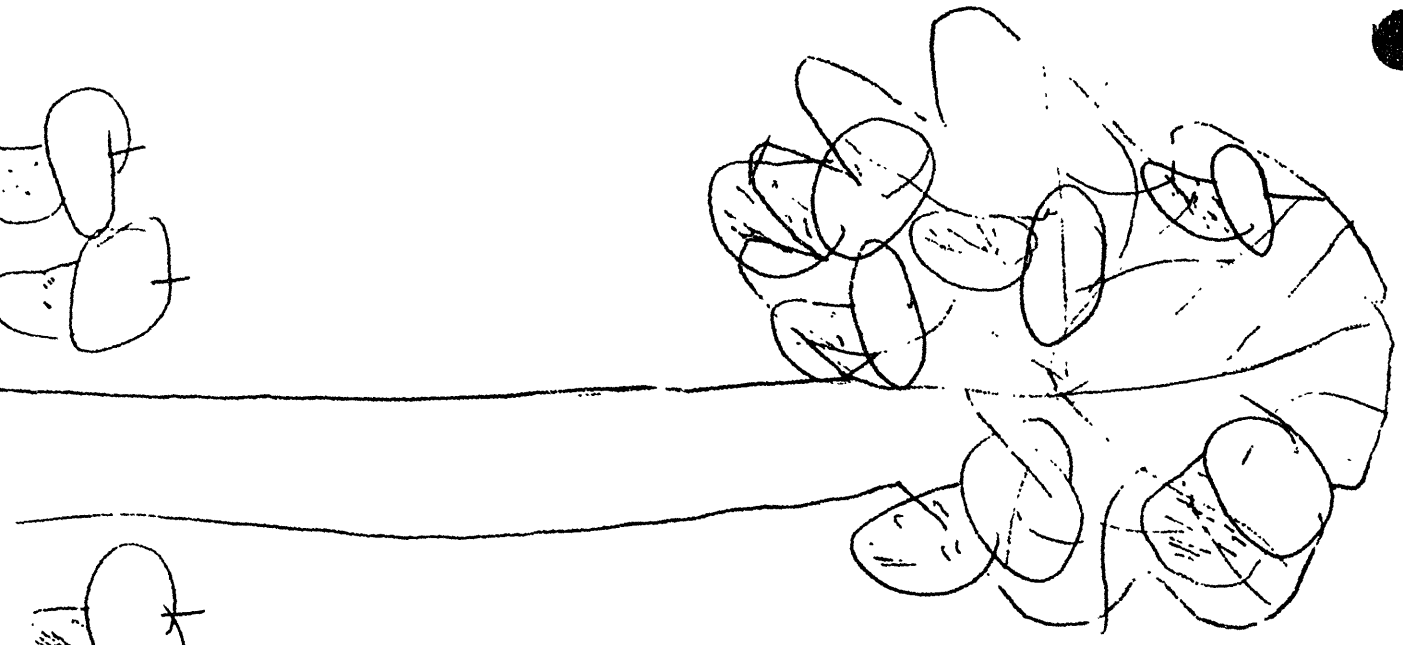
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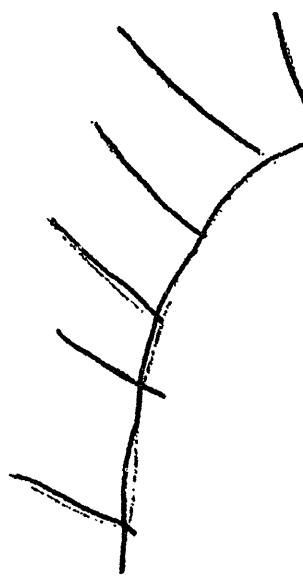
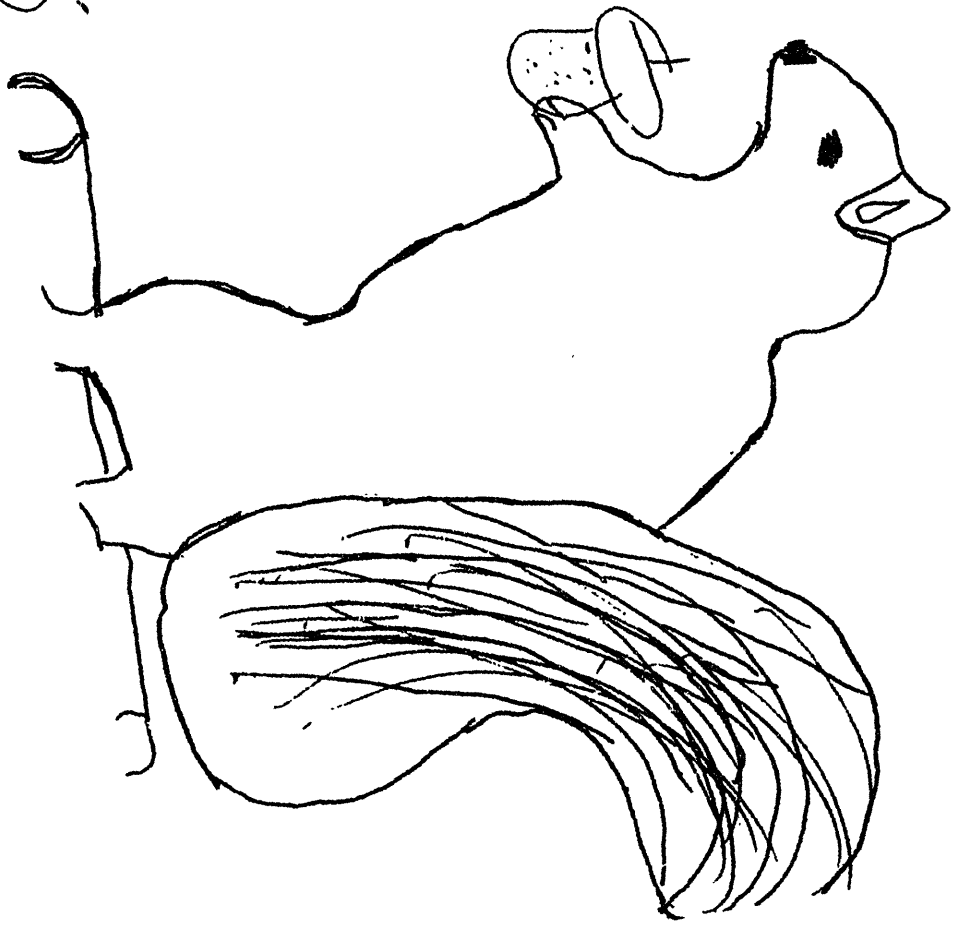
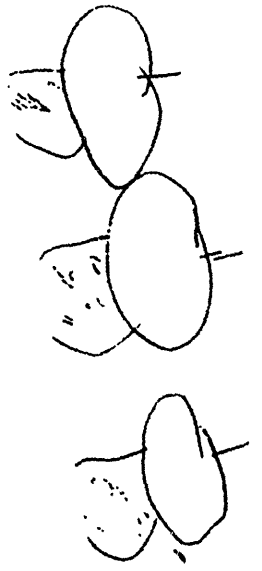
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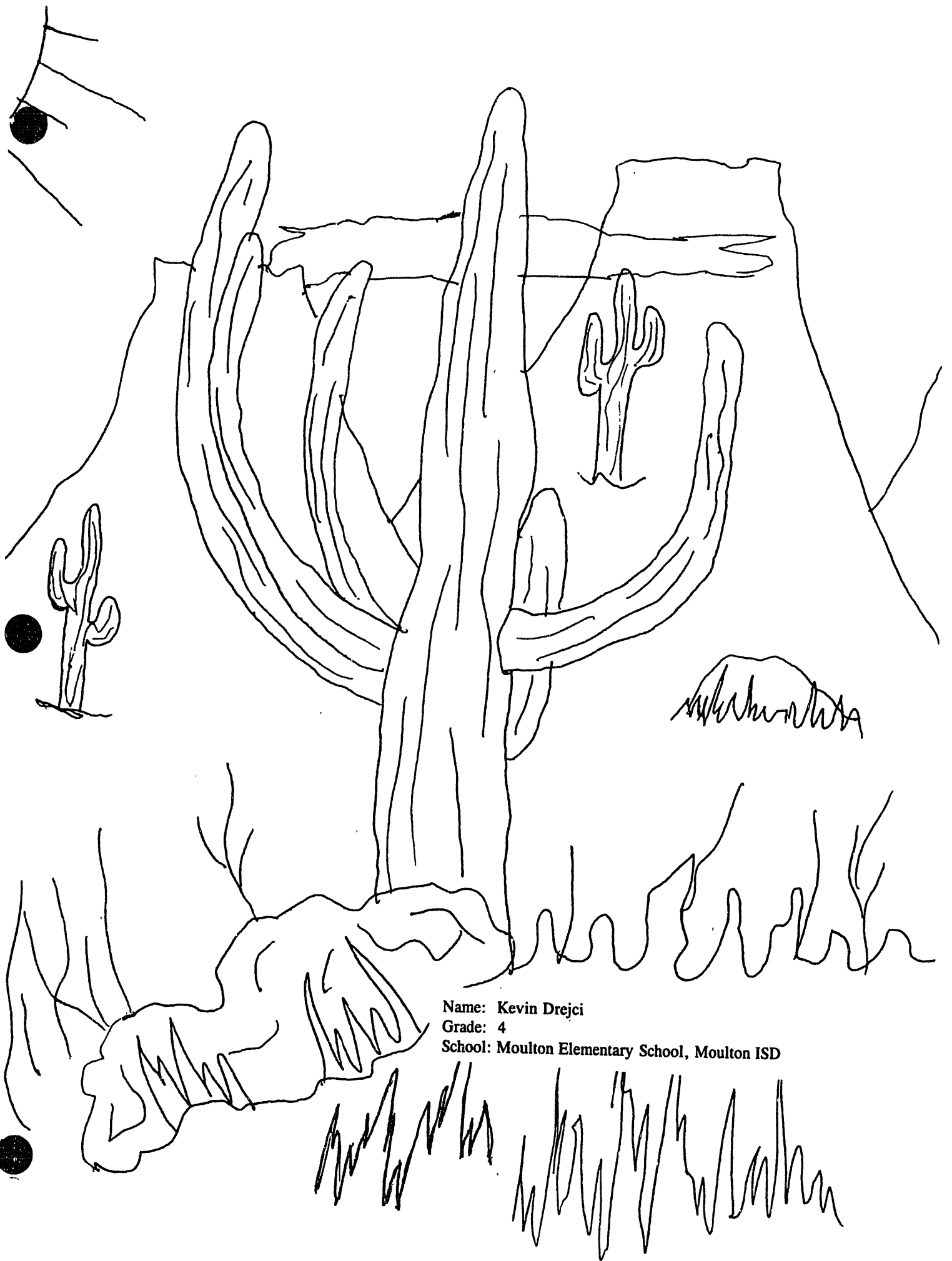
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Grade: 6  
School: Moulton Elementary School, Moulton ISD





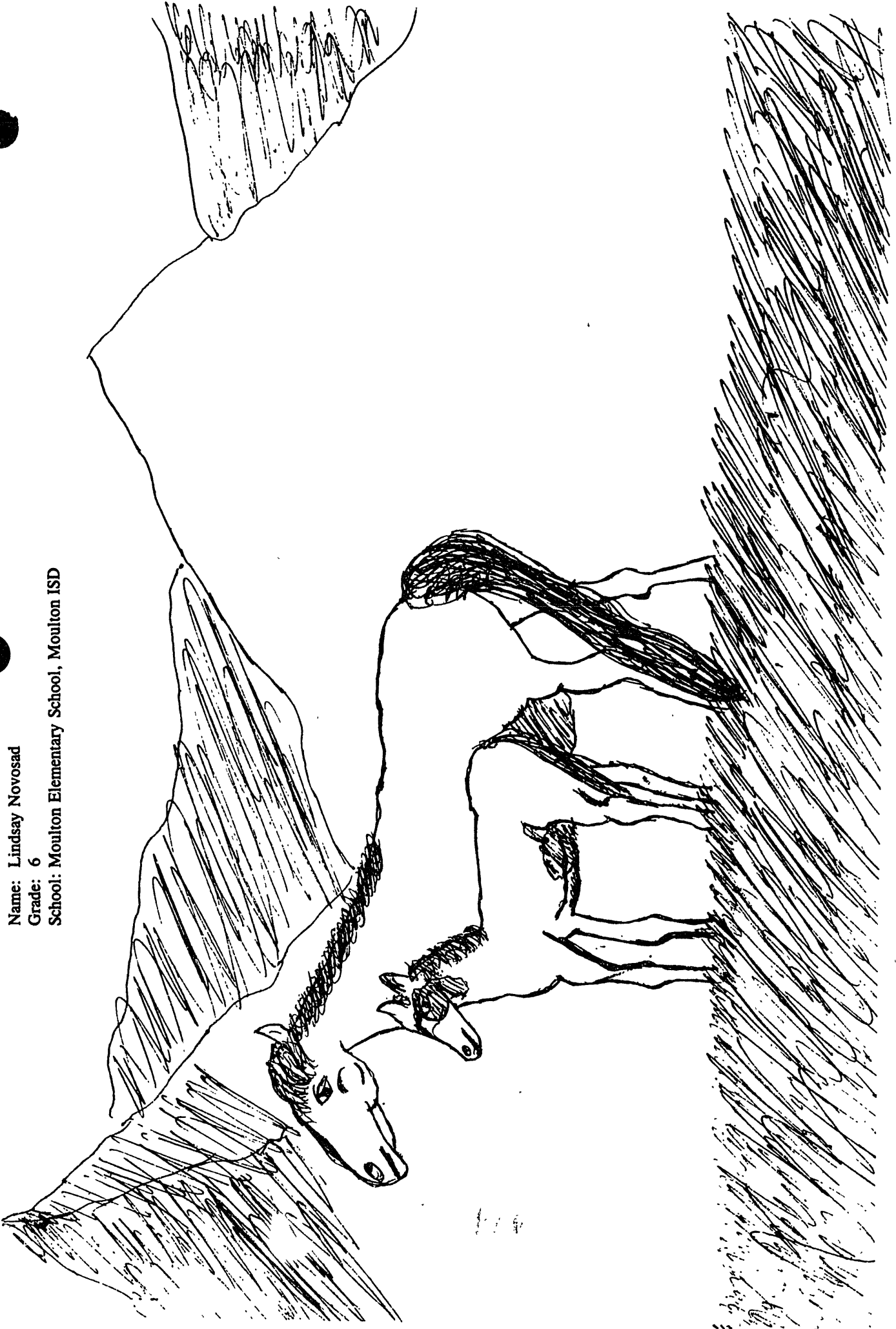
Name: Kevin Drejci  
Grade: 4  
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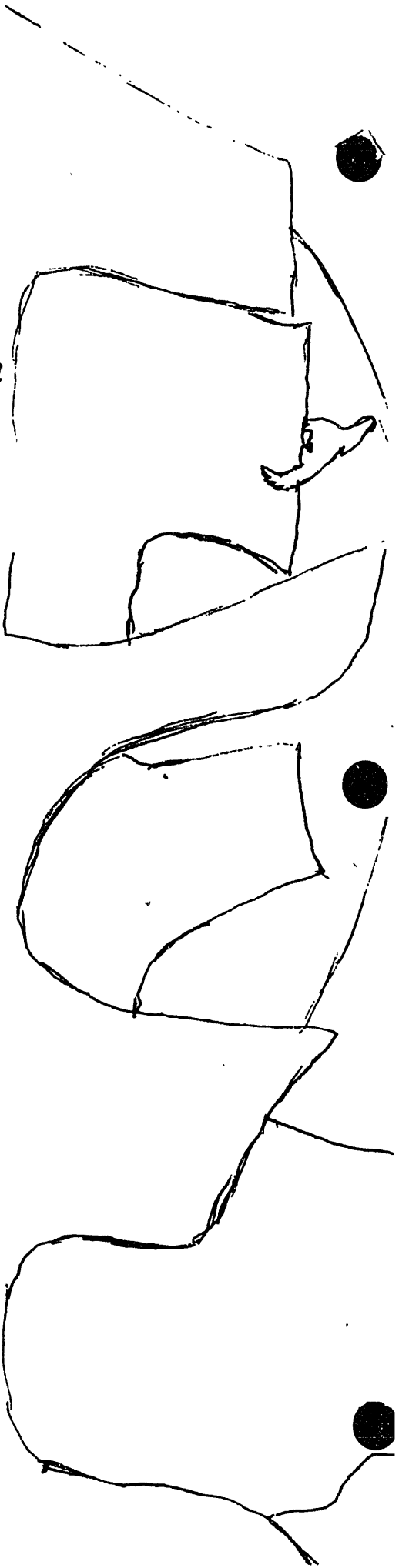
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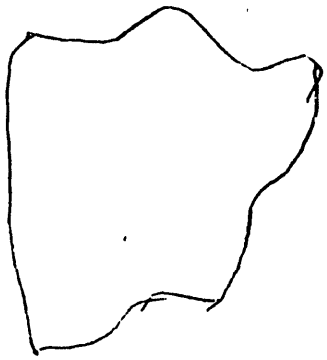
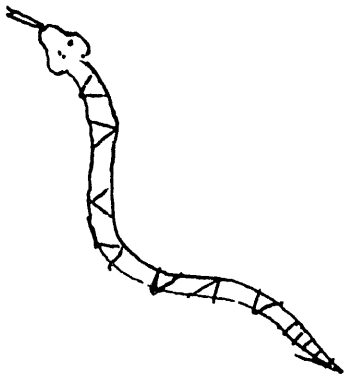
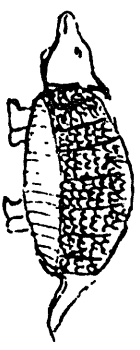
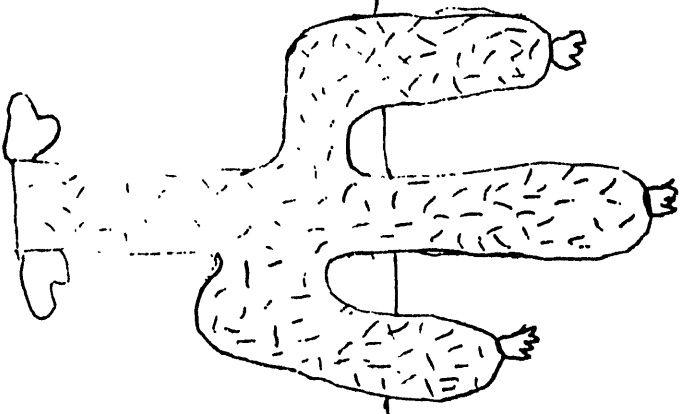


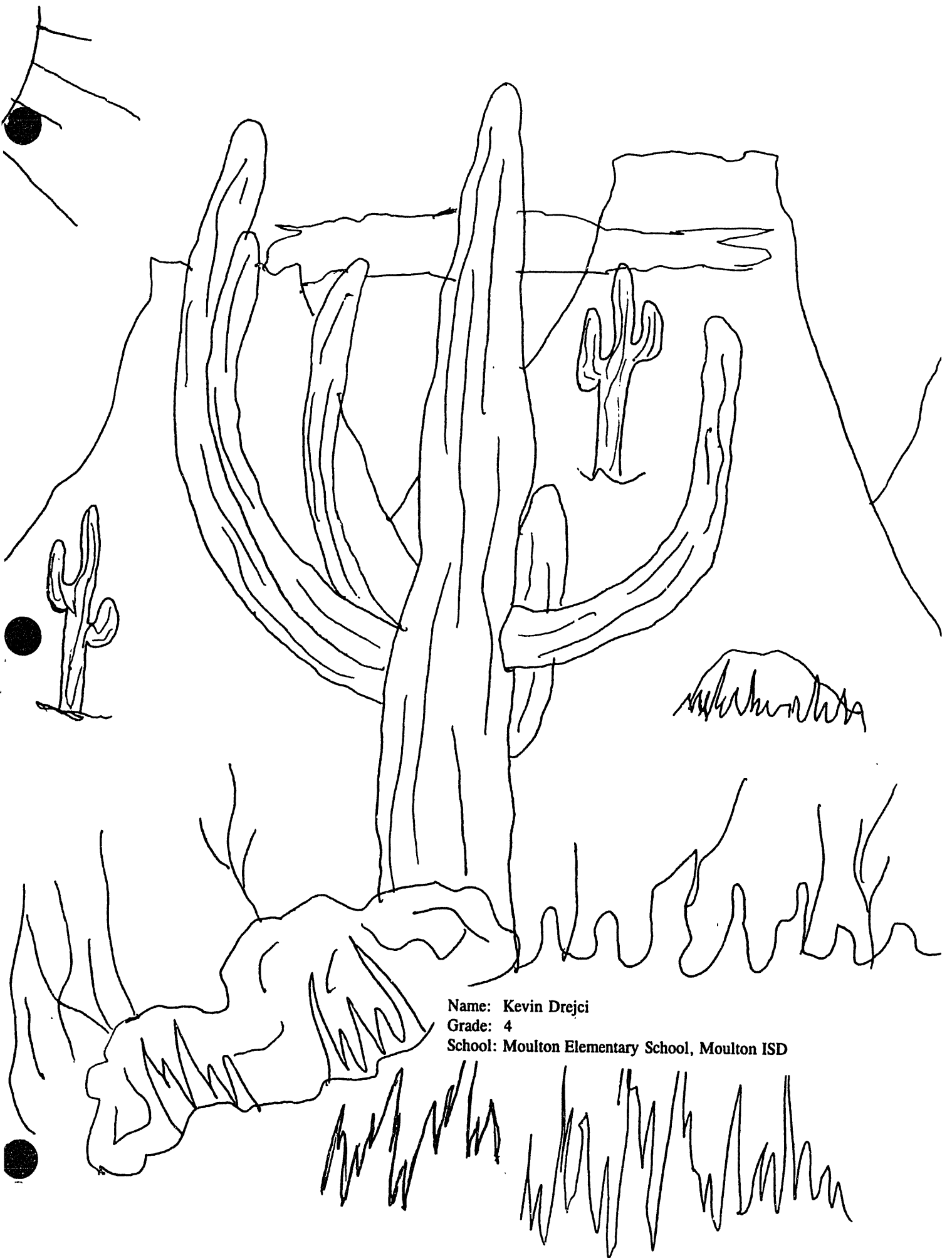
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Grade: 6  
School: Moulton Elementary School, Moulton ISD



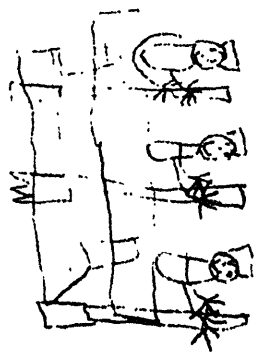


Name: Leah Price  
Grade: 6  
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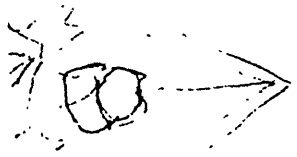
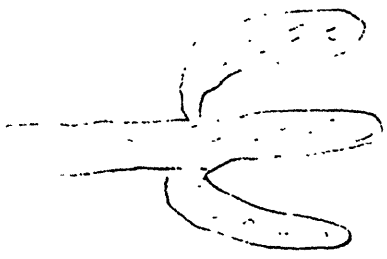
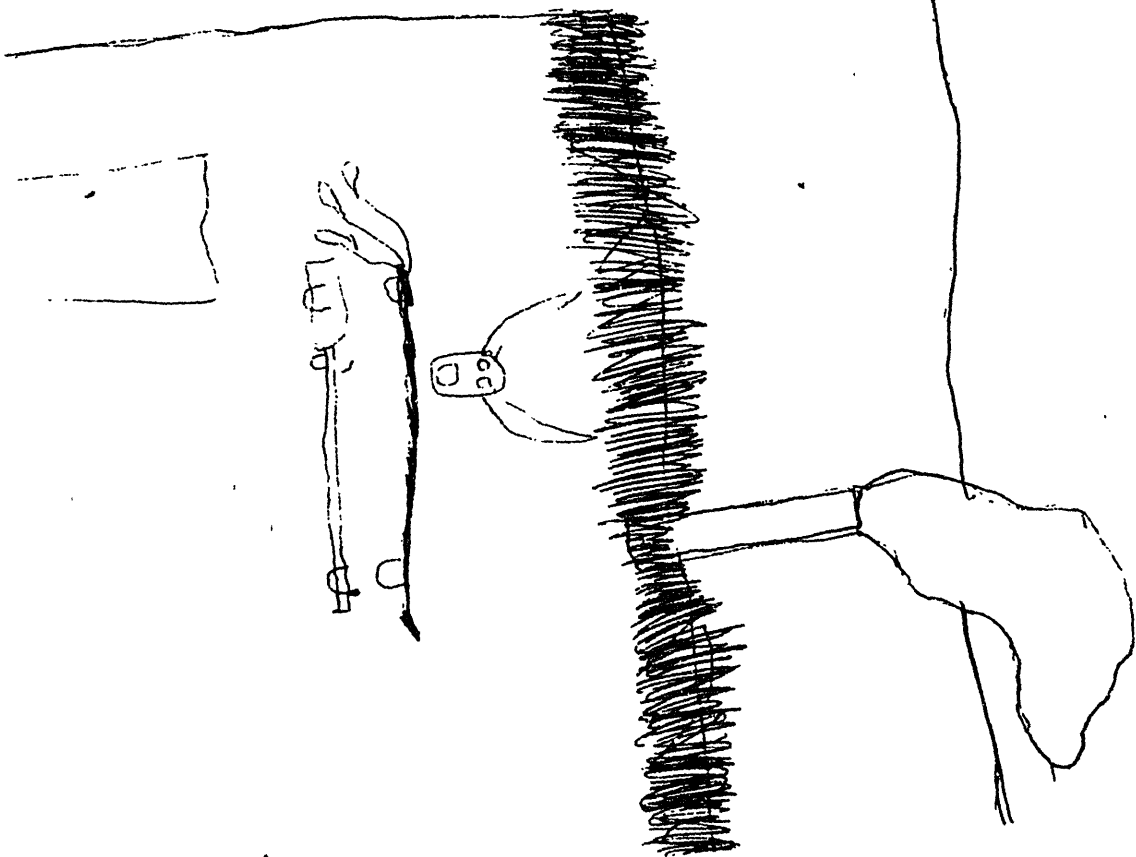




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# ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

## Letter Opinions

**LO-95-061 (ID #35935).** Request from the Honorable Albert G. Valadez, District Attorney, 83rd Judicial District of Texas, 104 West Callaghan, Fort Stockton, Texas 79735, concerning whether a presiding administrative district judge may appoint a visiting judge prior to preclearance by the United States Department of Justice.

**Summary of Opinion.** Section 23 of House Bill 3235 requires the appropriate administrative district judge, on the date on which he is advised by the secretary of state that notice of the relevant federal preclearance under the Voting Rights Act of 1965 has been received, or as soon thereafter as is practicable, to transfer all cases from Brewster, Jeff Davis, and Presidio counties that were pending in the 83rd District Court on September 1, 1995, to the newly created 394th District Court. Pending his receipt of such advice, those cases continue to be assigned to the 83rd Judicial District Court.

TRD-9513992

**LO-95-062 (ID# 31221).** Request from the Honorable John W. Berry, Karnes County

Attorney, 101 North Panna Maria, Suite 10, Karnes City, Texas 78118 concerning whether Attorney General Opinion JM-74 (1983) regarding section 6.06(e) of the Tax Code continues to be valid, and related question.

**Summary of Opinion.** There has been no change in the law which would invalidate Attorney General Opinion JM-74 (1983). That opinion continues to be valid. An agreement between the governing body of a taxing unit and a chief appraiser providing for a different method of payment under section 6.06(e) of the Tax Code may be made at any time but may not have the effect of waiving or rescinding penalties and interest due on payments that are already past due and therefore delinquent.

TRD-9513993

**LO-95-063 (RQ-837).** Request from Don A. Gilbert, Commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, concerning whether employees of the Department of Mental Health and Mental Retardation are "at will" employees.

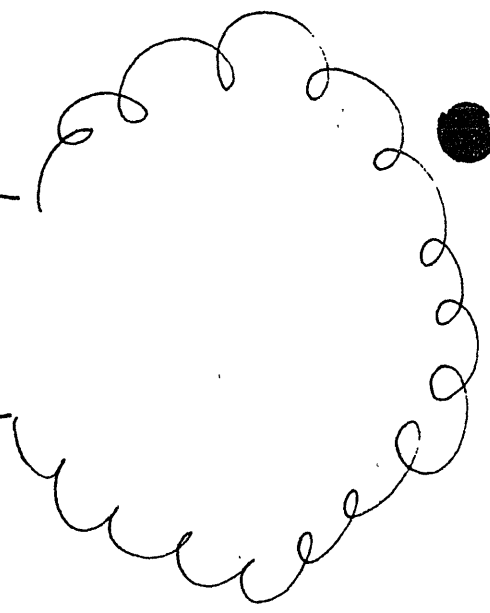
**Summary of Opinion.** Section 551.022(d)(3) of the Health and Safety Code creates for officers, teachers, and employees of Texas Department of Mental Health and Mental Retardation facilities a property interest in their employment of the sort protected by the Due Process clause of the Fourteenth Amendment to the Constitution of the United States.

TRD-9513991

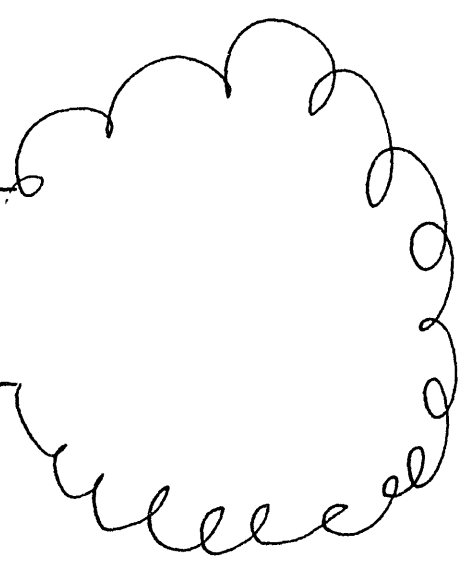
**LO-95-064 (ID #33243)** Request from the Honorable Ben W. "Bud" Childers, Fort Bend County Attorney, 309 South Fourth Street, Suite 621, Richmond, Texas 77469 concerning authority of a county to enforce speed limits on roads in a subdivision dedicated to the public but not accepted into the county road system.

**Summary of Opinion.** The mere filing and approval of a subdivision plat dedicating subdivision roads to the public does not authorize Fort Bend County to regulate and enforce speed limits on such roads. In order to have such authority, the county must have accepted the road for maintenance as part of the county road system.

TRD-9513994



Name: Eric Arledge  
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# EMERGENCY RULES

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

**Symbology in amended emergency sections.** New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 5. Quarantines

#### Sweet Potato Weevil Quarantine

##### • 4 TAC §5.67

The Texas Department of Agriculture (the department) adopts on an emergency basis, an amendment to §5.67, concerning issuance of certificate tags for the movement of restricted material from sweet potato weevil regulated areas.

The current rule prohibits issuance of a permit for movement of restricted material from a sweet potato weevil regulated area into the sweet potato weevil free area of Texas under any condition. The rule will now allow special permitting by the department for movement of restricted material from a regulated area in Texas into the sweet potato weevil free area of Texas. The department has determined that immediate ability to move restricted material under special permit conditions is both necessary and appropriate, and will not present a threat of the spread of the sweet potato weevil. The Texas Sweet Potato Council is supportive of the emergency rule amendment.

Currently, some produce distributors are prevented from moving sweet potatoes from one weevil free area to another weevil free area in the state because the intermediate distribution point for the sweet potatoes is located in a regulated area. Once shipped to a distribution point within the state's regulated area, the current rule prevents further movement of the sweet potatoes to a weevil free area in the state under any circumstances. The department has developed safeguard conditions

for the movement of such sweet potatoes described previously that will prevent the establishment of sweet potato weevils in the weevil free area of Texas. This rule will allow the immediate movement of these sweet potatoes by a special permit from the department through compliance agreement if safeguard conditions are met. The failure to allow immediate special permitting for the movement of sweet potatoes as provided for in this preamble will create a significant economic loss to Texas sweet potato producers and the state's economy. Without immediate special permitting, sweet potatoes currently being harvested for upcoming holiday markets will be significantly affected as they make up a substantial portion of annual sales.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §71.003, which provides the Texas Department of Agriculture with the authority to establish quarantines in areas surrounding pest free zones; §12.002, which provides the Texas Department of Agriculture with the authority to encourage the proper development of agriculture, horticulture, and related industries; §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for proper development of agriculture, horticulture, and related industries; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

*§5.67. Conditions Governing the Issuance of Certificate Tags for the Movement of Restricted Material from the Regulated Areas.*

(a) Subject to the restriction in §5.67(b), a [A] certificate for the movement of restricted material from any regulated area in the State of Texas outside thereof

may [will] be issued by a duly authorized inspector upon determination that:

(1) the material certified is [be] apparently free from infestation of the sweet potato weevil; and

(2) [that] the material has been produced, packed, and handled for shipment under such conditions as to eliminate any danger of the spread of weevils [, provided that no certificate will be issued for the shipment of sweet potatoes from Texas to any state which may prohibit such entry of potatoes from the area defined; and further, no permit will be issued under any condition for movement of restricted material into weevil free areas of Texas].

(b) No certificate shall be issued for the shipment of sweet potatoes from a regulated area in Texas to:

(1) a sweet potato weevil free area in Texas unless they were produced in a weevil free area and moved under special permit; or

(2) any state which prohibits such entry.

Issued in Austin, Texas, on November 1, 1995.

TRD-9514117

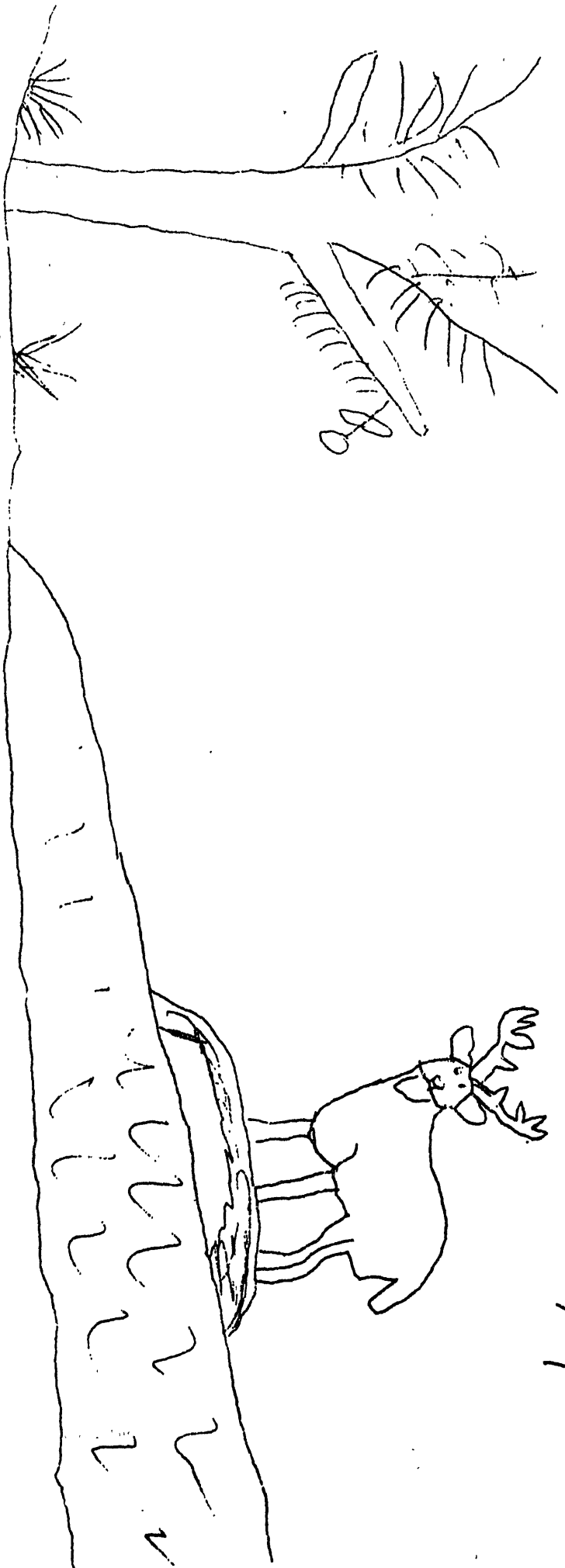
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Judge  
Texas Department of  
Agriculture

Effective date: November 1, 1995

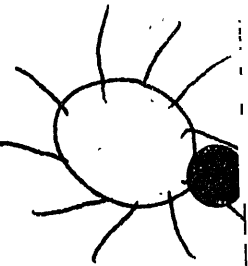
Expiration date: March 1, 1995

For further information, please call: (512) 463-7583

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Name: Adam Smith  
Grade: 6  
School: Moulton Elementary School, Moulton ISD





# 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 1. ADMINISTRATION

### Part V. General Services Commission

#### Chapter 111. Executive Administration Division

##### Historically Underutilized Business Certification Program

###### • 1 TAC §111.24

The General Services Commission proposes new §111.24, concerning the Historically Underutilized Business (HUB) Certification Program. The new rule provides for program review at least once every five years, but no later than two years following release of the Federal census report. The rule is designed to ensure that goals for the utilization of women and minority-owned firms are "narrowly tailored" and are updated in accordance with more recent, relevant data.

Darrell Pierce, director, Business Services, has determined that for each year of the first five years the section as proposed is in effect, there will be the following fiscal implications to state government as a result of administering the section: If there is new census data or other relevant data, then the state would incur the expense of hiring a consulting firm to update the data in the 1994 State of Texas Disparity Study (Disparity Study) at an estimated cost of \$250,000 to \$300,000 per updated study. If there is no new census data or other relevant data during the five-year period, there will be no fiscal implications to state government to reassess the program and goals. There will be no fiscal implications to local government.

Mr. Pierce 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 is the increase in opportunities for historically underutilized businesses and small businesses to do business with the state. The reassessment of goals based on the census data would ensure that the state was properly reflecting the goals established for this program. 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 David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new section is proposed under Chapter 684, §65(c), Acts, 73rd Legislature (1993), which provides the General Services Commission with the authority to promulgate rules necessary to implement the findings, conclusions, and recommendations of the Disparity Study mandated by that Act.

Government Code, Title 10, Subtitle D, Chapters 2151-2176 (formerly Texas Civil Statutes, Article 601b) is affected by the new section.

*§111.24. Program Review.* To the extent that federal census data or additional relevant data has been or will continue to be used as a baseline to determine HUB availability, the General Services Commission shall review and reassess goals and overall program at least once every five years or within two years following release of federal census reports, whichever is earlier.

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 October 31, 1995.

TRD-9514070

David Ross Brown  
Assistant General Counsel  
General Services  
Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-3960

#### Chapter 113. Central Purchasing Division

##### Purchasing

###### • 1 TAC §113.4

The General Services Commission proposes an amendment to §113.4, concerning the

Centralized Master Bidders List. This change provides for properly naming the Centralized Master Bidders List (CMBL), specifies the number of bids a vendor must respond to in order to be an active bidder on the CMBL, and clarifies use of the CMBL by the commission and state agencies/universities in accordance with Government Code, Title 10, Subtitle D, Chapter 2155, (formerly known as Texas Civil Statutes, Article 601b, §3.101).

Rolando A. Fabrega, business manager, Business Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Fabrega 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 would be clarification that the CMBL replaces the Bidders List and an increased opportunity to do business with the state since inactive bidders would be removed from the CMBL. 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 David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Government Code, Title 10, Subtitle D, Chapter 2155, (formerly known as Texas Civil Statutes, Article 601b, §3.101), which provides the General Services Commission with the authority to adopt procedures necessary to develop and maintain the CMBL, including procedures for removing inactive vendors from the list.

Government Code, Title 10, Subtitle D, Chapter 2155 is affected by this amendment.

###### *§113.4. Centralized Master Bidders List.*

(a) The commission maintains the Centralized Master Bidders List (CMBL) [centralized master bidders list] of the names and addresses of vendors which have applied and been accepted for inclusion on

the CMBL [list]. The CMBL [bidders list] is maintained for the state's use [convenience] in obtaining competitive bids for purchases and for registering vendors who wish to be designated as qualified information systems vendors. No vendor will be placed on the CMBL [bidders list] to receive bid invitations for information purposes only. Bid invitations and requests for proposals are mailed to vendors on the CMBL [bidders list] for the solicited commodity and/or service for open market, term contracts, [and] competitive sealed proposal acquisitions [made by the commission] and delegated purchases below and above [in excess of] \$15,000 made by the commission and state agencies/universities.

(b) To be considered for inclusion on the CMBL [centralized master bidders list], a vendor must:

(1) (No change.)

(2) remit a check or money order in the amount of \$100, which is the biennial maintenance fee assessed to cover the commission's costs for maintaining the bidders list and mailing bids or proposals. This fee, less \$15 for handling, will be refunded if the applicant is not accepted for inclusion on the CMBL [bidders list].

(c) The commission will review and evaluate the CMBL [a bidders list] application, and may reject the application based on one or more of the following factors:

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

(d) A vendor may be removed or temporarily suspended from the CMBL [bidders list] for one or more of the following reasons:

(1)-(7) (No change.)

(8) failing to submit bids in response to bid invitations on either:

(A) four [eight] consecutive open market invitations concerning the affected class or item; or

(B) (No change.)

(9) failing to remit the biennial CMBL [bidders list] maintenance fee;

(10) being or becoming unable to provide a commodity or service for which the vendor is enrolled on the CMBL [bidders list], provided that removal will affect only the commodities or services which the vendor is unable to provide; or

(11) (No change.)

(e) A vendor which has been temporarily suspended from the CMBL [bidders list] may be reinstated by promptly correcting the reasons for suspension. A

failure to make the necessary correction promptly may result in the vendor's removal from the CMBL [bidders list]. If removed, the vendor shall not be reinstated unless a written request for reinstatement is granted by the Director of Purchasing, General Services Commission [director].

(f) (No change.)

(g) [By June 1, 1995, state agencies that maintain bidders lists must provide the General Services Commission with all records and information in their custody that relate to those lists for inclusion in the centralized master bidders list. This information must be transmitted to the commission in a format specified by the commission]. Effective [By] September 1, 1995, [affected] state agencies/universities [agencies] shall use the CMBL [centralized master bidders list] to select bidders for competitive bids or proposals.

(h) (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 October 31, 1995.

TRD-9514069

David Ross Brown  
Assistant General Counsel  
General Services  
Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-3960

◆ ◆ ◆  
• 1 TAC §113.8

The General Services Commission proposes an amendment to §113.8, relating to bidder preferences in purchasing. The amendment changes the name of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons to the Texas Council on Purchasing from People with Disabilities (Council) as amended by House Bill 2658, §1, Acts, 74th Legislature (1995).

Pat Martin, director, Purchasing Program, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Martin 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 is accurate identification of the Council. 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 David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78701-3047. Comments must be received no later than 30 days

from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 8, Chapter 122, as amended by House Bill 2658, §1, Acts, 74th Legislature (1995).

Government Code, Title 10, Chapters 2155-2158 is affected by this amendment.

§113.8. Preferences.

(a) (No change.)

(b) Preferences.

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

(4) Products of persons with mental or physical disabilities. A preference shall be given to manufactured products of workshops, organizations, or corporations whose primary purpose is training and employing persons with mental or physical disabilities, if the products meet state specifications as to quantity, quality, and price. Competitive bids are not required for purchases of blind-made goods or services offered as a result of efforts by the Texas Council on Purchasing from People with Disabilities [Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons], if the goods or services meet state specifications as to quantity, quality, and price.

(5)-(8) (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 October 31, 1995.

TRD-9514071

David Ross Brown  
Assistant General Counsel  
General Services  
Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-3960

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Chapter 125. Travel and Transportation Division  
Texas Alternative Fuels Program

• 1 TAC §§125.63, 125.65, 125.69

The General Services Commission proposes amendments to §125.63 and §125.65 and new §125.69, concerning the Texas Alternative Fuels Program. The proposed amendments change the name of the Texas Air Control Board to the Texas Natural Resource Conservation Commission. The proposed amendments will reduce confusion by deleting reference to a name that is no longer used. The new §125.69 will require all state agencies to use an alternative fuel exclusively in vehicles that are equipped from the manufacturer or modified by a conversion facility to be capable of operating on an alternative fuel. It also allows exceptions in certain cases

such as the nonavailability of an alternative fuel or when the alternative fuel is more expensive than conventional gasoline or diesel.

Diane Harker, program director, Administrative Services Programs, has determined that for the first five-year period the amendments and new section are in effect, there will be no administrative costs for state agencies. There are no fiscal implications for local governments.

Ms. Harker 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 increased usage of alternative fuels. 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 David Brown, Assistant General Counsel, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments and new section are proposed under Senate Bill 958, §1, Acts, 74th Legislature (1995) (to be codified as Government Code, §2171.103) which provides the General Services Commission with authority to promulgate rules consistent with the code.

Government Code §2171.103 is affected by these amendments and new section.

**§125.63. Assistance to State Agencies and School Districts.**

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

(d) The Vehicle Fleet Section provides information to the Texas Natural Resource Conservation Commission [Texas Air Control Board] for its determination of air quality benefits associated with the use of alternative fuels.

**§125.65. Reduction and/or Waiver of Required Fleet Percentages.**

(a) Any state agency operating a fleet of more than 15 motor vehicles, excluding law enforcement and emergency vehicles, shall have a fleet percentage of alternative fuel vehicles equal to or greater than 30% of the total number of such vehicles operated by September 1, 1994, and a percent equal to or greater than 50% by September 1, 1996. Contingent upon a determination by the Texas Natural Resource Conservation Commission [Texas Air Control Board] by December 31, 1996, that the alternative fuel program reduced total annual emissions from vehicles, state agencies shall have a fleet percentage equal to or greater than 90% of alternative fuel vehicles by September 1, 1998, and thereafter.

(b)-(g) (No change.)

**§125.69. Alternative Fuel Usage.** Pursuant to Government Code, §2171.103, the Commission shall take all steps necessary to encourage the use of alternative fuels.

(1) Each state vehicle equipped from the manufacturer or modified by a conversion facility to be capable of operating on an alternative fuel shall operate exclusively on the alternative fuel except in cases:

(A) where and when the alternative fuel is not available;

(B) the range of the alternative fuel is insufficient to complete a round trip, in which case the alternative fuel shall be used until exhausted, with conventional gasoline or diesel fuel used only as a last resort to complete the trip when the alternative fuel is unavailable;

(C) when the alternative fuel cost more than conventional gasoline or diesel;

(D) when the conversion equipment is not in working order or is deemed unsafe to operate, in which case timely repairs or inspections shall be made so that the vehicle may continue to operate on the alternative fuel;

(2) Each state agency will be required to provide fuel usage data semi-annually on every vehicle capable of using alternative fuels through the Vehicle Reporting System.

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 October 31, 1995.

TRD-9514072

David Ross Brown  
Assistant General Counsel  
General Services  
Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call (512) 463-3960

**Part XVI. State Council  
on Competitive  
Government**

**Chapter 401. Administration  
Subchapter F. Monitoring of  
Services**

**• 1 TAC §401.104**

The Council on Competitive Government proposes amendments to §401.104 concerning Historically Underutilized Businesses (HUBs).

The amendments provide for conformance with the legislative direction set forth in the General Appropriations Bill, (House Bill 1, Article IX, §111, Acts, 74th Legislature (1995)) by making a good faith effort to increase purchases and contract awards to historically underutilized businesses.

Carl Mullen, Acting Clerk of the Council on Competitive Government, has determined that for each year of the first five years the section as proposed will be in effect there will be no fiscal implications for state or local government as a result of administering the proposed change.

Mr. Mullen 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 benefit because of enhanced accountability in government and because a wider and more diverse pool of vendors, particularly small businesses, may be involved in competing to provide state services. Other than the public benefit noted there will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed amendment.

Comments on the proposal may be submitted to Charlie Bertero, Manager, Council on Competitive Government, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments must be received no later than 30 days from the date of publication of the proposed change in the *Texas Register*.

The amendments are proposed under Government Code, Title 10, Subtitle D, §2162.101 (formerly Texas Civil Statutes, Article 601b, Article 15, subsection 15.06(1)), which invests the Council on Competitive Government with the authority to promulgate rules necessary to administer its functions.

Government Code, Title 10, Subtitle D, Chapter 2162 is affected by these amendments.

**§401.104. Historically Underutilized Businesses.** The Council is committed to assisting [historically underutilized businesses] **Historically Underutilized Businesses (HUBs)** in their efforts to participate in contracts to be awarded by the council [, and to achieving an overall minimum of 30% participation in contract awarded by the council by historically underutilized businesses]. This includes assisting HUBs to meet or exceed the procurement utilization goals set forth in the form of Texas Administrative Code rules at 1 TAC Chapter 111. These rules, which became effective October 4, 1995, were promulgated by the General Services Commission and address the State's **Historically Underutilized Business Certification Program**. The Council shall take positive steps to inform historically underutilized businesses of opportunities to provide identified state services that it determines may better be provided through a competitive process.

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 October 27, 1995.

TRD-9513951

David Ross Brown  
Assistant General Counsel  
State Council on  
Competitive  
Government

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-3960

## TITLE 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 5. Quarantines

##### Imported Fire Ant Quarantine

###### • 4 TAC §5.400, §5.401

The Texas Department of Agriculture (the department) proposes amendments to §5.400 and §5.401, concerning quarantined areas and quarantined articles. The amendment to §5.400 is proposed to stop the movement of Red Imported Fire Ants out of currently infested areas of the state and adds all of Ector County as well as Hidalgo and Willacy counties to the list of quarantined areas. The proposed amendment will also remove subsection (c) from §5.400, as it currently includes only a portion of Ector County. The amendment to §5.401 is proposed to parallel the language found in 7 Code Federal Regulations, §301.81 and §301.82. The proposed amendment will remove hay and straw as a quarantined article except baled hay and baled straw stored in direct contact with the ground.

David Kostroun, plant quality coordinator, has determined that for the first five-year period the sections are in effect there will be an estimated \$1,655 annual increased cost to state government due to: the costs of inspecting materials suspected to be contaminated with fire ants moving from newly quarantined counties into nonquarantined areas; the costs of issuing fire ant compliance agreements; and the costs of conducting training for landowners regarding fire ant quarantine, biology, and habitat. There will be no fiscal implications for local government as a result of enforcing or administering the sections.

Mr. Kostroun also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to slow the introduction of imported fire ants into areas of Texas that are currently not infested. The effect on small businesses and to persons who are required to comply with the rule as proposed in §5.400 will be an estimated cost of \$16 per acre to chemically treat quarantined articles, except baled hay and baled straw for which there is no chemical treatment, shipped to nonquarantined areas. The

effect on small businesses and to persons who are required to comply with the rule as proposed in §5.401 will be the additional cost to store, in a manner that prevents direct contact with the ground, baled hay and baled straw that is to be moved from a quarantined area to a nonquarantined area.

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

The amendments are proposed under the Texas Agriculture Code, §71.002, which provides the Texas Department of Agriculture with the authority to establish quarantines against diseases and pests found within the state; and §71.007, which authorizes the department to adopt rules necessary for the protection of agricultural and horticultural interests.

The Texas Agriculture Code, Chapter 71, is affected by the proposed amendments.

###### §5.400. Quarantined Areas.

(a) (No change.)

(b) In addition to the areas described in subsection (a) of this section, Brooks, Brown, Cameron, Delta, Dimmit, Duval, Ector, Hidalgo, Jack, Jones, Kennedy, Kimble, Kinney, Lamar, La Salle, Mason, Maverick, McCulloch, Midland, Montague, Palo Pinto, San Saba, Stephens, Val Verde, Webb, Willacy, Young, and Zavala counties are quarantined areas.

[(c) In addition to the areas described in subsections (a) and (b) of this section, the following parts of Ector County are quarantined areas: that part of the county beginning at the intersection of U.S. Interstate Highway 20 and State Highway 302 in the southwest corner, then northerly along State Highway 302 until the intersection of State Highway 302 and West Loop 338, then continuing north on West Loop 338 to East Loop 338, then continuing southeasterly and south along East Loop 338, to the intersection of U.S. Interstate Highway 20 on the southeast corner, then proceeding westerly along U.S. Interstate Highway 20 to the intersection of State Highway 302 and U.S. Interstate Highway 20.]

###### §5.401. Quarantined Articles.

(a) The following are designated as quarantined articles:

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

(5) baled hay and baled straw stored in direct contact with the ground;

(6)-(7) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on November 1, 1995.

TRD-9514116

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-7583

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

##### Conservation Rules and Regulations

###### • 16 TAC §3.83

The Railroad Commission of Texas proposes an amendment to §3.83, concerning a tax exemption for three-year inactive wells. The section defines a three-year inactive well, provides that the commission may certify a well as a three-year inactive well, may revoke the certificate for cause, and may not certify a well as a three-year inactive well after February 29, 1996. Under the current rule, an operator must prove a well has productive capability before the commission may certify the well as inactive. The proposed amendment will require an operator to prove a well has productive capability before applying to the comptroller for the tax incentives but not before obtaining certification from the commission. Removed from the rule is reference to an operator's application, which is not allowed by statute after August 31, 1995, and any requirement of proof for active injection wells.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for each year of the first five years the proposed section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Meredith Kawaguchi, legal examiner in the Office of General Counsel, 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 enacting the section as proposed will be a greater incentive for operators to bring inactive wells back on production, because a well's productive capability does not have to be established before February 29, 1996 (the last date the statute allows the commission to certify an inactive well). There will be no effect on small businesses. There is no anticipated economic

cost to persons who are required to comply with the amended section.

Comments on the proposal may be submitted to Meredith Kawaguchi, legal examiner, Office of General Counsel-Oil and Gas Section, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*. Comments should refer to the docket number of this rulemaking proceeding, 20-0209356.

The amendment is proposed under Texas Tax Code, §202.056, which provides the Railroad Commission of Texas with the authority to certify a well as a three-year inactive well, to revoke the certificate for cause, and to adopt all necessary rules to administer Texas Tax Code §202.056.

The following code sections are affected by this rule: Tax Code, §§201, 053, 202.052, and 202.056.

### §3.83. Tax Exemption For Three-Year Inactive Wells.

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

(1) Three-year inactive well-A well that has not produced any hydrocarbons in more than one calendar month in the three years prior to the date of certification by [application to] the commission [or designation by the commission] under this section[, whichever is earlier]. Wells eligible under this section include those that:

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

(c) Certification. The commission or its delegate may certify a well as a three-year inactive well.

#### [(c) Certification.

[(1) The commission or its delegate may designate a well as a candidate for certification as a three-year inactive well without application if the well qualifies during the period from September 1, 1993-August 31, 1995.

[(2) An application for certification as a three-year inactive well may be made by the owner or operator of the well from September 1, 1993-August 31, 1995. Applications shall be submitted to the Oil and Gas Division on a form prescribed by the commission according to instructions on the form. The commission may require the applicant to provide any relevant information needed to certify the well.

[(3) If the commission or its delegate declines to administratively certify a well, the applicant may request a hearing on the application. At such hearing, the applicant shall have the burden of proving that the well has not produced any hydrocarbons in more than one calendar month in the

three years prior to application or designation, whichever is earlier. For administratively denied applications involving active injection wells, the applicant shall present evidence showing the period of time the well has been on injection and shall have the burden of showing that the conversion from injection to production will result in increased recovery over the current enhanced recovery plan.]

(d) Revocation of Certification. Certification may be revoked by the commission for cause which includes, but is not limited to, receipt of information by the commission that a certified well produced hydrocarbons in more than one calendar month in the three years prior to certification [application or designation, whichever is earlier], or if production from other wells is credited to the three-year inactive well, or if a certified well is reported to the commission to be capable of production but is not capable of production. The Comptroller of Public Accounts will be notified of any revocation. [Upon notice from the commission that the certification for a three-year inactive well has been revoked, the tax exemption obtained as a result of such certification shall not apply to oil or gas production from that well sold after the date of notification.]

(e) Certified Wells. The commission may not certify a well under this section after February 29, 1996. Prior to applying to the Office of Comptroller for the tax incentives listed in subsection (a), the operator of a certified well shall file with the commission [Certification will be issued upon the filing of] a test report showing [the well's] productive capability for the well. Production is presumed to begin on this [the] well test date [as reported on a Form W-2, W-10, G-1, or G-10. The ten-year period for tax exemption begins with the date of certification and runs with the well]. The certification remains with the well in the event of a change of operator or ownership. [A change in ownership or operator status does not renew the exemption period.]

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

Issued in Austin, Texas, on October 31, 1995.

TRD-9514094

Mary Ross McDonald  
Acting General Counsel,  
Office of General  
Counsel  
Railroad Commission of  
Texas

Earliest possible date of adoption: December 8, 1995

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

## Chapter 9. Liquefied Petroleum Gas Division

### Subchapter A. General Applicability and Requirements

#### • 16 TAC §9.19

The Railroad Commission of Texas proposes an amendment to §9.19, relating to insurance requirements. Section 9.19 describes the insurance requirements for licensees.

The commission proposes this action to increase the motor vehicle insurance minimum from \$500,000 to \$1,000,000 for transports, bobtails, and any other vehicles required to be registered with the commission. The increase would bring Texas' intrastate requirements in line with interstate requirements. The increase was proposed by the Texas Department of Public Safety, the Texas Tank Truck Carriers Association, and the Texas Propane Gas Association. The only substantive change is in the last row of the table, where the amount of insurance for Category C, E, H, and J licensees, and ultimate consumers is proposed to be changed from \$500,000 to \$1,000,000.

Thomas D. Petru, assistant director, LP-Gas Section, Gas Services Division, has determined that for each year of the first five years the section as proposed will be in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the section.

Mr. Petru also has determined that the public benefit anticipated as a result of enforcing the section will be an increase in the protection of the health, safety, and welfare of the general public. There is an anticipated economic cost to small businesses or to persons required to comply. To increase motor vehicle insurance from the \$500,000 minimum currently required to the proposed \$1,000,000 amount would increase monthly premiums an estimated 10 to 15 percent, but the specific cost will depend on the insurance carrier and the claim history.

Comments on the proposals may be submitted to Kellie Martinec, Rules Coordinator, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The Texas Natural Resources Code, §113.051 is affected by this proposed amendment.

#### §9.19. Insurance Requirements.

(a) Pursuant to the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted the minimum amounts of insurance for LP-gas licensees licensed by the State of Texas

specified in Table 1 of this section. Applicants shall file or cause to be filed a valid certificate of insurance with the commission before it grants or renews a license, and a valid certificate of insurance shall remain in effect during the entire period that the license is in effect.

Figure 1: 16 TAC §9.19(a)

(b)-(j) (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 October 31, 1995.

TRD-9514093

Mary Ross McDonald  
Acting General Counsel,  
Office of General  
Counsel  
Railroad Commission of  
Texas

Earliest possible date of adoption: December 8, 1995

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

## Part VIII. Texas Racing Commission

### Chapter 305. Licenses for Pari-mutuel Racing

#### Subchapter C. Racetrack Licenses

##### General Provisions

###### • 16 TAC §305.70

The Texas Racing Commission proposes an amendment to §305.70, concerning officials' fees. The amendment increases the amount of compensation paid to the presiding steward and the commission veterinarian at pari-mutuel horse racetracks. The amount of the officials' fee paid by each racetrack is directly related to the amount of compensation paid to these officials.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for local government as a result of enforcing the section. There will be fiscal implications for state government, in that the amount the commission will receive in officials' fees will increase. However, because the amount of the officials' fee is calculated to directly offset the cost to the commission of compensating officials, the net fiscal impact to the state will be neutral.

Ms. Carter also has determined that for each 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 officials supervising pari-mutuel horse racing will be of the highest quality. There will be an effect on small businesses in that a pari-mutuel horse racetrack will be required to pay an increased officials' fee for each day of racing. The exact amount of the increase will depend on several factors, such as the number of live race days conducted by the racetrack and the post time for the first race. For a racetrack

that conducts four days of live racing per week with an afternoon post time, the officials' fee will be \$3,844 per week, compared to the current fee of \$3,300 per week. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §3.07, which authorizes the commission to impose a fee to offset the costs of compensating officials and to set the amount of the compensation by rule.

The proposed amendment implements Texas Civil Statutes, Article 179e.

###### §305.70. Officials' Fee.

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

(c) The officials' fee at a horse racetrack is based on the actual cost to the commission of compensating the presiding steward and the commission veterinarians. The compensation for these officials is:

(1) for the presiding steward, \$26 per hour [\$225 per race day, \$175 per non-race day, and \$100 per day of pre-meet licensing]; and

(2) for each [the primary] commission veterinarian, \$28 per hour [\$225 per race day and \$175 per non-race day; and

[(3) for the secondary commission veterinarian, \$200 per race day and \$175 per non-race day]

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 October 24, 1995.

TRD-9513979

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

### Subchapter D. Suspension and Revocation of Licenses

#### • 16 TAC §305.241

The Texas Racing Commission proposes an amendment to §305.241, concerning the applicability of the commission's rules regarding suspending and revoking licenses. The amendment clarifies that if one occupational license held by a person is suspended, all other occupational licenses issued by the commission to that person are considered suspended.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, 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 the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest integrity. There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to revoke and suspend racetrack licenses; and §7.04, which authorizes the commission to revoke and suspend occupational licenses.

The proposed amendment implements Texas Civil Statutes, Article 179e.

###### §305.241. Applicability.

(e)-(b) (No change.)

(c) Unless specifically ordered otherwise, if the commission, stewards, or racing judges suspend one occupational license held by an individual, all occupational licenses held by that individual are considered suspended for the term of the suspension.

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 October 24, 1995.

TRD-9513980

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

### Chapter 307. Practice and Procedure

#### Subchapter C. Proceedings by Stewards and Racing Judges Appeals to Commission

##### • 16 TAC §307.262

The Texas Racing Commission proposes an amendment to §307.262, concerning the hearing procedure for appeals from stewards'

and judges' rulings. The amendment clarifies the burden of proof in such appeals.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, 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 the section.

Ms. Carter also has determined that for each 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 commission's administrative procedures will be efficient and effective. There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.08, which makes stewards' and judges' decisions appealable under the Administrative Procedure Act; and Texas Government Code, §2001.004, which requires the commission to adopt rules of practice for all available formal and informal procedures.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §307.262. Hearing Procedure.

(a) (No change.)

[(b) The burden of proof is on the person making the appeal to present evidence to sustain the appeal.]

(b)[(c)] In an appeal [regarding the running of a race], the appellant has the burden to prove that the stewards' or racing judges' decision was clearly in error.

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 October 24, 1995.

TRD-9513981 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

## Chapter 309. Operation of Racetracks

### Subchapter B. Horse Race-tracks

#### Operations

##### • 16 TAC §309.199

The Texas Racing Commission proposes an amendment to §309.199, concerning the

horsemen's bookkeeper. The amendment clarifies the documentation that a pari-mutuel horse racetrack may use to evidence authorization to deduct a portion of a horse owner's winnings for payment to an organization of the horse owner's choice.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, 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 the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing is conducted in accordance with applicable law. There will be no effect on small businesses. There will be no economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all matters relating to the planning, construction, and operation of racetracks; and §6.08, which prohibits a racetrack from deducting any portion from a horse owner's account for payment to an organization except to an organization of the owner's choice.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §309.199. Horsemen's Bookkeeper.

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

(e) An association may not deduct or withhold any percentage of a purse from the account into which the purse paid to a horse owner is deposited for membership payments, dues, assessments, or any other payments to an organization except an organization of the horse owner's choice. The horse owner's choice may be evidenced by:

(1) a written instruction in a document on file with the horsemen's bookkeeper regarding the horse owner's account; or

(2) such other indicia of agreement as may be approved by the executive secretary.

(f)-(h) (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 October 24, 1995.

TRD-9514151 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

## Chapter 319. Veterinary Practices and Drug Testing

### Subchapter B. Treatment of Horses

#### • 16 TAC §319.111

The Texas Racing Commission proposes an amendment to §319.111, concerning the bleeders and furosemide (Lasix) program of the commission. The amendment eliminates the requirement that the commission verify the criteria under which a horse was certified as a bleeder in another state before the horse may be admitted to the Texas bleeder program.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, 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 the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe and humane for the racing animals. 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 on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

The proposed amendment implements Texas Civil Statutes, Article 179e.

#### §319.111. Bleeders and Furosemide (Lasix) Program.

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

(g) A horse that has been confirmed as a bleeder in another racing jurisdiction may be admitted to the furosemide (Lasix) program in this state provided:

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

(3) the trainer requests that the commission veterinarian admit the horse to the furosemide (Lasix) program not later than one hour before post time for the first race on the day the horse is scheduled to race; and

(4) the trainer provides written documentation satisfactory to the commission veterinarian that the horse was participating in the furosemide (Lasix) program in that jurisdiction.; and

((5) the commission is able to verify that the criteria used to confirm the horse as a bleeder are substantially equivalent to the criteria in this section.]

(h) (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 October 24, 1995.

TRD-9513982 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

## Chapter 321. Pari-mutuel Wagering

### Subchapter B. Distribution of Pari-mutuel Pools

#### • 16 TAC §§321.110, 321.111, 321.116, 321.117

The Texas Racing Commission proposes amendments to §§321.110, 321.111, 321.116, and 321.117, concerning the distribution of the trifecta, twin trifecta, superfecta, and tri-superfecta pools. The amendments modify the priority of distribution of the pools in the event no ticket is sold correctly selecting all the winning animals, clarify when coupled entries or mutual fields may start in races with these wagers, and specify when the pool should be canceled because of a small running field. These amendments are proposed to make the rules of the commission regarding similar wagers consistent.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, 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. Carter 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 pari-mutuel wagering will be of the highest caliber and will be conducted with the utmost integ-

ity. 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 on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering.

The proposed amendments implement Texas Civil Statutes, Article 179e.

#### §321.110. Trifecta.

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

(g) If no ticket is sold that requires distribution under subsections (e) or (f) of this section, the net pool shall be distributed equally among the holders of tickets selecting the animal finishing first [second and third animals with other animals].

(h) If no ticket is sold requiring distribution under subsections (e)-(g) of this section, the net pool shall be distributed equally among the holders of tickets selecting the animals finishing second and third [animal finishing first].

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

(n) If fewer than seven horses of different betting interests leave the paddock for a race on which there is trifecta wagering, the association shall cancel the trifecta wager for that race and refund the entire amount in the pool.

#### §321.111. Twin Trifecta.

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

(h) If no ticket is sold that requires distribution under subsections (f) or (g) of this section, the first race pool shall be distributed equally among the holders of tickets selecting the animal finishing first [animals finishing second and third].

(i) If no ticket is sold that requires distribution of the first race pool under subsections (f)-(h) of this section, the first race pool shall be distributed equally among the holders of tickets selecting the animals finishing second and third [animal finishing first].

(j)-(k) (No change.)

(l) If no ticket is sold that requires distribution under subsections (f)-(k) of this section, the twin trifecta pool shall be

carried forward to the next consecutive performance and shall be combined with that performance's twin trifecta pool. [association shall refund all twin trifecta tickets for that performance. The twin trifecta races shall end and the pool shall be closed for the day.]

(m)-(q) (No change.)

#### §321.116. Superfecta.

(a)-(h) (No change.)

(i) A coupled entry or mutual field may not start in a horse race with superfecta wagering unless the race is a stakes race with a purse of at least \$100,000 and there are seven or more wagering interests.

(j) If fewer than eight betting interests leave the paddock for a race in which there is superfecta wagering, the association shall cancel the superfecta wager for that race and refund the entire amount in the pool.

#### §321.117. Tri-Superfecta.

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

(h) If an animal in the first tri-superfecta race is scratched, all tri-superfecta tickets that include the animal shall be refunded. If an animal in the second tri-superfecta race is scratched, the holders of tickets on the affected animal may exchange the tickets for another selection. The association shall make public announcements, the windows shall be reopened if necessary, and reasonable time shall be given for exchange of tickets. [If an animal in the second tri-superfecta race is prevented from starting, the holders of tickets on the affected animal shall receive a consolation in an amount equal to the pay-off of the first tri-superfecta race. The money for the consolation shall be deducted from the pool for the second tri-superfecta race.]

(i) If the first race of the tri-superfecta ends in a dead heat in any of the first three positions, any ticket that selects the correct order of finish, counting an animal in a dead heat as finishing in any of the first three positions, may be exchanged for a second half ticket and the first half pool shall be paid as a place pool. If the second race of the tri-superfecta ends in a dead heat in any of the first four positions, all tickets selecting the correct order of finish, counting an animal in a dead heat as finishing in any of the first four positions, shall be paid one common price. [If either race of the tri-superfecta ends in a dead heat, all tri-superfecta tickets selecting an animal finishing in a position dead heated are winning tickets. The pool shall be calculated as a



place pool, or if there are multiple dead heats, as a show pool.]

(j)-(n) (No change.)

(o) A person may not disclose the number of tickets sold in the tri-superfecta or the number or amount of winning tickets eligible for exchange for the second tri-superfecta race until after the results of the second tri-superfecta race are official.]

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 October 30, 1995.

TRD-9513983 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

### Subchapter C. Simulcast Wagering

#### General Provisions

##### • 16 TAC §§321.203-321.205

The Texas Racing Commission proposes amendments to §§321.203-321.205, concerning the procedure for approving applications for simulcasting. The amendments modify the procedure for applying for and approving simulcasting.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, 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. Carter 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 pari-mutuel wagering on simulcast races will be conducted with the utmost integrity and in accordance with applicable 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 on or before December 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 179a, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering; and §11.011, which

authorizes the commission to adopt rules regulating pari-mutuel wagering on simulcast races.

The proposed amendments implement Texas Civil Statutes, Article 179e.

§321.203. *Approval of Simulcasts.* An association that wishes to serve as a sending racetrack and simulcast races conducted by the association shall submit the form of its contract as a sending racetrack [all contracts relating to the simulcast for] to the commission for approval. If the association changes the form of the contract, the association shall submit the changed version of the form to the commission for approval. If an association enters into a contract as a sending racetrack that differs from the form approved by the commission with respect to its responsibilities as a sending racetrack under these rules, the association shall immediately notify the commission in writing. [The association may not simulcast a race until the commission has approved all contracts relating to the simulcasting.]

§321.204. *Approval of Wagering on Simulcast Races.*

(a) (No change.)

(b) Except as otherwise authorized by the commission, a request for simulcasting must be filed not later than three days before the first simulcast race covered by the request. The executive secretary may approve a request for simulcasting [for a period not to exceed 90 days,] subject to rescission of the approval by the commission at its next regular meeting.

(c) [The association shall serve a copy of the request on every association licensed to conduct racing for the same species of race animal as the association.] The executive secretary may require the association to submit additional information if the executive secretary determines the additional information is necessary to effectively evaluate the request.

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

§321.205. *Simulcast Contract.* All contracts executed by an association regarding simulcasting are subject to inspection by [the approval of] the commission. An association shall maintain [submit] each contract regarding simulcasting for at least one year after the end of the term of the contract. An association shall make the contract available to the commission on request. [to the commission as soon as possible after the contract is finally executed, but not later than 5:00 p.m. of the third day preceding the simulcast.]

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 October 30, 1995.

TRD-9513984 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 794-8461

## TITLE 22. EXAMINING BOARDS

### Part VI. Texas State Board of Registration for Professional Engineers

#### Chapter 131. Practice and Procedure

##### Bylaws and Definitions

##### • 22 TAC §131.11

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.11, concerning rules of order. The section is being amended to update the current citation of parliamentary authority governing the meetings of the board.

John R. Speed, P.E., Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Speed 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 correct reference to the parliamentary authority governing board meetings. There will be no effect on small businesses as a result of enforcing the rule. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §7 is affected by this proposed amendment.

§131.11. *Rules of Order.* In its deliberations, the board shall be governed by the current edition of Robert's Rules of Order Newly Revised[, revised].

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 October 31, 1995.

TRD-9514074

John R. Speed, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Proposed date of adoption: January 10, 1996

For further information, please call: (512) 440-7723

## Part IX. Texas State Board of Medical Examiners

### Chapter 163. Licensure

#### • 22 TAC §163.1

The Texas State Board of Medical Examiners proposes an amendment to §163.1, concerning definitions. Changes made through Senate Bill 1301, 74th Legislature require amendment to this section.

Tim Weitz, general counsel, 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. Weitz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of rules so as to be in compliance with statute. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

Article 4495b, §§3.01(c), 3.03, 3.0305, 3.04, and 3.05 is affected by this amendment.

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

[Ability to communicate in the English language—An applicant who has passed the Educational Council for Foreign Medical Graduates (ECFMG) English test within three attempts. The Executive Director will review on a case-by-case basis the

application of any applicant who did not pass the ECFMG English test within three attempts and it will be at his discretion to evaluate the applicant's eligibility for licensure.]

Eligible for licensure in country of graduation—An applicant must be eligible [who has completed all requirements] for licensure in the country in which the medical school is located except for any citizenship requirements.

Examinations accepted by the board for licensure by endorsement—

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

(E) National Board of Osteopathic Medical Examiners Examination (NBOME) or its successor;

(F) Medical Council of Canada Examination (LMCC) or its successor;

(G) state board examination (with the exception of Florida, Virgin Islands, Guam, Tennessee Osteopathic Board or Puerto Rico after June 30, 1963)[and Special Purpose Examination (SPEX)]; or

(H) (No change.)

Examinations administered by the board for licensure by examination—To be eligible for licensure by examination an applicant must sit for the required examination administered by the board and pass with a score of 75 or better on each part. All steps or components must be passed within seven years. The board shall administer Step 3 of the United States Medical Licensing Examination (USMLE) [after December 31, 1993; the Federation Licensing Examination (FLEX), before January 1, 1994;] and the Texas medical jurisprudence examination in writing at times and places as designated by the board.

Substantially equivalent to a Texas medical school—A medical school or college located outside the United States or Canada must be an institution of higher learning designed to select and educate medical students; provide students with the opportunity to acquire a sound basic medical education through training in basic sciences and clinical sciences; to provide advancement of knowledge through research; to develop programs of graduate medical education to produce practitioners, teachers, and researchers; and to afford opportunity for postgraduate and continuing medical education. The school must provide resources, including faculty and facilities, sufficient to support a curriculum offered in an intellectual environment that enables the program to meet these standards. The faculty of the school shall actively contribute to the development and transmission of new knowledge. The medical school shall contribute to the advancement of knowledge and to the intellectual growth of its students and fac-

ulty through scholarly activity, including research. The medical school shall include, but not be limited to, the following characteristics:

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

(F) All medical or osteopathic medical education received by the applicant in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States. This subsection does not apply to postgraduate medical education or training. [All allopathic or osteopathic medical education instruction taught in the United States must be accredited by an accrediting body officially recognized by the United States Department of Education and the council on Postsecondary Accreditation as the accrediting body for medical education leading to the doctor of medicine degree or the doctor of osteopathy degree in the United States.]

(G) An applicant who is unable to comply with the requirements of subparagraph (F) of this definition is eligible for an unrestricted license if the applicant:

(i) received such medical education in a hospital or teaching institution sponsoring or participating in a program of graduate medical education accredited by the Accrediting Council for Graduate Medical Education, the American Osteopathic Association, or the Texas State Board of Medical Examiners in the same subject as the medical or osteopathic medical education if the hospital or teaching institution has an agreement with the applicant's school; or

(ii) is specialty board certified by a board approved by the American Osteopathic Association or the American Board of Medical Specialties.

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 November 1, 1995.

TRD-9514127

Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 834-7728

• 22 TAC §163.15

The Texas State Board of Medical Examiners proposes new §163.15, concerning licensure. The proposed new section will assist in answering questions regarding those physicians who practice administrative medicine and those who have not had direct patient care in several years.

Tim Weitz, general counsel, 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. Weitz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of rules regarding physicians practicing administrative medicine. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

Article 4495b, §3.03(g) is affected by this new section.

§163.15. Active Practice of Medicine.

(a) All applicants for licensure by endorsement shall provide sufficient documentation to the board that the applicant has, on a full-time basis, actively diagnosed or treated persons or has been on the active teaching faculty of an acceptable approved medical school, within each of the last two years preceding receipt of an application for licensure by endorsement.

(b) The term "full-time basis," for purposes of this section, shall mean at least 20 hours per week for 40 weeks duration during a given year.

(c) Applicants who do not meet the requirements of subsections (a) and (b) of this section may, in the discretion of the board, be eligible for an unrestricted license or a restricted license subject to one or more of the following conditions or restrictions:

- (1) current certification or recertification by the American Board of Medical Specialties or Advisory Board for Osteopathic Specialties;
- (2) passage of the SPEX examination;
- (3) completion of specified continuing medical education hours approved for Category I credits by the American

Medical Association or the American Osteopathic Association;

(4) limitation of the practice of the applicant to specified activities of medicine and/or exclusion of specified activities of medicine;

(5) remedial education, including but not limited to a mini-residency, fellowship or other structured program;

(6) such other remedial or restrictive conditions or requirements which, in the discretion of the board are necessary to ensure protection of the public and minimal competency of the applicant to safely practice medicine.

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 November 1, 1995.

TRD-9514128

Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 834-7728

◆ ◆ ◆  
Chapter 166. Physician  
Registration

• 22 TAC §166.3

The Texas State Board of Medical Examiners proposes an amendment to §166.3, concerning retired physicians returning to active practice.

Tim Weitz, general counsel, 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. Weitz 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 to ensure that only qualified physicians return to the active practice of medicine. There will be no effect on small businesses. There is a possible cost to those persons required to comply with the section as proposed if passage of an examination is required.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

regulation of the practice of medicine in this state, and the enforcement of this Act.

Article 4495b, §3.01, is affected by this amendment.

§166.3. Retired Physician Exception. The annual registration fee shall apply to all physicians licensed by the board, whether or not they are practicing within the borders of this state, except retired physicians.

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

(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status by submitting a written request to the attention of the Permits Department of the board which indicates the following:

- (A) the physician's Texas medical license number;
- (B) current mailing address;
- (C) proposed practice location;
- (D) intended type of medical practice;
- (E) length of retired status;
- (F) any other medical licenses held;
- (G) any condition which adversely affects the physician's ability to practice medicine with reasonable skill and safety;
- (H) any current specialty board certifications; and,
- (I) any formal or informal continuing medical education obtained during the period of retired status.

[(3) A physician whose license has been placed on official retired status must obtain the approval of the board before returning to active status. The physician shall then pay all previous exempt annual registration fees. Also, if the physician has been on a retired status five years or longer, he or she must:

[(A) pass SPEX; or

[(B) be specialty-certified or recertified within the last ten years by a specialty board approved by this board that

is a member of the American Board of Medical Specialties or the Advisory Board of Osteopathic Specialists.]

(4) The request of a physician seeking a return to active status whose license has been placed on official retired status for two years or longer shall be submitted to the Executive Committee of the board for consideration and a recommendation to the full board for approval or denial of the request. After consideration of the request and the recommendation of the Executive Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to passage of the Special Purpose Examination (SPEX), passage of the Medical Jurisprudence Examination, and/or passage of a specialty board certification examination.

(5) The request of a physician seeking a return to active status whose license has been placed on official retired status for less than two years may be approved by the executive director of the board or submitted by the executive director to the Executive Committee for consideration and a recommendation to the full board for approval or denial of the request. In those instances in which the executive director submits the request to the Executive Committee of the board, the Executive Committee shall make a recommendation to the full board for approval or denial. After consideration of the request and the recommendation of the Executive Committee, the board shall grant or deny the request subject to such conditions which the board determines are necessary to adequately protect the public including but not limited to passage of the Special Purpose Examination (SPEX), passage of the Medical Jurisprudence Examination, and/or passage of a specialty board certification examination.

(6) In evaluating a request to return to active status, the Executive Committee or the full board may require a personal appearance by the requesting physician at the offices of the board, and the full board may require a physical or mental examination by one or more physicians or other health care providers approved in advance in writing by the executive director, the secretary-treasurer, the executive committee, or other designee(s) determined by majority vote of 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.

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Texas State Board of  
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For further information, please call: (512) 834-7728

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**Chapter 177. Certification of  
Nonprofit Health  
Corporations**

• 22 TAC §177.1

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

The Texas State Board of Medical Examiners proposes the repeal of §177. 1, concerning certification of non-profit health corporations. Extensive rewrite of the section was felt necessary; therefore, this repeal with simultaneous proposal of a new section is submitted.

Tim Weitz, general counsel, 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.

Mr. Weitz 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 clarification of the rules by omission of existing language. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

Article 4495b, §5.01 is affected by this repeal.

*§177.1. Certification of Non-Profit Corporations.*

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 November 1, 1995.

TRD-9514131      Bruce A. Levy, M.D., J.D.  
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Texas State Board of  
Medical Examiners

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For further information, please call: (512) 834-7728

◆      ◆      ◆  
**Chapter 177. Certification of  
Nonprofit Health  
Organizations**

• 22 TAC §§177.1-177.15

The Texas State Board of Medical Examiners proposes new §§177.1-177.15, regarding the certification of non-profit health organizations. Extensive rewrite was felt necessary; therefore, this new section is proposed with simultaneous repeal of existing language.

Tim Weitz, general counsel, has determined that for the first five-year period the sections are in effect the fiscal implications will not include an increase or decrease in revenue for the state, but certification and renewal fees are anticipated to offset the costs of regulating non-profit health organizations.

Mr. Weitz also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the section will be to more clearly define the certification procedures for non-profit health organizations and the mechanisms for regulation by the Texas State Board of Medical Examiners. The proposed rules also outline proper documentation to be submitted, as well as fee requirements and biennial recertification requirements. There will be some effect on small businesses. The effect on small businesses is expected to include fiscal impacts related to certification fees, renewal fees, and legal expenses which can be anticipated to be less than \$10,000 per year for each business during the first five years that the proposed section is in effect. This effect is expected to be the same as the impact on large businesses based on the certification fees, renewal fees, and legal fees of approximately \$200 per hour. There is a cost of \$2,500 for initial certification and \$500 for biennial recertification to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

Article 4495b, §5.01, is affected by these new sections.

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

**Act**—The Texas Medical Practice Act.

**Actively engaged in the practice of medicine**—The physician is engaged in diagnosing, treating or offering to treat any mental or physical disease or disorder or any physical deformity or injury or performing such actions with respect to individual patients for compensation and shall include clinical medical research, the practice of clinical investigative medicine, the supervision and training of medical students or residents in a teaching facility or program approved by the Liaison Committee on Medical Education of the American Medical Association, the American Osteopathic Association or the Accreditation Council for Graduate Medical Education, and professional managerial, administrative, or supervisory activities related to the practice of medicine or the delivery of health care services.

**Board of Directors**—The board of the Health Organization whether referred to as the board of directors, the board of trustees or other title.

**Chief Executive Officer**—The officer of the Health Organization authorized in the articles of incorporation, the bylaws, or otherwise, to perform the functions of the principal executive officer, irrespective of the name by which such officer may be designated by the Health Organization.

**Director**—A member of the Board of Directors whether referred to as a director, trustee or other title.

**Member**—A member of the Health Organization.

**Health Organization**—An applicant for or holder of certification from the Texas State Board of Medical Examiners under the Act, §5.01(a).

**Rules**—The rules promulgated by the Texas State Board of Medical Examiners pursuant to the Act.

**Supplier**—

(A) A physician retained to provide medical services to or on behalf of the Health Organization; and

(B) any other person providing or anticipated to provide services or supplies to or on behalf of the Health Organization in excess of \$10,000 during a 12-month period.

**§177.2. Initial Certification.** Any Health Organization meeting the qualifications specified in §177.3 of this title (relating to

Qualifications for Certification) may seek certification by the Texas State Board of Medical Examiners under the Act, §5.01(a), by the submission of an application as provided in §177.4 of this title (relating to Applications for Certification).

**§177.3. Qualifications for Certification.** A Health Organization meeting the following qualifications shall be certified by the Texas State Board of Medical Examiners:

(1) the Health Organization is formed solely by persons licensed by the Texas State Board of Medical Examiners;

(2) the Health Organization is a non-profit corporation under the provisions of the Texas Non-profit Corporation Act;

(3) the Board of Directors of the Health Organization consists solely of persons licensed by the Texas State Board of Medical Examiners and actively engaged in the practice of medicine;

(4) the Health Organization is not established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act; and

(5) the Health Organization makes application, submits reports, pays fees and otherwise complies with the provisions of this chapter.

**§177.4. Applications for Certification.** A Health Organization seeking certification shall submit an application to the Texas State Board of Medical Examiners, attention permits department, on a form approved by the Texas State Board of Medical Examiners, which application shall include:

(1) Initial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the Health Organization;

(B) indicating the names and mailing addresses of all Member(s) or that there are no Member(s);

(C) indicating the names and mailing addresses of all Officers; and

(D) indicating the names and mailing addresses of all Directors.

(2) Initial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation of the Health Organization and attaching a copy of the current by-laws of the Health Organization including provision that:

(A) the Health Organization is organized for any or all of the following purposes:

(i) the carrying out of scientific research and research projects in the public interest in the fields of medical sciences, medical economics, public health, sociology, and related areas;

(ii) the supporting of medical education in medical schools through grants and scholarships;

(iii) the improving and developing of the abilities of individuals and institutions studying, teaching, and practicing medicine;

(iv) the delivery of health care to the public;

(v) the engaging in the instruction of the general public in the area of medical science, public health, and hygiene and related instruction useful to the individual and beneficial to the community;

(B) the physician(s) organizing and incorporating the Health Organization shall select the initial Board of Directors consistent with the mission, goals, and purposes of the Health Organization;

(C) the by-laws of the Health Organization shall be interpreted in a manner that reserves to the Health Organization through its retained physicians the sole authority to engage in the practice of medicine and reserves to the Health Organization through its Board of Directors the sole authority to direct the medical, professional, and ethical aspects of the practice of medicine;

(D) each Director is required to immediately report to the Texas State Board of Medical Examiners any action or event which such Director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules;

(E) each Director is required to individually disclose to the Member(s), if any, and to the Board of Directors (at the times of nomination and appointment) and to the Texas State Board of Medical Examiners (at the times of initial application and biennial reports) the identity of each financial relationship known to such Director, if any, which such Director has with any Member, any other Director, any Supplier of the Health Organization or any affiliate of any Member, other Director, or Supplier of the Health Organization, and to provide a concise explanation of the nature of each such financial relationship;

(F) the termination of the retention of any physician to provide medical services on behalf of the Health Organization during such physician's term of retention may be accomplished only by the Board of Directors or its physician designee(s) and such termination shall be subject to due process procedures adopted by the Board of Directors or its physician designee(s) or provided by the retention agreement between the Health Organization and the subject physician.

(3) Initial Director Statements. Statements signed and verified by each current Director indicating that:

(A) such Director is licensed by the Texas State Board of Medical Examiners;

(B) such Director is actively engaged in the practice of medicine;

(C) such Director will, as a Director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(D) such Director will, as a Director, exercise best efforts to cause the Health Organization to comply with all relevant provisions of the Act and the Rules;

(E) such Director will, as a Director, immediately report to the Texas State Board of Medical Examiners any action or event which such Director reasonably and in good faith believes constitutes a violation or attempted violation of the Act or the Rules; and

(F) such Director has disclosed within such Director's statement the identity of all of such Director's financial relationships, if any, of the type described in paragraph (2)(E) of this section and provided a concise explanation of the nature of each such financial relationship within such Director's statement.

(4) Initial Compliance Statement. A statement signed and verified by the chief executive officer indicating that the Health Organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) Initial Fee Payment. A fee in the amount and form specified by the Rules.

*§177.5. Special Requirements.* In addition to the general by-law requirements set forth herein for Health Organizations seeking certification, any Health Organization in which a Member is either a person who is not a physician actively engaged in the practice of medicine or an entity or organization that is not wholly owned and controlled by physicians actively engaged in the practice of medicine must comply with the following requirement:

(1) All credentialing, quality assurance, utilization review and peer review policies shall be made exclusively by the Board of Directors; however, following consultation with the Board of Directors, the Member(s) may retain the right to approve, or in the case of a Health Organization seeking to obtain or maintain tax exempt status the right to make, any financial decision of the Health Organization including, but not limited to, decisions regarding capital and operating budgets, physician compensation and benefits, expenditures of monies, and managed care contracts in which the Health Organization is at financial risk, the substance of which requirements shall be provided for in the by-laws of the Health Organization.

(2) Subsequent to the appointment of the initial Board of Directors, a Member may not appoint or elect any Director without the approval of at least a majority of the Board of Directors unless required by law including requirements to obtain or maintain tax exemption.

(3) Without the approval of at least a majority of the Board of Directors, the Member may not unilaterally amend the bylaws of the Health Organization unless required by law including requirements to obtain or maintain tax exemption.

*§177.6. Biennial Report.* Each Health Organization certified under the Act, §5.01(a), shall file with the Texas State Board of Medical Examiners a Biennial Report in September of each odd numbered year if certified in an odd numbered year, and in September of each even numbered year if certified in an even numbered year, and the Biennial Report shall include:

(1) Biennial Identification Statement. A statement signed and verified by the chief executive officer:

(A) indicating the name and mailing address of the Health Organization;

(B) indicating the names and mailing addresses of all Member(s) or that there are no Member(s);

(C) indicating the names and mailing addresses of all Officers;

(D) indicating the names and mailing addresses of all Directors; and

(E) disclosing any changes in the composition of the Board of Directors since the last biennial report.

(2) Biennial Document Statement. A statement signed and verified by the chief executive officer attaching a copy of the current certificate of incorporation and by-laws of the Health Organization if not already on file with the Texas State Board of Medical Examiners and indicating:

(A) whether or not the by-laws or articles of incorporation of the Health Organization have been revised since the last biennial report;

(B) whether or not such revisions, if any, were recommended or approved by the Board of Directors; and

(C) a concise explanation of such revisions, if any.

(3) Biennial Director Statements. Statements signed and verified by each current Director indicating that:

(A) such Director is licensed by the Texas State Board of Medical Examiners;

(B) such Director is actively engaged in the practice of medicine;

(C) such Director will, as a Director, exercise independent judgment in all matters and, specifically, matters relating to credentialing, quality assurance, utilization review, peer review, and the practice of medicine;

(D) such Director will, as a Director, exercise best efforts to cause the Health Organization to comply with all relevant provisions of the Act and the Rules;

(E) such Director will, as a Director, immediately report to the Texas State Board of Medical Examiners any action or event which such Director reasonably and in good faith believes constitutes a violation or attempted violation of such Act or the Rules; and

(F) such Director has disclosed within such Director's statement the identity of all of such Director's financial relationships, if any, of the type described in §177.4(a)(2)(E) of this title (relating to

Applications for Certification) and provided a concise explanation of the nature of each such financial relationship within such Director's statement.

(4) **Biennial Compliance Statement.** A statement signed and verified by the chief executive officer indicating that the Health Organization is in compliance with the requirements for certification and continued certification as required by the provisions of the Act and the Rules.

(5) **Biennial Fee Payment.** A fee in the amount and form specified by the Rules.

**§177.7. Establishment of Fees.** The fees established pursuant to the Act, §2.09(k) and the Rules for certification and continued certification shall be as follows.

(1) **Initial Fee.** In addition to all other requirements for certification under the Act, §5.01(a), and the Rules, to obtain certification, the Health Organization shall submit a fee of \$2,500 in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(2) **Biennial Fee.** In addition to all other requirements for continued certification under the Act, §5.01(a), and the Rules, to maintain certification, at the time of submission of the Biennial Report, the Health Organization shall submit a fee of \$500 in the form of a check or money order payable to the Texas State Board of Medical Examiners.

(3) **Refunds.** Fees shall not be refundable.

**§177.8. Failure to Submit Reports or Fees.** The failure of a Health Organization seeking certification under the Act, §5.01(a), and the Rules to submit any required fee shall be grounds for the Texas State Board of Medical Examiners to stop the processing of the application for certification and to deny the application. The failure of a Health Organization which is certified under the Act, §5.01(a), and the Rules to timely submit an accurate Biennial Report along with any required fee shall be grounds for decertification pursuant to section 177.12 of this title (relating to Review of Applications and Reports).

**§177.9. Migrant, Community or Homeless Health Centers.** Migrant, community or homeless health centers who wish to employ physicians shall make application and present the required proof to the permits department of the Texas State Board of Medical Examiners for approval.

(1) A written request by each health center's chief executive officer will suffice as the application.

(2) The following documentation shall be submitted:

(A) A copy of the certificate of incorporation under the Texas Non-Profit Corporation Act; and

(B) written proof of a determination by the Internal Revenue Service that the Health Organization is tax exempt under the Internal Revenue Code pursuant to §501(c)(3).

**§177.10. Denial of Certification.** Subject to due process procedures, the Texas State Board of Medical Examiners may, at its discretion, refuse to approve and certify any such Health Organization making application to the Board of Directors if in the board's determination the applying Health Organization is established or organized or operated in contravention to or with the intent to circumvent any of the provisions of the Act.

**§177.11. Revocation of Certification.** Subject to due process procedures, the Texas State Board of Medical Examiners shall revoke an approval or certification if in the board's determination the Health Organization is established, organized, or operated in contravention of or with the intent to circumvent any of the provisions of the Act.

**§177.12. Review of Applications and Reports.** Applications for certification and biennial reports under this section shall be initially reviewed by the permits and legal staffs of the Texas State Board of Medical Examiners or other designees of the Texas State Board of Medical Examiners to determine compliance with the requirements for certification. If upon review of the application or statement and any supporting documentation, the applying or reporting Health Organization appears to be in compliance for certification or continued certification, such certification shall be made upon approval of the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners. In the event that such compliance cannot be determined or is otherwise in question for any reason including complaints of actions by the Health Organization in contravention of this section or the Act, the application or statement and any supporting documentation shall be submitted to the Texas State Board of Medical Examiners or a committee of the Texas State Board of Medical Examiners for further review, investigation, and approval or denial. If an application for certification is denied or an insufficient biennial report results in decertification, the Health Organization shall be notified in writing of the basis for the denial or decerti-

fication, and the Health Organization may attempt to correct the deficiency, address any complaint, and resubmit the certification application or reporting statement without paying an additional fee if resubmitted within 60 days of the date of the mailing of the denial or decertification letter. If a biennial reporting statement is insufficient or there appears to be a basis for decertification, the Health Organization shall be notified in writing of the potential basis for decertification, and the Health Organization may attempt to correct the deficiency or potential basis for decertification without paying an additional fee if the corrective action is taken and the reporting statement is resubmitted within 60 days of the date of the mailing by the Texas State Board of Medical Examiners of the written explanation regarding the deficiency or apparent basis for decertification. If the deficiency or apparent basis for decertification is not remedied or adequately explained, and the corrected reporting statement submitted within the 60 day period, the Health Organization shall be decertified at the next meeting of the Texas State Board of Medical Examiners.

**§177.13. Procedure for Denial of Certification or Decertification.** Denial of an application for certification or decertification of a Health Organization for failure to comply with the provisions of this section shall follow the procedures set forth in §177.8 of this title (relating to Failure to Submit Reports or Fees) and §177.12 of this title (relating to Review of Applications and Reports).

**§177.14. Approved Form.** A Health Organization seeking certification under the Act, §5.01(a), shall submit an application on a board-approved form.

**§177.15 Compliance Date.** Health Organizations certified prior to the effective date of this chapter shall be required to be in compliance with these provisions no later than September 1, 1996. Health Organizations applying for certification after the effective date of this chapter shall be required to meet the requirements of these provisions as a prerequisite for certification.

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

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Executive Director  
Texas State Board of  
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For further information, please call: (512) 834-7728

### Chapter 183. Acupuncturists

#### • 22 TAC §183.2

The Texas State Board of Medical Examiners proposes an amendment to §183.2, related to the definition of acceptable approved acupuncture school.

Tim Weitz, general counsel, 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. Weitz also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result will be to create a higher standard for acceptable acupuncture schools. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

The amendment is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provides the Texas State Board of Medical Examiners with the authority to make rules, regulations and by-laws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act. In addition, the Medical Practice Act, Texas Civil Statutes, Article 4495b, §6.05(a), authorizes the Texas State Board of Medical Examiners to approve rules recommended by the Texas State Board of Acupuncture Examiners.

Article 4495b, §6.07, is affected by this amendment.

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

Acceptable approved acupuncture school—Effective January 1, 1996,

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM), offered no more than a certificate upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, func-

tions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modification/variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by NACSCAOM, offered a masters degree upon graduation, and had a curriculum of 1,800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a school defined in subparagraph (B) of this paragraph through an evaluation by a board-approved credential evaluation service; and

(D) the requirements of this section shall be in addition to the requirements of the Medical Practice Act, §6.07, subsection (c), and shall be construed and applied so as to be consistent with the Act.

[(A) Effective November 1, 1995, a school of acupuncture located in the United States or Canada which was a candidate for accreditation, at the time of the applicant's graduation, by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM) and offered no more than a certificate upon graduation; or

[(B) a school of acupuncture located in the United States or Canada which was accredited by NACSCAOM, at the time of the applicant's graduation, and offered a masters degree upon graduation; or

[(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a school defined in subparagraph (B) of this paragraph through an evaluation by a board-approved credential evaluation service.]

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

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Executive Director  
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For further information, please call: (512) 834-7728

#### • 22 TAC §183.20

The Texas State Board of Medical Examiners proposes new §183.20, concerning Texas acupuncture schools. The proposal will outline requirements for owners of acupuncture schools in Texas.

Tim Weitz, general counsel, 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. Weitz 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 to more clearly define what is required of school owners and to make students more aware of the criteria for acceptable acupuncture schools in Texas. There will be minimal 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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



Statutes, Article 4495b, §6.05(a) authorizes the Texas State Board of Medical Examiners to approve rules recommended by the Texas State Board of Acupuncture Examiners.

Article 4495b, §6.07, is affected by this new section.

### §183.20. Texas Acupuncture Schools.

(a) A licensed Texas acupuncturist operating an acupuncture school in Texas which has not yet been accredited by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM) or reached candidate status for accreditation by NACSCAOM, a licensed Texas acupuncturist with any ownership interest in such a school, or a licensed Texas acupuncturist who teaches in or operates such a school, shall ensure that students of the school and applicants to the school are made aware of the provisions of the Medical Practice Act governing acupuncture practice, the rules and regulations adopted by the Texas State Board of Acupuncture Examiners, and the educational requirements for obtaining a Texas acupuncture license to include the rules and regulations establishing the criteria for an approved acupuncture school for purposes of licensure as an acupuncturist by the Texas State Board of Acupuncture Examiners as set forth in subsection (b) of this section.

(b) Compliance with the provisions of subsection (a) of this section shall be accomplished by providing students and applicants with a copy of Subchapter F of the Medical Practice Act, a copy of Chapter 183 (Acupuncture) contained in the Rules of the Texas State Board of Medical Examiners, and the following typed statement: Figure 1 22 TAC §183.20(b)

(c) A licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by NACSCAOM or is not a candidate for NACSCAOM accreditation shall not state directly or indirectly, explicitly or by implication, orally or in writing, either personally or through an agent of the acupuncturist or the school, that the school is endorsed, accredited, registered with, affiliated with, or otherwise approved by the Texas State Board of Acupuncture Examiners for any purpose.

(d) Failure to comply with the requirements or abide by the prohibitions of this section shall be grounds for disciplinary action against a licensed Texas acupuncturist who operates, teaches at, or owns, in whole or in part, a Texas acupuncture school which is not accredited by NACSCAOM or is not a candidate for NACSCAOM accreditation. Such disciplinary action shall be based on the violation of a rule of the Texas State Board of Acupuncture Examiners as provided for in the Medical Practice Act, §6.11(a)(5).

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

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TRD-9514133

Bruce A. Levy, M.D., J.D.  
Executive Director  
Texas State Board of  
Medical Examiners

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 834-7728

## Chapter 187. Procedure

### Subchapter D. Posthearing

#### • 22 TAC §187.41

The Texas State Board of Medical Examiners proposes new §187.41, concerning recusal from participation or voting in matters brought before the board.

Tim Weitz, general counsel, 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. Weitz 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 to clarify those instances when a board member may be recused from participating in business of the board. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later date.

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

Article 4495b, §2.09, is affected by this new section.

#### §187.41. Recusals.

(a) Before or during any meeting or portion of a meeting of the board or board committee, a board member may choose to be recused from participating or voting in any contested or uncontested matter for any reason and shall not be required to state the basis for recusal, but may choose to state the basis in general terms if such a state-

ment will not prejudice the rights of any party to a fair proceeding before the board or committee of the board. In the event a board member discloses a basis for recusal which could potentially prejudice the rights of any party to a fair proceeding, the presiding officer of the board or committee may cure any such prejudice by an instruction to board or committee members to not consider the statement during the course of the proceeding or during deliberations or discussions related to the proceeding.

(b) A board member should exercise sound discretion in choosing to be recused from participation and voting in any contested matter in which the board member is predisposed either for or against a party based on matters which are not part of the administrative record, and should choose to be recused from any matter in which the board member cannot set aside the predisposition whether the predisposition be for or against a party to the contested matter.

(c) A board member shall not be subject to a motion for recusal from any party and shall not be involuntarily recused from participation and voting in a contested matter, but may voluntarily choose to be recused if a potential ground for recusal is raised by any party to the proceeding, any member of the board, or any member of a board committee.

(d) In any instance in which a ground for recusal is raised by any party to a proceeding, any member of the board, or any member of a board committee, the board member who may have a basis for recusal may generally explain the potential basis for recusal and obtain the oral or written consent of the parties to the proceeding to participate and vote in the pending matter.

(e) Upon exercising the right to be recused and announcement of the recusal in open session, any board member so recused shall be allowed to remain in the room during any portion of the related proceeding, but shall not participate in any discussions, questioning, deliberations, or vote pertaining to the proceeding.

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

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Bruce A. Levy, M.D., J.D.  
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**TITLE 28. INSURANCE**  
**Part I. Texas Department**  
**of Insurance**

**Chapter 1. General**  
**Administration**

**Subchapter C. Maintenance**  
**Taxes and Fees**

• **28 TAC §1.414**

The Texas Department of Insurance proposes an amendment to §1.414, concerning assessment of maintenance taxes and fees for payment in 1996. The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 1996 on the basis of gross premium receipts for calendar year 1995 or on some other designated basis. Section 1.414 set rates of assessment and applies those rates to life, accident, and health insurance; motor vehicle insurance; casualty insurance, and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and corporations issuing prepaid legal services contracts.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the proposed amended section, and there will be no effect on local employment or local economy. The anticipated fiscal impact on state government is estimated income of \$39,032,630 to the state's general revenue fund.

Mr. Fuchs also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the section will be facilitation in the collection of maintenance tax and fee assessments. Based on a cost-per-hour of labor basis, the cost of compliance for small businesses affected by the proposed section should be the same as the cost of compliance for large businesses. Actual reasonable costs for processing and administration may vary among persons required to comply with this proposed section, but should not exceed 5.0% of the amount assessed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Alicia M. Fechtel, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

The amendment is proposed under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49,

5.68, 9.46, 21.07-6 §21, 23.08A, 1.03A, and Article 20A.33 (the Texas Health Maintenance Organization Act), which provides authorization for the Texas Department of Insurance to assess maintenance taxes and fees for the lines of insurance and related activities specified in amended §1.414. Article 4.17 establishes a maintenance tax based on insurance premiums for life, accident, and health coverage and the gross considerations for annuity and endowment contracts. Article 5.12 establishes a maintenance tax based on insurance premiums for motor vehicle coverage. Article 5.24 establishes a maintenance tax based on insurance premiums for casualty insurance and fidelity, guaranty and surety bonds coverage. Article 5.49 establishes a maintenance tax based on insurance premiums for fire and allied lines coverage, including inland marine. Article 5.68 establishes a maintenance tax based on insurance premiums for workers' compensation coverage. Article 9.46 establishes a maintenance fee based on insurance premiums for title coverage. Article 21.07-6, §21 establishes a maintenance tax based on the gross amount of administrative or service fees for third party administrators. Article 23.08A establishes a maintenance tax based on gross revenue of corporations issuing prepaid legal service contracts. The Texas Health Maintenance Organization Act, §33 (codified at the Insurance Code, Article 20A.33), establishes an annual tax based on the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-6, §21, 21.46, 21.54, and 23.08A; and the Texas Health Maintenance Organization Act, §33, (codified at Article 20A.33).

*§1.414. Assessment of Maintenance Taxes and Fees, 1996 [1995].*

(a) The following rates for maintenance taxes and fees are assessed on gross premiums of insurers for calendar year 1995 [1994] for the lines of insurance specified in paragraphs (1)-(5) of this subsection [as follows]:

(1) for motor vehicle insurance, pursuant to the Insurance Code, Article 5.12, the rate is .055 [.068] of 1.0%;

(2) for casualty insurance, and fidelity, guaranty and surety bonds, pursuant to the Insurance Code, Article 5.24, the rate is .209 [.319] of 1.0%;

(3) for fire insurance and allied lines, including inland marine, pursuant to the Insurance Code, Article 5.49, the rate is .436 [.656] of 1.0%;

(4) for workers' compensation insurance, pursuant to the Insurance Code, Article 5.68, the rate is .093 of [.120] 1.0%;

(5) for title insurance, pursuant to the Insurance Code, Article 9.46, the rate is .110 [.171] of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 1995 [1994] for life, health, and accident insurance, pursuant to the Insurance Code, Article 4.17, is .040 [.040] of 1.0%.

(c) Rates for maintenance taxes are assessed for calendar year 1995 [1994] for the following entities:

(1) pursuant to the Texas Health Maintenance Organization Act, §33 (codified at the Insurance Code, Article 20A.33), the rate is \$.22 [\$.38] per enrollee for single service health maintenance organizations and \$.68 [\$.127] per enrollee for multi-service health maintenance organizations;

(2) pursuant to the Insurance Code, Article 21.07-6, §21, the rate is .310 [.235] of 1.0% of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) pursuant to the Insurance Code, Article 23.08, the rate is 1.0 [1.0] of correctly reported gross revenues for corporations issuing prepaid legal service contracts.

(d) The taxes assessed under subsections (a), (b), and (c) of this section shall be payable and due to the Comptroller of Public Accounts, Austin, Texas 78774-0100 on March 1, 1996 [1995].

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

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TRD-9514097

Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: December 8, 1995

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

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• **28 TAC §1.415**

The Texas Department of Insurance proposes an amendment to §1.415, concerning assessment of a maintenance tax surcharge which will be used to service the bonded indebtedness of the Texas Workers' Compensation Insurance Fund. The amendment is proposed to change the rate of assessment for taxes due in 1996 on the basis of gross premium receipts for calendar year 1995. The Texas Workers' Compensation Commission annually establishes and certifies to the comptroller of public accounts the rate of assessment for the maintenance taxes which

are authorized to pay the cost of administering the Texas Workers' Compensation Act. The commissioner of insurance may increase the Texas Workers' Compensation Commission tax rate to a rate sufficient to pay all debt service on the bonds issued on behalf of the Texas Workers' Compensation Insurance Fund, subject to the maximum rate established by Texas Civil Statutes, Article 8308-2.22. The proposed section amends the rate of assessment which applies to workers' compensation insurance companies. Timely and accurate payment of maintenance taxes is necessary for support of regulatory functions.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the proposed section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. The anticipated fiscal impact on state government is estimated income of \$17,632,753 generated from the maintenance tax surcharge which will be used to pay debt service for \$300 million in bonds issued in 1991 by the Texas Public Finance Authority on behalf of the Texas Workers' Compensation Insurance Fund.

Mr. Fuchs also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the section will be the facilitation in the collection of a maintenance tax surcharge assessment for the Texas Workers' Compensation Insurance Fund. Based on a cost-per-hour of labor basis, the cost of compliance for small businesses affected by the proposed section should be the same as the cost of compliance for large businesses. Actual reasonable costs for processing and administration may vary among persons required to comply with this proposed section, but should not exceed 5.0% of the amount assessed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Alicia M. Fechtel, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

The amendment is proposed under the Insurance Code, Articles 5.76-3, 5.76-5, 5.68, and 1.03A and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09. The Insurance Code, Article 5.76-3 establishes the Texas Workers' Compensation Insurance Fund. Article 5.76-5 establishes the maintenance tax surcharge. Article 5.68 establishes the maintenance tax based on premiums for workers' compensation coverage. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the Department as authorized by stat-

ute. Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09 establish the maintenance tax for workers' compensation insurance companies.

The following Texas statutes are affected by this rule: Insurance Code, Articles 5.12, 5.55C, 5.68, 5.76-3, 5.76-5, 21.46, and 21.54 and Texas Civil Statutes, Articles 8308-2.22, 8308-2.23, and 8308-11.09.

*§1.415. Maintenance Tax Surcharge for the Texas Workers' Compensation Insurance Fund, 1996 [1995].*

(a) The maintenance tax surcharge is levied against each insurance carrier writing workers' compensation insurance in this state at the rate of .59% [.54%] of the correctly reported gross workers' compensation insurance premiums for the calendar year 1995 [1994] to cover debt service for bonds issued on behalf of the Texas Workers' Compensation Insurance Fund.

(b) The maintenance tax surcharge shall be payable and due to the Comptroller of Public Accounts, Austin, Texas 78774-0100 on March 1, 1996 [1995].

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

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Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
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For further information, please call: (512) 463-6327

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**Chapter 7. Corporate and  
Financial Regulation**

**Subchapter J. Examination Ex-  
penses and Assessments**

• **28 TAC §7.1012**

The Texas Department of Insurance proposes an amendment to §7.1012, concerning assessments to cover the expenses of examining insurance companies. Assessments will be levied against and collected from each domestic insurance company based on admitted assets and gross premium receipts for the 1995 calendar year, and from each foreign insurance company examined during the 1996 calendar year based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made. The assessments made under authority of this proposed amended section will be in addition to, and not in lieu of, any other charge which may be made under law, including the Insurance Code, Article 1.16.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy. The anticipated fiscal impact on state government is estimated income of \$8,112,008 to the state's general revenue fund.

Mr. Fuchs also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the adoption of assessment rates to defray the expenses of examinations and administration of the laws related to examinations during the 1996 calendar year. Mr. Fuchs has determined that the direct economic cost to individuals who are required to comply with the proposed section will vary, depending on the amount of assessment against each company. In the case of domestic companies, this is dependent on rates applied to 1995 admitted assets and gross premium receipts. In the case of foreign insurers, it will depend on whether the company is examined by Texas examiners, on the salary and expenses of the examiners, and on the time it takes for the examination. There will be no difference in rates of assessments between small and large businesses, except that a minimum charge of \$25 is assessed domestic companies in §7.102(b)(3). Based on a cost-per-hour of labor basis, the cost of compliance for small businesses affected by the proposed section should be the same as the cost of compliance for large businesses. Actual reasonable costs for processing and administration may vary among persons required to comply with this proposed section, but should not exceed 5.0% of the amount assessed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Alicia M. Fechtel, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149014, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

The amendment is proposed under the Insurance Code, Articles 1.16 and 1.03A. The Insurance Code, Article 1.16(a) and (b) authorizes the commissioner of insurance to make assessments necessary to cover the expenses of examining insurance companies and to comply with the provisions of the Insurance Code; Articles 1.16, 1.17, and 1.18, in such amounts as the commissioner certifies to be just and reasonable. In addition, Article 1.16(c) provides that expenses incurred in the examination of foreign insurers by Texas examiners shall be collected by the commissioner by assessment. Article 1.03A authorizes the commissioner of insurance to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The following articles of the Insurance Code are affected by this rule: Articles 1.16, 1.17, 1.17A, 1.18, 1.19, 1.28, 4.10, and 4.11.

*§7.1012. Domestic and Foreign Insurance Company Examination Assessments, 1996 [1995.]*

(a) Foreign insurance companies examined during the 1996 [1995] calendar year shall pay for examination expenses according to the overhead rate of assessment specified in this subsection in addition to all other payments required by law including, but not limited to, the Insurance Code, Article 1.16. Each foreign insurance company examined shall pay 33% [34%] of the gross salary paid to each examiner for each month or partial month of the examination in order to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals. The overhead assessment will be levied with each month's billing.

(b) Domestic insurance companies shall pay according to this subsection and rates of assessment herein for examination expenses as provided in the Insurance Code, Article 1.16.

(1) The actual salaries and expenses of the examiners allocable to such examination shall be paid. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 1996 [1995]. The expenses assessed shall be those actually incurred by the examiner to the extent permitted by law.

(2) An overhead assessment to cover administrative departmental expenses attributable to examination of companies, which shall be paid and computed as follows:

(A) .00485 [0.00642] of 1.0% of the admitted assets of the company as of December 31, 1995 [1994], upon the corporations or associations to be examined taking into consideration the annual admitted assets that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 United States Code, §818(a)); and

(B) .01179 [0.01626] of 1.0% of the gross premium receipts of the company for the year 1995 [1994], upon the corporations or associations to be examined taking into consideration the annual premium receipts that are not attributable to 90% of pension plan contracts as defined in Section 818(a) of the Internal Revenue Code of 1986 (26 United States Code, §818(a)).

(3)-(5) (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.

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TRD-9514099

Alicia M. Fecthel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

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

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**Chapter 25. Insurance Premium Finance**

**Subchapter E. Examinations and Annual Reports**

• 28 TAC §25.88

The Texas Department of Insurance proposes an amendment to §25.88, concerning the general administrative expense assessment of insurance premium finance companies for calendar year 1995. The proposed amendment is necessary to adjust the rate of assessment which is sufficient to meet the expenses of performing the department's statutory responsibilities for examining, investigation, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the 1996 fiscal year's general administrative expense and will collect from each insurance premium finance company on the basis of a percentage of total loan dollar volume for the 1995 calendar year.

Carroll Fuchs, director of accounting for the department, has determined that for the first five-year period the proposed section is in effect, the fiscal impact equivalent on state government will be income estimated at \$335, 172 to the state's general revenue fund. There is no fiscal implication for local government or employment or the local economy as a result of enforcing or administering the proposed amended section.

Mr. Fuchs also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit anticipated as a result of enforcing the section is the facilitation in the collection of an assessment to cover the general administrative expense connected to the regulation of insurance premium finance companies. The cost to persons required to comply with this section is equivalent between small businesses and large businesses on a basis of cost per dollar of loan volume. The minimum cost for compliance based on assessment under the section is \$250. Cost of administration or processing of such assessments may vary from company to company, depending on individual procedures, but the reasonable cost of administration and processing should be no greater than 5.0% of the assessment.

Comments on the proposal to be considered by the commissioner must be submitted in writing within 30 days after publication of the proposed section in the *Texas Register* to Alicia M. Fecthel, General Counsel and Chief Clerk, Mail Code #113-2A, Texas Department

of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comments should be submitted to Carroll Fuchs, Director of Accounting, Mail Code #108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Request for a public hearing on this proposal should be submitted separately in writing to the Chief Clerk's Office.

The amendment is proposed under the Insurance Code, Articles 24.06(c), 24.09, and 1.03A. Article 24.06(c) provides that each insurance premium finance company licensed by the department shall pay an amount assessed by the department to cover the direct and indirect cost of examinations and investigations and a proportionate share of general administrative expense attributable to regulation of insurance premium finance companies. Article 24.09 authorizes the department to adopt and enforce rules necessary to carry out provisions of the Insurance Code concerning the regulation of insurance premium finance companies. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department.

The following articles of the Insurance Code are affected by this section: Articles 24.05, 24.06, 24.08, 24.09, and 24.10.

**§25.88. General Administrative Expense Assessment.** On or before April 1, 1996 [of each year], each insurance premium finance company holding a license issued by the department under the Insurance Code, Chapter 24, shall pay [to the department] an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. Payment shall be [by check, payable to the department,] sent to the Texas Department of Insurance, Examinations Division, Mail Code #305-2E, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses shall be computed and paid as follows:

(1) The amount of the assessment shall be computed as .01481 [0.0150] of 1.0% of the total loan dollar volume of the company for the calendar year 1995.

(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.

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Alicia M. Fecthel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

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

# TITLE 30. ENVIRONMENTAL QUALITY

## Part I. Texas Natural Resource Conservation Commission

### Chapter. 333 Voluntary Cleanup Programs

#### Subchapter A. Voluntary Cleanup Program Section

##### • 30 TAC §§333.1-333.11

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes new §§333.1-333.11, concerning the Voluntary Cleanup Program (VCP). The VCP was primarily created to provide incentives to encourage the cleanup of thousands of contaminated sites in Texas which require remedial actions in order to complete real estate transactions. The statutory basis for the proposed rules is found in House Bill (HB) 2296, 74th Legislature, which establishes the existence of a Voluntary Cleanup Program in Subchapter S of the Solid Waste Disposal Act (SWDA), Chapter 361, Health and Safety Code. House Bill 2296 provides a detailed explanation of the procedures necessary to gain TNRCC approval of voluntary cleanups. For further information concerning the statute or to obtain a copy, contact Charles Epperson of the Pollution Cleanup Division at (512) 239-2498. Prior to House Bill 2296, no mechanism existed to fund timely review of the growing number of site remediations in Texas. Historically, the TNRCC waste programs typically have reviewed sites in a worst case first priority. As a result, TNRCC review of remedial actions for the many real estate transaction sites and other lower priority sites received required several months for the agency to initiate and complete. Since the VCP statute explicitly states that sites will be reviewed in the order in which they are received and that parties utilizing the program will pay for commission oversight costs, timely review of these lower priority sites will be achieved. The VCP is not a replacement for other program areas, however parties who wish to gain the advantages of a cleanup liability release for future lenders and owners, protection from enforcement actions, plus an expedited review of submittals must enter the VCP. Also, except as noted herein these rules and the statute do not replace existing rules, such as the Risk Reduction Rules, which provide remediation standards and requirements applicable to industrial solid wastes and municipal hazardous wastes.

The most important advantage for parties who complete cleanups under the VCP is the provision to release otherwise responsible parties from cleanup liability to the state. Otherwise responsible parties may include future lenders and owners who may receive a certificate of completion for cleanup of their sites under the VCP. Existing environmental liability concerns across the United States have encouraged the development of previously undeveloped land (greenfields) outside of cities, while many properties with past commer-

cial or industrial use (brownfields) within cities remain abandoned or underutilized. This practice has contributed to increasing urban unemployment rates which results in higher crime in these areas; erosion of the tax base of these areas; and a general lack of civic pride due to businesses not wanting to locate in these areas. Also, many pristine or environmentally sensitive rural environments in Texas have been destroyed by development outside of major metropolitan areas. The commission believes that by eliminating future environmental liability concerns in brownfields areas, economic redevelopment will be encouraged.

Section 333.1 provides the requirements for the program. Section 333.2 and §333.3 provide definitions and the purpose of the program, respectively. The definitions for "exposure assessment model", "site subject to a commission permit or order", "initiate an enforcement action", "partial response action", "partial response action area", "pending enforcement action", "person", "response action objective", and "site" have been added as rules. The definitions related to enforcement actions, permits and orders are provided for the purpose of clarifying which sites may be allowed to participate in the VCP. The intention is to require sites which have an obligation to be remediated under an existing enforcement action or order to complete remedial actions under the review of those program areas. The term "partial response action area" has been defined for additional clarification.

Section 333.4 provides information on the application which must be submitted to participate in the VCP. A clarification of the statutory language has been included to assure applicants that applications will be reviewed and accepted or rejected within 45 days of the date of receipt by the commission.

Section 333.5 provides clarification of the commission's actions for cases in which an application is received for a site with pending enforcement actions. Involvement of the appropriate enforcement areas of the TNRCC is provided in §333.5 to ensure that sites which apply for entry into the VCP are not involved in an enforcement proceeding with another TNRCC program. Since the state superfund program typically expends state funds in scoring sites and in potentially responsible party searches and discovery, persons submitting applications for sites discovered through the state superfund program must pay all previous commission costs to the solid and hazardous waste remediation fee fund prior to entering into the VCP.

The requirement in §333.6(a) that the VCP agreement be signed prior to the implementation of any response actions ensures that the response actions are clearly understood and agreed to by both the applicant and the commission. Site investigations may begin prior to completion of the application and agreement, although the commission encourages persons to coordinate these activities with the commission after completion of the application and agreement. The commission will not review work plans and reports until after the agreement has been signed by both the applicant and the executive director or his autho-

rized representative. The time to review the application and complete the agreement will largely depend upon the detail of information provided by the applicant, but should not result in any long delays in site remediation. The commission will respond to all requests and submittals in a timely manner. Completion of the VCP agreement satisfies the notification requirement of 30 TAC §335.8(c)(1) of the Risk Reduction Rules. The interaction of the VCP and the enforcement process is further explained in §333.6(b). If a partial response action is conducted on a site, the portion of the site not addressed by this partial response action will not be included in the certificate of completion and the liability release will not extend to this portion of the site. The area of the site not addressed by the partial response action may not require investigation, depending on the nature and extent of contamination emanating from the partial response action area. Since there may be no investigation of this area and it is not subject to review under the voluntary cleanup agreement, the commission will retain its authority for future enforcement actions, if necessary, for areas of the site not addressed in the partial response action.

The commission is proposing rules in §333.7 and §333.8 that will allow added flexibility in the use of site-specific information in directing investigations and response actions. The commission desires to provide this flexibility as an initial step in the ongoing process to revise current technical regulations for sites with petroleum wastes, industrial solid wastes, and municipal hazardous wastes. The TNRCC's goal is to have one set of technical requirements which will be proposed for all sites which currently operate under the Risk Reduction Rules, Petroleum Storage Tank Rules and Air Permits Rules. The VCP will operate with the current appropriate technical standards (e.g. Risk Reduction Rules, Petroleum Storage Tank Rules, Air Permits Rules) and the exceptions proposed herein until adoption of the new rules for the agency.

Section 333.7 details investigation requirements and discusses where response actions must be conducted. The investigation of the site should determine the nature and extent of all contamination found at the site and any off-site migration of contamination unless site-specific conditions allow otherwise. Applicants may seek the commission's authorization to focus site investigation activities which would otherwise be required for a full investigation. Justification for focusing site assessments will be based upon the development of a conceptual exposure assessment model for the site. The exposure assessment model includes a determination of the current and reasonably anticipated use of the land and its resources, and an evaluation of human health and environmental exposure to the contaminated media of concern. TNRCC staff is drafting a guidance document which will provide examples of factors to be considered in defining the exposure assessment model for a site. Upon TNRCC approval of the exposure assessment model, focused investigations will be completed for media where there exists a pathway of current or reasonably anticipated future exposure. The guidance will also

explain how the exposure assessment model may be used in conjunction with the petroleum storage tank and risk reduction remediation requirements.

If a portion of a site is segregated for the purpose of conducting a partial response action, then it is only necessary to investigate the partial response action area and any contamination emanating from that area off-site. The certificate of completion extends only to the partial response action area. An accurate survey by a registered surveyor must be provided for the actual area for which approval is sought.

If the executive director determines that the source of contamination emanates from off-site and the applicant has no association with the source of contamination, the applicant will not be required to address the off-site contamination under the VCP. In such cases, the applicant will have the option of only conducting a response action on-site or performing a partial response action on-site.

The response action standards are discussed in §333.8. All contaminated media which exceed health-based cleanup levels must be addressed unless information provided in the exposure assessment model convinces the TNRCC that contamination within certain media does not present a threat to human health or the environment, based on current or reasonably anticipated future exposure scenarios.

Applicants are responsible for selecting a response action capable of meeting all response action objectives. The requirement under existing rules (e.g., the Risk Reduction Rules) to prepare reports examining the response action selection process will still be required; however, the criteria for response action selection will vary from existing requirements. The new selection criteria will allow a demonstration that the selected response action meets the approved response action objectives, rather than basing the selection on a comparison with other potential remedial alternatives. These criteria will be described in guidance currently under development.

Persons may conduct voluntary cleanups without obtaining local or state permits. The person conducting the response action is required to comply with any federal or state standard, requirement, criterion, or limitation to which the remedial action would otherwise be subject if a permit were required.

Requirements for deed certification under the existing Risk Reduction Rules are modified by §333.9. For approved response actions in the VCP, parties will not be required to deed certify when residential cleanup levels are successfully achieved without institutional or engineering controls.

Section 333.10 provides clarification that sites which do not require remediation may receive a certificate of completion. Further explanation related to partial response actions is provided in subsection (b) to clarify that only the portion of the site being addressed will receive the liability release. Subsection (c) has been included to allow applicants to file the certificate of completion into the property

deed record subsequent to its issuance by the VCP. Filing of certificates of completion by the applicant may facilitate more timely real estate transactions. The commission will routinely file the certificates unless the applicant requests to file on the behalf of the executive director.

The commission is seeking comment on the issuance of certificates of completion prior to completion of the response action in instances where long-term actions or engineering controls (e.g., groundwater pump and treat, cap and monitoring) are necessary. The statute does not specifically address the issuance of a certificate of completion prior to attainment of final remediation goals when long-term response actions or control measures are implemented. However, the commission believes the purpose of the statute, to provide incentives to remediate property by removing liability of lenders and future landowners, would be advanced by issuing "conditional" certificates of completion in these instances. Under this approach, the commission would issue the "conditional" certificate of completion for response actions where engineering controls which require continued operation and maintenance are approved. For example, once all remediation or monitoring systems are properly installed and adequately meet the performance standards, a "conditional" certificate of completion would be issued. The commission would issue a final certificate of completion when the response actions have met the final remediation goals for the site. Since the response action would not be complete until those goals were met, it may become necessary for the VCP to refer the site for enforcement action if the applicant fails to complete the response actions as approved.

The commission is seeking comments on the following approaches to achieving cleanup of contaminated areas while helping facilitate timely completion of real estate transactions. The commission is considering allowing parties to divide remediation of a contaminated area into separate phases with separate schedules under a single voluntary cleanup agreement. At the completion of each phase, a certificate of completion would be issued for the portion of the contaminated area that has been remediated. For example, if a contaminant plume has migrated off-site and the party desires to expedite remediation of the on-site contaminated area to sell the site, this approach would allow receipt of a certificate of completion after completion of on-site remediation. Subsequently, the party would receive a certificate of completion for the off-site portion of the contaminated area upon remediation of the off-site property. Each of these activities would be performed under one voluntary cleanup agreement, giving assurance to the party that no enforcement action would be initiated against them for on-site or off-site contamination being addressed, as long as the party remains in compliance with the terms of the agreement. This approach will allow parties the flexibility to prioritize cleanup activities for portions of contaminated areas but still be responsible for remediating the entire area. If a party fails to remediate the off-site contamination within the timeframes set forth in the agreement, the

portion of the agreement relating to off-site contamination may be terminated and the matter referred for enforcement. An alternative incentive would be to include a provision in the certificate of completion for the on-site portion of the contaminated area which requires completion of remediation of the off-site portion of the contaminated area or the on-site certificate of completion will become void. The commission intends to allow phased remediation activities which result in more than one certificate of completion on a case-by-case basis in which conditions provide compelling reasons to accept this approach.

The commission proposes rules for public participation in §333.11, as provided for in House Bill 2296. Due to the expectation that VCP response actions will take place mostly on private property, by private entities, the commission is not requiring public meetings or notification to the general public for all sites. The focus of public participation will be on notification to off-site landowners if off-site migration has occurred.

House Bill 2296 requires the agency to recover all reasonable costs associated with oversight of the work plan and reports and any field activities associated with a site. Toward that end, the TNRCC is required to publish a notice annually in the *Texas Register* establishing its rates. The commission published rates in the *Texas Register* on September 1, 1995. The notice included a discussion of the method utilized to determine the rate.

To assist those who wish to enter the VCP, the commission is developing a guidance document for investigative actions and for response actions at a contaminated site. The guidance documents will provide persons submitting voluntary cleanup plans and reports, the criteria needed to ensure expedited TNRCC review. Also, the commission has developed an application form, a voluntary cleanup agreement, and a certificate of completion. To obtain a copy of these documents, contact Charles Epperson of the Pollution Cleanup Division at (512) 239-2498.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period there will be fiscal implications as a result of administration of the program. The effect on state government will be an increase in cost not to exceed \$956,000 in fiscal year 1996 and \$829,000 in each of the fiscal years 1997-2000. These increases in cost will be offset by a corresponding increase in revenue equivalent to the costs actually incurred. The actual costs to the state will depend on the number of applications received and the utilization of the VCP by eligible applicants and cannot be determined exactly at this time. It is anticipated, however, that the recovery of costs under the program will offset whatever costs are actually incurred. There are no significant costs anticipated for units of local government. The approval of applications for certification under this program is anticipated to return certain properties to productive use and potentially increase the net valuation of real property within affected local taxing jurisdictions. No estimate of the potential effects on property value can be made at this time.

The program is voluntary; therefore there are no required costs or other fiscal implications anticipated for any person subject to or participating in the program. The costs to any one participant will vary on a case-by-case basis and cannot be determined. It is anticipated, however, that the majority of applicants under the voluntary cleanup program will have commission review and oversight expenses of between \$1,000 and \$5,000. These potential costs could be exceeded in specific circumstances, particularly for larger or more complex projects. The sections as proposed will have fiscal implications for small businesses. As for any applicant, the costs incurred are voluntary and will vary with each business. Costs to small businesses will depend more on the specific property affected, the nature of site contamination and the complexity of cleanup, and less on the size of the specific business concern.

Mr. Minick also has determined that for the first five years the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be increased incentives for the proper closure and remediation of property with environmental contamination, improved protection of human health and safety, improvements in the recovery of value and utilization of real property, and enhanced values of local property bases. There are no anticipated costs, other than those previously identified, for persons required to comply with these sections as proposed.

A public hearing on this proposal will be held in Austin on December 5, 1995, at 10:00 a.m. in Building E, Room 254S, at the TNRCC, 12100 Park 35 Circle, Austin, Texas 78753. Written comments not presented at the hearing may be submitted to the TNRCC no later than 5:00 p.m., 30 days after the date of publication of this proposal in the *Texas Register*. Please mail written comment to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, MC-201, Post Office Box 13087, Austin, Texas 78711-3087, and reference Rule Log Number 95145-333-WS. For further information regarding this proposal or the language contained in House Bill 2296, contact Clark Talkington, Waste Policy and Regulations Division, at (512) 239-6731 or Charles Epperson, Pollution Cleanup Division, at (512) 239-2498.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new sections are proposed under the Texas Water Code, §5.103 and §26.011, which provides the commission with authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The sections are also proposed under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.017, and §361.024, which provides the commission the authority to regulate industrial solid waste and municipal hazardous wastes and all other powers necessary or convenient to carry out its responsibilities. Additional authority is provided in §382.017,

Texas Health and Safety Code. The Texas Solid Waste Disposal Act, Texas Health and Safety Code, §§361.604, 361.611, and 361.612, provides specific authority to promulgate the sections for the Voluntary Cleanup Program.

The proposed rules implement Chapter 361 of the Texas Solid Waste Disposal Act.

**§333.1. Requirements.** The requirements of the Voluntary Cleanup Program are found in this Subchapter and in the Texas Solid Waste Disposal Act, Subchapter S, Texas Health and Safety Code, Chapter 361.

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

**Exposure assessment model**—A conceptual model of the physical site conditions, contaminants of concern by media, release mechanisms, environmental fate and transport, and potential receptors, and the interaction of each as it relates to site risk. The model identifies the universe of on-site and off-site current and reasonably anticipated future human and environmental exposure pathways and receptors. The purpose of the model is to design and focus site investigations and to assist in the determination of site response action objectives.

**Initiate an enforcement action**—The issuance of a notice of violation by the executive director or referral to the United States Environmental Protection Agency or Attorney General's Office for a possible enforcement action.

**Partial response action**—A response action which is limited to an areal portion of the site and off-site areas contaminated due to releases which have migrated from the site onto property owned or controlled by others, inclusive of all media.

**Partial response action area**—The area of the site and off-site within which the partial response action will be conducted in accordance with a plan approved by the executive director.

**Pending enforcement action**—A notice of violation has been issued and further administrative, state, or federal enforcement action is under evaluation.

**Person**—Includes but is not limited to any individual, group, company, corporation, organization, government or governmental subdivision, business trust, partnership, association, or any other legal entity, which desires to conduct a voluntary cleanup.

**Response action objectives**—The goals of the response actions, which may include both qualitative and quantitative goals.

**Site**—The property as described in the legal description provided in the voluntary cleanup agreement.

Site subject to a commission permit or order—A site or portion of a site concerning which an order or permit has been issued by the Texas Natural Resource Conservation Commission (commission). These also include interim status hazardous waste facilities, at the time interim status is granted.

**§333.3. Purpose.** The purpose of the Voluntary Cleanup Program is to provide incentives to remediate property by removing liability of future landowners and lenders.

**§333.4. Application to Participate in the Voluntary Cleanup Program (VCP).** An application submitted to the Voluntary Cleanup Program must be accepted or rejected within 45 days of receipt by the commission.

**§333.5. Rejection of Application.** The executive director may reject an application submitted to the Voluntary Cleanup Program when:

(1) an enforcement action is pending relating to or regarding the site and the executive director objects to the site being accepted into the Voluntary Cleanup Program; or

(2) all costs recoverable under the Texas Solid Waste Disposal Act, Subchapter F, Texas Health and Safety Code, Chapter 361 (State Superfund) for the site are not paid in full to the hazardous and solid waste remediation fee fund by the applicant.

**§333.6. Voluntary Cleanup Agreement.**

(a) The voluntary cleanup agreement must be signed by both parties prior to any response action being implemented, with the exception of emergency measures which should be coordinated with the appropriate emergency response authorities.

(b) In the case of partial response actions, the commission retains the authority to issue an enforcement action regarding releases or contamination not addressed by the partial response action.

**§333.7. Voluntary Cleanup Work Plans and Reports.**

(a) Voluntary cleanup work plans and reports shall include an investigation of the full nature and extent of contamination in all media unless the person demonstrates to the satisfaction of the executive director that site conditions warrant a focused investigation. This may be demonstrated with an exposure assessment model. The exposure assessment model shall examine all currently discovered and reasonably anticipated future exposure pathways for all contami-

nants and media of concern. Contaminated media within the investigation area shall be addressed according to the appropriate established technical standards.

(b) The requirements of subsection (a) of this section apply to a partial response action when a contaminant release originating from a partial response action area has migrated onto property owned or controlled by others.

(c) The requirements of subsection (a) of this section apply to all voluntary cleanup response actions with the following exceptions:

(1) when a person demonstrates to the satisfaction of the executive director that the source of contamination is from off-site and the person did not cause, suffer, or allow the release, the person may address only contamination on the site or the partial response action area within the site according to the appropriate established technical standards.

(2) when a contaminant release is present outside the site or partial response action area, but on property owned or otherwise controlled by the applicant, addressing the areal extent of contamination outside the site or partial response action area is not required; however, the contaminant release within the partial response action area shall be addressed according to the appropriate established technical standards.

§333.8. Response Action Standards.

(a) Excepting areal limitations with partial response actions and limitations determined from an exposure assessment model, which proves that no current or reasonably anticipated future human or environmental exposure pathways exist; all media which exceed the health-based cleanup levels shall be addressed through the appropriate response action and in accordance with the appropriate technical standards based upon the site characteristics and site contaminants.

(b) The applicant shall select a response action for the response action area which will achieve the response action objectives.

(c) State or local permits are not required, however the person conducting the voluntary cleanup shall comply with any federal or state standard, requirement, criterion, or limitation to which the response action would otherwise be subject if a permit were required.

§333.9. Deed Certification. Deed certification is required for cleanups which do not achieve residential health-based levels in all media of concern and for cleanups that include institutional or engineering controls.

§333.10. Certificate of Completion.

(a) If reports submitted under this subchapter demonstrate that no further action is required to protect human health and the environment, the executive director shall certify such facts by issuing the person a certificate of completion.

(b) For partial response actions, the certificate of completion shall pertain only to the partial response action area and shall include a legal description of that area.

(c) The executive director may allow the applicant to file the copy of the certificate of completion into the site deed record on the executive director's behalf if the applicant provides subsequent documentation of the filing.

§333.11. Public Participation. Persons conducting voluntary cleanups where contamination is located on property owned by others must provide notification to all such property owners. At the discretion of the executive director, this notice may include, but is not limited to, public notice in local newspapers, block advertisements, letters to individual households, or personal contacts. The executive director may require verification that such activity has been satisfactorily completed.

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 November 1, 1995.

TRD-9514124

Kevin McCalla  
Director, Legal Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 239-6087

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 83. Contracted Youth Services

• 37 TAC §83.7, §83.15

The Texas Youth Commission (TYC) proposes amendments to §83.7 and §83.15, concerning contracting for residential and nonresidential services and quality assurance. The amendments in both sections provide for enhanced monitoring by TYC staff of TYC contracted programs which provide ser-

vices to TYC youth. Monitoring will be conducted more frequently and will specifically evaluate compliance with contract requirements for performance and service delivery. Contract development and renewal will be based on assessments and evaluation of each contract program vendor.

John Franks, Director of Finance, 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. Franks 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 enhanced quality assurance procedures to ensure best use of State resources. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rules implement the Human Resource Code, §61.034.

§83.7. Contracting for Residential [and Nonresidential] Services.

(a) Policy. The Texas Youth Commission (TYC) contracts with private service agents [agencies] for [nonresidential and] residential services appropriate for TYC youth.

(b) Rules.

(1) General.

(A) TYC enters into contracts with private service agents [agencies best] able to provide services to meet specific needs of TYC youth. Service agents are identified through a process of initial assessments or [needs assessments and] Requests for Proposal.

(B) TYC contracts with providers which meet:

(i) TYC's Basic Core Standards, licensing standards of the Department of Protective and Regulatory [Human] Services, [accreditation requirements of the Joint Committee on Accreditation of Health Care Organization and/or the Council on Accreditation.] Texas Department of Mental Health and Mental Retardation Community Standards, Texas Commission on Drug and Alcohol Licens-



ing Standards, [or] Texas [Health] Department of Health Standards; [and]

(ii) local juvenile board certification or Texas Juvenile Probation Commission certification, and [Texas Health and Human Services Commission Levels of Care; and/or]

(iii) special requirements set forth by a [Request for Proposal or a] proposal for services.

(C) Contracts may be for a term up to 24 months. [two years.]

(D) Contract compliance and service delivery is ensured through a quality assurance program of monitoring by TYC staff. [contract specialists.]

(E)-(F) (No change.)

(2) Contracting [New Contract Procedure for Existing Programs].

(A) For new contracts, contract specialist or Request for Proposals review committee assesses [investigates and evaluates] a program for a contract based on specific requirements addressed in a proposal for services, agency needs, license or certification, cost per day, and levels of care, if applicable. All information is submitted in writing to the chief of community placement as required in the Residential Contract Monitoring System Manual. [service needs.]

(B) For contract renewals, contract specialist evaluates a program's performance and service delivery in accordance with the criteria as outlined in the Residential Contract Monitoring System Manual.

[(B) If a program meets the needs, qualifies as a service provider, and the region recommends a contract, then the contract specialist forwards appropriate paperwork to chief of community placement.

[(C) The chief of community placement reviews and submits to legal department to initiate a contract.

[(D) Chief of community placement forwards the contract to the contract specialist.

[(E) The contract specialist reviews the contract and obtains signature of the service provider.

[(F) The contract specialist forwards the signed contract to the chief of community placement for signature.

[(G) The chief of community placement routes copies to the following:

[(i) Finance-original;

[(ii) Contract program;

[(iii) Contract specialist;

[(iv) Chief of community placement.

[(H) The contract specialist ensures all appropriate personnel in the region have copy(ies) of the contract. ]

(3) Contract Renewals. [Procedure.

[(A) Contract specialist begins the contracting process three months prior to renewal.

[(B)] Contract specialist completes an evaluation and submits the evaluation to the chief of community placement in accordance with the Residential Contract Monitoring System Manual. [with a recommendation to renew/not renew two months prior to expiration of contract.

[(C) Chief of community placement reviews the recommendation and submits to legal department to initiate a new contract if there are no recommended changes.

[(D) If a change in rate, guarantee or level of care is recommended, the chief of community placement submits to the contract care review committee to review and to make a recommendation to grant or deny the regional recommendation. The chief of community placement submits to the deputy executive director for final approval of all rate increases.

[(i) If rate increase is denied, the chief of community placement informs the contract specialist and the service provider is informed of the results by the contract specialist and is advised of the appeal process.

[(ii) If rate increase is approved, the chief of community placement submits paperwork to legal department to initiate a new contract.

[(E) Chief of community placement forwards the contract to the contract specialist.

[(F) The contract specialist reviews the contract for corrections and obtains signatures.

[(G) The contract specialist forwards the signed contract to the chief of community placement for signature.

[(H) The chief of community placement routes copies to the following:

[(i) Finance-original;

[(ii) Contract program;

[(iii) Contract specialist;

[(iv) Chief of community placement.

[(I) The contract specialist ensures all appropriate personnel in the region have copy(ies) of the contract.

[(4) New Contract Procedure for RFP Awarded Programs.

[(A) Chief of community placement submits paperwork to legal department to initiate a new contract(s).

[(B) Chief of community placement obtains all signatures and routes copies to the following:

[(i) Finance-original;

[(ii) Contract program;

[(iii) Contract specialist;

[(iv) Chief of community placement.

[(C) The contract specialist ensures all appropriate personnel in the region have copy(ies) of the contract. ]

#### §83.15. Quality Assurance.

(a) Policy. The Texas Youth Commission (TYC) monitors and evaluates contract care programs to [encourage program development,] ensure contract compliance, and service delivery performance. [identify program strengths and weaknesses and provide technical assistance.] TYC implements a quality assurance process that identifies exceptions to standards together with corrective action to bring the service agent into compliance with applicable standards. TYC imposes sanctions, if necessary, to enforce any corrective action(s) recommended through the monitoring and evaluation process.

(b) Rules.

(1) Explanation of Terms Used.

(A) On-Site Visits-A visit [by a contract specialist] to a contract program [which may be at any time.] which may or may not be announced. [and is intended to offer technical assistance.]

(B) **Technical Assistance**—The assistance, advice or training that TYC staff offer [offers] in areas of contract implementation, performance standards, clarification, problem analysis, staff training, and feedback on program implementation.

(C) **Monitoring**—A formal review of the service agent's contract and service delivery. [if applicable, compliance with TYC Core standards, if applicable, levels of care, and any other applicable requirements as stated in the contract.]

(D) **Sanctions**—Actions that may be taken by TYC to facilitate service agent compliance with TYC stated requirements or deficient service delivery.

(E) **Evaluation**—A process used to measure and evaluate [assess] the quality and effectiveness of a service agency and/or a program.

(F) **Below Average Performance**—Three or more TYC performance measures rated as below average in two of the most recent four reporting periods.

(G) **Risk Assessment**—a process by which programs are identified by specific risk factors that present the greatest risk to agency resources and responsibility.

[(2) **On-Site Visits**. A minimum of quarterly on-site visits are required. Additional site visits may be necessary determined by work loads, regional needs and service agency performance.]

(2)[(3)] **Monitoring.**

(A) The central office contract administration [contract specialist] develops an annual [a] schedule to monitor all service agencies based on a risk assessment. The schedule may be revised quarterly. Monthly schedules are distributed to regions. [service agents performance and needs.]

(B) All visits are documented using the form designated by central office contract administration as appropriate.

(C) Scheduled visits are made by staff designated on the monthly schedule.

[(B) The contract specialist prepares for the monitoring visit by talking

with the casemanager, reviewing case information on youth placed in the program for relevant data, interviewing community and professional personnel as appropriate, reviewing appropriate licensing reports, and reviewing past monitoring data.

[(C) The contract specialist schedules and conducts monitoring visit with the service agent.

[(D) The contract specialist conducts an exit interview with the service agent to discuss the findings of the visit.

[(E) If no deficiencies are found, the contract specialist sends a letter of documentation to the service agent.

[(F) If a deficiency(ies) is found, the contract specialist completes a follow-up report with a corrective action plan within five days of the visit.]

(3)[(4)] **Monitoring Corrective Action. [Follow-Up]**

(A) The contract specialist follows up with the service agent in the time frame designated in the corrective action plan. [previous monitoring.]

(B) The contract specialist documents completion of the corrective action.

[(C) The contract specialist sends within five days of the follow-up visit, a corrective action taken by the service agent to those parties who received the monitoring report.]

(4)[(5)] **Imposing Sanctions.**

(A) If the service agent fails to complete the corrective action specified and no extenuating circumstances exist, non-compliance with the contract, or below average in the TYC performance measures, the contract specialist may initiate [initiates] the sanction appropriate for the performance deficiency.

(B) The contract specialist documents each contact with the service agent by sending a follow-up letter.

(C) The regional director will submit in writing to the chief of community placement a request for a major sanction with justification, proposed start date and the projected completion date.

(D) The chief of community placement reviews all proposed major sanctions and makes a final decision.

(E) The chief of community placement will notify appropriate TYC staff.

(F) The regional director will communicate in writing to the facility the imposed sanction.

(5)[(6)] **Sanctions.**

(A) **Minor sanctions:**

(i) **Conference**

(ii) **Letter documenting deficiencies, correction action needed, and timetable to program director/executive director**

(iii) **Letter to program director/executive director with copies to the program's board president**

(B) **Major sanctions:**

(i) **Moratorium on placements**

(ii) **Probation**

(iii) **Removal of youth**

(iv) **Contract termination**

(6) [(7)] **Evaluation.** An overall evaluation is conducted annually according to the Residential Contract Monitoring manual. [and prior to the end of each contract. The evaluation is based on all quality assurance components collected during the contract period which includes all monitoring reports during a contract period, compiled to assess a service agent's compliance with contract and service requirements.]

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

Issued in Austin, Texas, on November 1, 1995.

TRD-9514112

Steve Robinson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: December 8, 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 15. Medicaid Eligibility

The Texas Department of Human Services (DHS) proposes amendments to §§15.100, 15.215, 15.450, 15.455, 15.502; and new §15.453, concerning long-term care insurance policies; Veterans Administration contracts; deeming of income from a spouse; Retirement, Survivors, and Disability Insurance (RSDI) and Supplemental Security Income (SSI) recoupments; and incurred medical expenses, in its Medicaid Eligibility rule chapter. The purpose of the amendments and new section is to provide policy clarifications regarding long-term care Medicaid eligibility rules.

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 eligibility policy will be applied consistently, statewide. 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 Judy Coker at (512) 438-3227 in DHS's Long Term Care Division. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-051, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

#### Subchapter A. General Information

##### • 40 TAC §15.100

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

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

Ineligible child—for deeming pur-

poses, the natural or adopted child of the client, of the client's spouse, or of the parent or parent's spouse, who lives with the client, is not eligible for SSI or Medical Assistance Only, and who is under age 18, or under age 21 and a student regularly attending a school, college, university, or course of vocational training in preparation for gainful employment.

Medically necessary—The need for medical services in an amount and frequency sufficient, according to accepted standards of medical practice, to preserve health and life and to prevent future impairment. For dental services, prosthetic devices, and walking aids/shoes, the client must provide a statement of medical necessity from his physician.

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 November 1, 1995.

TRD-9514101

Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Proposed date of adoption: February 1, 1996

For further information, please call: (512) 450-3765

#### Subchapter B. Medicare and Third-Party Resources

##### • 40 TAC §15.215

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

**§15.215. Third-party Resources (TPRs).**

(a) (No change.)

(b) TPRs include the following:

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

(5) Long-term care insurance policies.

(A) Long-term care insurance policies pay for nursing facility care. Benefits are specified in the policy purchased by the client.

(B) Long-term care insurance policies do not affect Medicaid eligibility. If a client has such a policy, the eligibility specialist reports it as a third-party resource, using a Medical Insurance Input form.

(c)-(e) (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.

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Nancy Murphy  
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Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

#### Subchapter E. Income

##### • 40 TAC §§15.450, 15.453, 15.455

The amendments and new section are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provide the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

**§15.450. General Principles Concerning Income.**

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

(c) Third-party resource (TPR) reimbursements to the client (for example, from medical insurers) for a given medical service, which do not exceed the amount spent by the client for that same service, are not countable income.

(d) Refunds to a client from the Third-Party Recovery Unit, Texas Department of Health, are made when TPR payments (for example, from medical insurers) for a given medical service exceed the amount Medicaid paid for that same service. These refunds are countable income to the client upon receipt.

**§15.453. Reduction of Pension and Benefit Checks for Recoupment of Overpayments.** When pension or benefit checks are reduced because of recovery of overpayments, the following guidelines apply:

(1) For all overpayments except Retirement, Survivors, and Disability Insurance (RSDI).

(A) If the client was receiving Supplemental Security Income (SSI) or Medical Assistance Only (MAO) at the time of overpayment, disregard as income the amount being recovered. Count the net amount of the benefit (for example, the gross benefit minus the amount being recouped) for eligibility and applied income purposes.

(B) If the client was not receiving SSI or MAO at the time of overpayment, the recovered amount is still countable income. Count the gross amount of the benefit for eligibility and applied income purposes.

(2) For RSDI overpayments.

(A) If there was an overpayment of Social Security (RSDI or Title II) benefits, the recoupment is not voluntary. Count the net amount of the RSDI benefit (for example, the gross RSDI minus the amount being recouped) for eligibility and applied income purposes.

(B) If there was an overpayment of Supplemental Security Income (SSI or Title XVI) benefits, the recoupment is voluntary. Determine if the client signed the voluntary agreement for recoupment. If there is a signed agreement, count the gross RSDI for eligibility and applied income purposes. (If there is no signed agreement, there should be no recoupment from RSDI benefits.) The eligibility specialist should explain to the client that he is responsible for paying the full applied income amount, the adverse effect of agreeing to the RSDI benefit reduction, and that he may elect to revoke such an agreement.

#### *§15.455. Unearned Income.*

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

(c) Fixed income. Sources of unearned, fixed income are as follows:

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

(3) VA compensation, pension, and dependency and indemnity compensation (DIC) payments.

(A) (No change.)

(B) VA aid-and-attendance, [and] housebound benefits, and reimbursements for unusual medical expenses are not income for eligibility, applied income, or deeming purposes. They are also not

part of the community spouse's income (in spousal impoverishment cases) when calculating the spousal diversion in the applied income budget [are excluded in the income-eligibility test and in determining the amount of applied income. These benefits are also excluded for deeming].

(C) (No change.)

(D) A VA contract for payment of nursing facility services does not affect Medicaid eligibility. If an application is filed, the Texas Department of Human Services proceeds with the eligibility determination. If the case is certified while the contract is still in effect, the VA contract is reported as a third-party resource on the Medical Insurance Input form.

(d)-(e) (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.

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Nancy Murphy  
Section Manager, Media  
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Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

### Subchapter F. Budget and Payment Plans

#### • 40 TAC §15.502

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

#### *§15.502. Deduction of Incurred Medical Expenses.*

(a) Public Law 100-360 requires the department to deduct, when determining a client's applied income, certain incurred medical expenses not covered by a third party. The department limits these expenses to Medicare and other general health insurance premiums, deductibles, and coinsurance and to medical care and services that are recognized by state law but not covered

under the Medicaid state plan. Deductions are not allowed for medical services received before the client's certification date. In spousal impoverishment cases, if there is a diversion of income to the community-based spouse, incurred medical expenses paid by the community-based spouse for the nursing facility client are allowable deductions. Health insurance benefits must be assignable. This deduction applies only to MAO clients.

(b) Allowable deductions include but are not limited to:

[(1) parenteral fluids;]

[(1)[(2)] medically necessary routine dental services, including dentures, for NF clients, and emergency dental services not covered by the Emergency Dental Services System;

[(2)[(3)] medically necessary prosthetic devices;

[(3)[(4)] medically necessary walking aids and special shoes/support devices for feet; and

[(4) [(5)] physicals.

(c)-(f) (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.

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Nancy Murphy  
Section Manager, Media  
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Texas Department of  
Human Services

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For further information, please call: (512) 450-3765

### Chapter 48. Community Care for Aged and Disabled

#### In-Home and Family Support Program

##### • 40 TAC §48.2704

The Texas Department of Human Services (DHS) proposes an amendment to §48.2704, concerning functional eligibility, in its Community Care for Aged and Disabled chapter. The purpose of the amendment is to enable staff to request a physician's statement if other records alone cannot clearly establish disability.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the correct determination of disability so program eligibility determination can be made. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Debbie Berliner at (512) 438-3199 in DHS's Client Eligibility section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-077, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 35, which provides the department with the authority to administer public assistance and support services for persons with disabilities programs.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§35.001-35.012.

#### §48.2704. Functional Eligibility.

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

(c) The applicant must give permission to obtain verification of the diagnosis, limitations, and prognosis of his disability through either a signed physician's statement or clinical, educational, medical, diagnostic, and evaluation records. If clinical, educational, medical, diagnostic, or evaluation records are questionable or do not clearly establish the disability, a signed physician's statement must be provided. [that include the following:

- [(1) diagnosis;
- [(2) limitation; and
- [(3) prognosis.]

(d)-(e) (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 October 31, 1995.

TRD-9514018 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512) 438-3765



## Chapter 95. Medication Aides

### Program Requirements

- 40 TAC §§95.101, 95.103, 95.107, 95.109, 95.111, 95.115, 95.119, 95.121, 95.123, 95.125

The Texas Department of Human Services (DHS) proposes amendments to §§95.101, 95.103, 95.107, 95.109, 95.111, 95.115, 95.119, 95.121, 95.123, and 95.125, concerning introduction; requirements for administering medications; training requirements; nursing graduates reciprocity; application procedures; examination; permit renewal; training program requirements; permitting of persons with criminal backgrounds; violations, complaints, and disciplinary actions; and requirements for correctional institutions, in its Medication Aides chapter. The purpose of the amendments is to conform to changes made in the nurse aide rules, which were necessary to bring those rules into compliance with federal regulations.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. 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 to strengthen the sections that stipulate the permitting of medication aides, as well as bring the sections into compliance with federal regulations. 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 Wendy Francik at (512) 450-3167 in DHS's Institutional Policy Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-550, 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 Health and Safety Code, Chapter 242, which provides the department with the authority to regulate medication aides and under Texas Civil Statutes, Article 4413(502), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.151-161.

#### §95.101. Introduction.

(a) (No change.)

(b) Definitions. The following words and terms, when used in this Chap-

ter, must have the following meanings, unless the context clearly indicates otherwise.

(1) Abuse—The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish. [Any act, failure to act, or incitement to act done willfully, knowingly, or recklessly through words or physical action which causes or could cause mental or physical injury or harm or death to a resident. This includes verbal, sexual, mental and/or psychological, and physical abuse (including corporal punishment), involuntary seclusion, or any other actions within this definition.]

(2) (No change.)

(3) Facility—An institution licensed under the Health and Safety Code, Chapter 242; a state school as defined in the Texas Civil Statutes, Article 5547-201, §1.02(16); [and] a correctional institution as established under the jurisdiction of the Texas Department of Criminal Justice; a mental health and mental retardation program that is operated under the jurisdiction of the Texas Department of Mental Health and Mental Retardation (TDMHMR) and that meets the criteria in §95.103(b) of this title (relating to Requirements for Administering Medications); and a personal care facility licensed under the Health and Safety Code, Chapter 247, that meets the criteria in §95.103(b) of this title (relating to Requirements for Administering Medications).

(4) Licensed nurse—An individual licensed as a licensed vocational nurse or a licensed registered nurse.

(5) Licensed vocational nurse—A nurse who is currently licensed by the Board of Vocational Nurse Examiners for the State of Texas.

(6)[(4)] Medication aide—A person permitted by DHS to administer medications to facility residents.

(7)[(5)] Misappropriation of resident property—The deliberate misplacement, exploitation, or wrongful, temporary or permanent use of a resident's belongings or money without the resident's consent [taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident].

(8)[(6)] Neglect—The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness. [A deprivation of life's necessities of food, water, or shelter or a failure of an individual to provide services, treatment, or care to a resident which causes or could cause mental or physical injury or harm or death to the resident.]

(9) Non-licensed direct care staff—Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living and/or active treatment programs.

(10) Nurse aide—An individual certified to provide nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This individual has completed a nurse aide training and competency evaluation program (NATCEP) approved by the state as meeting the requirements of the Code of Federal Regulations (CFR), Chapter 42, §§483.151-483.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on the nurse aide registry of DHS. This definition does not include an individual who is a licensed health professional, a registered dietitian, a non-licensed direct staff person, or who volunteers such services without monetary compensation.

(11) [(7)] Registered nurse (RN)—An individual currently licensed by the Texas Board of Nurse Examiners to practice professional nursing.

(12)[(8)] Registered pharmacist—An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.

(13) [(9)] Training program—A program approved by DHS to instruct individuals to act as medication aides.

*§95.103. Requirements for Administering Medications.*

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

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Health and Safety Code, §242.154(f):

(1) State school employees and employees of mental health and mental retardation programs operated under the jurisdiction of the Texas Department of Mental Health and Mental Retardation (TDMHMR) must comply with subsection (b) of this section and §§95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, and 95.123 of this title (re-

lating to Allowable and Prohibited Practices of a Permit Holder; Training Requirements, Nursing Graduates, Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; Violations, Complaints and Disciplinary Actions).

(2) Correctional institution employees and employees of medical services contractors for a correctional institution must comply with §95.125 of this title (relating to Requirements for Correctional Institutions).

(d) Medication [Nurse] aides. Persons employed [used] as medication aides in a Medicare skilled nursing facility or a Medicaid nursing facility must comply with the requirements relating to nurse aides as set forth in the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §4201-4214, December 22, 1987, as amended, and Chapter 94 of this title (relating to Nurse Aides).

(e) (No change.)

*§95.107. Training Requirements; Nursing Graduates; Reciprocity.*

(a) (No change.)

(b) Prior to application for a permit under this chapter, all persons must:

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

(5) be currently employed in a facility as a nurse aide or nonlicensed direct care staff person on the first official day of an applicant's medication aide training program; and

(6) have been employed in a facility for 90 days as a [nurse aide or] nonlicensed direct care staff person. This employment must have been completed within the 12-month period preceding the first official day of the applicant's medication aide training program. An applicant employed as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility is exempt from the 90-day requirement.

(c)-(e) (No change.)

*§95.109. Application Procedures.*

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

(e) DHS will send a notice listing the additional materials required to an applicant who does not complete the application in a timely manner. An application not completed by the day of the medication aide final exam [within 30 days after the date of the notice] must be voided.

(f) (No change.)

*§95.111. Examination.*

(a) A written examination must be given by the Texas Department of Human Services (DHS) to each applicant at a site determined by DHS.

(1) A [No] final examination may not [must] be given to an applicant until the applicant has met the requirements of §95.107 of this title (relating to Training Requirements; Nursing Graduates; Reciprocity) and §95.109 of this title (relating to Application Procedures).

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

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

*§95.115. Permit Renewal.*

(a) (No change.)

(b) Permit renewal procedures.

[(1)] At least 30 days prior to the expiration date of a permit, DHS must send to the permit holder, at the address listed in DHS's records, notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form which the permit holder must complete and return with the required renewal fee.]

(1) [(2)] The renewal form must include the preferred mailing address of the permit holder and information on certain misdemeanor and felony convictions. It must be signed by the permit holder.

(2)[(3)] DHS must issue a renewal permit to a permit holder who has met all requirements for renewal.

(3)[(4)] A permit must not be renewed if the permit holder does not complete the required seven-clock-hour continuing education requirement. Successful completion must be determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this chapter.

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

*§95.119. Training Program Requirements.*

(a) (No change.)

(b) Basic training program.

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

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is

performing [observing or involved in] functions involving medication administration and under the direct, contact supervision of a licensed nurse.

(B) (No change.)

(8)-(9) (No change.)

(c) (No change.)

**§95.121. Permitting of Persons with Criminal Backgrounds.** The Texas Department of Human Services (DHS) may suspend or revoke an existing permit, disqualify a person from receiving a permit, or deny to a person the opportunity to be examined for a permit because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide.

(1) In considering whether a criminal conviction directly relates to the occupation of a medication aide, DHS must consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for requiring a permit to be a medication aide. The following felonies and misdemeanors relate to the permit of a medication aide because these criminal offenses indicate an inability or a tendency to be unable to perform as a medication aide:

(i) (No change.)

(ii) any conviction for an offense listed in §250.006 [§250.005] of the Health and Safety Code;

(iii)-(vi) (No change.)

(C)-(D) (No change.)

(2) (No change.)

**§95.123. Violations, Complaints, and Disciplinary Actions.**

(a) Filing of complaints. Any person may complain to the Texas Department of Human Services (DHS) alleging that a person or program has violated the code or this chapter.

(1) Persons who want to file a complaint against a permit holder, program, or another person, must notify DHS in writing [ , by telephone, or by personal visit to DHS]. The mailing address is Medication Aide Permit Program, Texas Department of Human Services, P.O. Box 149030, Mail Code Y-979, Austin, Texas 78714-9030.

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

(b) (No change.)

(c) Disciplinary actions. DHS may deny an application or permit renewal, suspend or revoke a permit, or rescind program approval for any violation of the code or this chapter.

[(1) If an alleged act of abuse, neglect, or misappropriation by a permitted medication aide, who also is a certified nurse aide under the provisions of Chapter 94 of this title (relating to Nurse Aides), violates the rules in this chapter and Chapter 94, the medication aide's request for an appeal of DHS's finding on abuse, neglect, and misappropriation must be conducted through DHS's formal hearing procedures under §§79.1601-79.1614 of this title (relating to Formal Appeals) and the Administrative Practices Act (APA), Title 10 of the Texas Government Code, §§2001.051 et seq. Through the formal hearing, determinations must be made on both the permit for medication aide practice and the certificate for nurse aide practice.]

(1)[(2)] Prior to institution of formal proceedings to revoke or suspend a permit or rescind program approval, DHS must give written notice to the permit holder or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the permit holder or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Health and Safety Code, Chapter 242, and this chapter. **When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a permit holder employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, DHS must comply with the hearings process as provided in 42 Code of Federal Regulations 488.335.**

(2)[(3)] If denial, revocation, or suspension of a permit or rescission of program approval is proposed, DHS must give written notice that the permit holder or program must request, in writing, a formal hearing within 30 days of receipt of the notice, or the right to a hearing must be waived and the permit must be denied, revoked, or suspended or the program approval must be rescinded.

(3)[(4)] The formal hearing must be conducted according to DHS's formal hearing procedures under §§79.1601-1614 of this title (relating to Formal Hearings) and §§76.101-76.108 of this title (relating to Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities), if applicable.

(4) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 94 of this title (relating to Nurse Aides) vio-

lates the rules in this chapter and Chapter 94, DHS must comply with the formal hearing process as required in paragraph (3) of this subsection. Through the formal hearing, determinations will be made on both the permit for medication aide practice and the certificate for nurse aide practice.

(d) (No change.)

**§95.125. Requirements for Correctional Institutions.**

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional institution or employed by a medical services contractor for a correctional institution.

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

(d) Application.

[(1)] An employee of a correctional institution or an employee of a medical services contractor for a correctional institution must submit an official application form to the Texas Department of Human Services (DHS). An application for a permit must be made in accordance with §95.109(b) and (c) of this title (relating to Application Procedures).

[(2) The Texas Department of Criminal Justice (TDCJ) must certify to DHS the individuals who have completed a training program approved under §95.119 of this title (relating to Training Program Requirements). A previous training program taught by the predecessor agency of TDCJ using the then-approved curriculum is deemed to meet the training program requirements of this paragraph.]

(e) Examination procedures. [Examination procedures must be as follows.]

[(1)] A written examination must be given by DHS to each applicant at a site determined by DHS. Examination provisions for employees of correctional institutions must comply with §95.111 [§95.111(a)(2), (5)-(6), and (b)] of this title (relating to Examination).

[(2) The applicant must complete the examination no later than 90 days after certification is received by DHS from the Texas Department of Criminal Justice. If the applicant fails the exam, another examination must be given only if the applicant enrolls in and successfully completes another training program.]

(f)-(j) (No change.)

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

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Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

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For further information, please call: (512)  
438-3768

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 21. Right of Way

##### Control of Outdoor Advertising Signs

- 43 TAC §§21.142, 21.149, 21.150, 21.153, 21.160

The Texas Department of Transportation proposes amendments to §§21.142, 21.149, 21.150, 21.153, and 21.160, concerning the control of outdoor advertising signs.

Senate Bill 971, 74th Legislature, 1995, re-codified the statutes relating to transportation into the Transportation Code.

Transportation Code, Chapter 391, previously codified at Texas Civil Statutes, Article 4477-9a, provides the department with authority to control outdoor advertising.

House Bill 467, 73rd Legislature, Regular Session, 1993, amended Texas Civil Statutes, Article 4477-9a, to provide for combined license and permit fees of \$10 for outdoor advertising erected and maintained by a nonprofit organization in a municipality or a municipality's extraterritorial jurisdiction if the advertising relates to or promotes only the municipality or a political subdivision whose jurisdiction is wholly or partly concurrent with the municipality. House Bill 467, also removed the requirement for nonprofit organizations to file a bond.

Prior to House Bill 467, all outdoor advertisers including nonprofit organizations were required to pay an original fee of \$125 for an outdoor advertiser's license and an annual renewal fee of \$60. In addition, they were required to obtain a surety bond in the amount of \$2,500 for each county, up to a total amount of \$10,000. They were also required to pay an original permit fee of \$96 and an annual renewal fee of \$40 for each sign that they erected and maintained.

The amendments to §§21.142, 21.149, 21.150, 21.153, and 21.160 provide for a limitation on the combined license and permits fees for a sign erected and maintained by a nonprofit organization in a municipality or the extraterritorial jurisdiction of a municipality if the sign advertises or promotes only the municipality or another political subdivision whose jurisdiction is in whole or in part concurrent with the municipality, and exempts a

nonprofit organization from the requirement that it file a bond.

Gary Bernethy, director, Right of Way Division, has determined that for the first five years the sections are in effect there will be fiscal implications as result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect is an increase in cost of \$5,000 for each year of the first five years.

Mr. Bernethy also has determined that there will not be fiscal implications for local governments as a result of enforcing or administering the proposed sections.

Mr. Bernethy has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Bernethy also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to allow nonprofit organizations to erect and maintain outdoor signs to promote the municipality or a political subdivision of the municipality for a lower fee. 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.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. A public hearing will be held at 9:00 a.m. on Tuesday, November 28, 1995, in the First Hearing Room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas. The hearing will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are

requested to contact Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed amendments may be submitted to Gary Bernethy, Director, Right of Way Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be 5:00 p.m. on December 4, 1995.

The amendments are proposed under the Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Texas Transportation Code, §391.065, which authorizes the commission to adopt rules to regulate the orderly and effective display of outdoor advertising signs on the Interstate or Primary System.

The amendments do not affect any other statute, article, or code.

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

Act—The Highway Beautification provisions of the Texas Litter Abatement Act, codified as Transportation Code, Chapter 391 [Texas Civil Statutes, Article 4477-9a].

Commission—The Texas [State Highway and Public] Transportation Commission.

Department—The Texas Department of [State Department of Highways and Public] Transportation.

Federal-aid primary highway system—That portion of connected main highways located within the State of Texas which now or hereafter may be so designated officially by the Texas [State Highway and Public] Transportation Commission and approved pursuant to 23 United States Code, §103.

Interstate highway system—That portion of the national system of interstate and defense highways located within the State of Texas which now or hereafter may be so designated officially by the Texas [State Highway and Public] Transportation Commission and approved pursuant to 23 United States Code, §103.

License—An outdoor advertising license issued by the department pursuant to the provisions of the Transportation Code, Chapter 391, Subchapter C [Act, §4.04].

Nonprofit sign—A sign erected and maintained by a nonprofit organization in a municipality or the extraterritorial jurisdiction of a municipality if the sign advertises or promotes only the municipality or another political subdivision whose jurisdiction is in whole or in part concurrent with the municipality.



Permit—The authorization granted for either the erection or maintenance or both, of an outdoor advertising sign as provided in the Act, §391.068 [4.05].

§21.149. Licenses.

(a) Application and issuance.

(1) Except as provided in §21.147 of this title (relating to Exempt Signs), and except as provided in subsection (f) of this section, a sign owner or sign lessee may not erect or maintain a sign as governed by §21.146 of this title (relating to Signs Controlled) until the owner or lessee has obtained a license covering the county in which the sign is to be erected or maintained. Licenses are issued by the director of right of way. An applicant for a license must file an application in a form prescribed by the department, which shall include, but not be limited to:

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

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

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

(d) Revocation or suspension. The director of right of way may suspend the issuance of additional permits or the transfer of existing permits or revoke a license if:

(1) (No change.)

(2) the licensee violates one or more applicable provisions of this undesignated head or Transportation Code, Chapter 391 [Texas Civil Statutes, Article 4477-9a]; or

(3) (No change.)

(e) (No change.)

(f) Exception. A nonprofit organization may erect or maintain a nonprofit sign without obtaining an outdoor advertising license. A permit must be obtained for any sign erected or maintained pursuant to this exception, in accordance with §21.150 of this title (relating to Permits).

§21.150. Permits.

(a) Eligibility. Except as provided in subsection (k) of this section, a [A] permit under this section may only be issued to a sign owner holding a valid license issued pursuant to §21.149 of this title (relating to Licenses).

(b) Application and issuance.

(1) Except as provided in §21.151 of this title (relating to Local Control) a sign owner who desires a permit to erect or maintain a sign as required in §21.146 of this title (relating to Signs Controlled) must file an application in a form

prescribed by the department, which shall include, but not be limited to:

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

(D) indication that the site owner has consented to the erection of the sign; [and]

(E) verification of the applicant's nonprofit status if the sign is a nonprofit sign; and

(F) such additional information as the department deems necessary.

(2)-(4) (No change.)

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

(e) Transfer.

(1) A permit may only be assigned or transferred with the written approval of the district engineer. At the time of the transfer, both the transferor and the transferee must hold a valid outdoor advertising license issued pursuant to §21.149 of this title (relating to Licenses), except as provided in paragraphs (3) and (4) of this subsection.

(2) (No change.)

(3) A permit issued under subsection (k) of this section may be transferred to a nonprofit organization that does not hold a valid outdoor advertising license issued under §21.149 of this title (relating to Licenses) if the permit is transferred for the purpose of maintaining a nonprofit sign.

(4) A permit issued under subsection (k) of this section may be transferred for a purpose other than maintaining a nonprofit sign if the transferee holds a valid outdoor advertising license at the time of the transfer.

(f) (No change.)

(g) Fees.

(1) Except as provided in paragraph (2) of this subsection, for [For] a permit issued pursuant to this section:

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

(2) For a nonprofit sign:

(A) the original fee is \$10 for each sign;

(B) the annual renewal fee is \$10; and

(C) the transfer fee is waived for the transfer of a permit issued

under subsection (k) of this section if the permit is transferred under subsection (e)(3) of this section. Any other permit transfer is subject to the provisions of paragraph (1) of this subsection.

(3)[(2)] A fee prescribed in this subsection is payable by check, cashier's check, or money order, and is nonrefundable.

(h) Expiration or cancellation. The director of right of way may cancel a permit issued pursuant to this section if the sign subject to the permit is acquired by the state, is removed, or is not maintained in accordance with applicable sections under this undesignated head or Transportation Code, Chapter 391 [Texas Civil Statutes, Article 4477-9a].

(i)-(j) (No change.)

(k) Nonprofit signs.

(1) A nonprofit organization may obtain a permit under this section to erect or maintain a nonprofit sign.

(2) In order to qualify for a permit issued under this subsection, a sign must comply with all applicable requirements under this undesignated head from which it is not specifically exempted.

(3) An application for a permit under this section must include, in detail, the content of the message to be displayed on the sign. Prior to changing the message on any sign permitted under this section, the permit holder must obtain the approval of the district engineer in whose district the sign is maintained.

(4) If at any time the sign ceases to be a nonprofit sign, the permit will be subject to cancellation pursuant to subsection (h) of this section.

(5) If the holder of a permit issued under this subsection loses its nonprofit status or wishes to advertise or promote something other than the municipality or political subdivision, an outdoor advertising license must be obtained pursuant to §21.149 of this title (relating to Licenses), the permit must be converted to a permit for a sign other than a nonprofit sign, and the holder must pay the original permit fee set forth in subsection (g)(1) and annual renewal fees set forth in subsection (g)(2) of this section.

(6) A nonprofit organization that holds a valid permit for a nonconforming sign that would otherwise qualify for a permit under this subsection may convert its permit to one issued under this subsection.

§21.153. Spacing of Signs.

(a)-(h) (No change.)

(i) The spacing rules in this section do not apply to on-premise or directional or other official signs, as provided in the Act, §391.031(b) (1), [4.03(b)(1)] nor shall measurements be made from such signs.

§21.160. Relocation.

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

(d) Requirements.

(1)-(9) (No change.)

(10) The spacing requirements as provided in paragraph (7) of this subsection do not apply to:

(A) (No change.)

(B) on-premise or directional or official signs, as cited in the Texas Litter Abatement Act, Transportation Code, Chapter 391, §391.031(b)(1) [Texas Civil Statutes, Article 4477-9a, §4.03(b)(1).] nor shall measurements be made from such signs.

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

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

Issued in Austin, Texas, on October 31, 1995.

TRD-9514121

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-8630



## Chapter 27. Toll Projects

### Subchapter B. Texas Turnpike Authority

#### • 43 TAC §§27.20-27.26

The Texas Department of Transportation proposes new §§27.20-27.26, concerning the Texas Turnpike Authority.

Transportation Code, Chapters 361 and 362, require that the Texas Transportation Commission authorize feasibility studies funded from the Texas Turnpike Authority Feasibility Study Fund and that the commission approve environmental reviews of authority projects, the location of authority projects, and any transfer of an authority project to another entity. Transportation Code, §362.051 prohibits the authority from initiating construction of a toll road, toll bridge, or turnpike without first obtaining commission approval if the project is to become part of the state highway system.

Senate Bill 1360 enacted by the 74th Texas Legislature, 1995, amended the Transporta-

tion Code by creating §362.0041. The legislation allows the commission, upon approval of the Governor, to transfer an existing segment of a state highway to the authority for operation as a toll road when such a transfer is the most feasible and economic means to accomplish necessary enlargements, improvements or extensions of the state highway system.

Section 27.20 explains that the purpose of the rules is to establish the criteria and procedures for the approval of certain phases of the development of turnpike projects constructed, maintained and operated by the authority; transfer existing free public highways to the authority to accomplish needed enlargements, improvements, or extensions; authorization of authority feasibility studies and approval of the authority's environmental reviews, project locations, projects, control of access, and transfer of projects.

Section 27.21 defines words and terms used in the new subchapter.

Section 27.22 requires that the authority submit a written request for authorization to conduct a project feasibility study, and provides that the commission shall consider the potential for environmental impact and the project's general compatibility with the state and regional transportation plans.

Section 27.23 requires that the authority submit a written request for approval of an environmental review, requires that the authority's environmental review shall be conducted in accordance with the authority's rules, and provides that the commission will approve the authority's environmental review if it complies with this section and applicable laws.

Section 27.24 authorizes the authority to designate the location, and establish, limit and control the points of ingress and egress from projects; provides that upon payment of all bonds and acceptance by the commission a turnpike project shall become part of the free state highway system; provides that certain governmental entities may not begin construction of a toll or turnpike project without commission approval if the project is to become part of the state highway system; requires that the authority submit a written request for project approval and provides a list of the required documentation; and provides the criteria for commission approval including effective integration into the state highway system, the department's ability to construct any connecting roads necessary for the project to generate sufficient revenue, and location of points of ingress and egress which ensure proper operation and maintenance.

Section 27.25 provides that turnpike projects may be transferred to certain entities if the authority, the commission, and the Governor approve the transfer as being in the best interest of the state and the local government, requires that the authority submit a written request to lease, sell or otherwise convey a project from the authority to another entity and that such request must be accompanied by a written commitment from the accepting entity to maintain the facility in a safe and efficient manner, and an evaluation of the impact of such action on regional mobility and project financial viability; and establishes the

criteria that the commission will consider before approving the lease, sale or conveyance of a project.

Section 27.26 provides that if the commission finds that the conversion of an existing public highway (or segment of highway) to a toll facility is the most feasible and economic means to accomplish necessary enlargements, improvements or extensions to the state highway system, that segment may, on approval of the Governor, be transferred to the authority; requires the commission to conduct a public hearing prior to transferring an existing highway to the authority; requires publication of public hearing notices; requires the department to prepare a public hearing summary; requires the authority to reimburse the commission for the cost of a transferred highway unless the commission finds that the transfer will result in a substantial net benefit to the state; establishes the criteria that the commission will consider before agreeing to transfer an existing highway; authorizes the commission to request approval from the Governor to execute such a transfer; requires the commission to remove a transferred segment from the designated state highway system; and requires the authority to assume responsibility and liability for maintenance and operation of the transferred facility.

Thomas A. Griebel, assistant executive director, Multimodal Transportation, has determined that for the first five years the new sections are in effect there will be fiscal implications for the state as a result of enforcing or administering the proposed sections. The anticipated estimated increase in cost to the state is a total of \$19,000, which includes the cost to both agencies, for each year of the first five years the proposed sections are in effect. There are no anticipated fiscal implications to local governments as a result of administering or enforcing the sections.

Mr. Griebel has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Griebel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of implementing the sections will be improved coordination between the Texas Department of Transportation and the Texas Turnpike Authority and more efficient and effective transportation planning for the people of Texas. There will be no effect on small businesses. The provisions of these sections are not applicable to individuals.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 1:30 p.m. on Tuesday, December 5, 1995, in the First Floor Hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations

will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 483-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new sections may be submitted to Thomas A. Griebel, Assistant Executive Director, Multimodal Transportation, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on December 8, 1995.

The new sections are proposed under the Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, Chapters 361 and 362, which provides that the commission must approve various aspects of turnpike project development and transfer of authority projects to other governmental entities; and may, upon approval of the Governor, transfer an existing public highway to the authority for conversion to a toll facility.

The new sections do not affect any other statute, article, or code.

**§27.20. Purpose.** Transportation Code, Chapter 361 and Transportation Code, Chapter 362, Subchapter B, require the approval of the Texas Transportation Commission and the Texas Department of Transportation for certain phases of the development of turnpike projects constructed, maintained, and operated by the Texas Turnpike Authority. Transportation Code, §362.0041, also authorizes the commission to transfer existing free public highways to the authority to accomplish needed enlargements, improvements, or extensions. This subchapter governs authorization of author-

ity feasibility studies funded through the authority's Feasibility Study Fund and approval of the authority's environmental reviews, project locations, projects, control of access, and transfer of projects. It also establishes the criteria and procedures by which the commission may transfer an existing public highway to the authority for conversion to a turnpike project.

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

**Authority**—The Texas Turnpike Authority.

**Commission**—The Texas Transportation Commission.

**Department**—The Texas Department of Transportation.

**Executive director**—The chief administrative officer of the department.

**Feasibility study**—Collectively, all evaluations and analyses necessary to ascertain the financial, technical, and environmental viability of a proposed project, including route location, environmental and financial investment studies.

**Metropolitan planning organization**—An organization designated by the governor to carry out the transportation planning process in prescribed urbanized areas as required by 23 United States Code, §134.

**Turnpike project**—A project of the Texas Turnpike Authority as defined by Transportation Code, Chapter 361.

**§27.22. Texas Turnpike Authority Feasibility Study Fund.** Transportation Code, §361.182, provides that project feasibility studies funded from the Texas Turnpike Authority Feasibility Study Fund require approval of the commission. To secure approval the authority shall submit a written request to the executive director prior to initiating such a study. When acting on the authority's request, the commission shall consider the potential for environmental impact and the project's general compatibility with the adopted state transportation plan and, if pertinent, the regional transportation plan adopted by a metropolitan planning organization having jurisdiction in the project area.

**§27.23. Environmental Review.**

(a) Request. Transportation Code, §361.103, provides that the environmental review of a turnpike project must be approved by the commission before construction of that project begins. To secure that approval the authority must submit a written request to the executive director.

(b) General Requirements. An environmental review submitted for approval

under this section shall be conducted in accordance with the rules of the authority concerning environmental review of its projects.

(c) Approval. The commission will approve the authority's environmental review if it finds that the review has complied with the requirements of this section. When acting on the authority's request for environmental review approval, the commission will consider applicable provisions of state and federal laws, rules and regulations.

**§27.24. Project Approval.**

(a) Requirements. Transportation Code, §361.101, authorizes the authority to construct, maintain, repair, and operate projects at such locations within the state as may be determined by the authority subject to approval as to location by the commission. Transportation Code, §361.043, authorizes the authority to designate the location, and establish, limit, and control such points of ingress to and egress from, each project as may be necessary and desirable in the judgment of the authority and the department to ensure the proper operation and maintenance of said project. Transportation Code, §361.238, provides that upon payment of all bonds and the acceptance by the commission as being in good condition and repair, a turnpike project shall become a part of the state highway system to be operated free of tolls. Transportation Code, §362.051 provides that certain governmental entities may not begin construction of a toll road, toll bridge, or turnpike without the approval of the commission if the project is to become part of the state highway system.

(b) Request. To secure approval under this section the authority shall submit a written request for approval to the executive director. The request must be accompanied by:

(1) documentation of the financial viability of the proposed project for purposes of seeking the approval described in subsection (c)(2) of this section;

(2) a detailed schematic indicating the location of interchanges, mainlanes, and ingress and egress ramps;

(3) a report identifying revisions or changes to state highway system facilities necessitated by the proposed project; and

(4) an evaluation of the project integration with the state highway system.

(c) Approval. The commission will approve a project if it finds that:

(1) the project may be effectively integrated into the state highway system;

(2) the department is able to construct any connecting roads necessary for the project to generate sufficient revenue to pay the debt incurred for its construction; and

(3) points of ingress and egress are located in a manner that ensures the proper operation and maintenance of the project.

*§27.25. Transfer of Turnpike Projects.*

(a) Requirements. Transportation Code, §361.282, authorizes the transfer of a turnpike project to certain entities if the authority, the commission, and the governor approve the transfer of the project as being in the best interests of the state and the local government.

(b) Request. To secure approval under this section to lease, sell, or otherwise convey a turnpike project to another entity the authority shall submit to the executive director a written request. Such request shall be accompanied by:

(1) a written commitment to the commission from the accepting entity to maintain the facility in a safe and efficient manner; and

(2) an evaluation of the impact of such action on regional mobility and project financial viability.

(c) Approval. The commission will approve the lease, sale, or conveyance of a project if it finds that such transfer:

(1) is in the best interests of the state;

(2) is in the best interests of the county in which the project is located, or, if the project will be transferred to a municipality, is in the best interests of the municipality in which the project is located; and

(3) will not adversely affect:

(A) the financial viability of the project; or

(B) regional mobility.

*§27.26. Transfer of Existing Public Highways.*

(a) Purpose. Transportation Code, §362.0041, provides that if the commission finds that the conversion of an existing segment of the free state highway system to a toll facility is the most feasible and economic means to accomplish necessary enlargements, improvements, or extensions to the state highway system, that segment may, on approval of the governor, be transferred by order of the commission to the authority.

(b) Public involvement. Prior to transferring an existing segment of the state highway system to the authority, the commission will conduct a public hearing for the purpose of receiving comments from interested persons concerning the proposed transfer. Notice of the hearing will be published in the Texas Register, one or more newspapers of general circulation, and a newspaper, if any, published in the county or counties in which the involved segment of highway is located. The department will prepare a summary of the public hearing and all comments received in response to the hearing.

(c) Reimbursement. The authority will reimburse the commission for the cost of the transferred highway, unless the commission finds that the transfer will result in substantial net benefits to the state, the department, and the traveling public that exceed that cost. The cost shall include the total dollar amount expended by the department for the original construction of the transferred highway (and all necessary appurtenant facilities), including all costs associated with the preliminary engineering and design engineering for plans, specifications and estimates, and acquisition of necessary right-of-way.

(d) Criteria. The commission may transfer an existing highway to the authority, provided that:

(1) the authority agrees, through binding written commitment, to accept the highway for maintenance and operation in a safe and efficient manner while protecting and preserving the state's investment in the facility;

(2) the authority demonstrates that based on existing and/or forecasted traffic volumes the project is capable of generating revenue from the toll rates set by the authority sufficient to satisfy project-related debt (including, if applicable, commission reimbursement) and maintenance and operation expenses;

(3) the transfer will not adversely affect regional mobility;

(4) construction of the necessary enlargement, improvement or extension can be accomplished efficiently, expeditiously, and with a minimum public investment; and

(5) if the transferred segment or a facility of which it will become a part is to be enlarged, improved, or extended by the authority, the requirements of §27.23 of this title (relating to Environmental Review) and §27.24 of this title (relating to Project Approval) are satisfied.

(e) Transfer. Provided the commission finds that the conversion of a segment of the existing state highway system to a toll facility is the most feasible and economic means to accomplish necessary enlargements, improvements, or extensions to the state highway system and that such conversion is in the best interest of the State of Texas, the commission will request approval from the governor to execute such a transfer. Coincident with the transfer, the commission will remove the segment of highway from the designated state highway system, and the authority shall assume all responsibility and liability for maintenance and operation of the facility.

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 October 31, 1995.

TRD-9514120

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: December 8, 1995

For further information, please call: (512) 463-8630

◆ ◆ ◆

# WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 48. Community Care for Aged and Disabled

##### Client-Managed Attendant Services

- 40 TAC §§48.2601, 48.2603, 48.2604

The Texas Department of Human Services has withdrawn from consideration for permanent adoption a proposed amendments to §§48.2601, 48.2603, and 48.2604, which appeared in the May 2, 1995, issue of the *Texas Register* (20 TexReg 3239). The effective date of this withdrawal is October 31, 1995.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514020 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: October 31, 1995

Proposal publication date: May 2, 1995

For further information, please call: (512) 438-3765



## Minimum Standards for Agencies Contracted to Provide Special Services to Persons with Disabilities

- 40 TAC §48.9302

The Texas Department of Human Services has withdrawn from consideration for permanent adoption a proposed amendment to §48.9302, which appeared in the May 2, 1995, issue of the *Texas Register* (20 TexReg 3240). The effective date of this withdrawal is October 31, 1995.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514021 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

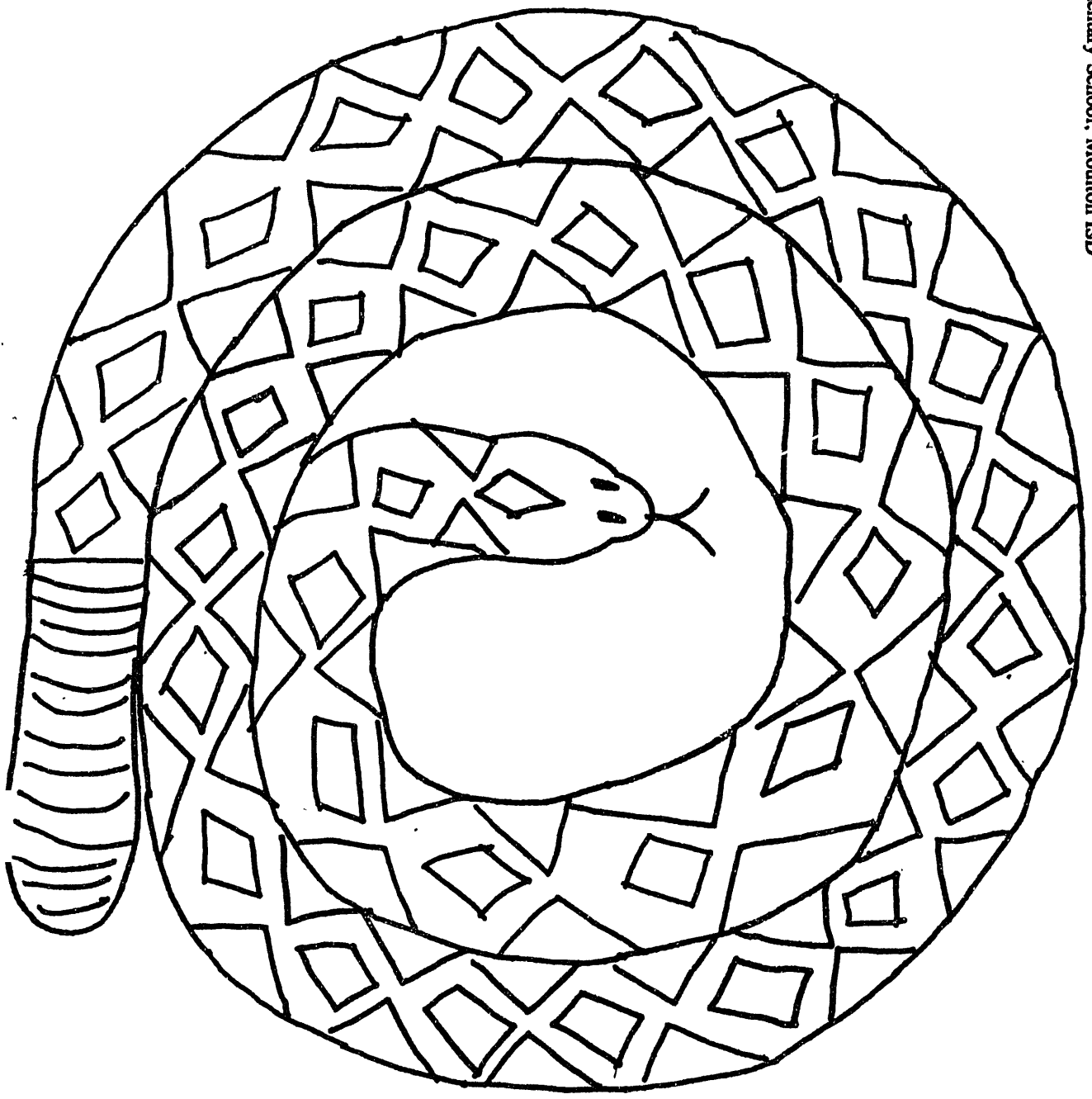
Effective date: October 31, 1995

Proposal publication date: May 2, 1995

For further information, please call: (512) 438-3765



Name: Eric Caballero  
Grade: 6  
School: Moulton Elementary School, Moulton 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 1. ADMINISTRATION

### Part IV. Office of the Secretary of State

#### Chapter 73. Statutory Documents

##### Disclosure Statement of Conditional Gifts

###### • 1 TAC §73.91

The Office of the Secretary of State adopts new §73.91, concerning filing procedures with regard to conditional gifts from foreign persons to public institutions of higher education, without changes to the proposed text as published in the September 12, 1995, issue of the *Texas Register* (20 TexReg 7151).

This rule is adopted to insure a more efficient filing procedure in that institutions of higher education will not have to submit different filings at the state and federal level with regard to conditional gifts from foreign persons.

No comments were received regarding adoption of the new section.

The new section is adopted under the authority of the 74th Legislature, Regular Session, Chapter 823, §10 and §11, 1995 (to be codified at Texas Education Code Annotated, §51.572 and §51.573), which requires the Secretary of State to accept such filings and promulgate necessary rules.

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 October 30, 1995.

TRD-9513987

Clark Kent Ervin  
Assistant Secretary of  
State  
Office of Secretary of  
State

Effective date: November 20, 1995

Proposal publication date: September 12, 1995

For further information, please call: (512) 463-5702

## TITLE 22. EXAMINING BOARDS

### Part VI. Texas State Board of Registration for Professional Engineers

#### Chapter 131. Practice and Procedure

##### Registration

###### • 22 TAC §131.138

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.138, concerning engineers' seals, with changes to the proposed text as published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5126).

The rule as amended clarifies the purpose and proper use of the seal, and defines the engineering documents which must be signed, sealed, and dated.

The rule clarifies the provisions pertaining to the sealing rule requirements.

Comments were received from individual professional engineers as well as engineering companies. While there was no opposition to the rule as proposed, one comment was received suggesting that the gender bias in the wording be eliminated. The board considered this recommendation and slight modifications were made to the adopted text changing the gender to the third person in paragraphs (2), (3), (7), (8), and subparagraph (B) of paragraph (10). Other comments ranged from being congratulatory in nature to requesting clarification of some language. Several engineers questioned whether computer-generated (CADD) seals should be used without a signature as permitted in paragraph (5) of the section. The board's opinion was that the authorization statement required in conjunction with the use of a CADD seal was sufficient. Several other individuals advised the board that the proposed terminology in paragraph (9) concerning "original and final documents" was redundant. The board agreed and the words "and final" were deleted in the adopted version. Another individual requested that the board consider adding "addenda" to the non-exclusive list of documents requiring a signature as defined in paragraph (9). The board also agreed with

this suggestion and the word was added. The board also determined that it was more appropriate for the language pertaining to reduced size computer-generated seals to be contained in subsection (a) instead of paragraph (5). Based on all of these comments, the board also made slight modifications to paragraphs (2), (5), (7), (8), and (9) for clarity and to remove redundancies with other existing rules.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

*§131.138. Engineers' Seals.* The purpose of the engineer's seal is to assure the user of the engineering product that the work has been performed by the professional engineer named and to delineate the scope of the engineer's work. The board strongly encourages the engineer to utilize the designation "P.E." on all correspondence and in conjunction with all engineering performed. The seal shall be used as noted in this section and in other board rules. Physical seals of two different sizes will be acceptable: a pocket seal (the size commercially designated as 1-5/8-inch seal) or desk seal (commercially designated as a two-inch seal) to be of the design shown as follows. Computer-generated seals may be of a reduced size provided that the engineer's name and number are clearly legible.

Figure 1: 22 TAC §131.138

(1) All seals obtained and used by license holders may contain any given name or initial combination, except for nicknames, at their discretion, provided the surname appears on the seal and in the usual written signature.

(2) Engineers shall only seal work done by them or performed under their responsible supervision, except as provided in paragraph (10) of this section concerning standards.

(3) It shall be misconduct to knowingly sign or seal any engineering document or product if its use or implementation may endanger the health, safety, or welfare of the public.

(4) It shall be unlawful for a license holder whose license has expired, or has been revoked or suspended to sign or affix a seal on any engineering document or product.

(5) All seals obtained and used by license holders shall be capable of leaving a permanent ink or impression representation on the engineering work, or shall be capable of placing a computer-generated representation in a computer file containing the engineering work. If not accompanied by an original signature and date, computer-generated seals shall be accompanied by the following text or similar wording: "The seal appearing on this document was authorized by (Example: Leslie H. Doe, P.E. 0112) on (date). Alteration of a sealed document without proper notification to the responsible engineer is an offense under the Texas Engineering Practice Act."

(6) Preprinting of blank forms with an engineer's seal, or the use of decal or other seal replicas is prohibited.

(7) Engineers shall take reasonable steps to insure the security of their physical or computer-generated seals at all times. In the event of loss of a seal, the registrant will immediately upon learning of such loss communicate in writing all facts relative to the loss to the executive director of the board.

(8) Engineers shall affix an unobscured seal, original signature, and date of signature to the originals of all documents containing the final version of any engineering work as outlined in paragraph (9) before such work is released from their control. Non-final documents released from their control shall identify the purpose of the document, the engineer(s) of record and the engineer license number(s), and the release date by placing the following text or similar wording instead of a seal: "This document is released for the purpose of (Examples: interim review, mark-up, drafting) under the authority of (Example: Leslie H. Doe, P.E. 0112) on (date). It is not to be used for (Examples: construction, bidding, permit) purposes." The use of signature reproductions, such as rubber stamps, or computer generated or other facsimiles shall not be permitted in lieu of actual signatures.

(9) The engineer shall sign, seal and date the original title sheet of bound engineering reports, specifications, details, calculations or estimates, and each original sheet of plans or drawings regardless of size or binding. All other engineering work, including but not limited to research reports, opinions, recommendations, evaluations, addenda, documents produced for litigation, and engineering software shall bear the engineer's printed name, date, signature and the designation "P.E." or other terms allowed under the Act, §1.2; a seal may be

added on such work as needed or at the engineer's discretion. Electronic correspondence of this type shall be followed by a hard copy containing the engineer's printed name, date, signature and the designation "P.E." or other terms allowed under the Act, §1.2.

(10) Work performed by more than one engineer shall be sealed in a manner such that all engineering can be clearly attributed to the responsible engineer or engineers. Licensed employees of the state, its political subdivisions, or other public entities are responsible for sealing their original engineering work; however, such licensed employees engaged in review and evaluation for compliance with applicable law or regulation of engineering work submitted by others, or in the preparation of general planning documents, a proposal for decision in a contested case or any similar position statement resulting from a compliance review, need not seal the review reports, planning documents, proposals for decision, or position statement. When an engineer elects to use standards or general guideline specifications, those items shall be clearly labeled as such, shall bear the identity of the publishing entity, and shall be:

(A) individually sealed by the engineer; or

(B) specified on an integral design/title/contents sheet that bears the engineer's seal, signature, and date with a statement authorizing its use.

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 October 31, 1995.

TRD-9514075

John R. Speed, P.E.  
Executive Director  
Texas State Board of  
Registration for  
Professional Engineers

Effective date: November 21, 1995

Proposal publication date: July 18, 1995

For further information, please call: (512) 440-7723

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

##### Subchapter CC. LoneSTAR Select Contracting Program

###### • 25 TAC §29.2801

On behalf of the State Medicaid Director, the Texas Department of Health (department)

submits an adopted amendment to §29.2801, concerning the LoneSTAR Select Contracting Program process for hospital inpatient services. The amendment is adopted without changes to the proposed text as published in the August 15, 1995, issue of the *Texas Register* (20 TxReg 6187).

The amendment implements Senate Bill 79, 73rd Texas Legislature, 1993, which mandates medical assistance selective contracting for non-emergency inpatient hospital services. Generally, the amendment enables the department to contract selectively with newly constructed health care providers (hospitals) for inpatient services for Medicaid recipients, thereby improving the department's ability to act as a prudent purchaser of services and manage the program in a more effective and efficient manner. Specifically, the amendment modifies the section by adding a definition for the term "new facility"; and by adding a provision concerning evaluation criteria for new facilities.

One comment was received from McAllen Heart Hospital (currently under construction), in favor of the proposed amendment to §29.2801. The department considered the comment and adopted the section as proposed.

The amendment is adopted under the Human Resources Code, §32.027, which provides authority for the adoption of rules on selective contracting; the Human Resources Code, §32.021, and Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to adopt rules to administer the state's Medical Assistance Program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate purchased health services programs and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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 November 1, 1995.

TRD-9514113

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: November 22, 1995

Proposal publication date: August 15, 1995

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

### Chapter 41. Utilization Review Waiver for Utilization Review Procedures

#### • 25 TAC §§41.101, 41.102, 41.104, 41.106-41.108, 41.110, 41.112, 41.113

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits adopted amendments to §§41.101, 41.102, 41.104, 41.106-41.108, 41.110,



41.112, and 41.113, concerning waiver for utilization review procedures. These amendments are adopted without changes to the proposed text as published in the May 12, 1995, issue of the *Texas Register* (20 TexReg 3554), and therefore the amendments will not be republished.

These sections are amended to redefine the scope of the utilization review program for inpatient hospital care for hospitals reimbursed under the department's prospective payment system. These amendments include a diagnosis related group (DRG) data base that will determine the DRG payment schedule, which includes psychiatric and rehabilitation admissions in the DRG payment methodology; define the review process to include review of readmissions, cost outliers, day outliers, and emergency services; improve administrative procedures by eliminating the requirement for annual renewal of acknowledgment of penalty notices and the requirement for the issuance of preliminary technical denials when attestation statements are not provided or are not properly completed when submitted with complete medical records; and clarify existing language by deleting repetitive language, simplifying instructions, and clearly delineating agency responsibility.

These sections cover inpatient hospital utilization program; case selection process; Texas Medical Review Program (TMRP) review process; attestation statement for TMRP hospitals; acknowledgment of penalty notice; denials and recoupments for TMRP and Tax Equity and Fiscal Responsibility Act (TEFRA) hospitals; appeals requirements under TMRP and TEFRA, and hospital notification; inpatient utilization review for hospitals reimbursed under the TEFRA principles of reimbursement; and quality of care review.

The department received no public comments during the comment period for these amendments.

The amendments are adopted under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

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 November 1, 1995.

TRD-9514114 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: November 22 1995

Proposal publication date: May 12, 1995

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

## Chapter 221. Meat Safety Assurance

### Meat and Poultry Inspection

#### • 25 TAC §221.12

The Texas Department of Health (department) adopts an amendment to §221.12, concerning meat and poultry inspection, with changes to the proposed text as published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4535).

Specifically, this section is being amended to address fees that will be charged for meat and poultry inspection services provided on a holiday or on an overtime basis, as allowed under the Texas Meat and Poultry Inspection Act (Act), Health and Safety Code, Chapter 433, §433.009. A fee for such services was previously established, and is currently being collected to recover certain costs of inspection as required by §433.009. The section is also being amended to correct the name of §221.12 from "Meat Inspection" to "Meat and Poultry Inspection."

The section enables the department to increase fees collected for overtime and special services and will provide continued assurance of consumer safety by enforcing the current United States Department of Agriculture regulations.

Two written comments were received regarding the proposed amendment. A summary of the comments and the department's responses are as follows.

**COMMENT:** One commenter stated that the profit margin for ratite meat is low and that inspection should be provided at no cost.

**RESPONSE:** The Texas Meat and Poultry Inspection Act, Health and Safety Code, Chapter 433, authorizes the department to collect fees for inspection services not required by federal law. Voluntary fees are charged for providing such inspection service. The Act also requires the Texas Board of Health to set the fee in an amount sufficient to recover the cost of providing the service. No change was made as a result of the comment.

**COMMENT:** One commenter stated that the fee increase will have a detrimental effect on the new ratite meat industry and that the 31% increase is out of line with inflation.

**RESPONSE:** The current \$16 per hour fee was set over ten years ago with no subsequent adjustment to accommodate recovering the increasing costs of inspection. The proposed fee represents less than a 3.0% increase per year when amortized over the past ten years, which is significantly lower than the average yearly inflation rate during that period. No change was made as a result of the comment.

Two additional comments were received orally at the Board of Health meeting. A summary of the comments and the department's responses are as follows.

**COMMENT:** The commenters stated that charging a fee for the inspection of exotic wild game that is required to be inspected is detri-

mental to the industry. The commenters stated that the Texas Department of Agriculture, makes low interest loans available to ranchers for developing alternative agriculture products. In addition, Texas producers must compete with producers in other states that do not charge a fee, giving the out-of-state producers an economic advantage over Texas producers.

**RESPONSE:** The department agrees with the comment that exotic wild game required to be inspected under state or federal law should not be charged a fee for routine inspections.

The commenters were individuals who were generally not in favor of the section of the rules requiring fees for voluntary inspection and expressed concerns regarding increased costs to their operations.

The amendment is adopted under the Health and Safety Code, Chapter 433, §433.008, which provides the commissioner with the authority to adopt rules for the efficient execution of the Texas Meat and Poultry Inspection Act; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner.

#### §221.12. Meat and Poultry Inspection.

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

(d) Special fees for inspection services.

(1) Scope and purpose. Fees shall be charged by the department for inspection services provided on a holiday or on an overtime basis, and/or for products which do not require inspection by state or federal law.

(2) Overtime and holiday rate. The overtime and holiday rate for inspection services provided pursuant to Health and Safety Code, Chapter 433, §433.009 shall be \$21 per hour, per program employee.

(3) Rate for inspections not required by state or federal law. The rate for inspections not required by state or federal law provided pursuant to Health and Safety Code, Chapter 433, §433.009 shall be \$21 per hour, per program employee.

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 October 30, 1995.

TRD-9513976 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: December 1, 1995

Proposal publication date: June 23, 1995

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

**TITLE 37. PUBLIC  
SAFETY AND CORREC-  
TIONS**

**Part III. Texas Youth  
Commission**

**Chapter 85. Admission and  
Placement**

**Placement Planning**

**• 37 TAC §85.31**

The Texas Youth Commission (TYC) adopts an amendment to §85.31, concerning home placement, with changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7816). The changes to the proposed text consist of updating terminology, specifically changing the term parole officer to community corrections officer and home evaluation to home assessment.

The justification for amending the section is to provide for increased supervision of delinquent youth on parole living in the community.

The amendment will allow juvenile community corrections officers to complete home assessments of youth in TYC institutions within 45 days of initial placement with one follow-up evaluation prior to the youth's release.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions, and §61.081, which provides the Texas Youth Commission authority to investigate, place, supervise, and direct the activities of parolees.

The proposed rule implements the Human Resource Code, §61.034.

**§85.31. Home Placement.**

**(a) Policy.**

(1) The Texas Youth Commission (TYC) staff evaluates each youth's home to determine whether the home is approved or disapproved for placement and whether the youth will be returned to his or her home upon release from residential placement. A youth's home is considered approved for placement unless one or more of the following disapproval criteria exists, and can be documented:

(A) physical abuse;

(B) sexual abuse;

(C) physical absence of parent caretaker due to criminal incarceration or physical/psychiatric hospitalization;

(D) serious physical/survival neglect;

(E) legal termination of parental rights;

(F) the youth is a sex offender and criteria/requirements in subsection (b)(4) of this section have not been met.

(2) Youth with approved homes with no placement objection are placed in their homes. Youth with disapproved home placements are not placed in their homes. Emergency furloughs of youth with a current disapproved home or pending assessment status may be granted if necessary. Administrative furloughs are prohibited.

(3) The home assessment process is applied to the home of each youth's legal parent(s), or guardian or relative who has volunteered to have the youth placed in his home. Nonrelatives are not considered for placement through this process. Incidents of a parent refusing to accept supervision of his child and/or incidents of a TYC youth claiming abuse in his home are reported to Department of Protective and Regulatory Services.

(4) The home assessment process is applied to all youth properly referred to community corrections officers through the Texas Interstate Compact on Juveniles (ICJ) Office.

**(b) Rules.**

(1) When a Home Assessment is Conducted.

(A) Immediately upon admission, assessment unit staff sends the home community corrections officer:

(i) a copy of the court order;

(ii) a copy of the Common Application, form CCF-002;

(iii) a copy of the social summary if received from the county;

(iv) notification when a youth is refusing to live at home when residential placement is complete. See paragraph (3)(A) of this subsection.

(v) notification when there is documented evidence that the youth sexually abused a person living in his/her household whether adjudicated for the offense or not. Provide specifics including whether the victim and/or a potential victim remains in the household.

(B) From the date of admission to TYC the community corrections officer completes initial home assessments:

(i) within 45 days; or

(ii) makes and documents at least three assertive attempts to conduct the assessment within that time.

(C) When the initial assessment cannot be completed within the 45 day period, the assessment is designated as pending and follow-up attempts are made and documented at intervals no greater than 30 days until the assessment is completed.

(D) A completed home assessment is considered current for any youth released to his home within 12 months of the first day counted on the minimum length of stay. A follow-up home assessment is conducted 90 days prior to completion of a minimum length of stay of 12 months or longer.

(E) The residential placement is responsible for notifying the community corrections officer of an offender's projected release date.

(F) When new evidence or special circumstances warrant, a youth's primary service worker (PSW) can request that a follow-up home assessment be conducted.

**(2) Home Assessment Status.**

(A) All completed home assessments are either approved or disapproved as the youth's home placement but may, prior to completion, temporarily be in a pending status. By 45 days after admission to TYC, each home assessment carries one of the following designations.

(i) Approved Home Placement—Investigation indicates conditions which could facilitate the rehabilitative adjustment of the youth.

(ii) Disapproved Home Placement—Investigation indicates conditions which would impede the rehabilitative adjustment or threaten safety of the youth.

(iii) Pending Home Placement—A temporary status meaning the investigation has not yet been completed but that required attempts have been made and will continue to be made until the assessment has been completed and the home is either approved or disapproved.

(B) The home placement status can be changed only as a result of a follow-up home assessment by the assigned community corrections officer.

(3) Approved Home-Placement Objection.

(A) A youth's home is said to have a placement objection when none of the criteria for disapproval of the home exists but:

(i) the parent states that he or she cannot or will not supervise the youth; or

(ii) the parent states that the youth is not welcome in the home; or

(iii) the youth states that he or she will not remain in the home if returned to the home on completion of assigned program.

(B) When a placement objection occurs, the community corrections officer assesses specific considerations and determines whether, in his best professional judgment, to recommend placement in the home, placement with a relative, or placement elsewhere. Specific considerations are:

(i) the age, maturity, physical size and ability of the youth to protect or care for himself should the need arise;

(ii) the psychological/emotional level of the youth as indicated in psychological and psychiatric assessments, social summaries, behavioral progress reports and diagnostic evaluations;

(iii) whether either or both the parent and the youth are stating a desire or willingness to seek professional assistance in resolving their conflicts;

(iv) whether the youth is claiming the existence of abuse or neglect in the home to self or to siblings; and

(v) whether the youth's offense record/committing offense indicates a strong behavioral risk. If the offenses are primarily against persons, extensive review of the youth's behavior/discipline record while in residence with TYC is conducted.

(4) Home Assessment of Sex Offenders.

(A) An automatic home disapproval occurs when there is documented evidence that the TYC youth sexually abused a person living in his or her home; and

(i) the victim continues to live in the home; or

(ii) a potential victim or victim whose profile is similar to that of the victim(s) in the committing offense and/or documented history currently lives in the home.

(B) Community corrections officers notify the parents of the automatic

disapproval and of the requirements for approval. Disapproval remains in effect until documentation of treatment for offender, victim and offender's family has occurred. Home approval can occur only if the offender's therapist and the victim's or family's therapist agree that specific criteria have been met. See criteria in GOP.49.27, §87.27 of this title (relating to Family Reintegration of Sex Offenders).

(5) Supervision in Placement.

(A) Youth returned home who have no placement objection on their approved home placement assessment, are supervised according to GOP.49.23, §87.23 of this title (relating to Supervision Levels in Parole Home Placement).

(B) Youth returned home who have a placement objection on their approved home assessment, are supervised by the assigned community corrections officer according to the following special supervision procedures in addition to the individual supervision levels.

(i) The placement objection is considered in the assessment and may be used to justify a higher level of supervision.

(ii) The Individual Case Plan includes all specific conditions of placement and all planned activities to assist the family in resolving conflicts and other problems.

(6) Disapproved Home Placement.

(A) A parent(s) whose child will not be returning home is asked to assist in locating a relative who might be willing to have the youth placed in his home. If the home of the relative is approved, a youth may be placed in the home unless the managing conservator strongly objects to such placement in which case alternatives are sought.

(B) When a suitable relative cannot be located, the assigned case manager is informed and alternative placement is sought.

(7) Documentation.

(A) Disapproval of a home should be supported by evidence which includes written documentation of relevant problems found by another agency, e.g., the County Juvenile Probation Department, Department of Protective and Regulatory Services, police departments, hospital reports, etc. When adequate support documentation is not found in the youth's file, the appropriate agency should be contacted for addi-

tional information. If there is no documentation by another agency to support disapproval but the evaluating community corrections officer finds reason to believe that disapproval criteria are present, the community corrections officer documents all observations and conversations leading to a recommendation for disapproval.

(B) TYC reports to the Department of Protective and Regulatory Services, all cases of a youth verbalizing abuse in the home and all cases of a parent(s) refusing to accept supervision of the youth.

(C) The result of the assessment and any follow-up assessments are documented on the Home/Family Assessment, form CCF-100, and supporting documentation is attached.

(D) Parents are immediately informed in writing when the home is disapproved for placement and the reasons for such. Any action which the parent could take to correct a deficiency is included. A copy of the letter is attached to the CCF-100 form.

(E) The community corrections officer's signature and recommendation for approval or disapproval is required for all completed home assessments.

(F) The community corrections supervisor's signature and approval or disapproval of the youth being placed in the home are required for all home assessments.

(G) The original Home/Family Assessment, form CCF-100, with all signatures and documentation, is sent to the youth's PSW and is filed in the youth's masterfile.

(8) Interstate. The ICJ Office electronically sends notification of new interstate case assignment to the receiving community corrections officer the same day that the referral is mailed to the receiving community corrections officer from the ICJ Office. From date of notification, the community corrections officer completes initial home assessments for 100% of interstate cases and makes recommendations for placement within 21 days. An interstate case cannot be rejected:

(A) when the proposed placement is with a custodial parent;

(B) on the basis that the youth is over age 17. The age at which persons are considered adults by criminal law in the receiving state should be mentioned in the home investigation but super-

vision cannot be rejected based solely on age; or

(C) on the basis that the offense is not considered delinquent conduct in Texas.

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 November 1, 1995.

TRD-9514110 Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: December 1, 1995

Proposal publication date: September 26, 1995

For further information, please call: (512) 483-5244

## Chapter 87. Treatment

### Program Planning

#### • 37 TAC §87.1, §87.23

The Texas Youth Commission (TYC) adopts amendments to §87.1 and §87.23, concerning case planning and supervision levels in parole home placement, with changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7817). The changes to §87.1 require that the assigned level of care is reviewed every six months rather than every 90 days except for levels of care six which will continue to be reviewed every 90 days. The change is made so that expectations are more consistent with available resources. Use of the term "parole officer" has been changed to the term "community corrections officer" to be consistent with a change of working title.

The justification for amending the sections is for TYC to provide increased contacts in supervision of youth considered to be a high risk to re-offend and reduce less critical administrative functions.

The amendments will provide for increased supervision of committed youth released to the community on parole.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Human Resources Code, §81.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions, and §61.081 which gives the Texas Youth Commission authority to investigate, place, supervise, and direct the activities of parolees.

The proposed rule implements the Human Resource Code, §81.034.

#### §87.1. Case Planning.

(a) Policy. An Individual Case Plan (ICP) for every youth in Texas Youth Com-

mission (TYC) care is developed based on the youth's need for services. Youth service needs are identified and corresponding long-term and short-term objectives are developed. The resulting case plan is reviewed regularly and revised when necessary.

#### (b) Rules.

(1) Requirements for Reception Admission. The Individual Case Plan: Assessment is completed by the assessment center primary service worker by the end of the assessment process. The form is signed by primary service worker, copy sent to parole officer and filed in masterfile.

(2) First Individual Case Plan Time Requirement for All Placement Programs.

(A) The ICP objectives are completed by the primary service worker of the receiving program each time a youth is placed or moved into a new program placement. ICP objectives are developed within:

(i) 14 days of admission to a halfway house facility;

(ii) 30 days of admission to any other program except home or home substitute on parole;

(iii) five working days for youth at home or home substitute on parole;

(B) Development of ICPs and all succeeding progress reviews, are conducted with the youth and include individual counseling.

(3) Requirements for TYC Operated Programs Except Home on Parole.

(A) ICP for sentenced offenders is developed in accordance with guidelines of this policy as far as possible and within the restrictions of GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition).

(B) The plan is developed in accordance with identified needs and must specify measurable objectives, expected outcomes and a means to evaluate progress. The three types of objectives developed in the ICP are offense related objectives, educational and employment objectives, and community reentry objectives.

(i) Offense related objectives are required objectives. They must be written so that they may be achieved within a period of time no longer than the required minimum length of stay or within four months if there is no required length of stay.

(ii) Education and employment related objectives must be written

so that they may be substantially completed within a period of time no longer than the required minimum length of stay or within four months if there is no required length of stay.

(iii) Community reentry objectives are those to be accomplished in order to encourage successful re-entry into the community. Community reentry objectives are developed with the youth's family and community corrections officer and include referrals, activities, and expectations for the youth and family to participate in upon return to the community after his release.

(C) ICP progress reviews are conducted every 30 days to evaluate a youth's progress, except in months when an ICP release review is conducted instead.

(D) For a youth in a transitional program, ICP release reviews are conducted monthly.

(E) Revisions may be made as necessary to meet youth needs. All changes are stated in the plan and are discussed with youth.

(F) Phases of resocialization, treatment needs assessments is reviewed every 90 days. Level of care may be reviewed at this time. Families and parole officers are invited to participate in these reviews.

(4) Requirements for Contract Programs.

(A) For youth in contract placements, ICP release reviews are conducted monthly instead of quarterly in compliance with GOP.47.09, §85.29 of this title (relating to Program Completion and Movement).

(B) The primary service worker meets monthly with the youth and contract placement caseworker/caregiver to review the youth's progress.

(C) Youth who are designated level of care six will be reviewed every 90 days. All other youth level of care is reviewed at a minimum every six months. Staff are encouraged to review the level of care on a more frequent basis.

(5) Requirements for Youth at Home on Parole.

(A) Upon notification of the first placement following commitment, the home parole officer initiates contact with the youth.

(B) Parole objectives are developed for youth on parole by the parole officer in consultation with the youth, the sending primary service worker, and when available, the parents. The ICP contains the condition of release and consists of the youth's plan for work, school, training or specialized treatment, projected date of discharge and any other special conditions.

(C) The ICP is reviewed according to the level of supervision and is updated as necessary. Required reviews are held:

- (i) every 30 days for intensive supervision level.
- (ii) every 60 days for maximum supervision level.
- (iii) every 90 days for moderate supervision level.
- (iv) every 90 days for minimum supervision level.

(D) ICP objectives may be reviewed more often in accordance with changes in a youth's behavior, need and circumstance.

(6) Documentation.

(A) The ICP, developed by each new program a youth enters, is completed/documented on the Individual Case Plan, CCF-114.

- (i) Page 1 is completed during the youth's admission assessment.
- (ii) Page 2 is the first ICP completed at every placement.
- (iii) Page 3 is completed at every placement for reviews.
- (iv) Page 4 is completed for all youth on parole.

(B) Individual Case Plan, CCF-114 development requirements:

- (i) Initial plans and reviews are developed by current primary service worker, with input of the youth, previous primary service worker if applicable, contract program staff if applicable, and parent/guardian if available.
- (ii) All ICPs are signed by the youth and primary service worker.
- (iii) The youth is given a copy.
- (iv) Parents are given copies and signature is requested.
- (v) Parole officers are given copies.

(vi) Originals are filed in youth masterfile.

(vii) Event is documented in chronological.

(viii) Designated teacher must sign initial ICPs and release ICPs for youth in state school.

§87.23. *Supervision Levels in Parole Home Placement.*

(a) Policy. The Texas Youth Commission parole staff develops a plan which provides a level of supervision intensity for each youth on parole status in the home or home substitute. The levels of intensity are based on youth's needs and the degree of risk presented to the public. Reassessments are completed on a scheduled basis and may result in increased supervision or a less intensive supervision and possible early discharge.

(b) Rules.

(1) Parole assessment and Individual Case Plan (ICP) is completed for each youth on parole status in a home or home substitute placement within five working days of arrival at the placement.

(2) Levels are identified as intensive, maximum, moderate, or minimum.

(3) All youth are initially placed on intensive supervision.

(4) Reassessments and ICP reviews are conducted on a scheduled basis in accordance with the level of supervision:

- (A) Intensive—every 30 days.
- (B) Maximum—every 60 days.
- (C) Moderate—every 90 days.
- (D) Minimum—every 90 days.
- (5) Changes to less intensive levels of supervision may occur when:

(A) the youth complies with the individual case plan;

(B) the youth has had no major incident since the last assessment.

(6) Additional reassessments are conducted when there is a major incident, noncompliance with Individual Case Plan objectives or the youth exhibits significant behavioral changes.

(7) Youth on subsidized independent living status are on a maximum supervision level.

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 November 1, 1995.

TRD-9514111 Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: December 1, 1995

Proposal publication date: September 26, 1995

For further information, please call: (512) 483-5244

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Part XIII. Texas  
Commission on Fire  
Protection

Chapter 401. Practice and  
Procedure

Subchapter A. General Provi-  
sions and Definitions

• 37 TAC §401.11

The Texas Commission on Fire Protection adopts an amendment to §401.11, concerning presentations to the commission, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7023).

The justification for this section is that commission and advisory committee meetings will be conducted in a more orderly manner. The submission of agenda requests to the General Counsel will insure compliance with the Texas Open Meetings Act.

The amendment changes the name of the section to "Conduct of Commission and Advisory Committee Meetings", and provides the presiding officer of the commission or advisory committees with discretion to employ any generally recognized parliamentary procedures for the conduct of commission or committee meetings and to set reasonable time limits for discussion on agenda items. In addition, subsection (c) is amended to direct agenda requests to the General Counsel and Executive Director, to lower from 45 to 30 the advance deadline for agenda requests, and to provide that the decision to place a matter on an agenda will rest with the appropriate presiding officer instead of the executive director.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties.

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 October 26, 1995.

TRD-9513954

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: November 20, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

## Chapter 407. Administration

### • 37 TAC §407.1

The Texas Commission on Fire Protection adopts new §407.1, concerning inscription on the Texas Commission on Fire Protection vehicles, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 4505).

The justification for this section is that agency personnel will be able to accomplish their tasks undetected to enforce laws administered by the commission, in compliance with Texas Civil Statutes, Article 6701m-1.

The new section establishes the primary use of agency vehicles without inscriptions and the purpose served by not inscribing the vehicles to carry out assignments that require agency personnel to accomplish their tasks undetected.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Civil Statutes, Article 6701m-1, Inscription on State Vehicles.

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 October 26, 1995.

TRD-9513955

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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For further information, please call: (512)  
918-7184

## Chapter 421. Standards for Certification

### • 37 TAC §421.5

The Texas Commission on Fire Protection adopts the repeal of §421.5, concerning definitions, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7024).

The justification for this section is that an "expired" certificate can be distinguished from an "inactive" certificate, providing clarification to requirements for proficiency testing.

The repealed language is replaced by a new section dealing with the same subject matter, adding a new definition of an "expired" certificate and modifying the definition of "inactive status".

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish standards for fire protection personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513957

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

The Texas Commission on Fire Protection adopts new §421.5, concerning definitions, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7024).

The justification for this section is that an "expired" certificate can be distinguished from an "inactive" certificate, providing clarification to requirements for proficiency testing.

The proposed new section replaces a repealed section dealing with the same subject matter, adding a new definition of an "expired" certificate and modifying the definition of "inactive status".

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish standards for fire protection personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513958

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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For further information, please call: (512)  
918-7184

## Chapter 423. Fire Suppression

### Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

#### • 37 TAC §§423.3, 423.5, 423.7

The Texas Commission on Fire Protection adopts amendments to §§423.3, 423.5, and 423.7, concerning higher levels of structure fire protection personnel certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7025).

The justification for this section is that recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities.

The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and 12 years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments will have a January 1, 1997, effective date.

The commenters in favor of the proposed rule change stated that the increase in the number of years of experience required for intermediate, advanced, and master levels of certification were appropriate and represented a good average, recognizing that some departments and stations might give a fire fighter more experience than others that have less frequent number of responses.

Commenters in favor of the rule amendments included representatives of the Texas State Association of Fire Fighters and DFW Airport Fire Department.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 October 26, 1995.

TRD-9513958

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1997

Proposal publication date: September 8, 1995  
For further information, please call: (512)  
918-7184

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**Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel**

- 37 TAC §§423.205, 423.207, 423.209

The Texas Commission on Fire Protection adopts amendments to §§423.205, 423.207, and 423.209, concerning higher levels of aircraft fire protection personnel certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7026).

The justification for this section is that recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities.

The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and 12 years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments will have a January 1, 1997, effective date.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 October 26, 1995.

TRD-9513959 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1997

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

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**Chapter 429. Minimum Standards for Fire Inspector**

- 37 TAC §§429.5, 429.7, 429.9

The Texas Commission on Fire Protection adopts amendments to §§429.5, 429.7, and 429.9, concerning standards for intermediate, advanced, and master fire inspector certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7027).

The justification for this section is that recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities.

The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and 12 years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments will have a January 1, 1997, effective date.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 October 26, 1995.

TRD-9513960 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

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**Chapter 431. Minimum Standards for Fire and Arson Investigator**

- 37 TAC §§431.5, 431.7, 431.9

The Texas Commission on Fire Protection adopts amendments to §§431.5, 431.7, and 431.9, concerning standards for intermediate, advanced, and master fire and arson investigator certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7028).

The justification for this section is that recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities.

The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and 12 years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments will have a January 1, 1997, effective date.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 October 26, 1995.

TRD-9513961 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1997

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

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**Chapter 437. Fees**

- 37 TAC §437.3, §437.5

The Texas Commission on Fire Protection adopts amendments to §437.3 and §437.5, concerning certification fees and renewal fees, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7028).

The justification for this section is that provisions applicable to fees for renewal of certificates are clarified; so that "inactive" certificates will not be considered "expired" until the end of the certification period, and these rules are made consistent with statutory requirements for proficiency examinations.

The change to §437.3 allows a department that employs an individual previously certified with a break in service of less than one year to certify the individual at any time within one year of employment, so long as the person's certificate has not been expired for more than one year. The change to §437.5 provides that an inactive certificate is not considered "expired" until the end of the certification period.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; Texas Government Code, §419.022(a)(5), which provides the commission with authority to set certification and renewal fees; and Texas Government Code, §419.026, which provides the commission with authority to establish standards for admission to employment as fire protection personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 26, 1995.

TRD-9513962. Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: November 20, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184

### Chapter 439. Examinations for Certification

- 37 TAC §§439.5, 439.7, 439.9, 439.15, 439.17

The Texas Commission on Fire Protection adopts amendments to §§439.5, 439.7, 439.9, 439.15, and 439.17, concerning examinations for fire protection personnel certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7029).

The justification for this section is that requirements and procedures for examinations will be more clearly understood and the public will be assured that performance skills of persons seeking original certification are adequate.

The changes to §439.5 concerning definitions clarifies that tests may be written only, or include both a written portion and a performance skills portion. The change to §439.7 concerning procedures requires that a second attempt to pass the commission examination must be exercised within 180 days of the first failure or the examinee must requalify by repeating an approved curriculum applicable to the examination. The changes to §439.9 clarify prohibitions on communication of the contents of examinations to person preparing to take the examination. Specifically, it prohibits any person, not just examinees, from disclosing examination contents. Changes to §439.15 rename the section, amend the continuing education exemption for the skills test to require twenty hours of continuing education for each year the person's certificate has been inactive, not just the last three years, and clarifies in subsection (b)(3)(C) that "another jurisdiction" means "a state other than Texas or a military

jurisdiction." Finally, §439.17 is renamed and amended to allow the continuing education exemption from the skills portion of the test for persons who have not been certified in a particular discipline only if it has been less than four years since an individual passed the performance skills portion of the examination for that discipline. Finally, the section is also amended to delete references to experience requirements for out-of-state or military applicants. The amendments have a proposed effective date of January 1, 1997.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.032(b), which provides the commission authority to adopt rules concerning basic certification examinations.

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 October 26, 1995.

TRD-9513963 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184

### Chapter 471. Standards for Volunteer Certification

- 37 TAC §471.5

The Texas Commission on Fire Protection adopts an amendment to §471.5, concerning definitions, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7030).

The justification for the amendment to this section which deletes the definition of "training points" is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the National Fire Academy (resident or field courses).

The amendment to this section deletes the definition of "training points" made obsolete by proposed changes to other chapters that will discontinue the use of training points to determine eligibility for higher levels of certification. The amendment has a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish

voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513964 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184

### Chapter 473. Volunteer Fire Fighter

- 37 TAC §§473.3, 473.5, 473.7

The Texas Commission on Fire Protection adopts the repeal of §§473.3, 473.5, and 473.7, concerning minimum standards for intermediate, advanced, and master volunteer fire fighter certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7031).

The justification for this section is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the NFA (resident and field courses). In addition, the new sections replacing the repealed sections allow more flexibility in scheduling of courses, particularly for colleges in rural areas of the state that offer courses on a three- or four-year rotation.

The repealed sections are replaced by new sections dealing with the same subject matter. The repeals have a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513965 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184



The Texas Commission on Fire Protection adopts new §§473.3, 473.5, and 473.7, concerning minimum standards for intermediate, advanced, and master volunteer fire fighter certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7031).

The justification for this section is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the NFA (resident and field courses). In addition, the new sections allow more flexibility in scheduling of courses, particularly for colleges in rural areas of the state that offer courses on a three- or four-year rotation.

The new sections replace repealed sections dealing with the same subject matter. The new sections discontinue the use of training points for determining eligibility for higher levels of certification as well as the balancing of length of experience with the amount of training points and/or education, and substitute experience requirements of three, six, and nine years for intermediate, advanced, and master certification levels, respectively. In addition, the new sections permit credit for any college fire science or fire technology course or NFA course, instead of requiring specific courses for specific levels. The new sections have a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513968 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184

## Chapter 476. Volunteer Fire Investigator

### • 37 TAC §§476.5, 476.7, 476.9

The Texas Commission on Fire Protection adopts the repeal of §§476.5, 476.7, and 476.9, concerning standards for intermediate, advanced, and master volunteer fire investigator certification, without changes to the proposed text as published in the September 8,

1995, issue of the *Texas Register* (20 TexReg 7032).

The justification for this section is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the NFA (resident and field courses). In addition, the new sections allow more flexibility in scheduling of courses, particularly for colleges in rural areas of the state that offer courses on a three- or four-year rotation.

The repealed sections are replaced by new sections dealing with the same subject matter. The repeals have a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513967 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: December 1, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184

The Texas Commission on Fire Protection adopts new §§476.5, 476.7, and 476.9, concerning standards for intermediate, advanced, and master volunteer fire investigator certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7033).

The justification for this section is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the NFA (resident and field courses). In addition, the new sections allow more flexibility in scheduling of courses, particularly for colleges in rural areas of the state that offer courses on a three- or four-year rotation.

The new sections replace repealed sections dealing with the same subject matter. The new sections discontinue the use of training points for determining eligibility for higher levels of certification as well as the balancing of length of experience with the amount of training points and/or education, and substitute experience requirements of three, six, and nine years for intermediate, advanced, and master certification levels, respectively. In addition, the new sections permit credit for any

college fire science or fire technology course or NFA course, instead of requiring specific courses for specific levels. The new sections will have a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513968 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: December 1, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512) 918-7184

## Chapter 478. Minimum Standards for Volunteer Fire Inspector

### • 37 TAC §§478.5, 478.7, 478.9

The Texas Commission on Fire Protection adopts the repeal of §§478.5, 478.7, and 478.9, concerning minimum standards for intermediate, advanced, and master volunteer fire inspector certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7034).

The justification for this section is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the NFA (resident and field courses). In addition, the new sections replacing the repealed sections allow more flexibility in scheduling of courses, particularly for colleges in rural areas of the state that offer courses on a three- or four-year rotation.

The repealed sections are replaced by new sections dealing with the same subject matter. The repeals have a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513969 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: December 1, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

## Chapter 478. Volunteer Fire Inspector

### • 37 TAC §§478.5, 478.7, 478.9

The Texas Commission on Fire Protection adopts new §§478.5, 478.7, and 478.9, concerning standards for intermediate, advanced, and master volunteer fire inspector certification, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7035).

The justification for this section is that higher levels of certification requirements are streamlined and focused on professional fire protection courses delivered by colleges and the NFA (resident and field courses). In addition, the new sections allow more flexibility in scheduling of courses, particularly for colleges in rural areas of the state that offer courses on a three- or four-year rotation.

The new sections replace repealed sections dealing with the same subject matter. The new sections discontinue the use of training points for determining eligibility for higher levels of certification as well as the balancing of length of experience with the amount of training points and/or education, and substitute experience requirements of three, six, and nine years for intermediate, advanced, and master certification levels, respectively. In addition, the new sections permit credit for any college fire science or fire technology course or NFA course, instead of requiring specific courses for specific levels. The new sections will have a proposed December 1, 1995, effective date.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 26, 1995.

TRD-9513970 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: December 1, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

## Chapter 479. Examinations for Volunteer Fire Fighter Certification

### • 37 TAC §§479.3, 479.5, 479.7

The Texas Commission on Fire Protection adopts the repeal of §§479.3, 479.5, and 479.7, concerning examinations for volunteer certification definitions, procedures, and eligibility, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7036).

The justification for this section is that the changes clarify the respective roles of approved training facilities and commission staff regarding determination of eligibility for examinations and promote uniformity in applying examination standards.

The repealed sections are replaced with new sections dealing with the same subject matter. The repeals have a proposed effective date of December 1, 1995.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071, concerning certification examinations for volunteers.

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 October 26, 1995.

TRD-9513971 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: December 1, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

The Texas Commission on Fire Protection adopts new §§479.3, 479.5, and 479.7, concerning examinations for volunteer certification definitions, procedures, and eligibility, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7036).

The justification for this section is that the changes clarify the respective roles of ap-

proved training facilities and commission staff regarding determination of eligibility for examinations and promote uniformity in applying examination standards.

The new sections replace repealed sections dealing with the same subject matter. The changes to §479.3 add a new definition of "certificate of completion" furnished by the provider of training and modify the definition of "endorsement of eligibility" to be issued only by commission staff. The changes to §479.5 pertain to course approvals and certificates of completion. The changes to §479.7 require a certificate of completion in order to qualify for an examination, and reiterate that commission staff determine eligibility for an examination. The new sections have a proposed effective date of December 1, 1995.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.071, concerning certification examinations for volunteers.

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 October 26, 1995.

TRD-9513972 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: December 1, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512)  
918-7184

## TITLE 40. SOCIAL SER- VICES AND ASSIS- TANCE

### Part I. Texas Department of Human Services

#### Chapter 11. Food Distribution and Processing

The Texas Department of Human Services (DHS) adopts amendments to §11.103 and §11.6009, without changes to the proposed text as published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7268).

The justification for the amendments is to clarify what constitutes acceptable documentation for contractors participating in the Special Nutrition Programs to demonstrate acceptable compliance with requirements of the Single Audit Act. The amendments also delete the requirement for a contractor to obtain a letter of engagement as proof of seeking an audit and replace it with the requirement for a contractor to submit a completed DHS Single Audit Identification Data form with the completed application package.

The amendments will function by providing a simplified process for contractors to demonstrate compliance or intent to comply with the requirements of the Single Audit Act.

No comments were received regarding adoption of the amendments.

### Food Distribution Program

#### • 40 TAC §11.103

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514022 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 438-3765

### The Emergency Food Assistance Program (TEFAP)

#### • 40 TAC §11.6009

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514023 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 438-3765

### Chapter 12. Special Nutrition Programs

The Texas Department of Human Services (DHS) adopts amendments to §§12. 3, 12.103, 12.205, 12.305, 12.312, 12.405, and 12.412, without changes to the proposed text as published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7269).

The justification for the amendments is to clarify what constitutes acceptable documentation for contractors participating in the Special Nutrition Programs to demonstrate acceptable compliance with requirements of the Single Audit Act. The amendments delete the requirement for a contractor to obtain a letter of engagement as proof of seeking an audit and replace it with the requirement for a contractor to submit a completed DHS Single Audit Identification Data form with the completed application package.

The amendments will function by providing a simplified process for contractors to demonstrate compliance or intent to comply with the requirements of the Single Audit Act.

No comments were received regarding adoption of the amendments.

### Child and Adult Care Food Program

#### • 40 TAC §12.3

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514024 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 450-3765

### Summer Food Service Program

#### • 40 TAC §12.103

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514025 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 450-3765

### Special Milk Program

#### • 40 TAC §12.205

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514026 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 450-3765

### School Breakfast Program

#### • 40 TAC §12.305, §12.312

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514027 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 450-3765

### National School Lunch Program

#### • 40 TAC §12.405, §12.412

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514028 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: December 1, 1995

Proposal publication date: September 15, 1995

For further information, please call: (512) 450-3765

◆ ◆ ◆  
**TITLE 43. TRANSPORTATION**

**Part I. Texas Department of Transportation**

**Chapter 17. Vehicles Titles and Registration**

**Miscellaneous Registration Provisions**

- 43 TAC §§17.56, 17.60-17.65, 17.67-17.75

The Texas Department of Transportation adopts the repeal of §§17.56, 17.60-17.65,

and 17.67-17.75, concerning obligations of motor vehicle dealers and manufacturers regarding registration and business operations, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7051).

The repeal of these sections is necessary to comply with the provisions of Senate Bill 1139, 74th Legislature, 1995, which amended Texas Civil Statutes, Article 6686, to transfer regulatory authority of motor vehicle dealers and manufacturers registration and business operations from the Texas Transportation Commission to the Texas Motor Vehicle Board.

A comment deadline of October 10, 1995, was published and no comments were received regarding adoption of the repeals.

The repeals are adopted under the Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Senate Bill

1139, 74th Legislature, 1995, which amended Texas Civil Statutes, Article 6686 and transferred the regulatory authority of motor vehicle dealers and manufacturers registration and business operations from the Texas Transportation Commission to the Texas Motor Vehicle Board.

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 October 31, 1995.

TRD-9514122

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Effective date: November 22, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512) 463-8630

# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

**§9.19. INSURANCE REQUIREMENTS.**  
**TABLE 1**

Category of License	Type of Coverage	Insurance Policy Endorsement Required	Form Required	Statement in Lieu of Required Insurance Filing
All	Workers' Compensation, including Employer's Liability	WC42 06 01, Texas Notice of Material Change	LPG Form 996A	LPG Form 996B
All	Alternative to Workers' Compensation including Employer's Liability, or Accident/Health insurance coverage: Medical expenses in the principal amount of at least \$150,000; accidental death benefits in the principal amount of at least \$100,000; loss of limb or sight on a scale based on principal amount of at least \$100,000; loss of income based on at least 60% of employee's pre-injury income for at least 52 weeks, subject to a maximum weekly wage calculated annually by the Texas Employment Commission	N/A	LPG Form 996A	N/A
A, B, C, E, O, H, J	General liability coverage including: premises and operations in an amount of at least \$300,000 per occurrence and \$300,000 aggregate	CG 02 05, Texas Changes Amendment, Cancellation Provisions, or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
A, B, C, E, O	Completed operations or products liability insurance, or both, in an amount of at least \$300,000 aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
D, F, I, G, K, L, M, N	General liability coverage including: premises and operations in an amount of at least \$25,000 per occurrence with a \$50,000 policy aggregate	CG 02 05, Texas Changes Amendments or Coverage Change Endorsement	LPG Form 998A	LPG Form 998B
C, E, H, J, Ultimate Consumer	Motor vehicle coverage: minimum \$1,000,000 (\$300,000 for state agencies) combined single limit for bodily injuries to or death of all persons injured or killed in any one accident, and loss or damage to property of others in any one accident	TE2326A, Liquefied Petroleum Gas Licensed Motor Vehicle Endorsement Texas Railroad Commission Form Endorsement	LPG Form 997A	LPG Form 997B

An asterisk (\*) indicates the requirement applies.

Texas State Board of Registration  
for Professional Engineers

Figure 1: 22 TAC, §131.138



ACUPUNCTURE TRAINING ADVISORY STATEMENT

You are advised that the practice of acupuncture in Texas requires licensure by the Texas State Board of Acupuncture Examiners and is governed by the Medical Practice Act ("the Act"), Texas Civil Statutes, Article 4495b, subchapter F, and the rules of the Texas State Board of Medical Examiners, 22 TAC 183.1 et. seq.

You are further advised that for an acupuncture school located in the United States or Canada to be considered to be an approved acupuncture school by the Texas State Board of Acupuncture Examiners for purposes of meeting the educational requirements for obtaining an acupuncture license, the school must comply and must meet the requirements set forth below:

Acceptable approved acupuncture school - Effective January 1, 1996,

(A) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was a candidate for accreditation by the National Accreditation Commission for Schools and Colleges of Acupuncture and Oriental Medicine (NACSCAOM), offered no more than a certificate upon graduation, and had a curriculum of 1800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modification/variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(B) a school of acupuncture located in the United States or Canada which, at the time of the applicant's graduation, was accredited by NACSCAOM, offered a masters degree upon graduation, and had a curriculum of 1800 hours with at least 450 hours of herbal studies which at a minimum included the following:

(i) basic herbology including recognition, nomenclature, functions, temperature, taste, contraindications, and therapeutic combinations of herbs;

(ii) herbal formulas including traditional herbal formulas and their modifications or variations based on traditional methods of herbal therapy;

(iii) patent herbs including the names of the more common patent herbal medications and their uses; and

(iv) clinical training emphasizing herbal uses; or

(C) a school of acupuncture located outside the United States or Canada that is determined by the board to be substantially equivalent to a school defined in subparagraph (B) of this paragraph through an evaluation by

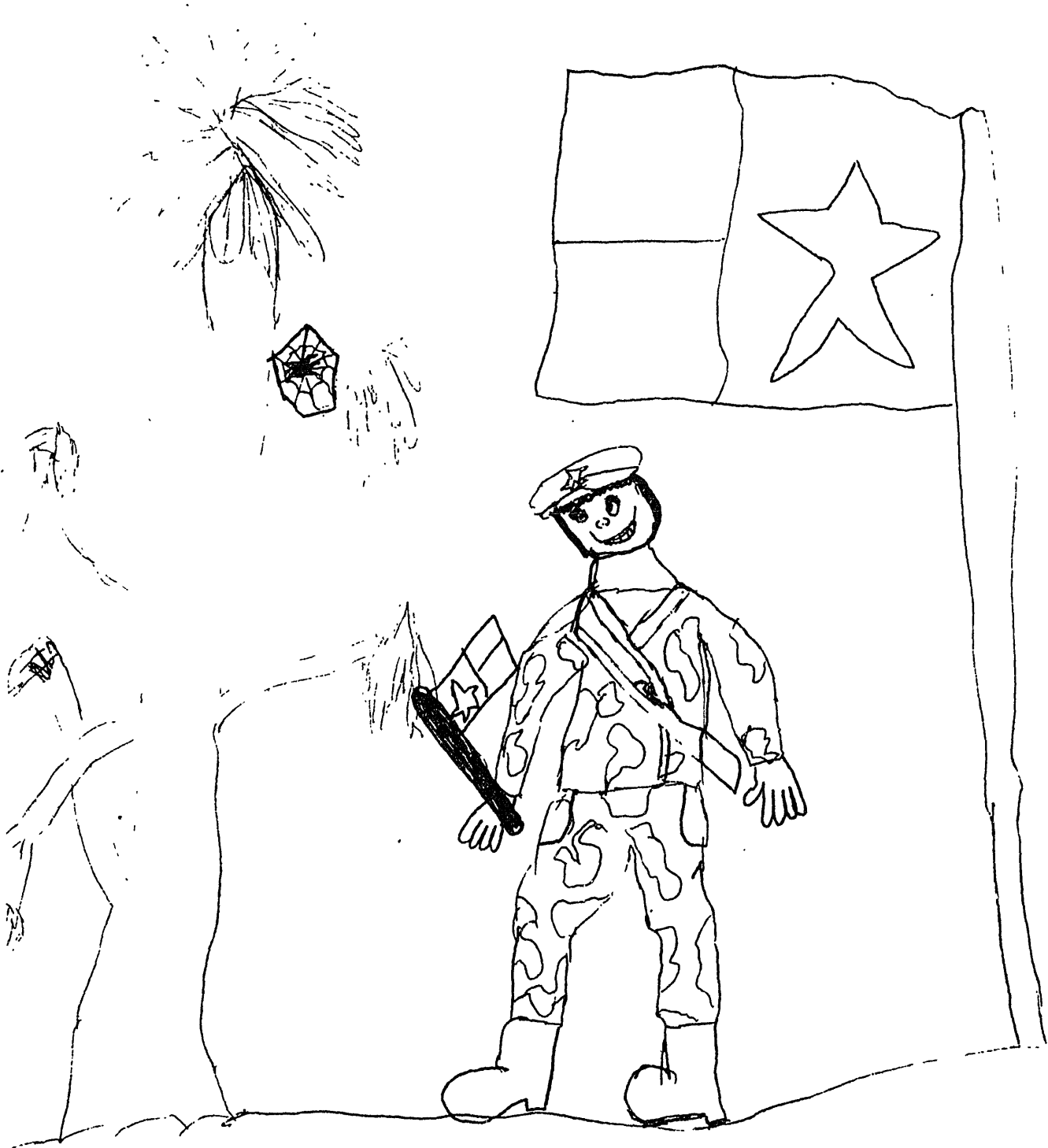


a board-approved credential evaluation service; and

(D) the requirements of this section shall be in addition to the requirements of the Medical Practice Act, <\*>6.07, subsection (c), and shall be construed and applied so as to be consistent with the Act.

You are additionally advised that \_\_\_\_\_ (name of institution) is not currently a candidate for accreditation by the National Accreditation Commission for Schools of Acupuncture and Oriental Medicine (NACSCAOM) and is not currently accredited by NACSCAOM. If such candidate status or accreditation is not obtained by this institution by the time of your graduation, under the current rules of the Texas State Board of Acupuncture Examiners you will not be eligible for a Texas acupuncture license based on training received at this institution.

Name: Jo Marie Claybourn  
Grade: 6  
School: Moulton Elementary School, Moulton ISD



# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## State Office of Administrative Hearings

Friday, November 17, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A joint hearing on remand will be held at the above date and time in SOAH Docket Numbers 473-95-1197/473-95-1201 application of TCG Dallas for facilities-based Certificate of Operating Authority (PUC Docket Number 14634) /application of Teleport Communications Houston, Inc. for facilities-based Certificate of Operating Authority within Harris County (PUC Docket Number 14633).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: October 31, 1995, 3:59 p.m.

TRD-9514088

Thursday, March 7, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A joint hearing on the merits is scheduled for the above date and time in SOAH Docket Number 473-95-1167/PUC Docket

Number 14452; and SOAH Number 473-95-1168/PUC Docket Number 14453:

Complaint of Manor Downs against Southwestern Bell Telephone Company

Complaint of Turbomachinery Repair, Inc. against Southwestern Bell Telephone Company

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: November 1, 1995, 3:08 p.m.

TRD-9514154

## Texas Council on Alzheimer's Disease and Related Disorders

Friday, December 1, 1995, 10:00 a.m. (Rescheduled from December 1, 1995, 1:00 p.m.)

Room 5501, Texas Rehabilitation Commission, 4900 North Lamar Boulevard

Austin

AGENDA:

The council will discuss and possibly act on: approval of minutes from the last meeting; Alzheimer's Family Care Program; Alzheimer research updates; Special Care Unit Disclosure Task Force update; Alzheimer's Regional Conference; program development; and legislative issues.

Please note the change in time and location for the meeting.

Contact: Veronda Durden, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: November 1, 1995, 11:06 a.m.

TRD-9514136

## Automobile Theft Prevention Authority

Wednesday-Thursday, November 8-9, 1995, 3:30 p.m. and 9:00 a.m., respectively.

911 North Raynor Street

El Paso

Board Meeting

AGENDA:

I. Call to order and introductions; approval of minutes of previous meeting. II. Presentation to the board by State Representative David Count; followed by recess of meeting until November 9, at 9:00 a.m. IV. Report on Statewide HEAT Program as presented by Jay Rougeau, coordinator of HEAT Program, Department of Public Safety. V. Director/staff report. VI. Deliberation/formal action on travel allowance for grantees to board meeting. VII. Announcement of nominations of grantee members of standing committee the period ending September 30, 1996. VIII. Update on office space for ATPA staff. IX. Deliberation/formal action

on items in report of meeting with Department of Transportation management, by Charles Wirth. X. Deliberation/formal action regarding "by-pass" automotive keys by United International Tools of Florida. XI. Deliberation/formal action regarding the establishment of a Foundation 501. C4. XII. Deliberation/formal action on unsolicited proposal for enhancement grant to provide services for ATPA. XII. Adjourn.

Contact: Linda Young, 4000 Jackson Avenue, Building One, Third Floor, Austin, Texas 78731, (512) 467-3999.

Filed: October 31, 1995, 4:22 p.m.

TRD-9514091

## The State Bar of Texas

Thursday-Friday, November 9-10, 1995, 8:30 a.m.

The Marriott Riverwalk, 711 East Riverwalk, Ballroom Level

San Antonio

Commission for Lawyer Discipline

### AGENDA:

Call to order/introductions/consider minutes of prior meetings/closed session to discuss pending litigation and disciplinary matters pending before evidentiary panels of grievance committees; discuss assignment of special counsel; and discuss personnel matters/public session resumed: discuss and take appropriate action on matters discussed in closed session/discuss matters unresolved in prior meeting/review and discuss statistical reports/review and discuss commission's compliance with the Texas Rules of Disciplinary Procedure, the State Bar Act and orders of the Supreme Court of Texas/review and discuss the organization and budgets of the commission and the Office of General Counsel/review and discuss grievance committees/review and discuss the Special Counsel Program/review and discuss mediation of disciplinary matters/presentations by trial staff with respect to individual dockets/discuss future meetings/discuss other matters as appropriate/receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: November 1, 1995, 2:43 p.m.

TRD-9514150

## Texas Board of Chiropractic Examiners

Friday, November 10, 1995, 2:00 p.m.  
333 Guadalupe, Tower III, Room 102

Austin

Board Meeting

### AGENDA:

The Texas Board of Chiropractic Examiners will meet on Friday, November 10, 1995 at 2:00 p.m. to consider, discuss, take any appropriate action, and/or approve: I. Minutes of September 8, 1995 board meeting; II. report of the president; III. report of the executive director; IV. Committee reports: A. Enforcement Committee; 1) Enforcement actions-Fiscal Year 1996; B. Licensure and Educational Standards Committee; 1) Continuing Education guidelines; 2) Consideration of Philip J. Greko, D.C. application to take December examination; 3) Continuing Education credit waiver for full-time medical school students and licensees with medical emergencies; 4) dates for 1996 examination; 5) use of alternative examinations; C. Technical Standards Committee; 1) injectables; 2) surface EMG; 3) Needle EMG; 4) Health plans/insurance offerings; 5) Kinetics; 6) Co-location of pharmacy and chiropractic offices; 7) Physical examination procedures; and 8) Nutritional supplements; D. Executive Committee; 1) annual evaluation of executive director; E. Rules Committee; 1) Chapters 71 through 80.1, Texas Administrative Code; V. Proposed appointees to the Advisory Commission; VI. Response regarding the request for Attorney General Opinion on acupuncture by doctors of chiropractic; VII. Personnel Manual; VIII. Policy and Procedures Manual; IX. Items to be considered for future agenda.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: November 1, 1995, 11:51 a.m.

TRD-9514137

## Texas Department of Commerce

Friday, November 10, 1995, 10:00 a.m.

State Capitol Building, Extension, Room E2.036, 1400 North Congress Avenue  
Austin

Texas Defense Economic Adjustment Advisory Council, Human Resources Committee

### AGENDA:

I. Welcoming remarks

II. Kelly Air Force Base/The Texas Plan-Linda Williamson, Director, Work Force Division, TDOC

III. Reese Air Force Base-Job Training Partnership Act (JTPA) program review/update

IV. Red River Army Depot-Job Training Partnership Act (JTPA) program review/update

V. Bergstrom Air Force Base-Job Training Partnership Act (JTPA) program review/update

VI. Lunch

VII. Presentation of Texas Work Force Commission organization and programs

VIII. Committee business

Discussion of committee objectives/strategies

Establish next meeting/tentative agenda

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Audra Lipe at (512) 936-0105 at least two days before this meeting so that appropriate arrangements can be made. Please contact Audra Lipe at (512) 936-0105 if you need assistance in having English translated to Spanish.

Contact: Audra Lipe, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0105.

Filed: November 2, 1995, 8:51 a.m.

TRD-9514165

## Texas Department of Criminal Justice

Friday, November 10, 1995, 11:00 a.m.

One Forum, 16th Floor, 8000 IH-10 West  
San Antonio

Facilities Committee, Subcommittee on Construction and Repairs

### AGENDA:

I. Authorization for construction/remodeling

a. Approval of prototype unit to be designed, constructed and located at the Estelle Unit, Huntsville, Texas-\$21,713,104

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463-9472 at least two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 1, 1995, 9:47 a.m.

TRD-9514126

## Texas Office for Prevention of Developmental Disabilities

Thursday, November 9, 1995, 1:00 p.m.  
Capitol Extension, Room E1.010, Capitol Complex

Austin

Executive Committee

AGENDA:

Call to order

Roll call-Quorum

Welcome and introductions

Minutes last meeting

Introduction of new member, Frank Brown, M.D.

Senate Bill 89, passage of top terms legislation

Introduction of Mary Cerverha, TDH board member

Introduction of Joe Smith, Center for Disease Control

Task force reports: Head/spinal cord injury and FAS decision on regional training of health care professionals in FAS

TOP meeting schedule, 1996

Other business

Adjournment

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: November 1, 1995, 4:35 p.m.

TRD-9514158

## Interagency Council on Early Childhood Intervention

Tuesday, November 14, 1995, 9:00 a.m.  
1100 West 49th Street, Room T-607

Austin

AGENDA:

Public comment. Discussion and approval of the schedule of meetings of the Interagency Council on Early Childhood Intervention for fiscal year 1996. Discussion and approval of Advisory Committee and director's forum report. Discussion and approval of staff recommendation to award merit raises in fiscal year 1996. Discussion and approval of new provider of intervention services in Liberty, Montgomery and Walker counties. FYI.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: November 1, 1995, 3:41 p.m.

TRD-9514156

## Texas Education Agency (TEA)

Thursday, November 9, 1995, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

AGENDA:

Work session on the Long-Range Plan for Public Education, 1996-2000. This work session will present an opportunity for the committee to discuss the draft Long-Range Plan for Public Education, 1996-2000, which is scheduled for approval.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: October 31, 1995, 3:30 p.m.

TRD-9514076

Thursday, November 9, 1995, 10:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Public Testimony; Commissioner's overview of the November 1995 State Board of Education (SBOE) meeting; Approval of the articles of incorporation and the bylaws of the Texas Permanent School Fund Management Company, Inc.; Authorize the executive administrator of the Texas Permanent School Fund to proceed with the filing of the articles of the incorporation of the Texas Permanent School Fund Management Company, Inc.; Discussion of pending litigation [this discussion will be held in executive session in accordance with §551.071(1) (A), Texas Government Code, and will include a discussion of Edgewood ISD et al. v. Meno, and related school finance litigation, Angel G. et al. v. Meno, et al. relating to students with disabilities residing in care and treatment facilities; T.E.A. et al. v. Gary W. Leeper et ux., et al. relating to home schooling, Maxwell, et al. v. Pasadena ISD relating to Texas Assessment of Academic Skills (TAAS) testing, and Casias, et al. v. Moses, et al. relating to accountability intervention-The Committee of the Whole will meet in room 1-103 to discuss pending litigation.] Consideration of pending litigation-this item provides the board the opportunity to consider appropri-

ate action as a result of pending litigation discussions.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: October 31, 1995, 3:31 p.m.

TRD-9514077

Thursday, November 9, 1995, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of Personnel

AGENDA:

Public Testimony; Proposed amendment to 19 TAC §61.61, Training for School Board Members; Proposed repeal/readoption of 19 TAC Chapter 97, Planning and Accreditation; Proposed new 19 TAC Chapter 157, Subchapter D, Independent Hearing Examiners. Approval of additional certification programs for The University of Texas at Dallas and Dallas Baptist University; Results of a statewide evaluation of education service center alternative certification programs; Report on ethnic and gender distribution of the TEA; Discussion of ongoing communications activities; Status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: October 31, 1995, 3:31 p.m.

TRD-9514078

Thursday, November 9, 1995, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Students and Committee on School Finance

AGENDA:

The committees will meet jointly on the following items: (1) Maximum prices in Proclamations 1994 and 1995; (2) Proclamation 1995 of the SBOE; and (3) Proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: October 31, 1995, 3:31 p.m.

TRD-9514079

Thursday, November 9, 1995, 1:00 p.m.

OR upon completion of the joint meeting of the Committees on Students and School Finance which convenes at 1:00 p.m.

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Students

**AGENDA:**

Public testimony; Maximum prices in Proclamations 1994 and 1995 Proclamation 1995 of the SBOE Proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; Proposed repeal of 19 TAC Chapter 78, Vocational and Applied Technology Education; Proposed repeal/readoption of 19 TAC Chapter 101, Assessment; Proposed repeal of 19 TAC Chapter 157, Subchapter A, Hearings Concerning Students with Disabilities Under the Individuals with Disabilities Education Act; Proposed repeal of 19 TAC Chapter 169, Relationship with University Interscholastic League; Discussion of issues regarding the proposed repeal and readoption of 19 TAC Chapter 75, Curriculum, Subchapters A and E-K; Recommendation of the SBOE recommended high school program review panel; Proposed amendments to the University Interscholastic League policies and 1995-1996 Constitution and Contest Rules; Discussion of proposed repeal of 19 TAC Chapter 63, Student Services; Update of the clarification of essential knowledge and skills process.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

**Filed:** October 31, 1995, 3:31 p.m.

TRD-9514080

**Thursday, November 9, 1995, 1:00 p.m.**  
**OR upon completion of the joint meeting of the Committees on Students and School Finance which convenes at 1:00 p.m.**

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on School Finance

**AGENDA:**

Public testimony; Maximum prices in Proclamations 1994 and 1995; Proclamation 1995 of the SBOE advertising for bids on instructional materials; Proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; School finance update; Proposed repeal of 19 TAC Chapter 68, Transportation; Proposed repeal/readoption of 19 TAC Chapter 105, Foundation School Program; Proposed repeal/readoption of 19 TAC Chapter 109, Budgeting, Accounting, and Auditing; Proposed repeal of 19 TAC Chapter 113, Federal Funds to Support Public Education in Texas; Proposed repeal of 19 TAC Chapter

121, Public School Finance-Personnel; Proposed repeal/readoption of 19 TAC Chapter 176, Driver Training Schools; Proposed repeal/readoption of 19 TAC Chapter 67, State Adoption and Distribution of Instructional Materials; Proposed repeal/readoption of 19 TAC Chapter 129, Student Attendance; Proposed repeal/readoption of 19 TAC Chapter 157, Subchapter C, Hearings Held Under the Texas Driver and Traffic Safety Education Act; Approval of costs of administering the Texas Assessment of Academic Skills tests to private school students approval of school applications and licenses for driver training programs; Discussion of proposed repeal of 19 TAC Chapter 49, Internal Operations; Discussion of proposed repeal/readoption of 19 TAC Chapter 61, School Districts.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

**Filed:** October 31, 1995, 3:31 p.m.

TRD-9514081

**Friday, November 10, 1995, 8:30 a.m.**

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

**AGENDA:**

Public testimony; Proposed repeal and readoption 19 TAC Chapter 65, Technology; Approval of the Long-Range Plan for Public Education, 1996-2000; Presentation of the Task Force on Adult Education and Literacy Report, Discussion of Federal Governmental Relations Activities.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

**Filed:** October 31, 1995, 3:31 p.m.

TRD-9514082

**Friday, November 10, 1995, 8:30 a.m.**

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund (PSF)

**AGENDA:**

Public testimony; Selection of the external auditor and authority for the commissioner of education to proceed with negotiation and execution of the contract to contract to conduct a financial audit of the Permanent School Fund pursuant to the authority granted in Texas Education Code, §43.006; Approval of new Section H to be included in the investment procedures manual relating to the PSF's bond guarantee program

disclosure requirements mandated by the Securities Exchange Commission; Ratification of the purchases/sales to the investment portfolio of the PSF for October; Discussion of the proposed repeal and readoption of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines; Discussion of the contract for the investment of funds under control and management of the SBOE, include the Texas PSF, as designated by the board; Review of PSF securities transactions and the investment portfolio; and Report of the PSF executive administrator.

**Contact:** Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

**Filed:** October 31, 1995, 3:32 p.m.

TRD-9514083

**Friday-Saturday, November 10-11, 8:30 a.m.**

Room 335, Hartland Plaza, 1717 West Sixth Street

Austin

State Parent Advisory Council (PAC) for Migrant Education

**AGENDA:**

Welcome and introductions; council members' visit to State Migrant Office; minutes from previous meeting; election of officers; overview of Texas Migrant Council/Headstart services; discussion of State PAC by-laws; overview of standard application system for 1995-1996; discussion of results-based monitoring for migrant education; election of representatives to Migrant Legal Action Program Board of Directors; agenda recommendations for next meeting.

**Contact:** Frank Contreras, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9057.

**Filed:** November 1, 1995, 4:51 p.m.

TRD-9514159

**Friday, November 10, 1995, 1:00 p.m.**

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE)

**AGENDA:**

Approval of October 13, 1995 SBOE minutes; Public testimony; Hero for Children Award; SBOE Resolutions; Approval of consent agenda; Approval of Articles of Incorporation/Bylaws of the Texas Permanent School Fund (PSF) Management Company, Inc.; Authorize executive administrator of Texas PSF to proceed with filing of Articles of Incorporation of Texas PSF Management Co., Inc.; Consideration of pending litigation; 19 TAC §61.61, Train-

ing for School Board Members; 19 TAC Chapter 97, Planning and Accreditation; 19 TAC Chapter 157, Subchapter D, Independent Hearing Examiners; 19 TAC Chapter 78, Vocational and Applied Technology Education; 19 TAC Chapter 101, Assessment; 10 TAC Chapter 157, Subchapter A, Hearings Concerning Students with Disabilities under the Individuals with Disabilities Education Act; 19 TAC Chapter 169, Relationship with University Interscholastic League (UIL); Recommendation of SBOE recommended high school program review panel; Amendments to UIL policies and 1995-1996 constitution/contest rules; Proclamation 1995 of SBOE advertising for bids on instructional materials; 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; 19 TAC Chapter 68, Transportation; 19 TAC Chapter 105, Foundation School Program; 19 TAC Chapter 109, Budgeting, Accounting, and Auditing; 19 TAC Chapter 113, Federal Funds to Support Public Education in Texas; 19 TAC Chapter 121, Public School Finance-Personnel; 19 TAC Chapter 176, Driver Training Schools; 19 TAC Chapter 67, Stat Adoption and Distribution of Instructional Materials; 19 TAC Chapter 129, Student Attendance; 19 TAC Chapter 157, Subchapter C, Hearings Held Under the Texas Driver and Traffic Safety Education Act; Costs of administering Texas Assessment of Academic Skills tests to private school students; School applications and licenses for driver training programs; 19 TAC Chapter 65, Technology; Approval of Long-Range Plan for Public Education, 1996-2000; Selection of external auditor/authority for commissioner of education to proceed with negotiation and execution of contract to conduct a financial audit of PSF; Approval of new Section H in the investment procedures manual relating to PSF's bond guarantee program disclosure requirements mandated by Securities Exchange Commission; Ratification of purchases/sales in investment portfolio of the PSF for October; Information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701.

Filed: October 31, 1995, 3:32 p.m.

TRD-9514084

## Texas Commission on Fire Protection

Monday, November 20, 1995, 9:00 a.m.

12675 North Research Boulevard

Austin

Fire Protection (Sprinkler) Advisory Council

AGENDA:

I. Election of a chairperson for the Sprinkler Advisory Council.

II. General discussion regarding the functions and responsibilities of the Fire Sprinkler Advisory Council.

III. Discussion and possible action regarding proposed rule amendments, new sections, or repeals to 37 TAC Chapter 541, concerning fire sprinkler systems including but not limited to:

A. Statutory amendments passed by the 74th Legislature, 1995, more specifically Senate Bill 702, relating to residential fire protection sprinkler systems and to an insurance premium discount for the use of such a system.

B. Petition for adoption of rules sent to the executive director relating to the adoption of commercial sprinkler fitter license, residential sprinkler fitter license, commercial sprinkler system inspector license, residential sprinkler system inspector license, apprentice permit and the administration thereof.

IV. New matters from the public, not included in preceding agenda items which may be discussed in future meetings.

V. Discussion and possible action on future meeting dates.

Contact: Carol Menchu, 12675 North Research Boulevard, Austin, Texas 78759, (512) 918-7100.

Filed: November 1, 1995, 12:19 p.m.

TRD-9514138

## Office of the Governor

Thursday, November 16, 1995, 12:15 p.m.

Capitol Extension, Room E1.012, 1400 Congress Avenue

Austin

Commission for Women

AGENDA:

I. Call to order

II. Approval of minutes

III. Discuss projects

A. Breast cancer awareness (Breast Cancer Leadership Symposium, PSA's, and other projects)

B. Women's Hall of Fame

C. Legislative Handbook

D. Other projects or suggestions

IV. Adjourn

Contact: Lucy Weber, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: October 31, 1995, 4:17 p.m.

TRD-9514089

## Health and Human Services Commission

Thursday, November 9, 1995, 9:15 a.m.

701 West 51st Street, Winters Building

Austin

Revised Agenda

Medical care Advisory Committee

AGENDA:

Opening comments; State Medicaid Director's comments; approval of minutes; federal legislative update; Medicaid Vendor Drug Program reimbursement methodology for dispensing fee; amendments to Medicaid nursing facility moratorium rules; changes to ventilator add-on rate eligibility criteria for nursing facility residents and Community Based Alternatives (CBA) clients; Day Activity and Health Services (DAHS) program; rule change; changes to the ICF-MR methodology for calendar year 1996; revision to the Bienvivir Waiver Program reimbursement methodology; exclusion of deeming from an alien's sponsor; Primary Home Care Program; health assessments; update on managed care; open discussion by members; next meeting/adjournment.

Contact: Sharon Dobbs, 4807 Spicewood Springs Road, Building Four, Austin, Texas 78759, (512) 502-3255.

Filed: November 1, 1995, 2:48 p.m.

TRD-9514152

## Texas Department of Housing and Community Affairs

Friday, November 10, 1995, 10:00 a.m.

1400 North Congress Avenue, Capitol Extension, Room E1.016

Austin

Low Income Housing Tax Credit Committee Meeting

AGENDA:

The Low Income Housing Tax Credit Committee of the Board of Texas Department of Housing and Community Affairs will meet to act upon the following: Recommendations for determinations on tax credit applications for 1995B Round; executive session-consultation with attorney under §551.071(2) of Texas Government Code; and adjourn.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: November 1, 1995, 7:50 a.m.

TRD-9514092

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**Texas Department of Licens-  
ing and Regulation**

Friday, November 17, 1995, 9:30 a.m.

E. O. Thompson Building, 920 Colorado,  
Fourth Floor Conference Room

Austin

Board of Boiler Rules

AGENDA:

1. Call to order
2. Roll call
3. Introduction of visitors
4. Adoption of agenda
5. Approval of minutes of meeting on April 13, 1995
6. Administrative report
7. Task Force reports
  - a. Controls and safety devices for automatically fired boilers
  - b. Jacketed kettles and sterilizers
  - c. Boiler installation
  - d. Water level indicators/unfired steam boilers
  - e. Nonwelded boilers
  - f. Atmospheric steamers
8. New business
  - a. Proposed litigation-pressure vessel
9. Old business
  - a. Houston Independent School District
  - b. Clearance requirements-potable water heaters
  - c. 1995 edition of the NBIC
  - d. Section 129 of the Clean Air Act, environmental protection agency requirements
10. Next meeting
11. Adjournment

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Barbara Stoll at (512) 475-2858 at least two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Bynog, 920 Colorado,  
Austin, Texas 78711, (512) 463-7365.

Filed: November 1, 1995, 3:33 p.m.

TRD-9514155

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**Texas Natural Resource Con-  
servation Commission**

Monday, November 13, 1995, 3:30 p.m.

Citgo Refinery, 1802 Nueces Bay Boul-  
evard, Nueces Bay Building

Corpus Christi

Local Governments Advisory Committee  
and the Citizens Advisory Committee of the  
Corpus Christi Bay National Estuary Pro-  
gram

AGENDA:

- I. Call to order/introduction/minutes
- II. Program update
- III. Presentation on the status of the pro-  
gram's characterization projects
- IV. Fiscal year 1996 public outreach priori-  
ties
- V. Review of bay guidebook
- VI. Review of second public service an-  
nouncement
- VII. Additional items/adjourn

Contact: Richard Volk, Campus Box 290,  
6300 Ocean Drive, Corpus Christi, Texas  
78412, (512) 985-6767.

Filed: October 31, 1995, 12:01 p.m.

TRD-9514016

Monday, November 20, 1995, 10:00 a.m.

1813 West Parmer Lane

Austin

Used Oil Grant Program Advisory Commit-  
tee

AGENDA:

The Used Oil Grant Program Advisory  
Committee will hold a meeting on Novem-  
ber 20, 1995, 10:00 a.m. in the conference  
room at Ryan's Steakhouse, located at 1813  
West Parmer Lane, Austin, Texas. The  
committee will review minutes of the Sep-  
tember 21st meeting, report on TNRC  
field operations, review grant rules and up-  
date on grants, review the used oil manage-  
ment standards, discuss future meeting  
dates, and public comments.

Public attendance is welcome.

Contact: Debbie Bohl or Gary W. Trim,  
12015 Park 35 Circle, Building F, Austin,  
Texas 78711-3087, (512) 239-6008 or (512)  
239-6708.

Filed: November 1, 1995, 9:45 a.m.

TRD-9514123

Monday, November 20, 1995, 10:00 a.m.

Building E, Room 201S, 12118 North IH-  
35 (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law  
judge of the State Office of Administrative  
Hearings on an application by E.B.J.V., Inc.  
doing business as Southern Oaks Water  
System for an increase in water rates effec-  
tive September 1, 1995 for its service area  
located in Montgomery County, Texas.  
SOAH Docket Number 582-95-1619.

Contact: Susan Prior, Mail Code 102, P.O.  
Box 13087, Austin, Texas 78711-3087,  
(512) 239-4100.

Filed: November 1, 1995, 2:30 p.m.

TRD-9514146

Tuesday, November 28, 1995, 10:00 a.m.

Building E, Room 254S, 12118 North IH-  
35 (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law  
judge of the State Office of Administrative  
Hearings on an application by Edward  
Wood doing business as Enchanted Harbor  
Utilities for an increase in water rates effec-  
tive July 31, 1995, for its service area lo-  
cated in Calhoun County, Texas. SOAH  
Docket Number 582-95-1125.

Contact: Susan Prior, Mail Code 102, P.O.  
Box 13087, Austin, Texas 78711-3087,  
(512) 239-4100.

Filed: November 1, 1995, 2:30 p.m.

TRD-9514147

Tuesday, November 28, 1995, 5:30 p.m.

Old Winona School, Auditorium, 615 West  
Dallas (FM 16 West)

Winona

AGENDA:

For a hearing before an administrative law  
judge of the State Office of Administrative  
Hearings on applications by American Ecol-  
ogy Environmental Services Corporation,  
Inc. for amendments to and renewal of  
Texas Air Quality Permit Number 9429, for  
renewal and Class 3 modifications of Haz-  
ardous Waste Permit Number HW-50368  
and Compliance Plan Number CP-50368,  
and for renewal of Class 1 injection well  
permits Number WDW-186 and Number  
WDW-229. The facility is located at 13640  
Highway 155 North, Winona, Smith  
County, Texas. The applications request  
continued authorization to operate a com-  
mercial hazardous waste management facil-  
ity comprised to two injection wells, 31  
tanks, five container storage areas and three  
miscellaneous units. The Class 3 modifica-  
tion proposes modifications to container  
storage areas and the addition of two mis-  
cellaneous units. Permits Number WDW-  
186 and WDW-229 authorize subsurface  
disposal of hazardous and non-hazardous  
industrial waste. For both wells, the injec-



tion zone is from 4,850 to 5,490 feet in the Woodbine Formation. The maximum average injection rate shall not exceed 200 gallons per minute. This facility will emit the following air contaminants: inorganic compounds including, but not limited to, ammonia, barium sulfate, carbon monoxide, iodine, iron oxide, nitrous oxides, sulfur dioxide, and particulate matter, and hydrocarbons including, but not limited to, benzene, carbon tetrachloride, carbon disulfide, ethyl ether, formaldehyde, maleic anhydride, methyl ethyl ketone, triethylamine, trichlorofluoromethane, and xylene. SOAH Docket Number 582-95-1618.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: November 1, 1995, 2:30 p.m.

TRD-9514145

**Wednesday, November 29, 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 an application by Billy Corbello doing business as B and C Utility and Billy Corbello doing business as Corbello Water System for increases in water rates effective July 13, 1995 for their service areas located in Harris County, Texas. SOAH Docket Number 582-95-1626.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: November 1, 1995, 2:30 p.m.

TRD-9514148

**Thursday, November 30, 1995, 10:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Room 507

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application by Chuck Bell Water System for an increase in water rates effective September 1, 1995, for its services area located in Johnson County, Texas. SOAH Docket Number 582-95-1620.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: November 1, 1995, 2:30 p.m.

TRD-9514149

## Public Utility Commission of Texas

**Thursday, November 9, 1995, 9:00 a.m.**

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on Docket Numbers 14665 and 14666; (SOAH Number 473-95-1196); issuance of preliminary orders; Docket Number 14654; (SOAH Docket Number 473-95-1207); Docket Number 14836; (SOAH Number 473-95-1208); Docket Number 14655; (SOAH Number 473-95-1208); Docket Number 14658; (SOAH Number 473-95-1209); Docket Number 14659; (SOAH Number 473-95-1210); Project Number 14517 (ADADs); Project Number 14425 (infrastructure reports); Docket Numbers 14151; 14271, 14410 and 11823; (SOAH Number 473-95-1183); financial audit report of Relay Texas for fiscal years ending 1993 and 1994; Universal Service Fund from the Texas Exchange Carriers Association; Docket Numbers 13369 and 13949; Consolidated Docket Number 12820; (SOAH Number 473-95-1175); Project Number 14908 (Nuclear Decommissioning Trusts); staff report on El Paso Electric Company quality of service issues; Project Numbers 14045 and 15000; appointment of five-person ERCOT-SPP Interstate Connection Committee; Project Number 14754 (Historically Underutilized Business Report Form); alternate dispute resolution; project assignments; agency administrative procedures; budget and fiscal matters; adjournment for closed session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in closed.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 1, 1995, 2:29 p.m.

TRD-9514144

## Texas Senate

**Wednesday, November 1, 1995, 10:00 a.m.**

1100 Congress Avenue, Capitol Extension, Room E1.012

Austin

International Relations, Trade and Technology

AGENDA:

I. Call to order

II. Discussion of interim charges

A. Monitor enforcement of House Bill 1001 (Colonias Bill)

B. Assess economically distressed areas program (EDAP)

C. Assess effects of NAFTA on Texas' infrastructure

III. Briefing of international motor carrier regulations

IV. Adjourn

Contact: Sarah Acosta, P.O. Box 12068, Austin, Texas 78711, (512) 463-0989.

Filed: October 31, 1995, 12:12 p.m.

TRD-9514062

**Tuesday, November 14, 1995, 2:00 p.m.**

Pearl C. Anderson School, 3400 Garden Lane

Dallas

Juvenile DWI Laws (Interim)

AGENDA:

I. Call to order

II. Roll call and opening remarks

III. Invited and public testimony

IV. Other business

V. Adjourn

Contact: Susie Ramirez, P.O. Box 12068, Austin, Texas 78711, (512) 463-0123.

Filed: October 31, 1995, 12:12 p.m.

TRD-9514063

**Wednesday, November 15, 1995, 10:00 a.m.**

6100 Main Street, Grand Hall

Houston

Juvenile Justice and Child Support (Interim)

AGENDA:

I. Call to order

II. Roll call and opening remarks

III. Committee business

IV. Invited Speakers

V. Public testimony

VI. Other business

VII. Adjourn

Contact: Kimberly Koelzer, P.O. Box 12068, Austin, Texas 78711, (512) 463-0395.

Filed: October 31, 1995, 12:11 p.m.

TRD-9514061

**Monday, December 4, 1995, 1:30 p.m.**

City Council Chambers, 103 Main Plaza  
San Antonio

Economic Development

**AGENDA:**

The Senate Economic Development Committee will meet to hear public testimony on the use of tax of abatements, enterprise zones and other financial incentives for economic development.

Contact: Barbara Henderson, P.O. Box 12068, Austin, Texas 78711, (512) 463-0365.

Filed: October 31, 1995, 12:12 p.m.

TRD-9514064

◆ ◆ ◆  
**Structural Pest Control Board**

Wednesday, November 29, 1995, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.120

Austin

Public Hearing and Regular Board Meeting

**AGENDA:**

I. Approval of board minutes of August 29, 1995.

Contact: Benny Mathis, 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: October 31, 1995, 3:04 p.m.

TRD-9514067

◆ ◆ ◆  
**The Texas A&M University System, Board of Regents**

Tuesday, November 7, 1995, 10:00 a.m.

The Lancaster Hotel, 701 Texas Avenue, Suite 1207

Houston

Board of Regents

**AGENDA:**

The purpose of the meeting is to discuss the role of the board in the governance of The Texas A&M University System on the following subjects: Operating procedures of the board, leadership, administrative and policy making roles of the board; relationship of the board to the administrative units of the System; organization of the System.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 1, 1995, 4:19 p.m.

TRD-9514157

**University Interscholastic League**

Monday, November 6, 1995, 1:30 p.m.

University Interscholastic League, Thompson Conference Center, Suite 2.120, 26th and Red River

Austin

Revised Agenda

Waiver Review Board

**AGENDA:**

AA. Request for waiver of Parent Residence Rule by Eric Linton, King High School, Kingsville

BB. Request for waiver of Four-Year Rule by Kajun Chism, representing Edgewood High School in San Antonio

CC. Request for waiver of Parent Residence Rule by Sylvester Taylor representing Gatesville High School

DD. Request for waiver of Parent Residence Rule by Victor Cantu, representing Plains High School

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: October 31, 1995, 1:01 p.m.

TRD-9514065

Monday, November 6, 1995, 1:30 p.m.

University Interscholastic League, Thompson Conference Center, Suite 2.120, 26th and Red River

Austin

Revised Agenda

Waiver Review Board

**AGENDA:**

AA. Request for waiver of Parent Residence Rule by Eric Linton, King High School, Kingsville

BB. Request for waiver of Four-Year Rule by Kajun Chism, representing Edgewood High School in San Antonio

CC. Request for waiver of Parent Residence Rule by Sylvester Taylor representing Gatesville High School

DD. Request for waiver of Parent Residence Rule by Victor Cantu, representing Plains High School

Contact: Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: October 31, 1995, 4:17 p.m.

TRD-9514090

**Regional Meetings**

Meetings Filed on October 31, 1995

The Grand Parkway Association Board of Directors will meet at 5757 Woodway, 140 East Wing, Houston, November 9, 1995, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9230. TRD-9514017.

The Hood County Appraisal District Appraisal Review Board will meet at 1902 West Pearl Street, District Office, Granbury, November 8, 1995, at 8:15 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9514068.

◆ ◆ ◆  
Meetings Filed on November 1, 1995

The Bell-Milam-Falls WSC Board will meet at the Office-FM 485 West, Cameron, November 7, 1995, at 8:30 a.m. Information may be obtained from Dwayne Jelke, P.O. Box 150, Cameron, Texas 76520, (817) 697-4016. TRD-9514095.

The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging will meet at 1706 East 29th Street, Bryan, November 7, 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-9514143.

The Nolan County Central Appraisal District Board of Directors will meet at Betty's Breakfast, Oak Street, Sweetwater, November 14, 1995, at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9514142.

The Permian Basin Regional Planning Commission Board of Directors will meet at 2910 La Force Boulevard, Midland, November 8, 1995, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-0514102.

The Upshur County Appraisal District Board of Directors will meet at Warren and Trinity Streets, Gilmer, November 13, 1995, at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280. TRD-9514153.

# 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.

## Texas Commission on Alcohol and Drug Abuse

### Multicultural Affairs Advisory Council Meeting

The Multicultural Affairs Advisory Council of the Texas Commission on Alcohol and Drug Abuse will meet Thursday, November 9, 1995, 2:00 p.m. to 5:00 p.m. and Friday, November 10, 1995, 10:00 a.m. to 4:00 p.m. The meeting will be held at the Texas Commission on Alcohol and Drug Abuse, 710 Brazos Street, Austin, Texas.

Issued in Austin, Texas, on October 30, 1995.

TRD-9513990 Mark Smock  
Assistant Deputy Director/Finance  
Texas Commission on Alcohol and Drug  
Abuse

Filed: October 30, 1995

## Texas Animal Health Commission Release of Quarantine

The Texas Animal Health Commission, pursuant to the authority granted in Chapter 161 of the Texas Agriculture Code, hereby releases the Quarantine imposed July 24, 1995, for exposure to vesicular stomatitis.

The area included in this release is described as the portions of Fisher and Jones Counties within ten miles of the town of McCaulley in all directions.

This release is effective the 28th day of August, 1995.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514015 Terry Beale, DVM  
Executive Director  
Texas Animal Health Commission

Filed: October 31, 1995

## Texas Education Agency Request for Proposals Concerning Assessment System for Students Currently Exempted from Texas Student Assessment Program

Filing Authority. Request for Proposals (RFP) #701-96-007 is filed under the Texas Education Code, §39.027(c).

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals from education service centers, col-

leges and universities, nonprofit organizations, and for-profit organizations to design and develop an assessment system for students currently exempted from the Texas student assessment program. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The Texas Education Code, §39.027(c), requires the development of an assessment system for evaluating the progress of students in special education and with limited English proficiency who are currently exempted from the Texas student assessment program. This assessment system must allow for the performance of these students to be compared to state-established standards and to be included in the state's accountability system. The assessment system developed by the selected contractor will be proposed to the legislature by the commissioner of education no later than December 1, 1996.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 17, 1996, and an ending date of no later than November 29, 1996.

Project Amount. Funding will be provided for one project in an amount not to exceed \$200,000.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The selection criteria and the review process are specified in the RFP. The TEA reserves the right to select from the highest ranking proposals the one that addresses all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-96-007 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Keith Cruse, Student Assessment Division, Texas Education Agency, (512) 463-9536.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Thursday, December 28, 1995, to be considered.

Issued in Austin, Texas, on November 1, 1995.

TRD-8514107      Cries Clout  
Associate Commissioner for Policy Planning  
and Research  
Texas Education Agency

Filed: November 1, 1995

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### Request for Proposals Concerning Alternative Assessments for Students Not Passing the Exit Level Tests

Filing Authority. Request for Proposals (RFP) #701-96-006 is authorized under the Texas Education Code, §28.025(a).

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals from education service centers, colleges and universities, nonprofit organizations, and for-profit organizations. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The Texas Education Code, §28.025(d), requires that by December 1, 1996, the commissioner of education propose to the legislature alternative methods of assessment for students who have attempted and failed to successfully complete the exit level assessment instrument administered under the Texas Education Code, §39.023(b). Exit level assessment instruments specified in the Texas Education Code, §39.023(b), consist of the exit level Texas Assessment of Academic Skills (TAAS) tests in reading, mathematics, and writing and are prerequisite for a Texas high school diploma. TEA is requesting that alternative methods of assessment be designed and developed to satisfy the requirements of law.

Dates of Project. All services and activities related to this proposal will be conducted within specified dates. Proposers should plan for a starting date of no earlier than January 17, 1996, and an ending date of no later than November 29, 1996.

Project Amount. One contractor will be selected for an amount not to exceed a maximum of \$200,000 during the contract period.

Selection Criteria. One proposal will be selected based on the ability of the proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The selection criteria and the review process are specified in the RFP. The TEA reserves the right to select from the highest ranking proposals those that address all requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-96-006 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Keith L. Cruse, Student Assessment Division, Texas Education Agency, (512) 463-9536.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Standard Time), Friday, December 29, 1995, to be considered.

Issued in Austin, Texas, on November 1, 1995.

TRD-9514106      Cries Clout  
Associate Commissioner for Policy Planning  
and Research  
Texas Education Agency

Filed: November 1, 1995

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### Texas Department of Health Correction of Error—Notice of Rescission of Order

Please note that this notice is a correction of error to a Notice of Rescission of Order that was originally published in the October 24, 1995 issue of the *Texas Register* (20 TexReg 8857).

The first paragraph of the notice originally read as follows.

"Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Order of revocation issued September 27, 1995, to Bellaire Cancer Center, 6602 Mapleridge, Houston, Texas 77081, holder of Certificate of Registration Number R20769."

The correct language should read as follows.

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued September 27, 1995, to Houston Cancer Care Center, doing business as Bellaire Cancer Center, 6602 Mapleridge, Houston, Texas 77081, holder of Certificate of Registration Number R20769.

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 October 30, 1995.

TRD-8513975      Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: October 30, 1995

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### Notice of Intent to Revoke Certificates of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: Al D. Lowe, D.D.S., Amarillo, R06480; Richard J. Montoya, D.D.S., El Paso, R07069; Mark G. Gonzales, D.D.S., San Antonio, R08752; Debra G. Stewart, D.D.S. and Donald R. Tamplen, D.D.S., Stafford, R10144; William J. Clouse, D.P.M., San Antonio, R11313; Animal Emergency Clinic of Waco, Waco, R12232; General Practice Associates, P.A., Houston, R13150; Charles L. Moughon, D.D.S., Mineral Wells, R14249; Alfred R. Louis, M. D., Houston,

R18237; Edwin Roy Hamlett, D.C., Houston, R18949; Gregory E. Richards, D.D.S., Houston, R21031.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on October 31, 1995.

TRD-9514086 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: October 31, 1995

### Notice of Intent to Revoke Radioactive Material Licenses

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following licensees: Satterfield Surveys, Inc., Clyde, L02307; Ace Perforators, Inc., Odessa, L03559; RADIACS, Houston, L04643; Alamo Logging Service, Sequin, L04665.

The department intends to revoke the radioactive material licenses; order the licensees to cease and desist use of such radioactive materials; order the licensees to divest themselves of the radioactive material; and order the licensees to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the licensees for a hearing to show cause why the radioactive material licenses should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid, the radioactive material licenses will be revoked at the end of the 30-day period of notice. A copy of all relevant material is

available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on October 31, 1995.

TRD-9514087 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: October 31, 1995

### Notice of Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued July 10, 1995, to Bacliff Medical Clinic, 1125 Grand Avenue, Bacliff, Texas 77518, holder of Certificate of Registration Number R15055; Emergency Cease and Desist Order issued July 25, 1995, to Rodelka Incorporated, 3 Ted Hunt Boulevard, Suite 110, Brownsville, Texas 78521, holder of Certificate of Mammography Systems Number M00545 (Pending).

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 October 31, 1995.

TRD-9514085 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: October 31, 1995

### Texas Department of Human Services Request for Proposal-Case Management Services for CLASS in El Paso County

The Texas Department of Human Services (DHS) is inviting proposals for the delivery of case management services under the authority of the Community Living Assistance and Support Service (CLASS) Waiver Program. Under this waiver, home and community-based services are provided as an alternative to institutionalization to Medicaid eligible individuals with related conditions who would otherwise require the level of care of an intermediate care facility for the mentally retarded with related conditions. The number of qualifying proposals received will determine the number of contracts to be negotiated. There are 60 existing participant slots in El Paso County. This RFP is to replace the existing provider in El Paso County.

**Description of services:** The case manager enrolls participants in the CLASS program and is the focal point for service planning, coordination, and monitoring. The case manager convenes the interdisciplinary team responsible for developing the individual service plan and assures that services are aligned with the aims of the individual participant. Case manager further assist in the identification and development of appropriate community resources, review of service delivery, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct service agency which delivers home and community-based services.

**Geographical Area:** The department intends to contract

with case management agency provider(s) in El Paso County.

**Contract Effective Date:** Contract(s) will be effective February 1, 1996, or upon certification by the department as a CLASS provider, whichever is later.

**Closing Date and Time:** The closing date for receiving proposals will be 5:00 on December 15, 1995.

**Evaluation and Selection:** Providers whose proposals receive qualifying scores, and who desire to contract with the department, are eligible to be considered for a contract with the department. Contracted providers must meet CLASS certification standards for case management.

**Contact Person:** To request an RFP package, please contact Barbara Stegall, Unit Manager, CLASS Waiver Program, Texas Department of Human Services, P.O. Box 149030, (MC W-521), Austin, Texas 78714-9030, (512) 438-3228, or Fax: (512) 438-5133, John H. Winters Human Services Center, 701 West 51st Street, Austin. RFP packages will be available on or after November 10, 1995.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514029 Nancy Murphy  
Section Manager for Media and Policy  
Services  
Texas Department of Human Services

Filed: October 31, 1995

## Texas Department of Insurance

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Bankers Risk Management Services, Inc., a foreign third party administrator. The home office is St. Petersburg, Florida.

Application for admission to Texas of PacifiCare of Oklahoma, Inc., a foreign third party administrator. The home office is Tulsa, Oklahoma.

Application for incorporation in Texas of Complete Professional Administration Services, Inc. (doing business under the assumed name of Compas, Inc.), a domestic third party administrator. The home office is Dallas, Texas.

Application for incorporation in Texas of South Texas Medical Clinics, P.A., a domestic third party administrator. The home office is Wharton, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on November 1, 1995.

TRD-9514098 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: November 1, 1995

## Texas Department of Mental Health and Mental Retardation

### Notice of Public Hearing on Medicaid Rates

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following Medicaid programs: Diagnostic Services for Persons with Potential for Mental Retardation. This public hearing will be conducted in conjunction with the public hearing previously announced in the October 31, 1995, issue of the *Texas Register* (20 TexReg 9079). The public hearing is held in compliance with Title 25, Texas Administrative Code, Chapter 409, Subchapter A, §409.002(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The hearing will be held at 9:00 a.m., Thursday, November 16, 1995, in the TDMHMR Central Office auditorium (main building) at 909 West 45th Street in Austin, Texas.

Persons who wish to offer testimony but who are unable to attend the hearing may submit written comments which must be received by noon the day of the hearing. The written comments should be sent to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668 or faxed to (512) 323-3250.

Interested parties may obtain a copy of the reimbursement briefing package by calling the Data Analysis Section at (512) 323-3870. If interpreters for the hearing impaired are required, please contact the Data Analysis Section at the number given previously at least 72 hours in advance of the hearing.

Issued in Austin, Texas, on November 1, 1995.

TRD-9514115 Ann K. Utley  
Chair, Texas MHMR Board  
Texas Department of Mental Health and  
Mental Retardation

Filed: November 1, 1995

## Texas Natural Resource Conservation Commission

### Public Notice-Request for Nominations to Consider Appointments to the Municipal Solid Waste Management and Resource Recovery Advisory Council

The Texas Natural Resource Conservation Commission (TNRCC), at its agenda meeting on December 6, 1995, will consider appointments to fill nine vacancies on the Municipal Solid Waste Management and Resource Recovery Advisory Council. The agenda meeting will be held at 9:30 a.m. on December 6, 1995, at the TNRCC Park 35 Complex, Building E, Room 201S, 12118 North Interstate 35, Austin.

The Advisory Council was mandated by the 69th Legislature (1983) and is composed of 18 members representing various segments of the regulated community; i.e., city and county solid waste agencies, commercial solid waste

operators, solid waste districts/authorities, environmental groups, city and county officials, tire processors, financial community, and the general public.

The Advisory Council meets a minimum of four times per year but will meet as needed. The meetings usually last one full day and are held in Austin, Texas.

The TNRCC Commissioners invite the regulated community, general public, environmental groups, and local governments to submit nominations for the vacant positions. Before nominating an individual, please confirm that the person meets the qualifications set forth elsewhere in this notice. Nominations should include a biographical summary of each nominee's education, experience, and qualifications, and a letter from the nominee stating his or her agreement to serve if appointed. Nominations will also be accepted from business groups, trade associations, organizations, agencies, individuals, etc.

Advisory Council members are not reimbursed for expenses to attend the meetings and do not receive financial compensation.

The Council reviews and evaluates the effect of state policies and programs on municipal solid waste management; makes recommendations to the TNRCC Commissioners on matters relating to municipal solid waste management; recommends legislation to the Commissioners to encourage the efficient management of municipal solid waste; recommends policies to the Commissioners for the use, allocation, or distribution of the Municipal Solid Waste Division's planning funds; and recommends to the Commissioners special studies and projects to further the effectiveness of municipal solid waste management and resource recovery for the State of Texas.

The following nine positions will be filled: A representative from a planning region (Council of Government) for a two-year term to expire December 1, 1997; a representative from a city or county solid waste agency, for a two-year term to expire December 1, 1997; two representatives from the general public, for two-year terms to expire December 1, 1997; an elected official from a city having a population less than 25,000 for a two-year term to expire December 1, 1997; an elected official from a city having a population of 25,000 or more but less than 100,000 for a two-year term to expire December 1, 1997; a representative of registered, fixed waste tire processors, for a two-year term to expire December 1, 1997; a representative from a private environmental conservation organization, for a two-year term to expire December 1, 1997; A representative from the financial community, for an unexpired four-year term to expire December 1, 1997; and a representative from the Texas Natural Resource Conservation Commission, for a term to expire December 1, 1997.

Written nominations must be received in the Municipal Solid Waste Division by 5:00 p.m., November 27, 1995. Nominations should be directed to Gary W. Trim, Special Programs Director, TNRCC, MC 124, Municipal Solid Waste Division, P.O. Box 13087, Austin, Texas 78711-3087. Questions regarding the MSW Advisory Council can be directed to Mr. Trim at (512) 239-6708.

Issued in Austin, Texas, on November 1, 1995.

TRD-9514125 Kevin McCalla  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: November 1, 1995

## Texas State Board of Examiners of Psychologists Notice of Hearing

The Texas State Board of Examiners of Psychologists will hold a public hearing on Monday, December 11, 1995, from 1:00 p.m. to 5:00 p.m. at the following five locations: 1) 333 Guadalupe, Suite 100, Austin, Texas 78701; 2) Texas Woman's University, Dallas/Parkland Campus, 1810 Inwood Road (at I-35 East), Rooms 215 and 218, Dallas, Texas 75235; 3) Thomason Hospital, Eighth Floor Board Room, 4815 Alameda, El Paso, Texas 79905; 4) Twelve Oaks Hospital, 4200 Portsmouth, Fourth Floor Conference Room, Houston, Texas 77027; 5) University of Texas Health Science Center, Department of Psychiatry, Room 735F, 7703 Floyd Curl Drive, San Antonio, Texas 78284.

The public hearing is to receive comments from interested parties in compliance with 22 TAC §466.13 concerning new Board Rules §463.32 and §465.38 proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate and adopt rules consistent with the Act governing its administration, including rules relating to the licensed specialist in school psychology. The proposed Rules "Specialist in School Psychology" 22 TAC §463.32 and "Psychological Services in the Schools" 22 TAC §465.38 will be published in the November 24, 1995, issue of the *Texas Register*. Any interested person may appear and offer comments or statements, either orally or in writing; however, questioning of commenters will be reserved exclusively to the Texas State Board of Examiners of Psychologists or its staff as may be necessary to ensure a complete record. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Texas State Board of Examiners of Psychologists reserves the right to restrict statements in terms of time or repetitive content. If you are unable to attend the hearing but wish to comment on the proposed rules, written comments will be accepted if mailed to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701 or delivered to the receptionist at 333 Guadalupe, Suite 2-450, Austin, Texas 78701. Organizations, associations, or groups are encouraged to present their commonly held views or similar comments, through a representative member where possible. Persons with disabilities who have special needs and who plan to attend the meeting should contact Rebecca E. Forkner or Brian L. Creath of the Texas State Board of Examiners of Psychologists at (512) 305-7700.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514108 Rebecca E. Forkner  
Executive Director  
Texas State Board of Examiners of  
Psychologists

Filed: November 1, 1995

**Public Utility Commission of Texas**  
**Notices of Application in Compliance**  
**with Public Utility Regulatory Act of**  
**1995, §3.311**

Notice is given to the public of the filing with the Public Utility Commission of Texas, an application by Southwestern Bell Telephone Company on September 1, 1995, pursuant to Public Utility Commission Substantive Rule 23.24, to revise its Local Exchange Tariff to comply with the Public Utility Regulatory Act of 1995, Texas Civil Statutes, Article 1446c-0, §3.311, Hunting Service. A summary of the application follows.

**Tariff Title and Number:** Application of Southwestern Bell Telephone Company for Approval of Tariff Changes in its Local Exchange Tariff. Tariff Control Number 14660.

**The Application:** Southwestern Bell Telephone Company seeks approval to revise its Local Exchange Tariff regarding Hunting Service to be handled in accordance with Public Utility Regulatory Act, §3.212, Changes by Local Exchange Companies; Hearings; Suspension of Proposed Changes (43A). Southwestern Bell Telephone Company's application affects regulation only; charges and/or rates are not affected.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514068 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 31, 1995

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Notice is given to the public of the filing with the Public Utility Commission of Texas, an application by GTE Southwest, Inc., on September 1, 1995, in compliance with the Public Utility Regulatory Act of 1995, Texas Civil Statutes, Article 1446c-0, §3.311, Hunting Service. A summary of the application follows.

**Tariff Title and Number:** Application of GTE Southwest, Inc. to Provide Hunting from Local Lines to Extended Metropolitan Service Lines Pursuant to Public Utility Regulatory Act §3.311, Hunting Service. Tariff Control Number 14706.

**The Application:** GTE Southwest, Inc. seeks approval to revise its Texas General Exchange Tariff, §4, Second Revised Sheet Number 15B and §14, Sixth Revised Sheet Number 16 to permit rotary hunt service from local exchange service lines to extended metropolitan service lines to be handled in accordance with Public Utility Regulatory Act, §3.212, Changes by Local Exchange Companies; Hearings; Suspension of Proposed Changes (43A). GTE Southwest, Inc.'s application affects regulation only; charges and/or rates are not affected.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Section

at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514060 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 31, 1995

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Notice is given to the public of the filing with the Public Utility Commission of Texas, an application by Contel of Texas, Inc., on September 1, 1995, in compliance with the Public Utility Regulatory Act of 1995, Texas Civil Statutes, Article 1446c-0, §3.311, Changes by Local Exchange Companies; Hearings; Suspension of Proposed Changes (43A). A summary of the application follows.

**Tariff Title and Number:** Application of Contel of Texas, Inc. to Provide Hunting from Local Lines to Extended Metropolitan Service Lines Pursuant to Public Utility Regulatory Act, §3.311, Hunting Service. Tariff Control Number 14703.

**The Application:** Contel of Texas, Inc. seeks approval to revise its Local Tariff sheet, Schedule Number A-1, Second Revised Sheet Number 59 to permit rotary hunt service from local exchange service lines to extended metropolitan service lines.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on October 31, 1995.

TRD-9514059 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 31, 1995

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**Notices of Intent to File Pursuant to**  
**Public Utility Commission Substantive**  
**Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on November 6, 1995, pursuant to Public Utility Substantive Rule 23.27 for approval of a customer-specific contract to provide high capacity multifunctional fiber-based digital channel service to DSC Communications.

**Tariff Title and Number:** Notice of GTE Southwest Incorporated to File Customer-Specific Contract for DSC Communications Pursuant to Public Utility Substantive Rule 23.27. Tariff Control Number 14923.

**The Application:** GTE Southwest Incorporated seeks approval to provide high capacity multifunctional fiber-based digital channel service to DSC Communications between the customer's premises and the local serving central office on a channelized basis (DS-1) within a multiple high capacity (DS-3) digital facility.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call



the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on October 30, 1995.

TRD-9513977

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 30, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on November 6, 1995, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for building and collection services with L.D. Services Inc.

**Tariff Title and Number:** Application of Southwestern Bell Telephone Company for approval of customer-specific contract for building and collection services with L.D. Services Inc. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14928.

**The Application:** Southwestern Bell Telephone Company seeks approval of a customer-specific building and collection services contract with L.D. Services Inc. The services pursuant to this customer specific contract will be offered anywhere within the State of Texas where L.D. Services Inc. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on October 30, 1995.

TRD-9513978

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 30, 1995

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## Public Notice

On October 30, 1995, GTE Southwest, Inc. filed notice to file a LRIC study pursuant to Public Utility Commission Substantive Rule 23.91 for the following: NAC Basic Level BNF; NACC Basic Level BNF (2-Wire and 4-Wire); NACC Performance and other Features and Functions-DDS Functionality BNF; Dedicated Transport Basic Level BNF; Dedicated Transport DS-1 Level BNF; Dedicated Transport DS-3 Level BNF; DDS Service; and DS-1 Service in Project Numbers 12475 and 12481, Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Studies Workplans Pursuant to Public Utility Commission Substantive Rule 23.91. GTE Southwest, Inc. expects to file these studies on November 8, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by December 14, 1995. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin,

Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on October 30, 1995.

TRD-9514058

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: October 31, 1995

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## Railroad Commission of Texas Correction of Error

The Railroad Commission of Texas adopted new §3.93, concerning water quality certification. The rule appeared in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8445).

An error was made in publishing, the rule should read as follows:

§3.93. *Water Quality Certification.*

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

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## The Texas A&M University System, Board of Regents

### Request for Proposal for Executive Search for a President at an Institutional Component of The Texas A&M University System

The Texas A&M University System (TAMUS) requests proposals from executive search firms interested in an agreement with TAMUS to conduct an executive search for a president at an institutional component of TAMUS.

**Description:** Effective January 1, 1996, Texas A&M International University (TAMIU), an institutional component of TAMUS, will have a vacant president's position. TAMIU is a four year institution of higher education with a student population of 2,512, 97 faculty, and 423 staff. TAMIU, located in Laredo, Texas, completed construction of the first phase of a new campus in September 1995.

TAMUS invites proposals in response to this RFP from qualified firms for the provision of executive search consulting services under the direction and supervision of Richard Lindsay, Deputy Chancellor for Finance and Operations.

**Responses:** Responses to this RFP should include at least the following information:

A description of the firm's qualifications and expertise for performing executive searches; the firm's experience in conducting executive searches (including the names and experience of the individuals who will be assigned to work on the search); the availability of the individuals assigned to the project; the ability of the firm to complete the search by February 15, 1996; a comprehensive description of the procedures to be used by the firm to conduct the search in a timely and cost effective manner; confirmation of willingness to comply with policies, directives and guidelines

of TAMUS; the submission of fee information and billable expenses; information regarding efforts made by the firm to encourage and develop the participation of minorities and women in the provision of executive search firm services; and preference will be given, all other considerations being equal, to an executive search consulting firm whose principal place of business is within the state and who will manage the contracted project entirely from its office within the state.

**Format and Person to Contact:** Three copies of the proposal are requested. The proposal should be typed, preferably double spaced, on 8 1/2 by 11 inch paper with all pages sequentially numbered and stapled or bound together. They should be sent by mail or delivered in person, marked "Response to Request for Proposal" and addressed to Richard Lindsay, Deputy Chancellor for Finance and Operations, The Texas A&M University System, College Station, Texas 77843-1122.

**Evaluation:** Proposals sent in response to this RFP will be evaluated in light of several criteria. The criteria includes expertise, prior experience in handling executive searches,

participation of women and minorities in delivering executive search consulting services and reasonableness of fees. Although the fee structure and overall cost of the executive search services will be an extremely important factor in evaluating proposals submitted in response to this RFP, the successful firm will clearly demonstrate exceptional expertise and experience with executive search firm services, as well as commitment to participation by minorities and women in executive search consulting services.

**Deadline for Submission of Response:** All proposals must be received by Richard Lindsay, Deputy Chancellor for Finance and Operations, The Texas A&M University System, College Station, Texas 77843-1122 no later than 5:00 p.m. on December 5, 1995.

issued in College Station, Texas, on October 27, 1995.

TRD-9513998

Vickie Running  
Secretary of the Board  
The Texas A&M University System, Board  
of Regents

Filed: October 30, 1995



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