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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

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

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THE GOVERNOR

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

Appointments Made November 15, 1995

To be a member of the **Texas Growth Fund** for a term to expire February 1, 1997: Suzanne B. Kriscunas, 4239 San Gabriel Drive, Dallas, Texas 75229. Mrs. Kriscunas will be filling the unexpired term of Rebecca Bronson of Austin who was not confirmed by the Senate.

To be a member of the **Governor's Juvenile Justice Task Force** for terms at the pleasure of the Governor. These appointments are being made pursuant to Executive Order Number GWB-95-13.

Chair:

Justice Sue Lagarde, Fifth Court of Appeals, 600 Commerce, Dallas, Texas 75202.

Judges:

Harold C. Gaither, Jr., 304th District Court, Dallas County Juvenile Justice Center, 2600 Lone Star Drive, Dallas, Texas 75212; Gladys Oakley, County Court at Law, 1 East Main Street, Bellville, Texas 77418; John J. Specia, Jr., 225th District Court, Bexar County Courthouse, San Antonio, Texas 78205; Olen Underwood, 284th District Court, Montgomery County, Conroe, Texas 77301; Darlene Whitten, County Court at Law Number 1, 210 South Woodrow Lane, Denton, Texas 76205.

Prosecutors:

Gary C. Arey, Assistant District Attorney, Dallas County, Juvenile Justice Center, 2600 Lone Star, LB 22, Dallas, Texas 75212; Stephanie Emmons, Assistant District Attorney, Juvenile Division, Travis County, P.O. Box 1748, Austin, Texas 78767; Elizabeth Godwin, Assistant District Attorney, Juvenile Division, Harris County, 201 Fannin, Suite 200, Houston, Texas 78602; Steve Hilbig, District Attorney, Bexar County, Justice Center, 300 Dolorosa Street, San Antonio, Texas 78205.

Defense Attorneys:

Lyle Medlock, Attorney at Law, 1801 South Hampton Road, DeSoto, Texas 75115; Larry Rayford, Attorney at Law, 8300 Douglas, Suite 800, Dallas, Texas 75225; Scott Stevens, Attorney at Law, P.O. Box 946, Belton, Texas 76513-0946.

Law Enforcement Officers:

Chief Chuck Brawner, Spring Branch Police Department, 8888 West View, Houston, Texas 77055; Officer Mike Knox, Houston Police Department, 6575 West Loop South, Suite 160, Houston, Texas 77401; Chief Ken A. Walker, Lubbock Police Department, P.O. Box 2000, Lubbock, Texas 79457; Chief Ken Yarbrough, Richardson Police Department, P.O. Box 831078, Richardson, Texas 75083-1078.

Probation Officers:

Lloyd Watts, Probation Officer, Lubbock County Juvenile Probation Department, 701 Main Street, Lubbock, Texas 79415-1118; Carey Cockrell, Chief Probation Officer, 2701 Kimbo Road, Fort Worth, Texas 76111; Mike Griffiths, Director of Juvenile Services, Dallas County Juvenile Justice Center, 2600 Lone Star Drive, Box 5, Dallas, Texas 75212; Peggy Fox, Chief Probation Officer, Denton County, 210 South Woodrow, Denton, Texas 76205.

Legislators:

Senator Chris Harris, 1309 West Abram, Arlington, Texas 76013; Representative Toby Goodman, 1600 East Lamar, Suite 115, Arlington, Texas 76011.

Other:

Professor Robert Dawson, University of Texas School of Law, 727 East 26th, Austin, Texas 78705; Professor Paul Tracey, 6912 April Way Circle, Plano, Texas 75023-1451; Carlos Loredo, Ph.D., 2111 Montclaire, Austin, Texas 78704; Saleem Ateek, Psy.D., Chief Psychologist, Dallas County Juvenile Justice System, 2600 Lone Star, Dallas, Texas 75212; Abelrado Saavedra, Superintendent, Corpus Christi I.S.D., 801 Leopard, P.O. Drawer 110, Corpus Christi, Texas 78403-0110; Rod Paige, Superintendent, Houston, I.S.D., 3830 Richmond Avenue, Houston, Texas 77027-5838.

Appointments Made November 16, 1995

To be a member of the **Adjutant General of Texas** for a term to expire February 1, 1997: Colonel Daniel James III, 4903 Airflight Circle, San Antonio, Texas 78250. Colonel James will be replacing Major General Sam C. Turk of Austin whose term expired.

Appointments Made November 27, 1995

To be a member of the **State Commission on Judicial Conduct** for a term to expire November 19, 2001: L. Scott Mann, P.O. Box 65600-1101, Lubbock, Texas 79464. Mr. Mann will be replacing A. H. Lock of Fort Worth whose term expired.

Appointments Made November 28, 1995

To be a member of the **Texas Higher Education Coordinating Board** for a term to expire August 31, 1997: Pamela Pitzer Willeford, 2511 McCullough, Austin, Texas 78703. Mrs. Willeford will be filling the unexpired term of Nancy Friedman Atlas of Houston who resigned.

Appointments Made November 30, 1995

To be a member of the **State Board of Education, District III** Position, until the next general election and until his successor shall be duly elected and qualified: Jose Garcia De Lara, 311 Wickes, San Antonio, Texas 78210. Mr. De Lara is being appointed pursuant to Senate Bill Number 1, §7.104, 74th Legislature and will be replacing Esteban Sosa of San Antonio who resigned.

To be a member of the **Interstate Oil and Gas Compact Commission** for terms at the pleasure of the Governor.

Mr. Brent Allen, ALPAR Resources, Inc., P.O. Box 1046, Perryton, Texas 79070; Mr. John E. Bennett, Bennett Production Corporation, P.O. Box 391, Bowie, Texas 76230; Mr. Gene L. Ames, III, Venus Exploration Company, 700 North St. Mary, Suite 1900, San Antonio, Texas 78205; Mr. David Blackmon, Meredian Oil, 801 Cherry Street, Suite 200, Fort Worth, Texas 76102-6878; Mr. A. Scott Anderson, TIPRO, 515 Congress Avenue, Suite 1910, Austin, Texas 78701; Mr. D. Phil Bolin, 2525 Kell Boulevard, Suite 510, Wichita Falls, Texas 76308; Mr. Howard E. Bell, Entex, P.O. Box 2628, Houston, Texas 77252-2628; Mr. Denny Bowles, Bowles Properties, Inc., 912 Lake Drive, Longview, Texas 75601; The Honorable Buster Brown, State Senator, P.O. Box 1616, Lake Jack-

son, Texas 77566; Ms. Amy Carman, TIPRO, 515 Congress Avenue, Suite 1910, Austin, Texas 78701; Mr. Ronald W. Brown, Gulf Gas Utilities Co., 3027 Marina Bay Drive, #205, League City, Texas 77573; Mr. Frank W. Cass, Cass Oil Company, 5950 Berkshire Lane, Suite 530, Dallas, Texas 75225; Ms. Sandra Bolz Buch, McElroy and Sullivan, P.O. Box 12127, Austin, Texas 78711; Mr. John Chalmers, Chalmers Exploration Company, P.O. Box 7396, Abilene, Texas 79608-7396; Mr. Morris Burns, West Central Texas Oil and Gas, P.O. Box 2332, Abilene, Texas 79604; Mr. Key Collie, 807 Brazos, Suite 710, Austin, Texas 78701; Mr. Kerry Cammack, Cammack and Strong, 400 West 15th Street, Suite 804, Austin, Texas 78701; Mr. Gary Compton, Hinkle, Cox, Eaton, Coffield, and Hensley, P.O. Box 9238, Amarillo, Texas 79101; Mr. Danny H. Conklin, Philcon Development Company, 730 First National Place I, Amarillo, Texas 79101; Mr. Lindsey Dingmore, TIPRO, 515 Congress Avenue, Suite 1910, Austin, Texas 78701; The Honorable Tom Craddick, State Representative, P.O. Box 2910, Austin, Texas 78769-2910; Mr. Arlen Edgar, 414 W. Texas #208, Midland, Texas 79701; Ms. Patricia A. Curran, Curran, Corbett and Stiles, PC, 800 Gessner, Suite 930, Houston, Texas 77024; Mr. James H. Edsel, Arrow Exploration Company, 1005 Congress Avenue, Suite, 880, Austin, Texas 78701; Mr. Joseph R. Dancy, ENSERCH Corporation, 300 South St. Paul, Suite 450-EC, Dallas, Texas 75201; Mr. Douglas D. Ehrlich, Conoco Inc., 600 North Dairy Ashford, Houston, Texas 77079; Mr. Doug Dashiell, Scott, Douglas, Luton, and McConnico, 600 Congress Avenue, Suite 1500, Austin, Texas 78701-3234; Mr. Robert J. Finley, Bureau of Economic Geology, Box X, University Station, Austin, Texas 78713-7508; Dr. William L. Fisher, University of Texas Austin, Department of Geological Sciences, Austin, Texas 78712; Mr. Larry J. Gunn, MidCon Texas Pipeline Corporation, P.O. Box 4758, Houston, Texas 7720-4758; Mr. Allan D. Frizzell, Enrich Oil Corporation Suite 6-A, Abilene, Texas 79601; Abilene, Texas 79601; Mr. Robert D. Gunn, Gunn Oil Company, P.O. Box GOCO, Wichita Falls, Texas 76307; Mr. Phil Gamble, Clark, Thomas and Winters, P.O. Box 1148, Austin, Texas 78767; Mr. William N. Hall, Jr., 2501 O'Kane Street, Laredo, Texas 78043; Mr. David Garlick, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967; Mr. Jeffery L. Hart, Cardwell and Hart, 807 Brazos, Suite 1001, Austin, Texas 78701; Mr. Terry Grantham, Craig, Terrill and Hale, L.L.P., P.O. Box 1979, Lubbock, Texas 79408; The Honorable Steve Holzheauser, State Representative, P.O. Box 4944, Victoria, Texas 77903; Mr. Gaylord T. Hughey, Jr., 305 Ferrell Place, Tyler, Texas 75702; Mr. Bob Kiker, Permian Basin Petroleum Association, P.O. Box 132, Midland, Texas 79702; Mr. Larry O. Hulsey, Larry O. Hulsey and Corporation, 220 Oak Street, Graham, Texas 76450; Mr. David A. Kimbell, Sr., Burk Royalty Company, P.O. Box BRC, Wichita Falls, Texas 76307; Mr. Donald J. Hupp, Hupp and Bauer, 719 Scott Avenue, Suite 200, Wichita Falls, Texas 76301-2606; Mr. Jerry Langdon, Republic Gas Corporation, 1800 West Loop South, Suite 740, Houston, Texas 77027; Mr. Glenn E. Johnson, Graves, Dougherty, Hearon and Moody, 515 Congress Avenue, Suite 2300, Austin, Texas 78701; Mr. Stephen D. Layton, Equinox Oil Company, 10077 Grogan's Mill Road, Suite 475, The Woodlands, Texas 77380; Mr. Jon Rex Jones, Jones Energy, Limited, P.O. Box 787, Albany, Texas 76430; Mr. Cadell S. Liedtke, Costilla Petroleum Corporation, P. O. Box 10369, Midland, Texas 79702; Mr. Robert L. Looney, Texas Mid-Continent Oil and Gas, Association, 1115 San Jacinto Boulevard, Suite 275, Austin, Texas 78701-1906; Mr. Tommy Merritt, P.O. Box 4347, Longview, Texas 75605; Mr. Travis Lynch, Aquila Southwest Pipeline, 100 NE Loop 410, San Antonio, Texas 78216; Mr. J. Neal Miller, Jr., The Chevron Companies, 1005 Congress Avenue, Suite 695, Austin, Texas 78701; Julian G. Martin, Gas Research Institute, 8303 Mopac Expressway, Suite 210A, Austin, Texas 78759; Mr. D. Alex Mills, North Texas O&G Association, 726 Scott, Suite 801, Wichita Falls, Texas 76301; Mr. David Ford Martineau, Pitts Oil Company, 4600 Greenville Avenue, Dallas, Texas 75206; The Honorable Nancy Moffat, State Representative, 9 Village Circle, Suite 450, Westlake, Texas 76262; Mr. D. Nathan Meehan, Ph.D., P.E., Union Pacific Resources, P.O. Box 7, Fort Worth, Texas 76101; The Honorable William J. Murray, Jr., 1906 Scenic Drive, Austin, Texas 78703; Ms. Stephanie Marcus Newell, 12456 Memorial Drive, #454, Houston, Texas 77024; Mr. Philip F. Patman, Patman and Osborn, 515 Congress Avenue, Suite 1704, Austin, Texas 78701-3503; Mr. Joseph I. O'Neill, III, O'Neill Properties, Limited, 410 West Ohio Avenue, Midland, Texas 79701; Mr. R.H. Pickens, The Pickens Company Inc., 8111 Preston Road, Suite 800, Dallas, Texas 75225-6378; Mr. William Osborn, Patman and Osborn, 515 Congress Avenue, Suite 1704, Austin, Texas 78701; Mr. L. Frank Pitts, Pitts Oil Company, 4600 Greenville Avenue, Suite 300, Dallas, Texas 75206; Mr. Mark G. Papa, Enron Oil and Gas, 1400 Smith, Enron Building, Houston, Texas 77002; Mr. Roger Plank, Apache Corporation, 2000 Post Oak Boulevard, Houston, Texas 77056; Mr. Edwin W. Parker II, BHP Petroleum (Americas) Inc., 1360 Post Oak Boulevard, Suite 500, Houston, Texas 77056-3020; Mr. James E. Russell, Russell Petroleum, Inc., P.O. Box 2618, Abilene, Texas 79604; Mr. Jeff Sandefer, Sandefer Capital Partner, Inc. 301 Congress Avenue, Suite 900, Austin, Texas 78701; Mr. Matthew R. Simmons, Simmons and Company International, 700 Louisiana, Suite 5000, Houston, Texas 77002; Mr. Ronald Schultz, Jr., Hoffman and Stephens, 401 west 15th Street, Suite 800, Austin, Texas 78701; Mr. Harry A. Spannaus, Parker and Parsley Petroleum Company, P.O. Box 3178, Midland, Texas 79702; Ms. Kim Vaughan Scrivener, Westchester Gas Company, P.O. Box One, Jonesville, Texas 75659; Mr. Dale W. Steffes, Planning and Forecasting Consultants, P.O. Box 820228, Houston, Texas 77282; Ms. Grace Shore, TEC Well Service, Inc. 2516 West Marshall, Longview, Texas 75604; Mr. Roy Steinhagen, Steinhagen Oil Company, Inc., P.O. Box 20037, Beaumont, Texas 77720-0037; Mr. Gary H. Shores, Bridwell Oil Company, P.O. Box 1830, Wichita Falls, Texas 76307; Mr. Robert F. Stout, Mitchell Energy and Development Corporation, P.O. Box 4000, The Woodlands, Texas 77387-4000; Mr. Rick Strange, 4124 Fox Follow Court, Midland, Texas 79707; Mr. Billy G. Thompson, Texas Energy Week, 101 West First Street, Suite 330-1, Austin, Texas 78701-2932; Mr. Paul M. Strunk, American Shoreline, Inc., 802 North Caranhua Street, Suite 1250, Corpus Christi, Texas 78470; Mr. Chester R. Upham, P.O. Box 940, Mineral Wells, Texas 76068; Mr. Brian Sullivan, P.O. Box 12127, Austin, Texas 78711; Mr. George Venner, 114 Highway 80 East, Mesquite, Texas 75182; Mr. Scott Taliaferro, Jr., TDC Engineering, Inc., P.O. Box 240, Abilene, Texas 79604; Mr. Mack Wallace, Hughes and Luce, L.L.P., 111 Congress Avenue, Suite 900, Austin, Texas 78701; Mr. Andrew M. Taylor, Bracewell and Patterson, 100 Congress Avenue, Suite, 1900, Austin, Texas 78701-4042; Mr. William F. Ward, Meridian Oil Inc., P.O. Box 4239, Houston, Texas 77210, Ms. Gail Watkins, Haynes and Boone, 600 Congress Avenue, Suite 1600, Austin, Texas 78701; Mr. Rex H. White, Jr., Hutcheson and Grundy, 111 Congress Avenue, Suite 2700, Austin, Texas 78701-4043; Mr. Jack M. Wilhelm, Mobil Exploration and Producing U.S., Inc., P. O. Box 633, Midland, Texas 79702-0633; The Honorable Ric Williamson, State Representative, P.O. Box 78758-2910; and Ms. Lori Wrotenbery, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

Appointments Made December 1, 1995

To be a **Ninetieth Judicial District Court, Stephens and Young Counties**, until the next General Election and until his successor shall be duly elected and qualified: Stephen O. Crawford, HC 60, Box 369, Graham, Texas 76450. Mr. Crawford will

be replacing Judge C. J. Eden Breckenridge who retired.

To be a member of the **Texas Board on Aging** for a term to expire February 1, 2001: Jan Patterson, 9854 Estate Lane, Dallas, Texas 75238. Mrs. Patterson is being reappointed.

To be a member of the **Texas Aerospace Commission** for a term to expire February 1, 2001: T. C. Selman, II, #4 Lakewood Lane, Lake Jackson, Texas 77566. Mr. Selman will be replacing Joseph P. Allen, IV of Houston whose term expired.

To be a member of the **Texas Aerospace Commission** for a term to expire February 1, 1997: Norma H. Webb, 1703 Douglas, Midland, Texas 79701. Mrs. Webb will be filling the unexpired term of Stephanie A. Coleman of San Antonio who resigned.

To be a member of the **Texas Aerospace Commission** for a term to expire February 1, 1997: R. Walter Cunningham, 5110 San Felipe, #162W, Houston, Texas 77056. Mr. Cunningham will be filling the unexpired term of James Gary Lipe of Fort Worth who resigned.

To be a member of the **Texas Aerospace Commission** for a term to expire February 1, 1999: William Earl Juett, 2400 West 26th Street, Amarillo, Texas 79109. Mr. Juett will be replacing Jack Webb of Houston who resigned.

To be a Chairman of the **Texas Agricultural Finance Authority Board of Directors** for a term at the pleasure of the Governor.

To be a member of the **Texas Agricultural Finance Authority Board of Directors** for a term to expire January 1, 1997: Charles Eugene Legg, 508 Cherry, Dumas, Texas 79029. Mr. Legg will be replacing Betty M. Condra of Lubbock whose term expired.

To be a member of the **Texas Agricultural Finance Authority Board of Directors** for a term to expire January 1, 1996: Danny E. Peggram, 15030 CR 498, Lindale, Texas 75771. Mr. Peggram will be replacing Luis Mata of El Paso who resigned.

To be a member of the **Texas Agricultural Finance Authority Board of Directors** for a term to expire January 1, 1997: Mark W. Jones, P.O. Box 185, Menard, Texas 76859. Mr. Jones will be replacing Judge Brad Rowland of Anson whose term expired.

To be a member of the **Texas Agricultural Finance Authority Board of Directors** for a term to expire January 1, 1997: The Honorable Deborah Herber, 1017 Oakridge, Pleasanton, Texas 78064. Judge Herber will be replacing Commissioner Bennie Claunch of Bula whose term expired.

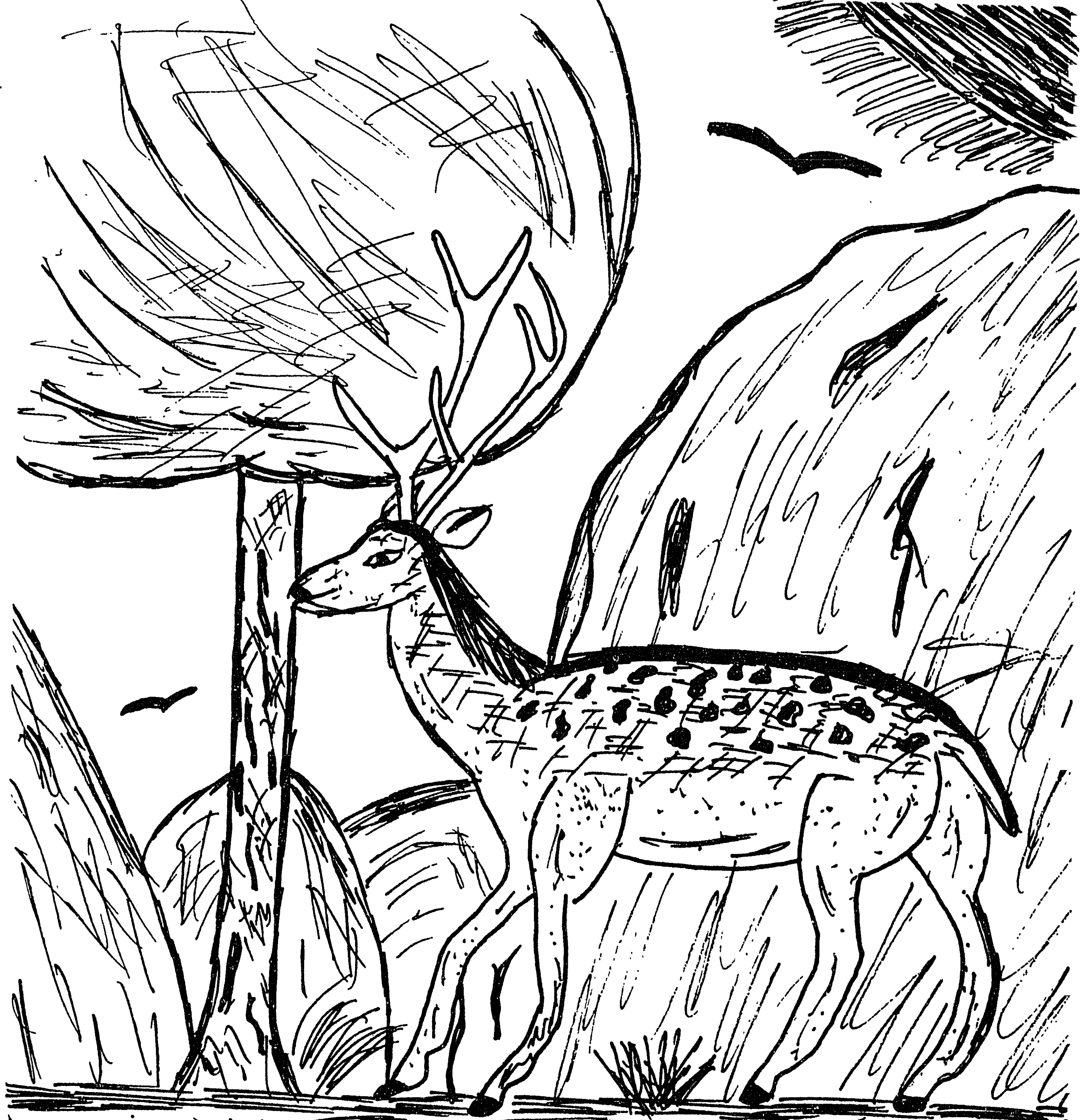
To be a member of the **Nominations Committee for the Governor's Awards for Excellence in the Arts, Humanities, and Sciences** for terms at the pleasure of the Governor: William P. Wright, Jr., 1415 Tanglewood, Abilene, Texas 79605; Lana E. Williams Smith, 3508 Oakdale Street, Houston, Texas 77004; Catherine Blaffer Taylor, 1203 Country Club Drive, Midland, Texas 79701. These appointments are being made pursuant to HCR 92, 74th Legislature.

Appointments Made December 4, 1995

To be a member of the **129th Judicial District Court, Harris County,** until the next General Election and until his successor shall be duly elected and qualified: Patrick W. Mizell, 4418 Tonawanda, Houston, Texas 77035. Mr. Mizell will be replacing Judge Greg Abbott of Houston who resigned.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515823 George W. Bush
Governor of Texas



Name: Juana Gopnzalez
Grade: 12
School: Harlandale High School, Harlandale ISD

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-95-074 (ID#-30899). Request from The Honorable Sonya Letson, County Attorney, Potter County, 303 Courthouse, Amarillo, Texas 79101, concerning whether the Government Code, §25.0005 or the Government Code, §25.1902 controls the amount of salary Potter County must pay the judges of its county courts at law and related question.

Summary of Opinion. In the context of the Government Code, §25. 1902(h), which provides that the judge of a county court at law in Potter County "may be paid an annual salary that is at least equal to the amount that is $1,000 less than the total salary paid the district judge in the county," the term "total salary" does not include the state's or county's contributions pursuant to the Federal Insurance Contributions Act, 26 United States Code, Chapter 21. On the other hand, the Government Code, §25.0005(a), which generally requires a county commissioners court in a county that collects fees and costs pursuant to the Government Code, §51.702 to pay a statutory county court judge "an amount that is at least equal to the amount that is $1,000 less than the total annual salary received by a district judge in the county," expressly defines the phrase "total annual salary" to include FICA contributions. Thus, the minimum salary §25.0005(a) establishes is higher than the minimum salary provided in §25.1902(h). But see Act of May 16, 1995, 74th Legislature, Regular Session, Chapter 242, §1, 1995 Texas Session Law Service 2151, 2151 (repealing §25.1902(h)). Assuming that the Potter County commissioners court has set the salary of its statutory county court judges at the level the Government Code, §25.0005(a) stipulates, it has complied with the law.

TRD-9515562

LO-95-075 (ID#-34011). Request from The Honorable Barry B. Telford, Chair, Committee on Pensions and Investments, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether, subsequent to the merger of a municipality's pension plan for volunteer fire fighters, established under Texas Civil Statutes, Article 6243e, with the Volunteer Fire Fighters' Relief and Retirement Fund, established under Texas Civil Statutes, Article 6243e.3, the state board of trustees of the Volunteer Fire Fighters' Relief and Retirement Fund may require the municipality to contribute additional funds to pay benefits for retired fire fighters who receive benefits under Texas Civil Statutes, Article 6243e.

Summary of Opinion. Texas Civil Statutes, Article 6243e.3, §11, provides the procedure by which a municipality that has established a local pension plan for its volunteer fire fighters under Texas Civil Statutes, Article 6243e may merge the plan with the statewide pension system established pursuant to Article 6243e.3. For purposes of Article 6243e.3, §11(h), "unfunded prior-service cost" includes only the cost the governing body of such a municipality must pay the 411 system fund for nonretired, active fire fighters who have accrued benefits under the local, Article 6243e plan. "Unfunded prior-service cost" does not include benefits retired fire fighters or their spouses receive under the Article 6243e plan.

Pursuant to §11(h), a municipality's unfunded prior-service cost must be calculated at the time the municipality's Article 6243e plan and the statewide Article 6243e.3 system merge. The board of trustees of the statewide pension system fund are not authorized, subsequent to the merger, to seek additional funds from the municipality for unfunded prior-service cost. The board may, however, require the municipality to pay, on an annual basis, the amount retirees or spouses are entitled to receive under the municipality's Article 6243e plan.

TRD-9515563

LO-95-076 (ID#-33343). Request from Honorable James L. Anderson, Jr., Aransas County Attorney, 301 North Live Oak Street, Rockport, Texas 78382, concerning whether the Aransas County Navigation District Number 1 may convert from a Chapter 62, Water Code, navigation district into a Chapter 63, Water Code, district.

Summary of Opinion. The Water Code, §63.039 authorizes the Aransas County Navigation District Number 1, which we understand to be a navigation district operating under Article XVI, Section 59 of the Texas Constitution and organized pursuant to Water Code, Chapter 62, to convert to a "self-liquidating district operating under" Chapter 63. In doing so, however, the district must comply with the Water Code, §§63.040-63.044.

TRD-9515564

LO-95-077 (RQ-834). Request from Robert S. Martin, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927, concerning whether the State Library and Archives Commission may deny federal grant monies to a municipal library that annually lends more than 20,000 items to individuals not residing in the municipality based solely upon the municipal library's provision of services to nonresidents.

Summary of Opinion. The Texas State Library and Archives Commission is not authorized by the Government Code, §441.009, or any other federal or state statute or regulation, to deny a federally funded Major Urban Resource Library grant to a municipal library merely because the library has failed to provide library services to nonresidents in compliance with the commission's grant guidelines.

TRD-9515565

♦ ♦ ♦

Open Records Decision

ORD-634 (RQ-775). Request from JoAnn S. Wright, School Attorney, Arlington Independent School District, 1203 West Pioneer Parkway, Arlington, Texas 76013-6246, concerning whether a school district may deny a request for information that is protected as "education records" under the federal Family Educational Rights and Privacy Act without seeking a determination from the attorney general under Government Code, §552.301.

Summary of Decisions. An educational agency or institution may withhold from public disclosure personally identifiable nondirectory information in "education records" as defined in the Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. §1232g, which information is excepted from required public disclosure by Government Code §552.026, without the necessity of requesting an attorney general decision as to that exception. Furthermore, an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by Government Code §552.101 as "information considered to be confidential by law," without the necessity of requesting an attorney general decision as to that exception. Finally, an educational agency or institution that is also state-funded may withhold from public disclosure information that is excepted from required public disclosure by Government Code §552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception.

An educational agency or institution that seeks an attorney general decision under the Texas Open Records Act should, before submitting "education records" to this office, either obtain parental consent to the disclosure of personally identifiable nondirectory information in the records or edit the records to make sure that they contain no personally identifiable nondirectory information.

TRD-9516058

♦ ♦ ♦

Requests for Opinion

(RQ-855). Request from Vernon M. Arrell, Commissioner, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Austin, Texas 78751-2399 and Mary Elder, Executive Director, Texas Interagency Council on Early Childhood Intervention, 1100 West 49th Street, Austin, Texas 78756-3199, concerning purchase of liability insurance for state officers and employees under the 1996-97 General Appropriations Act; reconsideration of Attorney General Opinion DM-346 (1995).

TRD-9515561

♦ ♦ ♦

TEXAS ETHICS COMMISSION

The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

Requests for copies of the full text of opinions or questions on particular submissions should be addressed to the Office of the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Advisory Opinion Request

AOR-331 The Texas Ethics Commission has been asked to consider whether an officeholder may use political contributions to have a deer or other animal stuffed and mounted to display in a capitol office.

Issued in Austin, Texas, on December 7, 1995.

TRD-9516078 Lucia Dodson
Executive Assistant
Texas Ethics Commission

Filed: December 8, 1995

Name: Mariano Sanchez
Grade: 10
School: Harlandale High School, Harlandale ISD

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 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 4. Employment Practices

Subchapter E. Sick Leave Pool Program

• 43 TAC §4.54, §4.56

The Texas Department of Transportation adopts on an emergency basis amendments to §4.54 and §4.56, concerning contributions and withdrawal to the department's sick leave pool program.

Government Code, Chapter 661 authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. The General Appropriations Act, Fiscal Years 1996-1997, Article IX, §8(2) defines family members and provides conditions when sick leave may be taken by an employee for illness of the employee or a family member.

The commission on May 25, 1995, proposed the adoption of new §§4.50-4.56, concerning the department's employee sick leave pool program. The commission on September 28, 1995, adopted those sections with changes to §4.54 and §4. 56.

The final adoption computer diskette as filed with the *Texas Register* did not reflect the changes to §4.54 and §4.56. Title 1, Texas Administrative Code, §91.135(d), prohibits the *Texas Register* from making corrections to adopted rules after the effective date of the rules.

The proposed amendments to §4.54 and §4.56 are technical amendments which when permanently adopted will accurately reflect the changes previously adopted by the commission. The permanent adoption of these amendments will allow the accurate version of §4.54 and §4.56 to be published in the Texas Register.

The amendments to §4.54 provide that the health care provider certification is confidential, unless otherwise required by law, and may only be released to the human resources officer if he or she can demonstrate a legitimate business necessity for this information. The amendments to §4.56 clarify that hours from the sick leave pool may be granted in a block of time and used on an as needed basis and that the pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists. The amendments also provide that the pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or not available.

It is necessary to adopt these amendments to §4.54 and §4.56 on an emergency basis to prevent economic hardship to employees, to address employees' or their family members' current catastrophic medical needs, and to facilitate the contribution and distribution of sick leave pool hours so that employees are not adversely affected by the technical error.

The amendments are adopted on an emergency basis under 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 Government Code, Chapter 661, which authorizes the department to adopt rules administering a sick leave pool program.

§4.54. Contributions.

(a) Restrictions.

(1) (No change.)

(2) Contributions may not be specified for use by a certain individual or **within a specific office or work unit.**

(b) Procedures.

(1) The department will encourage **all employees, including** an employee who is planning to retire, terminate employment, or resign, to contribute sick leave hours [upon separation], if the employee has not already contributed the amount allowed.

(2)-(4) (No change.)

§4.56. Withdrawals.

(a) Restrictions.

(1) (No change.)

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. The certification should include the diagnosis and prognosis of the condition or combination of conditions and the date the employee or employee's immediate family member will be able to return to normal activities. If the certification is for the employee's immediate family member, it should also include the amount of time the employee will be needed to provide primary care. The health care provider certification shall be in a form prescribed by the pool administrator. **This information is confidential, unless otherwise required by law, and may only be released to the human resources officer if he or she can demonstrate a legitimate business necessity for this information.**

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

(6) The maximum hours that may be **granted** [transferred] per request is 720 hours (90 calendar days) or one third of the balance of the pool, whichever is less at the time the request is received. The maximum number of hours that may be **granted** [transferred] per catastrophic condition is 720 hours (90 calendar days).

(7)-(12) (No change.)

(13) **Hours from the sick leave pool may be granted in a block of time and used on an as needed basis. The pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists.** [The pool administrator may approve the use of a withdrawal on an intermittent basis provided that the employee justifies his or her need for such use and supports the amount of time the employee expects to use within a three month period, with documentation from his or her health care provider. The employee may request an extension of time

used intermittently if the need still exists after the three month period is over.]

(14) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis **when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or not available**. If the employee is determined to be able to return to work sooner than a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require [that] the unused portion of a withdrawal be returned to the sick leave pool.

(15) -(16) (No change.)

(b) (No change.)

Issued in Austin, Texas, on December 6, 1995.

TRD-9515904 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 6, 1995

Expiration date: April 4, 1996

For further information, please call: (512) 463-8630

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Telephone

- **16 TAC §23.99**

The Public Utility Commission of Texas proposes new §23.99, relating to unbundling of the incumbent local exchange company (ILEC) network to the extent ordered by the Federal Communications Commission (FCC). The rule is authorized by the Public Utility Regulatory Act of 1995 §3.452(a), which requires an incumbent local exchange company, at a minimum, to unbundle its network to the extent ordered by the FCC.

Under the rule, ILECs are required to unbundle their networks pursuant to current as well as future FCC requirements. ILECs serving one million or more access lines are subject to the provisions of the rule upon the effective date of the rule while ILECs serving fewer than one million access lines have to unbundle their networks upon a bona fide request. If an ILEC with interstate tariffs in effect does not propose intrastate rates that are at parity with its interstate rates or if an authorized ILEC does not adopt the rates of another ILEC, then the rates of the ILEC are subject to certain costing and pricing standards set forth in the rule. The proposed rule provides definitions for terms used in the section, establishes deadlines and procedures for the designation of unbundled services to appropriate baskets, for filing of tariff changes required by the rule and for Commission processing of tariff filings.

Martin Wilson, Deputy Director, Office of Policy Development, has determined that for the first five-year period the section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Mr. Wilson also has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of enforcing the rule as proposed is the ability of carriers to purchase only those components of the LEC network that they need to compete with the local exchange carrier. The enhanced competition in telecommunications markets should provide additional service choices to customers, increase incentives for efficiency and lower prices, and facilitate new and innovative services. The access to unbundled services and the resulting positive impact on competition in telecommunications markets are expected to have a positive effect on small and large businesses. There are no anticipated economic costs to persons who are required to comply with the proposed rule because it ensures the recovery of appropriate costs.

Mr. Wilson also has determined that for each of the first five years the section is in effect, there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

The Commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The Commission will consider the costs and benefits in deciding whether to adopt the section.

Comments on the proposal (15 copies) may be submitted to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 14555. A public hearing on this matter will be held at 10:00 a.m. on February 6, 1995, at the Commission's offices at 7800 Shoal Creek Boulevard, Austin, Texas.

The new rule is proposed under the Public Utility Regulatory Act of 1995, §1.101, 74th Legislature, Regular Session 1995, as amended by House Bill 2128, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §3.051, which provides that the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace; and §3.452(a) which addresses unbundling of the incumbent local exchange company's network to the extent ordered by the FCC.

The following statute is affected by this rule: the Public Utility Regulatory Act of 1995, §1.101 and §3.452, 74th Legislature, Regular Session 1995, as amended by House Bill 2128.

§23.99. Unbundling.

(a) Purpose. The purpose of this section is to implement the Public Utility Regulatory Act of 1995 (PURA) §3. 452(a) which requires an incumbent local exchange company, at a minimum, to unbundle its network to the extent ordered by the Federal Communications Commission (FCC).

(b) Application.

(1) The provisions of this section apply, as of its effective date, to each incumbent local exchange company (ILEC) that serves one million or more access lines.

(2) The provisions of this section apply upon a bona fide request to each ILEC that serves 31,000 or more access lines but fewer than one million access lines.

(3) The provisions of this section apply, after September 1, 1998, upon a bona fide request to each ILEC that serves fewer than 31,000 access lines.

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

(1) Bona fide request–A written request to an ILEC from a certificated telecommunications utility (CTU) as that term is defined in §23.3 of this title (relating to Definitions) or an enhanced service provider, requesting that the ILEC unbundle its network/services to the extent ordered by the FCC. The request should indicate an intent to purchase the service subject to parties involved being able to negotiate mutually acceptable rates, terms, and conditions.

(2) Enhanced Service Provider–A company that offers services over transmission facilities that utilize computer-based processing applications to provide the customer with value-added telephone services.

(3) Incumbent Local Exchange Company (ILEC)–A local exchange com-

pany that has a certificate of convenience and necessity on September 1, 1995.

(4) Open Network Architecture-The overall design of an ILEC's basic network facilities and services to permit all users of the basic network, including the enhanced services operations of an ILEC and its competitors, to interconnect to specific basic network functions on an unbundled and non-discriminatory basis.

(5) Signalling for tandem switching-The carrier identification code (CIC) and the OZZ code, or equivalent information needed to perform tandem switching functions. The CIC identifies the interexchange carrier and the OZZ digits identifies the call type and thus the interexchange carrier trunk to which traffic should be routed.

(6) Unbundling-The disaggregation of the ILEC's network/service to make available the individual network functions or features or rate elements used in providing an existing service.

(d) Unbundling requirements.

(1) Unbundling pursuant to current FCC requirements.

(A) Each ILEC that is subject to this section shall unbundle as specified in clauses (i)-(ii) of this subparagraph. An ILEC with interstate tariffs in effect shall unbundle its network/services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for these unbundled rate elements.

(i) The ILEC's network shall be unbundled according to the FCC's Open Network Architecture requirements; and

(ii) Signalling shall be unbundled for tandem switching.

(B) Each ILEC that serves one million or more access lines shall unbundle its network/services in compliance with subparagraph (A) of this paragraph, upon the effective date of this section.

(C) Each ILEC that serves 31,000 or more access lines but fewer than one million access lines, shall unbundle its network/services in compliance with subparagraph (A) of this paragraph, upon a bona fide request.

(D) Each ILEC that serves fewer than 31,000 access lines, shall unbundle its network/services in compliance with subparagraph (A) of this paragraph, after September 1, 1998, upon a bona fide request.

(2) Unbundling pursuant to future FCC requirements.

(A) An ILEC shall unbundle its network as defined in subsection (c)(6) of this section for intrastate services to the extent ordered, in the future, by the FCC for interstate services. An ILEC with interstate tariffs in effect shall unbundle these services under the same terms and conditions, except for price, as it unbundles its interstate services, unless ordered otherwise by the commission. The ILEC shall also not impose a charge or rate element that is not included in its interstate tariffs for unbundling.

(B) Each ILEC that serves one million or more access lines shall unbundle its network/services in compliance with subparagraph (A) of this paragraph, upon the effective date of this section. In the event an ILEC that has interstate tariffs in effect and serves one million or more access lines does not file tariff filings pursuant to subsection (g)(2) of this section to comply with the requirements of subparagraph (A) of this paragraph, a CTU or enhanced service provider may request the ILEC to unbundle its network/services through a bona fide request before the CTU or enhanced service provider requests that the matter be docketed for adjudication.

(C) Each ILEC that serves 31,000 or more access lines but fewer than one million access lines, shall unbundle its network/services in compliance with subparagraph (A) of this paragraph, upon a bona fide request.

(D) Each ILEC that serves fewer than 31,000 access lines, shall unbundle its network/services in compliance with subparagraph (A) of this paragraph, after September 1, 1998, upon a bona fide request.

(e) Costing and pricing of services in compliance with this section.

(1) Cost Standard.

(A) The cost standard for unbundled services shall be the long run incremental costs (LRIC) of providing the service. For ILECs that are subject to §23.91 of this title (relating to Long Run Incremental Cost Methodology for LEC Services), the cost standard for unbundled services required under subsection (d)(2) of this section shall be the long run incremental costs pursuant to that rule.

(B) The long run incremental cost standard shall not apply if the ILEC proposes rates that are the same as the rates in effect for the carrier's interstate provision of the same, equivalent or substitutable service or if the ILEC adopts rates of another ILEC pursuant to paragraph (2)(B) of this subsection.

(C) Any ILEC subject to §23.91 of this title shall file LRIC studies pursuant to that rule, by December 31, 1996, for unbundled components specified in subsection (d)(1) of this section.

(2) Pricing.

(A) An ILEC may propose rates that are at parity with the rates in effect for the carrier's interstate provision of the same, equivalent or substitutable service. The ILEC shall amend its intrastate rates, terms and conditions to be consistent with subsequent revisions in its interstate tariffs providing for unbundling.

(B) ILECs that are not subject to §23.91 of this title may propose rates, without cost justification, that are the same as the rates in effect for the carrier's interstate provision of the same service or adopt the rates of another ILEC that are developed pursuant to the requirements of this section.

(C) If an ILEC proposes rates that are not at parity with the rates in effect for the carrier's interstate provision of the same, equivalent or substitutable service or does not adopt the rates of another ILEC pursuant to subparagraph (B) of this paragraph, the following requirements shall apply to any service approved under this section:

(i) Unless waived or modified by the presiding officer, the service shall be offered at the same price throughout the ILEC's system.

(ii) Unless waived or modified by the presiding officer, the service shall be offered in every exchange served by the ILEC, except exchanges in which the ILEC's facilities do not have the technical capability to provide the service.

(iii) If the sum of the rates of the new unbundled components is equal to the price of the original bundled service and if the ratio of the rate of each unbundled component to its LRIC is the same for each unbundled component, there shall be a rebuttable presumption that the rate of an unbundled component is reasonable.

(D) Rates based upon the new LRIC cost studies required under paragraph (1)(C) of this subsection shall be subject to the pricing rulemaking referred to in §23.91(p) of this title to the same extent as any other service offered by an ILEC subject to the pricing rule.

(f) Basket Assignment. An ILEC electing incentive regulation under subtitle H of PURA shall, in its compliance tariff filed pursuant to subsection (g) of this section, include a proposal for assigning the unbundled components to the appropriate basket.

(g) Filing Requirements.

(1) Initial filing to implement subsection (d)(1) of this section in effect for ILECs serving one million or more access lines. An ILEC serving one million or more access lines shall file initial tariff amendments to implement the provisions of subsection (d)(1) of this section not later than 60 days from the effective date of this section. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(2) Filings to comply with subsections (d)(2) and (e)(2)(A) of this section for ILECs serving one million or more access lines. An ILEC serving one million or more access lines shall file tariff amendments to implement the provisions of subsections (d)(2) and (e)(2)(A) of this section, within 60 days of the effective date of its interstate tariff providing for unbundling. The proposed effective date of such filings shall be not later than 30 days after the filing date, unless suspended. Tariff revisions filed pursuant to this subsection shall not be combined in a single application with any other tariff revision.

(3) Filings to implement subsection (d)(2) of this section in response to a bona fide request to ILECs serving one million or more access lines. The ILEC shall unbundle its network/services within 60 days from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.

(4) Filings to implement subsection (d)(1) and (2) of this section for ILECs serving fewer than one million access lines. If an ILEC serving fewer than one million access lines receives a bona fide request, it shall unbundle its network/services pursuant to the bona fide request within 90 days from the date of receipt of the bona fide request or shall have the burden of demonstrating the reasons for not unbundling pursuant to the bona fide request.

(h) Requirements for notice and contents of application in compliance with this section.

(1) Notice of Application. The presiding officer may require notice to be provided to the public as required by Subchapter D of the Commission's Procedural Rules. The notice shall include, at a minimum, a description of the service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on ILEC's revenues if the service is approved, the proposed effective date for the service, and the following language: Persons who wish to comment on this application should notify the commission by specified date, ten days before the proposed effective date. Requests for further information should be mailed to the Public Utility Commission of Texas, (insert the commission's current address), or you may call the Public Utility Commission's Public Information Office at (insert the commission's current telephone numbers), or (insert current commission telephone number for text telephone teletypewriter for the deaf).

(2) Contents of application for an ILEC required to remain in compliance with subsection (g)(1)-(3) of this section An ILEC shall request approval of an unbundled service by filing an application that complies with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Legal Division of the Commission's Office of Regulatory Affairs and one copy to the Office of Public Utility Counsel. The application shall contain the following information:

(A) a description of the proposed service and the rates, terms and conditions, under which the service is proposed to be offered and a demonstration that the proposed rates, terms and conditions are in conformity with the requirements in subsections (d), (e), and (f) of this section, as applicable;

(B) a statement detailing the type of notice, if any, the ILEC has provided or intends to provide to the public regarding the application and a brief statement explaining why the ILEC's notice proposal is reasonable;

(C) a copy of the text of the notice, if any;

(D) a long run incremental cost study supporting the proposed rates, if the rates are not at parity with the carrier's interstate rates;

(E) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service, including all workpapers and supporting documentation relating to computations or assumptions contained in the application, if the rates are not at parity with the carrier's interstate rates;

(F) projection of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long run incremental costs of providing the service, as well as a contribution for joint and/or common costs, if the rates are not at parity with the carrier's interstate rates;

(G) explanation that the proposed rates and terms of the service are not unreasonably preferential, prejudicial, or discriminatory, subsidized directly or indirectly by regulated monopoly services, or predatory or anticompetitive;

(H) the information required by §23.57 of this title (relating to Telecommunications Privacy); and

(I) any other information which the ILEC wants considered in connection with the commission's review of its application.

(3) Contents of application for an ILEC required to remain in compliance with subsection (g)(4) of this section. An ILEC shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the Legal Division of the Commission's Office of Regulatory Affairs and one copy shall be delivered to the Office of Public Utility Counsel. The application shall contain the following:

(A) contents of application required by paragraph (2)(A), (B), (C), (H) and (I) of this subsection;

(B) contents of application required by paragraph (2)(D), (E), (F) and (G) of this subsection, if the rates are not at parity with the carrier's interstate rates or the rates of another ILEC;

(C) a description of the proposed service(s) and the rates, terms, and conditions under which the service(s) are proposed to be offered and an affidavit from the general manager or an officer of the ILEC approving the proposed service;

(D) a notarized affidavit from a representative of the ILEC affirming that the rates are just and reasonable and are not unreasonably preferential, prejudicial, or discriminatory; subsidized directly or indirectly by regulated monopoly services; or predatory, or anticompetitive; and

(E) projections of the amount of revenues that will be generated by the proposed service.

(i) Commission processing of application

(1) Administrative review. An application considered under this section may be reviewed administratively unless the ILEC requests the application be docketed or the presiding officer, for good cause, determines at any point during the review that the application should be docketed.

(A) The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be according to the requirements in subsection (g) of this section.

(B) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within 10 working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.

(C) While the application is being administratively reviewed, the commission staff and the staff of the Office of the Public Utility Counsel may submit requests for information to the ILEC. Six copies of all answers to such requests for information shall be filed with Central Records and one copy shall be provided to the Office of Public Utility Counsel within 10 days after receipt of the request by the ILEC.

(D) No later than 20 days after the filing date of the sufficient application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations concerning the application.

(E) No later than 35 days after the effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the ILEC's application.

(2) Approval or denial of application. The application shall be approved by the presiding officer if the proposed tariff meets the requirements in this section. If, based on the administrative review, the presiding officer determines, that one or more of the requirements not waived have not been met, the presiding officer shall docket the application.

(3) Standards for docketing. The application may be docketed pursuant to §22.33(b) of the commission's Procedural Rules.

(4) Review of the application after docketing. If the application is docketed, the operation of the proposed rate schedule shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the effective date, whichever is later. Affected persons may move to intervene in the docket, and the presiding officer may schedule a hearing on the merits. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

(5) Interim rates. For good cause, interim rates may be approved after docketing. If the service requires substantial initial investment by customers before they may receive the service, interim rates shall be approved only if the ILEC shows, in addition to good cause, that it will notify each customer prior to purchasing the service that the customer's investment may be at risk due to the interim nature of the service.

(j) Commission processing of waivers. Any request for modification or waiver of the requirements of this section shall include a complete statement of the ILEC's arguments and factual support for that request. The presiding officer shall rule on the request expeditiously.

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 December 7, 1995.

TRD-9515985 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 458-0100

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Part III. Texas Alcoholic Beverage Commission

Chapter 45. Marketing Practices

Subchapter A. Standards of Identity for Distilled Spirits

• 16 TAC §45.4

The Texas Alcoholic Beverage Commission proposes an amendment to §45. 4(10), concerning standards of identity for distilled spirits. This section defines the criteria by which flavored brandy, gin, rum, vodka and whiskey are distinguished and identified. The section further specifies certain information which must be disclosed on labels of certain distilled spirits.

Allen Johnson, Supervisor of Marketing Practices at the Alcoholic Beverage Commission, has determined that this amendment would impose no fiscal implications for state or local units of government.

Randy Yarbrough, Assistant Administrator of the Alcoholic Beverage Commission, has determined that, for the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be simplification of the commission's label approval process, conformance with similar federal regulations and facilitating the introduction of affected products into the marketplace. There will be no effect on small businesses or economic cost to persons who are required to comply with this rule.

Comments on the proposal may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711.

The amendment is proposed pursuant to authority granted by §5.31 and §5. 38 of the Alcoholic Beverage Code.

Cross reference: §1.04(3), Alcoholic Beverage Code.

§45.4. The Standards of Identity. Standards of identity for the several classes and types of distilled spirits set forth in this section shall be as follows:

(1)-(9) (No change.)

(10) Class 10-flavored brandy, flavored gin, flavored rum, flavored vodka, and flavored whiskey. "Flavored brandy," "flavored gin," "flavored rum, " "flavored vodka," and "flavored whiskey" are brandy, gin, rum, vodka, and whiskey, respectively, to which have been added natural flavoring materials, with or without the addition of sugar, and bottled at not less than 60 proof. The name of the predominate flavor shall appear as a part of the designation. If the finished product contains more than 2 1/2%

by volume of wine, the kinds and percentages by volume of wine must be stated as a part of the designation, except that a flavored brandy may contain an additional 12 1/2% by volume of wine, without label disclosure, if the additional wine is derived from the particular fruit corresponding to the labeled flavor of the product. [If the product is less than 70 proof, it must be labeled "low proof", "diluted" or some identification approved by the commission to indicate that the product is lower in alcohol content.]

(11)-(13) (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 December 6, 1995.

TRD-9515926 Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 206-3204

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TITLE 22. EXAMINING BOARDS

Part X. Texas Funeral Service Commission

Chapter 203. Licensing and Enforcement–Specific Substantive Rules

The Texas Funeral Service Commission proposes repeal of §§203.1, 203.7-203.28, and the adoption of new §203.1, 203.7-203.31, concerning definitions, price disclosures, misrepresentations, required purchase of funeral goods or funeral services, services provided without prior approval, retention of documents, comprehension of disclosures, declaration of intent, display of funeral merchandise, requirements for reciprocal licenses, minimum standards for embalming, clarification of other facilities necessary in a preparation room, clarification of definition of directing a funeral, clarification of facilities in which funeral services may be conducted, clarification of other itemized services provided by funeral home staff, presentation of required price lists, consumer brochures, and written memorandum or purchase agreements, required documentation for embalming, professional conduct, franchise tax, clarification of definition of "Unreasonable Time", sponsors of provisional licensees, establishment licenses, funeral establishment names, continuing education as a condition for license renewal, inspection as requirement for renewal of establishment license; fees.

Marc Allen Connelly, General Counsel, has determined that for the first five-year period the proposed repealed and new rules will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Connelly also has determined that for each year of the first five years the repealed and new rules are in effect the public benefit anticipated as a result of enforcing the rules will be to prevent confusion by conforming state to federal regulations. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed repealed and new rules may be submitted to Marc Allen Connelly, General Counsel, Texas Funeral Service Commission, 8100 Cameron Road, Suite 550, Austin, Texas 78753.

• 22 TAC §§203.1, 203.7-203.28

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

The repeals are proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which authorize the Texas Funeral Service Commission to adopt rules to administer the statute.

The proposed repeals affect Texas Civil Statutes, Article 4582b.

§203.1. Definitions.

§203.7. Comprehension of Disclosures.

§203.8. Telephone Price Disclosures.

§203.9. Price Disclosure.

§203.10. Display of Funeral Merchandise.

§203.11. Clarification of Fraudulent or Deceptive Conduct in Providing Funeral Services or Merchandise.

§203.12. Requirements for Reciprocal Licenses.

§203.13. Minimum Standards for Embalming.

§203.14. Clarification of Other Facilities Necessary in a Preparation Room.

§203.15. Clarification of Definition of Directing a Funeral.

§203.16. Clarification of Facilities in Which Funeral Services May Be Conducted.

§203.17. Clarification of Other Itemized Services Provided by Funeral Home Staff.

§203.18. Presentation of Required Price Lists, Consumer Brochures, and Written Memorandum or Purchase Agreements.

§203.19. Required Documentation for Embalming.

§203.20. Location of Retained Records.

§203.21. Professional Conduct.

§203.22. Franchise Tax.

§203.23. Clarification of Definition of "Unreasonable Time."

§203.24. Sponsors of Provisional Licensees.

§203.25. Establishment Licenses.

§203.26. Funeral Establishment Names.

§203.27. Continuing Education as a Condition for License Renewal.

§203.28. Inspection as a Requirement for Renewal of Establishment License; Fees.

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 December 11, 1995.

TRD-9516139 Allen Connelly
General Counsel
Texas Funeral Service Commission

Proposed date of adoption: January 31, 1996

For further information, please call: (512) 834-9992

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• 22 TAC §§203.1, 203.7-203.31

The new sections are proposed pursuant to Texas Civil Statutes, Article 4582b, §5, which authorize the Texas Funeral Service Commission to adopt rules to administer the statute.

The proposed new sections affect Texas Civil Statutes, Article 4582b.

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

Alternative container–An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed

interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

Cash advance item-Any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

Casket-A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

Commission-The Texas Funeral Service Commission.

Cremation-A heating process which incinerates human remains.

Crematory-Any person, partnership or corporation that performs cremation and sells funeral goods.

Direct cremation-Disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

Funeral ceremony-A service commemorating the deceased with the body present.

Funeral goods-Goods which are sold or offered for sale directly to the public for use in connection with funeral services.

Funeral provider-Any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

Funeral services-Any services which may be used to:

(A) care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(B) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

Immediate burial-Disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

Memorial service-A ceremony commemorating the deceased without the body present.

Outer burial container-Any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

Person-Any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

Services of funeral director and staff-The basic services, not to be included in prices of other categories that must be stated separately on the general price list or written memorandum, that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§203.7. Price disclosures.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) Preventive requirements. To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.9(b)(1) of this title (relating to Other required purchase of funeral goods or funeral services), funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2)-(4) of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (4) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts,if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (4) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) General price list.

(A) Availability of general price list.

(i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(I) the prices of funeral goods or funeral services;

(II) the overall type of funeral service or disposition; or

(III) specific funeral goods or funeral services offered by the funeral provider.

(ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.10(a)(2) of this title (relating to Prior approval for embalming), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.

(iii) The list required in clause (i) of this subparagraph must contain at least the following information:

(I) the name, address, and telephone number of the funeral provider's place of business;

(II) a caption describing the list as a "general price list"; and

(III) the effective date for the price list.

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(iii) the price range for the direct cremations offered by the funeral provider, together with:

(I) a separate price for a direct cremation where the purchaser provides the container;

(II) separate prices for each direct cremation offered including an alternative container; and

(III) a description of the services and container (where applicable), included in each price;

(iv) the price range for the immediate burials offered by the funeral provider, together with:

(I) a separate price for an immediate burial where the purchaser provides the casket;

(II) separate prices for each immediate burial offered including a casket or alternative container; and

(III) a description of the services and container (where applicable) included in that price;

(v) transfer of remains to funeral home;

(vi) embalming;

(vii) other preparation of the body;

(viii) use of facilities and staff for viewing;

(ix) use of facilities and staff for funeral ceremony;

(x) use of facilities and staff for memorial service;

(xi) use of equipment and staff for graveside service;

(xii) hearse; and

(xiii) limousine.

(C) Include on the general price list, in any order, the following information:

(i) either of the following:

(I) the price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) the prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and

(ii) either of the following:

(I) the price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(II) the prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and

(iii) either of the following:

(I) the price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(II) the following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by clause (i)(I) of this subparagraph, or together with the prices of individual caskets, required by clause (i)(II) of this subparagraph.

(D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) Statement of funeral goods and services selected.

(A) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(i) the funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(ii) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(iii) the total cost of the goods and services selected.

(B) The information required by this subsection (b)(5) of this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) Other pricing methods. Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (2), (3), and (4) of this subsection so long as the statement required by paragraph (5) of this subsection is given when required by the rule.

§203.8. Misrepresentations.

(a) Embalming provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires that a deceased person be embalmed when such is not the case;

(B) fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) preventive requirements. To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.9(b)(1) of this title (relating to Other required purchase of funeral goods or funeral services) and §203.10(a) of this title (relating to Services provided without prior approval), funeral providers must:

(A) not represent that a deceased person is required to be embalmed for:

(i) direct cremation;

(ii) immediate burial; or

(iii) a closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(B) place the following disclosure on the general price list, required by §203.7(b)(4) of this title (relating to General price list), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for cremation provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires a casket for direct cremations;

(B) represent that a casket is required for direct cremations.

(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.9(a)(1) of this title (relating to Casket for cremation purposes), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer burial container provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) Preventive requirement. To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by §203.7(b)(3)(A) of this title (relating to Outer burial container price list), or, if the prices of outer burial containers are listed on the general price list, required by §203.7(b)(4) of this title (relating to General price list), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General provisions on legal and cemetery requirements.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in subsections (a)(1), (b)(1), and (c)(1) of this section, funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by §203.7(b)(5)) of this title (relating to Statement of funeral goods and services selected) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on preservative and protective value claims. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash advance provisions.

(1) Deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) Preventive requirements. To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by §203.7(b)(5)(A)(ii) of this title (relating to Statement of funeral goods and services selected): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§203.9. Required purchase of funeral goods or funeral services.

(a) Casket for cremation provisions.

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) Preventive requirement. To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other required purchases of funeral goods or funeral services.

(1) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(A) condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(i) Services of funeral director and staff, permitted by §203.7(b)(4)(C)(iii) of this title (relating to General price list);

(ii) other funeral services and funeral goods selected by the purchaser; and

(iii) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with §203.8(d)(2) of this title (relating to General provisions on legal and cemetery requirements).

(2) Preventive requirements.

(A) To prevent these unfair or deceptive acts or practices, funeral providers must:

(i) place the following disclosure in the general price list, immediately above the prices required by §203.7(b)(4)(B) and (C) of this title (relating to General price list): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(ii) place the following disclosure in the statement of funeral goods and services selected, required by §203.7(b)(5)(A) of this title (relating to Statement of funeral goods and services selected): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(B) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§203.10. Services provided without prior approval.

(a) Unfair or deceptive acts or practices. In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) the funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) Preventive requirement. To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by §203.7(b)(5) of this title (relating to Statement of funeral goods and services selected), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§203.11. Retention of documents. To prevent the unfair or deceptive acts or practices specified in §203.7 of this title (relating to Price disclosures) and §203.8 of this title (relating to Misrepresentations) of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §203.7(b)(2)-(4) (relating to Casket price list, outer burial container price list, and general price list), as applicable, for at least two years after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by §203.7(b)(5) (relating to Statement of funeral goods and services selected), for at least two years from the date of the arrangements conference.

§203.12. Comprehension of disclosures. To prevent the unfair or deceptive acts or practices specified in §§203.7-203.10 of this title (relating to Price disclosures, misrepresentations, required purchase of funeral goods or services, and services provided without prior approval), funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §203.7(b)(2)-(4) (relating to Casket price list, outer burial container price list, and general price list), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§203.13. Declaration of intent.

(a) Except as otherwise provided in §203.7(a) of this title (relating to Price disclosures), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§203.14. Display of funeral merchandise. The commission will approve only those display rooms in funeral establishments which meet the requirements of Texas Civil Statutes, Article 4582b, §4(C)(5), that are designed and utilized to allow the public to make a private inspection and selection, if they so desire.

§203.15. Requirements for reciprocal licenses.

(a) All applicants for a reciprocal license must provide proof that the license held from another issuing authority is not lapsed and is in good standing. If the license is lapsed, the applicant must pass all examinations required by the commission for licensure in Texas.

(b) Each reciprocal applicant must pass a written examination of not more than 50 questions on applicable state laws and commission rules. The written examination will be available to be administered at each regularly scheduled meeting of the commission.

(c) At such time the examination is taken, the applicant may also be required to personally appear before the commission.

§203.16. Minimum standards for embalming.

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of such licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the commission, in properly equipped and licensed establishments, or, in the event of a disaster of major proportions, in facilities designated by a medical examiner, coroner, or state health officials. Only three types of people may assist licensed embalmers in embalming: provisional embalmers; students who are enrolled in an accredited school of mortuary science; and, in the event of a disaster of major proportions and with the prior approval of the executive director, embalmers licensed in another state as long as they are working with and under the general supervision of a person licensed as an embalmer in this state.

(2) In order to prevent those involved in the embalming procedure from becoming unwitting carriers of pathogenic organisms into the community, they shall be required to utilize such protective devices as sterilizable gloves, aprons, or operating gowns during the embalming procedure. Disposable garments and/or gloves shall be permitted.

(3) Clothing directly exposed to contamination by pathogenic organisms shall either be burned or thoroughly cleaned and disinfected with a solution having a phenol coefficient of not less than one before delivery to any person or before any further utilization.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body shall be washed with an antiseptic soap or detergent. Fingernails, hair (including mustache and beard) shall be thoroughly cleaned, either before or immediately after arterial injection.

(6) Body orifices (open lesions and surgical incisions, nostrils, mouth, anus, and vagina) shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol coefficient not less than one.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1. 0% formaldehyde, or an approved substance that acts the same as formaldehyde, and in no instance shall less than one gallon of dilute solution be used for each 50 pounds of body weight. Computation of solution strength is as follows. C x V = C' x V' C = strength of concentrated fluid V = volume of ounces of concentrated fluid C' = strength of dilute fluid V' = volume of ounces of dilute fluid For example, how much of a 20 index fluid will it take to make two gallons (256 oz.) of a one index (1%) injection solution? Solving for V. C x V = C' x V' 20 x V = 1 x 256 20v = 256 V = 256/20 = 12.8 oz.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of at least 18 inches (mercury) vacuum.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used for each adult body.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be hypodermically injected with disinfectant fluid for maximum disinfection results.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to hypodermically inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in subsections (a)(1)-(11) of this section leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body a standard embalming powder and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) Nothing in this section shall be interpreted to require embalming if the next-of-kin does not authorize embalming.

(15) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermincide and/or insecticide to eliminate these conditions.

(16) No licensed establishment or licensed embalmer shall take into its care any dead human body for embalming without exerting every professional effort, and employing every possible technique or chemical, to achieve the highest level of disinfection.

(17) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) A report form, approved by the Texas Funeral Service Commission, shall be completed on each case of embalming. The completed form shall be retained for a two-year period and be made available to the Texas Funeral Service Commission, upon request, for inspection.

§203.17. Clarification of other facilities necessary in a preparation room

(a) The commission will approve only those preparation rooms which meet the requirements of Texas Civil Statutes, Article 4582b, §4(C)(4), and the following minimum standards prescribed by the commission:

(1) must be of sufficient size and dimensions to accommodate an operating table, a sink with water connections, and an instrument table, cabinet, or shelves:

(A) the operating table must have a rust proof metal or porcelain top, with edges raised at least 3/4 inch around the entire table and a drain opening at the lower end;

(B) the sink must have hot and cold running water and drain freely;

(C) the faucet must be equipped with an aspirator;

(2) must contain an injection/embalming machine and sufficient supplies and equipment for normal operations;

(3) must be clean, sanitary, and not used for other purposes;

(4) must not have defective construction which permits the entrance of rodents;

(5) must not have evidence of infestation of insects or rodents;

(6) must be private and have no general passageway through it;

(7) must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour;

(8) must not have unenclosed or public restroom facilities located within the room;

(9) must have walls which run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint;

(10) must have floors of concrete with a glazed surface, or tiled in order to provide the greatest sanitary condition possible;

(11) must have doors, windows, and walls constructed to prevent odors from entering any other part of the building;

(12) must have all windows and openings to the outside screened.

(b) The majority owner or designated agent of record of a funeral establishment may submit a written petition to the commission requesting an exemption to subsection (a)(2) of this section and the portion of subsection (a)(3) of this section pertaining to the use for other purposes. Each petition shall clearly state:

(1) each location's name and address;

(2) that the location is operated as a satellite to another location, giving its name and address;

(3) that both funeral establishments are under common management;

(4) that the primary establishment or location has full embalming facilities; and

(5) that the primary establishment or location is located within 50 miles of the satellite location.

(c) Upon receipt of the petition and the determination by the executive director that the criteria listed in subsection (b)(1)-(5) of this section have been met, the executive director will notify the petitioner that the exemption has been granted and will remain in effect so long as the criteria listed in subsection (b)(1)-(5) of this section remain unchanged.

§203.18. Clarification of definition of directing a funeral.

(a) "Directing", as used in Texas Civil Statutes, Article 4582b, §1(B), shall mean the personal supervision of those duties unless otherwise exempted by statute or rule.

(b) The responsibility of the funeral director for the personal supervision of a dead human body shall end at the point when the family is dismissed at the cemetery and the body is turned over to the cemetery staff for entombment or burial.

(c) A dead human body that is "released to a common carrier' may be transported to the common carrier by an unlicensed employee of the funeral establishment if so directed by the funeral director in charge.

(d) Only a licensed funeral director or registered funeral director apprentice, under the direct supervision of a licensed funeral director, shall present funeral services and merchandise to a customer or prospective customer and only a licensed funeral director shall sign all contractual agreements for funeral services or merchandise unless such services and merchandise are arranged and contracted for under a permit issued under the provisions of Texas Civil Statutes, Article 548b, Prepaid Funeral Benefits Act.

§203.19. Clarification of facilities in which funeral services may be conducted. For the purpose of these sections and Texas Civil Statutes, Article 4582b, §4(C)(1), the facilities in which funeral services may be conducted must meet the following criteria:

(1) must have reasonable access by the public;

(2) must contain a pulpit, podium, lectern or table from which a sermon, eulogy, or speech can be given;

(3) must have sufficient space for display and viewing of a casket;

(4) must have seating for a minimum of ten people.

§203.20. Clarification of other itemized services provided by funeral home staff. The term "other itemized services provided by the funeral establishment staff" in Texas Civil Statutes, Article 4582b, §1(S), is interpreted to include only those services, if any, of the funeral director and staff which are not included in the definition of "services of funeral director and staff", as defined in §203.1 (relating to Definitions), and which therefore must be declinable.

§203.21. Presentation of consumer brochures. Consumer information brochures, containing information specified by the commission, will be presented in the same manner and timing as required price lists.

§203.22. Required documentation for embalming.

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken over a period of at least three hours to obtain permission to embalm.

(c) In cases where a medical examiner or justice of the peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person authorized to make funeral arrangements has given permission or until the medical examiner or justice of the peace has provided written documentation of the efforts taken over a period of at least three hours to contact the person authorized to make funeral arrangements. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

§203.23. Location of Retained Records.

(a) All records required for retention by Texas Civil Statutes, Article 4582b, §3(H)(23) and (25) (relating to violations of this Act) and §203.16 of this title (relating to Minimum standards for embalming), will be maintained for a minimum of two years within the physical confines of the licensed establishment where the funeral arrangements were made. The records must be made available to the Texas Funeral Service Commission through its staff and members, or to the next of kin or person authorized for the making of funeral arrangements during regular business hours, and copies must be provided upon request to the commissioner.

(b) Any interested persons as defined in §201.8 of this title (relating to Misrepresentations), may submit a petition to the commission requesting an exemption to the portion of subsection (a) of this section which requires that retained records be kept within the physical confines of the licensed funeral establishment where the funeral arrangements were made.

(c) Each petition will clearly state:

(1) a brief explanation of the problem(s) created by that portion of the rules;

(2) the rational or justification for the granting of the exemption;

(3) the specific remedy requested, including the alternative location selected;

(4) assurances that the commission or its representative will be able to easily access all records by name of establishment, name of individual, or by date of service.

(d) The executive director will advise the commission of all petitions submitted in accord with this procedure, along with his recommendations.

(e) The commission will consider each petition submitted at its next scheduled meeting and may either grant, deny, or modify the remedy requested. The executive director will advise interested parties in writing of the action taken by the commission.

(f) Each petition will be considered separately and upon its own merit. When considering the petition, the commission will take into account the proposed geographical location of the records, and the licensee's demonstrated ability to substantially comply with the mortuary laws and the rules and regulations of the Texas Funeral Service Commission as demonstrated in prior inspection reports and other documents submitted to the commission.

§203.24. Professional conduct.

(a) The commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the commission, and may probate any license suspension if the commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Texas Civil Statutes, Article 4582b, the adopted rules of the Texas Funeral Service Commission and applicable health and vital statistic laws and rules;

(2) refusing or failing to keep, maintain or furnish any record or information required by law or rule;

(3) operating a funeral establishment in a unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a commission employee in the lawful performance of such employee's duties of enforcing Article 4582b and commission rules or instructions;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the commission;

(7) physically abusing or threatening to physically abuse a commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact.

§203.25. Franchise tax.

(a) Any corporation contracting with the Texas Funeral Service Commission and/or any corporate applicant for a license or permit issued by the agency must certify in writing, on a form provided by the agency, that its franchise taxes are current,

that the corporation is exempt from payment of the franchise tax or that it is an out-of-state corporation that is not subject to the franchise tax.

(b) The making of a false statement as to corporate franchise tax status on any license or permit application shall be grounds for disciplinary action.

(c) The making of a false statement as to corporate franchise tax status with regards to a state contract shall be grounds for cancellation of the contract at the option of the agency by treating the statement as a material breach of contract.

§203.26. Clarification of definition of "unreasonable time". "Unreasonable time", as used in Texas Civil Statutes, Article 4582b, §3H(18), shall be defined as retention of excess funds for a period not to exceed ten days from the time the funds were received by the funeral establishment or its agent.

§203.27. Sponsors of provisional licensees.

(a) Each participant in the provisional licensure program shall have a sponsor who is licensed by the commission in the specific discipline of the provisional program served. The sponsor must have been licensed in that discipline for at least two consecutive years prior to the date that he or she becomes a sponsor.

(b) No sponsor may sponsor more than two provisional licensees at one time.

(c) A sponsor shall ensure that direct supervision is provided in order to provide firsthand and factual documentation of work accomplished by the provisional licensee on each case report submitted.

(d) The sponsor is ultimately responsible for providing a work environment and assigning duties that are conducive to the provisional licensee's acquiring proficiency in the skills required of a funeral director and/or embalmer.

(e) Prior to the provisional licensee's attendance at the exit interview required by §203.6 of this title (relating to Provisional Licensees), the sponsor shall execute and provide to the commission an affidavit attesting to the proficiency of the provisional licensee in all required skills.

(f) In those cases where it is unlikely that a provisional licensee will be able to acquire sufficient cases at one funeral establishment to complete the requirements of the program, the provisional licensee may obtain additional sponsors, as long as each additional sponsor notifies the commission in writing of the sponsorship.

§203.28. Establishment licenses.

(a) The intentional submission of false information by any applicant for an original or renewed funeral establishment license is grounds for denial or revocation of the license.

(b) The use of subterfuge or other evasive means, such as applying for a license or renewal through a second party when an individual is disqualified from receiving the license, is grounds for denial or revocation of the license.

(c) All licensed funeral establishments shall display their establishment license in a conspicuous location in an area of the establishment that is open to the general public.

§203.29. Funeral establishment names.

(a) In order to prohibit false, misleading, or deceptive practices, each licensed funeral home shall select and indicate to the commission the one name under which the funeral home is to be licensed (it may be a trade name), and no licensed funeral establishment may use any name other than the one under which the license is issued by the commission.

(b) Names shall be approved by the executive director, and the executive director shall not issue a license with a name that is either deceptively or substantially similar to the name of another licensed funeral establishment in the same county, metropolitan area, or service area unless the funeral establishment with the similar name consents in writing to the use.

(c) A denial by the executive director of a funeral establishment name may be appealed, in writing, to the commission, which shall consider the appeal at its next meeting.

(d) Nothing in this rule prohibits a licensed funeral establishment from changing names; however, a licensed funeral establishment may not use a new or proposed name unless and until the commission has approved the name and issued a license in that name.

§203.30. Continuing education as a condition for license renewal.

(a) Purpose. In order to ensure that all licensees maintain and improve their professional skills, each person holding a license issued by the commission is required to participate in continuing education as a condition for renewal of any licenses.

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

(1) Accredited sponsor--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the commission.

(2) Approved program--A continuing education program activity that has received prior approval by the commission.

(3) Hour of continuing education--A 50-minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Standards for course approval. A continuing education activity will be considered for approval if the commission determines that the activity:

(1) constitutes an organized program of learning that contributes directly to the professional competence of the licensee;

(2) pertains to subject matters that relate to the practice of funeral directing, mortuary science, or related subjects; and

(3) is conducted by an individual(s) who has specialized expertise in the subject matter.

(d) Approval of sponsors, programs, and activities.

(1) Any person or organization wishing to present an educational program must submit, in a form approved by the commission, an application that outlines the course content, the total hours of instruction, the date and location of training, and the name(s) and professional qualifications of the instructor(s). The application must be submitted at least 30 days before the proposed training and accompanied by a nonrefundable fee in an amount set by the commission. The commission shall either approve or reject the application within 20 days of application and shall notify the applicant of the decision in writing.

(2) Any licensee who seeks credit for participation in an educational activity that did not receive prior approval by the commission may submit an application for post approval of the activity. The application shall be in a form approved by the commission and submitted within 30 days of the completion of the activity along with a nonrefundable fee in an amount set by the commission. The commission shall either approve or reject the application within 30 days of application and shall notify the applicant of the decision in writing. No applications may be accepted by the commission less than 30 days prior to the license renewal date.

(3) An appeal of denial of an application may be made, in writing, to the executive director. The appeal must be filed in the commission office within 15 days of the notification of denial, and the executive director shall rule on the appeal within 30 days of filing.

(4) The commission or its authorized representative may monitor, inspect, or review any approved continuing education activity, and upon evidence of significant variation in the program presented from the program approved, may disapprove all or any part of the approved hours granted the activity.

(5) Any person or organization sponsoring or conducting an approved program shall submit, in a form approved by the commission, a sworn affidavit attesting to the attendance and satisfactory completion of training of all persons in attendance. This information shall be provided to the commission within 15 days following the presentation of material. The commission may initiate disciplinary action against any licensee who knowingly falsely certifies training or who attempts through subterfuge to bypass the requirements listed herein.

(6) A provider of an approved continuing education activity may charge a reasonable fee to individuals registered for the activity. An individual may not be required to pay an additional fee in the form of registration for ancillary activities or events that are concurrent to the approved continuing education activity if the individual wishes only to attend the continuing education portion of the program. All fees shall be uniformly charged to all registrants; however, the authorized sponsor may exempt employees of the sponsoring organization.

(e) Continuing education requirements.

(1) All persons licensed by the commission shall complete a minimum of eight hours of approved continuing education in each two-year period, to coincide with the renewal date of the license, as a requirement of license renewal.

(2) Carryover credit of continuing education hours is not permitted.

(3) The maximum credit hours for participation in any course may not exceed the number approved by the commission.

(4) A licensee may not receive credit for attending the same course more than once during the same two-year period.

(5) No credit may be granted for partial completion of any continuing education activity.

(6) Two hours of credit may be granted for attendance at an entire, regularly scheduled commission meeting if the individual makes a prior request and follows commission procedures. The prohibition in subsection (e)(4) of this section does not apply to credit for regularly scheduled commission meetings.

(7) A licensed individual who conducts an approved course may receive credit for attendance at continuing education. However, the prohibition in paragraph (4) of this subsection will apply.

(f) Exemptions/waivers.

(1) Continuing education requirements for individuals newly licensed by examination shall be waived for the first-time renewal of license.

(2) Individuals licensed in Texas but residing outside of the state are exempt from the continuing education requirements set forth in this rule. Any individual who returns to residency in this state shall, within the first full year after his or her return, meet the continuing education requirements.

(3) Persons in a "Retired, Inactive" status will be exempted from the continuing education requirement. Any person changing from the "Retired, Inactive" status to a "Retired, Active" status shall, within the first full year after his or her change in status, meet the continuing education requirement.

(4) Persons in an active military status will be exempted, upon request, from the continuing education requirement. Upon release from active duty and return to residency in the state, the individual shall, within the first full year after his or her release and return, meet the continuing education requirement.

(5) Upon request, the executive director may authorize partial or full exemption from the continuing education requirement based on personal or family hardship. This request must be made at least 30 days prior to the expiration of the license(s) and the executive director may require documentation of the hardship.

(g) Record keeping procedures.

(1) It shall be the responsibility of the commission and the individual licensee to maintain accurate records of the continuing education of the individual licensee.

(2) All records pertaining to training will be retained by the sponsor for a period of not less than two years and are subject to examination by the commission.

(h) Failure to comply. Failure by any licensee to comply fully and in a timely manner with the continuing education requirements as presented in this section, will result in rejection of any application for renewal of a license. If a renewal application is rejected, the individual will be notified, the rejected application will be held, and any renewal fee submitted with the rejected application will be returned. A rejected renewal application will be processed only after the commission has received satisfactory documentation that the continuing education required during the prior licensing period has been completed and payment of all required fees and/or penalties have been received. If a license is not renewed prior to expiration because of noncompliance with continuing education requirements, a late compliance fee of $250 must be paid in addition to the renewal fee applicable to such license and the appropriate penalty fee for renewing after expiration of the license.

§203.31. Inspection as requirement for renewal of establishment license; fees.

(a) No establishment license may be renewed in the absence of completion of an annual inspection, as required by Texas Civil Statutes, Article 4582b, §4G (relating to Funeral establishments), unless the absence of such an inspection was due to the failure of the commission, its employees, or agents, to attempt to inspect the funeral establishment.

(b) At any time that an agent or employee of the commission attempts to inspect a funeral establishment and such establishment is not open or is otherwise unavailable for inspection, the inspector shall notify the owner of the establishment, its funeral director in charge, or any other employee or agent of the establishment, that an inspection was attempted but could not be made due to the unavailability of the establishment for such inspection. An attempt to give such notice shall be made by the inspector, in person or by telephone, on the same date as the initially attempted inspection, with the intent that the inspection shall be made on that date or before the inspector leaves the general area in which the establishment is located.

(c) If an inspector is unable to contact the establishment owner, its funeral director in charge, or any other employee or agent of the establishment to provide notice of the attempted inspection before leaving the general area, the inspector shall notify the funeral establishment by mail of the attempted inspection.

(d) If an inspector is required to make a special trip to the county in which an establishment is located to make a subsequent attempt to inspect an establishment which previously was not available for inspection, an inspection rescheduling fee of $250 must be paid to the commission prior to such inspection unless a waiver is granted by the Executive Director for good cause shown.

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 December 5, 1995.

TRD-9515839 Marc Allen Connelly
General Counsel
Texas Funeral Service Commission

Proposed date of adoption: January 31, 1996

For further information, please call: (512) 834-9992

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Part XIV. Texas Optometry Board

Chapter 273. General Rules

• 22 TAC §273.4

The Texas Optometry Board proposes an amendment to §273.4, concerning generals. The section is being amended to remove the cost of providing certification letters in accordance with a fee schedule but in lieu thereof assess the cost through Rule 272.1 under the Open Records requests, on a full cost recovery basis. The cost to the licensee and third parties can be reduced on a per certificate basis.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Mrs. Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to obtain certificates regarding licensure status on a cost recovery basis. There will be no effect on small businesses. There is an anticipated economic cost to persons who are required to comply with the rule as proposed in some instances due to the full cost recovery system as opposed to a set fee. The economic cost has not yet been determined.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 4552 (Texas Optometry Act), §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

The Texas Optometry Board interprets §2.14 of Article 4552, as well as House Bill 1009, 73rd Legislature, as authorizing the Board to establish certain record costs and fees.

§273.4. Fees (Not Refundable).

(a)-(l) (No change.)

[(m) Certificates of Licensure Status $25]

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 December 6, 1995.

TRD-9515950 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 305-8500

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Chapter 279. Interpretations

• 22 TAC §279.3

The Texas Optometry Board proposes an amendment to §279.3, concerning interpretations. The section is being amended to inform the licensees that dispensing from a patient's optometric record by other optometrists located within the same optometric office is permissible and is not in violation of §5.07 of Texas Civil Statutes, Article 4552, which prohibits prescribing without an examination.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Mrs. Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to obtain quality eye care without the additional expense of a second eye examination due to the absence of the first examining optometrist. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 4552 (Texas Optometry Act), §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

The Texas Optometry Board interprets §2.14 and §5.07 of Article 4552, as authorizing the Board to interpret the examination requirements established within the statutes.

§279.3. Board Interpretation Number Three. The Texas Optometry Act, §5.07, relates to prescribing without examination. It is the interpretation of this board that nothing in this section would prohibit a licensed optometrist from:

(1) (No change.)

(2) filling or having filled a prescription that has been signed by an authorized practitioner; [or]

(3) dispensing or having dispensed lenses from a patient's optometric record located within the same optometric office; or

(4)[(3)] replacing or repairing frames or parts thereof.

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 December 6, 1995.

TRD-9515949 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 305-8500

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• 22 TAC §279.14

The Texas Optometry Board proposes an amendment to §279.14, concerning interpretations. The section is being amended to inform the licensees that a facsimile (FAX) prescription for spectacles, contact lenses or medication is not considered a valid prescription.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the rule.

Mrs. Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to obtain the prescribed eyewear or medication through valid prescription use, preventing alterations or improperly filled prescriptions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 4552 (Texas Optometry Act), §2.14, which provide the Texas Optometry Board with the authority to promulgate procedural and substantive rules.

The Texas Optometry Board interprets §§2.14, 5.04, 5.12, and 5.18 of Article 4552, as authorizing the Board to interpret what constitutes a valid prescription within the lawful practice of optometry.

§279.14. Board Interpretation Number Fourteen.

(a) (No change.)

(b) A prescription for spectacles, contact lenses, or ophthalmic devices is defined as a written order signed by the examining optometrist, therapeutic optometrist or physician. A prescription for medications may be verbal or written. **A facsimile (FAX) prescription is not considered a valid prescription.**

(c) (No change.)

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

Issued in Austin, Texas, on December 6, 1995.

TRD-9515948 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 305-8500

Chapter 280. Therapeutic Optometry

• 22 TAC §280.5

The Texas Optometry Board proposes an amendment to §280.5, concerning therapeutic optometry. The section is being amended to clarify the use of cocaine eye drops for diagnostic purposes by therapeutic optometrists. The rule clearly denotes that the cocaine eye drops may be possessed and administered but not prescribed.

Tracie Svehlak with the Texas Department of Public Safety has determined that for the first five-year period the rule is in effect there will be fiscal implications for state government as a result of enforcing or administering the rule as follows: $7,902 in fiscal year 1996 and $6,568 in fiscal years 1997-2000.

Lois Ewald, executive director of the Texas Optometry Board, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for local governments as a result of enforcing or administering the rule.

Mrs. Ewald also has determined that for each of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to obtain good eye health care by the therapeutic optometrist's ability to use the cocaine eye drops as a diagnostic agent. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lois Ewald, Executive Director, Texas Optometry Board, 333 Guadalupe Street, Suite 2-420, Austin, Texas 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 4552 (Texas Optometry Act), §1.03 and §2.14.

The Texas Optometry Board interprets §1.03 of Article 4552, as authorizing therapeutic optometrists to utilize the cocaine eye drops for diagnostic purposes. The Texas Optometry Board interprets §2.14 as authorizing it to promulgate procedural and substantive rules for the regulation of optometry.

*§280.5. **Prescription and Diagnostic Drugs for Therapeutic Optometry** [Prescriptions Written for Pharmaceutical Agents by the Therapeutic Optometrists.]*

(a)-(i) (No change.)

(j) A therapeutic optometrist may possess and administer cocaine eye drops for diagnostic purposes. The cocaine eye drops must be no greater than 10% solution in prepackaged liquid form.

(1) A therapeutic optometrist must observe all requirements of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, and all requirements of the Texas Department of Public Safety (DPS) Drug Rules in making application and maintaining renewal of a United States Drug Enforcement Agency (DEA) registration number for possession of the cocaine eye drops, a Schedule II controlled substance.

(2) A therapeutic optometrist must obtain a registration number from the DPS for the principal office of practice. Application may be made for a separate registration for the practice of optometry at a satellite office but all requirements of this rule shall apply in all locations.

(3) The therapeutic optometrist must use the required DEA form for the purchase of the cocaine eye drops and shall maintain a complete and accurate record of purchases (to include samples received from pharmaceutical manufacturer representatives) and dispensing of controlled substances. The maximum amount to be purchased and maintained in an office of practice shall be no more than two vials, one opened and one in inventory.

(4) The above recordkeeping shall be subject to inspection at all times by the Texas Department of Public Safety, the U.S. Drug Enforcement Agency, and the Texas Optometry Board and any officer or employee of the governmental agencies shall have the right to inspect and copy records, reports, and other documents, and inspect security controls, inventory and premises where such cocaine eye drops are dispensed.

(5) Minimum security controls shall be established to include but not be limited to:

(A) establishing adequate security to prevent unauthorized access and diversion of the controlled substance,

(B) during the course of business activities, not allowing any individual access to the storage area for controlled substances except those authorized by the therapeutic optometrist,

(C) storing the controlled substance in a securely locked, substantially constructed cabinet or security cabinet which shall meet the requirements under the DPS Drug Rules,

(D) not employ in any manner an individual that would have access to controlled substances who has had a federal or state application for controlled substances denied or revoked, or have been convicted of a felony offense under any state or federal law relating to controlled substances or been convicted of any other felony, or have been a licensee of a health regulatory agency whose license has been revoked, canceled, or suspended.

(6) Failure of the therapeutic optometrist to maintain strict security and proper accountability of controlled substance shall be deemed to be a violation of the Texas Optometry Act , §4.04.

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 December 6, 1995.

TRD-9515952 Lois Ewald
Executive Director
Texas Optometry Board

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 305-8500

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 61. Chronic Diseases

Osteoporosis Advisory Committee

• 25 TAC §61.61

The Texas Department of Health (department) proposes new §61.61, concerning the creation of the osteoporosis advisory committee which will provide advice on the strategies for educating the public on the health benefits of the early detection, prevention and treatment of osteoporosis. The creation of the committee is authorized by Health and Safety Code, §90.003. The new section is required by Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

Dr. Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control,

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

Dr. Huang also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be better information and advice provided to the department and the Texas Board of Health (board) on the issues relating to the strategies for educating the public on the health benefits of the early detection, prevention and treatment of osteoporosis. There will be no effect on small businesses. There will be no economic costs to persons who are required to comply with the section as proposed. There will be no effect on local employment.

Comments may be submitted to Dr. Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7234. Comments on the new section will be accepted for 30 days following publication in the *Texas Register*.

The new section is proposed under the Texas Health and Safety Code, §90. 003, which provides for the creation of the osteoporosis advisory committee; Article 6252-33, §5, which sets standards for the evaluation of advisory committees by the agencies for which they function; under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health; and Health and Safety Code, §11.016, which allows the board to establish advisory committees.

The new section affects Health and Safety Code, Chapter 90.

§61.61. The Osteoporosis Advisory Committee.

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the advisory committee shall be the Osteoporosis Advisory Committee (committee).

(2) The committee is authorized to be established by the Texas Board of Health (board) by Health and Safety Code, §90.003.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33, relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board on strategies for educating the public on the health benefits of the early detection, prevention, and treatment of osteoporosis.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to educating the public on the health benefits of the early detection, prevention, and treatment of osteoporosis.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By September 1, 2000, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 11 members appointed by the board. The composition of the committee shall include:

(1) three consumer representatives; and

(2) eight other representatives.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantial equivalent number of members will expire on December 31st of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The advisory committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the advisory committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with a quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board.

The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. *Roberts Rules of Order, Newly Revised,* shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the advisory committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittee.

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

(3) A subcommittee chairperson shall make regular reports to the committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate proceedings 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

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 December 8, 1995.

TRD-9516116 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: January 15, 1996

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 3. Life, Accident, Health Insurance and Annuities

Subchapter W. Miscellaneous Rules for Group and Individual Accident and Health Insurance

Required Disclosure Statements for Policies that Duplicate Medicare

• 28 TAC §§3.3603-3.3613

The Texas Department of Insurance proposes new §§3.3603-3.3613, relating to required disclosure statements for policies that duplicate Medicare benefits. The sections are necessary to codify notice requirements for the content and format of ten disclosure statements which must be provided to inform prospective buyers of health insurance policies about the extent to which benefits under such policies duplicate Medicare benefits, pursuant to requirements approved by the U.S. Secretary of Health and Human Services. Proposed §3.3603 sets out the purpose and scope of the notice and disclosure. Proposed §3.3604 sets out the content and format of the notice for policies that provide benefits for expenses incurred for an accidental injury only. Proposed §3.3605 sets out the content and format of the notice for policies that provide benefits for specified limited services. Proposed §3.3606 sets out the content and format of the notice for policies that reimburse expenses incurred for specified disease or other specified impairments (including, cancer policies, specified disease policies and other policies limiting reimbursement to named medical conditions). Proposed §3.3607 sets out the content and format of the notice for policies that pay fixed dollar amounts for specified disease or other specified impairments (including cancer, specified disease policies, and other policies that pay a scheduled benefit or specified payment based on diagnosis of the conditions named in the policy). Proposed §3.3608 sets out the content and format of the notice for indemnity and other policies (other than long-term care policies) that pay a fixed dollar amount per day. Proposed §3.3609 sets out the content and format of the notice for policies that provide benefits for both expenses incurred and fixed indemnity. Proposed §3.3610 sets out the content and format for the notice for long-term care policies providing both nursing home and non-institutional coverage. Proposed §3.3611 sets out the content and format of the notice for long term care policies primarily providing nursing home care only. Proposed §3.3612 sets out the content and format of the notice for home care policies. Proposed §3.3613 sets out the content and format of the notice for other health insurance policies not specifically identified in §§3.3604-3.3612.

Tyrette Hamilton, acting deputy commissioner for the Life/Health Group, 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, or for small businesses, resulting from enforcement or administration of the new sections, and that there will be no effect on local employment or the local economy.

Ms. Hamilton also has determined that for each year of the first five years the new sections will be in effect the public benefit anticipated as a result of enforcing the new sections will be the effective disclosure to prospective insureds of the extent to which health coverages which they might be considering purchasing duplicate the benefits provided by Medicare, even if such duplication is only incidental, thereby making it possible for the consumer to make a more informed choice regarding the decision to purchase health coverages.

There is no anticipated economic cost to persons who are required to comply with the proposed sections which result from the proposed new sections. Any economic costs of compliance result from enactment of federal

law relating to such notices and adoption of disclosure standards ratified and adopted by the U.S. Secretary of Health and Human Services.

Comments on the proposal may be submitted to the Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication. An additional copy of comments should be submitted to Tyrette Hamilton, Acting Deputy Commissioner, Life/Health Group, P.O. Box 149104, MC 106-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed pursuant to the Insurance Code, Articles 3.74, 3.70-3, and 1.03A. Article 3.74, §5(d) provides that the department may promulgate reasonable rules for captions or notice requirements determined to be in the public interest and designed to inform prospective insureds, subscribers, or enrollees that particular coverages are not Medicare supplement coverages. Article 3.70-3 authorizes the department to adopt rules and regulations for the filing and submission of health insurance policies as are necessary, proper or advisable. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute.

The proposed new sections affect regulation pursuant to the following statutes: Insurance Code, Article 3.70-3 Insurance Code, Article 3.74.

§3.3603. Purpose and Scope.

(a) The purpose and scope of these sections is to codify the notice requirements for the content and format of ten disclosure statements which must be provided to inform prospective buyers of health insurance policies about the extent to which benefits under such policies duplicate Medicare benefits. The disclosure statements in these sections have been developed by the National Association of Insurance Commissioners and approved by the U.S. Secretary of Health and Human Services. Health insurance policy issuers subject to the requirements to provide such disclosure must comply with such requirements on and after August 11, 1995. These sections in no way impact the effective date on which issuers must provide affirmative disclosure of Medicare duplication to prospective insureds.

(b) On and after the effective date set out by federal requirements, issuers of the policies that duplicate Medicare benefits must display the applicable statement in a prominent manner as part of, or together with, the application for the policy. On and after the effective date of these sections, issuers of policies that duplicate Medicare benefits must also include such notices along with any filings which contain applications filings.

(c) Each of the statements applies to one of ten different types of health insurance policy identified as needing a disclosure based on its potential to duplicate Medicare benefits, even if only incidentally.

(d) Issuers who fail to provide the duplication notice are in violation of both federal and state law, and subject to both federal and state penalties.

(e) The ten separate types of health insurance policies which must be accompanied by an individualized statement of the extent to which the policy duplicates Medicare are listed in paragraphs (1)-(10) of this subsection. Each of these listed policy types must contain the disclosure statement, which may not vary from the statements set out in §§3.3604-3.3613 of this subchapter in terms of language or format, including type size, spacing, boldfacing, line spacing, and use of boxes to surround text. The specific policy types are:

(1) policies that provide benefits for expenses incurred for an accidental injury only;

(2) policies that provide benefits for specified limited services;

(3) policies that reimburse expenses incurred for specified disease or other specified impairments (including cancer policies, specified disease policies and other policies that limit reimbursement to named medical conditions);

(4) policies that pay fixed dollar amounts for specified disease or other specified impairments (including cancer, specified disease policies and other policies that pay a scheduled benefit or specified payment based on diagnosis of the conditions named in the policy);

(5) indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies;

(6) policies that provide benefits for both expenses incurred and fixed indemnity;

(7) long-term care policies providing both nursing home and non-institutional coverage;

(8) long-term care policies primarily providing nursing home benefits only;

(9) home care policies; and

(10) other health insurance policies not specifically identified in paragraphs (1)-(9) of this subsection.

(f) Providing the notice and disclosure addressed in these sections has no impact on the continuing application and effectiveness of §21.113(l) of this title (relating to acknowledgment of nonduplication and provision of notice to consumer).

§3.3604. Notice for Policies That Provide Benefits for Expenses Incurred for an Accidental Injury Only. The notice in this section is for policies that provide benefits for expenses incurred for an accidental injury only.
Figure: 28 TAC §3.3604

§3.3605. Policies That Provide Benefits For Specified Limited Services. The notice in this section is for policies that provide benefits for specified limited services.
Figure: 28 TAC §3.3605

§3.3606. Policies That Reimburse Expenses Incurred for Specified Diseases or Impairments. The notice in this section is for policies that reimburse expenses incurred for specified diseases or other specified impairments (including expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions).
Figure: 28 TAC §3.3606

§3.3607. Policies that Pay Fixed Dollar Amounts for Specified Diseases or Impairments. The notice in this section is for policies that pay fixed dollar amounts for specified diseases or other specified impairments (including cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy).
Figure: 28 TAC §3.3607

§3.3608 Indemnity or Other Policies that Pay a Fixed Dollar Amount Per Day. The notice in this section is for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies.
Figure: 28 TAC §3.3608

§3.3609. Policies that Provide Benefits Upon Both an Expense-Incurred and Fixed Indemnity Basis. The notice in this section is for policies that provide benefits upon both an expense-incurred and fixed indemnity basis.
Figure: 28 TAC §3.3609

§3.3610. Long-Term Care Policies Providing Nursing Home and Non-institutional Coverage. The notice in this section is for long-term care policies providing both nursing home and non-institutional coverage.
Figure: 28 TAC §3.3610

§3.3611 Policies Providing Nursing Home Benefits Only. The notice in this section is for policies providing nursing home benefits only.

Figure: 28 TAC §3.3611

§3.3612. Policies Providing Home Care Benefits Only The notice in this section is for policies providing home care benefits only.

Figure: 28 TAC §3.3612

§3.3613. Other Health Insurance Policies The notice in this section is for other health insurance policies not specifically identified in §§3.3604-3.3612 of this subchapter.

Figure: 28 TAC §3.3613

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 December 7, 1995.

TRD-9515975 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 15, 1996

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

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Subchapter X. Preferred Provider Plans

• 28 TAC §§3.3702-3.3705

The Texas Department of Insurance proposes amendments to §§3.3702-3. 3705, concerning health insurance policies that incorporate preferred provider plans. These amendments are proposed to further address the Governor's directive that the Commissioner of Insurance enact rules to maintain quality of health care for all Texans at affordable prices and to establish procedures for fairness to health care providers. These proposed amendments are based on a review of complaints concerning managed care plans and formal and informal public comment received by the department during the drafting and comment period for the amendments to this chapter adopted November 15, 1995. Protection of patients in the rapidly changing health care marketplace requires these updated regulations. These proposed amendments are necessary to assist consumers in making informed choices among health care plans; to assure that consumers receive the type and extent of coverage they contracted for at the contracted for price; and to assist the department in evaluating quality and costs of health care. Amended §3.3702 adds a definition of "contract holder" because that term is used throughout the text of these sections. Amended §3.3703 requires insurers to file with the department all advertising for policies marketed in Texas that include a preferred provider component and prescribes the manner in which advertising is to be filed. Amendment to §3.3704 enhances freedom of choice for the insured and assure that consumers receive the benefits they contracted for by clarifying that if covered services are not available through a preferred provider, the insurer pay for services by a non-preferred provider at the preferred provider level of benefits. Amended §3.3704 also enhances freedom of choice and assures that consumers receive the benefits they contracted for by requiring that contracts between an insurer and a contract holder, group or individual, provide that the contract holder may cancel the contract based upon material changes to any provisions required by law or this chapter to be disclosed to contract holders or the insured. Section 3.3705, as amended, requires that preferred provider contracts include an agreement by the preferred provider not to seek additional compensation for covered services from the insured patient.

Mary Keller, Senior Associate Commissioner for Legal and Compliance, Texas Department of Insurance, has determined that for each year of the first five-years the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections. There will be no measurable effect on local employment or local economy.

Ms. Keller also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the rules will be a cost effective mechanism to maintain the quality care delivered by preferred provider plans to their insureds and to promote fairness to insureds, potential insureds and providers.

Ms. Keller estimates that for each of the first five years that the section is in effect, the total cost to persons required to comply with the rules will range from $8,000 to $40,000. The only component of these amendments expected to result in cost to those required to comply is the requirement that advertising be filed with the department. These cost estimates are based on estimated additional costs of $100 to $500 per company to mail or deliver advertising copy to the department. Approximately 80 insurance companies currently offer fully-insured PPO arrangements. The assumptions on which these costs are based may change as the department receives data during the comment period. Because of the low additional cost of compliance to the insurers, it is anticipated that there will be no adverse economic impact on small businesses.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Tyrette P. Hamilton, Acting Deputy Commissioner, Life/Health Group, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code, Articles 1.03A, 3. 42(l), and (p) (as amended by Senate Bill 1637 enacted by the 74th Legislature) ; 3.51-6, §3, and §5; 3.70-2(B); 3.70-3(A)(9); 21.21, §§3, 4(1) and (2), and 13; 21.21-6, §1 and §3 (as added by House Bill 1367 enacted by the 74th Legislature); 21.21-8, §2 (as added by House Bill 668 enacted by the 74th Legislature); 21.52; §13; 26.08; 26.71 (as amended by House Bill 369 enacted by the 74th Legislature); 26.75 (as amended by House Bill 369 enacted by the 74th Legislature) and the Government Code, §§2001.004 et seq (Administrative Procedure Act). Article 3.42(l) authorizes the Commissioner of Insurance to disapprove any policy form which is unjust or which does not comply with the Insurance Code. Article 3.42(p) authorizes the commissioner to adopt reasonable rules to implement and accomplish the purposes of Article 3. 42, concerning review and approval of policy forms. Article 3.51-6, §3 provides that a group accident and health policy may not require that a service be rendered by a particular hospital or person. Article 3.51-6, §5 authorizes the commissioner to issue rules to carry out the provisions of Article 3.51-6, concerning group accident and health insurance. Article 3. 70-3(A)(9) provides that payment of claims other than indemnity for loss of life or accrued indemnities remaining unpaid at the death of the insured shall be payable to the insured. Articles 21.21, §3 and §4(1) and (2) prohibit untrue, deceptive or misleading statements with respect to the business of insurance. Article 21.21, §13 authorizes the Commissioner to promulgate rules as necessary to accomplish the purposes of Article 21.21, concerning unfair practices. Article 21.21-6, §1 and §3 define and prohibit unfair discrimination in the business of insurance. Article 21.21-8, §2 prohibits the making or permitting of any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any policy of insurance, or in the benefits payable thereunder, or in any of the terms or conditions of the contract, or in any other manner whatever. Articles 3.70-2(B) and 21.52 require freedom of choice for the insured in selecting a practitioner under health and accident insurance policies. Article 26.08 provides that small employer health benefit plan carriers may use cost containment and managed care features in a small employer health benefit plan, including different benefits applicable to providers that participate or do not participated in restricted network arrangements, and provides that utilization review must comply with Article 21. 58A. Article 26.71 requires the fair marketing of small employer health benefit plans and authorizes the department to require submission of data concerning those plans. Article 26.75 authorizes the commissioner to adopt rules providing for the fair marketing and broad availability of small employer health benefit plans. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of

available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following statutes are affected by these sections: Texas Insurance Code, Articles 3.42, 3.51-6; 3.70-2; 3.70-3; 21.21; 21.21-6; 21.21-8; 21.52; 26.08; 26.71; and 26.75.

§3.3702. Definitions. The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

Contract holder-An individual or organization which holds an individual or group health insurance policy.

§3.3703. Requirements. A health insurance policy that includes different benefits from the basic level of coverage for use of preferred providers shall not be considered unjust under the Insurance Code, Article 3.42, or unfair discrimination under the Insurance Code, Articles 21. 21-6 or 21.21-8, or to violate Article 3.70-2(B) or 21.52 of the Insurance Code, if:

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

(6) **The insurer offering a preferred provider plan shall file with the department the following information in the manner prescribed:**

(A) a copy of each advertisement to be disseminated in this state shall be filed no later than ten working days prior to its use. The term "advertisement" includes any material listed in §21.102 of this title (relating to Scope of Subchapter B, governing insurance advertising). Material filed under this paragraph is not to be considered approved but may be subject to review for compliance with Texas law and consistency with other documents.

(B) Any advertisement submitted shall be submitted in triplicate accompanied by a transmittal letter addressed to the advertising section of the department of Insurance, and shall contain the following information:

***(i)* the identifying form number of each form submitted;**

***(ii)* the types of advertisement submitted, i.e., institutional advertisement, invitation to inquire, or invitation to contract;**

***(iii)* the form number of the policy form or forms advertised;**

***(iv)* the initial number of the advertisements to be printed;**

***(v)* the method or media used for dissemination of the advertisement; and**

***(vi)* the area in which the advertisement will appear, be used, or be distributed.**

(C) Advertisements may be submitted in printers' proof or as pasteups.

§3.3704. Freedom of Choice. Pursuant to the Insurance Code, Article 3.51-6, §3, and Article 3.70-3(A)(9), no health insurance policy may require that a service be rendered by a particular hospital or practitioner. A health insurance policy that includes different benefits from the basic level of coverage for use of preferred providers shall not be considered to unlawfully restrict freedom of choice in the selection of physicians or health care providers by insureds provided:

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

(6) Physicians or health care providers may refer an insured to other than preferred providers, provided that the insured is advised that a different indemnity payment may apply. **If covered services are not available through preferred providers, the insurer shall pay for medically necessary covered services by a non-preferred provider at the preferred provider level of benefits.** [nonpreferred providers shall be reimbursed at the same rate as the preferred providers would have been reimbursed had the insured been treated by them:]

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

(14) the contract between an insurer and a contract holder, group or individual, provides that the contract holder may cancel the contract, upon written notice to the insurer, based on any material change to any provisions required to be disclosed to contract holders or insureds pursuant to this chapter or other law.

§3.3705. Procedure to Assure Adequate Treatment. Insurers which market a preferred provider plan must contract with physicians and health care providers to assure that all medical and health care services and items contained in the package of benefits for which coverage is provided, including treatment of illnesses and injuries, will be provided under the health insurance policy in a manner assuring both availability and accessibility of adequate personnel, specialty care, and facilities.

(1) -(8) (No change.)

(9) A preferred provider contract must include a provision that the physician or provider agrees that if the preferred provider is compensated on a discounted fee basis, the insured may be billed based only on the discounted fee and not on the full charge.

(10)[(9)] An insurer may enter into an agreement with a preferred provider organization for the purposes of offering a network of preferred providers. The agreement may provide that the notice and other insurer requirements of this subchapter may be complied with by either the insurer or the preferred provider organization on behalf of the insurer. If an insurer enters into an agreement with a preferred provider under this section, it is the insurer's responsibility to meet the requirements of this subchapter or to assure that the requirements are met. All preferred provider insurance benefit plans offered in this state shall comply with the requirements of this subchapter.

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 December 7, 1995.

TRD-9515976 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 15, 1996

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

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Chapter 11. Health Maintenance Organizations

The Texas Department of Insurance proposes amendments to Chapter 11, concerning health maintenance organizations, by amending §§11.506, 11.603, and 11.1600; and adding new §11.1502. These amendments are proposed to further address the Governor's directive that the Commissioner of Insurance enact rules to maintain quality of health care for all Texans at affordable prices and to establish procedures for fairness to health care providers. These proposed amendments are based on a review of complaints and formal and informal public comment concerning managed care plans received by the department during the drafting and comment period for the amendments to this chapter adopted November 15, 1995. Protection of patients in the rapidly changing health care marketplace requires these updated regulations. These proposed amendments are necessary to assist consumers in making informed choices among health care plans; to assure that consumers receive the type and extent of coverage they contracted for at the contracted for price; and to assist the department in evaluating quality and costs of health care.

Amended §11.506(4) requires that contracts between an HMO and a contract holder, group or individual, provide that the contract holder may cancel the contract based upon material changes to any provisions required by law or this chapter to be disclosed to

contract holders or the enrollees. New §11.506(17) assures that enrollees will receive all necessary covered services by requiring that HMOs allow referral to a non-network physician or provider if covered services are not available through network physicians or providers.

New §11.603 requires HMOs to file with the department all advertising for HMO plans marketed in Texas.

New §11.1502 provides that a contract between an HMO and a physician or provider may not contain a clause purporting to indemnify the HMO for any tort liability resulting from acts or omissions of the HMO.

Amended §11.1600 requires disclosure of an agreement by providers not to bill patients for any amounts not set out in the evidence of coverage.

Mary Keller, Senior Associate Commissioner for Legal and Compliance, Texas Department of Insurance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal impact on state or local government as a result of enforcing or administering the sections There will be no measurable effect on local employment or local economy.

Ms. Keller also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of the rules will be a cost effective mechanism to maintain the quality of care delivered by managed care plans to their enrollees and to promote fairness to enrollees, potential enrollees and providers.

Ms. Keller estimates that for the first year that the sections are in effect, the cost to persons required to comply with the rules will range from $6,000 to $30,000 per year. The only component of these rules expected to result in cost to those required to comply is the requirement that advertising be filed with the department. These cost estimates are based on estimated additional costs of $100 to $500 per licensed HMO to mail or deliver advertising copy to the department. There are currently 39 licensed entities and 22 pending applications. The assumptions on which these costs are based may change as TDI receives data during the comment period. Because of the low additional cost of compliance to the managed care plans, it is anticipated that there will be no adverse economic impact on small business.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the *Texas Register* to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Tyrette P. Hamilton, Acting Deputy Commissioner, Life/Health Group, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Any requests for a public hearing should be submitted separately to the Office of the Chief Clerk.

Subchapter F. Evidence of Coverage

• 28 TAC §11.506

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A. 05(b) and (d); 20A.14(a), (b), and (c); 21.21, §§3, 4(1) and (2), and 13; 21. 21-6, §1 and §3 (as added by House Bill 1367 enacted by the 74th Legislature); 26.08; 26.71 (as amended by House Bill 369 enacted by the 74th Legislature); 26.75 (as amended by House Bill 369 enacted by the 74th Legislature); 1.03A and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the State Board of Insurance may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 1.01A provides that except as otherwise provided by law, all references in the Insurance Code to the State Board of Insurance mean the department or the commissioner as consistent with the respective duties of the commissioner or the department under the Insurance Code and other laws relating to the business of insurance in this state. Article 20A 05(b) sets forth the determinations the commissioner and the Texas Board of Health must make prior to granting a certificate of authority to an HMO. Article 20A.05(d) provides a certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of the HMO Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Article 20A.14(a) provides that no HMO, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. Article 20A.14(b) provides that Article 21 21 applies to HMOs. Article 21.21, §3 and §4(1) and (2) prohibit untrue, deceptive or misleading statements with respect to the business of insurance. Article 21 21, §13 authorizes the commissioner to promulgate rules as necessary to accomplish the purposes of Article 21.21, concerning unfair practices. Article 20A.14(c) provides that an enrollee may not be canceled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner. Article 21.21-6, §1 and §3 define and prohibit unfair discrimination in the business of insurance, including HMOs. Article 26.08 provides that small employer health benefit plan carriers may use cost containment and managed care features in a small employer health benefit plan. Article 26.71 requires the fair marketing of small employer health benefit plans and authorizes the department to require submission of data concerning those plans. Article 26.75 provides that the Commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers in this state. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following articles are affected by this proposal: Insurance Code, Articles 20A.22; 20A.05; 20A.14; 21.21; 21.21-6; 26.08; 26.71; 26.75; and 1. 03A.

§11 506 Mandatory Provisions: Group and Non-Group ***Contract*** *[Agreement] and Group Certificate.* Each group and non-group **contract** [agreement] and group certificate must contain the following provisions. Use of the standard language for each provision as presented in Subchapter L of this chapter (relating to Standard Language for Mandatory and Other Provisions) shall exempt from review that portion of the evidence of coverage where standard language is contained. Such standard language shall not be the only language accepted by the **Texas Department** [State Board] of Insurance for such provisions.

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

(4) Cancellation-a statement specifying the **following** grounds for cancellation of coverage and the minimum notice period that will apply. The notice period will be as described in subparagraphs (A) and (B) of this paragraph.

(A) **Cancellation by an HMO of** [For] an enrollee, or if a subscriber, the subscriber and subscriber's enrolled dependents, in the case of:

(i)-(vi) (No change.)

(B) **Cancellation by an HMO of** [For] a group, in the case of:

(i)-(iii) (No change.)

(C) Cancellation by a group or individual contract holder: in the case of a material change by the HMO to any provisions required to be disclosed to contract holders or enrollees pursuant to this chapter or other law, the contract may be canceled after written notice to the HMO.

(5)-(16) (No change.)

(17) Out of network services-Each contract between an HMO and a contract holder must provide that, if medically necessary covered services are not available through network physicians or providers, the HMO must allow referral to a non-network physician or provider and shall reimburse the non-network physician or provider at the usual and customary or an agreed upon

rate. Each contract must further provide for a review by a specialist of the same or similar specialty as the physician or provider requesting the referral before the HMO may deny a referral.

(18)[(17)] Schedule of charges-a statement that disclosed the HMO's right to change the rate charged with 30 days written notice pursuant to the Texas Insurance Code, Article 3.51-10.

(19)[(18)] Service area-a map or clear description of the service area indicating major primary and emergency care delivery sites. A zip code map and a provider list may be used to meet this requirement.

(20)[(19)] Termination due to attaining limiting age-

(A) Medicare-provision describing the effect of becoming eligible for Medicare on the part of the subscriber or a dependent; and

(B) Handicapped child-provision that a child's attainment of a limiting age does not operate to terminate the coverage of the child while that child is incapable of self-sustaining employment due to mental retardation or physical handicap, and chiefly dependent upon the subscriber for support and maintenance. The subscriber may be required to furnish proof of such incapacity and dependency within 31 days before the child's attainment of the limiting age and subsequently as required, but not more frequently than annually following the child's attainment of such limiting age.

(21)[(20)] Conformity with state law-provision that if the agreement or certificate contains any provision not in conformity with the Act or other applicable laws it shall not be rendered invalid but shall be construed and applied as if it were in full compliance with the Act and other applicable laws.

(22)[(21)] Conformity with Medicare supplement minimum standards and long-term care minimum standards-each group and non-group agreement and group certificate must comply with Chapter 3, Subchapter T of this title (relating to Medicare Supplement Minimum Standards), referred to in this paragraph as Medicare supplemental rules, and Chapter 3, Subchapter Y of this title (relating to Long-term Care Minimum Standards), referred to in this paragraph as long-term care rules, where applicable. If there is a conflict between the Medicare supplement rules and/or the long-term care rules and the HMO rules, the Medicare supplement rules or long-term care rules shall govern to the exclusion of the conflicting provisions of the HMO rules. Where there is no conflict, both the Medicare supplement rules and/or the long-term care rules and the HMO rules shall be followed where applicable.

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 December 7, 1995.

TRD-9515977 Alicia M. Fechtel
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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Subchapter G. Advertising and Sales Material

• 28 TAC §11.603

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A. 05(b) and (d); 20A.14(a), (b), and (c); 21.21, §§3, 4(1) and (2), and 13; 21. 21-6, §1 and §3 (as added by House Bill 1367 enacted by the 74th Legislature); 26.08; 26.71 (as amended by House Bill 369 enacted by the 74th Legislature); 26.75 (as amended by House Bill 369 enacted by the 74th Legislature); 1.03A and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the State Board of Insurance may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 1.01A provides that except as otherwise provided by law, all references in the Insurance Code to the State Board of Insurance mean the department or the commissioner as consistent with the respective duties of the commissioner or the department under the Insurance Code and other laws relating to the business of insurance in this state. Article 20A.05(b) sets forth the determinations the commissioner and the Texas Board of Health must make prior to granting a certificate of authority to an HMO. Article 20A.05(d) provides a certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of the HMO Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Article 20A.14(a) provides that no HMO, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. Article 20A.14(b) provides that Article 21.21 applies to HMOs. Article 21.21, §3 and §4(1) and (2) prohibit untrue, deceptive or misleading statements with respect to the business of insurance. Article 21.21, §13 authorizes the commissioner to promulgate rules as necessary to accomplish the purposes of Article 21.21, concerning unfair practices. Article 20A.14(c) provides that an enrollee may not be canceled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner. Article 21.21-6, §1 and §3 define and prohibit unfair discrimination in the business of insurance, including HMOs. Article 26.08 provides that small employer health benefit plan carriers may use cost containment and managed care features in a small employer health benefit plan. Article 26.71 requires the fair marketing of small employer health benefit plans and authorizes the department to require submission of data concerning those plans. Article 26.75 provides that the Commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers in this state. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following articles are affected by this proposal: Insurance Code, Articles 20A.22; 20A.05; 20A.14; 21.21; 21.21-6; 26.08; 26.71; 26.75; and 1. 03A.

§11.603. Filings

(a) Any HMO licensed to do business in Texas shall file with the department a copy of each advertisement to be disseminated in this state no later than ten working days prior to its use. Material filed under this paragraph is not to be considered approved but may be subject to review for compliance with Texas law and consistency with other documents.

(b)[(a)] Any advertisement [required to be] submitted [or submitted voluntarily by an HMO licensed to do business in Texas] shall be **filed in triplicate** accompanied by a transmittal letter addressed to the advertising section of the **Texas Department** [State Board] of Insurance, and shall contain the following information:

(1) the identifying form number of each form submitted;

(2) the types of advertisement submitted, i.e., institutional advertisement, invitation to inquire, or invitation to contract;

(3) the form number of the policy form or forms advertised;

(4) the initial number of the advertisements to be printed;

(5) the method or media used for dissemination of the advertisement; and

(6) the area in which the advertisement will appear, be used, or be distributed.

[(b) All advertisements shall be submitted in triplicate.]

(c) Advertisements may be submitted in printers' proof or as pasteups.

[(d) Advertisements shall be filed in triplicate in final printed form subsequent to acceptance.]

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 December 7, 1995.

TRD-9515978 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 15, 1996

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

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Subchapter P. Prohibited Practices

• 28 TAC §11.1502

The new section is proposed under the Insurance Code, Articles 20A.22; 20A.05(b) and (d); 20A.14(a), (b), and (c); 21.21, §§3, 4(1) and (2), and 13; 21.21-6, §1 and §3 (as added by House Bill 1367 enacted by the 74th Legislature); 26.08; 26.71 (as amended by House Bill 369 enacted by the 74th Legislature); 26.75 (as amended by House Bill 369 enacted by the 74th Legislature); 1.03A and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the State Board of Insurance may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 1.01A provides that except as otherwise provided by law, all references in the Insurance Code to the State Board of Insurance mean the department or the commissioner as consistent with the respective duties of the commissioner or the department under the Insurance Code and other laws relating to the business of insurance in this state. Article 20A.05(b) sets forth the determinations the commissioner and the Texas Board of Health must make prior to granting a certificate of authority to an HMO. Article 20A.05(d) provides a certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of the HMO Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Article 20A.14(a) provides that no HMO, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. Article 20A.14(b) provides that Article 21.21 applies to HMOs. Article 21.21, §3 and §4(1) and (2) prohibit untrue, deceptive or misleading statements with respect to the business of insurance. Article 21.21, §13 authorizes the commissioner to promulgate rules as necessary to accomplish the purposes of Article 21.21, concerning unfair practices. Article 20A.14(c) provides that an enrollee may not be canceled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner. Article 21.21-6, §1 and §3 define and prohibit unfair discrimination in the business of insurance, including HMOs. Article 26.08 provides that small employer health benefit plan carriers may use cost containment and managed care features in a small employer health benefit plan. Article 26.71 requires the fair marketing of small employer health benefit plans and authorizes the department to require submission of data concerning those plans. Article 26.75 provides that the Commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers in this state. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insurance only as authorized by statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following articles are affected by this proposal: Insurance Code, Articles 20A.22; 20A.05; 20A.14; 21.21; 21.21-6; 26.08; 26.71; 26.75; and 1. 03A.

§11.1502. Indemnification of HMO. A contract between an HMO and a physician or provider may not contain any clause purporting to indemnify the HMO for any tort liability resulting from acts or omissions of the HMO.

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 December 7, 1995.

TRD-9515979 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 15, 1996

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

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Subchapter Q. Other Requirements

• 28 TAC §11.1600

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A. 05(b) and (d); 20A.14(a), (b) and (c); 21.21, §§3, 4(1) and (2), and 13; 21. 21-6, §1 and §3 (as added by House Bill 1367 enacted by the 74th Legislature); 26.08; 26.71 (as amended by House Bill 369 enacted by the 74th Legislature); 26.75 (as amended by House Bill 369 enacted by the 74th Legislature); 1.03A and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the State Board of Insurance may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 1.01A provides that except as otherwise provided by law, all references in the Insurance Code to the State Board of Insurance mean the department or the commissioner as consistent with the respective duties of the commissioner or the department under the Insurance Code and other laws relating to the business of insurance in this state. Article 20A.05(b) sets forth the determinations the commissioner and the Texas Board of Health must make prior to granting a certificate of authority to an HMO. Article 20A.05(d) provides a certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of the HMO Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Article 20A.14(a) provides that no HMO, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. Article 20A.14(b) provides that Article 21.21 applies to HMOs. Article 21.21, §3 and §4(1) and (2) prohibit untrue, deceptive or misleading statements with respect to the business of insurance. Article 21.21, §13 authorizes the commissioner to promulgate rules as necessary to accomplish the purposes of Article 21.21, concerning unfair practices. Article 20A.14(c) provides that an enrollee may not be canceled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner. Article 21.21-6, §1 and §3 define and prohibit unfair discrimination in the business of insurance, including HMOs. Article 26.08 provides that small employer health benefit plan carriers may use cost containment and managed care features in a small employer health benefit plan. Article 26.71 requires the fair marketing of small employer health benefit plans and authorizes the department to require submission of data concerning those plans. Article 26.75 provides that the Commissioner may adopt rules setting forth additional standards to provide for the fair marketing and broad availability of small employer health benefit plans to small employers in this state. Article 1.03A provides that the Commissioner of Insurance may adopt rules and regulations to execute the duties and functions of the Texas Department of Insur-

ance only as authorized by statute. The Government Code, §§2001.004 et seq authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and prescribes the procedures for adoption of rules by a state administrative agency.

The following articles are affected by this proposal: Insurance Code, Articles 20A 22; 20A.05; 20A.14; 21.21; 21.21-6; 26.08; 26 71; 26.75; and 1. 03A.

§11.1600. Information to Prospective Group Contract Holders and Enrollees.

(a) (No change.)

(b) The written plan description must be in a readable and understandable format, by category, and must include a clear, complete and accurate description of these items in the following order:

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

(6) an explanation of enrollee financial responsibility for payment of premiums, copayments, deductibles, and any other out of pocket expenses for noncovered or out-of-plan services[;] , **and, if applicable, an explanation that network physicians and providers have agreed to look only to the HMO and not to its enrollees for payment for services except as set forth in this description of the plan.**

(7)-(12) (No change.)

(c) (No change.)

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

Issued in Austin, Texas, on December 7, 1995.

TRD-9515980 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 15, 1996

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVI. Coastal Coordination Council

Chapter 506. Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies

• 31 TAC §506.28

The Coastal Coordination Council (council) proposes an amendment to §506.28, concerning general consistency agreements for federal activities and interagency coordination groups for federal development projects. The amendment is being proposed to correct an error and to clarify that the section applies to certain activities and projects in lieu of another section. In subsection (a), the rule incorrectly cites §505.26, concerning approval of thresholds for referral. The correct citation is §506.26, concerning referral of federal activities and development projects Also, subsection (b) is intended to apply to certain federal development projects in lieu of §506. 26. The amendment corrects the cross-referencing error and adds language clarifying that §506.28 applies in lieu of §505.26

The council authorized these and other changes when it adopted a series of rule amendments at its October 5, 1995, meeting. However, these two changes were inadvertently omitted from the council's submission of its October 5, 1995, amendment to the *Texas Register*. The amendment proposed today is necessary so that the council's rules will include all amendatory language the council approved on October 5, 1995.

Caryn Cosper, Deputy Commissioner for Resource Management, General Land Office, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Cosper 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 having the section accurately reflect the language approved by the council on October 5, 1995. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed amendment may be submitted to Cheli Cook, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1494, Fax: (512) 463-6311. Comments must be received by 5.00 p.m. on Friday, December 29, 1995.

The amendment is proposed pursuant to the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapters C and F, and is proposed under the council's authority to promulgate rules pursuant to those subchapters.

Texas Natural Resources Code, Chapter 33, Subchapters C and F, is affected by the proposed amendment.

§506.28 General Consistency Agreements for Federal Activities; Interagency Coordination Groups for Federal Development Projects.

(a) The council may issue a general consistency agreement with respect to a federal activity other than a development project. Prior to issuance of a general consistency agreement, the council shall request and consider public comments on the matter. If the conditions of a general consistency agreement are satisfied, the federal activity is deemed consistent, to the maximum extent practicable, with the CMP goals and policies and will not be subject to council review under **§506.26** [§505.26] of this title (relating to Referral of Federal Activities and Development Projects).

(b) The council shall, **in lieu of council review under §506.26 of this title (relating to Referral of Federal Activities and Development Projects),** issue a consistency agreement for a federal development project for which:

(1)-(4) (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 December 8, 1995.

TRD-9516108 Garry Mauro
Chairman
Coastal Coordination Council

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 305-9129

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.284

The Comptroller of Public Accounts proposes an amendment to §3.284, concerning drugs, medicines, medical equipment, and devices. The amendment reflects a legislative codification of a long-term administrative policy that exempts hospital beds. Also, this amendment reinstates the word "diagnosis" in subsection (c)(4), that clarifies the meaning of the term drugs and medicine. Subsection (c)(8) has been restated to clarify the requirements for a patient to qualify for an exemption to obtain a hot tub, spa, or similar appliance.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §151.313.

§3.284. Drugs, Medicines, Medical Equipment, and Devices.

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

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

(4) Drugs and medicines-Those commonly recognized substances possessing **identification,** curative, or remedial properties which are applied to or consumed by humans or animals either internally or externally for the alleviation of pain or for the **diagnosis,** cure, or prevention of sickness, disease, or suffering. The terms "drugs and medicines" do not include hardware of any kind, equipment, appliances, [or] devices, **or chemicals used to test body fluids and tissues.**

(5)-(11) (No change.)

(b) (No change.)

(c) Medical equipment.

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

(4) Sales tax is not due on the sale, lease, or rental of hospital beds or their replacement parts. A hospital bed is the type of bed used in a hospital for rest, recuperation, and/or treatment. A prescription is not required.

(5)[(4)] Sales or use tax is not due on the sale, lease, or rental of the following items when used by the deaf. An exemption certificate is not required for the purchase, rental, or lease of these items:

(A) hearing aids;

(B) specialized printing or signalling equipment used by the deaf for the purpose of enabling the deaf to communicate through the use of an ordinary telephone, including all materials, paper, and printing ribbons used in that equipment;

(C) a light signal and device to adapt items such as telecommunication devices for the deaf (TDD), telephones, doorbells, and smoke alarms; and

(D) adaptive devices or adaptive software for computers used by persons who are deaf.

(6)[(5)] Sales or use tax is not due on the sale, lease, or rental of the following items when used by the legally blind. An exemption certificate is not required for the purchase, rental, or lease of these items:

(A) a braille wristwatch, braille writer, braille paper;

(B) braille electronic equipment that connects to computer equipment and the necessary adaptive devices and adaptive computer software; and

(C) harness for guide dogs.

(7)[(6)] Sales or use tax is not due on the sale, lease, or rental of the following items when used by the legally blind if an exemption certificate is provided to the seller:

(A) a slate and stylus;

(B) print enlarger;

(C) light probe;

(D) magnifier;

(E) white cane;

(F) talking clock; and

(G) large print terminal and talking terminal.

(8)[(7)] Sales tax is not due on the sale, lease, or rental of therapeutic appliances, devices, and related supplies specifically designed for those products when sold, leased, or rented to individuals under a prescription of a licensed practitioner of the healing arts. A hot tub, spa, or similar appliance qualifies as a therapeutic appliance when prescribed for the purchaser by a licensed practitioner of the healing arts. **The patient must provide the seller of the hot tub, spa, or similar appliance with a prescription, an exemption certificate, and a signed statement on letterhead from the licensed practitioner. The signed statement should specify the medical requirements for the hot tub, spa, or similar appliance** [In addition to supplying the seller with an exemption certificate, the purchaser must provide the seller a signed statement from the doctor or other licensed practitioner of the healing arts, on the practitioner's letterhead, specifying why the hot tub, spa, or similar appliance is prescribed]. Unless a hospital, nursing home, or other institution qualifies for exemption under the Tax Code, §151.310(a)(1) or (2), the institution must pay sales tax on equipment and supply items used to provide medical services unless the item qualifies for exemption under paragraphs (1)-(3) of this subsection.

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 December 6, 1995.

TRD-9515961 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-4028

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• 34 TAC §3.286

The Comptroller of Public Accounts proposes an amendment to §3.286, concerning seller's and purchaser's responsibilities. The amendment to subsection (a) deletes all definitions of "engaged in business" except those definitions requiring a "physical presence" in Texas. The amendment to subsection (b)(2) states current policy on the length of time an out-of-state seller is obligated to collect Texas use tax after the seller ceases to have a physical presence in Texas but continues to make Texas sales from an out-of-state location. The amendment to subsection (d)(3) requires sellers and purchasers to be more specific as to the type of taxes included in lump-sum contracts. The other amendments are the result of legislative changes to the Tax Code. The amendment to subsection (i)(2) implements Senate Bill 982, 74th Legislature, 1995, allowing retailers from the United Mexican States to give a resale certificate in lieu of tax for inventory items to be sold in the regular course of business. Another amendment imposes a $50 penalty for failure to file timely returns. The additional penalty is imposed on persons who have failed to file timely on at least two other occasions. Another amendment lists the penalties for persons who use invalid resale or exemption certificates to avoid or evade sales or use tax. Effective January 1, 1994, the 12% interest that was compounded monthly was replaced with 12% simple interest.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title

2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §§111.0046, 151.008, 151.024, 151. 051, 151.053, 151.054, 151.103, 151.107, 151.202, 151.203, 151.410, 151.7031, and 151.707.

§3.286. Seller's and Purchaser's Responsibilities.

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

(1) Engaged in business. A retailer is engaged in business in Texas if the retailer is:

(A) maintaining, occupying, or using, permanently or temporarily, directly[,] or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room, warehouse or storage place or other place of business;

(B)-(D) (No change.)

(E) deriving receipts from a lease of tangible personal property located in this state; **or**

[(F) engaging in regular or systematic solicitation of sales of taxable items in this state by the distribution of catalogs, periodicals, advertising flyers, or other advertising, by means of print, radio, or television media, or by mail, telegraphy, telephone computer data base, cable, optic, microwave, or other communication system for the purpose of effecting sales of taxable items;

[(i) Advertising means messages by which a retailer solicits sales of taxable items.

[(ii) Regular or systematic solicitation means three or more separate transmittances of any advertisement during a testing period.

[(iii) Solicitation means offering, by advertisement, to make a taxable sale with a destination in Texas, or inviting offers to purchase tangible personal property for delivery in Texas.]

(F)[(G)] allowing a franchisee or licensee to operate under its trade name if the franchisee or licensee is required to collect Texas sales or use tax.[; or]

[(H) soliciting orders for taxable items by mail or other media and federal law permits the state of Texas to require the retailer to collect Texas sales or use tax.]

(2)-(4) (No change.)

(b) Permits required.

(1) (No change.)

(2) Every out-of-state seller engaged in business in this state must apply to the comptroller for a tax permit. **An out-of-state seller that has been engaged in business in Texas continues to be responsible for collecting Texas use tax on sales made into Texas for 12 months after the seller ceases to be engaged in business in Texas.**

(3) (No change.)

(c) (No change.)

(d) Collection and remittance of the tax.

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

(3) The amount of the sales tax must be separately stated on the bill, contract or invoice to the customer or there must be a written statement to the customer that the stated price includes **sales or use taxes** [tax]. **Contracts, bills, or invoices merely stating that "all taxes" are included are not specific enough to relieve either party to the transaction of its sales and use tax responsibilities. The total amount shown on such documents will be presumed to be the taxable item's sales price, without tax included. The seller or customer may overcome the presumption by using the seller's records to show that tax was included in the sales price.** Out-of-state sellers must identify the tax as **Texas sales or use tax.**

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

(e) Payment of the tax.

(1) Each seller or purchaser owing tax not collected by a seller must remit tax on all receipts from the sales or purchases of taxable items less any applicable deductions. On or before the 20th day of the month following each reporting period, each person subject to the tax shall file a consolidated return together with the tax payment for all businesses operating under the same taxpayer number. **Reports and payments due to be submitted on due dates occurring on Saturdays, Sundays, or legal holidays may be submitted the next business day.**

(2) (No change.)

(3) The returns will be filed on forms prescribed by the comptroller. The fact that the seller or purchaser does not receive the form or does not receive the correct forms from the comptroller for the filing of the return does not relieve the seller or purchaser of the responsibility of filing a return and **paying** [payment of] the required tax.

(f) Reporting period.

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

(3) Sellers and purchasers owing tax not collected by sellers who have $1,500 or more in state tax per quarter to report must file monthly returns **except for sellers who prepay** [unless a seller prepays] the tax. See §3.335 of this title (relating to Filing Reports).

(g) (No change.)

(h) Prepaying the tax; discounts; **penalties.**

(1) (No change.)

(2) A taxpayer who makes a prepayment based upon an estimate of tax liability may retain an additional 1.25% of the amount due. The prepayment must be made on or before the 15th day of the second month (February, May, August, and November) of the quarter for which the tax is due. Monthly prepayments are due on or before the 15th day of the month and are also entitled to the additional 1.25% deduction.

(A) (No change.)

(B) If a taxpayer does not file a quarterly or monthly return together with payment on or before the due date, the taxpayer forfeits all discounts and incurs a mandatory 5.0% penalty. After the first 30 days delinquency, an additional mandatory penalty of 5.0% is assessed against the taxpayer, and after the first 60 days delinquency, interest begins to accrue at the rate of 12% [compounded monthly].

(C) Permit holders are required to file sales and use tax returns monthly, quarterly, or yearly as set out in subsection (f) of this section. The sales and use tax returns must be filed even if there is no tax to report for the reporting period. A person who has failed to file timely reports on two or more previous occasions must pay an additional penalty of $50 for each subsequent report that is not filed timely. The penalty is due regardless of whether the person subse-

quently files the report or whether no taxes are due for the reporting period.

(i) Resale and exemption certificates.

(1) Any person selling taxable items in this state must collect a tax on the taxable items so sold unless a valid and properly completed resale, exemption, [or] direct payment exemption certificate, **or maquiladora exemption certificate** is received from the purchaser. [(Note:] Simply having **permit** numbers on file without properly completed certificates does not relieve the seller from the responsibility for collecting tax.[).]

(2) A seller may accept a resale certificate only from a purchaser who is in the business of reselling the taxable items within the geographical limits of the United States of America, its territories and possessions **or in the United Mexican States**. See §3.285 of this title (relating to Resale Certificate; Sales for Resale). To be valid, the resale certificate must show the 11-digit number from the purchaser's Texas tax permit or the out-of-state registration number of the out-of-state purchaser.

(3) (No change.)

(4) **A** [The] purchaser claiming an exemption from the tax must issue to the seller a properly completed resale or exemption certificate. The seller must act in good faith when accepting the resale or exemption certificate. If a seller has actual knowledge that the exemption claimed is invalid, the seller must collect the tax.

(5) A person who intentionally or knowingly makes, presents, uses, or alters a resale or exemption certificate for the purpose of evading sales or use tax is guilty of a criminal offense:

(A) if the tax evaded by the invalid certificate is less than $20, the offense is a Class C misdemeanor;

(B) if the tax evaded by the invalid certificate is $20 or more but less than $200, the offense is a Class B misdemeanor;

(C) if the tax evaded by the invalid certificate is $200 or more but less than $750, the offense is a Class A misdemeanor;

(D) if the tax evaded by the invalid certificate is $750 or more but less than $20,000, the offense is a felony of the third degree;

(E) if the tax evaded by the invalid certificate is $20,000 or more, the offense is a felony of the second degree.

(6)[(5)] Direct payment permit holders are entitled to issue an exemption certificate when purchasing all taxable items, other than those purchased for resale. The direct payment exemption certificate must show the purchaser's direct payment permit number. See §3.288 of this title (relating to Direct Payment Procedures and Qualifications).

(7)[(6)] Maquiladora export permit holders are entitled to issue a maquiladora exemption certificate when purchasing **tangible personal property** [all taxable items], other than **that** [those] purchased for resale. Maquiladora export permit holders should refer to §3. 358 of this title (relating to Maquiladoras).

(8)[(7)] The seller should obtain a [the] properly executed resale or exemption **certificate** [certificates] at the time a [taxable] transaction occurs. All certificates obtained on or after the date the auditor actually begins work on the audit at the seller's place of business or on the seller's records are subject to verification. All incomplete certificates will be disallowed regardless of when they were obtained. The seller has 60 days from the date written notice is received by the seller from the comptroller in which to deliver certificates to the comptroller. For the purposes of this section, written notice given by mail is presumed to have been received by the seller within three business days from the date of deposit in the custody of the United States Postal Service. The seller may overcome the presumption by submitting proof from the United States Postal Service or by other competent evidence showing a later delivery date. Any certificates delivered to the comptroller during the 60-day period will be subject to verification by the comptroller before any deductions will be allowed. Certificates delivered to the comptroller after the 60-day period will not be accepted and the deduction will not be granted. See §3.285 of this title (relating to Resale Certificate; Sales for Resale), §3.287 of this title (relating to Exemption Certificates), §3.288 of this title (relating to Direct Payment Procedures and Qualifications) and §3.282 of this title (relating to Auditing Taxpayer Records).

(j) (No change.)

(k) Refusal to issue permit. The comptroller is required by the Tax Code, §111.0046, to refuse to issue any permit to a person who:

(1) is not permitted or licensed as **required by law** for a different tax or activity administered by the comptroller; or

(2) is currently delinquent in the payment of any tax **or fee** collected by the comptroller.

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 December 6, 1995.

TRD-9515960 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-4028

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• 34 TAC §3.293

The Comptroller of Public Accounts proposes an amendment to §3.293, concerning food; food products; meals; food service. The amendment reflects the repeal made by House Bill 462, 74th Legislature, 1995, of the exemption for food products, meals, soft drinks, and candy sold to prison inmates and a change brought about by Senate Bill 640, 74th Legislature, 1995, which raised the maximum age of eligible members of certain nonprofit groups who can make exempt food sales from 17 to 18.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §151.313.

§3.293. Food; Food Products; Meals; Food Service.

(a) (No change.)

(b) Taxable food sales. Tax is due on the sale of food, meals and drinks:

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

(7) sold by concession stands at ball parks, recreation halls, gymnasiums, and other like places of business, or served

to a person seated in a stadium witnessing a sporting event; [or]

(8) purchased ready for immediate consumption by a common carrier for the purpose of serving passengers traveling en route aboard the carrier; or[.]

(9) sold to a person confined in a correctional facility operated under the authority or jurisdiction of or under contract with this state or a political subdivision of the state. This does not include meals provided by the correctional facility at no cost to the inmates as part of their incarceration.

(c) Exempt sales.

(1) (No change.)

(2) Food sales by schools, school-associated groups, and state institutions. For the purposes of this paragraph, food includes soft drinks and candy but does not include alcoholic beverages. Tax is not due on the sale of food when:

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

(D) sold by a person under **19** [18] years of age who is a member of a nonprofit organization devoted to the exclusive purpose of education, physical, or religious training, and groups associated with public or private elementary or secondary schools as a part of a fund-raising drive sponsored by the organization for its exclusive use;

(E) served to students, residents, **or** patients [or inmates] of hospitals, [prisons,] day care centers, summer camps, and other institutions licensed by the state for the care of human beings. However, meals served to visitors or employees of these establishments are taxable; [or]

(F) served to permanent residents of a retirement facility at the retirement facility. Meals served to visitors or employees of the facility are taxable; or[.]

(G) the food or meal is provided at no cost to inmates by correctional facilities as part of the inmates' incarceration.

(3) (No change.)

(d)-(i) (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 December 6, 1995.

TRD-9515962 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-4028

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• 34 TAC §3.316

The Comptroller of Public Accounts proposes an amendment to §3.316, concerning occasional sales. This rule is being amended because of the passage of House Bill 596, 74th Legislature, 1995, which exempts certain sales by college and student organizations. The comptroller proposes to rename the rule and add tax-free sales made by senior citizens' organizations provided for under the Tax Code, §151.332

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The amendment implements the Tax Code, §151.321.

§3.316. Occasional Sales ***and Other Tax-Free Sales.***

(a)-(i) (No change.)

(j) Senior citizens' organizations. Sales made by senior citizens' organizations will be exempt from tax if all of the following qualifications are met:

(1) all of the taxable items sold are produced exclusively by persons 65 years old or older;

(2) the sale is part of a fund-raising drive held or sponsored by a nonprofit organization created for the sole purpose of providing assistance to elderly persons;

(3) all net proceeds from the sale go to either the organization or the person who produced the taxable item sold; and

(4) the organizations have not conducted more than four separate fund-raising drives each calendar year for a total of not more than 20 days per year.

(k) University and college student organizations.

(1) A sale of a taxable item by a qualified student organization is exempted from sales tax if:

(A) the student organization sells the items at a sale that lasts for one day only, the primary purpose of which is to raise funds for the organization;

(B) the organization holds not more than one fund-raising sale each calendar month; and

(C) the qualifying organization has as its primary purpose a purpose other than engaging in business or performing an activity designed to make a profit.

(2) A taxable item acquired tax free under paragraph (1) of this subsection is exempt from use tax imposed on the storage, use, or consumption until the item is resold or subsequently transferred.

(3) A qualifying student organization must be affiliated with an institution of higher education as defined by the Education Code, §61.003, or a private or independent college or university that is located in this state and that is accredited by a recognized accrediting agency under the Education Code, §61.003. A student organization must file with the comptroller a certification issued by the institution, college, or university showing that the organization is affiliated with the institution, college, or university. A college, university or institution may designate one of its departments or officers to compile a list of registered or certified student organizations and submit the list to the comptroller in lieu of having each student organization submit individual certifications. The certification is valid for two years after the date the comptroller receives it. After the two-year period, the organization must recertify with the comptroller.

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 December 6, 1995.

TRD-9515963 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-4028

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Chapter 9. Property Tax Administration

Subchapter C. Appraisal District Administration

• 34 TAC §9.405

The Comptroller of Public Accounts proposes an amendment to §9.405, concerning exemption applications for residence homesteads. The amendment deals with the continuation of a school tax ceiling or the over-65 homestead exemption for an over-55 surviving spouse of a person who died while entitled to the specific tax ceiling or exemption. This rule will implement recently adopted amendments to Property Tax Code, §11.13, (House Bill 1127, 74th Legislature, 1995).

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities. There will be no significant effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Larrilyn Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under the Tax Code, §11.43(f), which requires the comptroller to prescribe the contents and form for each type of property tax exemption.

The amendment implements the Property Tax Code, §11.13 and §11.143.

§9.405. Exemption Applications for Residence Homesteads.

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

(d) All applications for residence homestead exemption shall contain a statement indicating that by signing the application, the applicant states that he/she is qualified for the exemptions indicated. **Additionally, all applications shall include in boldface type beneath the space for the signature and date, a notice of the penalties prescribed under the Penal Code, §37.10, for making or filing an application containing a false statement**[, and a statement of the penalties for violating the Penal Code, §37.10].

(e)-(k) (No change.)

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

Issued in Austin, Texas, on December 7, 1995.

TRD-9516001 Martin Cherry
Chief, General Law
Comptroller of Public Accounts

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-4028

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 4. Employment Practices

Subchapter E. Sick Leave Pool Program

• 43 TAC §4.54, §4.56

(Editor's Note: The Texas Department of Transportation proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is in the Emergency Rules section of this issue.)

The Texas Department of Transportation proposed amendments to §4.54 and §4.56, concerning contributions and withdrawal to the department's sick leave pool program.

Government Code, Chapter 661 authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. The General Appropriations Act, Fiscal Years 1996-1997, Article IX, §8(2) defines family members and provides conditions when sick leave may be taken by an employee for illness of the employee or a family member.

The commission on May 25, 1995, proposed the adoption of new §§4.50-4.56, concerning the department's employee sick leave pool program. The commission on September 28, 1995, adopted those sections with changes to §4.54 and §4. 56.

The final adoption computer diskette as filed with the Texas Register did not reflect the changes to §4.54 and §4.56. Title 1, Texas Administrative Code, Section 91.135(d), prohibits the Texas Register from making corrections to adopted rules after the effective date of the rules.

The proposed amendments to §4.54 and §4.56 are technical amendments which when permanently adopted will accurately reflect the changes previously adopted by the commission. The permanent adoption of these amendments will allow the accurate version of §4.54 and §4.56 to be published in the *Texas Register.*

The amendments to §4.54 provides that the health care provider certification is confidential, unless otherwise required by law, and may only be released to the human resources officer if he or she can demonstrate a legitimate business necessity for this information. The amendments to §4.56 clarify that hours from the sick leave pool may be granted in a block of time and used on an as needed basis and that the pool administrator may require the unused hours to be returned to the pool after such time has expired unless an immediate need for such leave still exists. The amendments also provide that the pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis when the necessary information to make a definite determination of the employee's need for pool hours is changed, uncertain, or not available.

Cathy J. Williams, Director, Human Resources Division, has determined that for the first five-year period the amended sections are in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the sections.

Ms. Williams 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.

Ms. Williams 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 effective implementation of the department's sick leave pool program. 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.

The amendments are proposed under 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 Government Code, Chapter 661, which authorizes the department to adopt rules administering a sick leave pool program.

No statutes, articles, or codes are affected by these proposed amendments.

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 December 6, 1995.

TRD-9515905 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-8630

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Chapter 25. Traffic Operations

Traffic Safety Program

• 43 TAC §§25.901-25.903, 25.905-25.907, 25.909-25.911, 25. 913

The Texas Department of Transportation proposes amendments to §§25. 901-25.903, 25.905-25.907, 25.909-25.911 and new §25.913, concerning the Texas Traffic Safety Program.

The Texas Traffic Safety Program consists of a coordinated program planned and administered by the department under Title 23, United States Code, §402 (Federal Highway Safety Act of 1966) and Transportation Code, Chapter 723 (Texas Traffic Safety Act of 1967).

Each federal fiscal year, the department solicits highway safety plans from its districts and project proposals from other state agencies and other organizations with interests in traffic safety in order to develop an annual highway safety plan. Projects are selected based on specified criteria and awarded funding through grant agreements or interagency cooperation contracts and then monitored to ensure project performance.

Sections 25.901-25.903 are amended to define and further clarify department procedures for conducting the Texas Traffic Safety Program.

Sections 25.905-25.907 are amended to provide for the procedures for the traffic safety program, delineate criteria for grant or contract funding, and reflect changes in the federal regulations concerning the types of eligible traffic safety projects.

Sections 25.909-25.911 are amended to outline grant agreement content and add the Federal Highway Administration as a participant in federal oversight of the traffic safety program.

New Section 25.913 stipulates the department's responsibility to monitor and report on project performance.

David T. Newbern, Acting Director of Traffic Operations, has determined that for the first five years the amendments and new section are in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Newbern has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments and new section.

Mr. Newbern also has determined that for each year of the first five years the amendments and the new section are in effect, the public benefits anticipated as a result of enforcing the amendments and new section will be a more effective and efficient use of traffic safety program funds. 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, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the amendments and new section. A public hearing will be held at 9:00 a.m. on Thursday, January 4, 1996, 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 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 the same 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 request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed amendments and new section may be submitted to David T. Newbern, P.E., Acting Director of Traffic Operations, 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 January 16, 1996.

The amendments and new section are proposed under the Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation and more specifically the Transportation Code, Chapter 723, which requires the department to design a highway traffic safety program to reduce traffic crashes, deaths, injuries, and property damage.

No statutes, articles, or codes are affected by the proposed amendments and new section.

§25.901. Purpose. The purpose of the sections in this undesignated head is to provide an orderly and efficient system of traffic safety program **grant agreements or** contracts between the department and local governments, state agencies, colleges, universities, individuals, and other public and private entities for the purpose of improving traffic safety and to facilitate compliance with applicable federal and state laws. These sections shall be construed to obtain these objectives.

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

Commission-The **Texas** [State Highway and Public] Transportation Commission.

Contract-A Texas traffic safety program contract between the department and another state agency for the **procurement** [implementation] of **goods or services for** a traffic safety project, and including expenditures pursuant to which are reimbursable, in whole or in part, by the department with traffic safety funds.

Department-The **Texas** [State] Department of [Highways and Public] Transportation.

District-One of the **25** [24] geographical areas into which the department divides the state.

FHWA-The Federal Highway Administration.

Grant agreement-A Texas traffic safety program agreement between a subgrantee and the department for the implementation of a traffic safety project which includes an approved project description and planned expenditures reimbursable, in whole or in part, by the department with traffic safety funds.

Monitoring-Project review and documentation that provides a method of tracking fiscal management and progress toward achievement of objectives.

Subgrantee-Any state agency, college, university, local government, public or private for-profit or nonprofit organization, or individual that receives traffic safety grant funds from the department, and which is accountable to the department for the use of the funds provided.

Uniform Grant and Contract Management Standards-The standards included in **Chapter 783, Texas Government Code** [Title 1, Texas Administrative Code, Chapter 5, Subchapter A], concerning uniform grant and contract management standards for state agencies.

§25.903. Scope. The sections under this undesignated head govern the scope and content of program **grant agreements and** contracts and the means of determining whether costs of a proposed project will be eligible for reimbursement with traffic safety funds pursuant to a **grant agreement**

or a contract with the department. They shall not be construed to enlarge, diminish, modify, or alter the power or authority of the department or [of] any substantive rights of any person, organization, or political jurisdiction. The sections under this undesignated head do not apply to purchase order contracts awarded in accordance with **Government Code, Chapter 2155** [Texas Civil Statutes, Article 601b].

§25.905. Availability of Documents.

(a) Forms. Forms issued by the department are available from the nearest district office or from the department's **traffic operations** [maintenance and operations] division, **traffic safety** [safety and traffic operations] section.

(b) State and federal regulations. Copies of pertinent state and federal regulations are maintained on file in the department's headquarters in Austin. Additional copies of federal regulations are generally available from the United States Government Printing Office.

(c) Procedures. The highway traffic safety volume of the department's traffic operations manual establishes program and project management procedures in support of the program. A copy of these procedures is available from the department's traffic operations division, traffic safety section.

§25.906. Participation. Any prospective **subgrantee** [contractor] with traffic safety responsibility, **or any local government,** may have its project proposal considered for inclusion in the Texas highway safety plan.

(1) (No change.)

(2) State agencies may contact the **traffic safety** [safety and traffic operations] section of the **traffic operations** [maintenance and operations] division regarding their project proposals.

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

(5) Except for those projects funded according to legislative or regulatory requirements, grant funding will be awarded according to the following criteria:

(A) potential for impact on traffic safety;

(B) quality of problem identification, supported by verifiable ???

(C) demonstration of a reasonable and logical solution for improving traffic safety; and

(D) cost effectiveness.

§25.907. Types of Projects Eligible. A **grant agreement or** contract may be executed to provide funding assistance for projects which meet eligibility requirements for one or more of the following areas:

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

(7) safety and traffic engineering projects which provide improved roadway safety through engineering-related activities; [and]

(8) school bus safety projects that provide training for school bus drivers and pupil transportation administrators;

(9) pedestrian and bicycle safety projects that focus on community school zones and public information and education materials;

(10) community programs that combine multi-issue traffic safety efforts within the geographic and political confines of communities and college or university campuses; and

(11)[(8)] other [types of] projects approved by the commission and included in the approved Texas highway safety plan which may be implemented to **eliminate or reduce the severity of** [improve] certain defined traffic safety problems.

§25.909. Basic ***Grant Agreement*** *[Contract]. Requirements.* The department will furnish a standard **grant agreement** [contract] format to prospective **subgrantees** [contractors] whose proposals are selected for funding. This document will include terms and conditions necessary to produce a sound and complete **grant agreement.** [contract, including, but not limited to, the following:

[(1) identification of contracting parties;

[(2) maximum amount payable;

[(3) contract period;

[(4) payment provision;

[(5) approved project budget;

[(6) project description (including objectives, description of services, identification of phases, milestones, or other schedules, and performance measures);

[(7) indemnification and/or insurance requirements;

[(8) inspection of work;

[(9) changes in work;

[(10) ownership of documents;

[(11) disputes;

[(12) noncollusion;

[(13) reporting;

[(14) records;

[(15) compliance with laws;

[(16) successors and assigns;

[(17) resources needed to perform project;

[(18) audit;

[(19) subcontracts;

[(20) termination;

[(21) documentation;

[(22) remedies;

[(23) gratuities;

[(24) copyrights, if appropriate;

[(25) patent rights, if appropriate;

[(26) changes in work and in funding;

[(27) debarment certification;

[(28) delinquent tax certification;

[(29) property management;

[(30) procurement standards;

[(31) equal employment opportunity;

[(32) nondiscrimination;

[(33) minority business enterprise;

[(34) signatory warranty; and/or

[(35) signature block.]

§25.910. General Acceptance Criteria.

(a) Each **grant agreement** [contract] submitted to the department for approval shall be reviewed for compliance with the applicable provisions.

(b) Any **grant agreement** [contract] will be rejected if the Texas highway safety plan cannot provide sufficient funds for the particular type of project submitted.

§25.911. Federal Rules and Regulations.

(a) The **NHTSA** [National Highway Traffic Safety Administration] **and the FHWA are** [is an administration in the United States Department of Transportation. As such, it is] subject to the common rule, which is also applicable to the program.

(b) The program is also subject to the program regulations promulgated by the **NHTSA** [National Highway Traffic Safety Administration] **and FHWA.**

(c) (No change.)

§25.913. Project Monitoring. The department will monitor and prepare reports on program performance to assure compliance with state and federal regulations and to assure that performance objectives are being met.

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 December 7, 1995.

TRD-9516014 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: January 15, 1996

For further information, please call: (512) 463-8630

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Chapter 30. Aviation

Subchapter C. Aviation Facilities Development and Financial Assistance Rules

• 43 TAC §§30.203, 30.208-30.210

The Texas Department of Transportation proposes amendments to §§30.203 and 30.208-30.210, concerning aviation facilities development and financial assistance rules.

Transportation Code, Chapter 21, provides for an aviation facilities development and financial assistance program. House Bill 2180, 74th Legislature, 1995, amended Texas Civil Statutes, Article 46c-6, now codified as Transportation Code, Chapter 21, to authorize a designated representative of the Texas Transportation Commission to conduct public hearings for comments on proposed financial assistance awards to governmental entities for airport development grants and to authorize the department to award a loan or grant to an aviation facility without holding a public hearing in the case of an emergency.

It is necessary to propose amendments to §30.203 and §§30.208-30.210 to comply with House Bill 2180, 74th Legislature, 1995.

The amendment to §30.203, provides for a definition of emergency.

The amendments to §§30.208-30.210 provide a procedure for the department to award emergency financial assistance without holding a public hearing.

Mr. David Fulton, Director of Aviation, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Fulton has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Fulton also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the amendments will be the ability to provide financial assistance in an emergency situation and a more expedient and efficient method of conducting public hearings on proposed financial assistance to governmental entities for aviation development grants or loans. 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.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 9.00 a.m., on Friday, January 5, 1996, 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 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Written comments on the proposal may be submitted to David Fulton, Director of Aviation, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on January 16, 1996.

The amendments are proposed under 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, Chapter 21, which provides an aviation facilities development and financial assistance program.

No statutes, articles, or codes are affected by the proposed amendments.

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

Emergency-A situation or condition at a general aviation airport which requires immediate attention due to an existing unsafe condition. The condition should be of sufficient concern to require the filing of a Notice to Airman with the Federal Aviation Administration under FAA Order 7930.2E until the safety concern has been resolved.

§30.208. Evaluation of Requests for Financial Assistance.

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

(c) In the case of an emergency, the executive director or his or her designee may, without holding a public hearing in accordance with §30. 209 of this title (relating to Approval of the Aviation Facilities Capital Improvement Program and Financial Assistance), award a loan or grant in accordance with this subsection.

(1) The sponsor must submit a written request for emergency financial assistance to the division. The request must be accompanied by a copy of the Notice to Airman filed with the Federal Aviation Administration under FAA Order 7930.2E and a description of the needed repairs, including the estimated cost.

(2) The division will evaluate the request and determine if funds are available to finance the repairs. The division will send its written recommendation to the executive director within three working days after receiving the completed notification.

(3) If the executive director or his or her designee determines that the condition warrants immediate attention and the funds are available, he or she will certify in writing to the fact and nature of the emergency. If the executive director or his or her designee determines that the funds are not available or that the condition does not warrant immediate assistance, the division will notify the sponsor of the reasons for denial.

(4) If the financial assistance is granted, the division will execute an Airport Project Participation Agreement with the sponsor within five days after certification in accordance with §30.210 of this title (relating to Intergovernmental Agreements) and §30.214 of this title (relating to Grant and Loan Agreement Payments).

(5) The executive director will send a written report of the details of the

emergency conditions and the award to the commission within five working days following the contract award.

§30.209. Approval of the Aviation Facilities Capital Improvement Program and Financial Assistance.

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

(c) The commission **or its authorized representative** shall hold a public hearing at which all interested parties shall have an opportunity to address the projects under consideration by the commission for financial assistance. Presentations shall be as concise as possible. The hearing will be held in accordance with §1.5 of this title (relating to Public Hearings).

(d) (No change.)

(e) The commission shall approve all financial assistance grants and loans **except as provided in §30.208(c) of this title (relating to Evaluation of Requests for Financial Assistance).** After financial assistance has been approved by the commission, the staff shall prepare and present to each sponsor an intergovernmental agreement. In the case of a state or federal grant, an Airport Project Participation Agreement will be executed, or a loan agreement, in the case of a loan. The sponsor and the department shall execute the agreement within 180 days of approval by the commission. If the agreement is not executed within 180 days of approval by the commission, approval of financial assistance for the project may be rescinded by the commission. Upon a showing of good cause, the director may allow the sponsor additional time to execute the agreement.

§30.210. Intergovernmental Agreements.

(a) (No change.)

(b) Airport Project Participation Agreement (APPA). Except as provided in subsection (c) of this section, when the commission has approved a sponsor's request for financial assistance, the APPA:

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

(5) shall include, as a separate attachment, an attorney's certificate of airport property interests title **if necessary**; certification of availability of sponsor share; and existence of an airport fund; and

(6) (No change.)

(c) (No change.)

(d) Covenants, terms, and conditions. In addition to all other requirements imposed by law or by this subchapter, all intergovernmental agreements made by the **department** [commission] shall be subject to the following terms and conditions and any additional terms and conditions necessary to effectuate the program.

(1)-(14) (No change.)

(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 December 7, 1995.

TRD-9516015 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Earliest possible date of adoption: January 15, 1996

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 filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 280. Therapeutic Optometry

• 22 TAC §280.5

The Texas Optometry Board has withdrawn from consideration for permanent adoption a proposed amendment to §280.5, which appeared in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8387). The effective date of this withdrawal is December 7, 1995.

Issued in Austin, Texas, on December 6, 1995.

TRD-9515953 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: December 7, 1995

For further information, please call: (512) 305-8500

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 119. Health Maintenance Organizations

• 25 TAC §§119.1-119.15

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed repeal of §§119.1-119.15, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5990). The effective date of this withdrawal is December 6, 1995.

Issued in Austin, Texas, on December 6, 1995.

TRD-9515940 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 6, 1995

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

• 25 TAC §§119.1-119.14

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §§119.1-119.14, which appeared in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5990). The effective date of this withdrawal is December 6, 1995.

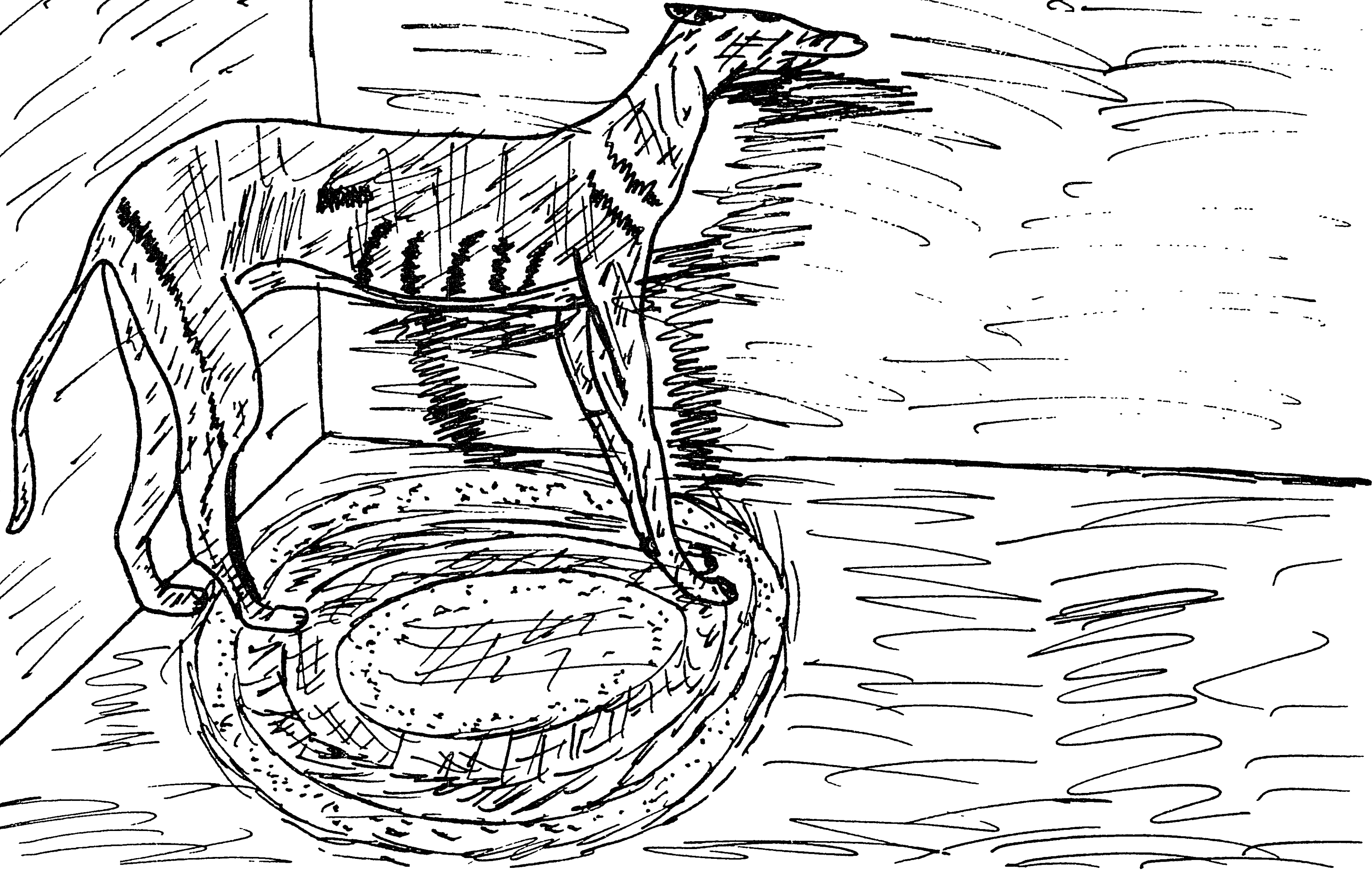
Issued in Austin, Texas, on December 6, 1995.

TRD-9515939 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 6, 1995

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

Name: Juana Gonzalez
Grade: 12
School: Harlandale High School, Harlandale ISD



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part VII. State Office of Administrative Hearings

Chapter 163. Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources

- **1 TAC §§163.1, 163.3, 163.5, 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, 163.67**

The State Office of Administrative Hearings (SOAH) adopts new §§163.1, 163.3, 163.5, 163.7, 163.9, 163.11, 163.13, 163.15, 163.17, 163.19, 163.21, 163.23, 163.25, 163.27, 163.29, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43, 163.45, 163.47, 163.49, 163.51, 163.53, 163.55, 163.57, 163.59, 163. 61, 163.63, 163.65, and 163.67, concerning the election of arbitration, the appointment of an arbitrator, and the procedures for arbitration for certain enforcement cases under Texas Health and Safety Code, Chapter 242, and Texas Human Resources Code, Chapter 32. Sections 163.3, 163.11, 163.13, 163.15, 163. 19, 163.21, 163.29, 163.41, 163.47, and 163.49 are adopted with changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8381). Sections 163.1, 163.5, 163.7, 163.9, 163.17, 163. 23, 163.25, 163.27, 163.31, 163.33, 163.35, 163.37, 163.39, 163.43, 163.45, 163.51, 163.53, 163.55, 163.57, 163.59, 163.61, 163.63, 163.65, and 163.67 are adopted without changes and will not be republished.

SOAH is adopting these rules to implement House Bill 2644 amending Texas Health and Safety Code, Chapter 242, and Texas Human Resources Code, Chapter 32. These rules provide for an alternative way to efficiently and economically resolve certain enforcement actions. They also establish minimum qualifications for people who may be appointed as arbitrators under these rules.

Following is a summary of the comments made concerning the proposed rules, SOAH's responses to those comments, and a description of the changes made to the proposed rules.

A commenter suggested substituting the word "concerning" for the words "relating to" in §163.3(3) to clarify that the arbitration is limited to the disputes listed in §163.3(1). SOAH responds that the language "relating to" was used in the statute in the same way that it is used in this section. No change was made to the section.

A commenter pointed out that there was an apparent clerical error in §163. 3(4) which referred back to the wrong section. This correction was made.

In response to a comment relating to the selection of potential arbitrators, a sentence was added to §163.3(6) to authorize parties to submit any special information that should be considered in compiling a panel of potential arbitrators in the notice of election or answering statement.

A suggestion was made that language be added to §136.3(7) to make it clear that parties could settle disputes after arbitration was elected. Such a change was made.

Several comments were received relating to the process of selecting an arbitrator under §163.11. It was suggested that parties should be encouraged to agree upon an arbitrator with the process for sending out a list of potential arbitrators being used if the parties do not agree. It was suggested that it would facilitate this process if the rule stated that the list is available to the public. These changes were made. The sections were also reordered to place the statement that parties could agree to an arbitrator in a more prominent position.

One commenter also suggested that the number of potential arbitrators sent to parties be increased from three to five and the number of strikes per party be increased from one to two each. These changes were made, and a requirement was added for the parties to number the remaining names in order of preference, if any. In addition, the provision that another name would be added to the list if a name was removed for cause was deleted. The unlikely situation where one name has been removed for cause and all other names have been struck will be handled on a case-by-case basis.

Another commenter pointed out that there seemed to be two different requirements for disclosure statements: one incorporated into the resume and one as a separate document. Changes have been made to clarify that only one disclosure statement under §163.15 is required. A change was made so that disclosure statements will not routinely be sent to parties, but will be used by SOAH to determine whether or not an arbitrator is potentially qualified to serve in a particular case. SOAH will not place names on a list if there appears to be any conflict.

A commenter pointed out that House Bill 2644 requires SOAH to consult with the department before contracting with a national association to conduct arbitrations and suggested that §163.11(g) should include an analogous requirement. Such a change was made.

A comment was made that the requirement in §163.15(b) for the disclosure of any circumstance which might "reasonably raise" a question about an arbitrator's impartiality was overly broad and vague and could lead to challenges solely for the purpose of delay. That section has been modified to state more specifically what must be disclosed in each particular case.

The contents of the resume required under §163.19(2) were more clearly articulated, and an addition to §163.19(3) specifies that letters of reference for potential arbitrators should be sent directly to the chief judge of SOAH by the person giving the reference.

Staff noticed that there was a clerical error in §163 21 and the correction was made.

A commenter suggested that §163.29(4) be modified to include a requirement that orders rendered be consistent with the Human Resources Code, §32.021(k), where a party involved in cases brought pursuant to that statute has elected arbitration. This commenter also suggested that there might be other applicable state and federal laws and regulations which arbitrators would have to apply in rendering an order and that this section should so indicate. Changes in this section were made to address these concerns.

As a clarification, staff changed §163.41 to specify that the parties must exchange lists of witnesses that each side expects to call during the hearing.

To facilitate the efficiency of the arbitration process, an addition was made to §163.47 requiring each party to produce any witnesses under its control without the necessity of a subpoena.

A change was made in §163.49 to require all witnesses to testify under oath to protect the integrity of the arbitration process.

Comments suggesting changes in the rules were received from the following groups and/or associations: Texas Department of Human Services and the Center for Public Policy Dispute Resolution. There were no comments submitted against the adoption of the rules.

A public hearing on the proposal was held on November 16, 1995, at 10:00 a. m. in Room 410A of the William B. Clements State Office Building, 300 West 15th, Austin, Texas.

The training course described in §163.19(4) of this title (relating to Qualifications of Arbitrators) will be held January 9-11, 1996, at the Department of Human Services, 701 West 51st Street, Austin, Texas. Persons who want to participate need to submit their names and resumes by January 1, 1996, to Nancy N. Lynch, Administrative Law Judge, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-4993. The number of persons who can attend the training may be limited due to space. Persons accepted for the training will be notified by SOAH. A small charge will be made to defray the costs of materials for the training.

§163.3. Election of Arbitration. The department or any affected facility may elect binding arbitration as an alternative in any of the following disputes unless the United States Health Care Financing Administration requires that such dispute be resolved by the federal government.

(1) Disputes for which arbitration may be elected include:

(A) renewal of a license under Health and Safety Code, §242.033;

(B) suspension or revocation of a license under Health and Safety Code, §242.061;

(C) assessment of a civil penalty under Health and Safety Code, §242.065;

(D) assessment of a monetary penalty under Health and Safety Code, §242.066; or

(E) assessment of a penalty as described by Human Resources Code, §32.021(k).

(2) Arbitration cannot be elected in situations where the department is seeking an emergency suspension or a closing order issued under Health and Safety Code, §242.062.

(3) An affected facility may elect arbitration by filing a notice of election to arbitrate with the director of hearings no later than the tenth day after a notice of an administrative or judicial hearing relating to any of the above-listed disputes is received by the facility. A copy of this election shall be sent to the department's representative of record in the relevant action.

(4) The department may elect arbitration under this subchapter by filing the election with the director of hearings no later than the date that the facility may elect arbitration under paragraph (3) of this section. A copy of this election shall be sent to the facility's representative of record in the relevant action or to the owner or chief operating officer of the facility if no representative has made an appearance in the action.

(5) The date of receipt shall be the date affixed upon a notice of election by a date-stamp utilized by the hearings department of the department.

(6) The notice of election shall include a written statement that contains:

(A) the nature of the action that is being submitted to arbitration, as listed in paragraph (1) of this section;

(B) a brief description of the factual and/or legal controversy, including the amount in controversy, if any;

(C) an estimate of the length of the hearing and the extensiveness of the record necessary to determine the matter;

(D) the remedy sought;

(E) any special information that should be considered in compiling a panel of potential arbitrators; and

(F) the hearing locale requested, along with a explanation for that locale. If no request is made, the arbitrator may choose the locale in compliance with this chapter.

(7) An election to engage in arbitration under this subchapter is irrevocable and binding on the facility and the department. However, such an election does not preclude the parties from reaching an agreed resolution of a dispute that has been submitted for arbitration at any time during the arbitration process before the final order has been issued by the arbitrator.

§163.11. Selection of Arbitrator.

(a) A master list of potential arbitrators will be maintained by SOAH and updated at least once a year. The master list will be made up of individuals who have been determined by the chief judge to be qualified under §163.19 of this title (relating to Qualifications of Arbitrators). This list will be available to the public upon request to SOAH.

(b) The parties may agree upon an arbitrator qualified under this chapter and submit that individual's name with their initial statements.

(c) If the parties do not agree on an arbitrator that is willing and available to serve, SOAH will provide a list of potential arbitrators. The list of potential arbitrators in each case will be created by selecting individuals from the master list. In selecting these individuals, due regard will be given to the complexity of the dispute, the expertise needed to understand the dispute, the experience and training of the proposed arbitrators, and the requests of the parties concerning the location of the hearing. SOAH will also consider any potential conflicts revealed in disclosure statements on file with SOAH.

(d) SOAH shall send each party an identical list of five persons qualified to serve as an arbitrator in the dispute within ten days after receipt of the answering statement by SOAH, or in any event no later than 15 days after the initial claim is received by SOAH.

(e) Any objections for cause pertaining to any name on the list shall be made in writing directed to the chief judge at SOAH within three days, with a copy served on all other parties. Such objections will be reviewed by the chief judge or his designee and acted upon within five days after the objection is received.

(f) Each party shall have ten days from the transmittal date to strike two names. The remaining names should be numbered in order of preference, if such preference exists. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. It is not necessary for the parties to exchange the name of the candidate that they are striking, nor will those names be disclosed to the candidates.

(g) SOAH will notify the parties of the selected arbitrator.

(h) SOAH may contract with a nationally recognized association that performs arbitrations to conduct arbitrations under this chapter, after consultation with the department.

§163.13. Notice to and Acceptance by Arbitrator of Appointment.

(a) Notice of the appointment of the arbitrator shall be sent to the arbitrator by SOAH, together with a copy of this chapter and an acceptance form for the arbitrator to sign and return. The signed acceptance of the arbitrator shall be filed with SOAH prior to the first pre-hearing conference or other meeting of the parties to the arbitration.

(b) The acceptance of the arbitrator shall state that she/he is qualified and willing to serve as arbitrator in accord with this chapter, and with the Code of Ethics for Arbitrators in Commercial Disputes issued by the American Bar Association and the American Arbitration Association in 1977. It shall also state that the arbitrator foresees no difficulty in completing the arbitration according to the schedule set out in this chapter.

§163.15. Disclosure Requirements and Challenge Procedure.

(a) Any person appointed to the master list of potential arbitrators shall file a disclosure statement with SOAH describing any circumstances likely to affect impartiality, including any bias or any financial or personal interest in or representation of health care facilities or the department, or any past (within the last three years) or present relationship with a facility or with the department or its employees. This disclosure statement must be updated as circumstances change, and in any event at least once annually in order to maintain eligibility for appointment as an arbitrator under this chapter.

(b) In any particular matter, a potential arbitrator must not enter or continue in any dispute if she/he believes or perceives that participation as an arbitrator would be a conflict of interest or create the impression of a conflict. A potential arbitrator must disclose any personal interest she/he may have in the result of the particular arbitration as well as any past or present relationship with the parties, their principals, or their representatives when approached by SOAH, or parties in a dispute that could be submitted to arbitration under these rules, about being an arbitrator under these rules.

(c) The duty to disclose is a continuing obligation throughout the arbitration process.

(d) Upon receipt of such information from the arbitrator or another source, SOAH shall communicate the information to the parties and, if appropriate, to the arbitrator and others. Upon objection of a party to the continued service of an arbitrator, the chief judge shall determine whether the arbitrator should be disqualified and shall inform the parties of his/her decision, which shall be conclusive.

§163.19. Qualifications of Arbitrators. The chief judge shall designate persons qualified to serve as an arbitrator under this chapter and that designation shall be conclusive. Potential arbitrators shall meet the following minimum standards.

(1) Have at least five years of experience in health care and/or the legal profession and/or alternative dispute resolution with recognized expertise in his/her profession(s).

(2) Have a current resume on file with SOAH that shows the nature of his/her law practice or other business, experience, and education, professional licenses and certifications, professional associations, publications, and other special qualifications such as other languages spoken. A separate disclosure statement containing information as described in §163. 15(a) of this title (relating to Disclosure Requirements and Challenge Procedure) must also be on file with SOAH.

(3) Have the attributes necessary to be a successful arbitrator, including expertise, honesty, integrity, impartiality, and the ability to manage the artibration process. These attributes must be reflected by at least three letters of recommendation submitted to the chief judge of SOAH from persons who have attained a recognized position of respect in their professional community. The author should assess the candidate's general expertise, honesty, integrity, impartiality, and ability to manage the arbitration process. These letters should describe the author's standing and experience in the community as well as the applicant's, and should describe the nature of the relationship between the author and the applicant. These letters should be sent directly to the chief judge of SOAH by the person giving the reference.

(4) Completion of a training course offered under the joint auspices of the department, SOAH, and representatives of the facilities.

(A) The course must address:

(i) the state and federal statutes, rules and regulations under which these enforcement actions are brought; and

(ii) geriatric issues with emphasis on the aging process, end of life, and emotional and psychosocial concerns.

(B) The course must:

(i) be offered at least once a year; and

(ii) be initially offered in January 1996.

(5) The chief judge can remove persons from the master list if he determines that they no longer meet the qualifications listed in this section. The determination of the chief judge in this matter is conclusive.

§163.21. Costs of Arbitration.

(a) An arbitrator's fees and expenses shall not exceed $500 per day for case preparation, pre-hearing conferences, hearings, preparation of the award, and any other required post-hearing work. Rates charged for less than one day must bear a reasonable relationship to the daily maximum.

(b) There may also be incidental expenses connected with an arbitration proceeding which may be charged in addition to the arbitrator's fees and expenses upon agreement by the parties. Examples of such expenses include renting a room for the hearing.

§163.29. Duties of the Arbitrator. The arbitrator shall:

(1) secure appropriate facilities for the hearing, giving preference to using state facilities;

(2) protect the interests of the department and the facility;

(3) ensure that all relevant evidence has been disclosed to the arbitrator, department, and facility, and

(4) render an order consistent with applicable state and federal law, including the Health and Safety Code, Chapter 242; the Human Resources Code, Chapter 32; and this chapter.

§163.41. Exchange and Filing of Information.

(a) By the 30th day after the date SOAH mailed notice to the parties of the name of the appointed arbitrator, the parties shall have exchanged the following information.

(1) List of witnesses that a party expects to call with a short summary of their expected testimony.

(2) Any and all documents or other tangible things that contain information relevant to the subject matter, including any documents that will be testified about at the hearing or that witnesses have reviewed in preparing for their testimony.

(3) Not later than the seventh day before the first day of the arbitration hearing, and sooner if so directed by the arbitrator, the department and the facility shall exchange and file with the arbitrator:

(A) all documentary evidence not previously exchanged and filed that is relevant to the dispute, with the relevant portions clearly indicated; and

(B) information relating to a proposed resolution of the dispute.

§163.47. Evidence

(a) The parties may offer evidence as they desire and shall produce additional evidence that the arbitrator considers necessary to understand and resolve the dispute. However, any documentary evidence not properly exchanged between the parties before the hearing will be excluded from consideration unless good cause is shown.

(b) The arbitrator is the judge of the relevance and materiality of the evidence offered. Strict conformity to the rules of judicial proceedings is not required. The Texas Rules of Civil Evidence are not binding on the arbitrator but may be used as a guideline.

(c) Each party shall produce any witnesses under its control without the necessity of a subpoena. Individuals may be compelled by the arbitrator, as provided under the Texas General Arbitration Act, Texas Civil Practice and Remedy Code Annotated, §171.007, to attend and give testimony or to produce documents at the arbitration proceeding or at a deposition allowed under §163.43 of this title (relating to Discovery).

§163.49. Witnesses. Witnesses shall testify under oath. Testimony may be presented in a narrative, without strict adherence to a "question and answer" format.

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 December 8, 1995.

TRD-9516127 Sheila Bailey Taylor
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings

Effective date: January 1, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 475-4993

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 13. Apiary Equipment Brands

• 4 TAC §§13.1-13.9

The Texas Department of Agriculture (the department) adopts the repeal of §§13.1-13.9, concerning issuance of apiary equipment brands, affixation to equipment, height and location, transference, bill of sale, sale of separate branded equipment, placement of brand number, tampering and stolen equipment, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5455).*

These sections are being repealed because the department no longer has the necessary legislative authority to adopt or implement these sections. That authority has been transferred to the Texas Agricultural Experiment Station.

Repeal of these sections will delete unnecessary rule language and reduce state regulations. The repeal eliminates existing regulations for apiary equipment brands

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to administer the provisions of the Texas Agriculture Code, Chapter 12.

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 December 8, 1995.

TRD-9516043 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

Chapter 15. Consumer Services Division

Texas Weights and Measures

• 4 TAC §15.7

The Texas Department of Agriculture (the department) adopts the repeal of §15.7, concerning standards for the sale of butter, or renovated or processed butter, or oleomargarine, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5455).*

This section is being repealed in order to allow for changes in consumer preferences; permit changes in industry standards, and avoid interference with interstate commerce.

Repeal of this section will delete unnecessary rule language and allow greater flexibility that manufacturers will have to respond to consumer preferences and the changing demographics of the marketplace. The repeal eliminates existing size standards for the sale of butter, renovated or processed butter or oleomargarine.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Agriculture Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning the sale and use of weights and measures and authorizing the department to supervise all weights and measures sold in this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9516044 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

• 4 TAC §15.10

The Texas Department of Agriculture (the department) adopts the repeal of §15.10, concerning standards for whole or unground grains or seed sold as poultry or livestock feed, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5456).*

This section is being repealed in order to allow for changes in consumer preferences; permit changes in industry standards, and avoid interference with interstate commerce.

The repeal of this section will delete unnecessary rule language and allow greater flexibility that manufacturers will have to respond to consumer preferences and the changing demographics of the marketplace. The repeal eliminates existing size standards for whole or unground grains or seeds sold as poultry or livestock feed.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Agriculture Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning the sale and use of weights and measures and authorizing the department to supervise all weights and measures sold in this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9516045 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

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• 4 TAC §15.13

The Texas Department of Agriculture (the department) adopts the repeal of §15.13, concerning the requirements for the inspection of the net contents of random weight and standard weight packages, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5456)*.

This section is being repealed in order to allow for the adoption of new §15.13, which will adopt by reference the current published edition of the National Institute of Standards and Technology (NIST) Handbook 133, Checking the Net Contents of Packaged Goods.

Repeal of this section will delete unnecessary rule language and allow greater standardization of TDA's package inspection program. The repeal eliminates existing requirements for the inspection of net contents of random weight and standard weight packages.

No comments were received regarding adopion of the repeal.

The repeal is adopted under the Texas Agriculture Code, §13.002, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 13, concerning the sale and use of weights and measures and authorizing the department to supervise all weights and measures sold in this state.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9516046 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

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The Texas Department of Agriculture (the department) adopts new §15.13, concerning requirements for the inspection of the net contents of random weight and standard weight packages, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5456)*.

This new section is being adopted in order to allow TDA to adopt by reference the current published edition of the National Institute of Standards and Technology (NIST) Handbook 133, Checking the Net Contents of Packaged Goods. This will eliminate the need to modify this section each time the national standards are changed.

The adoption of this section will allow greater standardization of TDA's package inspection program. The new section adopts by reference NIST standards for inspection of net contents of random weight and standard weight packages.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Agriculture Code, §13.002, which provides the Texas Department of Agriculture with the authority to adopt rules for the inspection of the net contents of random weight and standard weight packages.

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 December 8, 1995.

TRD-9516047 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

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Milk Volumetrics

• 4 TAC §§15.31-15.34

The Texas Department of Agriculture (the department) adopts the repeal of §§15.31-15.34, concerning installation and adjustment of bulk farm milk tanks and approval of milk testing apparatus to determine butterfat and other component parts of milk, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5457)*.

These sections are being repealed in order to comply with statutory changes made by the 74th Legislature, Regular Session, 1995, in accordance with Senate Bill 372. The underlying statutory authority for the department's adoption and implementation of these sections has been repealed.

Repeal of these sections will delete unnecessary rule language and reduce cost for consumers and producers.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code, §12.016, which provides the Texas Department of Agriculture with the authority to adopt rules for administration of the Texas Agriculture Code.

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 December 8, 1995.

TRD-9516048 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

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Alcohol Fuels and Fuel Alcohol Equipment

• 4 TAC §15.121, §15.122

The Texas Department of Agriculture (the department) adopts the repeal of §15.121 and §15.122, concerning definitions and registration of fuel alcohol equipment, without changes to the proposed text as published in the July 25, 1995, issue of the *Texas Register (20 TexReg 5458)*.

These sections are being repealed because the enabling legislation adequately describes the requirement for this program and additional rules are unnecessary.

Repeal of these sections will delete unnecessary rule language and reduce state regulations.

No comments were received regarding adoption the repeals.

The repeals are adopted under the Texas Agriculture Code, §17.003, which provides the Texas Department of Agriculture with the authority to enforce the provisions of the Texas Agriculture Code, Chapter 17, concerning the regulations of the alcohol fuels and fuel alcohol equipment in the state of 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 December 8, 1995.

TRD-9516049 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: July 25, 1995

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

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Chapter 27. Aquaculture Regulations

• 4 TAC §§27.2, 27.3, 27.6, 27.21, 27.23-27.25, 27.50, 27.102

The Texas Department of Agriculture (the department) adopts the repeal of §§27.2, 27.3, 27.6, 27.21, 27.23-27.25, 27.50, and 27.102, concerning aquaculture license required, fish farm vehicle license required, records, bill of lading required, invoices for shipments of dead redfish or dead speckled sea trout, transported dead redfish and dead speckled sea trout, labeling of redfish and dead speckled sea trout package, packaging requirements for importation of dead redfish and dead speckled sea trout and inspection, without changes to the proposed text as published in the September 22, 1995, issue of the *Texas Register* (20 TexReg 7569).

These sections are being repealed because they restate statutory authority or have been determined by the department to place an unnecessary burden on the aquaculture industry.

Repeal of these sections will delete unnecessary rule language and reduce state regulation. The repeal eliminates licensing and bill of lading requirements already stated in the statute and eliminates the use of invoices, labeling and packaging requirements.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Agriculture Code, §134.005, which provides the Texas Department of Agriculture with the authority to enforce the provisions of Texas Agriculture Code, Chapter 134, concerning the regulations of the Aquaculture industry in the state of 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 December 8, 1995.

TRD-9516050 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Effective date: December 29, 1995

Proposal publication date: September 22, 1995

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

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TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 25. Prepaid Funeral Contracts

Subchapter C. Investment of Trust Funds

• 7 TAC §§25.51-25.59

The Texas Department of Banking (the Department) adopts new §§25.51-25. 59, concerning guidelines for investment of prepaid funeral benefits trust funds pursuant to Texas Civil Statutes, Article 548b (the Act), §1(h) and §5A, with changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5976).

The Act, §5A, as added in 1993, generally provides requirements and limitations with respect to the types of investments and percentage of trust funds that may be invested in certain types of investments by trustees of prepaid funeral benefits trust funds. In addition, §5A grants a grace period until September 1, 1996, for trustees to dispose of all investments made before the effective date of §5A that are not in compliance with §5A with respect to the type of investment or the percentage of trust funds that may be invested in certain types of investments. The department has adopted new Subchapter C to clarify specific applications of the Act, §5A, eliminate certain ambiguities which have the potential to frustrate the intent of the Legislature, and authorize certain investments not specifically mentioned in §5A. Further, the title of new Subchapter C is being changed from the title as proposed because of an error in the proposed title.

While the Act, §5A, specifies percentage limitations applicable to trust account investments, further detail is required to provide for investment situations or decisions within the intent of the statute but not specifically addressed and to provide for an effective and orderly transition to conforming investments. The sections as adopted clearly set out permitted and prohibited investments and authorized percentages in various types of investments, and clarify the application of the "prudent person rule" in the context of statutory percentage caps. As adopted, §25.58 details the type of investment-related information which must be filed with a permit holder's annual report and made available during examinations.

With respect to investment in mutual funds, §25.55, as adopted, specifies that no limits apply if the portfolio of the mutual fund contains only investments that the trust fund could directly make without limits. If any investment in the mutual fund portfolio is subject to limits under the Act, two alternate methods are available for measuring investment limits. First, the trust fund can limit its investment in the mutual fund to 20% of the trust fund. This method is easy to apply and does not require the trustee to maintain extensive documentation. Second, the trustee can keep adequate records of the mutual fund portfolio, updated quarterly, and combine those holdings with other trust fund holdings for purposes of applying the percentage investment limits.

Finally, §25.59 as adopted contains time periods for complying with the investment guidelines and specifically prohibits any nonconforming investment prior to expiration of the statutory grace period on September 1, 1996.

Five speakers commented on various provisions of the proposed sections at a public hearing held on September 8, 1995. In addition, the department received five sets of written comments. Numerous suggestions were made or received requesting changes to the proposed sections. However, only one comment stated that the author was against the rule as a whole.

The following comments resulted in changes to the adopted sections:

1. The Texas Funeral Directors Association (TFDA) objected to the language in §25.54(b) which imposed a 10% limitation on any combination of real estate, oil and gas interests, limited partnerships, foreign securities and "any other investment not specifically authorized by the Act or by this subchapter." TFDA noted that the Act allows up to 10% of trust funds to be invested in any combination of real estate, oil and gas interests, limited partnerships, foreign securities and any other investments "not otherwise permitted by the Act." TFDA requested that the language as proposed in §25. 54(b) be changed for greater clarity and consistency. After the department reviewed this comment carefully, the adopted §25.54(b) has been changed in part to reflect a 10% limitation on the listed investments in 5A(d)(9) of an Act and "any other investments not otherwise permitted by this Act or this subchapter."

2. At the request of TFDA and another commenter, proposed §25.59(c) was revised to include language to reflect grandfathered plan investments under Section 4 of the 1993 amendatory provisions to the Act. As requested, the phrase "unless such investment is exempted by some other provision of the Act" was added to the end of adopted rule §25.59(c).

3. Additionally, TFDA and another commenter both argued that the appraisal requirements in §25.53(e) as proposed would create a hardship for trustees if a certified appraisal were required for investments secured by first lien real estate. The department revised this section to increase the interval between appraisals to six years, with interim valuations by internal appraisals or broker's opinions of value.

The proposed sections also received certain comments which, after thorough examination, the department rejected without making the requested changes to the adopted sections, for the reasons stated.

1. TFDA, the Trust Financial Services Division/Texas Bankers Association (TBA), and other commenters requested that §25.52, relating to the prudent person rule, be deleted

in its entirety. The commenters argued that the proposed section as drafted is an amplification and alteration of the prudent person rule as it is set forth in the Act and exceeds the authority of the department. The department disagrees and rejects this argument. The purpose of the department's rule making authority is to implement and clarify the Act. The prudent person rule as adopted by the department clarifies the Act by detailing the types of general standards which have been used by courts in determining whether a trustee has met the prudent person standard in investment decisions. This clarification does not, in the view of the department, diminish the trustee's discretion as set by the Legislature in the Act.

2. A commenter requested that escrow-to-maturity prefunded municipal bonds (municipal bonds that have escrow funds consisting of U.S. government securities set aside to provide for their payment upon maturity but which are not rated) be considered a permitted investment under §25.53. No provision in the Act authorizes this type of investment other than §5A(f) which authorizes a trustee to invest up to 10% of the prepaid funeral trusts funds related to a single permit holder to any other investments not covered by the Act, §5A(d). Therefore, under the Act and the adopted sections, up to 10% of a trust may be invested in any combination of real estate, oil and gas interests, limited partnerships, foreign securities and any other investments not otherwise permitted by the Act or the adopted sections, including escrow to maturity prefunded municipal bonds.

3. A commenter also requested that the reference to governmental securities in §25.53(b) of the proposed rule be clarified to show that this definition also encompasses governmental agency issues. The department reviewed this suggestion and is of the opinion that §25.53(b) as adopted is clear. Reference is made to §25.51 as adopted which defines a governmental security to include investments under the Act, §5A(d)(3) which include "bonds, evidences of indebtedness or obligations of agencies and instrumentalities of the government of the United States."

4. TFDA and another commenter requested that language be added to the proposed sections allowing investment of an entire fund in "dollar for dollar" mutual funds. The department rejects this suggestion. Section 25.55 as adopted provides the investment in trust funds in mutual funds are considered transparent. Thus, the underlying assets of the mutual must meet the limitations of the Act and the adopted sections. Dollar for dollar mutual funds are allowable only to the extent that they comply with the Act and with adopted sections, especially §25.55.

5. TFDA and another commenter also objected to the department's interpretation of the Act, §5A(e), as incorporated into adopted §25.54(a). The department's interpretation of the provisions is that a trustee may invest up to a total of 70% of trust funds in bonds, notes, and common and preferred stock as defined in the Act, §5A(5), (6), (7), and (8). The comment argued that §5A(e) creates an investment limit of up to 70% for bonds and notes and up to 70% for common and preferred stock. The department disagrees and notes that this and related issues are presently in litigation.

6. A commenter also requested that §25.53(b) as proposed be changed to reflect that a trustee could invest without limit in a mutual fund consisting "primarily" of investments in insured deposits and/or government securities. The department reviewed this matter and is of the opinion that the language as adopted allowing a trustee to invest without limit in mutual fund consisting "wholly" of the indicated investment is consistent with the statutory scheme set by the Legislature.

7. Finally, a commenter argued that the trust instruments and the common law interpretation of the prudent man rule should provide sufficient guidelines to manage their client's trust monies. The Department respectfully disagrees. The purpose of the Act is to protect and safeguard the prepaid funds of the holders of the contracts, not the sellers. The Legislature set up the framework to protect these funds by limiting both the seller and trustee to a statutory list of proper investments coupled with an obligation to comply with the prudent person standard under the Act, §5A(c). The purpose of these adopted sections is to clarify and implement the Act.

The new sections are adopted pursuant to the department's rulemaking authority under Texas Civil Statutes, Article 548b, §2, which authorizes the department to write rules concerning "matters incidental to the enforcement and orderly administration" of Texas Civil Statutes, Article 548b.

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

Act–Texas Civil Statutes, Article 548b.

Affiliate–A person or entity directly or indirectly controlling, controlled by, or under common control with a permit holder or the funeral provider.

Commissioner–The Banking Commissioner of Texas.

Department–The Texas Department of Banking.

Foreign security–A bond, evidence of indebtedness or obligation that would meet the requirements of the Act, §5A(d)(5), but for the fact that it is issued by a foreign country or a corporation organized under the laws of a foreign country, or a common or preferred stock that is publicly trading on a stock exchange located within the United States and would be described by the Act, §5A(d)(7) or §5A(d)(8), but for the fact that it is issued by a corporation organized under the laws of a foreign country.

Funeral provider–The funeral home designated in a prepaid funeral benefits contract that has agreed and obligated itself to provide the specified prepaid funeral benefits.

Government security–A security that is a permissible investment under the Act, §5A(d)(2) or §5A(d)(3), but not including a municipal security under the Act, §5A(d)(4).

Insured deposit–An investment authorized under the Act, §5A(d)(1).

Mutual fund–A mutual fund, collective investment fund, or similar participative investment fund.

Permit holder–A person having a valid permit to sell prepaid funeral benefits.

Trustee–The person or entity named as trustee in the instruments creating or amending a prepaid funeral trust, including a trust department in a state or national bank in this state or a trust company authorized to do business in this state, with which prepaid funeral benefits funds have been placed under the Act, §5(a)(2).

Trust fund or trust funds–The total prepaid funeral benefit funds related to a single permit holder.

§25.52. Prudent Person Rule. Notwithstanding any investment authorization contained in the Act or this section, the "prudent person rule" of the Act, §5A(c), requires the trustee of a prepaid funeral benefits trust to exercise the judgment and care under the circumstances then prevailing that a person of ordinary prudence, discretion, and intelligence would exercise in the management of that person's own affairs, not in regard to speculation but in regard to the permanent disposition of that person's funds, by:

(1) considering the probable income from as well as the probable increase in value and safety of the trust funds as a whole;

(2) diversifying the investment of all the assets of the trust so as to minimize the risk of material losses, unless under the circumstances it is clearly prudent not to do so;

(3) providing for liquidity to adequately fund funeral costs as may be needed from time to time as prepaid funeral benefit contracts mature, except that this provision may not be construed to require a trustee to employ the services of an actuary; and

(4) complying with the documents and instruments governing the trust insofar as the documents and instruments are consistent with the Act and regulations related to the Act.

§25.53. Permitted Investments.

(a) A trustee shall invest trust funds only in the types of investments permitted under the Act, §5A(d), in rules adopted by the department, or as otherwise permitted under §25.57 of this title (relating to Other Investments).

(b) Subject to §25.52 of this title (relating to Prudent Person Rule), a trustee may invest trust funds without limit in insured deposits, government securities, and/or a mutual fund the portfolio of which consists wholly of investments in insured deposits and/or government securities.

(c) As provided by the Act, §5A(d)(4), a trustee may invest in debt instruments of any state or local government that have been given federal income tax exempt status only if the debt instruments are rated "Aa" or better by Moody's bond rating service or "AA" or better by Standard and Poor's bond rating service. These debt instruments are not government securities as that term is used in the Act, §5A(g).

(d) As provided by the Act, §5A(d)(5), a trustee may invest in bonds, evidences of indebtedness, or obligations of corporations organized under the laws of the United States or of a state, only if the corporate bonds, evidences of indebtedness, or obligations are rated "A" or better by Moody's bond rating service or by Standard and Poor's bond rating service.

(e) As provided by the Act, §5A(d)(6), a trustee may invest in notes, evidences of indebtedness, or participations in notes or evidences of indebtedness, secured by a valid first lien on real property located in the United States, the amount of which obligations may not exceed 90% of the value of the respective parcels of real property securing them. The value of the collateral underlying permissible first lien mortgages must be determined by independent appraisal at initial funding or purchase of the mortgage and also independently reappraised at least once every six years to determine continuing compliance with the Act, §5A(d)(6). In the interim years between independent appraisals, the collateral must be valued at least annually by an internal appraisal or by a broker's opinion of value.

(f) As provided by the Act, §5A(d)(7), a trustee may invest in common stock of a corporation organized under the laws of the United States or of a state only if the corporation has and maintains at least $1 million of net worth or will have at least $1 million of net worth after completion of a securities offering to which the trust is subscribing. However, a trustee that invests trust funds in common stock of a corporation that is not publicly traded on a national securities exchange or through a national automated quotation system must maintain adequate, written documentation to justify the prudence of the investment under §25.52 of this title.

(g) As provided by the Act, §5A(d)(8), a trustee may invest in preferred stock of a corporation organized under the laws of the United States or of a state only if the stock is rated "BAA" or better by Moody's bond rating service or "BBB" or better by Standard and Poor's bond rating service.

§25.54. Investment Limitations.

(a) Subject to §25. 52 of this title (relating to the Prudent Person Rule), no more than 70% of trust funds may be invested in any combination of the following:

(1) bonds, evidences of indebtedness, or obligations of corporations organized under the laws of the United States or of a state;

(2) notes, evidences of indebtedness, or participations in notes or evidences of indebtedness, secured by a valid first lien on real property located in the United States;

(3) common stock of a corporation organized under the laws of the United States or of a state; and/or

(4) preferred stock of a corporation organized under the laws of the United States or of a state.

(b) No more than 10% of total trust funds may be invested in any combination of real estate, oil and gas interests, limited partnerships, foreign securities, and any other investments not specifically authorized by the Act or this subchapter.

(c) Except as provided in §25.53 and §25.55 of this title (relating to Permitted Investments and Mutual Funds, respectively), no more than 20% of trust funds may be invested in a single issue of any investment.

§25.55. Mutual Funds.

(a) For purposes of applying the investment limitations of the Act and this subchapter, the investment of trust funds in a mutual fund is generally considered to be transparent, i.e., an investment in the underlying assets of the mutual fund. Subsection (b) of this section governs investment in mutual funds that hold only securities for which the Act imposes no limit.

(b) A trustee may measure permissible investments under either paragraph (1) or (2) of this subsection. However, a trustee is required to use paragraph (2) of this subsection for all mutual funds if more than 10% of the investments in the portfolio of any mutual fund is comprised of real estate, oil and gas interests, limited partnerships, foreign securities, or any other investments not specifically authorized by the Act or this subchapter.

(1) If the portfolio of a mutual fund contains any investment that is subject to limits under the Act or this subchapter, no more than 20% of trust funds may be invested in the mutual fund unless the trustee evaluates the investment in the mutual fund under paragraph (2) of this subsection. In evaluating investment limits under this paragraph, a trustee is not required to treat the mutual fund as transparent except for the limited purpose of identifying whether the portion of portfolio of the mutual fund in real estate, oil and gas interests, limited partnerships, foreign securities, or any other investments not specifically authorized by the Act or this subchapter exceeds 10% of the total portfolio.

(2) At the election of the trustee or if required in lieu of the method permitted by paragraph (1) of this subsection, a trustee shall determine at least quarterly that the trust fund's pro rata share of any type of investment or a particular issue of an investment in the portfolio of the mutual fund is not in excess of applicable investment limits by reason of being combined with the trust fund's pro rata share of that type of investment or particular issue of an investment held by all other mutual funds in which the trust funds are invested and with the trust fund's own direct investment holdings. The trustee must maintain written documentation adequate to demonstrate compliance with this subsection.

§25.56. Repurchase Agreements. For the purposes of applying the investment limitations of the Act and this subchapter, the investment of trust funds in a repurchase agreement is considered to be an investment in the underlying security collateralizing the repurchase agreement. Any securities held by the trust fund that are subject to repurchase by another party must have a fair market value that equals or exceeds 102% of the repurchase price, and the ratio of market value to repurchase price must be evaluated no less often than quarterly.

§25.57. Other Investments Permitted by the Department. Pursuant to the Act, §5A(d)(11), the department may in the exercise of discretion approve an investment for trust funds other than as provided in the Act or this subchapter. An application for approval of an investment under this section must:

(1) be in writing;

(2) describe the investment in detail, which may be by reference to an offering circular or prospectus attached as an exhibit; and

(3) evaluate the investment in comparison with the standards set forth in §25.52 of this title (relating to the Prudent Person Rule).

§25.58. Reporting Requirements.

(a) A permit holder must provide the department with the following as a part of the permit holder's annual report:

(1) a written investment plan as required by the Act, §5A(a)(1); and

(2) a written statement from the trustee detailing all investments not in compliance with this section.

(b) A permit holder must notify the commissioner in writing of all prohibited investments of trust funds under the Act, §1(h), within 60 days of the effective date of this section. The notification must include a plan for removing prohibited investments within 60 days of the date of notification to the commissioner.

§25.59. Transition Provisions.

(a) A permit holder or trustee may not make an investment after the effective date of this subchapter that is not in compliance with the Act, §5A, or this subchapter or that would cause a trust fund investment portfolio currently not in compliance with the Act, §5A, or this subchapter to become further out of compliance.

(b) Subject to subsection (c) of this section, a trustee shall dispose of all investments made before September 1, 1993, that are not in compliance with this subchapter by September 1, 1996, unless the commissioner grants an extension in writing with respect to a particular investment as permitted by the Act, §5A(h). Extensions of time for disposition of a non-conforming investment (other than a prohibited investment under subsection (c) of this section) may be granted for periods of one year or more. A request for extension must be in writing and must set out the reasons for the extension. The commissioner may grant an extension, in the exercise of discretion, if the commissioner finds that the trustee has made a good faith effort to dispose of the non-conforming investment or finds that disposal of the non-conforming investment would be materially detrimental to the best interest of the purchasers of prepaid funeral benefits contracts.

(c) An investment prohibited under the Act, §1(h), may not be made or retained and is not subject to any grace period or extension of time for disposing of the investment, unless such investment is exempted by another provision of the Act.

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 December 6, 1995.

TRD-9515918 Everette D. Jobe
General Counsel
Texas Department of Banking

Effective date: December 27, 1995

Proposal publication date: August 8, 1995

For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter E. Pleadings

• 16 TAC §22.71

The Public Utility Commission of Texas adopts an amendment to Procedural Rule §22.71, concerning Filing of Pleadings and Other Materials, with changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8111).

This section is being amended to facilitate the commission's ability to provide an efficient review of regulatory matters that come before it. Commission staff will not be required to make additional copies and then route them separately, which is a resource-intensive effort.

The following parties filed comments in response to the October 6, 1995 *Texas Register* publication of the proposed rule: El Paso Electric Company (EPEC); Central Power and Light Company (CPL); Southwestern Electric Power Company (SWEPCO); and West Texas Utilities Company (WTU), the operating companies of Central and South West Corporation (CSW Companies); and Texas Utilities Electric Company (TU Electric).

EPEC generally supports the amendments to the rule as proposed. The CSW Companies believe the proposed rule provides an economic method to meet the commission's need for documents, and generally support its adoption. TU Electric recognizes that recent amendments to the Public Utility Regulatory Act (PURA) and reorganization of the commission provide an appropriate time to review the filing requirements of documents and other materials filed with the commission.

Both CSW Companies and TU Electric request that the commission provide clarification of §22.71(b)(5) as to the filing requirements for the fuel factor and fuel reconciliation filing packages. The commission supports this request for clarification of §22.71(b)(5) and modifies this paragraph to include such filing packages. CSW Companies suggest that the commission reconcile Procedural Rule §22.71(b)(2) with Substantive Rule §23.24(b)(1) as to the number of copies required in a tariff filing. The commission recognizes the inconsistency between the two rules and modifies §22.71(b)(2) to require the filing of five copies of tariffs.

TU Electric notes that currently, the commissionss procedural and substantive rules do not address applications for either certificate of convenience and necessity exemptions or service area exceptions, and requests that §22.71(b)(6) be modified to include such applications. The ommission supports this suggestion and modifies §22.71(b)(6) to include such applications. Finally, TU Electric proposes that a new subparagraph (9), dealing with rulemaking petitions and comments, be added to §22.71(b). TU Electric notes that under the proposed rule, a petition for rulemaking presumably would be within the scope of petitions for which proposed §22. 71(b)(1) will require 13 copies while comments to rulemaking petitions presumably would be within the scope of other pleadings and documents for which proposed §22.71(b)(8) will require ten copies. The commission disagrees with the proposal to add a new paragraph (9) to the proposed rule because rulemaking petitions will fall within the scope of §22.71(b)(1) while the number of copies of comments to proposed rules will be designated in the rule as noticed, as the number of such copies required is rule specific and not generic.

The amendment is adopted under the Public Utility Regulatory Act of 1995, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.71. Filing of Pleadings and Other Materials.

(a) (No change.)

(b) Number of Documents to Be Filed. Unless otherwise provided by this chapter or ordered by the presiding officer, the number of copies to be filed, including the original, are as follows:

(1) applications, petitions, and complaints: 13 copies;

(2) tariffs for review under §22.33 of this title: five copies;

(3) exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 22 copies

(4) testimony and briefs: 11 copies, except that in contested cases transferred to the State Office of Administrative Hearings, parties must file 13 copies of testimony and briefs;

(5) rate, fuel factor, and fuel reconciliation filing packages: 16 copies;

(6) applications for certificates of convenience and necessity for transmission lines or boundary changes, certificate of convenience and necessity exemptions, and service area exceptions: six copies;

(7) discovery requests and responses: seven copies; and

(8) other pleadings and documents: ten copies, except that in contested cases transferred to the State Office of Administrative Hearings, parties must file 12 copies of other pleadings and documents.

(c)-(h) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-9516059 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Effective date: December 29, 1995

Proposal publication date: October 6, 1995

For further information, please call: (512) 458-0100

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Subchapter G. Prehearing Proceedings

• 16 TAC §22.123

The Public Utility Commission of Texas adopts an amendment to §22.123, concerning appeal of an interim order, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8555).

The amendment removes the time limitation for ruling on appeals to allow the commission more flexibility in managing its meeting agenda, and establishes a procedure for determining when as appeal will be placed on an open meeting agenda.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under the Public Utility Regulatory Act of 1995, §1.01, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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 December 8, 1995.

TRD-9516060 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Effective date: December 29, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 458-0100

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TITLE 22. EXAMINING BOARDS

Part XIV. Texas Optometry Board

Chapter 271. Examinations

• 22 TAC §271.6

The Texas Optometry Board adopts an amendment to §271.6, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8387).

Rule 271.6 is required in order to clarify the terminology of the parts of the National Board of Examiners in Optometry (NBEO) examination, and to establish a mechanism whereby the Jurisprudence Examination can be administered on a quarterly basis rather than semi-annually.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the provisions of Texas Civil Statutes, Article 4552, §3.05 and §3.06. Section 2.14 provides the Texas Optometry Board with the authority to promulgate procedural and substantive rules. The Board interprets §3.05 and §3.06 as authorizing it to utilize the National Board Examination for testing applicants for licensure.

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 authority.

Issued in Austin, Texas, on October 6, 1995.

TRD-9515951 Lois Ewald
Executive Director
Texas Optometry Board

Effective date: December 28, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 305-8500

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Part XXX. Texas State Board of Examiners of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (the board) adopts amendments to §§681.2, 681.15, 681.17, 681.26, 681.32-681.35, 681. 39-681.41, 681.52, 681.61, 681.63, 681.64, 681.83, 681.84, 681.112, 681.121, 681.123, 681.125, 681.126, 681.171, 681.173, 681.174, 681.192, 681.193, and 681.195 and new section 681.114 and §681.128 concerning the licensure of professional counselors. Sections 681.32, 681.40, 681.52, 681.112, and 681.114 are adopted with changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8388). Sections 681.2, 681. 15, 681.17, 681.26, 681.33-681.35, 681.39, 681.41, 681.61, 681.63, 681.64, 681. 83, 381.84, 681.121, 681.123, 681.125, 681.126, 681.128, 681.171, 681.173, 681. 174, 681.192, 681.193 and 681.195 are adopted without changes and will therefore not be republished.

Specifically, the amendments cover definitions, license certificates, fees, required application materials, academic requirements, endorsement, license renewal, purpose and hour requirements for continuing education, violations by non-licensed persons and complaint procedures. The amendments define terms relating to art therapy; establish fee for art therapy specialty designation; and add language throughout rules to include an art therapy specialty designation. New §681.114 and §681.128 are necessary to implement legislation passed by the 74th Legislature, 1995. Section 681.114 establishes the academic and supervision requirements for an art therapy specialty designation. Section 681.128 establishes the procedures to suspend and reinstate a license for failure to pay child support.

The sections insure the regulation of professional counselors continues to identify competent practitioners and implements the legislation passed by the 74th Legislature, 1995.

The following comments were received concerning the proposal. The board's responses follow each comment.

Comment: Concerning §681.32(q)(4), a commenter suggested clarifying the language to except unkept appointments from the rule which relates to billing for services not provided.

Response: The board agrees and has added language for clarification.

Comment: A commenter recommended adding a rule that makes it a violation for an applicant to participate in any way in the subversion of licensing materials.

Response: The board agrees and has added §681.32(w).

Comment: Concerning §681.52(a)(1), a commenter suggested deleting language that requires information on the general application form that is also required on separate and additional documentation forms.

Response: The board agrees and made the change.

Comment: Concerning §681.112(e), a commenter indicated that the word "therapy" was omitted.

Response: The board agrees and has made the correction.

Comment: Concerning §681.114(b), a commenter suggested changing "accredited by" to "approved by."

Response: The board disagrees because "accredited by" is the statutory language and can not be changed.

Comment: One commenter recommended changing "Art Therapy Credentialing Board, Inc." in §681.114(c)(4) to "Art Therapy Credentials Board" because the name of that organization has changed since the legislative amendments were passed.

Response: The board agrees and has made the change.

Comment: One commenter suggested that if the national art therapy certification examination is not considered to be sufficiently equivalent to the Texas licensed professional counselor examination, the board might develop exam questions for the national art therapy certification examination so that examination could be sold to other states.

Response: The board disagrees and has requested its ad hoc testing committee to compare the two examinations for future discussions.

An editorial change was made for clarification purposes.

The commenters were all individuals who neither expressed general support for or opposition to the proposed amendments and new sections.

Subchapter A. The Board

• 22 TAC §§681.2, 681.15, 681.17

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516084 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: December 29, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter B. Authorized Counseling Methods and Practices

• 22 TAC §681.26

The amendment is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516085 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: December 29, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter C. Code of Ethics

• 22 TAC §§681.32-681.35, 681.39-681.41

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.32. General Ethical Requirements.

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

(e) A licensee shall inform an individual before or at the time of the individual's initial professional counseling session with the licensee of the following:

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

(5) any intent of the licensee to use another individual to provide counseling treatment intervention to the client; and

(6) (No change.)

(f) (No change.)

(g) A licensee shall provide counseling treatment intervention only in the context of a professional relationship, and shall not provide counseling treatment intervention by means of newspaper or magazine articles, radio or television programs, mail or means of a similar nature, electronic media, or telephonic media when that is the primary vehicle for maintaining the professional counseling relationship.

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

(k) A licensee shall not provide counseling treatment intervention to the licensee's current or previous family members, personal friends, or business associates.

(l) A licensee shall not knowingly offer or provide counseling treatment intervention to an individual concurrently receiving counseling treatment intervention from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent therapy, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(m) (No change.)

(n) A licensee to whom a school district refers a student for counseling treatment intervention shall comply with the rules adopted by the Texas Education Agency relating to the relationship between the district and the licensee. This requirement only applies to an outside counselor, not a licensee who is a school district employee.

(o) (No change.)

(p) For each client, a licensee shall keep accurate records of the dates of counseling treatment intervention, types of counseling treatment intervention, progress or case notes, and billing information. Records held by a licensee shall be kept for seven years for adult clients and seven years beyond the age of 18 for minor clients. Records held or owned by governmental agencies or educational institutions are not subject to this requirement.

(q) A licensee shall bill clients or third parties for only those services actually rendered or as agreed to by mutual understanding at the beginning of services or as later modified by mutual agreement.

(1) (No change.)

(2) On the written request of a client, a client's guardian, or a client's parent (managing or possessory conservator) if the client is a minor, a licensee shall provide, in plain language, a written explanation of the charges for counseling treatment intervention previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(3) (No change.)

(4) A licensee may not submit to a client or a third payor a bill for counseling treatment intervention that the licensee knows were not provided or knows were improper, unreasonable, or medically or clinically unnecessary, with the exception of an unkept appointment.

(r) A licensee shall terminate a professional counseling relationship when it is reasonably clear that the client is not benefiting from the relationship. When professional counseling is still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(s)-(u) (No change.)

(v) A licensee shall not aid and abet the unlicensed practice of professional counseling by a person required to be licensed under the Act.

(w) An applicant for licensure shall not participate in anyway in the subversion of licensing materials.

§681.40. Advertising and Announcements.

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

(d) The highest academic degree earned from an accredited college or university and relevant to the profession of counseling or a counseling-related field may be used when advertising or announcing counseling treatment intervention to the public or in counseling-related professional representations. A degree received at a foreign university may be used if the degree could be accepted as a transfer degree by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. A licensee may advertise or announce his or her other degrees from accredited colleges or universities if the subject of the degree is specified.

(e) (No change.)

(f) All advertisements or announcements of counseling treatment intervention including telephone directory listings by a person licensed by the board may clearly state the licensee's licensure status by the use of a title such as "Licensed Counselor, " or "Licensed Professional Counselor," "Licensed Professional Counselor-Art Therapist," "Art Therapist," "L.P.C.," "L.P.C.-A.T.," "A.T." or a statement such as "licensed by the Texas State Board of Examiners of Professional Counselors."

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 December 8, 1995.

TRD-9516086 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: December 29, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter D. Application Procedures

• 22 TAC §681.52

The amendment is adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.52. Required Application Materials.

(a) General application form. An application form shall contain:

(1) specific information regarding personal date, employment and type of practice, other state licenses and certifications held, felony or misdemeanor convictions, educational background, and references;

(2) -(7) (No change.)

(b) Practicum documentation form if applying for a temporary, regular license or regular license with art therapy specialty designation. The practicum documentation form shall contain:

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

(c) Supervised experience documentation form if applying for a regular license or a regular license with art therapy specialty designation. The supervised experience documentation form must be completed by the applicant's supervisor and contain:

(1)-(9) (No change.)

(10) a statement that the supervised experience complies with the rules set out in Subchapter F of this chapter (relating to Experience Requirements for Examination and Licensure) and §681.114 of this title (relating to Art Therapy Specialty Designation).

(d)-(e) (No change.)

(f) References.

(1) An applicant for a regular license or a regular license with art therapy specialty designation must have board reference forms submitted by three persons who can attest to the applicant's character, counseling skills and professional standards of practice, including at least one licensed professional counselor. The remaining two references must be from persons licensed or certified in the counseling profession or a mental health related profession.

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

(g) Provisional license based on endorsement. Applicants for a provisional license based on endorsement must submit:

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

(3) official documentation that the applicant has passed a national examination relating to counseling or art therapy or an exam offered by another state or territory for licensure as a counselor or art therapist; and

(4) a letter of sponsorship from a person who holds a regular license in Texas to practice counseling.

(h) Art therapy specialty designation.

(1) An applicant for a temporary or regular license with an art therapy specialty designation must submit evidence of the successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(2) An applicant for a temporary license with an art therapy specialty designation must submit:

(A) proof of current registration with the American Art Therapy Association; and

(B) proof that the applicant limits his or her scope of practice to art therapy at the time of application.

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 December 8, 1995.

TRD-9516087 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

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Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter E. Academic Requirements for Examination and Licensure

• 22 TAC §§681.61, 681.63, 681.64

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516088 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

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Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter F. Experience Requirements for Examination and Licensure

• 22 TAC §681.83, §681.84

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516089 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

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Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter H. Licensing

• 22 TAC §681.112, §681.114

The amendment and new section are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

§681.112. Endorsement.

(a) The Texas State Board of Examiners of Professional Counselors (board) may grant a provisional license to a person who holds, at the time of application, a license as a counselor or art therapist issued by another state or territory that is acceptable to the board. An applicant for a provisional license must:

(1) (No change.)

(2) be licensed in good standing as a counselor or art therapist in another state or territory that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Licensed Professional Counselor Act (Act);

(3) have passed a national examination relating to counseling or art therapy or an exam offered by another state or territory for licensure as a counselor or art therapist; and

(4) (No change.)

(b)-(d) (No change.)

(e) The board shall issue a regular license or a regular license with art therapy specialty designation to the holder of a provisional license if the board verifies that the provisional licensee has the academic and experience requirements for a regular license or a regular license with art therapy specialty designation.

(f) (No change.)

§681.114. Application for Art Therapy Specialty Designation.

(a) A person applying for examination and licensure with an art therapy specialty designation must:

(1) meet the requirements for a regular license set out in Subchapter E of this chapter (relating to Academic Requirements for Examination and Licensure) and Subchapter F of this chapter (relating to Experience Requirements for Examination and Licensure);

(2) hold either:

(A) a master's or doctoral degree in art therapy that includes 600 hours of supervised practicum from an accredited institution except that on or after September 1, 1996, applicants must have 700 hours of supervised practicum from an accredited institution; or

(B) have all of the following:

(i) a master's degree in a counseling-related field;

(ii) a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy; and

(iii) 600 hours of supervised practicum from an accredited institution except that on or after September 1, 1996, an applicant must have completed 700 hours of supervised practicum from an accredited institution;

(3) have the experience requirements set out in subsection (d) of this section; and

(4) have successfully completed the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(b) The Texas State Board of Examiners of Professional Counselors (board) shall accept an individual course from an art therapy program accredited through the American Art Therapy Association as satisfying the education requirements set out in §681.63 of this title (relating to Academic Requirements) if not less than 75% of the course content is substantially equivalent to the content of a course required in §681.64 of this title (relating to Academic Course Content).

(c) A temporary license with an art therapy specialty designation may be issued to a person who holds a master's degree in counseling or a counseling related field and:

(1) has completed not less than 42 graduate semester hours of the education requirements under the Act, §10(a)(4) in an art therapy program accredited by the American Art Therapy Association. The requirements are described in §681.63(b) of this title. These semester hours may be included in the master's degree;

(2) has completed the supervised work experience required under the Act, §10A(a)(3) and subsection (d) of this section;

(3) has passed the examination required under the Act, §10A(a)(4) and subsection (a)(4) of this section;

(4) is a registered art therapist with the Art Therapy Credentials Board and may use the title "A.T.R. " in the practice of art therapy;

(5) represents himself or herself to the public as an "art therapist";

(6) limits the scope of practice to art therapy;

(7) files a plan acceptable to the board on board forms detailing a course of study to complete the additional graduate semester hours necessary to satisfy the education requirements under the Act, §10(a)(4); and

(8) applies prior to September 1, 1996.

(d) As part of the supervised experience requirements for art therapy specialty designation required under the Act, §10(a)(5) and §§681.82-681.84 of this title (relating to Experience Requirements for Examination and Licensure), an applicant must have the following hours.

(1) For a person applying before September 1, 1996, supervised experience hours must include 1, 000 client contact hours under supervision of a nationally registered art therapist or other supervisor ac-

ceptable to the board as set out in §681.83 of this title (relating to Supervisor Requirements).

(2) For a person applying on or after September 1, 1996, supervised experience hours must include:

(A) 1,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(B) 2,000 client contact hours under supervision of a nationally registered art therapist or other supervisor acceptable to the board as set out in §681.83 of this title if the applicant holds a master's degree in a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours of practicum.

(3) For a person applying on or after September 1, 1998, supervised experience hours must include:

(A) 1,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's or doctoral degree in art therapy that includes 700 hours of practicum; or

(B) 2,000 client contact hours under supervision of a licensed professional counselor with an art therapy specialty designation, if the applicant holds a master's degree in a counseling related field and has a minimum of 21 semester hours or the equivalent of sequential course work in the history, theory, and practice of art therapy with 700 hours practicum.

(e) An LPC intern with art therapy specialty designation must comply with the requirements set out in:

(1) §681.81(c)-(g) of this title (relating to Temporary License);

(2) §681.82(a)-(b) and (e)-(g) of this title (relating to Experience Requirements (Internship));

(3) §681.83(c) of this title; and

(4) §681.84(a) and (c)-(n) of this title (relating to Other Conditions for Supervised Experience).

(f) An applicant for a regular license with art therapy specialty designation must pass the licensed professional counselor examination administered by the 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 December 8, 1995.

TRD-9516090 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: December 29, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter I. Regular License Renewal and Inactive and Retirement Status

• 22 TAC §§681.121, 681.123, 681.125, 681.126, 681.128

The amendments and new section are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516091 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

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Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter K. Continuing Education Requirements

• 22 TAC §§681.171, 681.173, 681.174

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516092 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: December 29, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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Subchapter L. Complaints and Violations

• 22 TAC §§681.192, 681.193, 681.195

The amendments are adopted under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

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 December 8, 1995.

TRD-9516093 James O. Mathis, Ed.D.
Chair
Texas State Board of Examiners of Professional Counselors

Effective date: December 29, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 834-6658

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Failure to Pay Child Support

• 25 TAC §1.301

The Texas Department of Health (department) adopts new §1.301, concerning the suspension of a license for failure to pay child support, without changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7789).

The section implements the provisions of the Family Code, Chapter 232 as added by Acts

1995, 74th Legislature, Chapter 751, §85 (HB 433). The law allows a court or Title IV-D agency (the Attorney General's Office) to issue an order suspending a license of a person who has failed to pay child support. The appropriate licensure program within the department will receive a copy of such final orders, record the suspension, and report the suspension as appropriate. The law became effective on September 1, 1995

No comments were received regarding the proposed new section.

The new section is adopted under the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health; and the Family Code, Chapter 232 relating to the suspension of a license for failure to pay child support.

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 December 6, 1995.

TRD-9516094 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 29, 1995

Proposal publication date: September 26, 1995

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

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Chapter 37. Maternal and Child Health Services

Reporting of Elevated Levels of Childhood Lead

• 25 TAC §§37.331-37.336

The Texas Department of Health (department) adopts new §§37.331-37.336, concerning the reporting of childhood lead poisoning. Section 37.331 and §37. 336 are adopted with changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7790). Sections 37.332-37.335 are adopted without changes to the proposed text and therefore will not be republished.

The new sections cover the purpose; definitions; confidentiality of information provided to the department; reportable health conditions; and reporting procedures. The new sections implement the Health and Safety Code, Chapter 88 (Chapter 965, 74th Legislature, 1995), Reports of Childhood Lead Poisoning, which requires reporting of elevated blood lead levels in children; and allows the department to establish a registry of children with lead poisoning and blood lead levels of concern. The sections will result in an improved knowledge of the prevalence of childhood lead poisoning. The sections provide the department with a means for identifying common causes for childhood lead poisoning in Texas and for creating a registry of children with elevated blood lead levels.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s) .

Comment: Two commenters stated that these rules would have significant fiscal implications for local health departments because of the need of data verification, confirmation of capillary blood lead levels, and other follow up activities.

Response: The department disagrees with the commenters. The intent of the legislation and sections are restricted to the reporting of childhood blood lead levels of concern. There are no requirements in the legislation or the sections for local health departments to perform follow up activities. Under §37.336, the sections also allow for the reporting entity to transmit reports directly to the department. Should the handling of these reports become burdensome to the local health authority, they can request that the reports be sent directly to the department.

Comment: Concerning §37.331, one commenter requested clarification on how the Texas Board of Health plans to control elevated blood lead levels in children.

Response: The department agrees that a clarification is needed in reference to the scope of these sections and has added language to clarify how these sections relate to the control of elevated blood lead levels in children.

Comment: Concerning §37.332, one commenter stated that the definition of lead poisoning as 20 micrograms per deciliter or greater was contradictory to the Centers for Disease Control and Prevention's definition of lead poisoning.

Response: The department disagrees because the legislation defines lead poisoning as the range specified for medical evaluation and possible pharmacologic treatment in the most recent criteria issued by the Centers for Disease Control and Prevention, and this level is 20 micrograms per deciliter or greater.

Comment: Concerning §37.334, two commenters questioned the rationale for including children in the age range of 6-14 in the reporting of blood lead levels of concern as defined by the sections.

Response: The department feels that blood lead levels of concern as defined by the sections should include blood lead levels from children in this age range. Elevated blood lead levels for individuals 15 years and older have been reportable since 1985 in accordance with Chapter 99 of this title (relating to Occupational Diseases). The age range of 14 years or younger was chosen to cover the rest of the population and avoid overlapping with the existing reporting law for older individuals. One reporting level was chosen for the younger age group to minimize confusion, facilitate reporting, and keep the reporting level consistent with the definition of blood lead level of concern in the legislation.

Comment: Concerning §37.334, one commenter requested that all reportable blood lead levels be dependent on the venous puncture technique.

Response: The department disagrees with restricting the reportable blood lead levels to venous samples only since a large number of results from capillary samples in the ten to 14 micrograms per deciliter range would then not be reported. The sections do specify that the method of sampling be reported. The reporting of both capillary and venous samples will also allow for investigation into factors related to false positive results.

Comment: Concerning §37.333 and §37.335, one commenter stated that inclusion of suspected cases might introduce problems to the integrity of the registry data and liability issues.

Response: The department disagrees that reporting suspected cases will introduce these problems. Only blood lead levels of ten micrograms per deciliter or greater are reportable, and the sections specify that the method of sampling (capillary or venous) be reported. Confidentiality of information provided to the department or the local health authority is assured under §37.333.

Comment: Concerning §37.335, one commenter requested that the sections require any laboratory conducting blood lead level concentration testing to report results in conjunction with information provided by the clinician or health facility administrator submitting the blood sample for assessment.

Response: The department agrees that coordination between laboratories and clinicians in submitting reports would be highly desirable. The department disagrees with requiring laboratories to coordinate reporting with clinicians. This requirement would be too cumbersome for some laboratories and might hamper timely reporting of blood lead levels of concern.

Comment: One commenter noted that there was no time frame in which blood lead levels of ten micrograms per deciliter or greater must be reported.

Response: The department agrees that a time frame should be included and has added the time frame to §37.336(a). The language "immediately after gaining knowledge of the blood lead level of concern" has been added to be consistent with the legislation.

Comment: One commenter requested that the child's date of birth, and the parent or legal guardian's name and telephone number be included in the report to the local health authority or department.

Response: The department agrees in part with the commenter and has added "date of birth" to §37.336(d)(1). The department disagrees with adding the child's parent or legal guardian's name and telephone number as information required to be reported because this information will often not be readily available to laboratories and might cause a delay in submission of reports.

Comment: After discussing the issue with the department, one commenter concurred that the one working day telephone reporting re-

quirement should apply only for those children who had blood lead level concentrations tested at 45 micrograms per deciliter or greater.

Response: The department agrees with this modification and has changed §37.336(d) to blood lead levels of 45 micrograms per deciliter or greater as reportable by telephone within one working day.

Comment: Concerning §37.336(d), one commenter requested that the name of the testing laboratory be added to the information required to be reported. Another commenter requested that the method of analysis used by the laboratory should be reported.

Response: The department agrees with the commenter's request to include the name of the testing laboratory and has added language to include this name and telephone number to §37.336(d)(2). The department disagrees that method of analysis should be required to be reported. This type of information can be obtained if needed for follow up, however, if the name and telephone number of the testing laboratory are reported.

Comment: One commenter requested that standardized reporting forms be required by all laboratories and any clinicians who submit reports of blood lead levels of concern.

Response: The department disagrees with the commenter that blood lead levels should be required to be reported on standardized reporting forms. Although the department will develop and make available a reporting form, all reports that contain the information as described in §37.336(d), will be received.

Comment: One commenter requested that all reports be transmitted directly to the department instead of giving the option of reporting either to the local health department or the Texas Department of Health.

Response: The department agrees that reports may be directly transmitted to the department. However, the department disagrees with excluding the local health authority as one of the recipients of these reports because other reportable conditions are reported to the local health authority such as communicable diseases and occupational conditions.

Comment: One commenter noted that the sections did not specify if repeat blood lead screens on the same child have to be reported.

Response: The department disagrees in having the sections specify whether repeat screens on the same child need to be reported. Any blood lead level ten micrograms per deciliter or greater is reportable. This would include all blood leads that met this criterion, whether initial or repeat screens.

Comment: Several commenters had questions about programmatic issues including the handling of duplicate reports on the same child; whether the data system will record serial results; procedures for follow up of reports; the handling of data requests; and the collection of denominator data.

Response: The department agrees that these issues are all important in the setting up and maintenance of a registry and will respond directly to the commenters concerning these issues.

Comments were received from the City of Houston Health and Human Services Department, the Harris County Health Department, and Texas Department of Health staff. One local health authority expressed their support of the concept of reporting elevated blood lead levels in children. The other local health department did not indicate whether they were in favor of or opposed to the sections. Both local health departments had questions and comments about specific sections.

The new sections are adopted under the Health and Safety Code, Chapter 88 (Chapter 965, 74th Legislature, 1995), which requires the department to establish rules to designate lead levels to be reported and establish a registry; 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 Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§37.331. Purpose. This purpose of these sections is to implement the provisions of Acts 1995, 74th Legislature, Chapter 965, adding Chapter 88 to the Health and Safety Code which provides the Texas Board of Health with the authority to adopt rules relating to the reporting of childhood lead levels of concern and control of elevated blood lead levels in children through an understanding of the prevalence and nature of the problem of childhood lead poisoning in Texas.

§37.336. Reporting Procedures.

(a) The reporting physician, laboratory director, or alternate person as set forth in §37.335(b) of this title (relating to Persons Required to Report) shall make the report of the childhood blood lead level of concern in writing to the local health authority or the Texas Department of Health (department) immediately after gaining knowledge of the blood lead level of concern. A local health authority or the department may authorize one or more employees under his or her supervision to receive the report from the physician, laboratory director, or alternate person by telephone. The local health authority or the department shall implement a method for verifying the identity of the telephone caller when that person is unfamiliar to the employee.

(b) The local health authority shall collect the reports and transmit the information at weekly intervals to the Texas Department of Health, Bureau of Epidemiology. Transmission may be made by mail, courier, or electronic transfer.

(1) If by mail or courier, the reports shall be placed in a sealed envelope addressed to the attention of the Texas Department of Health, Bureau of Epidemiology, and marked "confidential medical records."

(2) If by electronic transmission, including facsimile transmission by telephone, it shall be in a manner and form authorized by the commissioner or his or her designee in each instance. Any electronic transmission of the reports must provide at least the same degree of protection against unauthorized disclosure as those of mail or courier transmission.

(c) When a child with a blood lead level of concern resides outside the local health jurisdiction that received the report, the local health authority shall notify the appropriate local health authority where the child or children reside. The department shall assist the local health authority in providing such notifications if requested.

(d) Blood lead levels of 45 micrograms per deciliter or greater shall be reported within one working day by telephone to the local health authority or the department. The following information shall be reported on a child with a blood lead level of concern or lead poisoning:

(1) the child's name, address, date of birth or age, sex and race;

(2) the child's blood lead level concentration, test date, and name and telephone number of the testing laboratory;

(3) whether the sample is capillary or venous blood; and

(4) the name and city of the attending physician.

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 December 6, 1995.

TRD-9515947 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 27, 1995

Proposal publication date: September 26, 1995

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

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Chapter 157. Emergency Medical Care

The Texas Department of Health (department) adopts amendments to §§157. 2, 157.11, 157.17, 157.18, 157.22, 157.33, 157.38, 157.41, 157.44, 157.46, 157. 51, and 157.61; the repeal of §157.15; and new §157.23 and §157.24, concerning emergency medical care. Sections 157.2, 157.11, 157.23, 157.24, 157. 33, and 157.41 are adopted with changes to the proposed text as published in

the September 29, 1995, issue of the *Texas Register* (20 TexReg 7922) and the October 3, 1995, issue of the *Texas Register* (20 TexReg 8060). Sections 157.17, 157.18, 157.22, 157.38, 157.44, 157.46, 157.51, and 157.61 and the repeal of §157.15 are adopted without changes and will not be republished.

Specifically §157.2 adds two new definitions and amends seven others to clarify the intent of the rules. Section 157.11 increases provider fees; adjusts staffing requirements to include provisional certificants; and restricts firearms on ambulances. Section 157.17 and §157.18 add fees consistent with provider licensure. Section 157.22 revises a reference in accordance with rule changes. Section 157.33 provides for the roll-out of the new EMS curriculum which will be mandatory in 1996. Section 157.38 broadens the reporting categories for continuing education and removes redundant language. Section 157.41 adds skill requirements for EMTs which will be mandatory by 1996; allows for the acceptance of the national registry examination in lieu of the state examination for initial applicants; removes the requirement for a passing grade on each critical subscale in favor of an overall passing grade on the examination; describes requirements for provisional certification and outlines process for surrendering a certification. Section 157.44 deletes a reference to a repealed rule. Section 157.46 removes the requirement for a passing grade on each critical subscale in favor of an overall passing grade on the examination. Section 157.51 adds provisional certificants and includes loss of certification for failure to pay child support. Section 157.61 provides for an increase in Coordinator certification fee. Section 157.23 and §157.24 are new sections which revise the requirements for air ambulance providers.

The amendments, repeal, and new sections cover requirements for EMS provider licenses; EMS training and course approval; EMS personnel certification; and EMS course coordinator certification. The sections are needed to clarify existing certification and licensing requirements and to address current educational standards. The sections will increase educational standards for EMTs.

The following comments were received concerning the proposed amendments and new sections.

COMMENT: Concerning §157.2, two persons commented that the addition of interfacility care to the list of definitions is positive since it is consistent with actual practice.

RESPONSE: The department agrees.

COMMENT: Concerning §157.2, one commenter pointed out that in the definition for an "air ambulance provider", an individual could use or maintain an aircraft without being an EMS provider.

RESPONSE: The department agrees and has changed the language in this definition.

COMMENT: Concerning §157.11(c), four commenters said that they oppose the increase in provider licensure fees, with one commenting that a fee increase is justified for the inspection of ambulances.

RESPONSE: The department disagrees. The inspection of vehicles is only a small part of provider licensure and provider fees will not cover the cost of the program even with the increase.

COMMENT: Concerning §157.11(d)(4), a commenter is opposed to allowing provisional certification.

RESPONSE: The department disagrees. The EMS community has been asking for this privilege for the last several years.

COMMENT: Concerning §157.11(m)(18), several commenters suggested that policies regarding carrying firearms on ambulances would be better left to local providers.

RESPONSE: The department agrees and has removed this sentence.

COMMENT: Concerning §157.18(f), one commenter stated that since there will be an increase in provider fees, there should be no reinspection fee assessed.

RESPONSE: The department disagrees. There is no reinspection fee during the provider licensure process. The reinspection fee is only in connection with extensive problems that are found during an unannounced inspection.

COMMENT: Concerning §157.23(f)(2) and §157.24(h), one commenter stated that there should always be a paramedic on board the aircraft even in the case of interfacility transfers.

RESPONSE: The department disagrees in that the section defines staffing in terms of patient care needs.

COMMENT: Concerning §157.23(h), one commenter stated that the section should be more specific.

RESPONSE: The department agrees and has added new paragraph (4) to subsection (h) of that section and renumbered the paragraphs accordingly. Language was also added to the new paragraph (5) of that subsection.

COMMENT: Concerning §157.24(c)(2), one commenter stated that the section should specify that all fixed-wing aircraft should be pressurized.

RESPONSE: The department disagrees and believes that the section as worded protects the patient.

COMMENT: Concerning §157.24(c)(3), one commenter suggested that the words "kept current" be added.

RESPONSE: The department agrees and has added these words to the sentence.

COMMENT: Concerning §157.24(c)(12), a commenter stated that there should only be a requirement for one fire extinguisher since that is what the Federal Aviation Administration requires.

RESPONSE: The department disagrees in that it is a requirement for patient and crew safety.

COMMENT: Concerning §157.24(f)(1), a commenter stated that the section should specify that the physician is currently practicing medicine.

RESPONSE: The department agrees and that change is reflected in the rule.

COMMENT: Concerning §157.24(i)(1)(A), one commenter asked that the department consider the neonatal stretchers which are fitted for isolettes, since the wording in the section precludes their use.

RESPONSE: The department agrees and has included new wording in this sentence.

COMMENT: Concerning §157.24(i)(2)(C), a commenter stated that the oxygen needed should be specified by destination plus 1,000 liters.

RESPONSE: The department disagrees and believes the present wording addresses this concern.

COMMENT: Concerning §157.24(i)(2)(E)(i), one commenter suggested that the oxygen should be measured in liters rather than cubic feet.

RESPONSE: The department agrees and has made that change.

COMMENT: Concerning §157.24(l), one commenter felt that the department should not require a copy of the self study when a provider is accredited, since it would then become open record and the self study contains proprietary information. The commenter feels the certificate should be sufficient.

RESPONSE: The department disagrees since the same requirement exists in the provider licensure section.

COMMENT: Concerning §157.33(a)(1), one commenter pointed out that the standard national curriculum would be modified somewhat by the department in terms of the administration of medications.

RESPONSE: The department agrees and has made the addition.

COMMENT: Concerning §157.33(a)(2), a commenter stated that the last sentence should be deleted to be consistent with new curriculum.

RESPONSE: The department agrees and the sentence has been deleted in subsection (a)(2) and also in subsection (e)(3) of that section.

COMMENT: Concerning §157.33(a)(3), a commenter asked that an amendment be added to allow Mobile Intensive Care Unit providers to train EMT-basics in the use of manual monitor/defibrillators on order of the medical director.

RESPONSE: The department disagrees. This option is always available to medical directors through their medical practice act.

COMMENT: Concerning §157.33(a)(4), one commenter objected to the increase of training hours which the new curriculum requires.

RESPONSE: The department disagrees since it will take at the least a minimum 120 didactic hours to complete an EMT course.

COMMENT: Concerning §157.33(1), a commenter objected to the inclusion of the new curriculum for EMTs believing it to be detrimental to EMTs.

RESPONSE: The department disagrees since it is now a national standard.

COMMENT: Concerning §157.38(c), 207 persons and organizations registered their agreement with the broadening of the content areas in continuing education indicating that it would allow them more flexibility in determining needs and maximizing resources.

RESPONSE: The department agrees.

COMMENT: Concerning §157.38, one commenter stated that a person should not be able to gain CE credit for content areas that are not applicable to their level of certification.

RESPONSE: The department disagrees. To deny access to this training would discount the point of continuing education.

COMMENT: Concerning §157.41(a)(5)(B)(v), two commenters pointed out that although the administration of these drugs is in the curriculum; there is no practical way to determine proficiency verification as with the other skills.

RESPONSE: The department agrees and has deleted this requirement.

COMMENT: Concerning §157.41(a)(6), one person opposed the deletion of the requirement regarding passing critical subscales on the certification examination.

RESPONSE: The department disagrees. Current thinking among psychometricians and educators suggests that placing more emphasis on critical practice areas by increasing the number of questions within the exam is more reliable than easing pass/fail on subscale scores.

COMMENT: Concerning §157.61(b)(3)(A), a commenter objected to the increase in course coordinator's certification fee.

RESPONSE: The department disagrees. The change is made based on legislative mandate.

Editorial changes were made throughout for clarification purposes.

The following organizations or groups commented on the sections: Panhandle EMS System; Tarrant County Coordinators Association; and Tri-county EMS Training. The organizations were generally in favor of the sections; however, they raised questions and concerns on the changes.

Emergency Medical Services-Part A

• 25 TAC §157.2

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

§157.2. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Air ambulance provider-A person who operates/leases a fixed-wing or rotor-wing air ambulance aircraft, equipped and staffed to provide a medical care environment on-board appropriate to the patient's needs. The term air ambulance provider is not synonymous with and does not refer to the Federal Aviation Administration (FAA) air carrier certificate holder unless they also maintain and control the medical aspects that are consistent with EMS provider licensure.

Advanced life support (ALS)-Emergency prehospital or interfacility care that uses invasive medical acts. The provision of advanced life support shall be under the medical supervision and control of a licensed physician.

Basic life support (BLS)-Emergency prehospital or interfacility care that uses noninvasive medical acts. The provision of basic life support may be under the medical supervision and control of a licensed physician.

Emergency medical services volunteer-Emergency medical services personnel who provide emergency prehospital or interfacility care without remuneration, except for reimbursement for expenses.

Emergency medical technician (EMT)-An individual who is certified by the department as minimally proficient to perform emergency prehospital or interfacility care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.

Emergency medical technician-intermediate (EMT-I)-An individual who is certified by the department as minimally proficient in performing skills required to provide emergency prehospital or interfacility care by initiating under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation or both.

Emergency medical technician-paramedic (EMT-P)-An individual who is certified by the department as minimally proficient to provide emergency prehospital or interfacility care by providing advanced life support that includes initiation under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

Interfacility care-Care provided while transporting a patient between medical facilities.

Mobile intensive care unit (MICU)-A vehicle that is designed for transporting the sick or injured and that meets the requirements of the advanced life support vehicle and has sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way radio or cellular phone communication.

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 December 7, 1995.

TRD-9516117 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 29, 1995

Proposal publication date: September 29, 1995

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

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Emergency Medical Services Provider Licenses

• 25 TAC §§157.11, 157.17, 157.18, 157.22-157.24

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

§157.11. Requirements for An EMS Provider License.

(a) (No change.)

(b) License renewal process. The renewal process shall be complete prior to the expiration of the current license.

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

(3) Vehicle inspections for renewal of a license as described in subsection (e) of this section may be waived if the renewal applicant:

(A) (No change.)

(B) has not been found in violation of requirements of this section or §157.12 of this title (relating to Basic Life Support Level Requirements), §157.13 of this title (relating to Advanced Life Support Level Requirements), §157.14 of this title (relating to Mobile Intensive Care Level Requirements), §157.23 of this title (relating to Rotor-wing Air Ambulance Provider Licensure); or §157.24 of this title (relating to Fixed-wing Air Ambulance Provider Licensure) during scheduled or unscheduled

spot inspections conducted by the department during the previous license period; or

(C) (No change.)

(c) License fees.

(1) Nonrefundable fees shall be $150 for each EMS patient transport vehicle, not including reserve vehicles; unless:

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

(2) If a license is issued for less than a two-year period under subsection (h) of this section, the following nonrefundable fees per vehicle shall apply:

(A) $150 if the license is valid for 13-24 months; or

(B) $75 if the license is valid for less than 13 months.

(3) A provider who has a check returned to the department for "insufficient funds" shall be subject to revocation of the EMS provider license and this may be used as grounds for nonrenewal of the EMS provider license.

(d) Provider license requirements.

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

(4) Personnel provisional certification. If a provider chooses to recognize provisional certification as described in §157.41(m) of this title (relating to Certification), the individual may staff a vehicle within the parameters of provisional certification. If the provider has a medical director, the medical director's concurrence is also required.

(e) Vehicle inspection.

(1) Before the issuance of a license to an initial applicant, the applicant's vehicle(s) shall be inspected by the department. Each vehicle shall have:

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

(D) a current motor vehicle certificate of inspection prior to the department's inspection.

(2) The inspection shall include:

(A) visual and physical inspection of each vehicle and of the equipment on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications as described in this section, §157.12 of this title, §157.13 of this title, §157.14 of this title, §157.23 of this title or §157.24 of this title; and

(B) (No change.)

(f) (No change.)

(g) Provisional license.

(1) If any part of the provider licensure process is incomplete, a provider may apply for a provisional license by signing a provisional licensure form and submitting a nonrefundable fee of $25. This fee is in addition to the fee in subsection (c) of this section. A 60-day provisional license will be issued if the department finds:

(A) that the public interest and the community needs would be served;

(B)-(E) (No change.)

(2) A second 60-day provisional license may be issued if:

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

(C) a provisional licensure form is signed and submitted with a $25 nonrefundable fee.

(h)-(l) (No change.)

(m) Responsibilities of the EMS provider. During the license period the provider's responsibility shall include:

(1) notification of the department if a vehicle is added with submission of the nonrefundable prorated license fee, if applicable. The added vehicle shall be in compliance with §157.12 of this title, §157.13 of this title, §157.14 of this title, §157.23 of this title or §157.24 of this title;

(2)-(15) (No change.)

(16) maintaining compliance with all state motor vehicle laws and regulations; and

(17) written notification of the department within 30 days of change in official business address.

§157.23. Rotor-wing Air Ambulance Provider Licensure.

(a) Licensure as a helicopter air ambulance provider shall be at the mobile intensive care level and only be granted to a person or entity that directs and controls the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, typically the organization in charge of the medical functions directs the combined efforts of the aviation and medical components during patient transport operations.

(b) When being used as an ambulance, the helicopter shall:

(1) be configured so that the medical personnel have adequate access to the patient in order to begin and maintain basic and advanced life support treatment;

(2) have an entry that allows loading and unloading of a patient without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis); and does not compromise functioning of monitoring systems, intravenous lines, or manual or mechanical ventilation;

(3) have a supplemental lighting system in the event standard lighting is insufficient for patient care that includes:

(A) a self-contained lighting system powered by a battery pack or a portable light with a battery source; and

(B) a means to protect the pilot's night adaptation vision. (Use of red lighting or low intensity lighting in the patient care area is acceptable if not able to isolate the patient care area);

(4) have an electric power outlet with an inverter or appropriate power source of sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment;

(5) have protection of the pilot's flight controls, throttles and radios from any intended or accidental interference by the patient, air medical personnel or equipment and supplies; and

(6) have an internal medical configuration located so that air medical personnel can provide patient care consistent with the scope of care of the air medical service, to include:

(A) the space necessary to ensure the patient's airway is maintained and to provide adequate ventilatory support from the secured, seat-belted position of the air medical personnel;

(B) those aircraft with gaseous oxygen systems have equipment installed so that medical personnel can determine if oxygen is on by in-line pressure gauges mounted in the patient care area. Aircraft using liquid or gaseous oxygen should have equipment installed:

(i) with each gas outlet clearly marked for identification;

(ii) with oxygen flow capable of being stopped at or near the oxygen source from inside the aircraft; and

(iii) so that the measurement of the liter flow and quantity of oxy-

gen remaining is accessible to air medical personnel while in flight. All flow meters and outlets must be padded, flush mounted, or so located as to prevent injury to air medical personnel; or there shall be an operational policy stating that attendants wear helmets;

(C) hangers/hooks available to secure IV solutions in place or a mechanism to provide high flow fluids if needed:

(i) all IV hooks shall be padded, flush mounted, or so located as to prevent head trauma to the air medical personnel in the event of a hard landing or emergency with the aircraft; or an operational policy stating that attendants wear helmets; and

(ii) glass containers shall not be used unless required by medication specifications and properly vented;

(D) provision for medication which allows for protection from extreme temperatures if it becomes environmentally necessary; and

(E) secure positioning of cardiac monitors, defibrillators, and external pacers so that displays are visible to medical personnel.

(c) An air ambulance provider shall meet the requirements of emergency medical service (EMS) providers as in §157.11(a)(1)(A)-(E) of this title (Relating to Requirements for An EMS Provider License) and in addition shall:

(1) submit proof that the rotor-wing aircraft operator carries bodily injury and property damage insurance with a company licensed to do business in Texas, to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. Coverage amounts shall insure that:

(A) each aircraft shall be insured for the minimum amount of $1 million for injuries to, or death of, any one person arising out of any one incident or accident;

(B) the minimum amount of $3 million for injuries to, or death of, more than one person in any one accident; and

(C) the minimum amount of $500,000 for damage to property arising from any one accident;

(2) submit proof that they carry professional liability coverage in the minimum amount of $500,000 per occurrence, with a company licensed to do business in Texas, to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the care or lack of care of a patient;

(3) submit a list of all aircraft with the registration number or "N" number for the helicopters in the possession of the provider. The license fee as required in §157.11(b) of this title shall be based on the number of helicopter aircraft;

(4) submit a letter of agreement that all helicopters shall meet the specifications of subsection (b) of this section, if the aircraft is leased from a pool. The license fee shall be based on each complete set of equipment; and

(5) allow visual and physical inspection of each aircraft and of the equipment to be used on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications within this section.

(d) The air ambulance provider shall designate or employ a medical director who shall meet the following qualifications:

(1) be a physician currently licensed in the State of Texas and in practice. A waiver to this requirement may be granted to providers based in New Mexico, Oklahoma, Arkansas, and Louisiana who respond in Texas and whose medical director is licensed in his/her respective state;

(2) have knowledge and experience consistent with the transport of patients by air;

(3) be knowledgeable in aeromedical physiology, stresses of flight, aircraft safety, patient care, and resource limitations of the aircraft, medical staff and equipment; and

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside his/her area of practice.

(e) The physician shall fulfill the following responsibilities:

(1) ensure that there is a comprehensive plan/policy to address selection of appropriate aircraft, staffing and equipment;

(2) be involved in the selection, hiring, training and continuing education of all medical personnel;

(3) be responsible for overseeing the development and maintenance of a continuous quality improvement program;

(4) ensure that there is a plan to provide direction of patient care to the air medical personnel during transport. The system shall include on-line (radio/telephone) medical control, and/or an appropriate system for off-line medical control such as written guidelines, protocols, procedures, patient specific written orders or standing orders;

(5) participate in any administrative decision making processes that affects patient care;

(6) ensure that there is an adequate method for on-line medical control, and that there is a well defined plan or procedure and resources in place to allow off-line medical control; and

(7) oversee the review, revision and validation of written medical policies and protocols annually.

(f) There shall be two Texas licensed/certified personnel on board the helicopter when in service. A waiver to the Texas license/certification may be granted for personnel employed by providers in New Mexico, Oklahoma, Arkansas, and Louisiana who respond in Texas and are licensed in their respective state. Staffing of vehicles shall be as follows:

(1) when responding to an emergency scene, at least one of the personnel shall be a paramedic;

(2) when responding for an inter-facility transfer, at least one of the personnel performing patient care duties shall be a certified paramedic, registered nurse or physician. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs;

(3) when responding as in paragraphs (1) and (2) of this subsection, the second person may be a paramedic, registered nurse, or a physician; and

(4) air medical personnel shall not be assigned or assume the cockpit duties of the flight crew members concurrent with patient care duties and responsibilities.

(g) Documentation of successful completion of training specific to the helicopter transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew-National Standard Curriculum or equivalent program and each attendant's qualifications shall be documented.

(h) Medical supplies and equipment shall be consistent with the service's scope of care as defined in the protocols/standing orders. Medical equipment shall be functional without interfering with the avionics nor should avionics interfere with the function of the medical equipment. Additionally, the following equipment, clean and in working order, must be on the aircraft or immediately available for all providers:

(1) one or more stretchers being secured in the aircraft which:

(A) can accommodate an adult, six feet tall, weighing 212 pounds. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) shall have the head of the primary stretcher capable of being elevated up to 30 degrees. The elevating section shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available;

(D) shall have a pad or mattress impervious to moisture and easily cleaned and disinfected according to Occupational Safety and Health Administration (OSHA) bloodborne pathogen requirements; and

(E) shall have a supply of linen for each patient;

(2) adequate amounts of oxygen (for anticipated liter flow and length of flight with an emergency reserve) available for every mission;

(3) one portable oxygen tank;

(4) hand operated bag-valve mask ventilators of adult, pediatric, and infant sizes with clear masks in adult, pediatric and infant sizes. It shall be capable of use with a supplemental oxygen supply and have an oxygen reservoir;

(5) a back-up source of oxygen (of sufficient quantity to get safely to a facility for replacements). Back-up source may be the required portable tank if the tank is accessible in the patient care area during flight and there shall be one adult, one pediatric size non-rebreathing mask, one adult size nasal cannula and necessary connective tubings and appliances;

(6) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, child, and infant; and

(B) nasopharyngeal airways in at least three sizes with water soluble lubricant;

(7) at least one suction unit which is portable (bulb syringes or foot pump not acceptable);

(8) the following items in amounts and sizes as specified on a list signed by the medical director:

(A) intravenous solutions;

(B) intravenous catheters;

(C) endotracheal tubes;

(D) medications;

(E) any specialized equipment required in medical treatment protocols/standing orders;

(F) pressure bag;

(G) tourniquets, tape, dressings; and

(H) container appropriate to contain used sharp devices (needles, scalpels) which meets OSHA requirements;

(9) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric and infant patient(s) during flight;

(B) stethoscope;

(C) penlight/flashlight;

(D) heavy duty bandage scissors;

(E) pulse oximeter;

(F) external cardiac pacing device; and

(G) IV infusion pump capable of strict mechanical control of an IV infusion drip rate. Passive devices such as dial-a-flow are not acceptable;

(10) bandages and dressings as follows:

(A) sterile dressings such as 4x4's, ABD pads;

(B) bandages such as Kerlix, Kling; and

(C) tape in various sizes;

(11) container(s) and methods to collect, contain, and dispose of body fluids such as emesis, oral secretions, and blood consistent with OSHA bloodborne pathogen requirements;

(12) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, and each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) protective gloves;

(B) protective gowns;

(C) protective eyewear;

(D) protective face masks;

(E) an approved biohazardous waste plastic bag or impervious container to receive and dispose of used supplies; and

(F) handwashing capabilities or antiviral towelettes;

(13) an adequate trash disposal system exclusive of bio-hazardous waste control provisions;

(14) security of medications, fluids, and controlled substances shall be maintained by each air ambulance licensee in compliance with local, state, and federal drug laws;

(15) cardiac monitor defibrillator-DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient power supply to meet demands of the mission; and

(16) quantity and type of drugs and specialized equipment as specified on the medical director's list.

(i) The air ambulance provider who receives and maintains certification from a national accrediting organization approved by the department and who adheres to Texas staffing requirements shall be considered to have met the requirements of this section. They shall submit to the department a copy of the self study for accreditation and a copy of the formal accreditation approval. Copies of any updates submitted to the accrediting organization as well as any correspondence from the organization affecting the provider's accreditation should also be submitted to the department.

(j) An air ambulance provider who meets the requirements of this section shall be issued a license valid for a period of two years; except that the department may issue an initial license for less than two years in order to conform expiration dates to existing schedules for a locality. An initial license shall be valid upon the date of issuance. A renewed license shall be valid on the day after the expiration of the previous license. A license is not transferable from one EMS provider to another.

(k) A provider from New Mexico, Oklahoma, Arkansas, or Louisiana may apply for reciprocal issuance of a provider license. An administrative fee of $250 shall accompany the application in addition to the licensing fee in §157.11(c) of this title.

(1) The department shall notify the EMS provider 180 days before the expiration date of the provider license. If a provider does not receive notice of expiration from the department, it is the responsibility of the provider to notify the department and request a license renewal application. Failure to apply for renewal shall result in expiration of the license. Continuing to operate without a license may result in administrative penalties. A completed application shall be submitted at least 60 days before the expiration date of the current license.

(2) The license renewal applicant shall submit:

(A) the completed application and the nonrefundable fee as provided in §157.11(b) of this title;

(B) evidence of compliance with requirements for a provider license as delineated in §157.11(a)(1)(A)-(E) of this title, or evidence of accreditation as in subsection (h) of this section; and

(C) vehicle inspections for renewal of a license may be waived if the renewal applicant:

(i) provides evidence of compliance with requirements of this section;

(ii) has not been found in violation of requirements of this section during scheduled or unscheduled spot inspections conducted by the department during the previous license period; or

(iii) has not been found in violation of the Health and Safety Code, Chapter 773, during the previous license period.

(3) The air ambulance provider shall meet the responsibilities required in §157.11(m) of this title.

(l) An air ambulance provider who has a check returned to the department for insufficient funds shall be subject to revocation of the provider license and this may be used as grounds for nonrenewal of the EMS provider license.

§157.24. Fixed-wing Air Ambulance Provider Licensure.

(a) If an air ambulance provider advertises in Texas and operates an air ambulance service, the provider shall be required to have a Texas license.

(b) Licensure as a fixed-wing air ambulance provider shall be at the mobile intensive care level and shall only be granted to a person or entity that directs and controls the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, one organization, typically the one in charge of the medical functions, directs the combined efforts of the aviation and medical components during patient transport operations.

(c) When being used as an ambulance, a fixed wing aircraft shall:

(1) be multi-engine;

(2) maintain a cabin altitude consistent with patient diagnosis, condition, and destination;

(3) be equipped and kept current for instrument flight rules (IFR) flight;

(4) have a door large enough to allow a patient on a stretcher to be enplaned without excessive maneuvering or tipping of the patient which compromises the function of monitoring devices, intravenous (IV) lines or ventilation equipment;

(5) be designed or modified to accommodate at least one stretcher patient;

(6) have a lighting system which can provide adequate intensity to illuminate the patient care area and an adequate method (curtain, distance) to limit the cabin light from entering the cockpit and impeding cockpit crew vision during night operations;

(7) have an environmental system (heating and cooling) capable of maintaining a comfortable temperature at all times;

(8) have an interior cabin configuration large enough to accommodate the number of air medical personnel needed to provide care to the patient, as well as an adult stretcher in the cabin area with access to the patient. The configuration shall not impede the normal or emergency evacuation routes;

(9) have an electrical system capable of servicing the power needs of electrically powered on-board patient care equipment;

(10) have all installed and carry-on equipment secured using FAA-approved devices and methods;

(11) have sufficient space in the cabin area where the patient stretcher is installed so that equipment can be stored and secured with FAA-approved devices in such a manner that it is accessible to the air medical personnel; and

(12) have two fire extinguishers approved for aircraft use. Each shall be fully charged with valid inspection certification and capable of extinguishing type A, B, or C fires. One extinguisher shall be accessible to the cockpit crew and one shall be in the cabin area accessible to the medical crew member.

(d) An operator of aircraft in an air ambulance program shall be FAA certified as an air taxi and commercial operator (ACTO) with operation specifications allowing air ambulance operations.

(e) The fixed-wing air ambulance provider shall meet the requirements of emergency medical service (EMS) providers as in §157.11(a)(1)(A)-(E) of this title (relating to Requirements for an EMS Provider License) and shall also:

(1) submit proof that the fixed-wing aircraft operator carries bodily injury and property damage insurance with a company licensed to do business in the State of Texas, to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. Coverage amounts shall insure that:

(A) each aircraft shall be insured for the minimum amount of $1 million for injuries to, or death of, any one person arising out of any one incident or accident;

(B) there is a minimum amount of $3 million for injuries to, or death of, more than one person in any one accident; and

(C) there is a minimum amount of $500,000 for damage to property arising from any one accident;

(2) submit proof that the provider carries professional liability coverage in the minimum amount of $500,000 per occurrence, with a company licensed to do business in Texas, in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the care or lack of care of a patient;

(3) submit a list of all aircraft with the registration number or "N" number for the fixed-wing aircraft in the possession of the provider. The license fee as required in §157.11(b) of this title shall be based on the number of fixed-wing aircraft;

(4) submit a letter of agreement that all fixed-wing aircraft shall meet the specifications of subsection (b) of this section, if the aircraft is leased from a pool. The license fee as required in §157.11(b) of this title shall be based on each complete set of equipment; and

(5) allow visual and physical inspection of each aircraft and of the equipment on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications within this section.

(f) The air ambulance provider shall designate or employ a medical director who shall meet the following qualifications:

(1) be a physician currently licensed in the State of Texas and in practice. Physicians employed by providers who are based in another state, do not need Texas licensure but shall be licensed in their respective state;

(2) have knowledge and experience consistent with the transport of patients by air;

(3) be knowledgeable in aeromedical physiology, stresses of flight, aircraft safety, patient care, and resource limitations of the aircraft, medical staff and equipment; and

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside his/her area of practice.

(g) The physician shall fulfill the following responsibilities:

(1) ensure that there is a comprehensive plan/policy to address selection of appropriate aircraft, staffing and equipment;

(2) be involved in the selection, hiring, training and continuing education of all medical personnel;

(3) be responsible for overseeing the development and maintenance of a continuous quality improvement program;

(4) ensure that there is a plan to provide direction of patient care to the air medical personnel during transport. The system shall include on-line (radio/telephone) medical control, and/or an appropriate system for off-line medical control such as written guidelines, protocols, procedures, patient specific written orders or standing orders;

(5) participate in decision making processes that affect patient care;

(6) ensure that there is an adequate method for on-line medical control, and that there is a well defined plan or procedure and resources in place to allow off-line medical control; and

(7) oversee the review, revision and validation of written policies and protocols annually to include a policy defining the specific instances in which a patient could be accompanied by only one attendant.

(h) There shall be at least one licensed/certified paramedic, registered nurse, or physician on board an air ambulance to perform patient care duties on that air ambulance. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs. Personnel employed by providers who are based in another state, do not need Texas certification/licensure but shall be certified/licensed in their respective state.

(1) Documentation of successful completion of training specific to the fixed-wing transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew-National Standard Curriculum, or equivalent program.

(2) Each attendant's qualifications shall be documented.

(3) Air medical personnel shall not be assigned or assume the cockpit duties of the flight crew members concurrent with patient care duties and responsibilities.

(4) The aircraft shall be operated by a pilot or pilots certified in accordance with applicable FARs.

(i) Each fixed-wing air ambulance shall carry the following equipment:

(1) one or more stretchers installed in the aircraft cabin which:

(A) can accommodate an adult, six feet tall, weighing 212 pounds, except for approved apparatus used to transport neonates. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) the head of each stretcher is capable of being elevated up to 45 degrees. The elevating section must hinge at or near the patient's hips and shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) shall be positioned in the cabin to allow the air medical personnel clear view of the patient and shall ensure that medical personnel always have access to the patient's head and upper body for airway control procedures as well as sufficient space over the area where the patients chest is to adequately perform closed chest compression or abdominal thrusts on the patient;

(D) has a pad or mattress that is impervious to moisture and easily cleaned and disinfected according to Occupation Safety and Health Administration (OSHA) bloodborne pathogen requirements;

(E) has a device to make the stretcher surface rigid enough if the surface of the stretcher under the patient's torso is not firm enough to support adequate chest compressions; and

(F) has a supply of linen for each patient;

(2) an adequate and manually-controlled supply of gaseous or liquid medical oxygen, attachments for humidification, and a variable flow regulator for each patient:

(A) a humidifier, if used, shall be a sterile, disposable, one-time usage item;

(B) the method used to calculate the volume of oxygen required to provide sufficient oxygen for the patients needs for the duration of the transport shall be available and demonstrated by the licensee;

(C) a plan to provide the calculated volume of oxygen plus a reserve equal 1,000 liters or the volume required to reach an appropriate airport, whichever is longer shall be available;

(D) all necessary regulators, gauges and accessories shall be present and in good working order;

(E) the oxygen system shall be securely fastened to the airframe using FAA-approved restraining devices and in addition there shall be:

(i) a separate emergency backup supply of oxygen of not less than 57 liters with regulator and flow meter; and

(ii) one adult, one pediatric size non-rebreathing mask, one adult size nasal cannula and necessary connective tubings and appliances.

(3) an electrically-powered suction apparatus with wide bore tubing, a large reservoir and various sizes suction catheters. The suction system may be built into the aircraft or provided with a portable unit. Backup suction is required and can be a manually operated device. (Bulb syringe not acceptable);

(4) hand operated bag-valve-mask ventilators of adult, pediatric and infant sizes with clear masks in adult, pediatric and infant sizes. It shall be capable of use with a supplemental oxygen supply and have an oxygen reservoir;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, child and infant; and

(B) nasopharyngeal airways in at least three sizes with water soluble lubricant;

(6) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric and infant patient(s) during flight;

(B) stethoscope;

(C) penlight/flashlight;

(D) heavy duty bandage scissors; and

(E) pulse oximeter;

(7) bandages and dressings as follows:

(A) sterile dressings such as 4x4's, ABD pads;

(B) bandages such as Kerlix, Kling; and

(C) tape in various sizes;

(8) container(s) and methods to collect, contain, and dispose of body fluids such as emesis, oral secretions, and blood consistent with OSHA bloodborne pathogen requirements;

(9) urinal and bedpan with toilet tissue;

(10) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) protective gloves;

(B) protective gowns;

(C) protective eyewear;

(D) protective face masks;

(E) an approved bio-hazardous waste plastic bag or impervious container to receive and dispose of used supplies; and

(F) handwashing capabilities or antiviral towelettes.

(11) an adequate trash disposal system exclusive of bio-hazardous waste control provisions;

(12) the following additional equipment in amounts and sizes specified by the medical director is required for an air ambulance provider to function at the advanced level:

(A) advanced airway management equipment appropriate to the patient's needs;

(B) sterile crystalloid solutions in plastic containers, IV catheters, and administration tubing sets;

(C) hanger for IV solutions;

(D) pressure bag;

(E) tourniquets, tape, dressings;

(F) container appropriate to contain used sharp devices, needles, scalpels which meets OSHA requirements;

(G) a list signed by medical director defining quantities and types of drugs to be carried; and

(H) any specialized equipment required in medical treatment protocols/standing orders.

(13) cardiac monitor defibrillator-DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient power supply to meet demands of the mission; and

(14) survival kit which shall include, but not be limited to, the following items which are appropriate to the terrain and environments the provider operates over:

(A) instruction manual;

(B) water;

(C) shelter-space blanket;

(D) knife;

(E) signaling devices;

(F) compass; and

(G) fire starting items.

(j) A system for security of medications, fluids, and controlled substances shall be maintained by each air ambulance licensee in compliance with local, state, and federal drug laws.

(k) The air ambulance provider shall own the following equipment or shall have a written lease agreement explaining the availability of the equipment for use when the patient's condition indicates the need:

(1) external cardiac pacing device;

(2) IV infusion pump capable of strict mechanical control of an IV infusion drip rate. Passive devices such as dial-a-flow are not acceptable; and

(3) a mechanical ventilator that can deliver up to 100% oxygen concentration at pressures, rates and volumes appropriate for the size of the patient.

(l) The air ambulance provider who receives and maintains certification from a national accrediting organization approved by the department and who adheres to Texas staffing requirements shall be considered to have met the requirements of this section. They shall submit to the department a copy of the self study for accreditation and a copy of the formal accreditation approval. Copies of any updates submitted to the accrediting organization as well as any correspondence from the organization affecting the provider's accreditation shall also be submitted to the department.

(m) An air ambulance provider who meets the requirements of this section shall be issued a license valid for a period of two years; except that the department may issue an initial license for less than two years in order to conform expiration dates to existing schedules for a locality. An initial license shall be valid upon the date of

issuance. A renewed license shall be valid on the day after the expiration of the previous license. A license is not transferable from one EMS provider to another.

(n) The license renewal process shall be complete prior to the expiration of the current license.

(1) The department shall notify the EMS provider 180 days before the expiration date of the provider license. If a provider does not receive notice of expiration from the department, it is the responsibility of the provider to notify the department and request a license renewal application. Failure to apply for renewal shall result in expiration of the license. A completed application shall be submitted at least 60 days before the expiration date of the current license.

(2) The license renewal applicant shall submit:

(A) the completed application and the nonrefundable fee as provided in §157.11(b) of this title;

(B) evidence of compliance with requirements for a provider license as delineated in §157.11(a)(1)(A)-(E) of this title, or evidence of accreditation as in subsection (i) of this section; and

(C) vehicle inspections for renewal of a license which may be waived if the renewal applicant:

(i) provides evidence of compliance with requirements in this section; and

(ii) has not been found in violation of requirements of this section during scheduled or unscheduled spot inspections conducted by the department during the previous license period; and/or

(iii) has not been found in violation of the Health and Safety Code, Chapter 773 of during the previous license period.

(3) The air ambulance provider shall meet the responsibilities required in §157.11(m) of this title.

(o) An air ambulance provider who has a check returned to the department for insufficient funds shall be subject to revocation of the provider license and this may be used as grounds for nonrenewal of the EMS provider license.

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 December 7, 1995.

TRD-9516118 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 29, 1995

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

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• 25 TAC §157.15

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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General Counsel
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EMS Training and Course Approval

• 25 TAC §157.33, §157.38

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

§157.33. Emergency Medical Technician Training.

(a) Course curricula.

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

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

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

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

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

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

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

(b) (No change.)

(c) Course approval criteria.

(1) (No change.)

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

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

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

(d) (No change.)

(e) EMT completion course.

(1) (No change.)

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

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

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

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

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

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

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 December 7, 1995.

TRD-9516120 Susan K. Steeg
General Counsel
Texas Department of Health

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Proposal publication date: October 3, 1995

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

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EMS Personnel Certification

• 25 TAC §§157.41, 157.44, 157.46, 157.51

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

§157.41. Certification.

(a) A candidate for certification shall:

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

(3) complete the application for certification;

(4) (No change.)

(5) have documented evidence from a state certified skills examiner using state skills criteria of skills proficiency as follows.

(A) The ECA skills proficiency verification shall consist of:

(i)-(vi) (No change.)

(B) The EMT skills proficiency verification shall consist of the skills verification requirements for the ECA in subparagraph (A) of this paragraph. In addition, after September 1, 1996, the student shall demonstrate proficiency in the following skills:

(i) automated external defibrillation;

(ii) pneumatic antishock garment;

(iii) epinephrine auto-injector; and

(iv) inhaler bronchodilators.

(C) The EMT-I skills proficiency verification shall consist of the skills verification requirements for ECA and EMT in subparagraph (A) of this paragraph. In addition, the student shall demonstrate proficiency in the following skills:

(i) peripheral venipuncture for fluid administration;

(ii) utilization of the pneumatic antishock garment; and

(iii) utilization of an endotracheal tube (infant and adult) and an esophageal intubation device for airway control.

(D) The EMT-P skills proficiency verification shall consist of the skills verification requirements for an ECA, EMT, and EMT-I in subparagraphs (A) and (B) of this paragraph. In addition, the student shall demonstrate proficiency in the following skills:

(i) emergency drug administration;

(ii) defibrillation and cardioversion; and

(iii) megacode (possession of a valid Advanced Cardiac Life Support (ACLS) card issued within the inclusive dates of the paramedic or paramedic completion course or documentation issued by the course medical director based upon scenarios submitted with the course approval documents shall fulfill megacode proficiency requirements);

(6) achieve a passing grade of 70 on the department's certification examination or the National Registry examination.

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

(f) A candidate shall be eligible to reapply for certification for up to one year following the course completion date, if:

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

(g) A candidate who does not meet the requirements for certification within the one-year period following the course completion date shall be required to complete an entire EMS training course as described in §§157. 33-157.35 of this title (relating to EMS Training Program and Course Approval) to be eligible to apply for certification.

(h)-(i) (No change.)

(j) The completion of a course at a higher level of certification shall satisfy the course requirement for a lower level of certification, and the individual may apply for certification by:

(1) submitting an application and applicable fee, if any, as required in subsection (a)(3) and (4) of this section; and

(2) meeting the skills proficiency verification and examination requirements of this section within 180 days of the course completion date; or

(3) meeting the requirements of subsection (e) of this section.

(k) An individual who successfully completes certification requirements for a higher level is deemed to be certified only at that level.

(l) An individual who is certified as an EMT-I or EMT-P may voluntarily be certified at a lower level of certification by:

(1) submitting an application for certification and the applicable fee, if any, as required in subsection (a)(3) and (4) of this section;

(2) completing the requirements of §157.38 of this title (relating to Continuing Education) for the level of certification requested according to the two-year reporting cycle which is applicable;

(3) completing skills proficiency verification as required in subsection (a)(5) of this section;

(4) achieving a passing grade on the department's written examinations as required in subsection (a)(6) of this section; and

(5) returning the wallet-size certificate for the EMT-I or EMT-P level of certification to the department.

(m) An individual who has successfully completed an EMS course as in §§157.32-157.35 of this title, may have provisional certification for 180 days or until permanent certification status is achieved, whichever comes sooner, if the individual is employed by or volunteers for an EMS provider. The EMS provider is not required to recognize provisional certification. While on provisional status:

(1) an individual may serve as the second staff person on the ambulance as long as there is a person with full status certification of equal or higher level working with the individual; and

(2) if the individual fails an examination, the individual will automatically lose provisional certification status until such time as the individual successfully passes the examination and receive full status certification.

(n) An individual who wishes to surrender his or her certification prior to the expiration of the certificate may do so by:

(1) completing a Surrender of Certificate statement;

(2) acknowledging that the surrender is a "no contest" plea, in the event that a disciplinary action is pending or reasonably imminent; and

(3) identifying the reason for the surrender. When the reason is an inability to perform the functions of the applicable certificate level, the certificant shall identify the reason for the inability.

(o) To regain certification following the surrender of a certificate, the individual shall:

(1) petition the department in writing for approval to reapply for certification and provide evidence of present fitness; and

(2) meet the maximum re-entry requirements as in §157.45(f) of this title (relating to Recertification), if within two years of surrender; or

(3) meet initial certification requirements as in this section, if two or more years after surrender.

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 December 7, 1995.

TRD-9516121 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 29, 1995

Proposal publication date: September 29, 1995

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

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Emergency Medical Services Course Coordinator, Program Instructor and Examiner Certification

• 25 TAC §157.61

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

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 December 7, 1995.

TRD-9516122 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: December 29, 1995

Proposal publication date: September 29, 1995

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

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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 adopts an amendment to §1.414, concerning assessment of maintenance taxes and fees for payment in 1996, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9252).

The amendment is necessary to adjust the rates of assessment for maintenance taxes and fees for 1996 which will provide the revenue necessary to fund appropriations made by the Legislature.

Section 1.414 applies the rates to the gross premium receipts for the calendar year 1995, or some other basis designated by statute, 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. The department anticipates the adopted rates will produce revenue of $39,032,630 to the state's general revenue fund.

One commenter inquired as to why the rate of assessment decreased on some lines of insurance, but had remained the same for life, health and accident insurance companies.

The Texas Legal Reserve Officials Association commented on the proposed amendment.

The department did not propose a reduction to the assessment rate for life, health, and accident insurance in §1.414(b) since the expenses of the department associated with this line of insurance are anticipated to exceed the revenue anticipated as a result of the adopted rate, which is the maximum permitted under Texas Insurance Code, Article 4.17.

The amendment is adopted under the Insurance Code, Articles 4.17, 5.12, 5. 24, 5.49, 5.68, 9.46, 20A.33, 21.07-6, §§21, 23.08A, and 1.03A, 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. Article 20A.33 (The Texas Health Maintenance Organization Act, §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).

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 December 11, 1995.

TRD-9516145 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1996

Proposal publication date: November 7, 1995

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

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Subchapter C. Maintenance Taxes and Fees

• 28 TAC §1.415

The Texas Department of Insurance adopts 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, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9252).

The amendment is necessary to adjust the rate of maintenance tax surcharges due in 1996 on the basis of gross premium receipts for calendar year 1995 for workers' compensation insurance companies. The surcharge will be used to service the bonded indebtedness of the Texas Workers' Compensation Insurance Fund.

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 department estimates $17,632,753 will be 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.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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 statute. 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 articles of the Insurance Code are affected by this rule: 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.

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 December 11, 1995.

TRD-9516144 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1996

Proposal publication date: November 7, 1995

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

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Chapter 5. Property and Casualty

Subchapter N. Residential Property Insurance Market Assistance Program

Executive Committee Membership and Operation

• 28 TAC §5.10000

The Texas Department of Insurance adopts new 28 TAC §5.10000, concerning the Residential Property Insurance Market Assistance Program Executive Committee, which is appointed pursuant to the Insurance Code, Article 21.49-12, §3, to propose a plan of operation for the Residential Property Insurance Market Assistance Program (MAP) and to advise and consult with the Commissioner on the administration of the program. The new section is adopted without changes to the proposed text as published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6292).

Proposed pursuant to Texas Civil Statutes, Article 6252-33, which governs State Agency Advisory Committees, the new section is necessary to specify the purpose, task, reporting requirements, membership composition, and duration of the MAP Executive Committee. Article 6252-33 requires a state agency that is advised by an advisory committee to adopt rules stating the committee's purpose and tasks, the manner in which the committee will report to the agency, and the duration of the committee. Article 6252-33, §1 defines "advisory committee" to mean a committee, council, commission, task force, or other entity in the executive branch of state government that is not a state agency, is created by or under state law, and has as its primary function the advising of a state agency. Article 21.49-12 of the Insurance Code was enacted by the 74th Texas Legislature in House Bill 1367 (Acts 1995, 74th Legislature, Page 3008, Chapter 415, §5, effective August 28, 1995) to require the Commissioner to establish a voluntary market assistance program to assist insureds in Texas in obtaining residential property insurance coverage in underserved areas which are to be determined and designated by the Commissioner by rule. Pursuant to §2 of Article 21.49-12, an executive committee shall develop and submit the MAP plan of operation to the Commissioner for adoption by rule and shall be available to advise and consult with the Commissioner with regard to the administration of the program. Pursuant to §3 of Article 21.49-12, the executive committee shall be composed of 11 members appointed by the Commissioner.

Subsection (a) of new §5.10000 states the purpose of the rule which is to specify the purpose, task, reporting requirements, membership composition, and duration of the MAP Executive Committee. Subsection (b) specifies the purpose of the Executive Committee which is to assist the Commissioner in the administration of the MAP as authorized by the Insurance Code, Article 21. 49-12. Subsection (c) outlines the tasks of the Executive Committee which are specified in Article

21.49-12 of the Insurance Code. Subsection (d) specifies the committee's reporting requirements. Subsection (e) addresses the membership composition of the Executive Committee as provided by Article 21. 49-12 of the Insurance Code. Subsection (f) provides for the duration of the Executive Committee which shall be terminated upon termination of the MAP as provided in Article 21.49-12 of the Insurance Code.

For: No comments were received during the comment period in support of the proposed section as published. Against: Two commenters, Consumers Union and the Office of Public Insurance Counsel, submitted comments opposing the proposed section as published.

COMMENT: Both commenters suggested that the rule provide more specifics to guide the Executive Committee in developing the MAP plan of operation and the process it will utilize to fulfill the intent of the statute. Both commenters proposed that the rule be changed to require the MAP plan of operation to address term limits, removal for cause, public meetings, subcommittee membership, responsibilities of the Texas Department of Insurance to the MAP Executive Committee, eligibility criteria, coverage issues, recruitment of agents and insurers, public input, reporting to the public, and a grievance procedure. The commenters recommended specific amendatory language to address these suggested changes.

RESPONSE: The Department disagrees. The sole purpose of this rule is to comply with Article 6252-33, Texas Civil Statutes, which requires a state agency that is advised by an advisory committee to adopt rules stating the committee's purpose and tasks, the manner in which the committee will report to the agency, and the duration of the committee. The purpose of Article 6252-33 is to provide for the centralized monitoring of state agency advisory committees and to provide for and monitor reimbursement costs for members of these advisory committees. The Department does not believe that this rule is the appropriate means for providing additional guidance to the Executive Committee nor does the Department believe that such rules are necessary at this time. In addition, all of the issues in the suggested changes are included in the draft outline of the MAP plan of operation prepared by the Department staff and will be addressed in the plan of operation.

COMMENT: One of the commenters believes that subsection (c)(4) is not necessary and should be deleted. Under Article 21.49-12 §2(c) any need for a subcommittee is to be addressed in the plan of operation and this subdivision is repetitive to the Executive Committee's task of developing a plan of operation.

RESPONSE: The Department disagrees. The purpose of subsection (c) is to specify the tasks of the Executive Committee as required by Article 6252-33. Advising the Commissioner on the need for subcommittees, both in the plan of operation as recommended to the Commissioner as well as after the plan of operation is adopted, is a task of this committee. Several of the tasks listed in subsection (c) are addressed in the plan of operation, but this does not mean that including them in subsection (c) is repetitive, nor does it mean that the task is completed upon the adoption of the plan of operation. Many of these tasks are ongoing in nature and are thus appropriately included in subsection (c).

The new section is adopted pursuant to Texas Civil Statutes, Article 6252-33; the Insurance Code, Articles 21.49-12 and 1.03A; and the Government Code, §§2001.004-2001.038. Texas Civil Statutes, Article 6252-33, §5, requires a state agency that is advised by an advisory committee to adopt rules stating the purpose of the committee, the tasks of the committee, and the manner in which the committee will report to the agency. Article 21.49-12, §2 and §3 of the Insurance Code authorize the Commissioner to appoint an 11-member executive committee to develop and submit a Residential Property Insurance Market Assistance Program plan of operation to the Commissioner for adoption by rule and to advise and consult with the Commissioner with regard to the administration of the program. Article 1.03A of the Insurance Code provides that the Commissioner of Insurance may adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute. The Government Code, §§2001.004-2001.038 (Administrative Procedure Act) authorize and require each state agency to adopt rules of practice stating the nature and requirements of available formal and informal procedures and prescribe the procedures for adoption of rules by a state agency.

The following statutes are affected by this rule: Insurance Code, Article 21.49-12. Texas Civil Statutes, Article 6252-33.

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 December 8, 1995.

TRD-9516113 Bernice Ross
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: December 29, 1995

Proposal publication date: August 18, 1995

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

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Chapter 7. Corporate and Financial Regulation

Subchapter J. Examination Expenses and Assessments

• 28 TAC §7.1012

The Texas Department of Insurance adopts an amendment to §7.1012, concerning assessments to cover the expenses of examining insurance companies, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9253.

The section is necessary to provide a rate of assessment for domestic and foreign insurance company examination expenses. Examination assessment rates vary from year to year since the rate is based on the examination costs of the department after taking into account any unexpended funds.

Section 7.1012 provides the method and rates of assessment for examination expenses of foreign and domestic insurance companies. Rates of assessment are 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 expenses and charges to be assessed are in addition to, and not in lieu of, any other charge which may be made under the law, including the Insurance Code, Article 1.16.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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: Insurance Code, Articles 1.16, 1.17, 1.17A 1.18, 1.19, 1.28, 4.10, and 4.11.

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 December 11, 1995.

TRD-9516143 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1996

Proposal publication date: November 7, 1995

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 adopts an amendment to §25.88, concerning the general administrative expense assessment of insurance premium finance companies for calendar year 1995, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9254).

The amendment is necessary to adjust the rate of assessment so that it is sufficient to meet the expenses of performing the department's statutory responsibilities for examination, investigation, and regulation of insurance premium finance companies.

The department levies the rate of assessment set in the section 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. The department estimates that $335,172 will be collected for the state's general revenue fund.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 December 11, 1995.

TRD-9516142 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Effective date: January 1, 1996

Proposal publication date: November 7, 1995

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter G. Consumer-Related Sources

Consumer Products

• 30 TAC §115.612

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts an amendment to §115.612, concerning Control Requirements of Consumer Products, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7020). The revision to §115.612 deletes the category of "Insect Repellents-Aerosols" from the Table of Standards (Table III). The change is in response to a manufacturer's petition to delete this standard. The modified, compliant insect repellent formulations have not gained widespread consumer acceptance, and mandating their use presents the potential for under-use and the risk of increased insect-borne diseases. The deletion of this category also makes the regulations in Texas more consistent with other states' consumer product standards and the current direction of national rulemaking.

The proposed change to §115.612 was published in conjunction with a series of proposed revisions to the Consumer Products rule including §115. 600, concerning Definitions; §115.614, concerning Innovative Products; and §115.617, concerning Exemptions. Rulemaking on all Consumer Products rule revisions was initially set to be concluded by December 31, 1995. However, because the compliance date of the Consumer Products rule is January 1, 1996, and because the effective date of any rule revision is 20 days after it is filed with the Texas Register, staff responded to a request from the Chemical Specialities Manufacturers Association (CSMA) to accelerate the repeal of the insect repellent standard to protect manufacturers against technically falling out of compliance between the time the rule revision is adopted and the time it becomes effective. Rulemaking on the remaining revisions to the Consumer Products rule is still expected to be concluded by December 31, 1995.

Public hearings were held in Beaumont on September 26, 1995 and in Houston on September 27, 1995. Written comments were accepted through October 8, 1995.

SC Johnson Wax and the CSMA submitted testimony in favor of deleting the volatile organic compound standard for aerosol insect repellents.

No commenters opposed the revisions.

The amendment is adopted under the Texas Health and Safety Code (Vernon 1992), the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

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 December 6, 1995.

TRD-9515981 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: December 28, 1995

Proposal publication date: September 8, 1995

For further information, please call: (512) 239-1970

Chapter 277. Use Determinations for Tax Exemptions for Pollution Control Property

• 30 TAC §§277.10, 277.12, 277.20

The Texas Natural Resource Conservation Commission (TNRCC) adopts amendments to §277.10, concerning Application for Use Determination, §277. 12, concerning Application Review Schedule, and §277.20, concerning Application Fees, with changes to the proposed text as published in the October 6, 1995, issue of the *Texas Register* (20 TexReg 8181).

The adoption of §277.10 will extend the application deadline from December 31 of the tax year for which the use determination is being sought to January 31 of the following year. The adoption of §277.12 will clarify the requirements for the TNRCC to send a deficiency notice to an applicant. The rule language is being revised to clarify that the administrative and technical deficiencies are two separate determinations made by TNRCC staff. The adoption of §277.20 revises the fee structure for all levels of the application fee. The fee for Tier I applications is reduced from $100 to $50 per application. The Tier II fee is raised from $500 to $1,000 and the Tier III fee is raised from $1,000 to $2,500. The new fee structure will generate adequate funding to fully staff the program in order to ensure timely review of use determination applications.

Public comments were received from three commenters. The following commenters generally supported the proposed revisions to Chapter 277: Texas Chemical Council (TCC); Southwestern Public Service Company (SPS); and Texas Utilities Electric Company (TU). The SPS and TU did not suggest any changes to the proposed rule language. The TCC suggested changes to the proposed fee structure.

The TCC commented that the proposed fee increases for Tier II and Tier III applications may deter businesses that could not recover the fees in tax savings, and that not all Tier II and Tier III applications will require extensive staff review.

The staff has analyzed the existing and the proposed fee structure using the cost figures from the applications that were received for tax year 1994. Under the current fee structure, the Tier I applications accounted for almost 45% of the total fees. However, the bulk of the staff review time was occupied on Tier II and Tier III applications Also, the participation in the program by small businesses was almost absent. The staff decided to transfer the bulk of the fees to the Tier II and Tier III applications both to encourage greater participation by small businesses which should mainly submit Tier I applications, and to have the relative fees for each tier more reflective of actual review time.

The staff agrees that the fee for each and every application may not reflect the actual review time, but on an average basis it will be more representative. The purpose of the fees is to generate sufficient funds to operate the TNRCC's Proposition 2 program. The reason for revising the fees is not to increase overall funding, but to transfer the bulk of the funding from Tier I applicants to Tier II and III applicants. Based on the 1994 applications, there were only a few Tier II applications and no Tier III applications that would not show a positive cash benefit when comparing the application fee to the overall tax savings resulting from a positive use determination.

The staff plans to revisit the fee structure again at the end of the next tax year to determine if the fees should be revised further. Since the Proposition 2 program has been in effect for only one year, there is not a large historical data base for evaluating the fee structure.

The SPS commented that §277.20(a)(3) contained an error that was carried over from the original adoption of Chapter 277 consisting of using the character which means "greater than" where it should have used the character meaning "less than."

The October 6, 1995, issue of the *Texas Register* did contain a publication error as described in the preceding paragraph. This error should be corrected in this adopted version of the rule.

The TNRCC legal staff proposed a change in the wording of §277.12(2) and §277.20 by deleting the words "without prejudice" from the last sentence of §277.12(2) and from the first sentence of §277.20(b). These words are not needed to clarify the rule and may actually cause some confusion. Therefore, this change has been incorporated into the adopted rules. Also, wording was added to §277.20(a)(3) to clarify that Tier III applications do not include predetermined equipment.

The amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

§277.10. Application for Use Determination. In applying for a use determination under this chapter, a person or political subdivision shall present an official Texas Natural Resource Conservation Commission (TNRCC) application form or a similar reproduction, accompanied by the appropriate fee, pursuant to §277.20 of this title (relating to Application Fees) to the executive director of the TNRCC. An application must be submitted for each unit of pollution control property or for each facility consisting of a group of integrated units which have been, or will be, installed for a common purpose. Delivery of the application by the United States Postal Service, Certified Mail Receipt, is acceptable. If the applicant, other than a political subdivision, desires to apply for a use determination for a specific tax year, the application must be postmarked no later than January 31 of the following year. Applications postmarked after this date will not be processed until after review of all applications postmarked by the due date is completed and without regard for any appraisal district deadlines. The application form shall contain at least the following:

(1)-(8) (No change.)

§277.12. Application Review Schedule. Following submission of the information required by §277.10 of this title (relating to Application for Use Determination), the executive director of the Texas Natural Resource Conservation Commission (TNRCC) shall determine whether the pollution control property is used wholly or partly as a facility, device, or method for the control of air, water, or land pollution. If the determination is that the property is used partly for pollution control then the executive director shall determine the proportion of the property used for pollution control.

(1) (No change.)

(2) Unless the application is not timely received as discussed in §277.10 of this title, within 30 days of receipt of an application for use determination, the executive director shall mail written notification informing the applicant that the application is administratively complete or that it is deficient. If the application is deficient, the notification shall specify the deficiencies, and allow the applicant 30 days to provide the requested information. If the applicant does not submit an adequate response, then the application will be returned. Additional technical information may be requested within 60 days of issuance of an administrative completeness letter. If the applicant does not provide the requested technical information within 30 days, the application will be returned. The applicant may refile the application.

(3) (No change.)

§277.20. Application Fees.

(a) Fees shall be remitted with each application for use determination in an amount based on the following.

(1) Tier I-The fee for an application for property that has been granted a predetermination as pollution control, either partial or 100%, and the application seeks no variance from that determination, shall be $50.

(2) Tier II-The fee for an application for property that is used wholly (100%) for the control of air, water, and/or land pollution, but not designated as eligible for predetermination, shall be $1,000.

(3) Tier III-The fee for an application for property used partially (less than 100%) for the control of air, water, and/or land pollution, but not designated as eligible for predetermination, shall be $2,500.

(b) Fees shall be forfeited for applications for use determination which are denied or returned. An applicant who submits an insufficient fee will receive a deficiency notice in accordance with the procedures in §277. 12(2) of this title (relating to Application Review Schedule). The fee deficiency must be remitted with the response to the deficiency notice before the application will be deemed complete.

(c) All fees shall be remitted in the form of a check or money order made payable to the Texas Natural Resource Conservation Commission (TNRCC) "Proposition 2" and delivered with the application to the TNRCC Proposition 2 Section, at the address listed on the application form.

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 December 6, 1995.

TRD-9515998 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: December 28, 1995

Proposal publication date: October 6, 1995

For further information, please call: (512) 239-1966

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Chapter 305. Consolidated Permits

Subchapter D. Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

• 30 TAC §305.70

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts an amendment to §305.70, concerning modifications to Municipal Solid Waste (MSW) permits, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8582).

The commission is adding new paragraph (25) to §305.70(g) (relating to Municipal Solid Waste Class I Modifications) in order to provide a mechanism for processing changes to municipal solid waste landfill facility (MSWLF) permits to comply with the provisions of §330.203 (relating to Special Conditions (Liner Design Constraints)). Under the adopted rule, such changes will be considered permit modifications. The rule affects only those facilities that have received authorization in their permits to construct below the seasonal high water table.

The commission accepted public comment on the proposed rule for 30 days following publication. Comments were submitted during the public comment period by the following: Browning-Ferris Industries-Southern Region; Shirley Holland; and Sanifill, Inc.

Two commenters expressed support for the adoption of the proposed rule.

One commenter opposed the amendment. The commenter stated that changes to a permit to comply with §330.203 should not be considered Class 1 modifications and that the rule amendment will not provide for greater environmental protection. The commenter also stated that citizens have a right to a public hearing, and MSWLF owner/operators do not have the right to make significant changes without a public hearing. The commission believes that the modification process is appropriate for changes under §330.203 for a facility that is authorized through a permit or permit amendment to extend below the water table. The commission addressed the issue of environmental protection when the amendments to §330.203 were adopted in April, 1995. The technical standards in §330.203 ensure that methods used to offset hydrostatic forces in MSWLFs below the water table are equally protective regardless of the method employed or, in the case of ballast, the type of material used. This rule amendment creates a process for submitting and approving changes to a permit, rather than establishing technical standards. In general, the commission considers a permit modification process suitable for changes that provide an equivalent level of protection, and does not believe changes must result in greater environmental protection in order to be processed as permit modifications. The commission understands that such changes may increase the amount of capacity available for waste disposal in a landfill, but notes that other operational changes, such as alternative daily cover and greater compaction, can also result in more efficient utilization of landfill space and do not require permit amendments. The commission agrees that significant changes to a permit that could affect human health and safety and environmental protection should be subject to a possible public hearing through the amendment process. For example, a permit amendment may be required if the MSWLF facility permit does not authorize construction below the seasonal high water table, but the owner/operator wishes to increase the depth of excavation below the water table.

The commenter was also concerned that financial assurance requirements would not be met when operators modify their permits to change from soil ballast to waste ballast. The commission responds that these rules do not change existing rule provisions that would require an operator to modify the facility permit to account for any change in financial assurance if a modification to a permit results in a change to the anticipated costs of closure and/or corrective action. The determination will be case specific, and should be made in consultation with the TNRCC staff.

Finally, the commenter contended that the proposed amendment will not result in more cost-effective regulation of MSWLFs or more efficient utilization of existing capacity. The commission disagrees, and believes the rules will meet these criteria while being protective of health and the environment.

The amendment is adopted under the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code.

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 December 6, 1995.

TRD-9515937

Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: December 27, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 239-1970

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Chapter 336. Radiation Rules

• 30 TAC §336.7

The Texas Natural Resource Conservation Commission (TNRCC) adopts new §336.7, concerning adoption by reference of a Memorandum of Understanding (MOU) with the Texas Department of Health (TDH) relating to jurisdiction over radiation control functions, without changes to the proposed text as published in the July 21, 1995, issue of the *Texas Register* (20 TexReg 5368).

The new section implements the Texas Health and Safety Code, §401.414, which requires the TNRCC and the TDH to adopt by rule an MOU defining their respective duties in the control of radiation under Chapter 401. The text of the MOU was originally proposed by TDH in the December 16, 1994, issue of the *Texas Register* (20 TexReg 9953). The MOU was adopted by TDH, without changes, as a final rule under 25 TAC §289.131 by the Texas Board of Health in April 1995 and the adoption was published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3462). The MOU was signed by both agencies on March 30, 1995.

The MOU defines the respective jurisdictions of the agencies and provides for coordination of responsibilities, such as emergency preparedness, review of financial security instruments, relationships with the United States Nuclear Regulatory Commission and the Texas Radiation Advisory Board, implementation of a dosimetry and meter calibration program, and performance of a low-level waste health surveillance survey.

Only one comment was received on the proposal. The Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA) noted that certain policy statements contained in the previous September, 1987 "Memorandum of Understanding between the Texas Department of Health and the Texas Water Commission Regarding the Regulation and Management of Radioactive Mixed Wastes" do not appear in the March 30, 1995 MOU between TDH and TNRCC. Specifically, the TLLRWDA noted that the March 30, 1995 MOU does not state that naturally-occurring or accelerator-produced radioactive material (NARM) will be regulated as any other radioactive material, nor does it state that the disposal of non-hazardous, low-level radioactive waste is subject only to the licensing permitting requirements of the Texas Radiation Control Act, Chapter 401, Texas Health and Safety Code. The TLLRWDA is concerned that the disappearance of these policy statements from the MOU may create confusion as to whether these policies remain in effect.

The TNRCC does not agree that the omission of these policy statements from the MOU implies that the policies are no longer in effect. These statements were necessary in the previous MOU to clarify the overlapping jurisdiction of the TWC and TDH. Because §401.412, Texas Health and Safety Code (Vernon Supp. 1995) now clearly provides that the TNRCC has exclusive jurisdiction over disposal of radioactive substances, it is no longer necessary to clarify these areas in the MOU between TDH and the TNRCC.

The new section is adopted under the Health and Safety Code, §401.412(c), which provides the TNRCC with the authority to adopt rules and guidelines reasonably necessary to exercise its authority over the disposal of radioactive substances and source material recovery and processing and §401. 414, which requires the TNRCC and the TDH to adopt an MOU by rule defining their respective duties under Chapter 401.

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 December 6, 1995.

TRD-9515938 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: December 27, 1995

Proposal publication date: July 21, 1995

For further information, please call: (512) 239-1970

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part XVI. Coastal Coordination Council

Chapter 501. Coastal Management Program

The Coastal Coordination Council (council) adopts new §501.2 and §501. 15, relating to Findings and Policy for Major Actions, respectively, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8592).

Section 501.2 is being adopted to identify the council's findings about the use of the coastal zone and states that those uses may adversely affect coastal natural resource areas (CNRAs) and thus the uses require special management. Section 501.15 is being adopted to establish a policy for major actions.

Section 501.2 lists the uses of the coast that may adversely affect CNRAs. Section 501.15 defines major action and requires that prior to approving a major action, the agencies and subdivisions must meet and coordinate their policies relating to major actions. The agencies and subdivisions shall, to the greatest extent practicable, consider the cumulative and secondary adverse effects of each major action relating to the activity and shall not take a major action that is inconsistent with the goals and policies of this chapter.

The council will implement these sections beginning February 1, 1996, the same date that the other provisions of 31 TAC Chapters 501 and 503, and Chapter 505, Subchapters A and B will be implemented by the council.

No comments were received regarding adoption of the new sections.

Subchapter A. General Provisions

• 31 TAC §501.2

The new section is adopted pursuant to the Coastal Coordination Act, Texas Natural Resource Code, Chapter 33, Subchapters C and F, and adopted under the council's authority to promulgate rules pursuant to those subchapters.

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 December 8, 1995.

TRD-9516103 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: December 29, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-9129

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Subchapter B. Goals and Policies

• 31 TAC §501.15

The new section is adopted pursuant to the Coastal Coordination Act, Texas Natural Resources Code, Chapter 33, Subchapters C and F, and adopted under the council's authority to promulgate rules pursuant to those subchapters.

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 December 8, 1995.

TRD-9516104 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: December 29, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-9129

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Chapter 505. Council Procedures for State Consistency with Coastal Management Program Goals and Policies

Subchapter B. Council Review and Certification of Agency Rules

• 31 TAC §§505.23-505.25

The Coastal Coordination Council (council) adopts new §§505.23-205.25, relating to Council Certification of Rules and Rule Amendments; Pre-certification Review of Draft Rules or Draft Rule Amendments; and Revocation of Certification, respectively, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8593).

Section 505.23 is adopted to conform the Texas Coastal Management Program (CMP) to House Bill 3226, 74th Legislature, 1995. Section 505.24 allows a state agency to conform its rules to the CMP goals and policies at an early stage and is aimed at eliminating the need for repeated rule proposals to achieve consistency with the CMP goals and policies. Section 505.25 is adopted to allow the council to revoke an agency's rule certification.

Section 505.23 establishes the procedures for reviewing and certifying new rules and rule amendments as consistent with the CMP goals and policies. Section 505.24 allows agencies to seek council input on new rules and rule amendments by requesting a pre-certification review, prior to publishing the proposed rule or rule amendment in the *Texas Register*. Section 505.25 establishes the procedures for council revocation of agency rule certifications.

The council will implement these sections beginning February 1, 1996, the same date that the other provisions of 31 TAC Chapters 501 and 503, and Chapter 505, Subchapters A and B will be implemented by the council.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to the Coastal Coordination Act, Texas Natural Resource Code, Chapter 33, Subchapters C and F, and are adopted under the council's authority to promulgate rules pursuant to those subchapters.

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 December 8, 1995.

TRD-9516105 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: December 29, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-9129

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Chapter 506. Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies

• 31 TAC §506.50, §506.52

The Coastal Coordination Council (council) adopts new §506.50 and §505.52, relating to Notice to the Council of Application for Federal Assistance and Council Hearing to Review Applications for Federal Assistance, respectively, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8596).

Section 506.50 and §506.52 are adopted to conform the Texas Coastal Management Program (CMP) to House Bill 3226, 74th Legislature, 1995, and govern council review of federal assistance.

Section 506.50 requires the state single point of contact to provide a copy of federal assistance applications to the council secretary. Section 506.52 establishes the procedures the council must follow when reviewing an application for federal assistance.

These sections shall be implemented and become enforceable at a date to be established by the council in the future. The council shall publish notice of the implementation date of these sections in the *Texas Register* at least 30 days prior to such implementation date. Individual applications for federal assistance need not comply with the CMP goals and policies as set forth in Chapter 501 of this title (relating to Coastal Management Program) prior to the implementation of council review of such applications.

No comments were received regarding adoption of the new sections.

The new sections are adopted pursuant to the Coastal Coordination Act, Texas Natural Resource Code, Chapter 33, Subchapters C and F, and are adopted under the council's authority to promulgate rules pursuant to those subchapters.

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 December 8, 1995.

TRD-9516107 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: December 29, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-9129

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• 31 TAC §506.51

The Coastal Coordination Council (council) adopts an amendment to §506. 51, relating to Referral of Application for Federal Assistance, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8596).

The rule is amended to reflect statutory changes made by the 74th Legislature, 1995, in House Bill 3226.

Section 506.51 states that any three members of the council may refer an application for federal assistance to the council for review.

This section shall be implemented and become enforceable at a date to be established by the council in the future. The council shall publish notice of the implementation date of this section in the *Texas Register* at least 30 days prior to such implementation date. Individual applications for federal assistance need not comply with the Coastal Management Program goals and policies as set forth in Chapter 501 of this title (relating to Coastal Management Program) prior to the implementation of council review of such applications.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Coastal Coordination Act, Texas Natural Resource Code, Chapter 33, Subchapters C and F, and is adopted under the council's authority to promulgate rules pursuant to those subchapters.

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 December 8, 1995.

TRD-9516106 Garry Mauro
Chairman
Coastal Coordination Council

Effective date: December 29, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-9129

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 3. Traffic Law Enforcement

Traffic Supervision

• 37 TAC §3.62

The Texas Department of Public Safety adopts the repeal of §3.62, concerning regulations governing transportation safety, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8417).

The rule is being repealed to allow for the adoption of new §3.62 which implements the provisions of Senate Bill 3, 74th Legislature, 1995 (Chapter 705, Acts of the 74th Legislature, Regular Session, 1995) effective September 1, 1995, which requires the director to adopt by reference, rules, regulating the safe transportation of hazardous materials and to regulate the operations of commercial motor vehicles in the state.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 6675d and Article 6687b-2, which provide the director of the Texas Department of Public Safety with the authority to establish rules for the conduct of the work of the Texas Department of Public Safety, and more specifically which authorizes the director to adopt rules regulating the safe operation of commercial motor 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 November 28, 1995.

TRD-9515995 James R. Wilson
Director
Texas Department of Public Safety

Effective date: December 28, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 465-2890

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Chapter 16. Commercial Driver's License

Licensing Requirements, Qualifications, Restrictions, and Endorsements

• 37 TAC §16.9

The Texas Department of Public Safety adopts an amendment to §16.9, concerning licensing requirements, qualifications, restrictions, and endorsements, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8420).

The justification for this section will be waiving of the vision standards for those commercial drivers who operate intrastate commerce.

The amendment adds new paragraph (5) which states a driver who operates a commercial motor vehicle in intrastate commerce only may obtain a vision waiver from the department provided the person has 20/40 (Snellen) or better distant binocular acuity with or without corrective lenses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6687b-2, §12B, as passed by the 74th Legislature, 1995, which provide the Texas Department of Public Safety with the authority to adopt rules and regulations necessary to carry out the provisions of the Texas Commercial Driver's License Act and the Federal Commercial Motor Vehicle Safety Act of 1986 and Texas Transportation Code, §522.005.

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 28, 1995.

TRD-9515996 James R. Wilson
Director
Texas Department of Public Safety

Effective date: December 28, 1995

Proposal publication date: October 17, 1995

For further information, please call: (512) 465-2890

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Part III. Texas Youth Commission

Chapter 83. Contracted Youth Services

• 37 TAC §83.7, §83.15

The Texas Youth Commission (TYC) adopts amendments to §83.7 and §83. 15, concerning contracting for residential services and quality assurance, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9258).

The justification for amending the sections is enhanced quality assurance procedures to ensure best use of State resources.

The amendments will provide for enhanced monitoring by TYC staff of TYC contracted programs which provide services 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.

No comments were received regarding adoption of the amendments.

The amendments are 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.

The proposed rule implements the Human Resource Code, §61.034.

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 December 8, 1995.

TRD-9516031 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: November 7, 1995

For further information, please call: (512) 483-5244

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Chapter 85. Admission and Placement

Commitment and Reception

• 37 TAC §§85.1, 85.3, 85.5

The Texas Youth Commission (TYC) adopts amendments to §§85.1, 85.3, and 85.5, concerning legal requirements for admission, admission process, and assessment/evaluation, with changes to the proposed text as published in the October 24, 1995, issue of the *Texas Register* (20 TexReg 8784). The change to §85.1 adds the progressive sanctions worksheet to the list of documents required of the committing court upon a youth's admission to TYC. Changes to §85.3 provide for taking photographs and fingerprints of youth during admission. Section 85.5 provides for psychiatric evaluations for youth who meet certain criteria rather than routinely for all sentenced and type A violent offenders,

The amendments are justified to ensure compliance with sex offender registration of TYC youth as required by law and a more efficient intake process at a new TYC assessment unit.

The amendments add sex offender registration documentation required by law and, for some youth, the progressive sanctions worksheet to the list of documents provided by the committing court when a youth is admitted to TYC. The assessment process is being refined to include provisions for photographing and fingerprinting upon admission and psychiatric interviews. Amendments change references to the Statewide Reception Center in Brownwood to the Marlin Assessment and Orientation Unit in Marlin, Texas, to indicate a change of facility performing admission functions.

No comments were received regarding adoption of the amendments.

The amendments are 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 §61.071, which provides that the commission shall examine and make a study of each child committed to it as soon as possible after commitment.

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

§85.1. Legal Requirements for Admission. Policy.

(1) Each youth committed to the Texas Youth Commission (TYC) must be accompanied by legal and supporting documents supplied by the committing court. Upon admission, the following documents are required of the committing court:

(A) certified copy of the Order of Commitment;

(B) immunization records;

(C) Common Application, CCF-002;

(D) Detention order(s) (initial and subsequent) for offense(s) which resulted in commitment to TYC;

(E) petition which prompted the commitment hearing;

(F) the judgment which followed adjudication;

(G) Texas Department of Public Safety Sex Offender Registration as required by law;

(H) birth certificate for all youth;

(I) social history;

(J) education records;

(K) medical and dental records;

(L) any existing psychological and psychiatric reports; and

(M) pretrial detention time creditable to the youth's sentence.

(N) progressive sanctions deviation worksheet if assigned progressive sanctions level does not equal the progressive sanctions guideline level.

(2) The TYC intake staff review the commitment document to determine if, on its face, it meets all requirements of a valid court order before receiving the youth. TYC does not look beyond the document itself for determining its validity. Questions regarding verification of validity should be directed to the legal services department.

(3) No youth, under any circumstance, is admitted to TYC without a certified copy of the Order of Commitment, immunization records (except for undocumented aliens), and the Common Application. All other documents may be received subsequent to admission.

§85.3. Admission Process.

(a) Policy. Intake activities, including receipt of the youth from the committing county and orienting the youth to new surroundings, are performed by Texas Youth Commission (TYC) diagnostic intake units, the Marlin Assessment and Orientation Unit at Marlin and the Evins Regional Juvenile Center (ERJC) diagnostic unit at Edinburg. Both units are referred to as assessment units.

(b) Rules.

(1) The diagnostic intake units serve different youth and counties.

(A) The ERJC Diagnostic Unit in Edinburg, Texas receives youth each Tuesday between the hours of 8:00 a.m. and 5:00 p.m. Youth may be received at other times if prior arrangements are made. The unit does not serve females or male youth who are under a determinate sentence or are likely to be classified as type A violent offenders. Such youth are served by the statewide reception center. The ERJC unit serves the following counties: Aransas, Jim Hogg, Nueces, Zapata, Bee, Jim Wells, Refugio, Brooks, Kenedy, San Patricio, Cameron, Kleberg, Starr, Duval, Live Oak, Webb, Hidalgo, McMullen, and Willacy.

(B) The Marlin Assessment and Orientation Unit in Marlin, Texas receives youth committed to TYC five days per week, between 8:00 a.m. and 5:00 p.m. Youth may be received after 5:00 p.m. only if prior arrangements are made. The unit serves all counties not served by the ERJC unit, all females, all sentenced offenders, and all youth likely to be classified as type A violent offenders.

(2) Youth are not allowed to have personal possessions while at the assessment units. Personal items are inventoried and returned to the county transporter. The transporter is asked to sign a receipt for items returned to his care. Items a youth is allowed to keep are inventoried and a receipt issued to the transporter.

(3) Parents are notified of youth's admission and TYC's medical consent authority, and advised of procedures for mail and visits.

(4) The Marlin Unit assigns each youth an official TYC registration number.

(5) Staff completes personal data and commitment information.

(6) A youth is assigned a caseworker.

(7) Orientation to the admissions process and the TYC system is provided and documented as required in GOP.53.05, §87.55 of this title (relating to Youth Orientation).

(8) Routine admission procedures include but are not limited to the following.

(A) Each youth and his possessions are searched.

(B) Youth property is inventoried.

(C) A body identification form is completed, each youth showers, is screened for pediculosis, and receives treatment if indicated.

(D) Initial health screening is performed for each youth.

(E) Clothing is issued.

(F) Personal hygiene articles are made available as needed.

(9) Each youth may be photographed and fingerprinted. The photograph and fingerprints are filed in the youth's masterfile.

(10) In addition to assessment and placement activities, counseling is provided at both sites. Academic education is provided at the Marlin unit.

(11) Intake staff identify the home parole officer according to the agency assignment system based on zipcode area and county. The staff forwards to the home parole officer, within five working days of admission, the following:

(A) copy of the court order;

(B) copy of the Common Application (CCF-002);

(C) county social summary; and

(D) immediate notification when a youth is stating that he or she refuses to live at home when residential placement is complete.

(12) TYC staff transports youth to their initial placements and notify the families, the region parole officer, committing court, prosecuting attorney, chief probation officer and others as needed of the placement location.

§85.5. Assessment/Evaluation.

(a) Policy. The Texas Youth Commission (TYC) youth assessment process includes summarizing admission information, conducting diagnostic evaluations, identifying classification and developing an initial placement category recommendation by the classification unit. The youth assessment process is completed within two weeks of receipt of the youth at the Marlin Assessment and Orientation Unit or within one week of receipt of youth at Evins Regional Juvenile Center Diagnostic Unit.

(b) Rules. Intake staff at the diagnostic units conduct the following routine evaluations:

(1) completion of the Common Application (CCF-002);

(2) social summary;

(3) risk/needs assessment;

(4) family involvement assessment;

(5) religious preference assessment;

(6) recreation interest;

(7) psychological evaluation (if one has not been completed within the last year). Residential treatment centers require an updated clinical interview for current status within six months prior to placement;

(8) physical and dental examinations;

(9) educational assessment;

(10) substance abuse screening and assessment;

(11) career interests and experience;

(12) psychiatric interview of youth currently on psychotropic medication, and/or who have been in a psychiatric placement within the last three years, and/or who carry a current major psychiatric diagnosis such as psychotic or affective, and/or who are referred by professional staff;

(13) assessment of behavior while at the facility; and

(14) assign a level of care based on the needs of the youth.

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 December 8, 1995.

TRD-9516032 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 24, 1995

For further information, please call: (512) 483-5244

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 17. Vehicle Title and Registration

Certificate of Title

• 43 TAC §§17.2, 17.3, 17.7, 17.8

The Texas Department of Transportation adopts amendments to §17.2, §17.3, and §17.7, concerning the issuance of original, duplicate, certified, and alias motor vehicle

certificates of title, and new §17.8, concerning the issuance of motor vehicle certificates of title for salvage and nonrepairable motor vehicles, with changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8423). (Sections 17.2-17.3, and §17.8 are adopted with changes, and §17.7 is adopted without changes and will not be republished).

House Bill 2151, 74th Legislature, 1995, amended Texas Civil Statutes, Article 6687-1, to authorize the department to issue motor vehicle certificates of title for salvage and nonrepairable motor vehicles.

Amended §17.2 adds certain words and terms applicable to these sections and changes citations to statutory authority to the Transportation Code in accordance with Senate Bill 971, 74th Legislature, 1995, which recodified the statutes relating to transportation.

Amended §17.3 clarifies existing procedures for obtaining a certificate of title for a house trailer and removes all reference to a certificate of title for equipment. These amendments also change citations to statutory authority to the Transportation Code.

Amended §17.7 removes definitions which are being deleted or incorporated into amended §17.2 and clarifies existing procedures for obtaining alias certificates of title.

New §17.8 describes the place of application, who must apply, information to be included on application, and accompanying documentation for salvage vehicle certificates of title. The section describes issuance of certificates of title for salvage vehicles, explains the process for recording a lien on a salvage certificate of title, describes how an owner or lienholder may obtain a replacement for lost or destroyed certificates of title, describes to whom and how ownership of a salvage vehicle may be transferred, describes the process of obtaining a certificate of title for a rebuilt salvage motor vehicle, states the procedure by which insurance companies shall notify the department regarding payment of a total loss claim on a new or late model salvage or nonrepairable motor vehicle, and describes how a salvage vehicle dealer may acquire salvaged vehicles for the purpose of dismantling, scrapping, or destruction.

On October 27, 1995, a public hearing was held to receive comments, views, or testimony concerning the proposed amendments to §§17.2-17.3 and §17.7, and new §17.8. Two oral comments were received at the hearing.

Texas Auto Dealers, Recyclers, and Dealers Association indicated that it was in favor of the proposed amendments and new section. Auto Net, Inc., COPART, and one individual indicated that they were against the proposed amendments and new section. The Texas Independent Auto Resellers Association commented on the proposed sections at the hearing and indicated that it was in favor of some provisions and against some provisions. Insurance Auto Auction, Inc., the Texas Automotive Dismantlers and Recyclers Association, Capital Consultants, the Texas Automobile Dealers Association, State Farm Insurance Companies, and Farmers Insurance Group of Companies submitted written comments. State Farm Insurance Companies expressed that it was in full support of the comments submitted by Insurance Auto Auctions, Inc.

Regarding §§17.2-17.3, §17.7, and new §17.8 in general, Auto Net, Inc. , stated that the proposed sections were a burden to all tax payers, and questioned the reasoning behind changing a "working system." Additionally, Capital Consultants requested that implementation of House Bill 2151 be postponed. In response, the proposed sections are being adopted to comply with House Bill 2151, 74th Legislature, 1995, which established Texas Civil Statutes, Article 6687-1, which authorizes the department to issue motor vehicle certificates of title for salvage and nonrepairable motor vehicles. The department is responsible for implementing this legislative mandate, and it may not ignore or postpone implementation of a state law.

Regarding §17.2, Definitions, Insurance Auto Auction, Inc. suggested that the definition for "flood damage" should make some reference to damage by flood. In response, the department agrees and the definition has been revised to state that the damage to the vehicle was caused exclusively by flood in the remarks section of the certificate of title.

Also regarding §17.2, Definitions, the Texas Automobile Dealers Association requested that when a certificate of title bears a notation such as "Flood Damage" or "Rebuilt Salvage," it should be highlighted in a way which allows the notation to be readily noticed. In response, the department has determined that the current remarks reflected on certificates of title are sufficient notice.

Also regarding §17.2, Definitions, Insurance Auto Auction commented that the list for out-of-state license holders indicated in the definition for "out-of-state buyer" was not included. Additionally, representatives of the Texas Independent Auto Resellers Association, Auto Net, Inc., Capital Consultants, State Farm Insurance Companies, and Farmers Insurance Group of Companies also commented with regard to this definition, and expressed concern regarding the fact that the out-of-state motor vehicle authority must have substantially similar licensing requirements, and must permit salvage dealers licensed in Texas to purchase salvage motor vehicles or nonrepairable motor vehicles in that state. Capital Consultants suggested revisions to the definition of "out-of-state" buyer which would state that the department would make available a current listing of qualified out-of-state buyers. Texas Independent Auto Resellers Association also advised that it was unclear whether the department would provide an updated list of buyers to all licensed salvage dealers in Texas or if the responsibility of determining qualified out-of-state buyers would be a requirement of Texas salvage dealers. This commenter also raised the issue of this definition's possible conflict with the Interstate Commerce Act, Title 15, the Clayton Act, and the North American Free Trade Agreement (NAFTA), and said the Free Trade Association revealed that they had great concerns about this, also.

In response, the department would not generally adopt such lists as rules. At this time, the department is not aware of any other states that require substantially similar licensing requirements for salvage vehicle dealers. However, the department intends to notify known motor vehicle administrators regarding the provisions of House Bill 2151, 74th Legislature, 1995, and House Bill 2599, 74th Legislature, 1995, in order to ascertain whether or not substantially similar licensing requirements are in effect in other jurisdictions. Depending upon the responses received, any list generated by the department will be available the early part of 1996 upon submission of a written request to the Vehicle Titles and Registration Division, Texas Department of Transportation, Austin, Texas 78779-0001. Additionally, this list will be updated as the department is notified of the enactment of out-of-state statutes that have substantially similar licensing requirements. It is the department's opinion that the proposed sections do not conflict with the Clayton Act or NAFTA.

Regarding §17.3(b)(1), Motor Vehicle Certificates of Title, Initial application for certificate of title-Place of application, Insurance Auto Auction requested that a more specific reference to exempt dealers from the requirement of certificate of title application be shown. In response, the department has reviewed the reference and agrees that it is incorrect. The outdated reference to §17.74(c) has been deleted and replaced with Title 16, TAC §111.15(c) (relating to Record of Sales and Inventory), and §17.8(a)(1) (relating to Certificates of Title for Salvage Vehicles) for clarity.

Regarding §17.3(c)(1)(A)(ii), the Texas Automobile Dealers Association requested that the department review its requirement regarding the manufacturer's rated carrying capacity in tons to be shown on a manufacturer's certificate of origin/manufacturer's statement of origin. In response, the requirement regarding the manufacturer's rated carrying capacity in tons is mandated by Texas Civil Statutes, Article 6675a, and a change to this requirement would require legislative action.

Regarding §17.8, Certificates of Title for Salvage Vehicles, Capital Consultants, a representative of the Texas Independent Auto Resellers Association requested that the department continue the current salvage certificate of title system for vehicles that incur severe damage for which total losses are paid when the estimated cost of repair, including parts and labor, is less than 75% of the actual cash value of the vehicle's predamaged condition. Continuation of this system was requested until such time that further legislation could be enacted. In response, it is outside of the department's authority to continue this system. House Bill 2151 amends the Certificate of Title Act (Texas Civil Statutes, Article 6687-1) by adding Section 37A and repealing Section 37, which required the owners of such vehicles to surrender the negotiable title documents to the department for cancellation purposes.

Additionally, regarding §17.8, Certificates of Title for Salvage Vehicles, State Farm Insurance Companies commented that the department should consider regulations in situations concerning certain "total loss" vehicles which

are merely undamaged recovered stolen vehicles. State Farm urged that the insurers be permitted some flexibility in titling the vehicle appropriately depending upon whether or not it was actually damaged. In response, the insurer will have that flexibility, since the cost of repairs which includes parts and labor is the factor utilized to ascertain the percentage of the actual cash value of the vehicle in its predamaged condition. This percentage then determines whether it will be necessary for the insurer to apply for a salvage or nonrepairable certificate of title.

Regarding §17.8(a)(1)(A), Certificates of Title for Salvage Vehicles, Certificate of title applications for salvage vehicles-Place of application, concerning the place of application for transfer of a salvage motor vehicle , Insurance Auto Auction suggested adding "a nonrepairable motor vehicle which has not been issued a salvage motor vehicle certificate, a nonrepairable motor vehicle certificate of title or a comparable ownership document issued by another state or jurisdiction" to this subparagraph In response, the department agrees and has also determined that application for a salvage or nonrepairable motor vehicle certificate of title is not required if the vehicle will be dismantled, scrapped, or destroyed. Therefore, the department has incorporated the suggested wording and has revised this subparagraph to state that a salvage or nonrepairable motor vehicle certificate of title is not required if the vehicle will be dismantled, scrapped, or destroyed.

Regarding §17.8(a)(2)(A), Certificate of title applications for salvage vehicle-Information to be included on application, Insurance Auto Auctions commented that the application for a salvage motor vehicle certificate of title or nonrepairable motor vehicle certificate of title was not included in the proposed sections, suggested that the words "if available" be inserted after the words "empty weight" in clause (ii), requested clarification of "the estimated costs of repairs" in clause (iv), and requested clarification regarding why the recording of a lien is limited to a salvage motor vehicle certificate of title in clause (viii).

In response to comments and questions regarding §17.8(a)(2)(A), the department does not generally publish required forms in rules. However, upon final adoption of these sections, this form will be finalized, approved, printed, and available the early part of 1996. Requests for this form may be submitted to the Vehicle Titles and Registration Division, Texas Department of Transportation, Austin, Texas 78779-0001.

In response to Insurance Auto Auctions regarding clause (ii), the empty weight of a vehicle will be required on all certificate of title applications for salvage vehicles and, therefore, the suggested revision to add the words "if available" would not be appropriate. In response to Insurance Auto Auctions regarding using adjusted estimated costs of repairs, the department has renumbered the paragraphs under subsection (a)(2) of this section and added information to clarify how the estimated cost of repairs is to be determined. Insurance Auto Auctions asked why lienholder information was only applicable to salvage title issuance. To clarify provisions regarding the recording of a lien, the provisions of House Bill 2151 restrict the recording of a lien to a person who holds a salvage motor vehicle certificate of title. Therefore, a lien may not be recorded on a nonrepairable motor vehicle certificate of title.

Regarding §17.8(a)(2)(B)(v), Certificate of title applications for salvage vehicles-Information to be included on application, Insurance Auto Auctions questioned the need to include the "license plate number" on such applications. In response, the "license plate number" in subsection (a)(2)(B) (v) refers to the new license plate number issued for display on the vehicle at the time the title applicant files the rebuilt salvage title transaction with the county tax collector's office and pays the applicable fees. The department agrees that this reference is confusing and has revised subsection (a)(2) to clarify.

Regarding §17.8(a), Certificate of title applications for salvage vehicles, a representative of the Texas Independent Auto Resellers Association indicated that the inspection process performed by the Texas Department of Public Safety was more for the purpose of identifying stolen parts, rather than being designed for the elimination of safety hazards for the consumer. The commenter, as well as Capital Consultants, referred to the failure of the California inspection system and, along with the Texas Automotive Dismantlers & Recyclers Association and State Farm Insurance Companies, requested that a time limit for performing the inspection process be included in the proposed sections. In response, the department cannot address this request in its rules, as responsibility for administering the vehicle inspection program falls under the purview of the Texas Department of Public Safety.

Regarding §17.8(c), Certificate of title issuance for salvage vehicles, Insurance Auto Auctions commented that the nonrepairable certificate of title form, the application for a rebuilt salvage title, and the application for retitling a nonrepairable vehicle are not included in the proposed rules. In response, the department does not generally publish forms in rules. The application for a rebuilt salvage title and the application for retitling a nonrepairable vehicle will be the current Application for Texas Certificate of Title, Form 130-U. The nonrepairable certificate of title form will be finalized upon adoption of these rules.

Also with regards to §17.8(c), Insurance Auto Auctions also commented that the fee for a rebuilt salvage transaction was not addressed. In response, the fee referred to by House Bill 2151 is the regular certificate of title fee, which is currently $13.

Regarding §17.8(c)(1), Certificate of title issuance for salvage vehicles, Insurance Auto Auctions commented that the fee for application for salvage or nonrepairable motor vehicle certificate of title was not addressed, and also questioned whether there would be different certificates for vehicles which are voluntarily deemed salvage or nonrepairable. In response, the approximate fee of $3.00 per application was included in the fiscal note part of the proposed preamble to these sections as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8423). To alleviate confusion, the department has revised §17.8(c)(1) by adding that the prescribed fee will be $3.00. In addition, the department has revised paragraph (1) of this subsection to indicate that the required documentation shall accompany the appropriate fee.

In response to the questions regarding different certificates for vehicles which are voluntarily deemed salvage or nonrepairable, the issuance of salvage motor vehicle certificates of title and nonrepairable motor vehicle certificates of title for a motor vehicle will be dependent upon the estimated cost of repair, including parts and labor. If the estimated cost of repair indicated on the application is equal to 75% to 94% of the actual cash value of the vehicle in its predamaged condition, a salvage motor vehicle certificate of title will be issued. If the estimated cost of repair indicated on the application is equal to 95% or more of the actual cash value of the vehicle in its predamaged condition, a nonrepairable motor vehicle certificate of title will be issued.

Regarding §17.8(c)(2), Certificate of title issuance for salvage vehicles, Insurance Auto Auctions suggested that the words "or nonrepairable motor vehicle" be inserted in the second sentence after the word "vehicle" in its first use in the sentence. In response, the provisions of House Bill 2151 only address the rebuilding of a late model salvage motor vehicle for which the department has issued a salvage certificate of title or the assembling of a late model salvage motor vehicle from component parts. Additionally, the definition of "late model salvage motor vehicle" does not include a nonrepairable vehicle. The department is not obligated by House Bill 2151 to disclose a vehicle's former condition to a potential purchaser when a new or late model salvage motor vehicle for which the department has issued a salvage certificate of title is rebuilt, or when a new or late model salvage motor vehicle is assembled from component parts. When a nonrepairable motor vehicle has been rebuilt or assembled from component parts, there are no provisions that allow the department to preclude disclosure of the vehicle's former condition to a potential purchaser.

Also regarding subsection (c)(2), the department has included revisions to state that required documentation shall be submitted with the required fees for clarity.

Regarding §17.8(d), Replacement of certificates of title for salvage vehicles, Insurance Auto Auctions questioned how to apply for a duplicate nonrepairable motor vehicle certificate of title. In response, the provisions of new §17.8 apply to both salvage and nonrepairable motor vehicles. Consequently, subsection (d), Replacement of certificates of title for salvage vehicles, includes both salvage and nonrepairable motor vehicles. For clarity, the term "salvage vehicles" has been added to §17.2 and is defined as both salvage and nonrepairable vehicles.

Regarding §17.8(e), Insurance Auto Auctions commented that the availability of dealer reassignments should not be disrupted. House Bill 2151 clearly limits the transfer of a new or late model salvage motor vehicle by assign-

ment of certificate of title. Additionally, Texas Civil Statutes, Article 6687-1a, §3.01(a), clearly indicates that licensed salvage vehicle dealers acquiring ownership of late model salvage vehicles are required to submit a salvage or nonrepairable motor vehicle certificate of title application to the department along with the applicable fee within ten days of receiving an assigned certificate of title, unless the vehicle will be dismantled, scrapped, or destroyed. Therefore, further reassignment of a certificate of title on a late model salvage vehicle by licensed salvage vehicle dealers is not available. New Subparagraph (A) has been added to subsection (e) in order to clarify this provision.

Regarding §17.8(e)(1)(A) and (B), Transfer of ownership, Insurance Auto Auctions requests that flood vehicles be excluded from these subparagraphs, and requested that the vehicle's former owner and a governmental entity be included as permissible purchasers in subparagraph (B). In response, the department has reviewed House Bill 2151 and concurs that flood damaged vehicles are excluded from the transfer restrictions and that the requested vehicle transfers are permissible. Therefore, the department has added language to exclude flood damaged vehicles from transfer restrictions and to allow purchases by a vehicle's former owner and governmental entities.

Regarding §17.8(e)(2)(B), Transfer of ownership, Insurance Auto Auctions suggested that it would be helpful to state that the restrictions on sales set forth in (1)(A) and (B) do not apply to vehicles for which a salvage motor vehicle certificate of title or a nonrepairable motor vehicle certificate of title have been voluntarily obtained. In response, this situation is addressed in subsection (e)(2), relating to Transfer of ownership.

Regarding §17.8(f), Notification required of an insurance company, Insurance Auto Auctions commented that the form was not included in the proposed section. In response, the department does not generally publish required forms in the rules. However, upon final adoption of these sections, this form will be finalized, approved, printed, and available the early part of 1996. Requests for this form may be submitted to the Vehicle Titles and Registration Division, Texas Department of Transportation, Austin, Texas 78779-0001, or may be requested by phone by contacting the Special Services Branch at (512) 467-3998.

Additionally, language to further clarify the types of vehicles for which such notifications are required has been added to §17.8(f)(1) and (2).

Additionally, the Texas Automobile Dealers Association made comments regarding the manufacturer's rated carrying capacity in tons being required on the manufacturer's certificate of origin (MCO), when the MCO is invoiced to a Texas dealer, and the definition of "dealer" as defined in Texas Civil Statutes, Article 4413(36), §1.03(4) and 16 TAC, §111.2 (relating to Definitions). The department is only responding to comments which pertain to the rules addressed in these proposed sections. Therefore, these comments will not be addressed.

The amendments and new section are adopted under 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 Civil Statutes, Article 6687-1, §37A, which authorizes the department to adopt rules to administer the issuance of salvage and nonrepairable

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

Actual cash value-The market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the value of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner.

Automobile recycler-A person in the business of dealing in salvage motor vehicles for the purpose of dismantling the vehicles to sell used parts, or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts for reuse or resale as parts. The term includes a dealer in used motor vehicle parts.

Alias-The name of a vehicle owner reflected on the certificate of title, different than the name of the legal owner of the vehicle.

Alias certificate of title-A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

Bond release letter-Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for an imported motor vehicle to ensure compliance with federal motor vehicle safety standards.

Casual sale-The sale at auction of not more than one nonrepairable motor vehicle or new or late model salvage motor vehicle to the same person during a calendar year.

Certificate of title-A written instrument which may be issued solely by and under the authority of the department, which reflects the purchase, sale, vehicle, license plate and lien information disclosed on the certificate of title application as specified in this subchapter or as may be required by the department.

Certificate of title application-A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

Date of sale-The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

Department-The Texas Department of Transportation.

Distributor-A person engaged in the business of selling to a dealer motor vehicles bought from a manufacturer.

Division director-The director of the department's Vehicle Titles and Registration Division.

Executive administrator-The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

Exempt agency-A governmental body exempt by law from paying registration fees for motor vehicles.

Federal motor vehicle safety standards-Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 19, Code of Federal Regulations.

First sale-A bargain, sale, transfer, or delivery with intent to pass an interest therein, other than a lien, and accompanied by registration, of a motor vehicle which has not been previously registered in this state or elsewhere.

Flood damage-A remark initially indicated on a salvage or nonrepairable motor vehicle certificate of title to denote that the damage to the vehicle was caused exclusively by flood, which is carried forward upon subsequent title issuance.

House moving dolly-An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form a large semi-trailer.

House trailer-A vehicle without automotive power designed for human habitation and for carrying persons and property upon its own structure and for being drawn by a motor vehicle, not to include manufactured housing.

Identification certificate-A form issued by an inspector of an authorized safety inspection station on a vehicle previously registered or titled in another state or country in accordance with Transportation Code, §548.256.

Implements of husbandry-Farm implements, machinery and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include implements that are not designed or adapted for the sole purpose of transporting the farm materials or chemicals, or any passenger car or truck.

Importer-A person, except a manufacturer, who brings any used motor vehicle

into this state for the purpose of sale within this state.

Insurance company-A person authorized to write automobile insurance in Texas or an out-of-state insurance company that pays a loss claim for a motor vehicle in Texas.

Late model motor vehicle-A motor vehicle with a model year equal to the then current calendar year or one of the five preceding calendar years.

Late model salvage motor vehicle-A late model motor vehicle, other than a late model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Lien-A security interest, as defined in Business and Commerce Code, §1.201(37), of whatsoever kind or character whereby an interest, other than an absolute title, is sought to be held or given in a motor vehicle, and a lien created or given by constitution or statute in a motor vehicle.

Major component part-One of the following parts of a motor vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) the right or left front fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the vehicle;

(G) the front or rear bumper;

(H) the right or left quarter panel;

(I) the deck lid, tailgate, or hatchback;

(J) the cargo box of a pickup truck;

(K) the cab of a truck; or

(L) the body of a passenger vehicle.

Manufacturer-A person regularly engaged in the business of manufacturing or assembling new motor vehicles, either within this state or elsewhere.

Manufacturer's certificate of origin-A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for certificate of title show thereon, on appropriate forms to be prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

Moped-A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

Motor vehicle-Every kind of motor driven or propelled vehicle required to be registered under the laws of the state, including trailers, house trailers, and semitrailers, and shall also include motorcycles, motor-driven cycles, mopeds, and four-wheel all-terrain vehicles designed by the manufacturer for off-highway use, whether or not the vehicle is required to be registered under Transportation Code, Chapter 501. The term motor vehicle does not include manufactured housing, motorcycles, motor-driven cycles, and mopeds, designed for and used exclusively on golf courses.

Motor vehicle importation form-An importer's declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to an imported motor vehicle's compliance with federal motor vehicle safety standards.

Negotiable title-A title that may be used to transfer an interest or ownership in a motor vehicle, or to establish a new lien.

New model motor vehicle-A motor vehicle with a year model that is newer than the current calendar year.

New model salvage motor vehicle-A new model motor vehicle, other than a new model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

New motor vehicle-A motor vehicle which has never been the subject of a first sale either within this state or elsewhere.

Non-negotiable title-A title that may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle, or to establish a new lien.

Nonrepairable motor vehicle-A new or late model motor vehicle that is damaged or missing a major component part to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the costs of materials and labor for repainting the vehicle and excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95% of the actual cash value of the vehicle in its predamaged condition.

Nonrepairable motor vehicle certificate of title-A document issued by the department that evidences ownership of a nonrepairable motor vehicle.

Non United States standard motor vehicle-A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

Older model motor vehicle-A motor vehicle that was manufactured in a model year before the sixth preceding model year, including the current model year.

Other negotiable evidence of ownership-A document, other than a Texas certificate of title or a salvage certificate of title, that relates to a motor vehicle which the department considers sufficient to support issuance of a Texas certificate of title for the vehicle.

Out-of-state buyer-A person licensed by another state or jurisdiction in an automotive business if the department has listed the holders of such license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.

Owner-A person, firm, association, or corporation other than a manufacturer, importer, distributor, or dealer claiming title to, or having a right to operate pursuant to a lien on a motor vehicle after the first sale, except the Federal Government and its agencies, and the State of Texas and a governmental subdivision or agency thereof not required by law to register motor vehicles owned or used thereby in this State.

Person-An individual, firm, corporation, company, partnership, or other entity.

Rebuilder-A person that acquires and repairs, for operation on public highways, five or more new or late model salvage motor vehicles in any 12-month period.

Rebuilt salvage-A remark indicated on the face of a certificate of title issued by the department that evidences ownership of a rebuilt salvage motor vehicle.

Safety certification label-A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

Salvage motor vehicle-A new or late model motor vehicle, other than a new or late model vehicle that is a nonrepairable motor vehicle, that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Salvage motor vehicle certificate of title-A document issued by the department that evidences ownership of a salvage motor vehicle.

Salvage vehicle-A term which refers to both salvage and nonrepairable vehicles.

Salvage vehicle dealer-A person who is engaged in this state in the business of acquiring, selling, or otherwise dealing in salvage vehicles or vehicle parts of a type required to be covered by a salvage vehicle certificate of title or nonrepairable vehicle certificate of title under a license issued by the department that allows the holder of the license to acquire, sell, dismantle, repair, or otherwise deal in salvage vehicles.

Semi-Trailer-A vehicle of the trailer type having a gross weight in excess of four thousand (4,000) pounds so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle.

Statement of fact-A written declaration executed by the seller or involved party of a motor vehicle that clarifies an error made on evidence of ownership which supports the application for certificate of title.

Subsequent sale-A bargain, sale, transfer, or delivery, with intent to pass an interest therein, other than a lien, of a motor vehicle which has been registered with this state or elsewhere, save and except when such vehicle is not required under law to be registered in this State.

Token trailer fee-A registration fee paid for certain semitrailers, meeting the qualifications delineated in Transportation Code, §502.167, and used in combination with truck tractors or commercial motor vehicles whose registration is based upon a combined gross weight.

Trailer-Every vehicle having a gross unloaded weight in excess of four thousand (4,000) pounds and designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

Used motor vehicle-A motor vehicle that has been the subject of a first sale whether within this state or elsewhere.

Vehicle identification number-A number assigned by the manufacturer of a motor vehicle or the department that describes the motor vehicle for purposes of identification.

§17.3. Motor Vehicle Certificates of Title.

(a) Certificates of Title. Unless otherwise exempted by law or this chapter, the owner of any vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall be required to apply for a Texas Certificate of Title in accordance with the Certificate of Title Act, Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, and mopeds.

(A) The title requirements of a motorcycle are the same requirements prescribed for any motor vehicle.

(B) A motorcycle, motor-driven cycle, or a moped designed for or used exclusively on golf courses is not classified as a motor vehicle and, therefore, title cannot be issued until such time as the unit is registered.

(C) A vehicle which meets the criteria for a moped and has been certified as a moped by the Department of Public Safety, must be registered and titled as a moped; otherwise, if the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(D) A motor installed on a bicycle must be certified by the Department of Public Safety before the vehicle may be classified as a moped.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry and may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.283, and farm tractors used as road tractors to mow rights-of-way or used to move commodities over the highway for hire are required to be registered and titled.

(3) Exemptions from title. Vehicles registered with the following distinguishing license plates may not be titled under the Certificate of Title Act, Transportation Code, Chapter 501:

(A) vehicles eligible for machinery license plates in accordance with Transportation Code, §502.278;

(B) vehicles eligible for farm trailer license plates in accordance with Transportation Code, §502.163; and

(C) vehicles eligible for permit license plates in accordance with Transportation Code, §§502.351-502. 353.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers must apply for and receive a Texas Certificate of Title for any stand alone (full) trailer, including homemade full trailers, having an empty weight in excess of 4,000 pounds or any semitrailer having a gross weight in excess of 4,000 pounds. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph in order to be titled.

(A) In the absence of a manufacturer's rated carrying capacity for trailers and semitrailers, the rated carrying capacity shall not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as a dwelling, but classified as commercial semitrailers, and must be registered and titled as such if operated upon the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and which is eight body feet or more in width or forty body feet or more in length (not including the hitch), is classified as a mobile home and is titled under the Texas Manufactured Housing Standards Act, Texas Civil Statutes, Article 5221f, administered by the Department of Licensing and Regulation.

(ii) A house trailer-type vehicle which is less than eight feet in width and less than forty feet in length is classified as a travel trailer and must be registered and titled.

(iii) A camper trailer must be titled as a house trailer and must be registered with travel trailer license plates.

(b) Initial application for Certificate of Title.

(1) Place of application. When motor vehicle ownership is transferred, except as provided by 16 TAC, §111.15(c) (relating to Record of Sales and Inventory) and §17. 8(a)(1) (relating to Certificates of Title for Salvage Vehicles), a certificate of title application must be filed with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered, within 20 working days of the date of sale.

(2) Information to be included on application. An applicant for an initial certificate of title shall file an application on

a form prescribed by the department. The form shall at a minimum require the:

(A) motor vehicle description which includes, but is not limited to, the motor vehicle's:

(i) year;

(ii) make;

(iii) model;

(iv) identification number;

(v) body style;

(vi) manufacturer's rated carrying capacity in tons for commercial motor vehicles; and

(vii) empty weight;

(B) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(C) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(D) previous owner's name and city and state of residence;

(E) name and complete address of the applicant;

(F) name and mailing address of any lienholder and the date of lien, if applicable;

(G) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed; and

(H) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(3) Serial Number. If no serial number is die-stamped by the manufacturer upon a motor vehicle, house trailer, trailer, semi-trailer, or an item of equipment required to be titled, or if the serial number assigned and die-stamped by the manufacturer has been lost, removed or obliterated, the department will upon proper application, presentation of evidence of ownership, and presentation of a law enforcement physical inspection, assign a serial number to the motor vehicle, trailer or equipment; the manufacturer's serial number or the assigned serial number will be used by the department as the major identification of the motor vehicle or trailer in the issuance of a certificate of title.

(4) Accompanying documentation. The certificate of title application shall be supported by, at a minimum, the following documents:

(A) evidence of vehicle ownership, as described in subsection (c) of this section;

(B) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(C) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the vehicle was last registered in another state or country; and

(D) release of any liens or, if not released, the liens shall be carried forward on the new certificate of title application pursuant to the following limitations.

(i) An out-of-state lien recorded on out-of-state evidence as described in subsection (c) of this section cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached.

(ii) A lien recorded on out-of-state evidence as described in subsection (c) of this section is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title.

(c) Evidence of motor vehicle ownership. Evidence of motor vehicle ownership properly assigned to the applicant shall accompany the certificate of title application. Evidence shall include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser shall be required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin shall be in the form prescribed by the division director and shall contain, at a minimum, the following information:

(i) motor vehicle description which includes, but is not limited to, the motor vehicle's year, make, model, identification number, body style and empty weight;

(ii) the manufacturer's rated carrying capacity in tons when the manufacturer's certificate of origin is invoiced to a Texas dealer as defined in 16 TAC, §111.2, (relating to Definitions), and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502; and

(iii) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only.

(B) When a motor vehicle manufactured in another country is sold directly to a non-manufacturer's representative or distributor, the manufacturer's certificate of origin shall be assigned to the purchaser by the importer.

(2) Used motor vehicles. A certificate of title issued by the department, a certificate of title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership shall be relinquished in support of the certificate of title application for any used motor vehicle. A letter of Title and Registration verification is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Imported motor vehicles. An application for certificate of title for a motor vehicle last registered or titled in a foreign country shall be supported by, but is not limited to, the following documents:

(A) the motor vehicle registration certificate or other verification issued by a foreign country which reflects the name of the applicant as the motor vehicle owner, or reflects that such evidence of ownership has been legally assigned to the applicant; and

(B) proof of compliance with United States Department of Transportation regulations for all 1968 and subsequent year model motor vehicles and for all 1969 and subsequent year model motorcycles which shall include, but is not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the United States Department of Transportation, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the United States Department of Transportation confirming the exemption from the bond

release letter required in subitem (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on United States Customs letterhead and signed by a United States Customs agent verifying that the motor vehicle complies with United States Department of Transportation regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, or verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the United States Department of Transportation was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on their letterhead stationary.

(4) Alterations to documentation. An alteration to a registration receipt, certificate of title, manufacturer's certificate, or other evidence of ownership shall constitute valid reason for the rejection of any transaction to which such altered evidence is attached. The department may accept certain types of alterations provided that they are corrected in accordance with the following procedures.

(A) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of that state in which the lien originated verifying the correct lien information.

(B) A strikeover on any document which leaves any doubt as the legibility of any digit in a number will not be accepted.

(C) A correct manufacturer's certificate of origin will be required if the documents shows an:

(i) incomplete or altered vehicle identification number;

(ii) alteration or strikeover of the vehicle's year model;

(iii) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(iv) alteration or strikeover to the manufacturer's rated carrying capacity.

(D) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(i) where the date of sale on an assignment has been erased or altered in any manner; or

(ii) of alteration or erasure on a Dealer's Reassignment of Title.

(d) Certificate of title issuance. Upon receiving a completed application for certificate of title, along with the applicable fees, the department or its designated agent will process and issue a certificate of title.

(1) Negotiable titles. The department will issue and mail or deliver negotiable titles, marked "Original," to the applicant or, in the event that there is a lien disclosed in the application, to the first lienholder.

(2) Non-negotiable titles. The department will issue non-negotiable titles, which may be used only as evidence of title and may not be used to transfer any interest or ownership in a motor vehicle, or to establish a new lien:

(A) in the event that there is a lien disclosed in the application a duplicate certificate of title marked "Duplicate Original," will be mailed or delivered to the address of the applicant as disclosed upon the application;

(B) in the event that the owner of a vehicle last registered or titled in another state (and subject to registration in this state) cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a negotiable Texas title, a duplicate certificate of title marked "Registration Purposes Only" will be mailed or delivered to the address of the applicant as disclosed upon the application (in instances where the title or registration receipt is assigned to the applicant, an application for "Registration Purposes Only" will not be processed).

(e) Replacement of certificate of title. The owner or lien holder of a lost or destroyed certificate of title may obtain a certified copy of that title upon proper application with the department.

(1) Certified Copy. A certificate of title will be marked "Certified Copy" until such time that ownership of the vehicle is transferred, when the words "Certified Copy" will be eliminated from the new certificate of title.

(2) Recovery of lost title. In the event that the "Duplicate Original" or "Original" certificate of title is recovered, the owner shall relinquish the certified copy to the department for cancellation and the words "Certified Copy" will be eliminated from certificates issued thereafter by the department as a result of transfer of ownership.

(f) Suspension, revocation, or refusal to issue Certificates of Title.

(1) Grounds for title suspension, revocation, or refusal to issue. The department will refuse issuance of a certificate of title, or having issued a certificate of title, suspend or revoke the certificate of title if the:

(A) application contains any false or fraudulent statement;

(B) applicant has failed to furnish required information requested by the department;

(C) applicant is not entitled to the issuance of a certificate of title under the Certificate of Title Act, Transportation Code, Chapter 501;

(D) department has reasonable ground to believe that the vehicle is a stolen or converted vehicle, or that the issuance of a certificate of title would constitute a fraud against the rightful owner or a mortgagee;

(E) registration of the vehicle stands suspended or revoked; or

(F) required fee has not been paid.

(2) Contested case procedure. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may contest such decisions in accordance with the Certificate of Title Act, Transportation Code, §§501.052-501.053, in the following manner:

(A) Hearing. Any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked the certificate of title may apply to the designated agent of the county in which they reside for a hearing. At the hearing the applicant and the Department may submit evidence, and a ruling of the designated agent will bind both parties. An applicant wishing to appeal the ruling of the desig-

nated agent may do so to the County Court of the county in which the applicant resides.

(B) Alternative to hearing. In lieu of a hearing, any person who has an interest in a motor vehicle to which the department has refused to issue a certificate of title or has suspended or revoked a certificate of title may file a bond with the department, in an amount equal to one and one-half times the value of the vehicle as determined by the department, and in a form prescribed by the department. Upon the filing of the bond, the department may issue a certificate of title. The bond shall expire three years after the date it becomes effective and shall be returned to the person posting bond, upon expiration, unless the department has been notified of the pendency of an action to recover on the bond.

§17.8. Certificates of Title for Salvage Vehicles.

(a) Certificate of title applications for salvage vehicles.

(1) Place of application.

(A) When ownership of a new or late model salvage motor vehicle or nonrepairable motor vehicle, which has not been issued a salvage motor vehicle certificate of title, a nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction is transferred, and the vehicle will not be dismantled, scrapped, or destroyed, the person who acquires ownership must submit a salvage or nonrepairable motor vehicle certificate of title application to the department along with the applicable fee within ten days of receiving the title document which transfers ownership.

(B) A person who acquires ownership of a motor vehicle other than a new or late model salvage motor vehicle or a nonrepairable motor vehicle may voluntarily submit a salvage or nonrepairable motor vehicle certificate of title application to the department along with the applicable fee for issuance of a salvage or nonrepairable motor vehicle certificate of title.

(C) When a new or late model salvage or nonrepairable motor vehicle has been rebuilt and the vehicle's and parts' identification numbers, as well as compliance with state safety standards, have been certified to by a specially trained commissioned officer of the Texas Department of Public Safety, the owner shall file a certificate of title application with the county tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered supported by the evidence required by subsection (b)(2) of this section.

(2) Information to be included on application.

(A) An applicant for a salvage or nonrepairable motor vehicle certificate of title shall submit an application on a form prescribed by the department. The form, in addition to any other information required by the department, shall at a minimum include:

(i) the name and current address of the owner;

(ii) a description of the vehicle, including, the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(iii) a description of the damage to the vehicle;

(iv) the predamaged actual cash value of the vehicle;

(v) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(vi) previous owner's name and city and state of residence;

(vii) name and mailing address of any lienholder and the date of lien (applicable only in instances of salvage motor vehicle certificate of title issuance);

(viii) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed; and

(ix) the estimated cost of repair parts and labor (for the purpose of this section, the estimated cost of repair parts shall be determined by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts and the estimated labor costs shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed).

(B) An applicant for a certificate of title involving a transaction for a rebuilt salvage motor vehicle shall submit an application on a form prescribed by the department, and shall present such to the tax assessor-collector in the county in which the applicant resides, or the county in which the motor vehicle was purchased or encumbered. The form, in addition to any other information required by the department, shall at a minimum require or include in the transaction:

(i) the name and current address of the owner;

(ii) a description of the vehicle, which includes, but is not limited to, the motor vehicle's model year, make, model, identification number, body style, manufacturer's rated carrying capacity in tons for commercial motor vehicles, and empty weight;

(iii) description of each major component part used to repair the vehicle and shows the identification number required by federal law to be affixed to or inscribed on the part;

(iv) the description or disclosure of the vehicle's former condition in a manner that is understandable to a potential purchaser of the vehicle;

(v) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 501;

(vi) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(vii) previous owner's name and city and state of residence;

(viii) name and mailing address of any lienholder and the date of lien, if applicable;

(ix) signature of the seller of the motor vehicle or the seller's authorized agent and the date the certificate of title application was signed; and

(x) the signature of the applicant or the applicant's authorized agent and the date the certificate of title application was signed.

(3) Accompanying documentation.

(A) The salvage and nonrepairable motor vehicle certificate of title applications shall be supported by, at a minimum, the following documents:

(i) evidence of vehicle ownership, as described in subsection (b)(1) of this section;

(ii) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable; and

(iii) release of any liens.

(B) The application for certificate of title for a transaction involving a rebuilt salvage shall be supported by, at a minimum, the following documents:

(i) evidence of vehicle ownership, as described in subsection (c)(2) of this section;

(ii) odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(iii) proof of financial responsibility in the title applicant's name, as required by Transportation Code, §502.153;

(iv) the identification certificate required by Transportation Code, §548.256, and Transportation Code, §501.030, if the vehicle was last registered in another state or country;

(v) release of any liens or, if not released, an out-of-state lien (recorded on out-of-state evidence as described in subsection (b)(2) of this section) cannot be carried forward to a Texas title involving a rebuilt salvage when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached. (A lien is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title); and

(vi) a written statement signed by a specially trained commissioned officer of the Texas Department of Public Safety certifying to the department that the vehicle identification numbers and parts identification numbers are accurate, the applicant has proof that the applicant owns the parts used to repair the vehicle, the vehicle may be safely operated, and the vehicle complies with all applicable motor vehicle safety standards of this state.

(b) Evidence of salvage motor vehicle ownership.

(1) Evidence of salvage motor vehicle ownership properly assigned to the applicant shall accompany the salvage or nonrepairable motor vehicle certificate of title application. Evidence shall include, but is not limited, to the following documents:

(A) an Original Texas Certificate of Title;

(B) a Certified Texas Certificate of Title;

(C) a Texas Salvage Certificate; or

(D) a comparable ownership document issued by another state or jurisdiction.

(2) Evidence of motor vehicle ownership on a rebuilt salvage properly assigned to the applicant shall accompany the certificate of title application involving the transaction. Evidence shall include the following documents:

(A) a Texas Salvage Certificate;

(B) a Texas Salvage Motor Vehicle Certificate of Title;

(C) a Texas Nonrepairable motor Vehicle Certificate of Title; or

(D) a comparable ownership document issued by another state or jurisdiction.

(c) Certificate of title issuance for salvage vehicles.

(1) Upon receipt of a completed salvage and nonrepairable motor vehicle certificate of title application, along with the prescribed fee of $3.00 and the required documentation, the department shall, before the sixth business day after the date of receipt, issue the applicant a salvage or nonrepairable motor vehicle certificate of title, as appropriate. If the condition of salvage is caused exclusively by flood, a "Flood Damage" notation shall be reflected on the face of the document and shall be carried forward upon subsequent title issuance.

(A) Texas Civil Statutes, Article 6687-1, §37A(j) provides that a person who holds a salvage motor vehicle certificate of title is entitled to record a lien on the vehicle. If a salvage or nonrepairable motor vehicle certificate of title application records a lien, such lien is only applicable with the issuance of a salvage motor vehicle certificate of title. Presentation of the application with the lien disclosed therein and surrender of the current salvage motor vehicle certificate of title, along with the applicable fee, to the department shall constitute the notation of a lien on a salvage motor vehicle certificate of title. When a salvage motor vehicle certificate of title recording a lien is issued, the original will be mailed to the lienholder. For proof of ownership purposes, the applicant will be mailed a receipt or printout of the newly established motor vehicle record, which records the lien.

(B) A nonrepairable motor vehicle certificate of title must state on its face that, except as provided by Texas Civil Statutes, Article 6687-1, §37A(n) and (p), the vehicle:

(i) may not be issued a regular certificate of title or registered in this state; and

(ii) may only be used for parts or scrap metal.

(2) Upon receiving a completed certificate of title application for a rebuilt salvage transaction, along with the applicable fees and required documentation, the department or its designated agent will process and issue a certificate of title, which includes a "Rebuilt Salvage" remark on its face and describes or discloses the vehicle's former condition in a manner that is understandable to a potential purchaser of the vehicle. If the transaction is on a new or late model salvage vehicle that has been assembled from component parts or a new or late model salvage vehicle for which a Texas Salvage Certificate is being surrendered, only the "Rebuilt Salvage" remark will be reflected on the face of the certificate of title.

(3) On proper application by the owner of a vehicle brought into this state from another state or jurisdiction that has on any certificate of title issued by the other state or jurisdiction a "Rebuilt," "Salvage," "Nonrepair able," or analogous notation, the department shall issue the applicant a certificate of title or other appropriate document for the vehicle. A certificate of title or other appropriate document issued under this subsection must, in addition to other information required by the department, show on its face:

(A) the date of issuance;

(B) the name and address of the owner;

(C) any registration number assigned to the vehicle;

(D) a description of the vehicle as determined by the department; and

(E) any notation the department considers necessary or appropriate.

(d) Replacement of certificates of title for salvage vehicles. The owner or lienholder of a lost or destroyed certificate of title for a salvage vehicle may obtain a certified copy of that title upon proper application and applicable fee being submitted to the department. The appropriate certificate of title for a salvage vehicle will be issued and shall reflect "Certified Copy" and the date issued. The appropriate motor vehicle record will be noted accordingly until such time that ownership of the vehicle is transferred, when the notation will be eliminated from the new certificate of title.

(e) Transfer of ownership.

(1) New or late model salvage motor vehicles.

(A) Transfer of a salvage or nonrepairable motor vehicle without a salvage or nonrepairable motor vehicle certificate of title. A person who owns a new or late model salvage motor vehicle may not sell, transfer, or release the vehicle to a person other than a salvage vehicle dealer, the former owner of the vehicle, a governmental entity, an out-of-state licensed buyer, a buyer in a casual sale at auction, or a person described by Texas Civil Statutes, Article 6687-2b, Section (g), and shall deliver to that person a properly assigned certificate of title for the vehicle. If the assigned certificate of title is not a salvage motor vehicle certificate of title, a nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction, the purchaser shall follow the procedures described in subsections (a)(1)(A), (a) (2)(A), (a)(3)(A), and (b)(1) of this section.

(B) Transfer of a salvage or nonrepairable motor vehicle by assignment of a salvage or nonrepairable motor vehicle certificate of title. An owner, other than an insurance company, may sell a new or late model salvage motor vehicle by assignment of a salvage or nonrepairable motor vehicle certificate of title for the vehicle only to a salvage vehicle dealer in this state, an out-of-state licensed buyer, a buyer in a casual sale at auction, or a person described by Texas Civil Statutes, Article 6687-2b, §(g).

(C) Transfer of a salvage or nonrepairable motor vehicle by an insurance company. An insurance company may sell a new or late model salvage motor vehicle by assignment of a salvage or nonrepairable motor vehicle certificate of title for the vehicle only to a salvage vehicle dealer, an out-of-state licensed buyer, a buyer in a casual sale at auction, or a person described by Texas Civil Statutes, Article 6687-2b, §(g).

(D) Exemption. The owner of a new or late model salvage motor vehicle or a nonrepairable motor vehicle so classified solely because of water damage caused by flood conditions is not prohibited from selling the vehicle to any person.

(2) Motor vehicle other than a new or late model salvage or nonrepairable motor vehicle.

(A) If an insurance company acquires ownership of this type of vehicle through payment of a claim, the company shall, on delivery of the vehicle to a buyer of the vehicle, deliver to the buyer a properly assigned certificate of title for the vehicle.

(B) An insurance company or other person who acquires ownership of this type of vehicle may voluntarily and upon proper application obtain a salvage or nonrepairable motor vehicle certificate of title.

(f) Notification required of an insurance company. An insurance company shall submit to the department, before the 31st day after the date of the payment of the claim, on the form prescribed by the department, a report stating that:

(1) the insurance company has paid a total loss claim on the late model salvage motor vehicle or nonrepairable motor vehicle; and

(2) the insurance company has not acquired ownership of the late model salvage motor vehicle or nonrepairable motor vehicle.

(g) Noting of motor vehicle record with total loss claim information. Upon receipt of the report described in subsection (f) of this section, the department shall note the appropriate motor vehicle record accordingly to prevent transfer of ownership prior to the issuance of a salvage or nonrepairable motor vehicle certificate of title.

(h) Acquisition of salvage vehicles for the purpose of dismantling, scrapping, or destruction.

(1) A salvage vehicle dealer that acquires ownership of a new or late model salvage or nonrepairable motor vehicle for such purposes shall, before the 31st day after the date the dealer acquires the vehicle, submit to the department, on the form prescribed by the department, a report stating that the vehicle will be dismantled, scrapped, or destroyed, accompanied by a properly assigned regular certificate of title, salvage or nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction for the vehicle.

(2) A salvage vehicle dealer that acquires an older model vehicle for such purposes shall submit the report addressed in paragraph (1) of this subsection and shall keep on the dealer's business premises a record of the vehicle, until the third anniversary of the date the report on the vehicle is submitted to the department.

(i) Receipt of the report and the ownership documents by the department. On receipt of the report and the ownership documents, the department shall issue the salvage vehicle dealer a receipt for the certificate of title, salvage or nonrepairable motor vehicle certificate of title, or a comparable ownership document issued by another state or jurisdiction.

(j) Noting of motor records on which ownership documents have been surrendered to the department. The department will note applicable motor records on which ownership documents have been surrendered to the department by salvage vehicle dealers with an appropriate notation.

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 December 7, 1995.

TRD-9516011 Robert E. Shaddock
General Counsel
Texas Department of Transportation

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Proposal publication date: October 17, 1995

For further information, please call: (512) 463-8630

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Salvage Vehicles Dealers

• 43 TAC §§17.60-17.64

The Texas Department of Transportation adopts new §§17.60-17.64, concerning salvage vehicle dealers' and agents' licenses, with changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8428).

House Bill 2599, 74th Legislature, 1995, created Texas Civil Statutes, Article 6687-1a, which empowers the department to issue licenses to salvage vehicle dealers and agents. The bill provides that all dealers and agents must be licensed effective March 1, 1996.

New §17.60 describes the requirements applicable to these sections.

New §17.61 defines the words and terms applicable to these sections.

New §17.62 describes who must obtain a salvage dealer or agent license; classifications of licenses; application procedure; procedures for investigation of the applicant's qualifications; issuance of salvage vehicle dealer and agent licenses; renewal and late fees; the terms of licenses; requirements for the use of agents by salvage vehicle dealers; record keeping procedures; and the entities to whom a new or late model salvage or nonrepairable motor vehicle may be sold, transferred, or released.

New §17.63 provides for registration of business locations; a procedure for notification to the department of a change of licensee's status; and a prohibition of off-site sales.

New §17.64 prescribes the procedures for denial, suspension, or revocation of license.

On October 27, 1995, a public hearing was held to receive comments, views, or testimony concerning the proposed adoption of new §§17.60-17.64. Texas Auto Dealers, Recyclers, and Dealers Association indicated that it was in favor of the sections as proposed. One individual, Auto Net, Inc., and

COPART indicated that they were against the sections as proposed. The Texas Independent Auto Resellers Association commented that it was in favor of some provisions and against some provisions. Insurance Auto Auctions, Inc., Texas Automotive Dismantlers & Recyclers Association (TADRA), the Tarrant County Auto Theft Task Force, the Texas Automobile Dealers Association, Farmers Insurance Group of Companies, and Capital Consultants requested revisions. State Farm Insurance Companies expressed that it was in full support of the comments submitted by Insurance Auto Auctions, Inc.

Regarding §§17.60-17.64 in general, Auto Net, Inc., stated that such rules were a burden to all taxpayers, and questioned the reasoning behind changing a "working system." Capital Consultants requested that the rules be postponed. In response, the proposed rules are being adopted to comply with House Bill 2599, 74th Legislature, 1995, which established Texas Civil Statutes, Article 6687-1a, to authorize the department to issue licenses to salvage vehicle dealers and agents, and which stipulates that all dealers and agents must be licensed effective March 1, 1996. The department is responsible for implementing this legislative mandate.

Regarding §17.61, Definitions, the Texas Automobile Dealers Association requested that the department consider changing the definition for "new automobile dealer" to "franchised dealer" as set out in Texas Civil Statutes, Article 4413(36), §1.03(4). The department has reviewed this definition and has determined that it is necessary for the definition of "new automobile dealer" to address the buying of salvage and nonrepairable motor vehicles to repair and sell. The definition has not been revised.

Regarding §17.61, Definitions, Insurance Auto Auctions, Inc. suggested in the definition of "new model salvage motor vehicle" that the words shown parentheses should also include the phrase "that is a nonrepairable motor vehicle, that the word "license" in the definition for "salvage vehicle broker" should be changed to "licensed," and suggested revising the definition of "used automobile dealer" by changing "and sell" to "and/or sell."

In response, the department agrees with the suggested parenthetical punctuation correction in the definition for "new model salvage motor vehicle" and has made the appropriate revision. Additionally, the department agrees that the word "license" included in the definition of "salvage vehicle broker" should be "licensed," and has made this change. In response to the comment regarding the definition of "used automobile dealer," the department has determined that such definition addresses the buying and selling of salvage and nonrepairable motor vehicles, and that the suggested revision would not be appropriate because it would not include the sale.

Regarding §17.62(c)(1), Classification of licenses-Application for salvage vehicle dealer license, Insurance Auto Auctions, Inc. commented that the rules did not include the application form. In response, the department does not generally adopt required forms as rules. However, upon final adoption of these rules, this form will be developed, approved, printed, and available the early part of 1996. Requests for this form may be submitted to the Vehicle Titles and Registration Division, Texas Department of Transportation, Austin, Texas 78779-0001.

Regarding §17.62(d)(1)(A)(iv) and §17.62(d)(3)(A)(v), Application for salvage vehicle dealer or agent license, Insurance Auto Auctions, Inc. suggested inserting the word "dealer" between the words "vehicle" and "license" in two places within paragraphs (1)(A)(iv), (3)(A)(v), and (4)(D) for clarity. In response, the department has reviewed the referenced paragraphs, and agrees with the comment. Therefore, subsection (d) has been revised accordingly.

Regarding §17.62(h), License renewal, Insurance Auto Auctions, Inc. suggested that paragraph (3) should follow paragraph (1), since paragraph (2) explained what happens if a renewal is not effective before the first anniversary of the expiration of the license. In response, the department has reworded subsection (h) for clarity.

Regarding §17.62(i)(1)(A), Licensee duties-Proper assignment of ownership, Insurance Auto Auctions, Inc. suggested that the word "dealer" be inserted after the word "vehicle" for clarity. In response, the department has reviewed subsection (i)(1)(A) and agrees with the comment. Therefore, this subparagraph has been revised accordingly.

Regarding §17.62(i)(2)(A), Licensee duties-Unique inventory number, Insurance Auto Auctions, Inc. suggested adding "with an endorsement as a used vehicle parts dealer" to the word "dealer" to further define who shall assign a unique inventory number In response, the department has reviewed subsection (i)(2)(A) with regard to the suggestion and has determined that the definition of "salvage vehicle dealer" includes the acquisition, sale, or otherwise dealing in salvage vehicles and parts. Therefore, this subsection will not be revised.

Regarding §17.62(i), Licensee duties-Unique inventory number, Insurance Auto Auctions, Inc. commented that certain component parts were not exempted in the proposed section in accordance with the statute. In response, the department has reviewed House Bill 2599 and has determined that this exemption should be addressed by rule. Therefore, subparagraph (D) will be added to subsection (i)(2) to state that the provisions of (i)(2)(A) and (B) do not apply to a nonoperable engine, transmission, or rear axle assembly purchased by one salvage vehicle dealer from another salvage vehicle dealer or an automotive-related business.

Also regarding §17.62(i), Licensee duties, TADRA stated that it believes this provision applies only to purchases made from individuals and does not apply to dealer-to-dealer sales or to deliveries from common carriers. In response, the department has revised §17.62(i) to clarify the applicability of this subsection. House Bill 2599 does not specify an exemption for dealer-to-dealer sales.

Regarding 17.62(j), Record of purchases, sales, and inventory, Insurance Auto Auctions, Inc. questioned why the proposed section did not establish rules for "casual sales." In response, as specified in this section, salvage vehicle dealers with a salvage pool operator classification will be required to maintain records of purchases, sales, and inventory. Such records will reflect casual sales.

Regarding §17.62(j)(1), Record of purchases, sales, and inventory, Insurance Auto Auctions, Inc. suggested adding "if applicable" after the phrase "These records shall include . . . evidence indicating that an older model salvage vehicle was dismantled, scrapped, or destroyed." The department has reviewed this subsection and determined that it tracks the language of House Bill 2599.

Regarding §17.62(k), Authorized sale, Insurance Auto Auctions, Inc. suggested that flood vehicles be excluded from this subsection. In response, the department has reviewed House Bill 2599 and concurs that flood damaged vehicles are excluded from the transfer restrictions. Subsection (k) has been revised to reflect this exclusion.

Regarding §17.62(k)(2), Authorized sale, TADRA suggested that this provision require that the original sale should be solely to licensed buyers, and that a licensed salvage dealer may resell a salvage vehicle with a salvage title, which may then be sold, rebuilt, and transferred into the buyer's name. In response, the department does not have the authority to include this provision, as House Bill 2599 clearly stipulates to whom a salvage or nonrepairable motor vehicle may be sold, transferred, or released. Farmers Insurance Group of Companies requests that the section be revised to make clear that the transfer restrictions apply only to late model motor vehicles. In response, no revision is necessary because this section only applies to new or late model motor vehicles.

Regarding §17.62(l)(2), Determination of estimated cost of repair, Insurance Auto Auctions, Inc. commented that it understood that "estimated labor cost" is not required upon submission of an application for Texas salvage or nonrepairable motor vehicle certificate of title. Rather, the estimated cost of repairs to the vehicle, including parts and labor, is required. Also, they suggested that the words "are performed" should be replaced by "would be performed." In response, the department has reviewed House Bills 2151 and 2599 with regard to the comments on "estimated labor cost" and the determination of estimated cost of repair. The provisions of House Bills 2151 and 2599 clearly indicate that the estimated cost of repair shall include parts and labor. This clarification is reiterated in House Bill 2151, which requires application for salvage or nonrepairable motor vehicle certificate of title to include "the estimated cost of repairs to the vehicle, to include parts and labor." Therefore, the applicant is required to determine the estimated cost of parts and labor. The combination of these two costs provides the estimated cost of repair that is required to be indicated on the application for salvage or nonrepairable motor vehicle certificate of title. Subsection (l) has been revised to clarify determination of estimated repair costs.

Additionally, the department has reviewed the comment regarding subsection (l)(2) to replace the words "are performed" with the words "would be performed." The department has determined that the currently proposed verbiage tracks the provisions of House Bill 2599, and no revisions are required.

Regarding §17.63(a)(4), Place of Business, Registration of business locations, Insurance Auto Auctions, Inc. commented that this subsection seems to be contradictory to the time frame applicable to the registration requirement. In response, the department has reviewed the comment and revised subsection (a) to clarify requirements that the department be notified of the new location ten days prior to its opening.

Regarding §17.63(b), Established and permanent place of business, Insurance Auto Auctions, Inc. questioned whether the word "owner" in the second sentence could be employees of a salvage vehicle dealer for the purposes of this requirement, if the owner is a corporation. Insurance Auto Auctions, Inc. also questioned whether every corporate salvage vehicle dealer would be required to license one or more of its employees as salvage vehicle agents, since a corporation can only act through its employees. In response, the department has reviewed this section and has determined that its authority does not extend to office, sign and lease requirements. This subsection has been deleted in it's entirety. Due to the deletion of §17.63(b), proposed subsections (c) and (d) have been renumbered. Also due to the deletion of §17.63(b), the lease and photographic application requirements in proposed §17.62(d)(1)(C) and §17.62(d)(1)(D) (relating to Salvage Vehicle Dealer and Agent Licenses-Application for salvage vehicle dealer or agent license) and the last sentence of §17.63(a)(4) concerning registration of business locations have been deleted. Also due to the deletion of §17.63(b), §17. 64(a)(2) and (b)(1) (relating to Denial, Suspension, or Revocation), which provided that a license may be denied, suspended, or revoked if the requirements of the established and permanent place of business are not met, have been deleted and proposed subsections (a) and (b) have been renumbered. Additionally, any reference to providing "evidence of ownership or lease agreement," which was found in proposed §17.64(b)(2) (relating to Denial, Suspension, or Revocation-Suspension or revocation) has been deleted, as well as any reference to "an established and permanent place of business" in proposed §17.63(c) (relating to Place of Business-Off-site sales). The reference to place of business in §17.64(b)(12) (relating to Denial, Suspension, or Revocation-Suspension or revocation) has been deleted and replaced by "the licensed salvage vehicle dealer's business address."

The Tarrant County Auto Theft Task Force requested a change to §17.64(b) (3) (relating to Denial, Suspension or Revocation). This paragraph provides that the department may suspend or revoke a salvage vehicle dealer or agent license if the dealer or agent refuses to permit or fails to comply with a request of the department to examine documents during normal working hours. The Tarrant County Auto Theft Task Force requested that §17.63(b)(3) be revised to include that any peace officer may also examine a dealer's records as provided in House Bill 2599. The Tarrant County Auto Theft Task Force also feels that the term "normal working hours" in this subsection implies that inspections may only be conducted from 8:00 a.m. to 5:00 p.m., Monday through Friday. As many salvage dealers and agents work hours other than these, the Tarrant County Auto Theft Task Force requested changes which would allow examination of documents "at any reasonable time." The department concurs and section has been modified accordingly.

The Tarrant County Auto Theft Task Force also requested that a rule be added to close the dealer's business during the time that a dealer's license is suspended or revoked. The department has determined that it does not have the authority to enforce a closure of the business. House Bill 2599 provides that a district attorney may enjoin a business operations if a dealer or an employee is convicted of an offense under this bill.

Regarding §17.64(b)(4); Denial, Suspension, or Revocation; Suspension or revocation, Insurance Auto Auctions, Inc. questioned whether there would be license classifications for agents. In response, the department has determined that salvage vehicle dealer agent licenses must be issued for the same classifications held by the salvage vehicle dealer that employs the agent.

Also regarding §17.64(b), if a vehicle dealer's license is suspended or revoked, such suspension or revocation shall also apply to any licensed vehicle dealer agents employed by such dealer, as provided in §17.64(d)(1)(A) (4).

Regarding §17.64(b)(7), Suspension or revocation, Insurance Auto Auctions, Inc. commented that the reference to "§17.62(l)" should be "§17.62(k)," and regarding §17.64(b)(8), Suspension or revocation, the reference to §17. 62(l) is incorrect. Insurance Auto Auctions, Inc. also requested an explanation of §17.62(l). In response, the department agrees that the references to "§17.62(l)" in §17.64(b) are incorrect and this subsection has been revised accordingly. Section 17.62(l) refers to determination of estimated cost of repair.

Farmers Insurance Group of Companies has requested that the department address changes to the Tax Code related to the treatment of "totaled," nonrepairable and salvage vehicles. Because these tax changes are within the purview of the Comptroller of Public Accounts, they will not be addressed in these rules.

The new sections are adopted under 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 Civil Statutes, Article 6687-1a, which authorizes the department to adopt rules to administer the licensing of salvage vehicle dealers and agents.

§>17.60. Purpose and Scope.* Texas Civil Statutes, Article 6687-1a, provides that a person may not act as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including storing or displaying vehicles as an agent or escrow agent of an insurance company, unless the department issues that person a salvage vehicle dealer or agent license. This undesignated head describes procedures by which a person may obtain a license to act as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer; conditions under which a licensee must operate the facility; and the procedures by which the department will enforce this undesignated head.

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

Actual cash value-The market value of a motor vehicle as determined:

(A) from publications commonly used by the automotive and insurance industries to establish the value of motor vehicles; or

(B) if the entity determining the value is an insurance company, by any other procedure recognized by the insurance industry, including market surveys, that is applied by the company in a uniform manner.

Automobile recycler-A person in the business of dealing in salvage motor vehicles for the purpose of dismantling the vehicles to sell used parts and the resulting scrap metal or a person otherwise engaged in the business of acquiring, selling, or dealing in salvage parts. The term includes a dealer in used motor vehicle parts.

Casual sale-The sale at auction of not more than one nonrepairable motor vehicle or new or late model salvage motor vehicle to the same person during a calendar year.

Commission-The Texas Transportation Commission.

Department-The Texas Department of Transportation.

Division director-The director of the department's Vehicle Titles and Registration Division.

Late model motor vehicle-A motor vehicle with a model year equal to the then current calendar year or one of the five preceding calendar years.

Late model salvage vehicle-A late model motor vehicle with a major component part that is damaged or missing to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor, but excluding the cost of repairs to repair hail damage, is equal to

or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition; or a damaged vehicle that comes into this state under a salvage vehicle certificate of title or other comparable certificate of title.

Major component part-One of the following parts of a vehicle:

(A) the engine;

(B) the transmission;

(C) the frame;

(D) the right or left front fender;

(E) the hood;

(F) a door allowing entrance to or egress from the passenger compartment of the vehicle;

(G) the front or rear bumper;

(H) the right or left quarter panel;

(I) the deck lid, tailgate, or hatchback;

(J) the cargo box of a pickup truck;

(K) the cab of a truck; or

(L) the body of a passenger vehicle.

Motor vehicle-Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails.

New automobile dealer-A person whose primary business is selling new motor vehicles, but who may also buy salvage and nonrepairable motor vehicles to repair and sell.

New model motor vehicle-A motor vehicle with a year model that is newer than the current calendar year.

New model salvage motor vehicle-A new model motor vehicle (other than a new model vehicle that is a nonrepairable motor vehicle), that is damaged to the extent that the total estimated cost of repairs, other than repairs related to hail damage but including parts and labor, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition.

Nonrepairable vehicle-A new or late model motor vehicle that is damaged or missing a major component part to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor other than the costs of materials and labor for repainting the vehicle and excluding sales taxes on the total cost of the repairs, and excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 95% of the actual cash value of the vehicle in its predamaged condition; or a vehicle that comes into this state with a nonrepairable vehicle certificate of title or other comparable certificate of title.

Nonrepairable vehicle certificate of title-A document issued by the department that evidences ownership of a nonrepairable vehicle.

Older model motor vehicle-A motor vehicle that was manufactured in a model year before the sixth preceding model year, including the current model year.

Other comparable certificate of title-A document other than a Texas certificate of title or a salvage certificate of title that relates to a motor vehicle that the department considers sufficient to support issuance of a Texas certificate of title for the vehicle.

Out-of-state buyer-A person licensed by another state or jurisdiction in an automotive business if the Texas Department of Transportation has listed the holders of such license as permitted purchasers of salvage motor vehicles or nonrepairable motor vehicles based on substantially similar licensing requirements and on whether salvage vehicle dealers licensed in Texas are permitted to purchase salvage motor vehicles or nonrepairable motor vehicles in the other state or jurisdiction.

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

Salvage part-A major component part of a new or late model salvage vehicle that is serviceable to the extent that it can be reused.

Salvage pool operator-A person who is engaged in the business of selling nonrepairable or salvage vehicles at auction, including wholesale auction.

Salvage vehicle-A new or late model motor vehicle with a major component part that is damaged or missing to the extent that the total estimated cost of repairs to rebuild or reconstruct the vehicle, including parts and labor, but excluding the cost of repairs to repair hail damage, is equal to or greater than an amount equal to 75% of the actual cash value of the vehicle in its predamaged condition; or a damaged vehicle that comes into this state under a salvage vehicle certificate of title or other comparable certificate of title.

Salvage vehicle agent-A person employed by a licensed salvage vehicle dealer to acquire, sell, or otherwise deal in new or late model salvage vehicles or salvage parts in this state.

Salvage vehicle broker-A person who buys, sells, or exchanges salvage and nonrepairable motor vehicles with other licensed salvage dealers.

Salvage vehicle certificate of title-A document issued by the department that evidences ownership of a salvage vehicle.

Salvage vehicle dealer-A person who is engaged in this state in the business of acquiring, selling, or otherwise dealing in salvage vehicles or vehicle parts of a type required to be covered by a salvage vehicle certificate of title or nonrepairable vehicle certificate of title under a license issued by the department that allows the holder of the license to acquire, sell, dismantle, repair, or otherwise deal in salvage vehicles.

Salvage vehicle pool operator-A person who is engaged in the business of selling nonrepairable vehicles or salvage vehicles at auction, including wholesale auction.

Salvage vehicle rebuilder-A person who acquires and repairs, for operation on public highways, five or more late model salvage motor vehicles in any 12 month period.

Salvage vehicle record-The record of sales and purchases for each salvage vehicle handled by a salvage vehicle dealer.

Used automobile dealer-A person whose primary business is selling used motor vehicles, but who may also buy salvage and nonrepairable motor vehicles to repair and sell.

Used vehicle parts dealer-A person who is engaged in the business of obtaining salvage or nonrepairable motor vehicles for scrap disposal, resale, repairing, rebuilding, demolition, or other form of salvage.

§17.62. Salvage Vehicle Dealer and Agent Licenses.

(a) Applicability. A person who acts as an automobile recycler, salvage vehicle agent, or salvage vehicle dealer, including a person who stores or displays vehicles as an agent or escrow agent of an insurance company, must obtain a salvage vehicle dealer or an agent license in accordance with Texas Civil Statutes, Article 6687-1a, and the provisions of this undesignated head.

(b) Exemptions. The provisions of this undesignated head do not apply to:

(1) a person who purchases a nonrepairable or salvage vehicle from a salvage pool operator in a casual sale;

(2) an insurance company authorized to engage in the business of insurance in this state;

(3) a person predominantly engaged in the business of obtaining ferrous or nonferrous metals;

(4) a person who sells or offers for sale less than five new or late model salvage motor vehicles of the same type in a calendar year when such vehicles are owned, and registered and titled in the name of such person;

(5) a person who sells or offers to sell a new or late model salvage motor vehicle acquired for personal or business use if the person does not sell or offer to sell to a retail buyer and the transaction is not held for the purpose of avoiding the provisions of Texas Civil Statutes, Article 6687-1a;

(6) an agency of the United States, this state, or local government;

(7) a financial institution or other secured party selling a vehicle in which it holds a security interest, in the manner provided by law for the forced sale of that vehicle;

(8) a receiver, trustee, administrator, executor, guardian, or other person appointed by or acting pursuant to the order of a court;

(9) a person selling an antique passenger car or truck that is at least 25 years old or a collector selling a special interest motor vehicle as defined in the Transportation Code, §683.077, if the special interest vehicle is at least 12 years old; and

(10) a licensed auctioneer who, as a bid caller, sells or offers to sell property to the highest bidder at a bona fide auction if neither legal nor equitable title passes to the auctioneer and if the auction is not held for the purpose of avoiding a provision of Texas Civil Statutes, Article 6687-1a, and this undesignated head; and provided that if an auction is conducted of vehicles owned, legally or equitably, by a person who holds a salvage dealer's license, the auction may be conducted only at a location for which a salvage dealer's license has been issued to that person or at a location approved by the department as provided by this section.

(c) Classification of licenses. The department will classify salvage vehicle dealers according to the type of activity performed by the dealer. A salvage vehicle dealer may not engage in activities of a particular classification as indicated in this subsection unless the salvage vehicle dealer holds a license authorizing business under that classification. An applicant may apply for a salvage vehicle dealer license in one or more of the following classifications:

(1) new automobile dealer;

(2) used automobile dealer;

(3) used vehicle parts dealer;

(4) salvage vehicle pool operator;

(5) salvage vehicle broker; or

(6) salvage vehicle rebuilder.

(d) Application for salvage vehicle dealer or agent license.

(1) Application for salvage vehicle dealer license. An applicant for a salvage vehicle dealer license must apply on a form prescribed by the department. An applicant who will operate as a salvage vehicle dealer under a name other than the name of that applicant shall use the name under which that applicant is authorized to do business, as filed with the secretary of state or county clerk, and the assumed name of such legal entity shall be recorded on the application form using the letters "DBA."

(A) Form of application. The application form must be signed by the applicant, be accompanied by the application fee of $95, and include:

(i) the name, business address(es), and business telephone number(s) of the applicant;

(ii) the name under which the applicant will do business;

(iii) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(iv) a statement indicating whether the applicant has previously applied for a salvage dealer vehicle license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(v) an affidavit containing a statement that the applicant has never been convicted of a felony and three business association references;

(vi) the applicant's federal tax identification number, if any;

(vii) the applicant's state sales tax number;

(viii) the applicant's social security number, if the applicant is an individual; and

(ix) the classification(s) of license(s) for which the form is being submitted.

(B) Verification of assumed name. The department will require verification of the assumed name, if applicable, in the form of an assumed name certificate on file with the secretary of state or county clerk at the time the application form is submitted.

(2) Application for salvage vehicle agent license. An applicant, who is authorized to operate as an agent for a salvage vehicle dealer must apply on a form prescribed by the department. The application form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name of the applicant;

(B) the name, business address, and business telephone number of the salvage vehicle dealer authorizing the applicant as a salvage vehicle agent;

(C) the name under which the salvage vehicle dealer will do business;

(D) the location, by number, street, and municipality, of each office from which the applicant will conduct business;

(E) a statement indicating whether the applicant has previously applied for a salvage vehicle dealer or agent license under this section, the result of the previous application, and whether the applicant has ever been the holder of a salvage vehicle dealer or agent license that was revoked or suspended;

(F) an affidavit containing a statement that the applicant has never been convicted of a felony and three business association references;

(G) the applicant's federal tax identification number, if any;

(H) the applicant's state sales tax number; and

(I) the applicant's social security number.

(3) Application for corporate salvage vehicle dealer license. If a salvage vehicle dealer license applicant intends to engage in business through a corporation, the applicant must apply on a form prescribed by the department.

(A) Form of application. The form must indicate the name of the corporation, as it appears on file with the secretary of state, be signed by the applicant, be accompanied by the application fee, and include:

(i) the name, business address(es), and business telephone number(s) of the corporation;

(ii) the name under which the corporation will do business;

(iii) the location, by number, street, and municipality, of each office from which the corporation will conduct business;

(iv) the state of incorporation;

(v) a statement indicating whether an employee, officer, or director has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether an employee, officer, or director has ever been the holder of a salvage dealer vehicle license that was revoked or suspended;

(vi) an affidavit containing a statement that each officer and director has never been convicted of a felony and three business association references;

(vii) the applicant's federal tax identification number, if any;

(viii) the applicant's state sales tax number;

(ix) the name, address, date of birth, and social security number of each of the principal officers and directors of the corporation;

(x) the classification(s) of license(s) for which the form is being submitted.

(B) Verification of corporate franchise taxes. The corporation must also provide verification that all corporate franchise taxes required under the Texas Business Corporation Act, Article 2.45, have been paid at the time the application form is submitted to the department.

(4) Partnerships. If the license applicant intends to engage in business through a partnership, the applicant must apply on a form prescribed by the department. The form must be signed by the applicant, be accompanied by the application fee, and include:

(A) the name, business address(es), and business telephone number(s) of the partnership;

(B) the name under which the partnership will do business;

(C) the location, by number, street, and municipality, of each office from which the partnership will conduct business;

(D) a statement indicating whether an owner, partner, or employee, has previously applied for a salvage vehicle dealer license under this section, the result of the previous application, and whether an owner, partner, or employee, has ever been the holder of a salvage vehicle dealer license that was revoked or suspended;

(E) an affidavit containing a statement that each owner and partner has never been convicted of a felony and three business association references;

(F) the partnership's federal tax identification number, if any;

(G) the partnership's state sales tax number;

(H) the name, address, date of birth, and social security number of each owner and partner;

(I) the classification(s) of license(s) for which such form is being submitted.

(e) Issuance, investigation, and report by the department. The department will not grant a salvage vehicle dealer or an agent a license until the department completes an investigation of the applicant's qualifications and references in accordance with Texas Civil Statutes, Article 6687-1a. Such investigation shall be conducted not later than the 15th day after the date the application is received by the department. Upon completion of the investigation, the results of the investigation shall be reported to the applicant(s) by written notification from the department. If the applicant is denied, the applicant may appeal the decision as specified in §17.64 of this title (relating to Denial, Suspension, or Revocation).

(f) License issuance. The department will issue a license to an applicant who meets the license qualifications of subsection (d) of this section and pays the required fees described in this subsection.

(1) The license fee for each salvage vehicle dealer or agent license issued for a period of less than one year shall be prorated and only that portion of the $95 license fee allocable to the number of months for which the license is issued shall be payable by the licensee. The amount of such license fees will be rounded off to the nearest dollar.

(2) A license may not be issued in a fictitious name that may be confused with or is similar to that of a governmental entity or that is otherwise deceptive or misleading to the public.

(3) A person whose license has been revoked in accordance with §17.64 of this title (relating to Denial, Suspension, or Revocation) may not be issued a new license before the first anniversary of the date of the revocation.

(g) Use of agents by salvage vehicle dealers. The holder of a salvage vehicle dealer license may authorize not more than five persons to operate as salvage vehicle agents under the dealer's license. An agent may acquire, sell, or otherwise deal in new or late model salvage or nonrepairable vehicles or salvage parts as directed by the dealer. An agent authorized to operate for a salvage vehicle dealer is entitled to a salvage vehicle agent license on application to the department and payment of the required $95 fee as provided by subsection (e) of this section.

(h) License renewal.

(1) A salvage vehicle dealer or agent license expires on the first anniversary of the date of issuance and may be renewed annually on or before the expiration date on payment of the required renewal fee of $85.

(2) If the license is not renewed prior to the expiration date, the license holder may renew the license on payment of the renewal fee and a late fee of $10, provided such fees are submitted within one year of expiration.

(3) If the license has been expired for a period of one year or longer, the license holder must apply for a new license in the same manner as an applicant for an initial license.

(i) Licensee duties.

(1) Proper assignment of ownership.

(A) If a salvage vehicle dealer acquires ownership of a new or late model salvage vehicle from an owner, the dealer must receive a properly assigned certificate of title. If the assigned certificate of title is not a salvage or nonrepairable motor vehicle certificate of title or comparable ownership document issued by another state or jurisdiction, the licensed salvage vehicle dealer shall, not later than the 10th day after the date of receipt of the title, surrender the assigned certificate of title to the department and apply for a salvage or nonrepairable motor vehicle certificate, as appropriate as provided by §17.8 of this title (relating to Certificates of Title for Salvage Vehicles).

(B) If a new or late model salvage or nonrepairable vehicle is to be dismantled, scrapped, or destroyed, the salvage vehicle dealer shall surrender the assigned ownership document to the department in the manner prescribed by the department not later than the 30th day after the date the vehicle is acquired and report to

the department that the vehicle was dismantled, scrapped, or destroyed.

(C) If the holder of a salvage vehicle dealer license acquires ownership of an older model vehicle from an owner and receives an assigned certificate of title and the vehicle is to be dismantled, scrapped, or destroyed, the license holder shall surrender the assigned certificate of title to the department on a form prescribed by the department not later than the 30th day after the date on which the title is received. Evidence that the vehicle was dismantled, scrapped, or destroyed must also be presented.

(D) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer licensed as a used vehicle parts dealer may not receive a motor vehicle unless the dealer first obtains a certificate of authority, sales receipt, or transfer document in accordance with Transportation Code, Chapter 683, or a certificate of title showing that there are no liens on the vehicle or that all recorded liens have been released.

(2) Unique inventory number.

(A) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer shall assign a unique inventory number to each transaction in which the dealer purchases or takes delivery of one or more component parts. The unique inventory number shall contain the:

(i) salvage vehicle dealer's license number;

(ii) day, month, and year of the purchase or delivery; and

(iii) sequential log number for that day.

(B) The unique inventory number shall then be attached to each component part the dealer obtains in the transaction. The unique inventory number may not be removed from the component part while the part remains in the inventory of the salvage vehicle dealer.

(C) Each component part shall be retained in its original condition on the business premises of the salvage vehicle dealer who originally purchased the part for at least three calendar days, excluding Sundays, after the date on which the dealer obtains the part.

(D) The provisions of subsection (i)(2)(A) and (B) do not apply to a nonoperable engine, transmission, or rear axle assembly purchased by one salvage vehicle dealer from another salvage vehicle dealer or an automotive-related business.

(E) The provisions of subsection (i) do not apply to:

(i) interior used component parts or special accessory parts on a motor vehicle more than 10 years of age; or

(ii) used component parts delivered by commercial freight lines or commercial carriers.

(j) Record of purchases, sales, and inventory.

(1) Each holder of a salvage vehicle dealer license shall maintain records of each salvage or nonrepairable vehicle and any salvage parts purchased, sold, or being held in inventory by the license holder. Such records, except as specified in paragraph (2)(C) of this subsection, shall be maintained for a five-year period. These records shall include the:

(A) date of purchase;

(B) name and address of the person selling the vehicle or part to the dealer;

(C) a description of the vehicle or part to include the year model, make, and vehicle identification or component part number, if applicable;

(D) ownership document number and state of issuance, if applicable;

(E) copy of the front and back of the ownership document for the vehicle or salvage part purchased by the dealer unless the year model exceeds 10 or more years;

(F) date the ownership document was surrendered to the department;

(G) evidence indicating that an older model salvage vehicle was dismantled, scrapped, or destroyed;

(H) date of sale;

(I) name and address of the person purchasing the vehicle or part from the dealer; and

(J) copy of the front and back of the ownership document for the vehicle or salvage part sold by the dealer unless the year model exceeds 10 or more years.

(2) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer licensed as a used vehicle parts dealer shall keep an accurate and legible inventory of each used component part purchased by or delivered to the dealer.

(A) Such parts inventory shall include:

(i) the date of purchase or delivery;

(ii) the name, age, address, sex, and driver's license number of the seller and a legible photocopy of the seller's driver's license;

(iii) the license number of the motor vehicle used to deliver the used component part;

(iv) a complete description of the item purchased, including the type of material and, if applicable, the make, model, color, and size of the item; and

(v) the vehicle identification number of the motor vehicle from which the used component part was removed.

(B) In lieu of the information required in subparagraph (A) of this paragraph, a salvage vehicle dealer may record the name of the business from which the motor vehicle or motor vehicle part is purchased and the Texas certificate of inventory number or federal taxpayer identification number of the business.

(C) A salvage vehicle dealer is not required to keep records under this subsection for:

(i) interior used component parts or special accessory parts on a motor vehicle more than 10 years of age; or

(ii) used component parts delivered by commercial freight lines or commercial carriers.

(D) As required by Texas Civil Statutes, Article 6687-2, a salvage vehicle dealer shall maintain two copies of each record for used component parts addressed by paragraph (2) of this subsection on a form prescribed by the department for one year after the date of sale or disposal of the item.

(k) Authorized sale.

(1) New or late model water damaged salvage motor vehicles. The owner of a new or late model salvage motor vehicle or a nonrepairable motor vehicle so classified solely caused by flood conditions is exempt from the provisions of this subsection, and is not prohibited from selling such vehicle to any person.

(2) Sales, transfer or release of new or late model salvage or nonrepairable motor vehicle. A salvage vehicle dealer or agent may not sell, transfer, or release a new or late model salvage or nonrepairable motor vehicle to anyone other than:

(A) a governmental entity;

(B) the vehicle's former owner;

(C) a licensed salvage vehicle dealer;

(D) an out-of-state buyer;

(E) a buyer in a casual sale at auction; or

(F) a person described by Texas Civil Statutes, Article 6687-2b, Section (g).

(l) Determination of estimated cost of repair. If it is necessary for a salvage vehicle dealer or agent to determine the estimated cost of repair, which includes parts and labor, for completion of an application for Texas salvage or nonrepairable motor vehicle certificate of title, the estimated cost of repair parts shall be determined as follows:

(1) by using a manual of repair costs or other instrument that is generally recognized and commonly used in the motor vehicle insurance industry to determine those costs or an estimate of the actual cost of the repair parts; and

(2) the estimated labor costs shall be computed by using the hourly rate and time allocations that are reasonable and commonly assessed in the repair industry in the community in which the repairs are performed.

§17.63. Place of Business.

(a) Registration of business locations.

(1) A license applicant who intends to operate as a salvage vehicle dealer at more than one location within a county must:

(A) list each location in the application;

(B) notify the department of any additionally acquired locations within that specific county; and

(C) not employ more than five salvage dealer agents at all locations.

(2) A licensed applicant who intends to operate as a salvage vehicle dealer with additional locations within another county will be required to obtain a separate license.

(3) A licensed applicant with additional locations which are operated under a different name will be required to obtain a separate license for each location.

(4) Before moving a place of business or opening an additional place of business, a salvage vehicle dealer must register the new location with the department within 10 days prior to the opening or relocation of the business establishment.

(b) Change of licensee's status.

(1) Licensee name change. A licensed salvage vehicle dealer shall notify the department in writing within 10 days if there is a licensee name change. Upon notification of a name change, the department shall indicate the change on the dealer's file. The dealer shall retain the same salvage vehicle dealer license number.

(2) Change of ownership. A salvage vehicle dealer shall notify the department in writing within 10 days if there is a change of ownership. Upon notification of a complete change of ownership, the department shall cancel the existing salvage vehicle dealer license. The new owner must qualify for a new salvage vehicle dealer license by submission of a completed application for Texas salvage vehicle dealer or agent to the department.

(3) Change of operating status. A salvage vehicle dealer shall notify the department in writing within 10 days of the closing of any dealer location.

(c) Off-site sales. A salvage vehicle dealer or agent is not permitted to sell or offer for sale salvage or nonrepairable vehicles or salvage vehicle parts from a location other than the licensed salvage vehicle dealer's business address, which has been approved by the department.

§17.64. Denial, Suspension, or Revocation.

(a) Denial of salvage vehicle dealer or agent license. The department shall deny issuance of a salvage vehicle dealer or agent license if:

(1) all the information required on the application is not complete;

(2) the affidavit and business references required by §17.62 of this title (relating to Salvage Vehicle Dealer and Agent Licenses) are inadequate; or

(3) the applicant's previous salvage vehicle dealer or agent license was revoked and the first anniversary of the date of revocation has not occurred.

(b) Suspension or revocation. The department may suspend or revoke a salvage vehicle dealer or agent license if the dealer or agent:

(1) fails to maintain purchase, sales, and inventory records as provided in §17.62(m) of this title (relating to Salvage Vehicle Dealer and Agent Licenses);

(2) refuses to permit or fails to comply with a request by a representative of the department or a peace officer to examine, during normal working hours, or while the premises are occupied, the purchase, sales, and inventory records and ownership documents for salvage or nonrepairable vehicles or salvage parts owned by that dealer or under that dealer's control;

(3) holds one or more classifications of salvage vehicle dealer or agent license(s) and is found to be dealing in another classification for which a license has not been issued to the dealer or agent;

(4) fails to notify the department of a change of address within 10 days after such change;

(5) fails to notify the department of a dealer's name or ownership change within 10 days after such change;

(6) fails to follow the restriction of the sale, transfer, or release of a late model salvage or nonrepairable motor vehicle as provided in §17.62(k) of this title (relating to Authorized Sale);

(7) fails to meet the time frames and requirements provided in §17.63 of this title (relating to Place of Business);

(8) fails to remain regularly and actively engaged in the business for which such salvage vehicle dealer or agent license is issued;

(9) sells more than one new or late model salvage or nonrepairable motor vehicle to the same person in a casual sale during a calendar year;

(10) uses or allows use of the dealer's or agent's license or location for the purpose of avoiding the provisions of the salvage vehicle dealer law;

(11) sells or offers for sale salvage or nonrepairable vehicles or salvage vehicle parts from a location other than the licensed salvage vehicle dealer's business address, which has been approved by the department;

(12) makes a material misrepresentation in any application or other information filed with the department;

(13) fails to remit payment for civil penalties assessed by the department; or

(14) violates any of the provisions of Transportation Code, Chapter 501,

or any provisions of this undesignated head.

(c) Suspension due to failure to pay court ordered child support.

(1) On receipt of a final order suspending license, issued under Family Code, §232.008, the department will suspend a dealer or agent's certificate of registration.

(2) The department will charge an administrative fee of $10 to a dealer or agent who is the subject of an order suspending license.

(d) Proceedings relating to the denial, suspension, or revocation of a salvage dealer's or agent's license.

(1) Upon determination that a dealer or agent license should be denied, suspended, or revoked, the director will mail a notice of the denial, suspension, or revocation to the last known address of the dealer or agent by certified mail.

(A) The notice shall clearly state:

(i) the reason for the denial, suspension, or revocation;

(ii) the effective date of the denial, suspension, or revocation;

(iii) the right of the dealer or agent to request an administrative hearing on the question of denial, suspension, or revocation; and

(iv) that the notice of suspension or revocation shall also apply to licensed salvage vehicle dealer agents employed by such dealer.

(B) A request for an administrative hearing under this section must be made in writing to the director within 10 days of the receipt of notice of denial, suspension, or revocation.

(2) If timely requested, an administrative hearing shall be conducted in accordance with §§1.21-1.61 of this title (relating to Contested Case Procedure).

(e) Re-application after revocation of license. A person whose license is revoked may not apply for a new license before the first anniversary of the date of the revocation.

(f) Refund of fees. The department will not refund fees paid by a salvage vehicle dealer or agent, if the license is revoked or suspended.

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 December 7, 1995.

TRD-9516013 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: March 1, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-8630

Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5. 97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance, at a public hearing held on November 28, 1995, under Docket Number 2185, at 1:30 p.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments to the Dwelling Section and the Farm and Ranch Section of the Texas Personal Lines Manual (Manual) to provide optional large deductibles for coverage afforded under a dwelling policy and a farm and ranch policy. The amendments were proposed by Department staff in a petition filed on October 16, 1995. In addition to the staff petition, two other entities petitioned the Commissioner for adoption of the optional large deductibles-National Lloyds Insurance Company and the Association of Fire and Casualty Companies (AFACT), a trade association composed of 37 property and casualty insurance companies licensed to do business in Texas. Notice of the proposal (Reference Number P-1095-38-I) was published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8743).

The Commissioner adopted, with one change to the proposal as published, a new rule (Rule 5 in the Dwelling Section of the Manual under the General Requirements Section V, Deductibles Subsection D and Rule 6 in the Farm and Ranch Section of the Manual under General Requirements Section V, Deductibles Subsection D) to provide for optional large deductibles of 1-1/2%, 2.0%, 2-1/2%, 3.0%, 4.0% or 5.0% of the limit of liability for each item of insurance shown on the declarations page of Texas Dwelling Policy Forms TDP-1, TDP-2, and TDP-3 and for each item of insurance shown on the declarations page of Texas Farm and Ranch Policy Forms TFR-1, TFR-2, and TFR-3 and on the declarations page of any endorsement attached to Texas Farm and Ranch Policy Forms TFR-1, TFR-2, and TFR-3. The adopted rule provides that the large deductible may be selected at the option of the insured, with an appropriate reduction in premium, subject to certain requirements and conditions: (1) the minimum deductible amount may not be less than $100; (2) the optional large deductible may not be applied to a loss caused by the perils of fire and lightning; (3) the actual deductible amount in dollars must be shown on the declarations pages of the dwelling policy and the farm and ranch policy and on the declarations page of any endorsements attached to Texas Farm and Ranch Policy Forms TFR-1, TFR-2, and TFR-3; and (4) the option of the large deductibles may only be provided under the policy if the insured is offered, in addition to an optional large deductible, at least one of the other deductible options promulgated by the Department for use in Texas. Based on comments received on the published proposal, the Commissioner did not adopt the requirement that the premium credit for the optional large deductibles be shown on the requisite declarations pages because the Commissioner determined that to provide space on the declarations pages for this credit amount would require a redesign of the declarations pages and reprogramming of insurers' computer systems. This redesign and reprogramming would be costly to insurers, and these costs would be passed on to policyholders. In most instances, the agent will discuss the differences in the cost of deductibles with insureds. The Commissioner has determined, therefore, that it is unnecessary to require the premium credit for the optional large deductible to be shown on the declarations page. The adopted rule also references the optional large deductible adjustment chart, which will be included in the Manual, for the appropriate credits.

In the past, insureds covered under dwelling policies and under farm and ranch policies have had the option of selecting varying deductibles of zero, $100, $250, $500, $1,000, or 1.0% of the limit of liability of Coverage A (Dwelling) of each item of insurance shown on the declarations page of the policy and of any endorsement attached thereto. Under the adopted rule, these insureds will be able to select additional deductible options of 1-1/2%, 2.0%, 2-1/2%, 3.0%, 4.0% or 5.0% of the limit of liability of Coverage A (Dwelling). The option of these larger deductibles, however, may only be provided if the insured is offered, in addition to these deductibles, at least one of the other deductible options promulgated by the Department.

The Commissioner has determined that the new rules are necessary to provide those insureds who are financially able to do so to assume a greater portion of the risk in return

for lower premiums and, secondly, to encourage insurers to expand their writings in an otherwise restrictive market. The Commissioner has further determined that the applicable premium credits for the optional large deductibles should be determined at the next residential property insurance benchmark rate hearing held pursuant to Articles 5.101 and 1.33B of the Insurance Code, and that the effective date for the use of the new rules shall be the effective date of the residential property insurance benchmark rates determined at such hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35, 5.101, 5.96, and 5.98.

The amendments as adopted by the Commissioner of Insurance are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference Number P-1095-38-I and are incorporated by reference by Commissioner's Order Number 95-1284

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that a new Rule 5 in the General Requirements Section V, Deductibles Subsection D in the Dwelling Section of the Texas Personal Lines Manual and a new Rule 6 in the General Requirements Section V, Deductibles Subsection D in the Farm and Ranch Section of the Texas Personal Lines Manual, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted. IT IS FURTHER ORDERED that the applicable premium credits for the optional large deductibles shall be determined at the next residential property insurance benchmark rate hearing held pursuant to Articles 5.101 and 1.33B of the Insurance Code and that the new rules shall be effective for all applicable policies issued on and after the effective date of the residential property insurance benchmark rates determined at such hearing.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 December 8, 1995.

TRD-9516115

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

Effective date: December 30, 1995

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

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The Commissioner of Insurance, at a public hearing held on November 28, 1995, under Docket Number 2187, at 10:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted residential property insurance policy forms and endorsements for use in designated underserved areas served by the Property Protection Program (Program) pursuant to Article 5.35-3 of the Insurance Code. The policy forms and endorsements were proposed by Department staff in a petition filed on October 16, 1995. The petition requested that current rates, premiums, and rating rules currently promulgated in the Texas Personal Lines Manual (Manual) continue to apply to those coverages that have previously been adopted pursuant to Article 5.35 of the Insurance Code and that are proposed for adoption pursuant to Article 5.35-3 of the Insurance Code for use under the Program. In addition, the petition requested the adoption of newly developed endorsements to attach to certain residential property insurance policies to add or exclude individual or combined coverages or perils insured against for use under the Program. These endorsements are intended for use with the Texas Dwelling Form TDP-1, Texas Homeowners Form HO-A, Texas Farm and Ranch Owners Form FRO-A, and Texas Farm and Ranch Form TFR-1, under the Program. The petition requested that new Manual rating rules be promulgated under a separate rulemaking procedure for these endorsements and that new rates and premiums be developed at the next residential property insurance benchmark rate hearing. Notice of the proposal (Reference Number P-1095-40-I) was published in the October 24, 1995 issue of the *Texas Register* (20 TexReg 8860).

The Commissioner adopted the entire staff proposal with two changes to the proposal as published. One commenter noted that Endorsement Numbers (PPP) HO-700 and (PPP)FRO-800, which relate to exclusion of coverages for vandalism and malicious mischief and theft under the Homeowners Policy Form HO-A and the Farm and Ranch Owners Policy Form FRO-A, are confusing and misleading because of the inclusion of exceptions to when theft coverage does not apply (items a, b, and c under the theft exclusion provision). In concurring, the Commissioner has determined that when theft coverage is provided under the basic policy forms, these exceptions are necessary to clearly indicate the extent of the theft coverage provided under the policy; however, when the peril of theft is being excluded, as in these two endorsements, there is no need to repeat the exceptions in the theft exclusion provision. The Commissioner, therefore, has determined that Endorsement Numbers (PPP)HO-700 and (PPP)FRO-800 should be adopted with the deletion of exceptions a, b, and c under the theft exclusion provision. The second change is in Endorsement Numbers (PPP)TDP-031, (PPP) HO-702, (PPP)FRO-803, and (PPP)TFR-081, relating to the perils of accidental discharge, leakage, or overflow of water or steam; and freezing. The Commissioner has determined that these endorsements should provide for a limitation in tear-out and replacement coverage of "no more than a total of 5. 0% of Coverage A (Dwelling) limit of liability or $3,500, whichever is greater, " in lieu of the proposed coverage limit of "no more than a total of 5.0% of Coverage A (Dwelling) limit of liability or $2,500, whichever is greater." This limitation in coverage applies only to the cost of tearing out and replacing any part of the building and land necessary to access, repair, or replace that part of a plumbing drain system located within or under the slab or foundation of the dwelling in the event of accidental discharge or leakage of water from such plumbing drain system. This change is necessary because of the Commissioner's adoption of the limitation in tear-out and replacement coverage of "no more than a total of 5.0% of Coverage A (Dwelling) limit of liability or $3,500, whichever is greater," in Endorsement Numbers HO-155, TDP-054, TDP-055, FRO-455, TFR-054, and TFR-055, pursuant to Commissioner's Order Number 95-1261 (December 1, 1995). The Commissioner has determined that this increase in the limit of coverage from $2,500 to $3,500 is necessary to provide adequate tear-out and replacement coverage for those policyholders with lower value dwellings.

The Property Protection Program is authorized by Article 5.35-3 of the Insurance Code, which was enacted by the 74th Legislature in House Bill 1367 (Acts 1995, 74th Legislature, Page 3007, Chapter 415, §3, effective August 28, 1995.) Article 5.35-3 provides that the Commissioner by rule may determine and designate areas as underserved areas for residential property insurance. The statute requires the Commissioner, in determining which areas will be designated as underserved, to consider whether residential property insurance is not reasonably available to a substantial number of owners of insurable property in the underserved area and any other relevant factors as determined by the Commissioner. Article 5.35-3 in §1(a) defines residential property insurance for purposes of the Property Protection Program as insurance coverage against loss to real or tangible personal property at a fixed location provided in a homeowners policy, residential fire and allied lines policy, or farm and ranch owners policy. The statute prohibits the Property Protection Program from including windstorm and hail insurance coverage for a risk eligible for that coverage under Article 21.49 of the Insurance Code. All insurers authorized to write property or casualty insurance in this state and writing residential property insurance in this state, including those insurers licensed under Chapters 18 (Lloyd's plans) and 19 (reciprocal exchanges) of the Insurance Code are authorized to write insurance on the forms adopted under Article 5.35-3. Article 5.35-3 in §3 authorizes the Commissioner to adopt policy forms for residential property insurance specifically for use in the designated underserved areas. Section 3 further provides that the policy forms adopted pursuant to Article 5.35-3 shall include a basic policy covering fire and allied lines perils with endorsements providing additional coverages at the option of the insured. The statute provides that the adopted policy forms may be used by all insurers writing insurance in underserved areas and that all insurers shall make available to their agents and all agents shall offer all insureds the full range of coverages promulgated under Article 5.

35-3 subject to the applicable rates and underwriting guidelines of each such insurer.

The Commissioner has determined that in order to efficiently and effectively implement the Property Protection Program pursuant to Article 5 35-3 of the Insurance Code, it is necessary and in the public interest to use currently promulgated forms and endorsements with modifications, in the form of newly developed endorsements, to allow for the addition and exclusion of certain coverages and perils. The Commissioner has determined that this approach is cost-effective for insurers while still providing consumers the option of purchasing necessary basic coverages and additional coverages. The Commissioner has further determined that because this approach is less confusing to insurers, agents, and consumers, implementation of the Property Protection Program is facilitated.

The Commissioner has determined that in order to implement the Property Protection Program in the most efficient and cost-effective manner, certain basic policy forms with new and currently promulgated endorsements should be adopted for use in the Program, including Texas Dwelling Policy Form TDP-1 with an amended declarations page, eight new endorsements, and 12 current endorsements; Texas Homeowners Policy Form HO-A with an amended declarations page, seven new endorsements, and 30 current endorsements; Texas Farm and Ranch Owners Policy Form FRO-A with an amended declarations page, ten new endorsements, and 23 current endorsements; and Texas Farm and Ranch Policy Form TFR-1 with an amended declarations page, ten new endorsements, and 15 current endorsements. The adoption of these policy forms and endorsements does not affect the coverage, provisions, or use of any of the current policy forms and endorsements adopted under Article 5.35 of the Insurance Code for use in the entire state of Texas.

The Commissioner has determined that the following policy and endorsement forms, should be adopted, with any applicable premium charges, rates, and rating rules as indicated, for use under the Property Protection Program to provide fire and allied lines coverage in designated underserved areas:

(1) Dwelling Policy Declarations Page with amendments to reflect additional perils that are available for coverage under the policy.

(2) Texas Dwelling Policy Form TDP-1 without change to the currently promulgated policy form with the current rates and rating rules for Form TDP-1.

(3) New Endorsements. The following new endorsements are designated with the prefix "(PPP)" to identify their use under the Program:

(a) Endorsement Number (PPP)TDP-031, Perils of Accidental Discharge, Leakage, or Overflow of Water or Steam and Freezing-combines the two perils of (i) accidental discharge, leakage, or overflow of water or steam and (ii) freezing to provide coverage that is not currently available under the Form TDP-1. A single additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(b) Endorsement Number (PPP)TDP-032, Perils of Collapse of Building, Breakage of Glass, and Falling Objects-combines the three perils of (i) collapse of building, (ii) breakage of glass, and (iii) falling objects to provide coverage that is not currently available under the Form TDP-1. A single additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(c) Endorsement Number (PPP)TDP-033, Theft-adds the peril of theft which provides coverage that is not currently available under Form TDP-1. An additional premium shall be charged for the attachment of this endorsement, and this rate shall be determined at the next residential property insurance benchmark rate hearing.

(d) Endorsement Number (PPP)TDP-034, Additional Living Expense-adds coverage for loss of use when a peril insured against makes the insured dwelling wholly or partially untenantable. The limit of liability may be selected by the insured. An additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(e) Endorsement Number (PPP)TDP-035, Replacement Cost Coverage A (Dwelling) -amends three provisions (Your Duties After Loss, Loss Settlement, and Appraisal provisions) in the Conditions Section of Form TDP-1 to provide replacement cost coverage on the insured dwelling. No additional premium is necessary for this endorsement; however, the insured value of the dwelling must reflect at least 80% of the replacement cost value of the dwelling .

(f) Endorsement Number (PPP)TDP-036, Replacement of Personal Property-provides replacement cost coverage for Coverage B (Personal Property) and includes the appropriate Loss Settlement provisions. An additional premium is necessary for the attachment of this endorsement; however, since no substantive changes in coverage are adopted, current rates and rating rules applicable to Endorsement Number TDP-002 shall apply to this endorsement.

(g) Endorsement Number (PPP)TDP-037, Agreed Amount on Dwelling-for use only when Endorsement Number (PPP)TDP-035 (Replacement Cost Coverage A (Dwelling)) is attached to the policy. This endorsement is an agreement that the limit of liability shown on the declarations page for Coverage A (Dwelling) is the amount of insurance required for replacement cost coverage for the dwelling. No additional premium is necessary for this endorsement.

(h) Endorsement Number (PPP)TDP-038, Miscellaneous Property Schedule-a redesignated Endorsement Number TDP-012, which is amended to reflect additional perils that are available for coverage under this endorsement. Current rates and rating rules applicable to Policy Form TDP-1 shall apply to this endorsement for coverage for losses caused by the perils of (i) fire and lightning; (ii) sudden and accidental damage from smoke, windstorm, hurricane, hail, explosion, aircraft and vehicles, riot and civil commotion; and (iii) vandalism and malicious mischief; each additional premium for the coverages for losses caused by the perils of (iv) accidental discharge, leakage, or overflow of water or steam and freezing of plumbing, heating and air conditioning systems or household appliance; (v) collapse of building, breakage of glass, and falling objects; and (vi) theft shall be determined at the next residential property insurance benchmark rate hearing.

(4) Current Endorsements. The Commissioner has determined that the following current endorsements, which have previously been adopted pursuant to Article 5.35 of the Insurance Code, should be adopted, without changes, for attachment to Texas Dwelling Policy Form TDP-1 for use under the Program. The Commissioner has determined that current rates and rating rules should apply to any of the endorsements requiring a premium charge or credit. The adopted endorsements are as follows:

(a) Endorsement Number TDP-001, Windstorm, Hurricane and Hail Exclusion Agreement;

(b) Endorsement Number TDP-003, Exclusion of Residential Community Property Clause;

(c) Endorsement Number TDP-007, Additional Named Insured;

(d) Endorsement Number TDP-009, Residence Glass Coverage;

(e) Endorsement Number TDP-010, Loss Payable Clause;

(f) Endorsement Number TDP-011, Vacancy Clause;

(g) Endorsement Number TDP-013, Loss Assessment Property Coverage;

(h) Endorsement Number TDP-014, Texas Dwelling Policy Sworn Statement in Proof of Loss;

(i) Endorsement Number TDP-015, Contract of Sale;

(j) Endorsement Number TDP-017, Fair Rental Value;

(k) Endorsement Number TDP-020, Premium Surcharge-Claims;

(l) Endorsement Number TDP-021, Windstorm, Hurricane and Hail Deductible.

The Commissioner has determined that the following policy and endorsement forms should be adopted, with any applicable premium charges, rates, and rating rules as indicated, for use under the Property Protection Program to provide homeowners coverage in designated underserved areas:

(1) Homeowners Policy Declarations Page with amendments to reflect additional perils that are available for coverage under the policy.

(2) Texas Homeowners Policy Form HO-A without changes to the currently promulgated policy Form HO-A with the current rates and rating rules for Form HO-A.

(3) New Endorsements. The following new endorsements are designated with the prefix of (PPP) to identify their use under the Program:

(a) Endorsement Number (PPP)HO-700, Exclusion of Coverages-excludes coverage for losses caused by the two perils of (i) vandalism and malicious mischief and (ii) theft. Each peril may be separately excluded or both perils may be excluded. A separate reduction in premium shall be determined for each of the two perils to be excluded under the endorsement, and the amount of reduction in premium for each peril shall be determined at the next residential property insurance benchmark rate hearing.

(b) Endorsement Number (PPP)HO-702, Accidental Discharge, Leakage, or Overflow of Water or Steam and Freezing-combines the two perils of (i) accidental discharge, leakage, or overflow of water or steam and (ii) freezing to provide coverage that is not currently available under the Homeowners Policy Form HO-A. A single additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(c) Endorsement Number (PPP)HO-703, Collapse of Building, Breakage of Glass, and Falling Objects-combines the three perils of (i) collapse of building, (ii) breakage of glass and (iii) falling objects to provide coverage that is not currently available under Homeowners Policy Form HO-A. A single additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(d) Endorsement Number (PPP)HO-708, Replacement Cost Coverage A (Dwelling) -amends three provisions (Your Duties After Loss, Loss Settlement and Appraisal provisions) of the Conditions Section of Homeowners Policy Form HO-A to provide replacement cost coverage on the insured dwelling. No additional premium is necessary for this endorsement; however, the insured value of the dwelling must reflect at least 80% of the replacement cost value of the dwelling.

(e) Endorsement Number (PPP)HO-709, Replacement Cost for Personal Property-provides replacement cost coverage for Coverage B (Personal Property) and includes the appropriate Loss Settlement provisions. An additional premium is necessary for the attachment of this endorsement; however, since no substantive changes in coverage are adopted, current rates and rating rules applicable to current Endorsement Number HO-101 shall apply to this endorsement.

(f) Endorsement Number (PPP)HO-710, Agreed Amount on Dwelling-for use only when Endorsement Number (PPP)HO-708 (Replacement Cost Coverage A (Dwelling)) is attached to the policy. This endorsement is an agreement that the limit of liability shown on the declarations page for Coverage A (Dwelling) is the amount of insurance required for replacement cost coverage for the dwelling. No additional premium is necessary for this endorsement.

(g) Endorsement Number (PPP)HO-711, Increased Limit on Jewelry, Watches and Furs-provides for the increase in the limit of liability for jewelry, watches and furs under Coverage B (Personal Property) when the peril of theft is a Peril Insured Against under the Program's Form HO-A. Current rates and rating rules applicable to current Endorsement Number HO-110 shall apply to this endorsement.

(4) Current Endorsements. The Commissioner has determined that the following current endorsements, which have previously been adopted pursuant to Article 5.35 of the Insurance Code, should be adopted, without changes, for attachment to the current Texas Homeowners Policy Form HO-A for use under the Program. The Commissioner has determined that current rates and rating rules should apply to any of the endorsements requiring a premium charge or credit. The adopted endorsements are:

(a) Endorsement Number HO-105, Residence Glass Coverage;

(b) Endorsement Number HO-111, Increased Limit on Business Personal Property;

(c) Endorsement Number HO-112, Increased Limit on Money/Bank Cards;

(d) Endorsement Number HO-113, Increased Limit on Bullion/Valuable Papers;

(e) Endorsement Number HO-120, Television and Radio Antenna;

(f) Endorsement Number HO-121, Windstorm Coverages for Greenhouses;

(g) Endorsement Number HO-122, Windstorm Coverage for Cloth Awnings;

(h) Endorsement Number HO-125, Physicians', Surgeons' and Dentists' Outside Coverage;

(i) Endorsement Number HO-126, Personal Computer Coverage;

(j) Endorsement Number HO-140, Windstorm, Hurricane and Hail Exclusion Agreement;

(k) Endorsement Number HO-142, Exclusion of Residential Community Property Clause;

(l) Endorsement Number HO-145, Homeowners Amendatory Mandatory Endorsement;

(m) Endorsement Number HO-146, Homeowners Amendatory Mandatory Endorsement;

(n) Endorsement Number HO-147, Business Property Special Limits Mandatory Endorsement;

(o) Endorsement Number HO-160, Scheduled Personal Property;

(p) Endorsement Number HO-190, Texas Homeowner Policy Sworn Statement in Proof of Loss;

(q) Endorsement Number HO-201, Personal Injury Coverage;

(r) Endorsement Number HO-205, Office, Private School or Studio-Section II Liability;

(s) Endorsement Number HO-210, Farmers Personal Liability;

(t) Endorsement Number HO-215, Watercraft Liability Coverage;

(u) Endorsement Number HO-220, Business Pursuits Liability Coverage;

(v) Endorsement Number HO-225, Additional Premises Liability Coverage;

(w) Endorsement Number HO-231, Pre-Judgment Interest Mandatory Endorsement;

(x) Endorsement Number HO-301, Additional Insured;

(y) Endorsement Number HO-305, Amended Definition of Residence Premises;

(z) Endorsement Number HO-310, Townhouse Loss Assessment Coverage;

(aa) Endorsement Number HO-315, Neighborhood Homeowners Loss Assessment Coverage;

(bb) Endorsement Number HO-320, General Change Endorsement;

(cc) Endorsement Number HO-330, Premium Surcharge-Claims;

(dd) Endorsement Number HO-382, Condominium Loss Assessment Coverage.

The Commissioner has determined that the following policy and endorsement forms should be adopted, with any applicable premium charges, rates, and rating rules as indicated, for use under the Property Protection Program to provide farm and ranch owners coverage in designated underserved areas:

(1) Farm and Ranch Owners Declarations Page with amendments to reflect additional perils that are available for coverage under the policy.

(2) Texas Farm and Ranch Owners Policy Form FRO-A without changes to the currently promulgated policy form with the current rates and rating rules for Form FRO-A.

(3) New Endorsements. The following new endorsements are designated with the prefix of "(PPP)" to identify their use under the Program:

(a) Endorsement Number (PPP)FRO-800, Exclusion of Coverages-excludes coverage for losses caused by the two perils of (i) vandalism and malicious mischief and (ii) theft. Each peril may be separately excluded or both perils may be excluded. A separate reduction in premium shall be determined for each of the two perils to be excluded under the endorsement, and the amount of reduction in premium for each peril shall be determined at the next residential property insurance benchmark rate hearing.

(b) Endorsement Number (PPP)FRO-803, Accidental Discharge, Leakage, or Overflow of Water or Steam and Freezing-combines the two perils of (i) accidental discharge, leakage, or overflow of water or steam and (ii) freezing to provide coverage that is not currently available under the Form FRO-A. A single additional premium shall be charged

for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(c) Endorsement Number (PPP)FRO-804, Collapse of Building, Breakage of Glass, and Falling Objects-combines the three perils of (i) collapse of building, (ii) breakage of glass, and (iii) falling objects to provide coverage that is not currently available under Form FRO-A. A single additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(d) Endorsement Number (PPP)FRO-808, Replacement Cost Coverage A (Dwelling) -amends three provisions (Your Duties After Loss, Loss Settlement, and Appraisal provisions) in the Conditions Section of Form FRO-A to provide replacement cost coverage on the insured dwelling. No additional premium is necessary for this endorsement; however, the insured value of the building must reflect at least 80% of the replacement cost value of the dwelling.

(e) Endorsement Number (PPP)FRO-809, Replacement Cost for Personal Property-provides replacement cost coverage for Coverage B (Personal Property) and includes the appropriate Loss Settlement provisions. An additional premium is necessary for the attachment of this endorsement; however, since no substantive changes in coverage are adopted, current rates and rating rules applicable to current Endorsement Number FRO-401 shall apply to this endorsement.

(f) Endorsement Number (PPP)FRO-810, Agreed Amount on Dwelling-for use only when Endorsement Number (PPP)FRO-808 (Replacement Cost Coverage A (Dwelling)) is attached to the policy. This endorsement is an agreement that the limit of liability shown on the declarations page for Coverage A (Dwelling) is the amount of insurance required for replacement cost coverage for the dwelling. No additional premium is necessary for this endorsement.

(g) Endorsement Number (PPP)FRO-811, Increased Limit on Jewelry, Watches and Furs-provides for the increase in the limit of liability for jewelry, watches and furs under Coverage B (Personal Property) when the peril of theft is a Peril Insured Against under the Program's Form FRO-A. Current rates and rating rules applicable to current Endorsement Number FRO-410 shall apply to this endorsement.

(h) Endorsement Number (PPP)FRO-859, Scheduled Farm and Ranch Property-a redesignated Endorsement Number FRO-459 which is amended to reflect additional perils that are available for coverage under this endorsement. Current rates and rating rules applicable to Policy Form FRO-A shall apply to this endorsement for coverage for losses caused by the perils of (i) fire and lightning; (ii) sudden and accidental damage from smoke, windstorm, hurricane, hail, explosion, aircraft and vehicles, riot and civil commotion; and (iii) vandalism and malicious mischief; each additional premium for the coverages for losses caused by the perils of (iv) accidental discharge, leakage, or overflow of water or steam and freezing of plumbing, heating and air conditioning systems or household appliance; (v) collapse of building, breakage of glass, and falling objects; and (vi) theft shall be determined at the next residential property insurance benchmark rate hearing.

(i) Endorsement Number (PPP)FRO-881, Additional Residence Coverage-a redesignated Endorsement Number FRO-481 with the declarations revised to reflect additional perils that are available for coverage under this endorsement. Current rates and rating rules applicable to current Form FRO-A shall apply to this endorsement.

(j) Endorsement Number (PPP)FRO-889, Damage By Weight of Ice, Sleet or Snow-a redesignated Endorsement Number 489 which is amended to reflect the reference to a new Endorsement Number (PPP)FRO-859 in the title of the endorsement. Current rates and rating rules shall apply to this endorsement.

(4) Current Endorsements. The Commissioner has determined that the following current endorsements, which have previously been adopted pursuant to Article 5.35 of the Insurance Code, should be adopted, without changes, for use with the Texas Farm and Ranch Owners Policy Form FRO-A under the Program. The Commissioner has determined that current rates and rating rules shall apply to any of the endorsements requiring a premium credit or charge. The adopted endorsements are:

(a) Endorsement Number FRO-405, Residence Glass Coverage;

(b) Endorsement Number FRO-411, Increased Limit on Business Personal Property;

(c) Endorsement Number FRO-412, Increased Limit on Money/Bank Cards;

(d) Endorsement Number FRO-413, Increased Limit on Bullion/Valuable Papers;

(e) Endorsement Number FRO-420, Television and Radio Antenna;

(f) Endorsement Number FRO-421, Windstorm Coverages for Greenhouses;

(g) Endorsement Number FRO-425, Physicians', Surgeons' and Dentists' Outside Coverage;

(h) Endorsement Number FRO-426, Personal Computer Coverage;

(i) Endorsement Number FRO-440, Windstorm, Hurricane and Hail Exclusion Agreement;

(j) Endorsement Number FRO-442, Exclusion of Residential Community Property Clause;

(k) Endorsement Number FRO-460, Scheduled Personal Property;

(l) Endorsement Number FRO-490, Texas Farm and Ranch Owner's Sworn Statement in Proof of Loss;

(m) Endorsement Number FRO-500, Mandatory Farm and Ranch Owners Endorsement;

(n) Endorsement Number FRO-501, Personal Injury Coverage;

(o) Endorsement Number FRO-505, Office, Private School or Studio Section II Liability;

(p) Endorsement Number FRO-515, Watercraft Liability Coverage;

(q) Endorsement Number FRO-520, Business Pursuits Liability Coverage;

(r) Endorsement Number FRO-525, Additional Premises Liability Coverage;

(s) Endorsement Number FRO-530, Farm and Ranch Owners Amendatory Endorsement;

(t) Endorsement Number FRO-600, General Change Endorsement;

(u) Endorsement Number FRO-601, Additional Insured;

(v) Endorsement Number FRO-605, Amended Definition of Residence Premises;

(w) Endorsement Number FRO-630, Premium Surcharge-Claims.

The Commissioner has determined that the following policy and endorsement forms should be adopted, with any applicable premium charges, rates, and rating rules as indicated, for use under the Property Protection Program to provide farm and ranch coverage in designated underserved areas:

(1) Farm and Ranch Policy Declarations Page with amendments to reflect additional perils that are available for coverage under the policy.

(2) Texas Farm and Ranch Policy Form TFR-1 without changes to the currently promulgated policy form with current rates and rating rules for Form TFR-1.

(3) New Endorsements. The following new endorsements are designated with the prefix of "(PPP)" to identify their use under the Program:

(a) Endorsement Number (PPP)TFR-081, Perils of Accidental Discharge, Leakage, or Overflow of Water or Steam and Freezing-combines the two perils of (i) accidental discharge, leakage, or overflow of water or steam and (ii) freezing to provide coverage that is not currently available under Form TFR-1. A single additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(b) Endorsement Number (PPP)TFR-082, Perils of Collapse of Building, Breakage of Glass, and Falling Objects-combines the three perils of (i) collapse of building, (ii) breakage of glass, and (iii) falling objects to provide coverage for Coverage A (Dwelling) and Coverage B (Personal Property) that is not currently available under the Form TFR-1. This endorsement also provides coverage for falling objects for Coverage C (Farm Building) and Coverage D (Scheduled Farm Property). This endorsement specifically excludes coverage to farm buildings (Coverage C) or scheduled farm property (Coverage D) for the perils of collapse of building and breakage of glass. A single additional premium shall be charged for the attachment of this endorsement, and the additional premium shall be determined at the next residential property

insurance benchmark rate hearing.

(c) Endorsement Number (PPP)TFR-083, Theft-adds the peril of theft to provide coverage that is not currently available under Form TFR-1. An additional premium shall be charged for the attachment of this endorsement, and the additional premium shall be determined at the next residential property insurance benchmark rate hearing

(d) Endorsement Number (PPP)TFR-084, Additional Living Expense-adds coverage for loss of use when a peril insured against makes the insured dwelling wholly or partially untenantable. This endorsement does not apply to any farm and ranch buildings. The limit of liability may be selected by the insured. An additional premium shall be charged for the attachment of this endorsement, and this additional premium shall be determined at the next residential property insurance benchmark rate hearing.

(e) Endorsement Number (PPP)TFR-085, Agreed Amount on Dwelling or Farm Building-for use only when Endorsement Number (PPP)TFR-086 (Replacement Cost Coverage A (Dwelling(s)) or Endorsement Number (PPP)TFR-087A (Reimbursement for Replacement of Farm Building(s)) is attached to the policy. This endorsement is an agreement that the limit of liability shown on the declarations page for Coverage A (Dwelling) or Coverage C (Farm Building) is the amount of insurance required for replacement cost coverage for the dwelling or farm building. No additional premium is necessary for this endorsement.

(f) Endorsement Number (PPP)TFR-086, Replacement Cost Coverage A (Dwelling) -amends three provisions (Your Duties After Loss, Loss Settlement, and Appraisal provisions) in the Conditions Section of Form TFR-1 to provide replacement cost coverage on the insured dwelling. No additional premium is necessary for this endorsement; however, the insured value of the dwelling must reflect at least 80% of the replacement cost value of the dwelling.

(g) Endorsement Number (PPP)TFR-087, Replacement of Personal Property-provides replacement cost coverage for Coverage B (Personal Property) and includes the appropriate Loss Settlement provisions An additional premium is necessary for the attachment of this endorsement; however, since no substantive changes in coverage are adopted, current rates and rating rules applicable to current Endorsement Number TFR-052 shall apply to this endorsement.

(h) Endorsement Number (PPP)TFR-087A, Reimbursement For Replacement of Farm Building-provides replacement cost coverage on Coverage C (Farm Building). No additional premium is necessary for this endorsement; however, the insured value of the building must reflect at least 80% of the replacement cost value of the building.

(i) Endorsement Number (PPP)TFR-088A, Miscellaneous Property Schedule-a redesignated Endorsement Number TFR-062 which is amended to reflect additional perils that are available for coverage under this endorsement. Current rates and rating rules applicable to Policy Form TFR-1 shall apply to this endorsement for coverage for losses caused by the perils of (i) fire and lightning; (ii) sudden and accidental damage from smoke, windstorm, hurricane, hail, explosion, aircraft and vehicles, riot and civil commotion; and (iii) vandalism and malicious mischief; each additional premium for coverages for losses caused by the perils of (iv) accidental discharge, leakage, or overflow of water or steam and freezing of plumbing, heating and air conditioning systems or household appliance; (v) collapse of building, breakage of glass, and falling objects; and (vi) theft shall be determined at the next residential property insurance benchmark rate hearing.

(j) Endorsement Number (PPP)TFR-089, Scheduled Farm and Ranch Property-a redesignated Endorsement Number TFR-077 which is amended to reflect additional perils that are available for coverage under this endorsement. Current rates and rating rules applicable to Policy Form TFR-1 shall apply to this endorsement for coverage for losses caused by the perils of (i) fire and lightning; (ii) sudden and accidental damage from smoke, windstorm, hurricane, hail, explosion, aircraft and vehicles, riot and civil commotion; and (iii) vandalism and malicious mischief; each additional premium for coverages for losses caused by the perils of (iv) accidental discharge, leakage, or overflow of water or steam and freezing of plumbing, heating and air conditioning systems or household appliance; (v) collapse of building, breakage of glass, and falling objects; and (vi) theft shall be determined at the next residential property insurance benchmark rate hearing.

(4) Current Endorsements. The Commissioner has determined that the following current endorsements, which have previously been adopted pursuant to Article 5.35 of the Insurance Code, should be adopted, without changes, for attachment to Texas Farm and Ranch Policy Form TFR-1 for use under the Program. The Commissioner has determined that current rates and rating rules should apply to any of the endorsements requiring a premium charge or credit. The adopted endorsements are:

(a) Endorsement Number TFR-051, Windstorm, Hurricane and Hail Exclusion Agreement;

(b) Endorsement Number TFR-053, Exclusion of Residential Community Property Clause;

(c) Endorsement Number TFR-057, Additional Named Insured;

(d) Endorsement Number TFR-059, Residence Glass Coverage;

(e) Endorsement Number TFR-060, Loss Payable Clause;

(f) Endorsement Number TFR-061, Vacancy Clause,

(g) Endorsement Number TFR-064, Texas Farm & Ranch Policy Sworn Statement in Proof of Loss;

(h) Endorsement Number TFR-065, Contract of Sale;

(i) Endorsement Number TFR-067, Fair Rental Value;

(j) Endorsement Number TFR-071, Mobile Agricultural Machinery and Equipment Coverage;

(k) Endorsement Number TFR-073, Premium Surcharge-Claims;

(l) Endorsement Number TFR-074, Windstorm, Hurricane, and Hail Deductible;

(m) Endorsement Number TFR-080, Windstorm Coverages for Greenhouses-Farming;

(n) Endorsement Number TFR-088, Farm and Ranch Amendatory Endorsement.

The Commissioner has determined that the effective date for the use of the adopted policy forms and endorsements shall be the later of the effective date of the applicable residential property insurance benchmark rates determined at the next residential property insurance benchmark rate hearing or the effective date of the rule designating the underserved areas to be served by the Property Protection Program pursuant to Article 5.35-3 of the Insurance Code. The Commissioner has further determined that rating rules for those endorsements adopted solely for use under the Property Protection Program shall be promulgated under a separate rulemaking procedure following the next residential property insurance benchmark rate hearing.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.35-3, 5.96, 5.98, and 5.101.

Consistent with the Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the policy forms and endorsement forms, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted for use in designated underserved areas served by the Property Protection Program pursuant to Article 5.35-3 of the Insurance Code. IT IS FURTHER ORDERED that current rates, premiums, and rating rules currently promulgated in the Texas Personal Lines Manual shall apply to any policy forms that have previously been adopted pursuant to Article 5.35 of the Insurance Code and that are adopted for use in the Property Protection Program. IT IS FURTHER ORDERED that current premiums, rates, and rating rules currently promulgated in the Texas Personal Lines Manual shall apply to any endorsements previously adopted pursuant to Article 5.35 of the Insurance Code and that are adopted for use in the Property Protection Program, which require a premium charge or credit, as specified herein. IT IS FURTHER ORDERED that the applicable rates and premium charges or credits for the new endorsements adopted solely for use under the Property Protection Program, as specified herein, shall be determined at the next residential property insurance benchmark rate hearing held pursuant to Articles 5.101 and 1.33B of the Insurance Code. IT IS FURTHER ORDERED that the effective date for

the use of the policy forms and endorsements shall be the later of the effective date of the applicable residential property insurance benchmark rates determined at the next residential property insurance benchmark rate hearing or the effective date of the rule designating the underserved areas to be served by the Property Protection Program pursuant to Article 5.35-3 of the Insurance Code. IT IS FURTHER ORDERED that rating rules for the new endorsements adopted solely for use under the Property Protection Program, as specified herein, shall be promulgated under a separate rulemaking procedure following the next residential property insurance benchmark rate hearing.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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 December 8, 1995.

TRD-9516114 Alicia M. Fechtel
Chief Clerk
Texas Department of Insurance

Effective date: December 30, 1995

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

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

FIGURE 28 TAC <*>3.3604

The notice for policies that provide benefits for expenses incurred for an accidental injury only must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses that result from accidental injury. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare,* available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3605

The notice for policies that provide benefits for specified limited services must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for expenses relating to the specific services listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- any of the services covered by the policy are also covered by Medicare

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare,* available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3606

The notice for policies that reimburse expenses incurred for specified diseases or other specified impairments (including expense-incurred cancer, specified disease and other types of health insurance policies that limit reimbursement to named medical conditions) must follow the content and format of this section as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the policy conditions, for hospital or medical expenses only when you are treated for one of the specific diseases or health conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- hospital or medical expenses up to the maximum stated in the policy

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3607

The notice for policies that pay fixed dollar amounts for specified diseases or other specified impairments (including cancer, specified disease, and other health insurance policies that pay a scheduled benefit or specific payment based on diagnosis of the conditions named in the policy) must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed amount, regardless of your expenses, if you meet the policy conditions, for one of the specific diseases or health conditions named in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits because Medicare generally pays for most of the expenses for the diagnosis and treatment of the specific conditions or diagnoses named in the policy.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3608

The notice for indemnity policies and other policies that pay a fixed dollar amount per day, excluding long-term care policies, must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays a fixed dollar amount, regardless of your expenses, for each day you meet the policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3609

The notice for policies that provide benefits upon both an expense-incurred and fixed indemnity basis must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance pays limited reimbursement for expenses if you meet the conditions listed in the policy. It also pays a fixed amount, regardless of your expenses, if you meet other policy conditions. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when:

- any expenses or services covered by the policy are also covered by Medicare; or
- it pays the fixed dollar amount stated in the policy and Medicare covers the same event

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.
✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare,* available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3610

The notice for long-term care policies providing both nursing home and non-institutional coverage must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations:

- This is long term care insurance that provides benefits for covered nursing home and home care services.
- In some situations Medicare pays for short periods of skilled nursing home care, limited home health services and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most long term care expenses.

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.

✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3611

The notice for policies providing nursing home benefits only must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations:

- This insurance provides benefits primarily for covered nursing home services.
- In some situations Medicare pays for short periods of skilled nursing home care and hospice care.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most nursing home expenses.

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.
✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3612

The notice for policies providing home care benefits only must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

Federal law requires us to inform you that this insurance duplicates Medicare benefits in some situations:

- This insurance provides benefits primarily for covered home care services.
- In some situations, Medicare will cover some health related services in your home and hospice care which may also be covered by this insurance.
- This insurance does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

Neither Medicare nor Medicare Supplement insurance provides benefits for most services in your home.

Before You Buy This Insurance

✓ Check the coverage in **all** health insurance policies you already have.
✓ For more information about long term care insurance, review the *Shopper's Guide to Long Term Care Insurance*, available from the insurance company.
✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.
✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.

FIGURE 28 TAC <*>3.3613

The notice for other health insurance policies not specifically identified in §§3.3604 through 3.3612 of this subchapter must follow the content and format set out in this section, as follows:

IMPORTANT NOTICE TO PERSONS ON MEDICARE
THIS INSURANCE DUPLICATES SOME MEDICARE BENEFITS

This is not Medicare Supplement Insurance

This insurance provides limited benefits, if you meet the conditions listed in the policy. It does not pay your Medicare deductibles or coinsurance and is not a substitute for Medicare Supplement insurance.

This insurance duplicates Medicare benefits when it pays:

- the benefits stated in the policy and coverage for the same event is provided by Medicare

Medicare generally pays for most or all of these expenses.

Medicare pays extensive benefits for medically necessary services regardless of the reason you need them. These include:

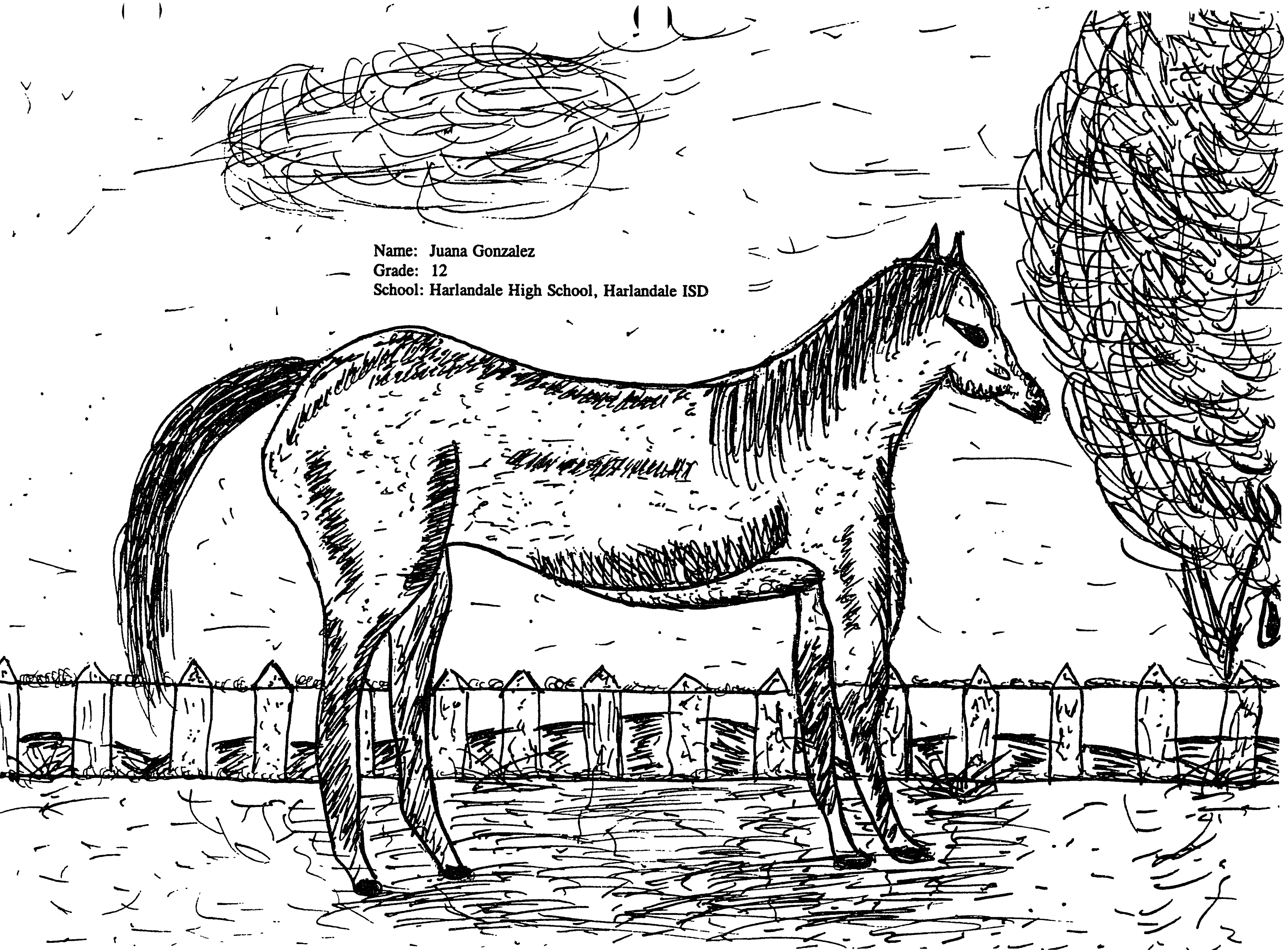
- hospitalization
- physician services
- hospice
- other approved items and services

Before You Buy This Insurance

✓ Check the coverage in all health insurance policies you already have.

✓ For more information about Medicare and Medicare Supplement insurance, review the *Guide to Health Insurance for People with Medicare*, available from the insurance company.

✓ For help in understanding your health insurance, contact your state insurance department or state senior insurance counseling program.


Name: Juana Gonzalez
Grade: 12
School: Harlandale High School, Harlandale ISD

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Monday, December 18, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A prehearing conference will be held at the above date and time in SOAH Docket Number 473-95-1572–Application of Time Warner Communications for facilities-based Certificate of Operating Authority within Travis and Williamson counties (PUC Docket Number 15025).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 7, 1995, 4:16 p.m.

TRD-9516005

Monday, February 26, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be a hearing on the merits at the above date and address for SOAH Docket Number 473-95-1570 (PUC Docket Number 14686)–Petitions of Southwestern Bell Telephone Company, et al for extended area service form the Acton, Cresson, and Godley exchanges to the Fort Worth metropolitan exchange; from the Texas City, Galveston, and Port Bolivar exchanges to the Houston metropolitan calling area; from the Houston metro calling area to the Kingwood and Porter exchanges; and from certain independent local exchange companies to the Dallas and Fort Worth metropolitan areas.

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 7, 1995, 4:20 p.m.

TRD-9516006

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Community Nutritional Task Force

Wednesday, December 20, 1995, 10:00 a.m.

Stephen F. Austin Building, Room 835

Austin

AGENDA:

I. Call to order

II. Discussing and formulating a work plan with a time frame

III. Agency reports

IV. Discuss general developments and objectives for projects

V. Public comments

VI. Adjourn

Contact: Leda Roselle, 1700 North Congress Avenue, Room 837, Austin, Texas 78701, (512) 463-6279.

Filed: December 11, 1995, 11:19 a.m.

TRD-9516163

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Comptroller of Public Accounts

Monday, December 18, 1995, 10:00 a.m.

Capitol Extension, Room E1.102

Austin

Board Meeting for the Prepaid Higher Education Tuition Fund

AGENDA:

I. Call to order

II. Roll call

III. Approval of minutes of November 10, 1995 board meeting

IV. Designation of board secretary

V. Discussion and vote to adopt program rules (Title 34, Part I, Chapter 7)

VI. Discussion and vote to approve contract prices

VII. Discussion and vote to approve application form and master contract form

VIII. Discussion and vote to approve marketing plan for program

IX. Discussion and vote to approve liability insurance coverage for board members

X. Discussion of investment of program assets, application process

XI. Discussion and vote to ratify issuance of RFP for investment consultant and investment manager

XII. Discussion of board's authority to award scholarships and create a direct-support organization to administer certain scholarship contributions

XIII. Discussion of plan for access to board meetings and program participation for persons who do not speak English, or are physically, mentally, or developmentally disabled

XIV. Public comment

XV. Set next board meeting

XVI. Adjourn

Contact: Wardaleen Belvin, 111 East 17th Street, Room 131, Austin, Texas 78774, (512) 463-4384.

Filed: December 8, 1995, 4:36 p.m.

TRD-9516123

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Texas Department of Criminal Justice

Tuesday, December 19, 1995, 10:00 a.m.

Coryell County Complex, Highway 84, 1/4 mile east of Highway 36 Bypass

Gatesville

Ad Hoc Committee on the Inmate Telephone System

AGENDA:

1. Presentations by consultant firms in response to October 31, 1995, request for proposal on the TDCJ inmate telephone system.

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: December 11, 1995, 1:08 p.m.

TRD-9516169

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State Employee Charitable Campaign

Monday, December 18, 1995, 9:00 a.m.

2201 19th Street

Lubbock

Local Employee Committee-Lubbock

AGENDA:

1) Review 1995 campaign results

2) Evaluate 1995 campaign

3) Review 1996 local campaign area recommendations

4) Review LEC membership

5) Discuss 1996 campaign

6) Recommendations for State Policy Committee meeting

Contact: Dianne Stewart, 2201 19th Street, Lubbock, Texas 79401, (806) 747-2711, Fax (806) 747-2716.

Filed: December 11, 1995, 11:01 a.m.

TRD-9516152

♦ ♦ ♦

Texas Ethics Commission

Friday, December 15, 1995, 9:30 a.m.

1101 Camino La Costa, Room 235

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the November 3, 1995, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of a report; discussion and possible action in response to the following Advisory Opinion Requests Numbers 324, 325, 327-331; and adjourn.

Contact: Tom Harrison, 1101 Camino La Costa, Austin, Texas 78752, (512) 463-5777.

Filed: December 7, 1995, 3:46 p.m.

TRD-9516002

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General Land Office

Tuesday, December 19, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

AGENDA:

Approval of previous board meeting minutes; Wildcat Field, Starr County; Oak Hill South, Harrison County; Wildcat Field, Matagorda County; Flour Bluff Field, Laguna Madre, Nueces County; compensatory royalty application, Acevedo (Lobo 6) field, Webb County; consideration of ratification of oil and gas leases covering non-executory mineral interests, Matagorda Island, Matagorda County; applications to lease highway rights of way for oil and gas, Washington County; Wharton County; and Zapata County; Arroyo Colorado, Cameron County; Tres Palacios Bay, Matagorda County; West Bay, Galveston County; easement applications, Clear Lake, Harris County; executive session-pending or contemplated litigation; executive session-consideration of revisions to land acquisition and boundary agreement, North Padre Island, Kleberg County; open session-approval of revisions of land acquisition and boundary agreement, North Padre Island, Kleberg County; executive session-consideration of potential land acquisition, Cameron County; open session-consideration of potential land acquisition, Cameron County; executive session-consideration of policy on excess acreage; open session-consideration of policy on excess acreage.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: December 7, 1995, 5:00 p.m.

TRD-9516016

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Texas Department of Health

Monday, December 18, 1995, 10:00 a.m.

Room N-410, The Exchange Building, 8407 Wall Street

Austin

Home and Community Support Services Advisory Committee

AGENDA:

The council will discuss and possibly act on: approval of the minutes from the last meeting; memorandum of understanding between the Texas Department of Health, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department of Protective and Regulatory Services, Texas Department of Aging, Texas Rehabilitation Commission, and Texas Commission for the Blind as required by the Health and Safety Code, Chapter 142; recommendations to the Texas Department of Health/Board of Nurse Examiners Memorandum of Understanding Advisory Committee; and public comment.

Contact: Becky Beechinor, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6670. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Filed: December 8, 1995, 2:53 p.m.

TRD-9516077

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Texas State Affordable Housing Corporation

Friday, December 15, 1995, 11:00 a.m.

1400 North Congress Avenue, Room E1.012, Capitol Extension Building

Austin

Board of Directors Meeting

AGENDA:

The Board of Texas State Affordable Housing Corporation will meet to consider and possibly act on: Minutes of November 13, 1995; appointment of treasurer; Down Payment Assistance Program-Increase income limits; utilize down payment assistance without utilizing a bond program for first lien mortgage for Casa Rio addition, City of Dallas; presidents report; and adjourn.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: December 7, 1995, 4:34 p.m.

TRD-9516008

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Texas Department of Housing and Community Affairs

Friday, December 15, 1995, 11:00 a.m.

1400 South Congress Avenue, Room E1.012, Capitol Extension

Austin

Board Meeting

AGENDA:

The Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of November 13, 19 95; inducement resolutions for multi-family bonds for Harbors, Plumtree, Woodcreek, Dakota, Ridgemar, Sterling Point; resolution on amendment to investment policy, signature authority; appointment of treasurer of board; recommendations for Capacity Building Fund Project in amount of $150,000; joint project with Housing Trust Fund and CDBG; resolution on issuance of multi-family refunding bonds for Oxford Properties; resolution on 1995 single family bond transaction; proposed HOME Program rules to publish in the *Texas Register* to receive public comment; feasibility study for establishment of Statewide Architectural Barriers Program; manufactured housing contested cases of: MHD1995001417T, Raul Ramirez, respondent; MHD1995001211D, Sandra D. Vandergrift doing business as Big D's Mobile Home Service; MHD 199400833D, Dale Evans; MHD1995001482D, Juan Cardenas; MHD1994001264C, Michael A. Jackson doing business as All Star Mobile Homes; executive session-anticipated litigation (general counsel to give report under §551.071 and §551.103, Texas Government Code litigation exception); proposed settlement agreement for Mutual Benefit Bonds; personnel matters regarding duties and responsibilities under §551.074 of the Texas Government Code; action in open session on executive session items; executive director's report on consolidated plan. Adjourn.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: December 7, 1995, 4:34 p.m.

TRD-9516007

Friday, December 15, 1995, 9:30 a.m.

Capitol Extension, Room E1.012, 1400 North Congress Avenue

Austin

Finance Committee

AGENDA:

The Finance Committee will meet to consider and possibly act on the following: Minutes of September 29, 1995, meeting; inducement resolutions for multi-family bonds for Harbors, Plumtree, Woodcreek, Dakota, Ridgemar, Sterling Point; resolution relating to issuance of multi-family refunding bonds for Oxford Properties; resolution relating to 1995 single family mortgage revenue bond transaction.

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Larry Paul Manley, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: December 7, 1995, 4:35 p.m.

TRD-9516009

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Texas State Board of Medical Examiners

Friday, December 15, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Hearings Division

Emergency Agenda

AGENDA:

Probation appearance, 9:00 a.m.-Rodney N. Dotson, M.D., Carrizo Springs, Texas.

Probation appearance, 9:00 a.m.-Michael G. Hummer, M.D., Austin, Tex[illegible]

Probation appearance, 9:00 [illegible] A. Luker, M.D., Austin, Texas.

Probation appearance, 9:00 [illegible]glas H. Rankin, M.D., Austin, Te[illegible]

Probation appearance, 10:30 [illegible]ael K. Boone, El Paso, Texas.

Probation appearance, 11:00 a.[illegible]olas M. Jackson, M.D., Kerrville, [illegible]

Probation appearance, 11:00 a.m.-[illegible]ephen C. Thomas, M.D., Lubbock, Tex[illegible]

Modification request, 10:30 a.m. [illegible]homas C. Branch, M.D., Plainview, Te[illegible]

Modification request, 11:00 a.[illegible]ennis M. Shaughnessy, M.D., Midlan[illegible]xas.

Modification request, 12:30 p.m. [illegible]lville R. Monte, M.D., Lubbock, Texa[illegible]

Modification request, 1:00 p.m.-R[illegible]ert H. Stowe, M.D., El Paso, Texas.

Termination request, 10:00 a.m.-Th[illegible]mas J. Brown, M.D., Harlingen, Texas.

Executive session under authority of the Open Meetings Act, §551.071 of [illegible] Government Code, and Article 4495b, [illegible]07(b) and §2.09(o), Texas Civil Statutes, regarding pending or contemplated litigation.

Reason for emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box [illegible]49134, Austin, Texas 78714-9134, (512) 305-7016, Fax: (512) 305-7008.

Filed: December 11, 1995, 1:08 p.m.

TRD-9516168

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Texas Natural Resource Conservation Commission

Friday, December 15, 1995, 1:30 p.m.

Building E, Room 201S, 12118 North Interstate Highway 35

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

1. Consideration of commissioners' priorities on rule and policy development.

2. Consideration of the Title V Operating Permits Program.

3. Consideration of staff briefing on the regulatory status of mixtures of water and recyclable petroleum products (tank wastewater).

4. Consideration of staff briefing on the Houston/Galveston area AERCO resolution regarding agency guidance on supplemental environmental projects.

5. Consideration of staff briefing on Phase II of the Procedural Rules.

6. Consideration of staff briefing on the integration of pollution prevention efforts with other functions of the agency.

7. Planning for the next work session.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Filed: December 7, 1995, 11:49 a.m.

TRD-9515973

Wednesday, December 20, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Class 3 modification; hearing request; motions for reconsideration; municipal solid waste enforcement; public water supply enforcement; industrial hazardous waste enforcement; petroleum storage tank enforcement; rules; administrative law judge's proposal for decision; executive session; the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration for 9:30 agenda starts 8:45 until 9:25.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: December 8, 1995, 4:22 p.m.

TRD-9516101

Wednesday, December 20, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

Commission will meet in closed session to discuss the duties and roles of the internal auditor and the recent peer review of the Office of Internal Audit under §551.074 of the Open Meetings Act. The commission may meet in open session to consider the duties and role of the commission's internal auditor.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317

Filed: December 11, 1995, 11:02 a.m.

TRD-9516156

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Texas Board of Occupational Therapy Examiners

Monday, December 18, 1995, 9:00 a.m.

300 Waymore Drive Conference, 300 Wing

El Paso

Application Review Committee

AGENDA:

I. Call to order

II. Review and possible action on following applications: R. Beck, S. Ewing, B. Mathis, R. Rasmovicz

III. Adjournment

Contact: Joy K. Vaughn, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942, (512) 305-6900.

Filed: December 7, 1995, 3:12 p.m.

TRD-9516019

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Texas Public Finance Authority

Wednesday, December 20, 1995, 10:30 a.m.

300 West 15th Street, Committee Room Five, Fifth Floor

Austin

Board Meeting

AGENDA:

1. Call to order.

2. Approval of minutes of the October 18, 1995 board meeting.

3. Consider possible refinancing of the Commercial Paper Program.

4. Consideration of request for financing from the Texas Parks and Wildlife Department for $10,000,000 General Obligation Bonds for the improvement, development and equipping of park sites and select method of sale.

5. Consideration of designation of paying agent and registrar for Series 1987 General Obligation Bonds.

6. Other business.

7. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Patricia Logan at (512) 463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, (512) 463-5544.

Filed: December 12, 1995, 9:57 a.m.

TRD-9516205

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Public Utility Commission of Texas

Friday, December 15, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commissioners will have a work session at the above date and time for discussion and possible action on agency administrative procedures; project assignments; budget and fiscal matters; Project Number 14045 (rulemaking on transmission access and pricing and stranded investment). There may also be discussion of electric industry competition issues, including Project Number 15000 (electric industry restructuring); Project Number 15001 (stranded costs or excess costs over market) and Project Number 15002 (scope of competition in the electric industry in Texas).

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: December 7, 1995, 11:49 a.m.

TRD-9515974

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Railroad Commission of Texas

Tuesday, December 19, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider whether to authorize a study of natural resources statutory and regulatory framework and how to maximize future economic benefit for the State of Texas.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: December 8, 1995, 2:21 p.m.

TRD-9516075

Tuesday, December 19, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

Contact: Mary Ross McDonald, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: December 8, 1995, 11:12 a.m.

TRD-9516035

Wednesday, December 20, 1995, 2:00 p.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

The commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's Office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: December 8, 1995, 11:12 a.m.

TRD-9516034

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Stephen F. Austin University

Tuesday, December 12, 1995, 2:00 p.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents Finance Committee Telephone Meeting

AGENDA:

I. Discussion of method of bond sale

II. Discussion of debt service schedule

III. Discussion of method of financing

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: December 8, 1995, 11:18 a.m.

TRD-9516036

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Teacher Retirement District of Texas

Friday, December 15, 1995, 9:00 a.m.

1000 Red River, Fifth Floor Board Room

Austin

Board of Trustees

AGENDA:

Roll call of board members; public comments; approval of minutes of November 17, 1995, meeting; report of Nominations Committee and consideration of appointments to the Retirees Advisory Committee; appointment of officers of the Retirees Advisory Committee; report of Texas Public School Employees Group Insurance Program; report of Retirees Advisory Committee; report of Audit Committee; report of Investment Committee; review of TRS actuarial valuation as of August 31, 1995; review of trustee qualifications for office; consideration of action to fund biennial investment performance evaluation of the Retirement System's investment practices and performance required by Texas Government Code, §825.512; report of Benefits Division; report of executive director; comments by board members; and report of general counsel on litigation.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance, contact Mary Godzik (512) 397-6400 or T.D. D. (512) 397-6444 at least two days prior to the meeting.

Filed: December 7, 1995, 2:49 p.m.

TRD-9515990

Friday, December 15, 1995, 8:00 a.m.

1000 Red River, Room 514E

Austin

Audit Committee

AGENDA:

Approval of official minutes of the September 14, 1995, Audit Committee meeting; review of TRST Subsidiary Corporation audits; report on other external audits; review internal audit annual report fiscal year 1994/1995; other internal audit activity/special projects; and Audit Committee orientation.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400. For ADA assistance, contact Mary Godzik (512) 397-6400 or T.D. D. (512) 397-6444 or 1-800-841-4497 at least two days prior to the meeting.

Filed: December 7, 1995, 2:49 p.m.

TRD-9515991

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The University of Texas at Austin

Monday, December 11, 1995, 11:30 a.m.

21st and San Jacinto Streets, Ex-Students' Association

Austin

Council for Intercollegiate Athletics for Women

AGENDA:

I. Call to order

II. Approval of minutes of the previous meeting

III. Old business

IV. New business

V. Announcements/information reports

VI. Adjournment

Contact: Jody Conradt, Bellmont Hall 718, Austin, Texas 78712-1296, (512) 471-7693.

Filed: December 7, 1995, 3:46 p.m.

TRD-9516003

Friday, December 15, 1995, 1:00 p.m.

Conference Room, Bellmont Hall 232, 21st and San Jacinto

Austin

Intercollegiate Athletics for Men

AGENDA:

Convene into open session, recess into executive session, reconvene into open session, approve minutes of October 20, 1995, items from executive session, development, schedules/schedule changes, construction, new business, old business, and adjourn.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713, (512) 471-5757.

Filed: December 11, 1995, 4:52 p.m.

TRD-9516181

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University of Houston

Monday, December 18, 1995, 2:00 p.m.

Optometry Building, Room 22198, 4800 Calhoun Boulevard

Houston

Animal Care Committee

AGENDA:

To discuss and/or act upon the following:

Approval of November minutes

Renewal protocols

Semi-annual care and use program review and facilities inspection

Contact: Rosemary Grimmet, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: December 12, 1995, 9:03 a.m.

TRD-9516193

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Texas Workforce Commission

Tuesday, December 19, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; staff reports; internal procedures of commission appeals; consideration and possible proposal for adoption of rule providing for income tax withholding from unemployment insurance benefits; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 51; discussion, consideration, and possible action with regard to transfer of programs pursuant to House Bill 1863; consideration and possible proposal for adoption of rules regarding administration of the Skills Development Fund; consideration and possible proposal for adoption of rules for local workforce development boards in the preparation of local plans; consideration and possible proposal for adoption of rules for waivers for independent staffing and separate service provider requirements for local workforce development boards; consideration and possible proposal for adoption of rules for waiver for a person that provides one-stop services to also provide development services such as basic education and skills training; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: December 11, 1995, 4:10 p.m.

TRD-9516179

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Regional Meetings

Meetings Filed December 7, 1995

The Ark-Tex Council of Governments (ATCOG) met at 507 North Highway 59, Atlanta, December 14, 1995, at 5:30 p.m. Information may be obtained from Becky Borgeson, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9515993.

The Bi-County WSC met at Arch Davis Road (FM 2254), Bi-County Office, Pittsburg, December 12, 1995, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9515999.

The Brazos Valley Development Council (Revised Agenda.) Board of Directors met at 1706 East 29th, Suite F, Bryan, December 13, 1995, at 1:30 p. m. Information may be obtained from Mary Stevens, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9515967.

The Colorado River Municipal Water District Board of Directors met at 400 East 24th Street, Big Spring, December 13, 1995, at 10:00 a.m. Information may be obtained from John W. Grant, Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9515986.

The East Texas Council of Governments JTPA Board of Directors met at 1306 Houston Street, Kilgore, December 13, 1995, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9516004.

The Education Service Center, Region II Board of Directors met at 209 North Water (Board Room), Corpus Christi, December 14, 1995, at 6:30 p. m. Information may be obtained from Dr. Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, (512) 883-9288, Ext. 2200. TRD-9515987.

The El Oso Water Supply Corporation Board of Directors met at FM 99, Karnes City, December 12, 1995, at 7:00 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9515982.

The Hansford County Appraisal District Board of Directors met at 709 West Seventh, Spearman, December 14, 1995, at 9:00 a.m. Information may be obtained from Alice Peddy, 709 West Seventh, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9515994.

The Henderson County Appraisal District Appraisal Review Board met at 1751 Enterprise Street, Athens, December 14, 1995, at 9:00 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise Street, Athens, Texas 75751, (903) 675-9296. TRD-9515984.

The High Plains Underground Water Conservation District Number 1 Board met at 2930 Avenue Q, Board Room, Lubbock, December 12, 1995, at 10:00 a. m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9515989.

The Jones County Appraisal District Board of Directors will meet at 1137 East Court Plaza, Anson, December 21, 1995, at 8:30 a.m. Information may be obtained from Susan Holloway, P.O. Box 348, Anson, Texas 79501, (915) 823-2422. TRD-9515969.

The Leon County Central Appraisal District Leon County Appraisal Review Board met at 103 North Commerce, Corner Highway 7 and 75, Leon County Central Appraisal District, Gresham Building, Centerville, December 14, 1995, at 9:00 a.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD-9515983.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, December 11, 1995, at 6:00 p.m. Information may be obtained from Levi G. Cash and/or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9515992.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization met at the TxDOT District Office, 600 West Expressway US 83, Pharr, December 14, 1995, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas, (210) 682-3481. TRD-9515966.

The Middle Rio Grande Development Council Board of Directors met at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, December 13, 1995, at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9515971.

The North Texas Municipal Water District Board of Directors will meet at the Administrative Office, 505 East Brown, Wylie, December 19, 1995, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9515997.

The Northeast Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, December 18, 1995, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9515970.

The Rockwall County Central Appraisal District Board of Directors met at 106 North San Jacinto, Rockwall, December 8, 1995, at 11:45 a. m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9515972.

The Rusk County Appraisal District Board of Directors met at 107 North Van Buren, Henderson, December 14, 1995, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-9697. TRD-9515988.

The South Texas Development Council Board of Directors met in the Commissioners Courtroom, Courthouse Annex, Zapata, December 14, 1995, at 11:00 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9516018.

The STED Corporation Board of Trustees met in the Commissioners Courtroom, Courthouse Annex, Zapata, December 14, 1995, at 10:30 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9516017.

The Wise County Appraisal District Appraisal Review Board met at 206 South State Street, Decatur, December 14, 1995, at 8:00 a.m. Information may be obtained from Deidra Deaton, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9515968.

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Meetings Filed December 8, 1995

The Alamo Area Council of Governments Management Committee met at 118 Broadway, Suite 400, San Antonio, December 13, 1995, at 10:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9516033.

The Archer County Appraisal District Board of Directors met at 101 South Center, Archer City, December 13, 1995, at 5:00 p.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9516052.

The Atascosa County Appraisal District Board of Directors met at Fourth and Avenue J, Poteet, December 14, 1995, at 1:30 p.m. Information may be obtained from Bruce H. Martin, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9516061.

The Blanco County Appraisal District 1995 Board of Directors met at 200 North Avenue G, Johnson City, December 12, 1995, at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9516037.

The Central Texas Council of Governments Executive Committee met at the Bell County Expo Center, Belton, December 14, 1995, at 11:00 a.m. Information may be obtained from A. C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801. TRD-9516126.

The Coleman County Water Supply Corporation Board of Directors met at 214 Santa Anna Avenue, Coleman, December 13, 1995, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9516053.

The Dallas Area Rapid Transit Audit Committee met in Conference Room "B", 1401 Pacific, Dallas, December 12, 1995, at 11:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 729-3256. TRD-9516025.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room "C", 1401 Pacific, Dallas, December 12, 1995, at 1:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 729-3256. TRD-9516026.

The Dallas Area Rapid Transit Board met in the Board Room-First Floor, 1401 Pacific, Dallas, December 12, 1995, at 6:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 729-3256. TRD-9516027.

The East Texas Council of Governments Executive Committee met at 3800 Stone Road, Kilgore, December 14, 1995, at 1:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9516051.

The Education Service Center, Region X Board of Directors will meet at 400 East Spring Valley Road, Richardson, December 15, 1995, at 9:30 a. m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, (214) 231-6301. TRD-9516063.

The Erath County Appraisal District (Revised Agenda.) Board of Directors met at 1390 Harbin Drive, Stephenville, December 14, 1995, at 7:00 a. m. Information may be obtained from Vicky Greenough, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9516023.

The Harris County Appraisal District will meet at 2800 North Loop West, Eighth Floor, Houston, December 15, 1995, at 9:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9516030.

The Hays County Appraisal District Board of Directors met at 21001 North IH-35, Kyle, December 14, 1995, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9516100.

The Heart of Texas Council of Governments Executive Committee met at 300 Franklin Avenue, Waco, December 14, 1995, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9516042.

The Hockley County Appraisal District Board of Directors met at 1103 Houston, Levelland, December 11, 1995, at 6:00 p.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9516083.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, December 14, 1995, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9516028.

The Lamb County Appraisal District Board of Directors will meet at 331 LFD Drive, Littlefield, January 2, 1996, at 6:00 p.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474. TRD-9516022.

The Lower Colorado River Authority Board of Directors met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516064.

The Lower Colorado River Authority Planning and Public Policy Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516065.

The Lower Colorado River Authority Energy Operations Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516066.

The Lower Colorado River Authority Natural Resources Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516067.

The Lower Colorado River Authority Conservation and Environmental Protection Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516068.

The Lower Colorado River Authority Finance and Administration Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516069.

The Lower Colorado River Authority Community Resources and Development Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516070.

The Lower Colorado River Authority Audit Committee met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 13, 1995, and reconvening, if necessary, Thursday, December 14, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3283. TRD-9516071.

The Lower Colorado River Authority Fuels Corporation met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 14, 1995, at Noon. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9516072.

The Lower Colorado River Authority Energy Services Corporation met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 14, 1995, at Noon. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9516073.

The Lower Colorado River Authority Telecommunications Corporation met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 14, 1995, at Noon. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9516074.

The Manville Water Supply Corporation Board met at Spur 277, Board Room, Coupland, December 14, 1995, at 7:00 p.m. Information may be obtained from Tony Graf, Spur 277, Coupland, Texas 78615, (512) 272-4044. TRD-9516079.

The Middle Rio Grande Development Council (Revised Agenda.) Board of Directors met at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, December 13, 1995, at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9516125.

The Montague County Tax Appraisal District Board of Directors met at 312 Rusk Street, Montague, December 13, 1995, at 5:00 p.m. Information may be obtained from Wanda Russell, P.O. Box 121, Montague, Texas 76251, (817) 894-2081. TRD-9516062.

The Texas Municipal Power Agency (TMPA) Board of Directors (Workshop) met at the Holiday Inn, Parlor Room, 1215 East IH-30, Greenville, December 13, 1995, at 6:30 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9516080.

The Texas Municipal Power Agency (TMPA) Board of Directors (Workshop) met at the Fletcher Warren Civic Center, Rooms "A" and "B", 5501 Highway 69-South, Greenville, December 14, 1995, at 9:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9516081.

The Panhandle Quality Work Force Panhandle Quality Work Force Planning Committee met at 415 West Eighth Avenue, Amarillo, December 13, 1995, at 3:30 p.m. Information may be obtained from Deborah Pickering, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381. TRD-9516076.

The Sabine Valley Center Board of Trustees met at the Administration Building, 107 Woodbine Place, Longview, December 14, 1995, at 7: 30 p.m. Information may be obtained from Inman White, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9516041.

The South Texas Development Council Board of Directors met in the Commissioners Courtroom, Courthouse Annex, Zapata, December 14, 1995, at 11:00 a.m. Information may be obtained from Julie Saldana, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9516021.

The STED Corporation Board of Trustees met in the Commissioners Courtroom, Courthouse Annex, Zapata, December 14, 1995, at 10:30 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 78044-2187, (210) 722-3995. TRD-9516020.

The Surplus Lines Stamping Office of Texas Board of Directors met at Hughes and Luce, 111 Congress Avenue, Suite 900, Austin, December 14, 1995, at 10:15 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, (512) 346-3274. TRD-9516039.

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Meetings Filed December 11, 1995

The Austin-Travis County MHMR Center Executive Committee met at 1430 Collier Street-ED Conference Room, Austin, December 14, 1995, at 4:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9516178.

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street-Board Room, Austin, December 14, 1995, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9516151.

The Barton Springs/Edward Aquifer Conservation District Board of Directors-Regular Meeting met at 1124A Regal Row, Austin, December 14, 1995, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441 or Fax: (512) 282-7016. TRD-9516128.

The Blanco County Appraisal District (Emergency Revised Agenda.) 1995 Board of Directors met at 200 North Avenue G, Johnson City, December 12, 1995, at Noon. (Reason for emergency: to amend the original submission form to include item #7.) Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9516167.

The Central Plains Center for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, December 14, 1995, at 6:00 p.m. Information may be obtained from Janet Dollins, 208 South Columbia, Plainview, Texas, (806) 293-2636. TRD-9516170.

The Central Texas MHMR Center Board of Trustees will meet at 408 Mulberry Drive, Brownwood, December 18, 1995, at 5:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, Ext. 102. TRD-9516173.

The Concho Valley Quality Work Force Planning Full Committee of Concho Valley Quality Work Force Planning met at the Spaghetti Western Italian Grill, 26 East Concho Avenue, San Angelo, December 13, 1995, at 11:30 a.m. Information may be obtained from Catherine Cordova, 3197 Executive Drive, San Angelo, Texas 76904, (915) 944-9856 or Fax: (915) 947-9529. TRD-9516157.

The Dallas Area Rapid Transit Strategic Plan Task Force met at the Canyon Creek Country Club, 625 Lookout Drive, Richardson, December 14, 1995, at 5:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas

75266-0163, (214) 749-3256. TRD-9516166.

The Dallas Area Rapid Transit (Revised Agenda.) Strategic Plan Task Force met at the Canyon Creek Country Club, 625 Lookout Drive, Board Room, Richardson, December 14, 1995, at 5:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9516175.

The Dallas Area Rapid Transit Commuter Rail Subcommittee, The "T" and DART will meet at 2317 Pine Street, Second Floor Board, Fort Worth, December 15, 1995, at Noon. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9516174.

The Dewitt County Appraisal District Board of Directors will meet at 103 Bailey Street, Cuero, December 19, 1995, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9516158.

The Kendall Appraisal District Board of Directors will meet at 121 South Main Street, Boerne, December 14, 1995, at 5:30 p.m. Information may be obtained from Mick Mikulenka or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012 or Fax: (210) 249-3975. TRD-9516161.

The Lower Colorado River Authority (Revised Agenda.) LCRA Telecommunications Corporation met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 14, 1995, at Noon. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9516153.

The Lower Colorado River Authority (Revised Agenda.) LCRA Energy Services Corporation met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 14, 1995, at Noon. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9516154.

The Lower Colorado River Authority (Revised Agenda.) LCRA Fuels Corporation met at 1405 Willow Street, Riverside Conference Center, Texas Building, Bastrop, December 14, 1995, at Noon. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9516155.

The Lower Rio Grande Valley Tech Prep Associate Degree Consortium Board of Directors met in the Board Room, Conference Center, Texas State Technical College, 2424 Boxwood, Harlingen, December 13, 1995, at Noon. Information may be obtained from Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550-3697, (210) 425-0729. TRD-9516129.

The Mason County Appraisal District Board of Directors will meet at 210 Westmoreland, Mason, December 15, 1995, at Noon. Information may be obtained from Deborah Geistweidt, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989. TRD-9516130.

The Mills County Appraisal District Board of Directors will meet at the Mills County Courthouse, Jury Room-Fisher Street, Goldthwaite, December 19, 1995, at 6:30 p.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9516172.

The Northeast Texas Municipal Water District (Revised Agenda.) Board of Directors will meet at Highway 250, South, Hughes Springs, December 18, 1995, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7538. TRD-9516159.

The Nueces River Authority Audit Committee will meet at the Corpus Christi Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, December 15, 1995, at 9:30 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9516149.

The Nueces River Authority Board of Directors will meet at the Corpus Christi Marriott Bayfront Hotel, 900 North Shoreline Boulevard, Corpus Christi, December 15, 1995, at 10:00 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9516150.

The Nueces-Jim Wells-Kleberg-Kenedy Soil and Water Conservation District Board of Directors will meet at the NRCS Office, 548 South Highway 77, Suite B, Robstown, December 19, 1995, at 2:00 p.m. Information may be obtained from Denise Lawhon, 548 South Highway 77, Suite B, Robstown, Texas 78380. TRD-9516160.

The San Antonio River Authority Board of Directors will meet at 100 East Guenther Street, Boardroom, San Antonio, December 20, 1995, at 2:00 p. m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9516162.

The Trinity River Authority of Texas Central Regional Wastewater System Right-of-Way Committee will meet at 5300 South Collins Street, Arlington, December 18, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9516177.

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Meetings Filed December 12, 1995

The Education Service Center, Region III Board of Directors will meet at 1905 Leary Lane, Victoria, December 18, 1995, at 4:00 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9516192.

The Limestone County Appraisal District Board of Directors will meet at 200 State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, December 19, 1995, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9516194.

The Sharon Water Supply Corporation Board of Directors will meet at the Office of Sharon Water Supply Corporation, Route 5, Box 50361, Winnsboro, December 15, 1995, at 6:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnsboro, Texas 75494, (903) 588-3525. TRD-9516180.

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Meetings Filed December 12, 1995

The Education Service Center, Region XVIII Board of Directors will meet at 2811 LaForce Boulevard, Midland, December 19, 1995, at 1:00 p.m. Information may be obtained from Dr. Vernon Stokes, P.O. Box 60580, Midland, Texas 79711, (915) 563-2380. TRD-9516203.

The Lubbock Regional MHMR Center Board of Trustees will meet at 1602 Tenth Street, Board Room, Lubbock, December 18, 1995, at Noon. Information may be obtained from Gene Menefee, P.O. Box 2828, Lubbock, Texas 79408, (806) 766-0202. TRD-9516204.

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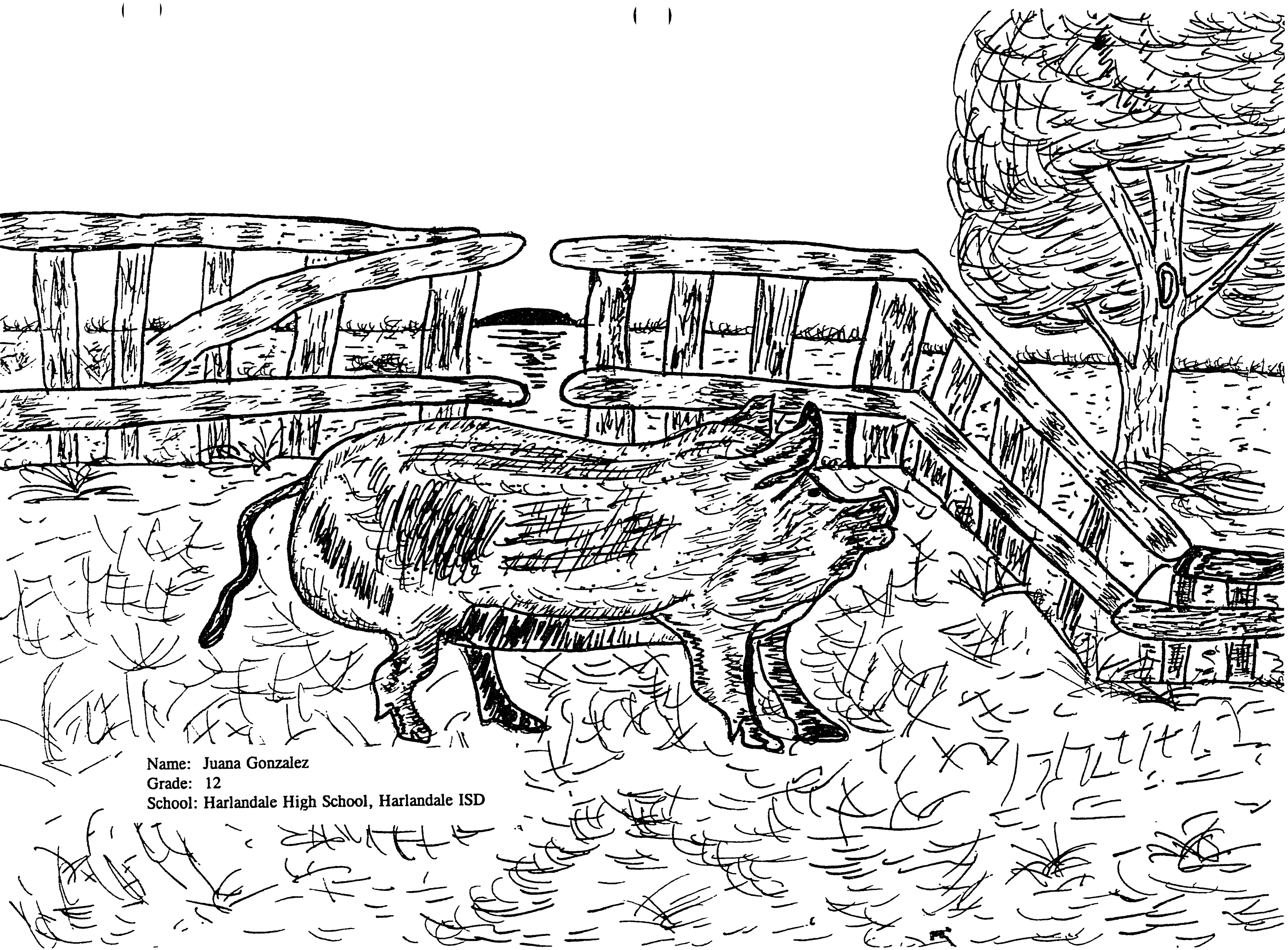
Name: Juana Gonzalez
Grade: 12
School: Harlandale High School, Harlandale ISD

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Comptroller of Public Accounts

Notice of Request for Proposals

Notice of Request for Proposals: Pursuant to Chapter 2254, Subchapter B, Texas Government Code, and House Bill 1214, passed earlier this year by the 74th Legislature and which amended Chapter 54, Texas Education Code, to add Subchapter F, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring a consultant to assist the Comptroller with investment consultant services in connection with the establishment of a prepaid higher education tuition program. House Bill 1214 provides that the program be administered by a seven member Prepaid Higher Education Tuition Board (Board). The Comptroller is the executive director and chairperson of the Board. The fund to be created to hold funds from contracts and investments of the program is to be known as the Texas Tomorrow Fund. The Board is authorized to enter into one or more contracts for the performance of services relating to establishing and maintaining the program. The Comptroller, as executive director of the Board, is issuing this RFP in order that the Board may move forward with retaining services necessary to establish the program, provided that the vendor recommended by the Comptroller pursuant to this RFP process will be subject to approval by the Board. The Comptroller has identified investment consultant services as a service required to establish the program. If approved by the Board, the successful proposer will be expected to begin performance of the contract on or about January 29, 1996.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the referenced address on Wednesday, December 20, 1995, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the listed address prior to 4:00 p.m. (CZT) on Monday, January 8, 1996.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Friday, January 19, 1996. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final selection as to a proposer to be recommended to the Board. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. Neither the Comptroller nor the Board is under any legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller or the Board to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP-December 20, 1995, 4:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due-January 8, 1996, 4:00 p.m. (CZT); Proposals Due-January 19, 1996, 4:00 p.m. (CZT); and Contract Execution-January 29, 1996, or soon thereafter as possible.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516132 Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: December 11, 1995

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Employees Retirement System of Texas

Request for Applications for Health Maintenance Organizations

In accordance with the Insurance Code, §4 of Article 3.50-2, as amended, the Employees Retirement System of Texas (ERS) announces a request for applications from Health Maintenance Organizations (HMOs) to provide prepaid health benefits for the Texas Employees Uniform Group Insurance Program (UGIP) during the next plan year 1997, beginning September 1, 1996. The HMO must provide the level of benefits as required in the application.

HMOs wishing to respond to this request must: be certified by the State of Texas, be Federally approved, have been providing services in the service area for which application is made for at least 12 months prior to February 1, 1996, and have at least 25 UGIP participants who reside within the HMO service area.

The application is available upon request from the ERS.

The deadline for receipt of the completed applications in response to this request will be 4:00 p.m. on February 1, 1996.

The ERS reserves the right to accept or reject any application submitted. The ERS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

The ERS will base its choice of HMOs on demonstrated capacity to provide adequate services to UGIP participants, superior qualifications, and evidence of conformance with the application criteria.

This application does not commit the ERS to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interest of the State of Texas.

For further information regarding this notice, or to obtain copies of the application, contact James W. Sarver, Director, Group Insurance Division, Employees Retirement System of Texas, 18th and Brazos, P.O. Box 13207, Austin, Texas 78711-3207, (512) 867-3217.

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

TRD-9516098 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Filed: December 8, 1995

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General Land Office

Notice of Public Hearings

The General Land Office will conduct public hearings for the purpose of receiving comment on the proposed acquisition of approximately 3,700 acres of land on Padre Island lying north of the northern border of the National Seashore. The proposed acquisition is a transportation enhancement project funded in part by the federal government under the Intermodal Surface Transportation Efficiency Act of 1991. The Texas Department of Transportation, representing the Federal Highway Administration, and the General Land Office have entered into a contract for this project with the purpose of preserving open space, public access and the scenic appearance of the subject tract.

The public hearings are scheduled as follows:

Tuesday, December 19, 1995, 10:00 a.m., Kleberg County Courthouse, Second Floor District Courtroom, 700 East Kleberg, Kingsville, Texas.

Tuesday, December 19, 1995, 2:00 p.m., Padre Balli Park Pavillion, 15820 Park Road 22, Corpus Christi, Texas.

Persons with questions concerning the public hearings should contact John Hamilton, General Land Office, Resource Conservation Division, at (512) 463-5310. Persons with special seating or communications or other needs who are planning to attend are requested to contact (512) 463-5128 or RELAY Texas at 1-800-735-2989 as far in advance of the hearing as possible in order to accommodate these needs.

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

TRD-9516102 Garry Mauro
Commissioner
General Land Office

Filed: December 8, 1995

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Texas Department of Health

Applicants for Appointment to the Medical Device Distributors and Manufacturers Advisory Committee

The Texas Department of Health (TDH) is extending the closing date for acceptance of applicants for appointment to the Medical Device Distributors and Manufacturers Advisory Committee. The original notice requesting applicants for appointment to this committee was published in the September 22, 1995, issue of the *Texas Register*. This advisory committee was mandated by amendments to the Health and Safety Code, Chapter 431, which occurred as the result of the 74th Texas Legislature. The purpose and tasks of this committee are outlined in the Health and Safety Code, §431.275. It is anticipated that the committee will meet two times during the next 12 months.

There are currently five vacant positions on this committee. The positions are for two public members and three industry representatives with staggered terms of three years.

If you wish to be considered for appointment to any of these positions, please contact Cynthia Culmo, R.Ph., Director, Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Applications must be received by TDH no later than 5:00 p.m., January 10, 1996.

In accordance with polices and procedures of the Texas Board of Health, selection criteria will include the nominee's background, desire and ability to serve, accessibility, and geographical location; and the nominee must meet the requirements of the position for which he or she is nominated.

Due to budget constraints, the advisory committee's travel expenses will not be funded for the 1996-1997 biennium. Therefore, members will be required to pay their own travel expenses, including transportation, lodging, meals, and incidentals such as parking fees and taxis.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516148 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 11, 1995

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Applicants for Appointment to the Wholesale Drug Advisory Committee

The Texas Department of Health (TDH) is seeking applicants for appointment to the Wholesale Drug Advisory Committee. This advisory committee was created to advise the Texas Board of Health in the development of standards and procedures relating to the licensing of wholesale drug distributors. The purpose and tasks of this committee are further outlined in Health and Safety Code, §431.208. It is anticipated that the committee will meet two times during the next 12 months.

There are currently three vacant positions on this committee. These positions are for industry representatives with staggered terms of six years.

If you wish to be considered for appointment to one of these positions, please contact Cynthia Culmo, R.Ph., Di-

rector, Drugs and Medical Devices Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 719-0237. Applications must be received by TDH no later than 5:00 p.m., January 10, 1996.

In accordance with policies and procedures of the Texas Board of Health, selection criteria will include the nominee's background, desire and ability to serve, accessibility and geographical location; and the nominee must meet the requirements of the position for which he or she is nominated.

Due to budget constraints, the advisory committee's travel expenses will not be funded for the 1996-1997 biennium. Therefore, members will be required to pay their own travel expenses, including transportation, lodging, meals, and incidentals such as parking fees and taxis.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516147 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 11, 1995

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Notice of Changes in Request for Proposals for HIV Prevention Projects in Dallas County, Texas

The Texas Department of Health (TDH) published a notice for request for proposals (RFPs) from governmental, public, and private non-profit entities to provide health education and risk reduction (HERR) programs to prevent the spread of HIV among persons at high risk in Dallas County, Texas. The notice appeared in the December 8, 1995, issue of the *Texas Register* (20 TexReg 10428). Two changes have been made since the notice was published.

The TDH intends to fund one or more projects. The deadline for submission of the proposals has been extended from December 29, 1995 to January 15, 1996.

Notice of these changes in the RFP have been mailed directly to all existing TDH HIV contractors in Dallas County, Texas.

For more information, interested persons may contact Deborah Mayhew, Regional HIV Coordinator, Public Health Region 2 & 3, Arlington, at (817) 792-7213.

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

TRD-9516097 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 8, 1995

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Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Austin Diagnostic Medical Center (registrant M-00176) of Austin to cease and desist performing mammographic examinations until all requirements are met for mammographic quality control as described in Texas radiation control regulations. The bureau determined that performing mammography without an adequate quality control program may subject patients to unnecessary radiation exposure, which constitutes an immediate threat to public health and safety, and the existence of an emergency.

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 December 8, 1995.

TRD-9516095 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 8, 1995

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Notices of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued April 18, 1995, to Ricardo B. Tan, M.D., P.A., 3220 North Freeway, Fort Worth, Texas 76111, holder of Certificate of Registration Number R21507.

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 December 8, 1995.

TRD-9516096 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 8, 1995

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Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued December 1, 1995, to Austin Diagnostic Medical Center, 12221 MoPac Expressway North, Austin, Texas 78708, holder of Certification of Mammography Systems Number M00176.

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 December 11, 1995.

TRD-9516146 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: December 11, 1995

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Texas Department of Housing and Community Affairs

1996 Texas Consolidated Plan Public Comment Period Extension

The public comment period for the *1996 Texas Consolidated Plan* Draft has been extended. Due to the volume of comment received and the requests of various entities affected by the *Consolidated Plan*, the Texas Department of Housing and Community Affairs will extend the public comment period on the *Consolidated Plan* Draft until January 2, 1996.

The *Texas Consolidated Plan* is a requirement of the U.S. Department of Housing and Urban Development (HUD). The State of Texas is required to submit this plan in order to receive funding for the 1996 Community Development Block Grant (CDBG) Program, the Home Investment Partnerships (HOME) Program, the Emergency Shelter Grants (ESG) Program and the Housing Opportunities for Persons with AIDS (HOPWA) Program.

The Texas Department Housing and Community Affairs (TDHCA) which administers the State of Texas' CDBG, HOME, and ESG programs is the lead agency responsible for overseeing the development of the *1996 Texas Consolidated Plan*.

Public hearings announcing the preparation of the *Consolidated Plan* were held statewide in the month of March 1995. In addition, public hearings to receive comments on the *Consolidated Plan* draft were held in five regions of the state during the first two weeks of November. The public comment period on the *1996 Texas Consolidated Plan* was originally from October 27, 1995 to November 30, 1995.

A summary of the major program changes that are contained within the *1996 Texas Consolidated Plan* Draft and complete copies of the *Consolidated Plan* are available for inspection at the locations listed. In addition, you may have a copy of the summary for $3.00 by sending a letter, fax or calling the Department. Complete individual copies of the draft are also available for $15 by sending a letter of request to David Armstrong, (512) 475-3975; fax: (512) 475-3746, TDHCA, in care of Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941. If you have any questions, please do not hesitate to call.

Locations of Consolidated Plan: Abilene: West Central Texas COG; 1025 East North Tenth; Jim Compton; (915) 672-8544; **Alpine**: Sul Ross State University; Bryan Wildenthal Memorial; Library; Circulation Desk; Sherry Williams; (915) 837-8417; **Amarillo**: Panhandle Regional Planning Commission; 2736 West Tenth Street; Courtney Sharp; (806) 372-3381; **Arlington**: "North Central Texas COG; 616 Six Flags Drive, Suite 200"; Joanne Jackson; (817) 640-3300; **Austin**: Texas State Library; 1201 Brazos; Reading Room 300; Diana Houston; (512) 463-5426; **Austin**: Capital Area Planning Council; 2520 IH-35S; Suite 100; Lee Cain; (512) 443-7653; **Baytown**: Lee College Library; 511 South Whiting Street; D. G. Owens; (713) 425-6497; **Belton**: Central Texas COG; 100 South East Street; Alyse Flannary; (817) 939-5724; **Brownsville**: University of Texas Pan American; Serials Department; 1825 May Street; Eva Jerez; (210) 544-8221; **Brownwood**: "Howard Payne University, Walker Memorial Library; 1000 Fisk Avenue"; Nancy Anderson; (915) 649-8610; **Bryan**: Brazos Valley Development Council; 1706 East 29th Street; Robert Grisham; (409) 775-4244; **Canyon**: West Texas A&M University Library; Cornette; Library; Documents Department; Bennett Pomsford; (806) 656-2204; **Carrizo Springs**: Middle Rio Grande Development Council; 1904 North First Street; Mimo; (210) 278-2527; **College Station**: Texas A&M University; Sterling C. Evans Library; Reference Department; Julia Rholes; (409) 862-1049; **Commerce**: East Texas State University; James Gilliam Gee Library; Government Documents; (903) 866-5726; **Corpus Christi**: "Coastal Bend COG, 2910 Leopard Street"; Richard Bullock; (512) 883-5743; **Corsicana**: Navarro College; Learning Resource Center; 3200 West Seventh Avenue; Jorene Helms; (903) 874-6501; **Dallas**: "Dallas Public Library, Government Publications Division; 1515 Young Street"; Kathy Cottage; (214) 670-1468; **Denton**: University of North Texas Willis Library; 1500 Highland; Doris Chipman; (817) 565-2413; **Edinburg**: "University of Texas Pan American at Edinburg Library; Government Documents Division; Reserve Desk, 1201 West University Drive"; David Mizener; (210) 381-3304; **El Paso**: Rio Grande COG; 1100 North Stanton; Suite 610; Justin Ormsby; (915) 533-0998; **Fort Worth**: Forth Worth Public Library; 300 Taylor Street; Reference Department; (817) 871-7701; **Galveston**: "Rosenberg Public Library; Reference Section, 2310 Sealy Avenue"; Robert Lipscomb; (409) 763-8854; **Garland**: Nicholson Memorial Library System; 625 Austin Street; Betty Landen; (214) 205-2543; **Houston**: Houston Public Library; Texas Room; 500 McKinney; Carol Johnson; (713) 236-1313; **Huntsville**: Sam Houston State University; Newton Gresham Library; Government Documents; Don H. Ko; (409) 294-1629; **Irving**: Irving Public Library System; 801 West Irving Boulevard; Lynn Baker; (214) 721-2606; **Jasper**: Deep East Texas COG; 274 East Lamar; Ethel Bluitt; (409) 384-5704; **Kilgore**: East Texas COG; Stone Road; Glenn Knight; (903) 984-8641; **Kingsville**: Texas A&M University; Jernigan Library; 105 University Avenue; Sylvia Martinez; (512) 595-3416; **Laredo**: South Texas Development Council; 1718 Calton Road; Suite 14; Myrna Garza; (210) 722-3995; **Longview**: "Longview Public Library, Adult Services Unit, 222 West Cotton"; Ron Heezen; (903) 237-1340; **Lubbock**: South Plains Association of Governments; 1323 58th Street; Nancy Banuelos; (806) 762-8721; **McAllen**: Lower Rio Grande Valley Development Council; 4900 North 23rd Street; Mr. Jones; (210) 682-3481; **Midland**: "Permian Basin Regional Planning Commission, 2910 La Force Boulevard"; Terry Moore; (915) 563-1061; **Nacodoches**: Stephen F. Austin Library; Steen Library; Documents Department; Kayce Halstead; (409) 468-4307; **Odessa**: "University of Texas Permian Basin Library, 4901 East University Boulevard"; Steve Pettijohn; (915) 552-2000; **Port Arthur**: South East Texas Regional Planning Commission; 3501 Turtle Creek Drive; Suite 108; Fred Hellen; (409) 727-2384; **Prarie View**: Prairie View A&M University; John B. Coleman Library; Documents Department; Phyllis Martin; (409) 857-2612; **Richardson**: UT at Dallas; McDermott Library; Government Documents; 2601 North Floyd Road; Paula Sutherland; (214) 883-2918; **San Angelo**: Concho Valley COG; 5002 Knickerbocker; Robert Weaver; (915) 944-9666; **San Antonio**: Alamo Area COG; 118 Broadway; Suite 400; Al J. Notzon III; (210) 225-5201; **San Marcos**: Southwest Texas State University Library; Documents Division; Allkek Building; Melvia Randall; (512) 245-2685; **Seguin**: Texas Lutheran College; Blumberg Memorial Library; 1000 West Court Street; Vicki Eckhardt; (210) 372-8100; **Sherman**: "Austin College, Abell Library Center; 900 North Grand"; Beth Pettit; (903) 813-2470; **Sherman**: "Texoma COG, 3201 Texoma Parkway, Suite 200"; France Pelli; (903) 893-2161; **Stephenville**: Tarelton State University; Dick Smith Library; Pat Cockrell; (817) 968-9937; **Texarkana**: Ark-Tex COG; 911 North Bishop Road; Building A; Wake Village; Jim Fisher; (903) 832-8636; **Tyler**: UT-Tyler; Muntz Library; Documents Department; 3900 University Boulevard; Marie Crow; (903) 566-7344; **Victoria**: Golden Crescent Regional Planning Commission; 568 Big Bend Drive; Mary Ann Wyatt; (512) 578-1587; **Waco**: Heart of Texas COG; 300 Franklin Avenue; Leon Willhite; (817) 756-7822; **Wichita Falls**: Nortex Regional Planning Commission; 4309 Jacksboro Highway; Suite 200; Matt Marrs; (817) 322-5281.

Issued in Austin, Texas, on December 9, 1995.

TRD-9516024 Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs

Filed: December 8, 1995

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Texas Department of Human Services

Public Notice-Open Solicitation

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, in the March 31, 1995, issue of the *Texas Register* (20 TexReg 2443), the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days, effective the date of this public notice, for Parmer County, County #185, and Refugio County, County #196 identified below, where Medicaid contracted nursing facility occupancy rates exceed the threshold (90% occupancy) in each of six months in the continuous, May-October 1995, six-month period. Potential contractors seeking to contract for existing beds which are currently licensed as nursing home beds or hospital beds in the counties identified in this public notice must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Gary L. Allen, Certification, Provider Enrollment and Billing Services, Long Term Care-Regulatory, Mail Code Y-976, Post Office Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS by 5:00 p.m. January 15, 1996, the last day of the open solicitation period.

Potential contractors will be placed on a waiting list for the primary selection process in the order that the beds which were being proposed for Medicaid certification were initially licensed. The primary selection process will be completed on January 25, 1996. If there are insufficient available beds after the primary selection to reduce occupancy rates to less that 90%, TDHS will place a public notice in the *Texas Register* announcing an additional open solicitation period for those individuals wishing to construct a facility.

County Number	County Name	Number of Months Over	MAY	JUN	JUL	AUG	SEP	OCT
185	PARMER	6	93.6	92.5	90.3	91.0	92.5	92.8
196	REFUGIO	6	91.8	92.4	96.8	92.2	96.7	96.4

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

TRD-9516029 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Filed: December 8, 1995

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for incorporation in Texas for Austin Insurance Company, Limited, a domestic fire and casualty company. The home office is in Euless, Texas.

Application for use of an assumed name in Texas by The General Auto Insurance Company, a foreign fire and casualty company. The proposed assumed name is Credit General Insurance Company of Texas. The home office is in Cleveland, Ohio.

Application for a name reservation in Texas for Mutual of Omaha Health Plans of Texas, Inc., a domestic health maintenance organization. The home office is in Dallas, Texas. Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

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

TRD-9516110 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: December 8, 1995

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Notice of Application by Comprehensive Health Services of Texas, Inc., San Antonio, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of COMPREHENSIVE HEALTH SERVICES OF TEXAS, INC., San Antonio, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, 6th Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to COMPREHENSIVE HEALTH SERVICES OF TEXAS, INC., without a public hearing.

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

TRD-9516111 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: December 8, 1995

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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 Administrative Services, Inc., a foreign third party administrator. The home office is Miami, Florida.

Application for admission to Texas of Associated Insurance Plans International, Inc., a foreign third party administrator. The home office is Wheeling, Illinois.

Application for admission to Texas of Kaiser Foundation Health Plan of Colorado, Inc., a foreign third party administrator. The home office is Denver, Colorado.

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 December 8, 1995.

TRD-9516112 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: December 8, 1995

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City of Lockhart, Texas

Public Notice for Professional Services-Project Manager

The City of Lockhart is seeking to enter into a professional services contract with a project manager to assist the city in a recently approved project from the Texas Department of Transportation-ISTEA Enhancement Program. The project will restore and preserve the exterior and the interior of the Dr. Eugene Clark Library building, per Secretary of the Interior's Standards for Rehabilitation and Restoration. The building is designated as historically significant under federal, state, and local guidelines, and is the oldest continually active public library in the State of Texas. Built in 1899, it consists of 3,750 square feet and features a balcony, dome and cat walk, gable roof, masonry walls, three entry porches and stained glass windows.

To be considered, proposals must be received by the city no later than Thursday, February 1, 1996. The city reserves the right to reject any and all proposals, to award the contract in what it deems the best interest of the city, and to waive any informality or technicality in the proposals. The city further reserves the right to negotiate with any and all project management consultants or firms that submit proposals, as per the Texas Professional Services Procurement Act and Office of Management and Budget Circular Number A102.

Request for Proposals may be obtained by calling James Blystone, Assistant City Manager, at (512) 398-3461.

Proposals must be submitted in a sealed envelope clearly marked "PROPOSAL FOR PROFESSIONAL SERVICES-PROJECT MANAGER" and addressed to City of Lockhart, Attention: City Secretary, P.O. Box 239, Lockhart, Texas 78644-0239. The City of Lockhart is an Affirmative Action and Equal Opportunity Employer.

Issued in Austin, Texas, on December 5, 1995.

TRD-9515693 Philip G. Cook
City Manager
City of Lockhart, Texas

Filed: December 4, 1995

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Texas Department of Mental Health and Mental Retardation

Notice of Award of Contract for Consultant Services to Restructure Reimbursement Methodology for ICF-MR and HCS-Waiver Programs

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Texas Department of Mental Health and Mental Retardation announces this notice of contract award. The consultant proposal request was published in the August 11, 1995, issue of the *Texas Register* (20TexReg 6151). The consultant will evaluate and make detailed recommendations regarding restructuring the reimbursement methodologies for the Intermediate Care Facilities for Persons with Mental Retardation and Related Conditions (ICF/MR) Program and the Home and Community Based Services Waiver (HCS) Program. The contract is awarded to Deloitte & Touche, LLP, 1010 Grand Avenue, Suite 400, Kansas City, Missouri 64106-2232. The total value of the contract is not to exceed $389,200. The contract begins November 6, 1995, and extends through October 31, 1996. The contractor will produce periodic progress reports on or before December 22, 1995, and January 31, 1996; and will assist the department in the development of presentations to the Texas Board of Mental Health and Mental Retardation regarding the contractor's evaluation of and recommendations for the ICF/MR program at the March 20-21, 1996, meeting of the Board, and regarding the contractor's evaluation of and recommendation for the HCS program at the June 19-20, 1996, meeting of the Board. A final report will be completed on or about July 31, 1996.

Issued in Austin, Texas, on December 7, 1995.

TRD-9516000 Ann Utley
Chair
Texas Department of Mental Health and Mental Retardation

Filed: December 7, 1995

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Notice of Public Hearing

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: intermediate care facilities for mental retardation (ICF/MR). 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., Wednesday, January 3, 1996, in Room 240 in the TDMHMR Central Office (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 listed at least 72 hours in advance of the hearing.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516135 Ann K. Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Filed: December 11, 1995

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Texas Natural Resource Conservation Commission

Applications for Standby Fees

Notices of applications to Levy Standby Fees issued during the period of December 4-8, 1995.

Application by ARANSAS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 1 for renewal of the authority to adopt and impose standby fees on undeveloped property. The application has been executed by the Board of Directors of the District. The District received approval from the Commission for authority to impose standby fees in for the calendar years 1990-1995. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses. The amount of the standby fee requested is $156 per equivalent single-family connection (ESFC) for operation and maintenance for the calendar years 1996-1998 on residential lots, each 70 feet of frontage for acreage restricted for residential use, and each proposed town home unit within the District that has available water and/or wastewater facilities constructed and financed by the District. This includes Blocks 1-7 Single Family; Block 8 Patio Homes; Blocks 11-15 R.V. Lots; Tracts A-1, A-2, A-3, A-4, A-5, and A-6 Town Homes; and unrestricted residential Residents B-1 thru B-6, C and D Residential-fee levied per each 70 foot frontage.

Application by FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 46 for renewal of the authority to adopt and impose standby fees on undeveloped property. The application has been executed by the Board of Directors of the District. The District received approval from the Commission for authority to impose standby fees in for the calendar years 1991-1993. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses and debt service on the bonds. The amount of the standby fee requested for debt service is $380 per equivalent single-family connection (ESFC) on all unimproved ESFCs in Commercial Reserves B and R; $137 per ESFC on all unimproved ESFCs within a 113.5-acre area; and $112 per ESFC on all unimproved ESFCs within a 57.5-acre area. The standby fee for operation and maintenance requested per ESFC for a period not to exceed three years of: (a) $350 for year 1, $244 for year 2, and $254 for year 3 on all unimproved ESFCs in Commercial Reserves B and R; (b) $126 for year 1, $88 for year 2 and $92 for year 3 on all unimproved ESFCs within a 113.5-acre area; and (c) $103 for year 1, $72 for year 2 and $75 for year 3 on all unimproved ESFCs within a 57. 5-acre area.

The Commission may approve the standby fee as requested or it may approve a lower standby fee, but it will not approve a standby fee greater than that requested. The standby fee is a personal obligation of the person owning the undeveloped property on January 1 of the year for which the fee is assessed. A person is not relieved of the obligation on transfer of title to the property. On January 1 of each year, a lien attaches to the undeveloped property to secure payment of any standby fee imposed and the interest or penalty, if any, on the fee. The lien has the same priority as a lien for taxes of the District.

The Executive Director is authorized to act on behalf of the TNRCC and issue final approval on certain applications. The Executive Director will act on this application unless a written hearing request that includes the following information is filed within the 30 days after newspaper publication of this notice: the name, mailing address, and daytime phone number of the person requesting the hearing; the name of the District; the statement "I/we request a public hearing"; and a brief description of how the person for whom the hearing is being requested would be adversely affected by the approval of the application in a way not common to the public. A hearing request by a group or association must meet certain additional requirements that may be obtained from the Chief Clerk at the address and telephone number listed.

If a hearing request is filed, the Executive Director will not act on the application and will forward the application and hearing request to the TNRCC Commissioners for consideration at a scheduled Commission meeting.

If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Office of the Chief Clerk-Mail Code 105, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3315.

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

TRD-9516054 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 8, 1995

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Enforcement Orders

An agreed enforcement order was entered regarding CHAMPION IRON AND METAL, Docket Number 95-1660-PST-E (TNRCC Facility ID55908; Enforcement ID E10569) on December 4, 1995, assessing $3,200 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Paul Sarahan, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3422.

An enforcement order was entered regarding L AND C ENTERPRISES, Docket Number 95-1001-IHW-E (SWR Number 81097) on December 4, 1995, assessing $8,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic McWherter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0579.

An agreed enforcement order was entered regarding LACEY AND HOLLIS PETROLEUM INC, Docket Number 95-1018-PST-E (TNRCC Facility ID19691; Enforcement ID E10663) on December 4, 1995, assessing $185,712.54 in administrative penalties with $71,712.54 deferred.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding PRIDE OF THE CITRUS OF TEXAS, Docket Number 95-1637-PST-E (TNRCC Facility ID28228; Enforcement ID E10880) on December 4, 1995, assessing $3,200 in administrative penalties with $2,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Corwin, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-5915.

An agreed enforcement order was entered regarding UNION PACIFIC RAILROAD MKT RAIL YARD, Docket Number 94-0327-ISW-E (SWR Number 81424) on December 4, 1995, assessing $59,200 in administrative penalties with $11,840 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Ray, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0674.

An agreed enforcement order was entered regarding VISTA EQUIPMENT LEASING CORPORATION, Docket Number 95-1611-IWD-E (Permit Number 03317) on December 4, 1995, assessing $11,760 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Pamela Campbell, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4493.

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

TRD-9516055 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 8, 1995

♦ ♦ ♦

Notice of Opportunity to Comment on Permitting Actions for the Week Ending December 8, 1995

The following applications are subject to a Commission resolution adopted August 30, 1995, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mail Code 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Consideration of the application of the City of Hays to Transfer Water CCN Number 11457 from Estates Utilities Water Supply Corporation; in Hays County, Texas (Application Number 30484-S, Doug Holcomb).

Consideration of the application of Stringtown Water Service Corporation to Acquire Facilities and Transfer Water CCN Number 11747 from Ed Longcope doing business as K AND L Water Supply in Hays County, Texas (Application Number 30897-S, Doug Holcomb).

Consideration of the application of Espinoza Del Diablo Water Supply Corporation to Transfer a Portion of Water CCN Number 12713 from Grace J. Wahrmund doing business as Utilities Services; Amend Water CCN Number 12713 and issue Water CCN 12771 in Comal and Hays Counties, Texas (Application Number 30740-S, Doug Holcomb).

THE CITY OF PAMPA has applied for a municipal solid waste permit, Proposed Permit Number MSW2238. The proposed permit would authorize a Type I (Landfill) solid waste management facility. The applicant seeks a permit to receive approximately 300 tons of municipal solid waste

per day for disposal and other processing in accordance with municipal solid waste regulations. The facility will be located on a 146.778 acre site on Loop 171, adjacent to an existing site (MSW589-B) approximately 0.5 miles northeast of the City of Pampa, Gray County, Texas.

NORTHGATE CROSSING MUNICIPAL UTILITY DISTRICT NUMBER 2 for a minor amendment to Permit Number 12979-01 to add an interim phase and decrease the flow volume in the final phase. The current permit authorizes a discharge of treated domestic wastewater effluent at an interim I volume not to exceed an average flow of 125,000 gallons per day, at an interim II volume not to exceed an average flow of 250,000 gallons per day and at a final volume not to exceed an average flow of 810,000 gallons per day. The proposed amendment would authorize an interim I volume not to exceed an average flow of 50,000 gallons per day, an interim II volume not to exceed an average flow of 125,000 gallons per day and a final volume not to exceed an average flow of 500,000 gallons per day. The wastewater treatment facilities are approximately 4,500 feet southeast from the intersection of Interstate Highway 45 and Spring Creek and approximately 1.3 miles northeast of the intersection of Stuebner Road and Interstate Highway 45 in Harris County, Texas.

APPLICATION BY THE VILLAGE OF SURFSIDE BEACH AND RED RIVER COUNTY TO REGULATE ON-SITE SEWAGE FACILITIES WITHIN THEIR JURISDICTION.

APPLICATION NUMBER 23-2782F BY BORDER ENERGY SERVICES, INC. FOR AN AMENDMENT TO CERTIFICATE OF ADJUDICATION NUMBER 23-2782, PURSUANT TO TEXAS WATER CODE, §11.122. Applicant seeks authorization to divert their ten acre-feet of water per annum from any point on the Rio Grande in Hidalgo, Starr and Zapata counties, and to change the place of use to these three counties. Border Energy Services, Inc. owns ten acre-feet of Class "B" water rights authorized under Certificate Number 23-2782, as amended, for mining use (RENEE' TUGGLE).

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

TRD-9516057 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 8, 1995

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Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Facilities for the Week Ending December 8, 1995

APPLICATION BY ENVIROCLEAN MEDICAL SERVICES, INC.; Proposed Permit Number MSW2245, authorizing a Type V-WI (thermal oxidation unit) permit to receive medical waste and municipal solid waste. The site covers approximately 3.0 acres of land and is to receive up to 48 tons of medical and municipal solid waste daily. The site is located on the west side of Industrial Lane, which is bordered on the north side by Wood Street and on the south by Kingsley Road, in the city of Garland, Dallas County, Texas.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

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

TRD-9516056 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 8, 1995

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Public Utility Commission of Texas

Public Notice

On December 1, 1995, GTE Southwest Incorporated filed notice to file LRIC studies pursuant to Substantive Rule 23.91 for Switched Transport BNF, NACC-Performance and other features and functions-Voice Repeater BNF, and Private Line Voice Grade-2 and 4 Wire Service in Project Number 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 expects to file these studies on December 11, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by January 8, 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 December 8, 1995.

TRD-9516038 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 8, 1995

♦ ♦ ♦

Teacher Retirement System of Texas

Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets-Fiscal Year 1994-1995

Texas Government Code, §825.108, requires the Teacher Retirement System of Texas (TRS) to publish a report in the *Texas Register* no later than December 15 of each year containing the following information:

(1) the retirement system's fiscal transactions for the preceding fiscal year;

(2) the amount of the system's accumulated cash and securities; and

(3) the rate of return on the investment of the system's cash and securities during the preceding fiscal year.

TRS is publishing the following report as required by statute.

334-Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets [graphicl]

-Unaudited-

TEACHER RETIREMENT SYSTEM OF TEXAS

Report of Fiscal Transactions,
Accumulated Cash and Securities, and
Rate of Return on Assets
Fiscal Year 1994-95

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- Unaudited -

334-Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets [graphic2]

Teacher Retirement System Of Texas (323)

Combining Balance Sheet
AUGUST 31, 1995
Exhibit A

FIDUCIARY FUND TYPES

ASSETS	PENSION TRUST FUND (960) Retirement	EXPENDABLE TRUST FUNDS (Exhibit B)	AGENCY FUND (001) Collections On Behalf Of The State's General Revenue Fund	Combined Totals
Current Assets:				
Cash in Bank	$ 17,258,216	$ 2,950,000	$	$ 20,208,216
Cash on Hand	109,720	423		110,143
Cash In State Treasury	388,767,820	15,344,335		404,112,155
Short-Term Investments	911,156,955	85,500,000		996,656,955
Accounts Receivable				
Sale of Investments	47,610,958			47,610,958
Member Contributions	33,607,679	9,490,211		43,097,890
State Contributions - School Districts	3,848,734			3,848,734
Other	3,294,514	25,645		3,320,159
Due from General Revenue Fund - State Contributi	4,522,974	3,810,254		8,333,228
Due from School Districts			8,214,320	8,214,320
Dividends Receivable	64,292,877			64,292,877
Interest Receivable	287,193,886	5,462,335		292,656,221
Prepaid Assets	1,032,106			1,032,106
TOTAL CURRENT ASSETS	$ 1,762,696,439	$ 122,583,203	$ 8,214,320	$ 1,893,493,962
Long-Term Investments:				
Fixed Income (Amortized Cost)				
U.S. Treasury	$ 3,095,182,895	$	$	$ 3,095,182,895
U.S. Government Agency-Mortgages	5,331,557,571			5,331,557,571
U.S. Government Agency-Other	753,497,252	12,773,220		766,270,472
Mortgages Other	49,204,865			49,204,865
Corporate	5,403,279,353	161,763,046		5,565,042,399
Foreign	1,824,702,035			1,824,702,035
Real Estate Mortgages(Amortized Cost Less Loan Losses)	967,187,757			967,187,757
Equities (Cost)	17,567,634,501			17,567,634,501
Real Estate Held for Sale(Net of Loss Reserves)	518,848,891			518,848,891
TOTAL LONG-TERM INVESTMENTS	$ 35,511,095,120	$ 174,536,266	$ -0-	$ 35,685,631,386
Fixed Assets:				
Land	$ 1,658,310	$	$	$ 1,658,310
Building	26,757,672			26,757,672
Furniture and Equipment	9,960,166			9,960,166
Subtotal	$ 38,376,148	$ -0-	$ -0-	$ 38,376,148
Less Accumulated Depreciation	(10,529,391)			(10,529,391)
NET FIXED ASSETS	$ 27,846,757	$ -0-	$ -0-	$ 27,846,757
Other Assets				
Deferred Assets	$ 3,366,535	$	$	$ 3,366,535
Net Losses Deferred on Investment Exchanges	76,176,860			76,176,860
TOTAL OTHER ASSETS	$ 79,543,395	$ -0-	$ -0-	$ 79,543,395
Total Assets	$ 37,381,181,711	$ 297,119,469	$ 8,214,320	$ 37,686,515,500

(to next page)

- Unaudited -

334-Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets [graphic3]

:acher Retirement System Of Texas (323)

›mbining Balance Sheet

JGUST 31, 1995

xhibit A

›ncluded)

FIDUCIARY FUND TYPES

TAL LIABILITIES, DEFERRED :EDITS, AND FUND EQUITY	PENSION TRUST FUND (960) Retirement	EXPENDABLE TRUST FUNDS (Exhibit B)	AGENCY FUND (001) Collections On Behalf Of The State's General Revenue Fund	Combined Totals
'rent Liabilities:				
›ccounts Payable	$ 17,534,195	$ 5,639,830	$	$ 23,174.025
›enefits Payable	152,761,993	45,424,000		198,185.993
Due to State's General Revenue Fund			8,214,320	8,214.320
vestments Purchased Payable	102,614,501			102,614.501
TOTAL CURRENT LIABILITIES	$ 272,910,689	$ 51,063,830	$ 8,214,320	$ 332,188.839
.. Credits:				
›einstatement Installment Receipts	$ 14,287,260	$	$	$ 14,287,260
Equity:				
Balance Reserved for:				
Member Savings Account	$ 9,887,860,575	$	$	$ 9,887,860.575
State Contribution Account	11,268,008,791			11,268,008.791
Retired Reserve Account	15,627,037,495			15,627,037,495
Benefit Increase Reserve Account	291,643,718			291,643,718
Expense Account	19,433,183			19,433,183
Future Retention, Claims, and Administrative Expenditures		246,055,639		246,055.639
TOTAL FUND EQUITY	$ 37,093,983,762	$ 246,055,639	$ -0-	$ 37,340,039.401
Liabilities, Deferred , And Fund Equity	$ 37,381,181,711	$ 297,119,469	$ 8,214,320	$ 37,686,515.500

- Unaudited -

334-Report of Fiscal Transactions, Accumulated Cash and Securities, a Rate of Return on Assets [graphic4

Teacher Retirement System Of Texas (323)

Combining Balance Sheet

AUGUST 31, 1995

Exhibit B

EXPENDABLE TRUST FUNDS

	Public School Retired Employees Group Insurance (989)	Public School Active Employees Insurance Reserve (889)	Combined Totals (Exhibit A)
ASSETS			
Current Assets:			
Cash in Bank	$ 2,950,000	$	$ 2,950,000
Cash on Hand	423		423
Cash In State Treasury	5,126,672	10.217,663	15,344,335
Short-Term Investments	85,500,000		85,500,000
Accounts Receivable			
Member Contributions	9,487,101	3,110	9,490,211
Other	25,645		25,645
Due from General Revenue Fund - State Contributions	3,810,254		3,810,254
Interest Receivable	5,417,008	45,327	5,462,335
TOTAL CURRENT ASSETS	$ 112,317,103	$ 10,266,100	$ 122,583,203
Long-Term Investments:			
Fixed Income (Amortized Cost)			
U.S. Government Agency-Other	$ 12,773,220	$	$ 12,773,220
Corporate	161,763,046		161,763,046
TOTAL LONG-TERM INVESTMENTS	$ 174.536.266	$ -0-	$ 174,536,266
Total Assets	$ 286,853,369	$ 10,266,100	$ 297,119,469
LIABILITIES AND FUND EQUITY			
Current Liabilities:			
Accounts Payable	$ 5,633,017	$ 6,813	$ 5,639,830
Benefits Payable	45,424,000		45,424,000
TOTAL CURRENT LIABILITIES	$ 51,057,017	$ 6,813	$ 51,063,830
Fund Equity:			
Fund Balance Reserved for:			
Future Retention, Claims, and Administrative Expenditures	235,796,352	10,259.287	246,055,639
TOTAL LIABILITIES, AND FUND EQUITY	$ 286,853.369	$ 10,266,100	$ 297,119,469

- UNAUDITED -

334-Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets [graphic5]

Teacher Retirement System Of Texas (323)
Combining Statement of Revenues, Expenditures and Changes in Fund Balance
YEAR ENDED AUGUST 31, 1995
Exhibit C

EXPENDABLE TRUST FUNDS

	Public School Retired Employees Group Insurance (989)	Public School Active Employees Insurance Reserve (889)	Combined Totals Year Ended August 31, 1995
Revenues:			
Member Contributions	$ 29,924,925	$ 4,949,820	$ 34,874,745
State Contributions from State of Texas	59,849,850		59,849,850
Retiree Contributions	89,006,331		89,006,331
Interest	16,841,673	463,308	17,304,981
TOTAL REVENUES	$ 195,622,779	$ 5,413,128	$ 201,035,907
Expenditures:			
Insurance Claims Incurred	$ 172,836,644	$	$ 172,836,644
Insurance Retention	11,393,649		11,393,649
Administrative Expenditures	826,198	27,561	853,759
TOTAL EXPENDITURES	$ 185,056,491	$ 27,561	$ 185,084,052
Excess Of Revenues Over Expenditures	$ 10,566,288	$ 5,385,567	$ 15,951,855
Fund Balance - Beginning September 1	225,230,064	4,873,720	230,103,784
Fund Balance - Ending August 31	$ 235,796,352	$ 10,259,287	$ 246,055,639

- UNAUDITED -

334-Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets [graphic6]

Teacher Retirement System Of Texas (323)

Statement of Revenues, Expenses and Changes in Fund Balance

YEAR ENDED AUGUST 31, 1995

Exhibit D

		PENSION TRUST FUND (960)
Revenues:		
Member Contributions	$	901,930,561
State Contributions from State of Texas		963,322,791
State Contributions from School Districts		66,851,022
Interest		1,499,041,540
Dividends		561,133,858
Net Gain on Securities		1,588,835,784
Reinstatement of Withdrawals		25,098,953
Reinstatement Fees		17,361,590
Membership Fees		6,113,925
Miscellaneous Expense Reimbursements		242,797
Transfers from Employees Retirement System of Texas		269,026
Net Gain on Operations of Real Estate Held for Sale		73,240,952
TOTAL REVENUES	$	5,703,442,799
Expenses:		
Benefits	$	1,727,152,497
Withdrawal of Member Accounts		146,099,978
Administrative Expenses		26,139,546
Transfers to Employees Retirement System of Texas		4,863,571
TOTAL EXPENSES	$	1,904,255,592
Net Income	$	3,799,187,207
Fund Balance - Beginning September 1		33,294,796,555
Fund Balance - Ending August 31	$	37,093,983,762

- Unaudited -

Teacher Retirement System Of Texas (323)

Statement of Changes in Assets and Liabilities

YEAR ENDED AUGUST 31, 1995

Exhibit E

AGENCY FUNDS (001)

UNAPPROPRIATED RECEIPTS

Collections on Behalf of The State's General Revenue Fund	Balances September 1, 1994	Additions	Deductions	Balances August 31, 1995
Assets				
Cash	$	$ 113,021,195	$ 113,021,195	$
Due from Reporting Districts	8,383,181	8,214,320	8,383,181	8,214,320
TOTAL ASSETS	$ 8,383,181	$ 121,235,515	$ 121,404,376	$ 8,214,320
Liabilities				
Due to State's General Revenue Fund	$ 8,383,181	$ 8,214,320	$ 8,383,181	$ 8,214,320

- UNAUDITED -

334-Report of Fiscal Transactions, Accumulated Cash and Securities, and Rate of Return on Assets [graphic8]

Teacher Retirement System Of Texas (323)
Rate of Return on Assets
YEAR ENDED AUGUST 31, 1995
Exhibit F

	Total	Pension Trust Fund (960)	Public School Retired Employees Group Insurance (989)	Public School Active Employees Insurance Reserve (689)
Beginning Book Value	$ 29,349,125,826	$ 29,076,469,832	$ 267,782,264	$ 4,873,730
Net Contributions Added	4,589,618,239	4,582,459,745	2,229,432	4,929,062
Interest and Dividend Income	2,150,721,331	2,133,416,350	16,841,673	463,308
Net Realized Capital Gains	1,588,835,784	1,588,835,784		
Ending Book Value	$ 37,678,301,180	$ 37,381,181,711	$ 286,853,369	$ 10,266,100
Return from Interest and Dividend Income	6.80%	6.80%	6.26%	6.31%
Return from Net Realized Capital Gains	5.02%	5.07%	0.00%	0.00%
Cash Return on Book Value	11.82%	11.87%	6.26%	6.31%

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

TRD-9516082 Charles Dunlap
Executive Director
Teacher Retirement System of Texas

Filed: December 8, 1995

Publication Schedule

The following is the 1995 Publication Schedule for the Texas Register. Listed below are the deadline dates for the June-December 1995 issues of the Texas Register. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the Texas Register are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
75 Tuesday, October 3	Wednesday, September 27	Thursday, September 28
76 Friday, October 6	Monday, October 2	Tuesday, October 3
Tuesday, October 10	Wednesday, October 4	Thursday, October 5
77 Friday, October 13	THIRD QUARTERLY INDEX	
78 Tuesday, October 17	Wednesday, October 11	Thursday, October 12
79 Friday, October 20	Monday, October 16	Tuesday, October 17
80 Tuesday, October 24	Wednesday, October 18	Thursday, October 19
81 Friday, October 27	Monday, October 23	Tuesday, October 24
82 Tuesday, October 31	Wednesday, October 25	Thursday, October 26
83 Friday, November 3	Monday, October 30	Tuesday, October 31
84 Tuesday, November 7	Wednesday, November 1	Thursday, November 2
Friday, November 10	No Issue Published	
85 Tuesday, November 14	Wednesday, November 8	Thursday, November 9
86 Friday, November 17	Monday, November 13	Tuesday, November 14
87 Tuesday, November 21	Wednesday, Novmber 15	Thursday, November 16
88 Friday, November 24	Monday, November 20	Tuesday, November 21
Tuesday, November 28	NO ISSUE PUBLISHED	
89 Friday, December 1	Monday, November 27	Tuesday, November 28
90 Tuesday, December 5	Wednesday, November 29	Thursday, November 30
91 Friday, December 8	Monday, December 4	Tuesday, December 5
92 Tuesday, December 12	Wednesday, December 6	Thursday, December 7
93 Friday, December 15	Monday, December 11	Tuesday, December 12
94 Tuesday, December 19	Wednesday, December 13	Thursday, December 14
95 Friday, December 22	Monday, December 18	Tuesday, December 19
96 Tuesday, December 26	Wednesday, December 20	Thursday, December 21
Friday, December 29	NO ISSUE PUBLISHED	