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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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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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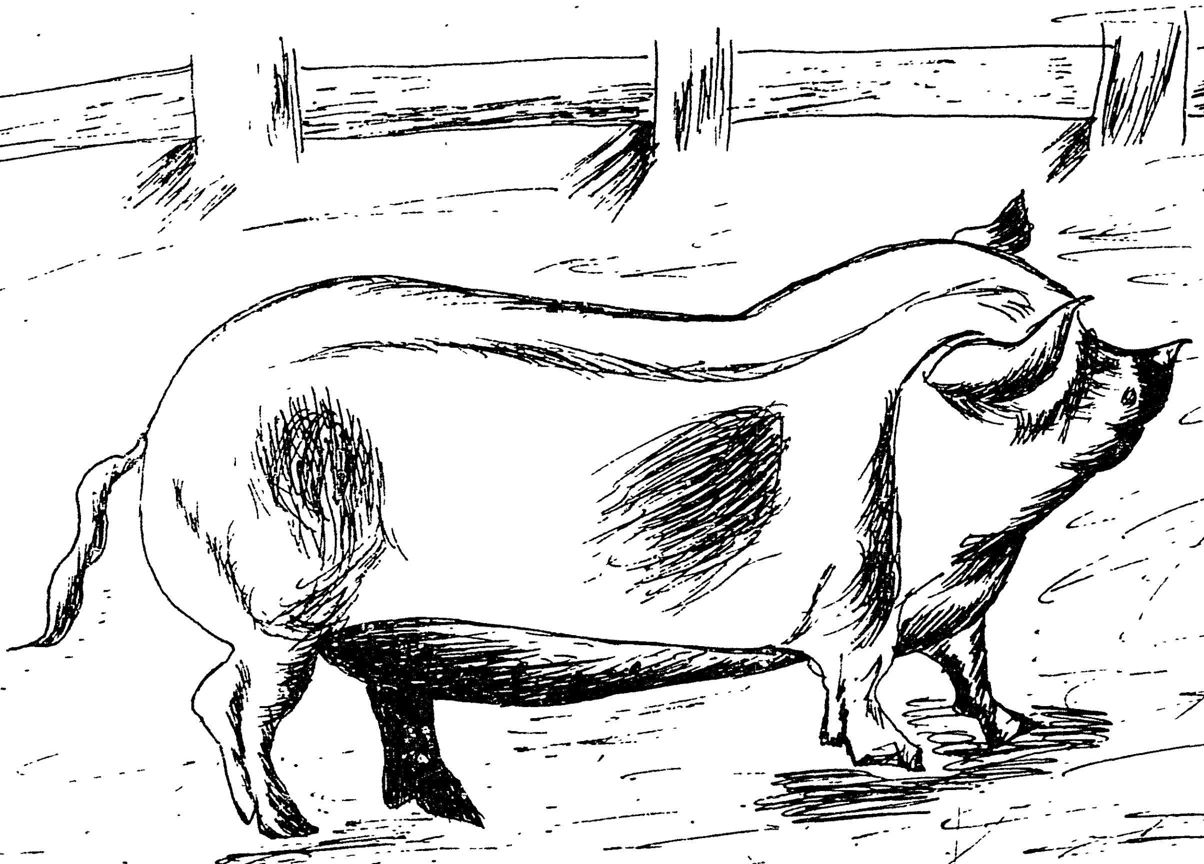
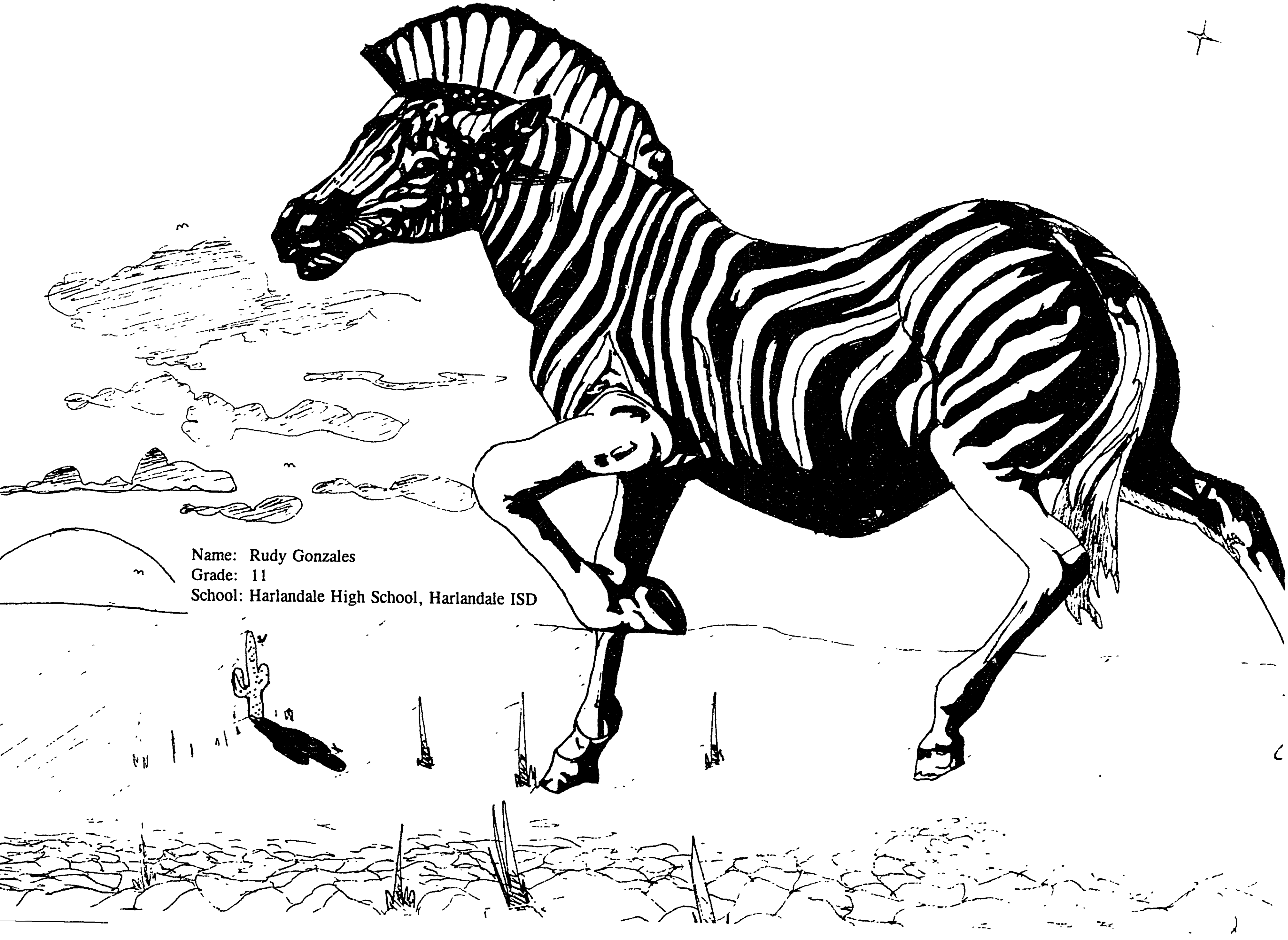
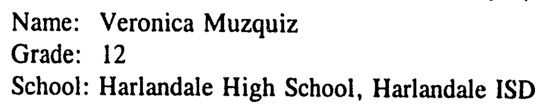
Name: Blanca Dominguez
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Blanca Dominguez
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Rudy Gonzales
Grade: 11
School: Harlandale High School, Harlandale ISD



Name: Veronica Muzquiz
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 Opinion

LO-95-078 (RQ-679). Request from Honorable William R. Ratliff, Chair, Committee on Education, Texas State Senate, P.O. Box 12068, Austin, Texas 78711, concerning whether and how a private road may become a part of the public domain after long and continuous use by the public.

Summary of Opinion. A private road may become a part of the public domain after long and continuous usage by the public. The public's right of highway by prescriptive easement ripens after ten years of continuous and uninterrupted public use that is adverse and exclusive and that is open and notorious or known to the owner of the servient tenement and acquiesced in by him or her.

An easement by necessity is an easement by implied grant and thus is not adverse and cannot ripen into a prescriptive easement even after continuous use of such an easement for more than ten years.

Since August 31, 1981, the effective date of former Texas Civil Statutes, Article 6812h, now nonsubstantively recodified as Transportation Code, Chapter 281, a public roadway easement by prescription may not arise in a county of 50, 000 or fewer persons until it is declared in a final judgment in a court of competent jurisdiction. For an easement ripening before that date, there is no legal requirement that any county obtain a judicial declaration of a public road by adverse possession before the county may spend public funds to maintain the roadway, and the public's right of highway based on prescription before that date is not dependent on the county's recognition of the road as a public highway.

TRD-9516321

Open Records Decisions

ORD-635 (RQ-720). Requests from Honorable Carole Keeton Rylander, Chair, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, concerning whether the appointment calendars used by public officers or employees constitute public information subject to the Texas Open Records Act and related questions.

Summary of Decisions. An appointment calendar purchased by a public official or employee with private funds is information subject to the Open Records Act when another public employee maintains the calendar as part of his or her job. Under these circumstances, the calendar cannot be considered a handwritten note in the sole possession of a public official or employee and made by that public official or employee for his or her own personal use. Furthermore, information, including an appointment calendar, does not fall outside the definition of public information in the Open Records Act merely because an individual member of a governmental body possesses the information rather than the governmental body as a whole.

The appointment calendar maintained by an employee for a public official is subject to the Open Records Act in its entirety, including the entries regarding personal appointments and activities. Common-law privacy may except from disclosure some medical information that may be found in the requested appointment calendar. To be excepted from disclosure by common-law privacy, medical information must contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and be of no legitimate public interest. The determination of whether particular information is excepted from disclosure by common-law privacy must be made on a case-by-case basis.

Under the facts stated in this decision, the appointment calendar purchased by a Railroad Commission of Texas employee with personal funds, that has been solely maintained and used by the employee, and that primarily contains personal appointments, is not public information subject to the Open Records Act even though some commission-related entries may be included in it.

TRD-9516353

ORD-636 (ORQ-1). Request from G. Todd Stewart, Olson & Olson, Three Allen Center, Suite 3485, 333 Clay Street, Houston, Texas 77002, concerning whether numbers called by individuals with specific law enforcement responsibilities on cellular telephones provided to the individuals by a governmental body are subject to disclosure under the Government Code, Chapter 552.

Summary of Decisions. The Government Code, §552.108 may protect from disclosure the numbers called on cellular telephones provided by a governmental body to individuals with specific law enforcement responsibilities. To establish the §552.108 exception to the numbers called, a governmental body must mark the numbers it claims are excepted and detail how release of the information would endanger a confidential informant or unduly interfere with law enforcement. A governmental body must withhold the home telephone numbers of peace officers and current or former government employees who have requested that this information be kept confidential under the Government Code, §552.024.

TRD-9516352

Opinion

DM-367 (RQ-794). Request from Honorable Fred Hill, Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910,

concerning constitutionality of the statute that permits local authorities to authorize persons to stand in roadways to solicit certain charitable contributions but not other contributions.

Summary of Opinion. The 1989 amendment to what then was §81(c) of Texas Civil Statutes, Article 6701d and now is Transportation Code, §552.007(a) (the "amendment"), which amendment permits local authorities to authorize persons to stand in roadways to solicit certain charitable contributions but prohibits solicitation of other contributions, Act of May 18, 1989, 71st Legislature, Regular Session, Chapter 342, 1989 Texas General Laws 1310, establishes a content-based speech restriction The amendment therefore is not valid under the First and Fourteenth Amendments of the Constitution unless the provision's discrimination against all solicitation other than certain charitable solicitation is narrowly drawn and necessary to serve a compelling state interest.

TRD-9516322

Requests for Opinions

(ID-#36001). Request from Tonya S. Davis, Cooke County Attorney, Cooke County Attorney's Office, Third Floor, Courthouse, Gainesville, Texas 76240, concerning authority of a private security officer to detain or arrest an individual who commits a criminal offense in his presence.

(ID-#36631). Request from Honorable Ben W. "Bud" Childers, County Attorney, Fort Bend County, 309 South Fourth Street, Suite 621, Richmond, Texas 77469, concerning whether a commissioners court may provide for themselves gasoline and repairs to their personal vehicles in addition to a monthly travel allowance.

(ID-#36860). Request from Charles Kuratko, Chair, State Board of Examiners for Speech-Language Pathology Audiology, 1100 West 49th Street, Austin, Texas 78756-3183, concerning whether Article 4566-1.16A, which requires a business entity that is "engaged in the fitting and dispensing of hearing instruments" to file a bond, surety in lieu of bond, cash deposit, or other negotiable security, is applicable to a person who practices audiology pursuant to Texas Civil Statutes, Article 4512j.

(ID-#36957). Request from Honorable Pete Gallego, Chair, Committee on General Investigating, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the holder of a special parking permit for the disabled is entitled to free parking at airport lots and garages.

TRD-9516320

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 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 3. Banking Section

Subchapter B. General

• 7 TAC §3.25

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

The Finance Commission of Texas (the commission) proposes the repeal of §3.25, concerning accounting for other real estate owned by a state bank. A new §12.91 in this title is proposed in this issue of the *Texas Register* to address other real estate owned.

The repeal is necessary because of changes in law made regarding other real estate owned by state banks as a result of the recent enactment of Texas Civil Statutes, Articles 342-1.001 et seq (Texas Banking Act, §§1.001 et seq) (the Act), particularly by the Act, §5.002. Required amendments are sufficiently extensive to warrant repeal and replacement of §3.25 by a new section.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Jobe also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal is clarification of statutory requirements through elimination of obsolete provisions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeal is proposed pursuant to rulemaking authority under the Act, §1. 012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Act. As required by the Act, §1. 012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

The statute affected by the proposed repeal is Texas Banking Act, §5.002.

§3.25. Accounting for Other Real Estate Owned by a State Bank.

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 15, 1995.

TRD-9516384 Everette D. Jobe
General Counsel
Finance Commission of Texas

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 475-1300

♦ ♦ ♦

Subchapter F. Access to Information

• 7 TAC §3.111

The Finance Commission of Texas (the commission) proposes new §3.111, concerning confidentiality of certain information relating to the financial condition or business affairs of a financial institution or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution. Proposed §3.111 will be the initial section in new Subchapter F, entitled Access to Information.

Proposed §3.111 prohibits the Banking Commissioner of Texas or an employee or agent of the Texas Department of Banking (the department) from disclosing confidential information, as that term is defined in the section, and prohibits a financial institution, its service provider or affiliate, or a governmental agency that has received confidential information from the department from disclosing it, subject to stated exceptions. In addition, the section establishes procedures for discovery of confidential information, filing notices of compulsory process related to confidential information and requesting records or testimony containing confidential information, and releasing or withholding confidential information.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Jobe 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 and more uniform protection of confidential information relating to financial institutions and, therefore, improved stability of such institutions and their ability to serve the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed pursuant to various rulemaking authority under Texas Civil Statutes, Articles 342-1.001 et seq (Act, §§1.001 et seq). The Act, §2.104, provides that a financial institution, affiliate or service provider that receives confidential information from the department may not disclose that information to anyone who is not officially connected to the recipient, except as authorized by rules adopted under the Act. The Act, §2. 105, provides that discovery of confidential information pursuant to subpoena from a person subject to the Act, Chapter 2, Subchapter B, must comply with rules adopted under the Act. The Act, §2.105 also provides that the rules may restrict release to confidential information that is directly relevant to the legal dispute at issue and that the rules may require a court-issued protective

order, in form and under circumstances the rules specify, prior to release. The Act, §1.012(a), provides that the commission may adopt rules "to accomplish the purposes of this Act," including rules that "implement and clarify" it or "preserve or protect the safety and soundness of banks." Texas Civil Statutes, Article 342-1106(b), provide that the commission may adopt rules to accomplish the purposes of trust company regulation. Texas Civil Statutes, Article 342-1103, §5, render the confidentiality provisions of the Act, §§2.101-2 108, applicable to trust companies. Finally, the Act, §9. 002(b), provides that the finance commission may adopt rules specifically applicable to foreign bank agencies The Act, §9.002(a), provides that a foreign bank agency is subject to the Act and, consequently, to the confidentiality provisions of the Act, §§2.101-2 108, as if it were a state bank.

As required by the Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Act, §§2.009, 2.101-2.108, 3.004, 4.002, 4.201, 6.012, 6.105, 6.204, and 7.224; and Texas Civil Statutes, Article 342-1103, §1, are affected by the proposed new section.

§3 111 Confidential Information.

(a) Policy. The Texas Department of Banking (the department) is committed to the concept of open state government. As a regulator of financial institutions, however, the department recognizes the mandate of the legislature to balance the competing interests of the need of financial institutions for confidentiality regarding their financial condition and business affairs with the general public's need for information. The legislature has determined that confidential information, with limited exceptions, should not be disclosed. See Texas Civil Statutes, Articles 342-2.101 et seq (the Act, §§2.101 et seq). Inappropriate disclosures can result in substantial harm to financial institutions and to those persons and entities (including other financial institutions) that have relationships with them. In accordance with the historical availability of records of financial institutions and the sound public policy that generally protects them, non-disclosure under this section protects the stability of such institutions by preventing disclosures that could adversely impact financial institutions. For example, the department may criticize a bank in an examination report for a financial weakness that does not currently threaten the solvency of the bank. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of bank "runs," short-term liquidity problems, and volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the bank. Bank failures lead to reduced access to credit and greater risk to depositors. Further, specific loans may be criticized in an examination report, and confidentiality of the information protects the financial privacy of customers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the financial institution and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

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

(1) Act-The Texas Banking Act, Texas Civil Statutes, Articles 342-1.001 et seq (the Texas Banking Act, §1.001 et seq).

(2) Affiliate-A company that directly or indirectly controls, is controlled by, or is under common control with a bank or other company.

(3) Confidential information-Written and oral information obtained directly or indirectly by the department relative to the financial condition or business affairs of a financial institution, or a present, former, or prospective shareholder, participant, officer, director, manager, affiliate, or service provider of a financial institution, whether obtained through application, examination, or otherwise, and all related files and records of the department, regardless of the form of the information when obtained or as held by the department or when the department first obtained it, and whether or not the information is part of the department's official files or records. The term does not include the public portions of call reports and profit and loss statements.

(4) Financial institution-As defined in the Act, §1.002(a)(25). For purposes of this section only, the term includes a trust company incorporated under Texas Civil Statutes, Articles 342-1101 et seq, and a foreign bank agency licensed under the Act, §§9.001 et seq.

(5) Governmental agency-Another department of this state, another state, the United States, a foreign sovereign state, or any related agency or instrumentality.

(6) Court-A court of law or equity or other adjudicatory tribunal with jurisdiction to issue a subpoena or other legal process for the production of documents, including a government agency exercising adjudicatory functions and an alternative dispute resolution mechanism, voluntary or required, under which a party may compel the production of documents.

(c) Authority to receive, hold or disclose confidential information. Authority to disclose confidential information to an individual, business, or governmental agency under this section constitutes authority to disclose it to the appropriate person officially connected to such individual, business, or governmental agency that has a need to know the information in connection with the discharge of official responsibilities and authority for the person who is officially connected to such individual, business, or governmental agency to receive such information. A person officially connected to a financial institution includes its holding company, officer, director, manager, in-house attorney, employee, and a person reasonably designated as officially connected with the financial institution by resolution duly adopted by the board of directors of the financial institution. A financial institution or its service provider, or affiliate may disclose confidential information to a non-employee, such as its agent, independent auditor, bonding company, or a prospective acquirer, only pursuant to board resolution designating the person or entity as officially connected with the financial institution, affiliate, or service provider. The financial institution, affiliate, or service provider may not disclose confidential information to a shareholder or participant that is specifically denied to such person under the Act, §2.108. Only a person to whom confidential information has been released pursuant to lawful authority may disclose that information to another, and all such further disclosures must be in accordance with the Act and this section.

(d) Disclosure prohibited.

(1) Pursuant to the Act, §2.101, and *Stewart v McCain*, 575 S.W.2d 509 (Texas 1978), the department possesses an absolute privilege against disclosure of confidential information held by the department. Except as provided by the Act and rules adopted under the Act, the finance commission, a member of the finance commission, the banking commissioner, or an employee or agent of the department may not directly or indirectly disclose confidential information, whether voluntarily or pursuant to subpoena or other legal process. Confidential information is discoverable from the department under this section only in a case in which the department is a party other than as intervenor under this section. Pursuant to the Act, §2.106, and notwithstanding any other provision of this section authorizing the release of confidential information, the banking commissioner may refuse to release information or records in the

custody of the department if, in the opinion of the banking commissioner, release of the information or records might jeopardize an ongoing investigation by the department or other governmental agency of potentially unlawful activities.

(2) Except as provided by the Act and this section, a financial institution, its service provider, or its affiliate may not disclose confidential information received from the department. Confidential information includes an examination report of, correspondence with, and formal and informal actions of the department taken against the financial institution, service provider, or affiliate.

(e) Exceptions to non-disclosure

(1) Disclosures by the department. Confidential information disclosed by the department pursuant to an exception to disclosure remains the confidential property of the department. The department may:

(A) disclose confidential information to the finance commission and other governmental agencies as provided by the Act, §2.102 and §2.103;

(B) publish final removal, prohibition, and cease-and-desist orders and information regarding the existence of a cease-and-desist order as provided by the Act, §6.012;

(C) release employment information as provided by the Act, §2.107;

(D) provide a copy of the regular report of examination and an order, opinion, or other confidential information to the financial institution, its service provider, or affiliate for which it was prepared and to which it relates and correspond with that financial institution, service provider, or affiliate regarding such information;

(E) provide a copy of the regular report of examination of a service provider and an order, opinion, or other confidential information relating to the service provider to the financial institution or institutions it services; and

(F) forward to a court of proper jurisdiction, subject to any existing administrative protective order, the record of an administrative hearing under appeal that contains confidential information. In the event an administrative protective order does not exist, the department or another party shall file a motion with the court for a protective order consistent with the terms of subsection (f)(4) of this section prior to filing the administrative record. Discretion of the banking commissioner or finance commission to vacate an administrative protective order entered under §9.22 of this title (relating to In Camera Materials) ceases at the time the appeal is filed.

(2) Further disclosure by a governmental agency, financial institution, service provider or affiliate. Except for disclosures pursuant to subsection (f) of this section, confidential information released to a financial institution, its service provider, or affiliate may be disclosed by the recipient only to a person officially connected to the recipient as provided by subsection (c) of this section and, if authorized under the terms of a confidentiality agreement between the department and another governmental agency, to that governmental agency in the discharge of its official duties. Disclosures to a non-employee designated by board resolution as officially connected to the financial institution, service provider, or affiliate must be made pursuant to a confidentiality agreement between the financial institution, service provider, or affiliate and the recipient. Confidential information released to a governmental agency may be disclosed by the agency only to a person officially connected to the agency as provided by subsection (c) of this section or to another governmental agency to the extent authorized by this section or other law, and must be in accordance with the terms of this section and a confidentiality agreement with or letter of instructions from the department.

(3) Disclosures of certain information.

(A) Statistical data. Confidential information consisting solely of statistical data may be disclosed, providing its release does not directly or indirectly disclose the identity of an individual or financial institution related to the data.

(B) Records of a failed financial institution. Subject to an appropriate finding of the banking commissioner under this subparagraph, the department may release confidential information in or related to the records of a failed financial institution. Release may not occur under this subparagraph earlier than three years after the date such financial institution failed. Information subject to release must pertain only to the condition of the financial institution and cannot include confidential customer information, absent customer consent, or information made confidential by laws other than the Act or this section. Confidential information, as limited herein, may be released if the banking commissioner, in the exercise of discretion, finds that:

(i) production of records is neither overly burdensome nor contrary to the public interest;

(ii) the need for the information clearly outweighs the need to maintain the confidentiality of the information; or

(iii) a compelling need exists for release of the records.

(C) Records of another governmental agency. Information the department has obtained from a federal or state governmental agency that is confidential under federal or state law or by agreement with the other agency is not considered part of the department's records. The department may not release such information unless the request for release is submitted with a certification from the appropriate state or federal authority that the information is subject to release under the laws of that jurisdiction.

(f) Discovery of confidential information from a governmental agency, financial institution, service provider, or affiliate.

(1) General rule. A governmental agency, financial institution, service provider, or affiliate that receives a subpoena or other legal process in any proceeding for the release of confidential information shall promptly notify the department of the request, provide the department with a copy of the process and of the requested documents or information, and object by written motion or other means available under applicable rules of procedure. Notice and documents should be sent to the Texas Department of Banking at 2601 North Lamar Boulevard, Austin, Texas 78705-4294, to the attention of the General Counsel, and should be labeled "Request for Release of Confidential Information under 7 TAC §3.111." Prior to the release of confidential information, such government agency, financial institution, service provider, or affiliate also must file and obtain a ruling on a motion for a protective order and in camera inspection in accordance with this subsection. Confidential information may be released only pursuant to a protective order in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

(A) the party seeking the information has a substantial need for the information;

(B) the information is directly relevant to the legal dispute in issue; and

(C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

(2) Discretionary filings by department. On receipt of notice under subsection (f)(1) of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this subsection.

(3) Motion for protective order and in camera inspection. The movant shall ask the court to enter a protective order in accordance with this subsection regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the protective order shall move for in camera inspection of the pertinent information. Until subject to a protective order, confidential information may not be released, and the party seeking a protective order shall request the court officer to deny discovery of such confidential information. The party seeking the protective order must comply with the court's applicable rules of procedure.

(4) Protective order. A protective order obtained pursuant to the terms of this subsection must:

(A) specifically bind each party to the litigation, including one who becomes a party to the suit after the protective order is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the protective order;

(B) describe in general terms the confidential information to be produced;

(C) state substantially the following in the body of the protective order:

(i) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the protective order in whole or part;

(ii) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the protective order and must insure that disclosure is limited to those persons specified in the protective order;

(iii) confidential information subject to the protective order and all information derived therefrom may be used only for the purpose of the trial, appeal, or other proceedings in the case in which it is produced,

(iv) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the terms of the protective order;

(v) confidential information produced under to the protective order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order:

(I) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under that attorney's supervision;

(II) to a witness or potential witness in the case;

(III) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the protective order and the party employing the expert agrees to be responsible for the compliance of its expert with this confidentiality obligation; and

(IV) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(vi) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(vii) a transcript, including a deposition transcript, that may include confidential information subject to nondisclosure is subject to the protective order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(viii) upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return to the party that produced the confidential information all copies of every document subject to the protective order and for which the counsel is custodian; and

(ix) production of documents subject to the protective order does not waive a claim of privilege or right to withhold the documents from a person not subject to the protective order.

(D) Clauses (i), (ii), and (v)-(vii) of subsection (f)(4)(C) of this section are subject to modification by the court for good cause before the conclusion of the proceeding, upon notice and opportunity to appear to the department.

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 15, 1995.

TRD-9516385 Everette D. Jobe
General Counsel
Finance Commission of Texas

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 475-1300

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TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 12. Loans and Investments

Subchapter A. Lending Limits

• 7 TAC §§12.1-12.11

The Finance Commission of Texas (the commission) proposes new §§12.1-12. 11, to constitute all of Chapter 12, Subchapter A, regarding legal lending limits applicable to state banks and trust companies. Chapter 12 is proposed to be retitled "Loans and Investments" and Subchapter A is proposed to be titled "Lending Limits." The previously proposed §§12.1-12.11, published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9335), are withdrawn in this issue of the *Texas Register*. All existing sections of Chapter 12 were proposed for repeal in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9335), although the repeal will not be adopted until and unless the new proposed sections are adopted.

The proposed sections do not substantially change the existing law established by the existing sections of Chapter 12 as reorganized and modified to account for changes in law made by Texas Civil Statutes, Articles 342-1.001 et seq (the Texas Banking Act, §§1.001 et seq) (the Act), particularly the Act, §5 201, and for existing regulatory determinations and other changes in law made since the legal lending limit rules were last revised in 1988. The proposed sections articulate and expand upon exceptions to the statutory legal lending limit and create several exceptions not addressed by the Act or existing sections of Chapter 12, both to improve clarity and answer frequently asked questions The proposed sections also implement parity with national banks in several respects, and the staff of the department of banking closely compared the proposal to the national bank lending limits adopted by the Office of the Comptroller of the Currency (OCC) on February 15, 1995, published in the *Federal Register* at 60 Fed. Reg. 8526, and codified at 12 Code of Federal Regulations (CFR), §§32 1-32.6, while attempting to preserve the lending limit scheme set forth in the Act. Percentage limits imposed by the OCC have been adjusted upward in appropriate circumstances to create parity in light of the smaller calculation base under the Act. In addition, the staff of the department of banking carefully considered comments submitted to date in formulating the proposed sections, as discussed further in this preamble.

Proposed §12.1 restates the public policy underlying legal lending limits and addresses the scope of the proposed subchapter. References are specifically made to federal law that creates additional restrictions on state banks. Two commenters pointed out other, applicable federal citations, and these provisions are added. The reader is further specifically cautioned that legal lending limits are designed to limit the bank's exposure to one borrower or source of repayment and to encourage diversification in the bank's loan portfolio, and do not address the application of prudent lending standards and safe and sound banking practices. The obligation to engage in prudent lending is the overriding standard.

Proposed §12 2 formerly set forth definitions of the "Act" and "borrower" to be applicable to the entire subchapter, and the new proposal adds a definition of "Federal funds sold" to facilitate certain redrafting. Proposed §12.3 extensively analyzes the term "loans or extensions of credit" as used in the Act, setting forth specific inclusions in the term as well as specific exclusions Language describing the power of a state bank to act as surety or guarantor, formerly set forth as part of proposed §12.3(a)(2)(B), is deleted in response to a comment that the authority to engage in the activity should more appropriately be located in regulations dealing with bank powers instead of in sections governing the legal lending limit. Comments received also requested definition of the terms "account party" and "commercial letter of credit" as used in proposed §12.3(a)(2)(D). Account party is clarified as the customer or applicant in a letter of credit transaction The agency concludes that the term "commercial letter of credit" does not need additional clarification given the explanation in the text of the section that the instrument neither guarantees payment nor provides for payment in the event of a default by a third party and is further characterized by the beneficiary's reasonable expectation that the beneficiary will draw on the issuer.

One comment received pointed out that Federal funds sold has changed somewhat in the modern marketplace and that maturities of more than one business day should be considered as loans or extensions of credit. Appropriate revisions have been made to §12.3(a) and (b) to make the correction. The agency also notes that the new proposal is consistent with the limitations imposed on national banks, see 12 CFR, §32.2(j)(1)(ii).

Proposed §12.3(b)(1) permits a bank to advance funds to protect its collateral without such advance being considered a loan or extension of credit, provided that any such advances must be considered as outstanding indebtedness in evaluating whether the bank can fund a new loan or extension of credit to the same borrower. Examples include advances for taxes, insurance, utilities, security, and maintenance expenses, but only if necessary to preserve the value of the real property or other collateral security and consistent with safe and sound banking practices. Under federal law, the OCC has also included advances for operating expenses within the exception, see 12 CFR, §32.2(j)(2)(l). The agency feels strongly that advances for operating expenses should be considered a new loan or extension of credit and is not reasonably related to preservation of collateral. Comments received, with one exception, generally agreed with the agency's position, and several pointed out the flexibility inherent in proposed §12.8(a) to address exceptions on a cases by case basis Clarification is added that the lending bank is expected to maintain adequate documentation demonstrating that the additional advance is necessary to preserve the value of the real property or other collateral security

As is the case under prior law, accrued and discounted interest is excluded from loans and extensions of credit under proposed §12.3(b)(2) The OCC has also excluded interest that has been capitalized from prior notes and interest that has been advanced under a loan agreement, under 12 CFR, §32.2(j)(2)(ii). The OCC states that such an addition assists primarily large banks with loans to foreign governments and also grants more flexibility to banks in working out troubled loans. The agency believes inclusion of the provision on capitalized and advanced interest is contrary to safe and sound banking practices for most state banks. Commenters generally urged the commission to adopt the OCC position while recognizing the flexibility under proposed §12. 8(a), which permits the banking commissioner, on application, to grant exceptions to the lending limit on a case by case basis. The proposed section does not include capitalized interest as a general exclusion from loans or extensions of credit.

One commenter expressed concern that the funding requirement for loan participations in proposed §12.3(b)(3)(B) could create inadvertent difficulties in the event of late funding. The proposal is amended to refer to the participating bank's contractual obligation to fund in the specified period to address this concern.

Proposed §12.3(b)(4) previously excluded "an advance against uncollected funds in the normal course of collection pursuant to Regulation CC (12 CFR, §229.1 et seq), including the amount of an item that must be credited to the customer under Regulation CC but remains uncollected and unreturned because of a delay or defect in the collection system" from loans or extensions of credit. Two commenters observed that the appropriate reference should be to the bank's published availability schedule since in many instances normal bank operations would result in "loans" where that schedule differs from Regulation CC. The proposed section is revised to address this concern.

One commenter urges inclusion of a new exception to loans and extensions of credit for the purpose of facilitating sales of the bank's own assets. Such an addition is not necessary given the exception already in the statute, see the Act, §5.201(a)(15).

Proposed §12.4(a) elaborates on the subject of loan commitments, a source of considerable confusion in prior years. In the view of the agency, no change in law or policy is made by proposed §12.4(a). Proposed §12.4(b) was formerly proposed as §12.5(g). Proposed §12.4(b) implements an increased lending limit for additional advances to complete project financing, under the commission's authority to add exceptions by rule. The section is intended to permit a bank to renew a loan commitment for purposes of completing the original intended funding under the commitment, to enable a project to be finished rather than force the unfinished property into foreclosure, if certain conditions are met. Several commenters argued that §12.5(g) as originally proposed could subject the bank to liability for failure to fund a binding commitment. The intent of the subsection is to allow renewal of an expiring commitment in those circumstances in which the new commitment would result in a legal lending limit violation, provided the specified conditions are met Some clarification has been made in response to these comments. As stated in proposed §12.4(a), advances may be made under a binding commitment to lend even if the advances would exceed the bank's lending limit on the date of funding, provided the aggregate commitment was within the bank's lending limit at the time of origination Proposed §12.4(b) does not alter §12.4(a) .

Proposed §12.5(a) sets out the general standard for legal lending limits, and clarifies that the sum of capital and certified surplus, as a measurement device, must be reduced in the event undivided profits is sufficiently negative to cause equity capital of a bank to be less than capital and certified surplus. In the view of the agency, no change in law or policy is made by the inclusion of proposed §12.5(a). The remainder of proposed §12. 5 sets out in detail the circumstances under which the general limit of §12. 5(a) can be exceeded, although banks are reminded that prudent

lending standards are always applicable. The increased lending limits generally are cumulative; i.e., the section is drafted in such a way that the limit expressed is in addition to the general 25% limit and any other special limit applicable to a transaction with the same borrower except as otherwise specifically provided Proposed §12.5(b)-(d) implement and clarify statutory exceptions. Several commenters suggested reductions in the percentage limits but these limits are set by statute and are based on national bank lending authority. While the commission can alter these percentage limits, the agency concludes that more experience is needed in assessing the viability of the statutory limits.

Proposed §12.5(e)-(g), create several new exceptions on the basis of parity with national banks Proposed §12.5(e) implements an increased lending limit for livestock under the commission's authority to add exceptions by rule, as a matter of parity with national banks. The agency, unlike the OCC in 12 CFR, §32.3(b)(3)(i), has not included horses and mules within "livestock" for purposes of this exception because a daily and reliable market does not exist for these animals. Comment was specifically requested regarding the ease of marketability of horses and mules and why an increased lending limit is appropriate consistent with safety and soundness. Based on comments received, the agency concludes that horses and mules should not be included in the definition of livestock for purposes of this exception.

Also with respect to livestock loans, the OCC addresses a potential lien conflict regarding livestock loans resulting from a lien for pasturage statutorily imposed in certain states on livestock by imposing an apparently complex requirement on the lending bank to, among other steps, obtain assignment and perfection of that lien, see 12 CFR, §32.3(b)(3)(iii). Under Property Code, §70.003, an owner or lessee of a pasture with whom an animal is left for grazing has a lien on the animal for the amount of charges for the grazing. Case law appears to hold that the lien is inferior to a prior recorded lien if the prior lienor did not have knowledge of or consent to the pasturage lien. However, the pasturage lien may be superior with respect to charges accrued before the bank's lien is recorded. Comment was specifically requested on the risk posed to banks lending on livestock by pasturage liens under Property Code, §70.003. Commenters generally concur that a pasturage lien can be superior to the bank's lien but argue that the risk is minimal and the effort to eliminate that risk can be overly burdensome and not cost effective. The agency therefore declines to require a state bank to buy out pasturage liens as a condition for use of this exception for livestock lending, but cautions that a bank should carefully consider the noted risk in the decision to lend, especially in those situations where the livestock are or will be on leased pasturage. If the loan is made, the bank's lien should be promptly recorded.

The proposal requires periodic inspection and valuation of pledged livestock, but in no event less than annually. This requirement matches the federal standard at 12 CFR, §32.3(b)(3)(iii). One commenter experienced in cattle lending stated that quarterly inspection and valuation should be required due to short term volatility in the cattle market. The agency concluded that, to preserve parity with national banks, the minimum standard of annual evaluation should be retained, but the agency notes that the requirement is for a reasonably current inspection and valuation, "taking into account the nature and frequency of turnover of the livestock to which the documents relate." Accordingly, monthly inspection and valuation may be appropriate for feedlot cattle, while annual inspection and evaluation may be sufficient with respect to range cattle.

Proposed §12.5(f) implements an increased lending limit for dairy cattle paper under the commission's authority to add exceptions by rule, as a matter of parity with national banks.

Proposed §12.6 clarifies certain exemptions under the Act, §5.201, for which no limits are specified, and are without significant change from prior law and regulatory interpretations. Proposed §12.6(c) and (e) are intended to exempt a loan to a governmental entity of this state or to a federal agency that would constitute a purchase of an investment security under the Act, §5. 101(d)(1), if the obligation were marketable. Proposed §12.6(f) is intended to exempt government guaranteed loans.

One commenter objects to the detailed requirements for both §12.6(c) and (f). The commenter argues that an opinion of counsel that a state or local governmental obligation is a "legally created general obligation" of the governmental entity may be impossible to obtain, as required by §12.6(c). With respect to §12.6(f), the commenter states that no loan would satisfy the requirements because all the programs are so different from one another. The agency requests further comment on this issue. The requirements are identical to the requirements imposed on national banks, see 12 CFR, §32.3(c) (4) and (5). However, the provisions are slightly reworded for clarity

With respect to §12.6(g), one commenter urged clarification that a loan that is only partially secured by a segregated deposit account should be excluded up to the amount of the segregated deposit. The agency disagrees that the proposal needs clarification. The exception to the legal lending limit is for loans secured by segregated deposit accounts to the extent so secured.

A commenter argues that the definition of "consumer paper" in proposed §12.6(h)(3) is unnecessarily limiting. The agency concurs and has modified the definition to be open-ended. Proposed §12.6(h)(4) lists factors that may result in characterization of an ostensible temporary mortgage purchase program as a loan to the originator, i.e., a mortgage warehouse facility. Clarification is added that failure to meet any one of the listed criteria will not necessarily result in characterization of an ostensible purchase transaction as a mortgage warehouse facility to the originator.

The specialized area of lease financing is addressed by proposed §12.7, which defines the structure of a financed lease sufficient to allow the bank to look to the lessee and not the lessor as borrower. No comments have been received on proposed §12.7.

Proposed §12.8 specifies the process of obtaining an exemption upon application as well as obtaining emergency relief from the banking commissioner in the situation of a legal lending limit that has become too low to allow a bank to adequately serve its community. The agency believes the ability to obtain an exemption on the facts of a particular case provides a significant advantage for state banks over national banks, although comment was requested regarding whether such an approval has implications under 12 United States Code (USC), §1831a and 12 CFR, §362.1 et seq (relating to limiting certain state bank activities to those permissible for national banks) . No comments were received regarding this potential issue. However, several commenters were concerned that insufficient standards were specified in the proposed section to add any degree of predictability. The agency believes that granted exceptions will be relatively rare, but is concerned that the section as proposed will lead to frequent requests for permission to loan in excess of legal lending limits. However, more detailed standards would also limit the flexibility of the proposed section before the agency has an opportunity to gauge its usefulness. The proposed section therefore has been modified to a limited extent in response to these comments.

Aggregation and attribution of loans, the process of determining the consolidated risk or exposure of the lending bank to a single source of repayment, is addressed in proposed §12.9 and, with two exceptions, is substantially unchanged from existing law although reorganized for clarity. Several modifications have been made to the prior proposal to correct inadvertently omitted words and lines that changed the meaning of several subsections, particularly §12.9(e) and (f).

Several commenters urged deletion of repetitious assertions of banking commissioner discretion to attribute loans to another person, and further requested either deletion of all such references or objective standards for application. The agency declines to eliminate the provision in this proposal based on the Act, §5.201(c). Discretion to deal with creative evasion of the legal lending limits must remain unfettered. However, the agency has eliminated repetitious assertions of discretion as requested.

Under proposed §12.9(c), the common enterprise test for aggregation and attribution is stated in one instance as the existence of "substantial financial interdependence ... between or among the borrowers." Proposed §12. 9(c)(2) states that substantial financial interdependence exists if 50% or more of one borrower's annual gross receipts or gross expenditures derive from transactions with the other borrower, and further creates a rebuttable presumption of substantial financial interdependence exists if 25% or more of one borrower's annual gross receipts or gross expenditures derive from transactions with the other borrower. The 50% irrebuttable presumption is the same as the OCC has imposed on national banks, see 12 CFR, §32.5(c)(2)(ii). Two commenters argued for deletion of the 25% rebuttable presumption because it is not included in the federal regulation. The agency disagrees in that a busi-

ness that is dependent for a quarter of its revenues or raw materials on another business could reasonably be characterized as financially interdependent with the other business, but has modified the provision to clearly state that the 25% presumption is rebuttable.

The OCC has imposed a separate limit on loans to corporate groups (generally defined as a group of business entities under common control, including forms of business entities other than corporations) in 12 CFR, §32. 5(d). Proposed §12.9(e) seeks to impose the same requirement in recognition of the inherent risk in loans to a controlled group of business entities and to simplify application of the attribution rules in that context.

Proposed §12.9(g) is new in this proposal. Several questions in recent weeks regarding the applicability of aggregation to guarantors and other accommodation parties convinced the agency to include this provision, in substance substantially identical to existing §12.2. Generally, the derivative obligation of a drawer, endorser, or guarantor of a loan or extension of credit, including a contingent obligation to purchase collateral that secures a loan, is not aggregated with direct loans or extensions of credit to such drawer, endorser, or guarantor if the lending bank is relying primarily on the creditworthiness of the primary obligor and neither the direct benefit, common enterprise, nor source of repayment test is met.

Nonconforming loans are loans made on or after September 1, 1995, that were within a bank's legal lending limit when made but no longer comply because of specified reasons, and are governed by proposed §12.10. Such loans will be cited as nonconforming loans but not as violations of the legal lending limit if they are nonconforming by reason of a decline in the bank's capital and certified surplus or equity capital, subsequent merger or affiliation of borrowers in such a way as to invoke aggregation of previously separate loans, subsequent changes in lending limit or capital definitions or standards after the effective date of proposed Chapter 12, or a decline in value of collateral securing a loan or extension of credit that causes noncompliance with a special lending limit or exception. In the last case, a bank must take action to restore collateral value within 30 days after the nonconformity is discovered. In other cases of nonconformity, the bank is obligated to use best efforts to bring the credit into compliance, and in some circumstances may renew or restructure the loan.

One comment argues that this proposed section conflicts with proposed §12. 4(a) regarding funding loan commitments. Another comment argues that the banking commissioner's authority to determine that a renewal or restructuring is an attempt to evade the legal lending limit is too broad. A third comment objected to the 30 day period for curing a nonconformity that arises because of a decline in collateral values. The agency disagrees with all three comments. The proposal is similar provisions imposed on national banks, see 12 CFR, §32.2(j)(2)(iv) and §32.6. Further, identifying a loan as nonconforming merely aids in identifying weaknesses in the financial condition of a bank, and is not a violation of the legal lending limit. Finally, the agency believes the 30 day cure period for nonconformity based on declined collateral values is adequate, and is identical to provisions governing nonconforming loans of national banks, see 12 CFR, §32.6(c).

Proposed §12.11 addresses transition from the Texas Banking Code to the Texas Banking Act regarding treatment of loans in existence on the effective date of the Act, primarily by providing an exemption based on specified standards, including standards for renewing and restructuring a loan if necessary. Subject to satisfaction of the specified standards, loans subject to proposed §12.11 will not be cited as violations of lending limits or as nonconforming loans.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Jobe 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 is the clarification of highly complex statutory standards to aid the industry in compliance. No net economic cost will result to persons required to comply with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed sections may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new sections are proposed under the Act, §5.201(d), which authorizes the commission to adopt rules to administer and carry out the Act, §5.201, regarding legal lending limits, including rules to define or further define terms used in the statute, or establish limits, requirements, or exemptions other than specified by the statute for particular classes or categories of loans or extensions of credit. The sections are also proposed under the Act, §1.012(a), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Act, preserve or protect the safety and soundness of state banks, and grant the same rights and privileges to state banks that are or may be granted to national banks domiciled in this state. As required by the Act, §1.012(b), in proposing these sections, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Texas Civil Statutes, Article 342-5.201 and Article 342-5.203, are affected by the proposed new sections.

§12.1. Purpose and Scope.

(a) Purpose. The purpose of this subchapter is to administer and carry out the objectives of Texas Civil Statutes, Articles 342-1.001 et seq (the Texas Banking Act, §§1.001 et seq) (the Act), particularly the Act, §5.201, to protect the safety and soundness of state-chartered banks by preventing excessive loans to one person or a relatively small group of persons who are financially interdependent, and to promote diversification of loans to reduce portfolio and credit risk. Notwithstanding the provisions of the Act, §5.201, and this subchapter, loans and extensions of credit by state banks and their operating subsidiaries remain subject to the exercise of prudent lending standards and safe and sound banking practices.

(b) Scope.

(1) This subchapter applies to all loans and extensions of credit made by a state bank and its operating subsidiaries on or after September 1, 1995. This subchapter does not apply to loans made by a state bank and its domestic operating subsidiaries to the bank's "affiliates," as that term is defined in 12 United States Code (USC), §371c(b)(1), pursuant to the Act, §5.201(a)(13), or to loans made by a state bank to the bank's operating subsidiaries, pursuant to the Act, §5.201(a)(14). Except as otherwise provided, this subchapter does not apply to other loans specifically exempted from the lending limit pursuant to the Act, §5.201(a).

(2) Loans and extensions of credit to affiliates, executive officers, directors, and principal shareholders of state banks, and their related interests, are subject to the limits prescribed by 12 USC, §§371c, 371c-1, 375a, and 375b, Regulation O (12 Code of Federal Regulations (CFR), §215.1 et seq), and 12 CFR, §337.3, in addition to the lending limits established by the Act, §5.201, and this subchapter.

(3) The lending limits in this subchapter are separate and apart from the investment limits set forth in the Act, §5.101, and regulations adopted to govern investment limits. A state bank may make loans or extensions of credit to one borrower up to the full amount permitted by this subchapter and also purchase and hold eligible investment securities issued by the same obligor up to the full amount permitted under the Act, §5.101.

§12.2. General Definitions. Words and terms used in this subchapter that are defined in the Act, §1.002, have the same meanings as defined in the Act. 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, Articles 342-1.001 et seq (the Texas Banking Act, §§1.001 et seq).

Borrower-A person who is named as a borrower, obligor, or debtor in a loan or extension of credit, or any other person, including but not limited to a drawer, endorser, or guarantor who is considered to be a borrower under the direct benefit, source of repayment, or common enterprise tests set forth in §12.9 of this title (relating to Aggregation and Attribution).

§12.3 Loans and Extensions of Credit.

(a) Loans or extensions of credit for purposes of the Act, §5.201, and this subchapter include:

(1) an overdraft, regardless of whether such overdraft was pre-arranged, other than an overdraft for which payment or deposit is received by the bank before the time at which the bank closes its accounting records for the business day on which the funds were advanced;

(2) a contractual obligation to advance funds to or on behalf of a person, including a bank's obligation to:

(A) make payment, directly or indirectly, to a third party contingent upon default by a customer of the bank in performing an obligation owed to the third party or upon another stated condition;

(B) guarantee or act as surety for the benefit of a person;

(C) advance funds under a legally binding commitment to lend; or

(D) advance funds under a standby letter of credit, a put, or other similar arrangement, however named or described, that represents an obligation to the beneficiary on the part of the issuing bank to repay money borrowed by or advanced to or for the account of the account party (the customer or applicant in a letter of credit transaction), make payment on account of any indebtedness undertaken by the account party, or make payment on account of a default by the account party in the performance of an obligation, but not including a bank's obligation under a commercial letter of credit or similar instrument if the issuing bank reasonably expects the beneficiary to draw on the issuer and the instrument neither guarantees payment nor provides for payment in the event of a default by a third party;

(3) a maker or endorser's obligation arising from the discount of commercial paper;

(4) third-party paper purchased to the extent it is subject to an agreement that the seller will repurchase the paper, including an obligation to repurchase the paper upon default or at the end of a stated period, less any applicable dealer reserves held by the bank as collateral security;

(5) the sale of Federal funds with a maturity of more than one business day, but not Federal funds sold with a maturity of one day or less or Federal funds sold under a continuing contract;

(6) loans or extensions of credit that have been charged off on the books of the bank, in whole or part, unless the loan or extension of credit:

(A) has become unenforceable by reason of discharge in bankruptcy;

(B) is no longer legally enforceable because of the expiration of the statute of limitations or judicial decision; or

(C) is no longer legally enforceable for any other reason, provided the bank maintains sufficient records to demonstrate that the loan is unenforceable;

(7) lease financing transactions made pursuant to the Act, §5.203, unless otherwise exempt under §12.7 of this title (relating to Lease Financing); and

(8) nonrecourse or limited recourse loans or extensions of credit.

(b) Loans or extensions of credit for purposes of the Act, §5.201, and this subchapter do not include:

(1) funds advanced to or for the benefit of a borrower by a bank for taxes or insurance associated with collateral security for a loan or extension of credit, as well as funds advanced for utilities, security, and maintenance expenses associated with real property securing a loan or extension of credit, but only if necessary to preserve the value of the real property or other collateral security and consistent with safe and sound banking practices, provided the bank maintains sufficient records to demonstrate the necessity of the advance, except that such advances must be included in loans and extensions of credit thereafter until repaid for the purpose of determining whether additional loans or extensions of credit to the same borrower may be made within applicable lending limits;

(2) accrued and discounted interest on an existing loan or extension of credit;

(3) that portion of a loan or extension of credit sold as a participation by a bank on a nonrecourse basis, provided the participation results in a pro rata sharing of credit risk proportionate to respective interests of the originating and participating lenders, except that:

(A) if the participation agreement provides that repayment must be applied first to the portions sold, a pro rata sharing will be considered to exist only if the participants share in all subsequent repayments and collections in proportion to their percentage participation in the event of default or comparable event provided in the agreement, at the time of the occurrence of the event; and

(B) if the originating bank funds the entire loan, the participants must be contractually obligated to remit their portion to the bank before the close of business (the time at which the bank closes its accounting records for the business day) on the next business day of the originating bank or its portion funded by the originating bank will be considered a loan by the originating bank to the borrower;

(4) an advance against uncollected funds in the normal course of collection pursuant to the bank's availability schedule issued in compliance with Regulation CC (12 CFR, §229.1 et seq), including the amount of an item that must be credited to the customer under the bank's availability schedule but remains uncollected and unreturned because of a delay or defect in the collection system; or

(5) the sale of Federal funds with a maturity of one day or less, or Federal funds sold under a continuing contract.

§12.4. Loan Commitments.

(a) A commitment to lend, when combined with all other loans or extensions of credit to a borrower, must be within the bank's legal lending limit at the time the commitment becomes binding, and advances may be made under a binding commitment to lend even if the advances would exceed the bank's lending limit on the date of funding. In determining whether a commitment to lend is within a bank's lending limit when made, the bank may deduct from the amount of the commitment the amount of each legally binding loan participation agreement executed concurrently with the bank's commitment that would be excluded from a loan or extension of credit under §12.3(b)(3) of this title (relating to Loans and Extensions of Credit).

(b) Pursuant to the Act, §5.201(b)(2), a state bank may renew a commitment to lend and complete funding under that commitment to one borrower in circumstances where the renewed commitment would exceed the bank's current, general lending limit if:

(1) the completion of funding is consistent with safe and sound banking practices and is made to protect the position of the bank;

(2) the completion of funding will enable the borrower to complete the project for which the original, expiring commitment to lend was made; and

(3) the amount of the additional funding does not exceed the unfunded portion of the bank's original, expiring commitment to lend.

§12.5. Percentage Lending Limits.

(a) General Lending Limit. Generally, a bank's total outstanding loans and extensions of credit to one borrower, as provided in the Act, §5.201, may not exceed 25% of the lesser of the bank's capital and certified surplus or the bank's total equity capital. However, certain loans or extensions of credit are subject to special lending limits as set forth in this section. These special lending limits are cumulative of one another and of the general lending limit under this subsection except as otherwise provided.

(b) Loans Secured by Title to Readily Marketable Goods.

(1) Pursuant to the Act, §5.201(a)(3), loans to one borrower secured by a bill of lading, bonded warehouse receipt, or similar document transferring or securing title to readily marketable goods may not exceed 50% of the lesser of the bank's capital and certified surplus or the bank's total equity capital, in addition to the amount for that borrower allowed under the bank's general lending limit for loans and extensions of credit other than as provided by this subsection, provided the bank's interest in the collateral is adequately insured against loss if it is customary to do so. The market value of the goods securing the loan must at all times equal at least 115% of the amount of the outstanding loan that exceeds the general lending limit. The duration of the loan or extension of credit may not exceed six months if secured by goods that are refrigerated or frozen, or ten months if secured by nonperishable goods.

(2) The holder of the bonded warehouse receipts, order bills of lading, documents of title (as defined under the Business and Commerce Code), or other similar documents must have control and be able to obtain immediate possession of the goods so that the bank is able to sell the underlying goods and promptly transfer title to the buyer if default were to occur on a loan secured by such documents. The requirement under applicable law for a brief notice period or other similar procedural condition prior to disposal of the goods will not affect the eligibility of the instruments for this special lending limit.

(3) For purposes of this subsection, readily marketable goods are articles of commerce or industry in the form of fungible units that are easy to sell in a market with sufficiently frequent price quotations, and includes basic metals, such as tin, copper, or lead, consumer goods, and packaged processed foods, including refrigerated or frozen foods. The exact price must be easy to determine and the article itself must be easy to sell at any time at a price that would not be considerably less than the amount at which it is valued as collateral. Whether an article qualifies as readily marketable goods is determined on the basis of the conditions existing at the time the loan or extension of credit secured by the article is made. Whether goods are nonperishable must be determined on a case-by-case basis because of the differences in types of goods and differences in the shipping, handling, and storing of goods.

(c) Loans secured by Liens on Stored Agricultural Products.

(1) Pursuant to the Act, §5.201(a)(4), loans to one borrower secured by liens on agricultural products in secure and properly documented storage in bonded warehouses or elevators may not exceed 50% of the lesser of the bank's capital and certified surplus or the bank's total equity capital, in addition to the amount for that borrower allowed under the bank's general lending limit for loans and extensions of credit other than as provided by this subsection, provided the bank's interest in the collateral is adequately insured against loss. The market value of the agricultural products securing the loan must at all times equal at least 125% of the amount of the outstanding loan. The duration of the loan or extension of credit may not exceed six months if secured by agricultural products that are refrigerated or frozen, or exceed ten months if secured by nonperishable agricultural products.

(2) The bank must have control and be able to obtain immediate possession of the agricultural products so that the bank is able to sell the underlying products and promptly transfer title to the buyer if default were to occur on a loan secured by such products. The requirement under applicable law for a brief notice period or other similar procedural condition prior to disposal of the products will not affect the eligibility of the products for this special lending limit.

(3) Field warehouse receipts are an acceptable form of collateral when issued by a duly bonded and licensed grain elevator or warehouse having exclusive possession and control of the agricultural products even though the grain elevator or warehouse is maintained on the premises of the owner of the products. Warehouse receipts issued by the borrower-owner that is a grain elevator or warehouse company, duly bonded and licensed and regularly inspected by state or federal authorities, may be considered eligible collateral under this provision only when the receipts are registered with an independent registrar whose consent is required before the products may be withdrawn from the warehouse.

(4) Agricultural products are any product of agriculture, excluding livestock but not the products of livestock, and includes wheat and other grains, cotton, wool, flowers, eggs, and milk. Whether agricultural products are nonperishable must be determined on a case-by-case basis because of the differences in types of agricultural products and differences in the shipping, handling, and storing of agricultural products.

(d) Loans Secured by Readily Marketable Collateral.

(1) Pursuant to the Act, §5.201(a)(12), loans or extensions of credit to one borrower may exceed the bank's general lending limit by an additional 15% of the lesser of the bank's capital and certified surplus or the bank's total equity capital if the amount that exceeds the bank's general lending limit is fully secured by readily marketable collateral. The bank must properly perfect its security interest in the collateral to qualify for this added special lending limit and the collateral at all times must have a market value of at least 100% of the amount of the loan or extension of credit that exceeds the bank's general lending limit.

(2) For purposes of this subsection, readily marketable collateral must be financial instruments or bullion that can be promptly sold under ordinary market conditions at a fair market value determined by reliable and continuously available price quotations, based upon actual transactions on an auction or similarly available daily bid and ask price market. Financial instruments are stocks, bonds, notes, and debentures traded on a national securities exchange, over-the-counter margin stocks as defined in Regulation U (12 CFR, §§221.1 et seq), commercial paper, negotiable certificates of deposit, bankers' acceptances, and shares in a money market mutual fund of the type that issues shares in which banks may perfect a security interest, but not including individual mortgages. Financial instruments may be denominated in foreign currencies that are freely convertible into United States dollars.

(e) Loans Secured by Documents Covering Livestock.

(1) Pursuant to the Act, §5.201(b)(2), loans or extensions of credit to one borrower secured by shipping documents or instruments that transfer or secure title to or grant a first lien security interest

in livestock may not exceed 15% of the lesser of the bank's capital and certified surplus or the bank's total equity capital, in addition to the amount allowed under the bank's general lending limit The market value of the livestock securing the loan must at all times equal at least 115% of the amount of the outstanding loan that exceeds the general lending limit.

(2) The bank must maintain in its files an inspection and valuation for the livestock pledged that is reasonably current, taking into account the nature and frequency of turnover of the livestock to which the documents relate, but in no event more than 12 months old.

(3) For purposes of this subsection, livestock includes dairy and beef cattle, hogs, sheep, goats, poultry, and fish, whether or not held for resale.

(f) Loans Secured by Dairy Cattle Paper. Pursuant to the Act, §5. 201(b)(2), loans and extensions of credit to one borrower arising from the discount by dealers in dairy cattle of paper given in payment for the cattle may not exceed 15% of the lesser of the bank's capital and certified surplus or the bank's total equity capital, in addition to the amount allowed under the bank's general lending limit. To qualify, the paper must carry the full recourse endorsement or unconditional guarantee of the seller and must be secured by the cattle sold, pursuant to liens that allow the bank to maintain a perfected security interest in the cattle under applicable law.

§12 6 Loans Not Subject to Lending Limits

(a) Loans Arising from the Discount of Commercial or Business Paper.

(1) Pursuant to the Act, §5 201(a)(1), loans or extensions of credit arising from the discount of negotiable commercial or business paper that evidences an obligation to the person negotiating the paper are not subject to the lending limits of the Act, §5.201, or this subchapter, provided that:

(A) the paper is given in payment of the purchase price of commodities purchased for resale, fabrication of a product, or another business purpose that may reasonably be expected to provide funds for payment of the paper; and

(B) the paper bears the full recourse endorsement of the owner of the paper, except that paper discounted in connection with export transactions may be transferred without recourse or with limited recourse if supported by an assignment of appropriate insurance, acceptable to the banking commissioner, covering the political, credit, and transfer risks applicable to the paper, such as insurance provided by the Export-Import Bank.

(2) A default in the payment of principal or interest on commercial or business paper when due does not disqualify the exception under this subsection or result in a loan or extension of credit to the maker or endorser of the paper that is subject to lending limits, provided that the amount of such defaulted paper must be included in loans and extensions of credit thereafter until the default is remedied for the purpose of determining whether additional loans or extensions of credit to the same borrower may be made within applicable lending limits.

(b) Bankers' Acceptances. Pursuant to the Act, §5.201(a)(2), acceptance of drafts eligible for rediscount under 12 USC, §372 and §373, or a bank's purchase of acceptances created by other banks that are eligible for rediscount under those sections, is not subject to the limits of the Act, §5.201, or this subchapter. Bankers' acceptances within this exception do not include:

(1) acceptance of drafts ineligible for rediscount, thereby resulting in a loan from the bank to the customer for whom the acceptance was made, in the amount of the draft;

(2) purchase of ineligible acceptances created by other banks, thereby resulting in a loan from the purchasing bank to the accepting bank, in the amount of the purchase price; or

(3) a bank's purchase of its own acceptances, thereby resulting in a loan to the bank's customer for whom the acceptance was made, in the amount of the purchase price.

(c) Obligations of State or Local Government. Pursuant to the Act, §5. 201(b)(2), a loan or extension of credit to this state or an agency or political subdivision of this state, including a county or municipality or an agency or political subdivision of a county or municipality, is not subject to the limitations of the Act, §5.201, or this subchapter to the extent the loan or extension of credit constitutes a legally created general obligation of the borrower, if the lending bank has obtained an opinion of counsel that the loan or extension of credit is a valid and enforceable general obligation of the borrower.

(d) Loans Secured by U.S. Obligations. Pursuant to the Act, §5.201, a loan or extension of credit to a borrower is not subject to the limitations of the Act, §5.201, or this subchapter if the bank perfects a security interest in the collateral under applicable law and the bank is fully secured by the current market value of:

(1) bonds, notes, certificates of indebtedness, or Treasury bills of the United States or by similar obligations fully and unconditionally guaranteed as to principal and interest by the United States; or

(2) loans to the extent unconditionally guaranteed as to repayment of principal by the full faith and credit of the United States, as further described by subsection (f) of this section.

(e) Loans to a Federal Agency. Pursuant to the Act, §5.201(b)(2), a loan or extension of credit to an agency or instrumentality of the United States including a department, agency, bureau, board, commission, or establishment of the United States, or any corporation wholly owned directly or indirectly by the United States, is not subject to the limitations of the Act, §5.201, or this subchapter.

(f) Government Guaranteed Loans. Pursuant to the Act, §5.201(a)(8), a loan or extension of credit to a borrower is not subject to the limitations of the Act, §5.201, or this subchapter to the extent secured by unconditional takeout commitments, insurance, or guarantees of a governmental entity described in subsection (c) or (e) of this subsection, provided the commitment or guarantee is payable only in cash or its equivalent within 60 days after demand for payment is made. If the purchasing, insuring, or guaranteeing entity is described in subsection (c) of this section, the lending bank must obtain an opinion of counsel that the unconditional takeout commitment, insurance, or guarantee is a legally created, general obligation of the purchasing, insuring, or guaranteeing entity. A takeout commitment, insurance, or guarantee is considered unconditional if the protection afforded the bank is not substantially diminished or impaired if loss should result from factors beyond the bank's control. Protection against loss is not materially diminished or impaired by procedural requirements such as an agreement to take over only in the event of default, including default over a specific period of time, a requirement that notification of default be given within a specific period after its occurrence, or a requirement of good faith on the part of the bank.

(g) Loans Secured by Segregated Deposit Accounts. Pursuant to the Act, §5.201(a)(10), loans or extensions of credit are not subject to the limitations of the Act, §5.201, and this subchapter to the extent secured by a segregated deposit account in the lending bank, provided that:

(1) the lending bank has perfected its security interest in the deposit under applicable law;

(2) if the deposit is eligible for withdrawal before the secured loan matures, the bank establishes internal procedures to prevent release of the security without the lending bank's prior consent;

(3) if the deposit is denominated and payable in a currency other than that of the loan or extension of credit that it secures, the deposit currency is freely convertible to U.S. dollars, except that only that portion of the loan or extension of credit that is fully secured by the U.S. dollar value of the deposit qualifies for exception and only if the lending bank establishes procedures to periodically revalue foreign currency deposits to ensure that the loan or extension of credit remains fully secured at all times.

(h) Discount of Installment Consumer Paper.

(1) Loans and extensions of credit to one borrower arising from the discount of negotiable or nonnegotiable installment consumer paper that carries a full recourse endorsement or unconditional guarantee of payment by the person transferring the paper to the bank is considered a loan or extension of credit to the transferor, as well as the maker, and subject to the general lending limit, except that the loan or extension of credit will not be considered made to the transferor to the extent the bank has met the requirements of the Act, §5.201(a)(11), and this subsection. If the transferor of the paper offers only partial recourse to the bank, the exception provided by the Act, §5.201(a)(11), and this subsection is available only to the extent of the total amount of paper the transferor may be obligated to repurchase or has guaranteed. An unconditional guarantee may be in the form of a repurchase agreement, separate guarantee agreement, or other agreement having the same effect. A condition reasonably within the power or control of the bank to perform will not render conditional an otherwise unconditional guarantee.

(2) In order to claim the installment consumer paper exception under the Act, §5.201(a)(11), and this subsection, the bank must demonstrate its reliance on the maker of the paper by maintaining records supporting the bank's independent credit analysis of the maker's ability to repay the loan or extension of credit, maintained by the bank or a third party that is contractually obligated to make those records available for examination purposes, and a written certification by an officer of the bank, specifically designated by the board of the bank for this purpose, that the bank is relying primarily on the maker for repayment of the loan or extension of credit and not on a full recourse endorsement or unconditional guarantee by the transferor. If installment consumer paper is purchased in substantial quantities, the required records, evaluation, and certification must be in a form appropriate for the class and quantity of paper involved. The bank may use sampling techniques, or other appropriate methods, to independently verify the reliability of the credit information supplied by the seller.

(3) As used in this subsection, a consumer is the end user of a product, commodity, good, or service, whether leased or purchased, but not a person who purchases products or commodities for the purpose of resale or fabrication into goods for sale. Consumer paper includes paper relating to the lease or purchase of automobiles, mobile homes, residences, office equipment, household items, tuition fees, insurance premiums, and other consumer items. Consumer paper also includes paper relating to the lease or purchase of equipment for use in manufacturing, farming, construction, or excavation, if the bank is neither the lessor nor owner of the property.

(4) A bank may purchase and temporarily hold mortgages for sale to investors in the secondary market, and consider the purchases as loans to individual mortgagors rather than a mortgage warehouse facility, by purchasing without recourse to the transferor or, if purchased with recourse, by complying with this subsection. Whether an actual purchase is considered to occur depends on both the nature of the relationship established between the bank and other parties to the contractual arrangements and on assessment of the economic substance of the transaction. Failure to meet any one of the criteria applied by the department does not necessarily result in characterization of an ostensible purchase transaction as a mortgage warehouse facility to the originator. In determining whether the economic substance of a transaction constitutes a purchase, the department will consider whether:

(A) provisions of the contractual arrangements governing the mortgage transfers consistently reflect a relationship of buyer and seller between the bank and the transferor, and whether the bank in fact acts as the owner of the mortgages;

(B) the bank obtains possession or control of the bearer instruments conveying ownership, including the original note, deed of trust, assignment from the transferor, and a power of attorney from the transferor for instruments endorsed in blank, provided that possession or control may also be established through safekeeping or custodial arrangements between the bank and a third party agent or bailee;

(C) the bank takes possession or control of underlying underwriting documents, provided that possession or control of the underwriting documents by the investor is not inconsistent with characterization of the bank as a purchaser and owner of the mortgages;

(D) the bank receives and controls the sales proceeds when remitted from the investor;

(E) the bank demonstrates reliance on the maker by reviewing the credit quality and documentation underlying a mortgage prior to committing to make the purchase, provided that a bank purchasing mortgages in significant quantities may use sampling techniques or other appropriate methods to independently verify the reliability of the credit information supplied by the transferor;

(F) recourse and repurchase obligations of the transferor are subject to conditions outside the control of the transferor, such as a commitment to repurchase the mortgage if rejected by the investor for reasons other than fraud or underwriting deficiency; and

(G) the bank earns interest on the mortgages according to the interest rate on the face of each note rather than at a rate separately negotiated with the transferor.

§12.7. Lease Financing.

(a) Loans to Industrial Development Authorities. Pursuant to the Act, §5.201(b)(2), a loan or extension of credit to an industrial development authority or similar public entity created to construct and lease a plant facility, including a health care facility, to an industrial occupant is considered a loan to the lessee, provided that:

(1) the bank documents the basis for its reliance on the industrial occupant as the primary source of repayment before the loan is extended to the authority;

(2) the authority's liability on the loan is limited solely to whatever interest it has in the particular facility;

(3) the authority's interest is assigned to the bank as security for the loan or the industrial occupant issues a promissory note to the bank that provides a higher order of security than the assignment of a lease; and

(4) the industrial occupant's lease rentals are assigned and paid directly to the bank.

(b) Loans to Leasing Companies. Pursuant to the Act, §5.201(b)(2), a loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease is considered a loan to the lessee, provided that:

(1) the bank documents the basis for its reliance on the lessee as the primary source of repayment before the loan is extended to the leasing corporation;

(2) the loan is without recourse to the leasing corporation;

(3) the bank receives a security interest in the equipment and, in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;

(4) the leasing corporation assigns all of its rights under the lease to the bank;

(5) the lessee's lease payments are assigned and paid to the bank directly by the lessee; and

(6) the lease terms are subject to the same limitations that would apply to a state bank acting as a lessor under the Act, §5.203.

§12.8. Other Exceptions

(a) By Application. The banking commissioner in the exercise of discretion may grant an exception to any legal lending limit in the Act, §5. 201, or this subchapter, based on extenuating facts and circumstances. A decision to deny a requested exception is not appealable. In deciding whether to grant an exception under this subsection, the banking commissioner will consider:

(1) the proposed transaction for which the exception is sought;

(2) how the requested exception would affect the capital adequacy and safety and soundness of the requesting bank if the exception is not granted or, if the exception is granted, if the proposed borrower should ultimately default;

(3) how the requested exception would affect the loan portfolio diversification of the requesting bank;

(4) the competency of management to handle the proposed transaction and any resulting safety and soundness issues;

(5) the marketability and value of the proposed collateral; and

(6) the extenuating facts and circumstances that warrant an exception in light of the purpose of legal lending limits as set forth in §12.1 of this title (relating to Purpose and Scope).

(b) Emergency Lending Limits. In the event that a bank's capital and certified surplus or total equity capital declines sufficiently to seriously impair the bank's ability to effectively operate in its marketplace or serve the needs of its customers or the community in which it is located, the banking commissioner may, upon written application, grant the bank temporary permission to fund loans or extensions of credit in excess of the bank's legal lending limit. The banking commissioner in the exercise of discretion may limit emergency lending authority under this section to particular types or classes of loans or extensions of credit.

§12.9. Aggregation and Attribution.

(a) General Rule. A loan or extension of credit to one borrower is attributed to another person, and each person will be considered a borrower, if:

(1) proceeds of the loan or extension of credit are to be used for the direct benefit of the other person, to the extent of the proceeds so used, as provided by subsection (b) of this section;

(2) a common enterprise is deemed to exist between the persons as provided by subsection (c) of this section; or

(3) the expected source of repayment for each loan or extension of credit is the same for each person as provided by subsection (d) of this section; or

(4) notwithstanding another provision of this section, the banking commissioner determines that a loan should be attributed to another person pursuant to the Act, §5.201(c).

(b) Direct Benefit. The proceeds of a loan or extension of credit to a borrower is considered used for the direct benefit of another person and attributed to the other person if the proceeds, or assets purchased with the proceeds, are transferred in any manner to or for the benefit of the other person, other than in a bona fide arm's length transaction where the proceeds are used to acquire property, goods, or services.

(c) Common Enterprise.

(1) A common enterprise is considered to exist and loans to separate borrowers will be aggregated in the case of.

(A) loans or extensions of credit made to borrowers who are related directly or indirectly through common control, or made to a borrower directly or indirectly controlled by another borrower, if substantial financial interdependence exists between or among the borrowers; or

(B) loans made to separate persons for the purpose of acquiring more than 50% of the voting securities or voting interests of a business enterprise, in which case the acquisition loans are aggregated and attributed to the business enterprise.

(2) For purposes of paragraph (1)(A) of this subsection, substantial financial interdependence exists if 50% or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower and is presumed to exist, subject to rebuttal, if 25% or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues and expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

(d) Source of Repayment. The expected source of repayment for each loan or extension of credit is considered the same if the primary source of repayment is the same for each borrower. An employer will not be considered a primary source of repayment under this subsection solely because of wages and salaries paid to an employee.

(e) Loans to a Corporate Group. Pursuant to the Act, §5.201(b)(c), loans or extensions of credit by a bank to a corporate group may not exceed 75% of the lesser of the bank's capital and certified surplus or the bank's total equity capital. This limitation applies only to loans subject to the general lending limit. For purposes of this subsection, a corporate group is comprised of a person and all of its subsidiaries, and a corporation or other entity is a subsidiary of a person if the person owns or beneficially owns directly or indirectly more than 50 percent of the voting securities or voting interests of the corporation or other entity. Subject to the special limit of this subsection, loans or extensions of credit to a person and its subsidiary, or to different subsidiaries of a person, are not aggregated or attributed to other members of the corporate group unless either the direct benefit, common enterprise, or source of repayment test is met.

(f) Loans to Partnerships.

(1) A loan or extension of credit to a partnership, joint venture, or association is considered to be a loan or extension of credit to each member of the partnership, joint venture, or association other than those partners or members that, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association, provided those provisions are valid against third parties under applicable law, and that have not agreed to guarantee or be personally liable on the loan or extension of credit.

(2) Loans to Partners. A loan or extension of credit to a member of a partnership, joint venture, or association is generally not attributed to the partnership, joint venture, or association, or to other members of the partnership, joint venture, or association, except as otherwise required by subsections (b)-(d) of this section, provided

that a loan or extension of credit made to a member of a partnership, joint venture or association for the purpose of purchasing an interest in the partnership, joint venture or association, is attributed to the partnership, joint venture or association.

(g) Guarantors and Accommodation Parties. The derivative obligation of a drawer, endorser, or guarantor of a loan or extension of credit, including a contingent obligation to purchase collateral that secures a loan, is not aggregated with direct loans or extensions of credit to such drawer, endorser, or guarantor if the lending bank is relying primarily on the creditworthiness of the primary obligor and none of the tests set forth in this section are satisfied. The reliance of the lending bank on the primary obligor must be evidenced by the certification of an officer of the bank that the bank is, on stated facts, relying primarily on the responsibility and financial condition of the primary obligor for payment of the loan or extension of credit and not on the guarantee, or commitment in whatever form, of the guarantor, drawer, or endorser. In the event that the loan or extension of credit to the primary obligor, considered by the bank to be of sufficient credit quality at its inception, experiences subsequent deterioration to the point that the primary obligor is no longer performing in accordance with the terms of the initial loan agreement, such event will not result in a lending limit violation on behalf of the guarantor by virtue of the primary obligator's nonperformance. However, the total amount of the deteriorated loans guaranteed by such accommodating person must be combined with all other obligations of such guarantor in determining whether the guarantor may obtain additional loans or extensions of credit from the bank.

§12.10. Nonconforming Loans.

(a) A loan or extension of credit, within a bank's legal lending limit when made, will not be considered a violation of the applicable lending limit but will be cited as nonconforming if the loan no longer complies with the bank's legal lending limit because:

(1) the bank's capital and certified surplus or total equity capital, if less, has declined;

(2) borrowers have merged or otherwise become affiliated in such a way as to invoke aggregation under §12.9 of this title (relating to Aggregation and Attribution);

(3) the lending limit or capital definitions or standards have changed after the effective date of this subchapter; or

(4) collateral securing the loan or extension of credit to satisfy the requirements of a special lending limit or lending limit exception has declined in value.

(b) A bank must exercise best efforts to bring a loan or extension of credit that is nonconforming as a result of circumstances described in subsection (a)(1)-(3) of this section into conformity with the legal lending limit, consistent with safe and sound banking practices. As a last resort, a bank may renew or restructure an existing, nonconforming loan or extension of credit as a new, nonconforming loan or extension of credit without violating the Act or this subchapter, unless.

(1) additional funds are advanced by the bank to the borrower;

(2) the original borrower is replaced by a new borrower; or

(3) the banking commissioner determines that the renewal or restructuring of the loan or extension of credit is designed to evade the bank's lending limit.

(c) A bank must bring a loan or extension of credit that is nonconforming as a result of the circumstance described in subsection (a)(4) of this section into conformity with the legal lending limit on or before the 31st day after the nonconformity is discovered unless judicial proceedings, regulatory action, or other extraordinary circumstances beyond the bank's control prevent the bank from taking action.

§12.11. Transition Rules.

(a) This subchapter applies to loans or extensions of credit made on or after September 1, 1995. A loan or extension of credit existing prior to September 1, 1995, that was within a bank's legal lending limit when made, is not a violation of the Act, §5.201, and this subchapter, and is considered a conforming loan.

(b) A bank may renew, extend the maturity of, or restructure an existing loan or extension of credit that is exempt under this section if the bank makes a reasonable effort, consistent with safe and sound banking principles, to bring the credit into conformance with the Act, §5.201, and this subchapter, unless:

(1) additional funds are advanced by the bank to the borrower except as permitted by §12.5(e) of this title (relating to Percentage Lending Limits);

(2) a new borrower replaces the original borrower; or

(3) the banking commissioner determines that the renewal, extension, or restructuring of the loan or extension of credit is designed to evade the bank's lending limit.

(c) An extension, if any, of the maturity of the loan or extension of credit, in the aggregate, may not exceed the lesser of the original term of the loan or one year.

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 15, 1995.

TRD-9516372 Everette D. Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 475-1300

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Subchapter D. Other Real Estate Owned

• 7 TAC §12.91

The Finance Commission of Texas (the commission) proposes new §12.91, in new Subchapter D concerning the treatment of other real estate owned (OREO) by a state bank. Existing §3.25 concerning OREO is proposed for repeal in this issue of the *Texas Register*.

Texas Civil Statutes, Article 342-5.002 (the Act), §5.002), substantially alters the statutory treatment of other real estate from prior law, Texas Civil Statutes, Article 342-502, although the provisions of the Act substantially resemble existing regulatory policy previously communicated to the industry. These changes necessitate repeal and rewrite of existing §3.25 to conform to the Act.

OREO is generally defined by the Act and proposed §12.91(a)(11) as real property interests not used or intended to be used as banking facilities. A state bank is not empowered to own real estate, other than for use in its own business, except in specified circumstances, such as acquisition of real estate through foreclosure of collateral securing debt previously contracted. The general prohibition on ownership of real property interests and the permissible means of acquiring OREO are set forth in proposed §12.91(b) and (c). Proposed §12.91(d) specifies appraisal requirements for OREO and proposed §12.91(e) permits the bank to make additional investment in the OREO to preserve its value pending required disposition.

The bank must dispose of OREO within a specified period of time, or holding period, set forth in proposed §12.91(f), and such efforts must be documented under proposed §12.91(g). Proposed §12.91(h) establishes those methods of disposition that will satisfy the statutory requirement. For example, disposition pursuant to a contract for deed is specifically permitted, even though legal title remains with the bank until the contract is fully performed. Proposed §12.91(i) establishes that a bank must account for OREO under regulatory accounting principles, defined in the Act, §1.002(a)(46), as generally accepted accounting principles as

modified by rule adopted under the Act or applicable federal statute or regulation. At present, no rules modify generally accepted accounting principles for OREO.

Sammie K. Glasco, Assistant General Counsel, Texas Department of Banking, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section

Ms. Glasco also has determined that, for each year of the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section.

Comments on the proposed section may be submitted in writing to Sammie Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The section is proposed under the Act, §5.002(a)(1), which authorizes the commission to adopt rules regarding acquisition and retention of real estate. As required by the Act, §1.012(b), in proposing this section, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

Texas Banking Act, §5.001 and §5.002 are affected by the proposed new section.

§12.91. Other Real Estate Owned.

(a) Definitions. Words and terms used in this subchapter that are defined in the Act, §1.002, have the same meanings as defined in the Act. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates the contrary.

(1) Act-Texas Civil Statutes, Article 342-1.001 et seq (the Texas Banking Act, §1.001 et seq).

(2) Appraisal-A written report by a state certified or licensed appraiser containing sufficient information to support the state bank's evaluation of OREO taking into consideration market value, analyzing appropriate deductions or discounts, and conforming to generally accepted appraisal standards unless principles of safe and sound banking require stricter standards.

(3) Appraiser-A state certified or licensed in-house appraiser or a state certified or licensed third party appraiser with relevant and competent experience and background as related to a particular appraisal assignment.

(4) Bank facility-Real property, including improvements, owned or leased to the extent of the lease by a state bank if the real estate is held for the purposes set forth in the Act, §5.001(a)(1)-(3), and is not disqualified under the Act, §5.001(c). The term also includes capitalized leasehold improvements if held for the same purposes.

(5) Coterminous sublease-A lease with the same duration as the remainder of the master lease.

(6) Evaluation-A written report prepared by an evaluator describing the OREO and its condition, the source of information used in the analysis, the actual analysis and supporting information and the estimate of the OREO's market value, with any limiting conditions.

(7) Evaluator-An individual who has related real estate training or experience and knowledge of the market relevant to the OREO but who has no direct or indirect interest in the OREO. An appraiser may be an evaluator.

(8) Generally accepted appraisal standards-The Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board, Appraisal Foundation, Washington, D.C.

(9) In-house appraiser-An appraiser on the staff of a state bank who has no direct or indirect interest in the OREO.

(10) Market value-The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) buyer and seller are typically motivated;

(B) both parties are well informed or well advised, and acting in what they consider their own best interests;

(C) a reasonable time is allowed for exposure in the open market;

(D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(11) Non-coterminous sublease-A lease with a duration shorter than the remainder of the master lease.

(12) Other Real Estate Owned (OREO)-Real estate, including improvements, mineral interests, surface, and subsurface rights, owned in whole or in part or leased by a state bank, no matter how acquired, which is not a bank facility as defined by paragraph (4) of this subsection or leasehold property as permitted under the Act, §5.203(a).

(13) Third party appraiser-An appraiser who has an independent contractor relationship with a state bank and has no direct or indirect interest in the OREO.

(14) Year-For the purposes of this section, a calendar year.

(b) Prohibition on real estate ownership. A state bank may not acquire or hold real estate except as specifically provided under the Act, §§5.001, 5.002, and 5.203(a), and this section.

(c) Acquisition of OREO. A state bank may hold OREO only if acquired by:

(1) purchase under judicial or nonjudicial foreclosure, or through a deed in lieu of foreclosure, of real estate that is security for debts previously contracted in good faith;

(2) purchase to protect its interest in debts previously contracted if prudent and necessary to avoid or minimize loss;

(3) purchase of an employee's principal residence to facilitate a change of duty assignment;

(4) with prior written approval of the banking commissioner, an exchange of OREO or personal property for real estate to avoid or minimize loss on the real estate exchanged or to facilitate the disposition of OREO;

(5) with prior written approval of the banking commissioner, purchase of additional real estate to avoid or minimize loss on OREO currently held;

(6) involuntary acquisition of an ownership interest or leasehold interest in real estate as a result of or incidental to a judicial or nonjudicial foreclosure, or by adverse possession, or by operation of law without any action on the part of the state bank to obtain such interest; or

(7) loss of designation of real estate owned or leased by the state bank as a bank facility.

(d) Appraisal requirements.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a state bank must substantiate the market value of the OREO by obtaining an appraisal within 60 days of the date of acqui-

sition. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is less than $250,000.

(2) An additional appraisal or evaluation is not required when a state bank acquires OREO if a valid appraisal or appropriate evaluation was made in connection with the real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years on OREO with a recorded book value in excess of $250,000.

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(e) Additional expenditures on OREO. A state bank may re-fit OREO for new tenants or make normal repairs and incur routine maintenance costs to preserve or protect the value of the OREO or to render the OREO in saleable condition without prior notification to or approval by the banking commissioner. Other advances or additional expenditures on OREO must have the prior written approval of the banking commissioner, and must be:

(1) not made for the purpose of speculation in real estate;

(2) not made for the purpose of changing or altering the current status or intended use of the OREO; and

(3) consistent with safe and sound banking practices.

(f) Holding period.

(1) A state bank must dispose of OREO, except for real estate which became OREO pursuant to the Act, §5.001(c), no later than five years after it was acquired or ceases to be used as a bank facility, unless an extension of time for disposing of the real estate is granted in writing by the banking commissioner pursuant to the Act, §5.002(d). A bank must dispose of real estate which becomes OREO pursuant to the Act, §5.001(c), within two years of the date it ceases to be a bank facility.

(2) The holding period commences on the date that:

(A) ownership is acquired by the state bank pursuant to subsection (c)(1)-(5) of this section;

(B) OREO is acquired by a state bank through merger/consolidation, conversion or purchase and assumption;

(C) the bank first learns of its ownership interest in real estate which has devolved to the bank by operation of law under subsection (c)(6) of this section;

(D) the bank ceases to use a former bank facility or completes its relocation from a former bank facility to a new bank facility; or

(E) is three years following the acquisition of real estate as a bank facility for future expansion or relocation of the bank if the real estate has not been occupied by the bank, unless the banking commissioner has granted written approval to a further delay in the improvement and occupation of the real estate.

(3) The banking commissioner may grant one or more additional extensions of time for disposing of OREO if the commissioner finds that the state bank has made a good faith effort to dispose of the OREO or that disposal of the OREO would be detrimental to the safety and soundness of the state bank.

(g) Disposition Efforts; Documentation. A state bank must make diligent and ongoing efforts to dispose of OREO and must maintain documentation adequate to reflect those efforts. Such documentation must be available for inspection by the commissioner.

(h) Disposition of OREO. A state bank may dispose of OREO by:

(1) selling the OREO in a transaction that qualifies as a sale under regulatory accounting principles;

(2) selling the OREO pursuant to a contract for deed;

(3) retaining the property for its own use as a bank facility, subject to the approval of the commissioner;

(4) transferring the OREO for market value to an affiliate, subject to the Act, §4.107, and applicable federal law, including 12 United States Code, §§371c, 371c-1, and 1828(j); or

(5) if the OREO is a master lease, obtaining a coterminous sublease or an assignment of a coterminous sublease, provided that if the bank acquires or obtains assignment of a non-coterminous sublease, the holding period during which the master lease must be divested is suspended for the duration of the sublease and will commence running again upon termination of the sublease.

(i) Accounting for OREO. Investment in OREO, and disposition of OREO, must be accounted for in accordance with regulatory accounting principles.

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 15, 1995.

TRD-9516373 Everette D Jobe
General Counsel
Texas Department of Banking

Earliest possible date of adoption: January 22, 1996

For further information, please call. (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 37. Legal

Rules of Practice

• 16 TAC §37.45

The Texas Alcoholic Beverage Commission proposes an amendment to §37.45, concerning the record in contested cases before the commission. The rule states the items which constitute the record on appeal of a contested case.

Gayle Gordon, Director of the Legal Division for the commission, has determined that for the first five-year period the section is in effect there will be a fiscal impact on the Alcoholic Beverage Commission. The fiscal impact will be as a result of the commission being relieved of the responsibility of paying for the record in the appeal of certain administrative cases. The amount of the fiscal impact is not subject to calculation because it is not possible to know how many cases will be subject to this rule in coming years or the cost of the record in future cases. There will be no fiscal implications for units of local government.

Lou Bright, General Counsel, has determined that the public benefit received from this rule will be through lowered operation costs of the Alcoholic Beverage Commission and through conformance between commission policies and practices permissible under Texas Government Code, §2001.177. The financial impact of this rule will be limited to persons and small businesses that hold licenses or permits under the Alcoholic Beverage Code and that appeal contested cases from the commission. The amount of the impact is not subject to calculation because it is not possible to predict the number of cases which will be appealed in the future or the cost of the record in each case. The economic impact will be the same for small and large businesses.

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 the Texas Alcoholic Beverage Code, §5.31.

Cross Reference: §11.67 and §61.81, Alcoholic Beverage Code.

§37 45. The Record.

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

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

Issued in Austin, Texas, on December 14, 1995.

TRD-9516355 Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 22, 1996

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

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Chapter 41. Auditing

Records and Reports by Licensees and Permittees

• 16 TAC §41.54

The Texas Alcoholic Beverage Commission proposes new §41.54, concerning reporting requirements for receiving a refund of tax for alcoholic beverages destroyed.

Thomas L. Byrd, Director of the Compliance Department, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Byrd 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 from a relaxing of constraints regarding the destruction of alcoholic beverages and subsequent refund of taxes paid. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The new section is proposed under the Texas Alcoholic Beverage Code, Chapter 5, Subchapter B, §5.31, which provides the Alcoholic Beverage Commission with the authority to promulgate rules consistent with the Alcoholic Beverage Code.

Alcoholic Beverage Code, §§201.03, 201.04, and 201.42 is affected by this new section.

§41.54. Destructions.

(a) Each permittee subject to the provisions of the Alcoholic Beverage Code, §§201.03, 201.04, and 201.42 and each licensee subject to the provisions of the Alcoholic Beverage Code, §203. 01 shall be entitled to receive an exemption from tax or a tax credit for any alcoholic beverages destroyed in accordance with the provisions stated herein.

(b) In order to qualify for this exemption from tax or a tax credit, the alcoholic beverages to be destroyed must meet the following criteria:

(1) be in full unopened containers;

(2) be unsalable or unmarketable;

(3) have never been claimed for any other type of tax credit or exemption; and

(4) have never been claimed for a refund of tax.

(c) The beverages, which will be claimed for destruction, must be destroyed in such a manner that the product will be rendered unrecoverable or unfit for human consumption.

(d) Prior to the destruction of the alcoholic beverages, the permittee or licensee must:

(1) notify the nearest authorized representative of the commission of the intent to destroy alcoholic beverages at least three full working days prior to the destruction. This notification must be made in writing on an "Application for Destruction of Alcoholic Beverages" and must contain the following information:

(A) the account's trade name;

(B) the account's location address;

(C) the license or permit number of the licensee or permittee;

(D) the reason the merchandise is to be destroyed;

(E) the location at which the destruction will take place;

(F) the time at which the destruction will take place;

(G) the method to be used to destroy the alcoholic beverages;

(H) the type of alcoholic beverages destroyed; and

(I) a listing by brand, quantity, container size, and package size of the destroyed merchandise, if beer or ale and malt liquor are destroyed; or a summary by class of alcoholic beverage, quantity, container size, and wine gallons, if distilled spirits and wine are to be destroyed.

(2) Receive written approval from the nearest authorized representative of the commission to conduct the destruction.

(e) The licensee or permittee must obtain the following documentation for the tax exemption or credit claimed:

(1) A signed written approval for the destruction of the alcoholic beverages from the nearest authorized representative of the commission. This information should be retained in the licensee's or permittee's files and made available upon request for inspection by an authorized representative of the commission.

(2) If distilled spirits and wine are destroyed, a detailed listing by brand, type or class of liquor, and package size of all alcoholic beverages destroyed. This listing may be in the form of an invoice if the invoice provides all required information. The listing should not be submitted with the Monthly Distributor's Report, Monthly Wholesalers Ale and Malt Liquor Report, or Monthly Wholesaler's Report but retained by the account for inspection by an authorized representative of the commission upon request.

(3) If the alcoholic beverages were destroyed at a location which charges a fee for this service, the licensee or permittee shall retain a copy of the receipt for payment for this fee and make such available to an authorized representative of the commission upon request.

(4) An affidavit of destruction executed by an employee of the licensee or permittee who witnessed the destruction of the alcoholic beverages. Separate affidavits must be prepared for distilled spirits and wine; ale and malt liquor; and beer. The affidavits should contain the following:

(A) the name and title of the person who witnessed the destruction and is preparing the affidavit;

(B) the date destroyed;

(C) the location where the destruction took place;

(D) how the merchandise was destroyed; and

(E) a copy of the original "Application for Destruction of Alcoholic Beverages".

(f) An original and two copies of the affidavit for destruction should be made and distributed as follows:

(1) The original should be submitted with the monthly report upon which the exemption for the destruction is claimed. If the licensee or permittee is unable to claim the destruction as an exemption on a tax report, they may submit a letter requesting an authorized tax credit. The request along with the destruction affidavit should be submitted to the commission's Austin headquarters.

(2) One copy should be retained in the licensee's or permittee's files and made available upon request for inspection by an authorized representative of the commission.

(3) The second copy should be forwarded to the commission office where the original "Application for Destruction of Alcoholic Beverages" was filed.

(g) The commission may designate an authorized representative to be present during the destruction of the alcoholic beverages.

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 15, 1995.

TRD-9516418 Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission

Earliest possible date of adoption: January 22, 1996

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

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 143. Medical Radiologic Technologist

The Texas Department of Health (department) proposes amendments to §§143.1-143.9, 143.11, and 143.13; the repeal of §143.14; and new §143. 14 and §§143.16-143.19, concerning the regulation of persons performing radiologic procedures. Specifically the amendments cover purpose and scope, definitions, the Medical Radiologic Technologist Advisory Committee, fees, applicability, application requirements and procedures, types of certificates and applicant eligibility, examinations, standards for the approval of curricula and instructors, continuing education requirements, certifying persons with criminal backgrounds, disciplinary actions, dangerous or hazardous procedures, mandatory training programs for non-certified technicians, registry of non-certified technicians and hardship exemptions. The new §§143.16-143.19 will implement Acts 1995, 74th Legislature, Chapter 613 (House Bill 1200), which amends the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m. The repeal of §143. 14 will allow for new §143.14.

Bernie Underwood, CPA, Chief of Staff Services, Health Care Quality and Standards, has determined that for the first-five year period that the sections as proposed will be in effect, there will be fiscal implications as a result of enforcing or administering the sections. The effect on the department for the first five-year period the sections are in effect will be as follows. For fiscal year (FY) 1996, there will be an estimated increase in revenue of $10,150 with an increase in costs of $29,750 For FY 1997, there will be an estimated increase in revenue of $7,100 with an increase in costs of $48,000 For FY 1998, there will be an estimated increase in revenue of $5, 350 with an increase in costs of $92,250. For FY 1999 and FY 2000, there will be an estimated increase in revenue of $4,850 for each year with an increase in costs of $132,750. The cost of administering the proposed new §143.18 and §143.19 cannot be recovered because the department has no statutory authority to collect such fees. There will be no fiscal implications on local governments anticipated as a result of administering the sections as proposed.

Ms. Underwood 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 proposed sections will be to assure that the public is protected from the harmful effects of ionizing radiation used for medical purposes. There may be economic costs to small and large businesses where radiologic procedures are performed if the businesses will pay the cost of training the individuals who are not certified. Also, businesses could incur costs of certification fees for employees who are qualified for certification but who are not already certified. If businesses do not pay the training costs or the certification costs, these expenses will be incurred by the individuals. The anticipated cost to individuals for training will be a one-time charge of $500 (estimated) in 1996; for the certification fee a one-time charge of $75 in 1996; for biennial renewal of certification a charge of $40 in 1998 and again in 2000; for the annual limited curriculum program approval fee a charge of $350 for each of the years 1996-2000; and for the training program approval fee a one-time charge of $350 in 1996 and an annual renewal fee of $100 for each of the years 1997-2000.

Concerning the training program cost to individuals, approved programs offering the training specified by the department in §143.17 may charge participants from $0 to $1,000 (or more) for the required training. The cost indicated above is the midpoint between these amounts. Persons who are required to comply with the training requirements are encouraged to exercise responsible consumer choice in selecting the training program which will best fulfill the needs of the person to be trained. The department will not offer or provide the training.

There may be an effect on local employment because of the new training requirements and the identification and enforcement of radiologic procedures which only a certified medical radiologic technologist or practitioner may perform. The effect is expected to be minimized by adjusting or rearranging job duties for persons who perform radiologic procedures but who will not comply with the training requirements by January 1, 1998; practitioners performing radiologic procedures, as necessary, whenever a certified technologist or non-certified technician is unavailable after January 1, 1998; allowing exemptions in documented hardship situations; and allowing persons to comply with the training requirements over a two-year period ending December 31, 1997.

The department has specified the required number of hours of training in §143.17(d). The proposed subsection reflects the number of hours recommended to the Texas Board of Health (board) by the Medical Radiologic Technologist Advisory Committee. The board requests comments on whether the number of hours for each area is appropriate. If the commenter disagrees with the number of hours, the commenter should state what he or she believes to be an appropriate number of hours and why

The "core" training consists of 98 classroom/clock hours. At least one unit of human anatomy and radiologic procedures must be completed before a person may perform a radiologic procedure after January 1, 1998. The number of hours of training, in addition to the "core" hours, which must be completed will be as follows: chest-15; spine-20; abdomen-15; upper extremities-15; lower extremities-15; and podiatric-5. For example, a person who performs x-rays of the chest and extremities must complete at total of 143 hours (98 + 15 + 15 + 15) by December 31, 1997.

Comments on the proposal may be submitted to Donna Flippin, Program Administrator, Medical Radiologic Technologist Certification Program, Professional Licensing and Certification Division, 1100 West 49th Street, Austin, Texas, 78756-3183, (512) 834-6617 or Fax: (512) 834-6677. Public hearings are scheduled as follows: Tuesday, January 9, 1996, 10:00 a.m., Texas Department of Health, 2301 North Big Spring, #300, Midland, Texas 79705-7649, (915) 683-9492; Thursday, January 11, 1996, 10:00 a.m., Texas Department of Health Lecture Hall, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111; Tuesday, January 16, 1996, 10:00 a.m., Texas Engineering Extension Service, 300 West Arbrook, Arlington, Texas 76014, (817) 784-8409; and Thursday, January 18, 1996, 10:00 a.m., Environmental Health Services, Houston Health and Human Services, 7411 Park Place Boulevard, Houston, Texas 77087, (713) 640-4349.

• 25 TAC §§143.1-143.9, 143.11, 143.13

The amendments are proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry, §2.07(f), concerning minimum standards for mandatory training; §2.05(g), (h), and (k), concerning rules on dangerous or hazardous procedures; §2.05(j), concerning hardship criteria determined by department rule, §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; §2.11(c)(5), concerning standards of practice of radiologic technology; and the Texas Health and Safety Code, §12 001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendments affect Texas Civil Statutes, Article 4512m.

§143 1 Purpose and Scope

(a) (No change)

(b) Scope. These sections cover definitions, the Medical Radiologic Technologist Advisory **Committee** [Board's operation]; fees; applicability (exceptions to certification); application requirements and procedures; types of certificates; examinations, standards for curricula and instructor approval; certificate renewal; continuing education requirements; changes of name or address; certifying persons with criminal backgrounds to be medical radiologic technologists; [violations, complaints, and subsequent actions;] **disciplinary actions; alternate eligibility requirements; dangerous or hazardous procedures; mandatory training programs for non-certified technicians; registry of non-certified technicians; and hardship exemptions.**

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

[ACRRT-American Chiropractic Registry of Radiologic Technologists and its successor organizations.]

Administrator-The department employee designated as the administrator of **regulatory** [certification] activities authorized by the Act.

[Advisory board-The Medical Radiologic Technologist Advisory Board.]

AP-Anterior/posterior.

[ASPA-The American Society of Podiatry Assistants.]

[CCE-Council on Chiropractic Education and its successor organizations.]

Committee-The Medical Radiologic Technologist Advisory Committee.

[DANB-Dental Assisting National Board.]

Direct supervision-Supervision and control by a medical radiologic technologist or a practitioner who assumes legal liability for a student employed to perform a radiologic procedure and enrolled in a training program that meets the requirements set out in §143.18 of this title (relating to Registry of Non-Certified Technicians), and who is physically present during the conduct of a radiologic procedure to provide consultation or direct the action of the student.

Federally qualified health center (FQHC)-A health center as defined by 42 United States Code, §1396d(2)(B).

Fluoroscopy-The practice of examining tissues using a fluorescent screen.

Fluorography-Hard copy of a fluoroscopic image; also known as spot films.

Instructor-An individual approved by the **department** [advisory board] to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

Limited Medical Radiologic Technologist (LMRT)-A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, [dental,] podiatric and chiropractic.

Non-Certified Technician (NCT)-A person who has completed a training program and who is listed on the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

PA-Posterior/anterior.

Registry-A list of names and other identifying information of non-certified technicians.

Rural area-A city having a population of 50,000 or less, or the unincorporated area of a county, which has a population of 200,000 or less and which is predominantly rural in character. Population shall be determined by the decennial census or federal census estimate, whichever is most recently published by the United States Bureau of Census.

TRCR-Texas Regulations for the Control of Radiation, 25 Texas Administrative Code, **Chapter 289** [§§289.111-289.126] of this title (relating to Texas Regulations for the Control of Radiation). The regulations [also are commonly known as Chapters 11-45 of the TRCR, and] are available from the Standards Branch, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688.

§143.3. Medical Radiologic Technologist Advisory Committee.

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

(d) Tasks.

(1) The committee shall advise the board concerning rules **to implement standards adopted under the Act** relating to the **regulation of persons performing radiologic procedures** [certification of medical radiologic technologists and limited medical radiologic technologists].

(2) (No change.)

(e)-(o) (No change.)

[(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

[(1) No compensatory per diem shall be paid to committee members unless required by law.

[(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

[(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

[(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

[(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

[(q) Any references in this chapter to the Medical Radiologic Technologist Advisory Board shall mean Medical Radiologic Technologist Committee.]

§143.4. Fees.

(a) (No change.)

(b) The schedule of fees is as follows:

(1)-(10) (No change.)

[(11) dental examination fee-$25 (which shall be paid directly to Dental Assisting National Board (DANB));]

(11)[(12)] chiropractic examination fee-$50;

(12)[(13)] skull, chest, spine, extremities or podiatric examination fee-$25 for the first examination and $20 for each additional examination taken on the same day;

(13)[(14)] upgrade of a temporary certificate to a renewable certificate, limited or general-$42 (prorated at $3.50 per month);

(14)[(15)] limited instructor approval fee-$50;

(15)[(16)] limited curriculum application fee-$450 [$100] per year per course of study; [and]

(16)[(17)] site visit fee-a fee equal to the round trip travel expenses including meals and lodging of the inspection committee members, not to exceed $1,000;[.]

(17) training program application fee-$350; and

(18) training program renewal fee-$150.

§143.5. Applicability.

(a) (No change.)

(b) Except as specifically exempted by **subsections** [subsection] (c) **and (d)** of this section, the provisions of the Act and this chapter apply to any person representing that he or she performs [medical] radiologic procedures.

(c) This chapter does not prohibit the performance of a radiologic procedure by the following:

(1) A person who is a practitioner and performs the procedure in the course and scope of the profession for which that person holds the license; or

(2) a person who performs a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography and under the instruction or direction of a dentist, if the person and the dentist are in compliance with rules adopted under the Act, §2.08 by the Texas State Board of Dental Examiners (BDE).

(d) This chapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §143. 16 of this title (relating to Dangerous or Hazardous Procedures) by the following:

(1)[(2)] a person **who has successfully completed a training program for non-certified technicians, in accordance with §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) and who performs** the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §2.08, by the Texas State Board of Chiropractic Examiners (BCE), [Texas State Board of Dental Examiners (BDE),] Texas State Board of Medical Examiners (BME), Texas State Board of Nurse Examiners (BNE), or Texas State Board of Podiatry Examiners (BPE)[, so long as the procedure has not been identified as hazardous and dangerous under the Act, §2.08(c)(4)];

(2)[(3)] a person **who has successfully completed a training program for non-certified technicians, in accordance with §143.17 of this title and** who performs the procedure in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) [and who has received appropriate instruction and training in the use and operation of diagnostic radiologic equipment, consistent with either the federal Medicare standards for certification of hospitals or the accreditation standards of the JCAHO. A hospital that instructs and trains a person in the performance of radiologic procedures shall develop a protocol for the instruction and training];

(3) [(4)] students of medicine, [dentistry,] podiatry or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with paragraph **(1)** [(2)] of this subsection;

(4)[(5)] a person who performs only in-vitro clinical or laboratory testing procedures as described in the Texas Regulations for the Control of Radiation (TRCR);

(5)[(6)] a student enrolled in a radiologic technology program which meets the requirements of §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) **or §143.17 of this title** who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(6)[(7)] a person who performs radiologic procedures for a period of not more than ten days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §143.11 of this title (relating to Continuing Education Requirements) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, the American Registry of Radiologic Technologists (ARRT), [the American Registry of Clinical Radiography Technologists (ARCRT),] the Nuclear Medicine Technology Certification Board (NMTCB), the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa; or[.]

(7) a person who performs the procedure in a hospital, federally qualified health center (FQHC), or for a practitioner, if a hardship exemption was granted to the hospital, FQHC or practitioner by the department during the previous 12-month period.

§143.6. Application Requirements and Procedures.

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

(c) Required application materials.

(1) The application form shall contain the following items:

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

(D) a statement that the applicant, if issued a certificate, shall return the certificate and identification card(s) to the department upon the expiration, revocation, **surrender** or suspension of the certificate;

(E)-(J) (No change.)

(2) Applicants for a certificate who do not qualify under the provisions of §143.7(b) of this title (relating to Types of Certificates and Applicant Eligibility) must submit the following additional documents or qualify under the provisions of §143.15 of this title (relating to Alternate Eligibility Requirements):

(A) **if the applicant is not a graduate of or expected to graduate within 20 days from a general certificate program in accordance with §143. 9(b) of this title (relating to Standards for the Approval of Curricula and Instructors)**, a photocopy which has been notarized as a true and exact copy of an unaltered official diploma or official transcript indicating graduation from high school; a certificate of high school equivalency issued by the appropriate educational agency; or an official transcript from an accredited college or university indicating that the applicant received a high school diploma or the equivalency or was awarded an associate, baccalaureate, or post-baccalaureate degree; and

(B) at least one of the items set out as follows:

(i) a photocopy which has been notarized as a true and exact copy of an unaltered certificate of completion from an approved medical radiologic technologist educational program in accordance with §143. 9 of this title [(relating to Standards for the Approval of Curricula and Instructors)]. The certificate must contain the following items: name of the program; name

of the graduate; the exact day and month applicant is recognized as a program graduate; and the signature of the program director or his designate;

(ii) **an original letter or other notification from either the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technology Certification Board (NMTCB) that the applicant is considered examination eligible; or**

(iii)[(ii)] if applying prior to graduation, from an approved medical radiologic program in accordance with §143.9 of this title [(relating to Standards for the Approval of Curricula and Instructors)], an expected graduation statement signed by the program director or registrar. Within 30 days of the completion date noted in the graduation statement, the department must receive:

(I) a notarized photocopy of the certificate of completion or letter on letterhead indicating graduation, containing the items set out in clause (i) of this subparagraph; **or**

(II) a notarized statement signed by the program director or registrar indicating that the applicant officially completed the program.[; or]

[(III) an original letter or other official notification from either the American Registry of Radiologic Technologists (ARRT) or the Nuclear Medicine Technology Certification Board (NMTCB) that the applicant is considered examination eligible by the ARRT or the NMTCB. A photocopy which has been notarized as a true and exact copy may be submitted in lieu of the original document.]

(3) Persons applying under the provisions of §143.7(d)(5) of this title [(relating to Types of Certificates and Applicant Eligibility)] must submit to the department a properly completed other license/registration documentation report form which has been completed and signed by an authorized representative of the governmental agency which issued the license or other form of registration. A photocopy of the license or other form of registration in medical radiologic technology issued by the government of another state, District of Columbia, or territory of the United States shall be submitted by the applicant.

(d) Application approval.

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

[(3) Applicants approved for a general or limited certificate who fail to pay the prorated certificate fee, as set out in §143.10(b) of this title (relating to Certificate Issuance, Renewals and Late Renewals) must reapply in order to become certified as a medical radiologic technologist or limited medical radiologic technologist.]

(e) Disapproved applications.

(1) The department **may** [shall] disapprove the application if the applicant:

(A) has not met the eligibility and application requirements set out in this section and §143.7 of this title [(relating to types of Certificates and Applicant Eligibility)];

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

(E) **has obtained or attempted to obtain a certificate issued under the Act by bribery or fraud** [has been in violation of the Act or any other applicable provision of this chapter];

(F) **has made or filed a false report or record made in the person's capacity as a medical radiologic technologist** [has been finally convicted of a felony or misdemeanor as set out in §143.13 of this title (relating to Certifying Persons with Criminal Background to be Medical Radiologic Technologists)];

(G) **has intentionally or negligently failed to file a report or record required by law** [is under restriction in another state, country, District of Columbia or territory];

(H) **has intentionally obstructed or induced another to intentionally obstruct the filing of a report or record required by law** [has been disciplined or restricted by the uniformed services of the United States of America if the violation or activity for which the discipline or restriction was imposed directly relates to the duties and responsibilities of a medical radiologic technologist.];

(I) has engaged in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the board in §143.14 of this title (relating to Disciplinary Actions);

(J) has developed an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

***(i)* an illness;**

***(ii)* drug or alcohol dependency; or**

***(iii)* another physical or mental condition or illness;**

(K) has failed to report to the department the violation of the Act by another person;

(L) has employed, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(M) has violated a provision of the Act, a rule adopted under the Act, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(N) has had a certificate revoked, suspended, or otherwise subjected to adverse action or been denied a certificate by another certification authority in another state, territory, or country; or

(O) has been convicted of or pled nolo contendere to a crime directly related to the practice of radiologic technology.

(2) If the administrator determines that the application should not be approved, the administrator [shall ask the credentialing committee to review the application. The committee shall take one of the following actions.

[(A) If the committee concurs that the application should not be approved, the administrator] shall give the applicant written notice of the reason for the disapproval and of the opportunity for a formal hearing in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). Within ten days after receipt of the written notice, the applicant shall give written notice to the administrator to waive or request the hearing. If the applicant fails to respond within ten days after receipt of the notice of opportunity or if the applicant notifies the administrator that the hearing be waived, the department shall disapprove the application.

[(B) If the committee determines that the application should be approved, the administrator shall approve the application.

[(C) The advisory board shall ratify the decision of the credentialing committee at its next regular meeting.]

(3) An applicant whose application has been disapproved under paragraph

(1)(D) -(O) [and (E)] of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit **a current application, the certification fee and** [with the reapplication] proof, satisfactory to the department, of compliance with **the then current requirements of** this chapter and the provisions of the Act [in effect at the time of reapplication].

(f) Application processing.

(1) The department shall comply with the following procedures in processing applications for a certificate.

(A) (No change.)

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. The time periods are as follows:

(i) (No change.)

(ii) letter of denial of certificate-**90** [180] days [(this time limit reflects the time allowed for the advisory board to review the proposal to disapprove; however, in most cases, the time will be much shorter)].

(2) The department shall comply with the following procedures in processing refunds of fees paid to the department.

(A) In the event an application is not processed in the time periods stated in paragraph (1) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the [program] administrator. If the [program] administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) (No change.)

(3) If a request for reimbursement under paragraph (2) of this subsection is denied by the [program] administrator, the applicant may appeal to the commissioner of health for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner of health at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The [program] administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner of health shall provide written notice of the decision to the applicant and the program administrator. An appeal shall be decided in favor of the applicant, if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) (No change.)

§143.7. Types of Certificates and Applicant Eligibility

(a) General. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants for certification as a medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT).

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

(4) A person certified as an MRT or LMRT shall **carry or** display **the** [his] original certificate or **current identification card** [have available a certified or notarized photocopy] at **the** [his] place of employment. Photocopies shall not be **carried or** displayed but may be kept in a file.

(5) No one shall display, **present,** or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(6) (No change.)

(b) Special provisions for persons who were nationally certified on September 1, 1987. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue [an approval letter for] a general certificate to a person who was registered by the American Registry of Radiologic Technologists (ARRT) or American Registry of Clinical Radiography Technologists (ARCRT) as a radiographer, was registered by the ARRT as a radiation therapy technologist, or was registered by the ARRT or certified by the Nuclear Medicine Technologist Certification Board (NMTCB) as a nuclear medicine technologist.

[(c) Special provisions for persons who have performed radiologic procedures during the five year period, September 1, 1982, through August 31, 1987, and when the application is postmarked on or before January 1, 1990. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue an approval letter for either:

[(1) a general certificate to a person who has performed radiologic procedures for not less than two years, as documented on form(s) prescribed by the department; or

[(2) a limited certificate to a person who has performed radiologic procedures for not less than one year, as documented on forms prescribed by the department. The category or categories of the limited certificate shall be based upon the type of documented radiologic procedures performed by the applicant. However, an approval letter for a limited certificate in the dental, chiropractic, or podiatric categories may be issued provided the applicant submits written evidence satisfactory to the department of at least one of the following items:

[(A) for the dental limited certificate, the applicant:

[(i) had passed the examination administered by the Dental Hygiene National Board on or before September 1, 1987;

[(ii) was certified on September 1, 1987 as a dental assistant by the Dental Assisting National Board (DANB);

[(iii) had passed the Dental Radiation Health and Safety examination administered by the DANB on or before September 1, 1987; or

[(iv) was licensed on September 1, 1987 as a dental hygienist by the Texas State Board of Dental Examiners (BDE) or the appropriate regulatory agency in another state or territory;

[(B) for the chiropractic limited certificate, that the applicant was certified by the American Chiropractic Registry of Radiologic Technologists (ACRRT) on September 1, 1987; and

[(C) for the podiatry limited certificate, that the applicant was certified by the American Society of Podiatry Assistants (ASPA) on September 1, 1987.]

(c)[(d)] Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of **subsection** [subsections] (b) [or (c)] of this section:

(1) graduation from high school or its equivalent as determined by the Texas Education Agency;

(2) attainment of 18 years of age;

(3) freedom from physical or mental impairment which interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of patients;

(4) submission of a satisfactory completed application on a form supplied by the department;

(5) payment of the appropriate fees; and

(6) eligibility for the specific certificate requested as set out in subsection (d), (e), (f), (g), or (h) of this section.

(d)[(e)] Medical radiologic technologist. To qualify for a general certificate an applicant shall meet at least one of the following requirements in addition to those listed in subsection (c) [(d)] of this section:

(1) possess current national certification as a registered technologist by the ARRT;

(2) have successfully completed the ARRT's examination in radiography, radiation therapy technology, or nuclear medicine technology;

(3) possess current national certification as a certified nuclear medicine technologist by the MNTCB;

(4) have successfully completed the NMTCB's examination in nuclear medicine technology; or

[(5) possess current national certification as a clinical radiographic technologist by the ARCRT in which the technologist qualified for the ARCRT examination on the basis of completion of a two-year training program or a military training program (ARCRT examination eligibility categories A, B or C as of March 1990); or]

(5)[(6)] be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are more stringent than or are substantially equal to the requirements for Texas certification.

(e)[(f)] Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (c) [(d)] of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; [dental;] chiropractic; and podiatry.

(2) Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, bedside radiography, and nuclear medicine or radiation therapy procedures.

(4) To qualify for a certificate as a limited medical radiologic technologist an applicant must provide documentary evidence satisfactory to the department of the following:

(A) the successful completion of a limited course of study as set out in §143.9 of this title (relating to standards for the Approval of Curricula and Instructors) and the successful completion of the appropriate limited examination in accordance with §143.8 of this title (relating to Examinations);

(B) current licensure or registration as a LMRT by another state, District of Columbia or territory of the United States of America whose requirements are more stringent than or substantially equal to the requirements for the Texas limited certificate at the time of application to the department; or

(C) current general certification as a MRT issued by the department. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested. The request shall be postmarked on or before the certificate expiration date and shall be accompanied by the general certificate and the certificate and/or identification card replacement fee.

[(g) Alternate eligibility. An individual who does not qualify under subsection (d)(1) of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).]

(f)[(h)] Temporary medical radiologic technologist (general or limited). To qualify as a temporary medical radiologic technologist (general or limited), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (c) [(d)] of this section.

(1) For the general temporary certificate, an applicant must:

(A) have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by the Committee on Allied Health Education and Accreditation (CAHEA);

(B) be approved by the ARRT as examination eligible;

(C) be approved by the NMTCB as examination eligible;

(D) be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(2) For the temporary **limited** certificate, the applicant must have successfully completed or be within 28 days of successful completion of a course of study in limited practice [which is accredited by the Commission on Dental Accreditation of the American Dental Association, the Council on Chiropractic Education (CCE), or] approved **in accordance with §143.9 of this title (relating to standards for the approval of curricula and instructors)** by the department; or be licensed or registered as a limited medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(g)[(i)] Special provisions for technologists on active military duty. An MRT or LMRT whose certificate has expired and was not renewed under §143.10(h) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) may file a complete application for another certificate of the same type as that which expired.

(1) The application shall be on official department forms and be file with the application processing fee.

(2) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualifications and no further qualifications or examination shall be required except payment of the certification fee.

(3) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified.

(4) An application is subject to disapproval in accordance with §143.6(e) of this title (relating to Application Requirements and Procedures).

(5) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

(h) Alternate eligibility. An individual who does not qualify under subsections (a)-(g) of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).

§143.8. Examinations.

(a) (No change.)

(b) Examination eligibility.

(1) (No change.)

(2) Persons who qualify under §143.7(b), **(d)** [(c), (e)] or **(g)** [(f)] of this title (relating to Types of Certificates and Applicant Eligibility) are not required to be reexamined for state certification.

(c) (No change.)

(d) Approved examination for the limited certificate. A limited certificate shall be issued upon successful completion of the appropriate examination, as follows:

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

[(5) dental-the Dental Assisting National Board (DANB) examination on dental radiation health and safety or the certified dental assistant examination administered by the DANB;

(5)[(6)] chiropractic-the **ARRT examinations for the limited scope of practice in radiography (spine and extremities)** [American Chiropractic Registry of Radiologic Technologists (ACRRT) examination]; or

(6)[(7)] podiatric-the ARRT examination for the limited scope of practice in radiography **(podiatry)** [(lower extremities/podiatry)].

(e) Examination schedules. A schedule of examinations indicating the date(s), location(s), fee(s) and application procedures shall be provided by **the agency or organization administering the examination(s) for** the department to each person issued any temporary certificate or approved under the provisions of §143.15 of this title [(relating to Alternate Eligibility Requirements)].

(f)-(g) (No change.)

(h) Results.

(1) (No change.)

(2) Score release. The applicant is responsible for submitting a signed score release to the examining agency or organization or otherwise arranging to have examination scores forwarded to the department. [If the score report does not come directly from the examining agency in writing or on data tape, the results shall be in the form of a photocopy which has been notarized as a true and exact copy of:

[(A) an original letter, or other official notification from the approved examining agency to the examinee; or

[(B) the certificate issued by the approved examining agency.]

(3) (No change.)

(i) (No change.)

§143 9. Standards for the Approval of Curricula and Instructors.

(a) (No change.)

(b) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by the **Review Committee on Education in Nuclear Medicine Technology (JRCENMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT)** [Committee on Allied Health Education and Accreditation (CAHEA)].

(c) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must either:

(1) be accredited by the **JRCERT** [CAHEA] to offer a limited curriculum in radiologic technology[, the Commission on Dental Accreditation of the American Dental Association or the Chiropractic Council on Education]; or

(2) be approved by the department[, with the advice of the program and instructor approval committee,] and be offered within the geographic limits of the State of Texas.

(d) Application procedures for limited certificate programs. An application shall be submitted to the department at least **ten**, [six] weeks prior to the starting date of the program to be offered by a sponsoring institution [or the course of study to be offered by an independent sponsor]. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program [or by the independent sponsor]. Program directors and [independent sponsors] shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

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

(4) Notices will be mailed to applicants informing the applicant of the completeness or within **60** [21] days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying the application is 120 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees, as set out in §143.6(f)(2) and (3) of this title (relating to Application Requirements and Procedures).

(5) (No change.)

(6) The application shall include:

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

(C) the location, **mailing address, phone and facsimile numbers** of the program [or course of study];

(D) a list of instructors approved by the department, in accordance with subsection (g) of this section, and any other persons responsible for the conduct of the program [or course of study] including management and administrative personnel. The list must indicate what courses each will teach or instruct or the area(s) of responsibility **for the non-instructional staff;**

(E) a list of clinical facilities, letters of agreement from clinical facilities signed by the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized;

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

(iii) the number and location(s) of examination rooms available; [and]

(iv) (No change.)

***(v)* an acknowledgement that students may only perform radiologic procedures under supervision of an limited medical radiologic technologist (LMRT) or medical radiologic technologist (MRT);**

***(vi)* copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures; and**

***(vii)* an acknowledgement that the students shall not perform procedures utilizing contrast media, mammography, fluoroscopy, tomography, nuclear medicine studies, radiation therapy or other procedures beyond the scope of the limited curriculum;**

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration. **The admission requirements shall include the minimum eligibility requirements for certification in accordance with §143. 7(c)(1)-(3) of this title (relating to Types of Certificates and Applicant Eligibility);**

(G) [if the program is conducted by a sponsoring institution,] the name of the program director who is an approved instructor in accordance with subsection (g) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice;

[(H) if a course of study is independently sponsored, the name of the sponsor who is an approved instructor in accordance with subsection (g) of this section; and]

(H)[(I)] the name and Texas license number of the person who is] **a letter of acknowledgement and a photocopy of the current Texas license from** a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director [or program advisor]. **The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program;** [The independent sponsor who is also a practitioner may be designated as the medical director/program advisor.]

(I) a letter or other documentation from the Texas Education Agency, Proprietary Schools Section (or the successor organization) indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175; and

(J) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be conducted concurrently, the maximum number of students to be enrolled at any one time.

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §143.7(f) of this title [(relating to Types of Certificates and Applicant Eligibility)]. Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (e) of this section. **If the curriculum differs from that set out in subsection (e) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.**

(8) In making application to the department, **the program director** [sponsors] shall agree in writing to:

(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment if the program is sponsored by an institution[, or provide a ratio of one approved instructor for every ten students in the clinical environment if the program is sponsored by an independent sponsor];

(B)-(G) (No change.)

(H) permit site inspections by departmental representatives to determine compliance and conformance with the provision of this section. In lieu of a site inspection, the department may accept the most recent site visit report from a recognized accrediting body set out in subsection (c)(1) of this section; [and]

(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the department and utilized as a criteria for rescinding approval. In addition to this criteria, the department may rescind approval in accordance with §143.14 of this title (relating to Violations and Subsequent Actions); **and**[.]

(J) comply with the Texas Regulations for the Control of Radiation (TRCR), including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.

(9) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with §143.4 of this title [(relating to Fees)].

(e) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least **132** [120] clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, [dental], and chiropractic, and not less than **66** [60] clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate[; provided, however, a person who received a limited certificate under §143.7(c)(2) of this title (relating to Types of Certificates and Applicant Eligibility) must complete the required clock hours of basic theory/classroom instruction in order to add a category to the temporary limited or limited certificate]. The following subject areas and minimum number of hours (in parentheses) must be included in all programs [or courses of study] and must be instructor directed. The recommended clock hours for each shall be:

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

(D) applied human anatomy and radiologic procedures-(20); [and]

(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid-(10); [and]

(F) medical terminology-(6); and

(G) medical ethics and law-(6); and

(2) a clinical practicum for each category of limited curriculum is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner or certified medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT) in accordance with the following chart.
Figure 1: 25 TAC §143.9(e)(2)

(A) (No change.)

(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 days of the starting date of the clinical experience. **Variances from this must be approved in advance by the department and must demonstrate good cause. A request for a variance must be submitted in writing to the administrator. For the purposes of this section, a normal pregnancy or medical disability shall be good cause.**

(C) (No change.)

(D) The program director [or independent sponsor] shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience.

Such written documentation must be provided to each student within 14 days of completion of the clinical experience. Students who successfully complete the required clinical experience may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §143.6(c)(2)(B)(iii) [(ii)] of this title [(relating to Application Requirements and Procedures)]. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures.

(f) Limited certificate educational program approval.

(1) Provided the requirements are met, the sponsoring institution [or independent sponsor] shall receive a letter from the department indicating approval of the educational program in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(2) A program [or course of study] shall be denied approval if the application is incomplete or not submitted as set out in this section. The applicant shall be notified in accordance with §113.1 of this title [(relating to Processing Permits for Special Health Services Professionals)].

(3) (No change.)

(g) Instructor approval for limited certificate programs.

(1) All persons who plan to or who provide instruction and training in the limited certificate courses of study or programs shall:

(A) (No change.)

(B) submit the prescribed application fee in accordance with §143.4 of this title [(relating to Fees)];

(C) (No change.)

(2) (No change.)

(3) Within 21 days of receipt of the application in the department, a notice will be mailed informing the applicant of the completeness or deficiency of the application. The time of receipt of the last item necessary to complete the application to the date of issuance of a written notice approving or denying the application is 42 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees paid as set out in §143.6(f)(2) and (3) of this title [(relating to Application Requirements and Procedures)].

(4) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within ten days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title [(relating to Texas Board of Health)]. If no hearing is requested, the right to a hearing is waived and the proposal action shall be taken.

(h) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and experience in teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

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

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas State Board of Chiropractic Examiners (BCE), [Texas State Board of Dental Examiners (BDE),] Texas State Board of Medical Examiners (BME), or Texas State Board of Podiatry Examiners (BPE), the Texas Department of Human Services, the United States Department of Health and Human Services.

(2) (No change.)

(i) Transition. The currently approved programs shall have one year from the date of adoption of this amended section to comply with the new requirements.

§143.11. Continuing Education Requirements.

(a) (No change.)

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's or LMRT's birth month and ending on the last day of each MRT's or LMRT's birth month two years hence.

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

(8) An MRT or LMRT who holds a current and active annual registration or credential card issued by the [ACRRT], **American Registry of Radiologic Technologists (ARRT)** [ARRT], [DANB] or **Nuclear Medicine Technology Certification Board (NMTCB)** [NMTCB] indicating that the MRT is in good standing and not on probation satisfies the continuing education requirement for renewal of the general or limited provided the hours accepted by the agency or organization which issued the card meet or exceed the requirements set out in subsection (c) of this section. The department shall be able to verify the status of the card presented by the MRT or LMRT electronically or by other means acceptable to the department. The department may review documentation of the continuing education activities in accordance with subsection (f)(1) of this section. This procedure shall be effective for renewals beginning in 1997.

(9)-(10) (No change.)

(c) (No change.)

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and:

(1) (No change.)

(2) is offered for continuing education credit by an institution accredited by the **Joint Review Committee on Education in Radiologic Technology (JRCERT)** [JRCERT], **Joint Review Committee on Education in Nuclear Medicine Technology (JRCENMT)** [JRCENMT], [the Committee on Dental Accreditation of the American Dental Association] or the Council on Chiropractic Education (CCE) and is directly or indirectly related to the disciplines of radiologic technology; or

(3) (No change.)

(e)-(j) (No change.)

(k) Partial exemption. The department may consider granting an exemption for one-half of the continuing education requirement if the technologist submits proof of successful completion of the examination administered by or for the American Registry of Diagnostic Medical Sonographers during the renewal period. The balance of the hours must comply with subsection (c)(1) of this section.

(l)[(k)] Denial of request for exemption. A technologist whose request for exemption is denied by the department may be granted a 120-day extension to complete the continuing education requirements and may request a hearing on the denial within 30 days after the date the department notified the technologist of the denied exemption. If no hearing is requested in writing within 30 days, the opportunity for hearing shall be waived.

(m)[(l)] Record keeping. An MRT or LMRT shall be responsible for keeping, for a period of not less than two years, accurate and complete documentation or other records of continuing education reported to the department. An MRT or LMRT shall submit documentation of attendance and participation in continuing education activities upon written request by the department.

§143.13. Certifying Persons with Criminal Backgrounds to be Medical Radiologic Technologists.

(a) (No change.)

(b) **Pleadings of nolo contendere or criminal** [Criminal] convictions which directly relate to the profession of radiology.

(1) The department may suspend or revoke any existing certificate, disqualify a person from receiving any certificate, or deny to a person the opportunity to be examined for a certificate because of a **person pleading nolo contendere to or being convicted of** [person's conviction of] a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT) .

(2) In considering whether a **pleading of nolo contendere** or a criminal conviction directly relates to the occupation of an MRT or LMRT, the department shall consider:

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

(3) (No change.)

(c) Procedures for revoking, suspending, or denying a certificate or temporary certificate to persons with criminal backgrounds.

(1) The administrator shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary certificate after hearing in accordance with the provisions of the Administrative Procedure [and Texas Register] Act, **the Government Code, Chapter 2002** [Texas Civil Statutes, Article 6252-13a], and the formal hearing procedures in §§1.21-**1.34** [1.32] of this title (relating to Formal Hearing Procedures).

(2) (No change.)

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

Issued in Austin, Texas, on December 14, 1995.

TRD-9516349 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: January 22, 1996

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

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• 25 TAC §143.14

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

The repeal is proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.07(f), concerning minimum standards for mandatory training; §2.05(g), (h), and (k), concerning rules on dangerous or hazardous procedures; §2.05(j), concerning hardship criteria determined by department rule; §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; §2.11(c)(5), concerning standards of practice of radiologic technology; and the Texas Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects Texas Civil Statutes, Article 4512m.

§143.14. Violations and Subsequent Actions.

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 14, 1995.

TRD-9516351 Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: January 22, 1996

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

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• 25 TAC §§143.14, 143.16-143.19

The new sections are proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.07(f), concerning minimum standards for mandatory training; §2.05(g), (h), and (k), concerning rules on dangerous or hazardous procedures; §2.05(j), concerning hardship criteria determined by department rule; §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; §2.11(c)(5), concerning standards of practice of radiologic technology; and the Texas Health and Safety Code §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect Texas Civil Statutes, Article 4512m.

§143.14. Disciplinary Actions.

(a) The Texas Department of Health (department) is authorized to take the following disciplinary actions for the violation of any provisions of the Medical Radiologic Technologist Certification Act (Act) or this chapter:

(1) suspension, revocation, or nonrenewal of a certificate;

(2) rescission of curriculum, training program, or instructor approval;

(3) denial of an application for certification or approval;

(4) assessment of a civil penalty in an amount not to exceed $1,000 for each separate violation of the Act;

(5) issuance of a reprimand; or

(6) placement of the offender's certificate on probation and requiring compliance with a requirement of the department, including submitting to medical or psychological treatment, meeting additional education requirements, passing an examination, or working under the supervision of a medical radiologic technologist or other practitioner.

(b) The department may take disciplinary action against a person subject to the Act for:

(1) obtaining or attempting to obtain a certificate issued under the Act by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as a medical radiologic technologist;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the department;

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the department the violation of the Act by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(9) violating a provision of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

(c) Engaging in unprofessional conduct means the following:

(1) making any misleading, deceptive, or false representations in connection with service rendered;

(2) engaging in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol;

(3) performing a radiologic procedure on a patient or client which has not been authorized by a practitioner;

(4) aiding or abetting a person in violating the Act or rules adopted under the Act;

(5) any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;

(6) performing a radiologic procedure which results in mental or physical injury to a patient or which creates an unreasonable risk that the patient may be mentally or physically harmed;

(7) misappropriating medications, supplies, equipment, or personal items of the patient, client or employer;

(8) performing or attempting to perform radiologic procedures in which the person is not trained by experience or education and in which the procedure is performed without appropriate supervision;

(9) performing or attempting to perform any medical procedure which relates to or is necessary for the performance of a radiologic procedure and for which the person is not trained by experience or education or when the procedure is performed without appropriate supervision;

(10) performing a radiologic procedure which is not within the scope of an limited medical radiologic technologist's (LMRT) certificate;

(11) disclosing confidential information concerning a patient or client except where required or allowed by law;

(12) failing to adequately supervise a person in the performance of radiologic procedures;

(13) providing false or misleading information on an application for employment to perform radiologic procedures;

(14) providing information which is false, misleading, or deceptive regarding the status of certification; registration with the American Registry of Radiologic Technologists (ARRT) or Nuclear Medicine Technology Certification Board (NMTCB); or licensure by another country, state, territory, or District of Columbia;

(15) discriminating on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical handicaps or economic status in the performance of radiologic procedures;

(16) impersonating or acting as a proxy for an examination candidate for any examination required for certification;

(17) acting as a proxy for an medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT) at any continuing education required under §143.11 of this title (relating to Continuing Education Requirements);

(18) obtaining, attempting to obtain, or assisting another to obtain certification or placement on the registry by bribery or fraud;

(19) making abusive, harassing or seductive remarks to a patient, client or co-worker in the workplace or engaging in sexual contact with a patient or client in the workplace;

(20) misleadingly, deceptively or falsely offering to provide education or training relating to radiologic technology;

(21) failing to complete the continuing education requirements for renewal as set out in §143.11 of this title;

(22) failing to document the continuing education requirements for renewal as required by the department;

(23) failing to cooperate with the department by not furnishing required documents or responding to a request for information or a subpoena issued by the department or the department's authorized representative;

(24) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by use of threats or harassment against any person;

(25) failing to follow appropriate safety standards or the Texas Regulations for the Control of Radiation (TRCR) in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(26) failing to adhere to universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(27) defaulting on a guaranteed student loan, as provided in the Education Code, §57.491;

(28) assaulting any person in connection with the practice of radiologic technology or in the workplace;

(29) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage to or from a person licensed, certified or registered by a state health care regulatory agency. The provisions of the Health and Safety Code, §161.091, relating to the prohibition of illegal remuneration apply to MRTs and LMRTs;

(30) using or permitting or allowing the use of the person's name, certificate, or professional credentials in a way that the person knows, or with the exercise of reasonable diligence should know:

(A) violates the Act, this chapter or department rule relating to the performance of radiologic procedures; or

(B) is fraudulent, deceitful or misleading;

(31) knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision; or

(32) knowingly concealing information relating to enforcement of the Act or this chapter.

(d) A person subject to disciplinary action under subsection (b)(6) of this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that the person is able to resume the practice of radiologic technology.

(e) An instructor engages in unprofessional conduct if the instructor violates any of the provisions of subsections (b) or (c) of this section or if the instructor:

(1) is an MRT or LMRT who fails to renew the certificate;

(2) is a practitioner who fails to renew his or her license or who has the license suspended, revoked, or otherwise restricted by the appropriate regulatory agency;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, religion, national origin, age, physical handicaps, sexual orientation, or economic status;

(4) abandons an approved course of study or a training program with currently enrolled students;

(5) knowingly provides false or misleading information on the application for instructor approval or on any student's application for certification; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, §85.203.

(f) An education program engages in unprofessional conduct if the program, including its employees or agents, violates any of the provisions of subsections (b) or (c) of this section or if the program:

(1) makes any misleading, deceptive, or false representations in connection with offering or obtaining approval of an education program;

(2) fails to follow appropriate safety standards or the TRCR in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, age, physical handicaps, economic status, religion or national origin;

(4) aids or abets a person in violating the Act or rules adopted under the Act;

(5) abandons an approved education program with currently enrolled students; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, Section 85, Subchapter I.

(g) The department may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

(h) In determining the appropriate action to be imposed in each case, the department shall take into consideration the following factors:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since the date of the violation;

(5) the number and type of previous disciplinary cases filed against the person or program;

(6) the length of time the person has performed radiologic procedures;

(7) the length of time the instructor or education program has been approved;

(8) the actual damage, physical or otherwise, to the patient or student, if applicable;

(9) the deterrent effect of the penalty imposed;

(10) the effect of the penalty upon the livelihood of the person or program;

(11) any efforts for rehabilitation; and

(12) any other mitigating or aggravating circumstances.

(i) Formal hearing requirements are as follows.

(1) The administrator may only initiate or propose disciplinary action. Final action may be taken by the department only after the person has had an opportunity for a formal hearing to contest the proposed action.

(2) The formal hearing shall be conducted in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(3) Prior to institution of formal proceedings, the administrator shall give written notice to the person or program of the facts or conduct alleged to warrant disciplinary action and the person or program shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(4) To initiate formal hearing procedures, the administrator shall give the person or program written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within ten days after receipt of the notice, the person or program shall give written notice to the administrator that the hearing is requested. Receipt of the written notice is presumed to occur on the tenth day after the notice is sent to the last address known to the department unless another date is reflected on the return receipt.

(A) If no request for a hearing is given within ten days after receipt of the notice, the person or program is deemed to have waived the hearing and be in agreement with the allegations and proposed action. If the hearing has been waived, the department shall recommend disciplinary action to the commissioner.

(B) If the person or program requests a hearing within ten days after receiving the notice of opportunity for hearing, the department shall initiate the department's formal hearing procedures in accordance with Chapter 1 of this title.

(C) If the person or program fails to appear or be represented at the scheduled hearing, the person or program is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. An appropriate order may be entered without further notice except as required by law.

(j) The following applies after disciplinary action has been taken.

(1) The department may not reinstate a certificate to a holder or cause a certificate to be issued to an applicant previously denied a certificate unless the department is satisfied that the holder or applicant has complied with requirements set by the department and is capable of engaging in the practice of radiologic technology. The person is responsible for securing and providing to the department such evidence, as may be required by the department. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in this chapter; however, the department may not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed and that the person is capable of engaging in the practice of radiologic technology.

(4) If the commissioner of health revokes or does not renew the certificate, the former certificate holder may reapply in order to obtain a new certificate by complying with the requirements and procedures at the time of reapplication. The department may not issue a new certificate until the administrator or the department determines that the reasons for revocation or nonrenewal have been removed and that the person is capable of engaging in the practice of radiologic technology. An investigation may be required.

(5) If the commissioner rescinds the approval of an instructor or program, the formerly approved instructor or program may reapply for approval by complying with the requirements and procedures at the time of reapplication. Approval will not be issued until the administrator or the department determines that the reasons for revocation have been removed. An investigation may be required.

§143.16. Dangerous or Hazardous Procedures.

(a) Purpose. The purpose of this section is to identify the radiologic procedures which are dangerous or hazardous and may only be performed by a practitioner, medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT) . A person trained under §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) and placed on a registry under §143.18 of this title (relating to the Registry of Non-Certified Technicians) is not certified under the Medical Radiologic Technologist Certification Act (the Act) and shall not perform a dangerous or hazardous procedure identified in this section.

(b) Dangerous procedures identified. A dangerous procedure is any potentially high radiation dose rate procedure which has the capability of producing damaging biological effects when performed inappropriately or incorrectly. The list of dangerous procedures which a practitioner, MRT or LMRT may perform are:

(1) nuclear medicine studies;

(2) administration of radiopharmaceuticals, unless administered by a registered nurse;

(3) radiation therapy, including brachytherapy;

(4) computed tomography (CT) or any variation thereof;

(5) interventional radiographic procedures, including angiography;

(6) fluoroscopy and/or fluorography; and

(7) cineradiography.

(c) Hazardous procedures identified. A hazardous procedure is any potentially difficult procedure that has the capability of producing damaging biological effects when performed inappropriately or incorrectly. The list of hazardous procedures which a practitioner, MRT or LMRT may perform are:

(1) conventional tomography;

(2) skull radiography, including all bones of the cranium, facial bones and sinuses;

(3) mobile radiography;

(4) pediatric radiography, excluding extremities;

(5) spine radiography, excluding anterior-posterior/posterior-anterior (AP/PA) and lateral views;

(6) shoulder girdle radiographs other than AP and lateral shoulderviews, AP clavicle and AP scapula;

(7) pelvic girdle radiographs, except AP or PA views;

(8) sternum radiographs; and

(9) radiographic procedures which utilize contrast media.

(d) Scope of practice. Subsections (b) and (c) of this section do not authorize an LMRT to perform a radiologic procedure which is not within the scope of the LMRT's certification. They do not authorize a practitioner to perform a radiologic procedure which is outside the scope of the practitioner's license.

(e) Dental radiography. This section does not apply to a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography.

(f) Mammography. In accordance with the Health and Safety Code, §§401.421 et seq, mammography is a radiologic procedure which may only be performed by an MRT (not an LMRT) who meets the qualifications set out in §289.230(d)(2) of this title (relating to Texas Regulations for the Control of Radiation (TRCR)). Mammography shall not be performed by a practitioner or any other person.

(g) Prohibited act. A person who is not a practitioner, an MRT or an LMRT shall not perform a radiologic procedure which has been identified in subsections (b) or (c) of this section as a dangerous or hazardous procedure. A person who performs a dangerous or hazardous procedure in violation of the Act, §2.13(a)(1) commits a Class B misdemeanor, punishable by up to 180 days in jail or a fine up to $2,000, or both.

(h) Misidentified dangerous or hazardous procedures. The following sets out the procedure to amend the list of procedures identified in subsections (b) or (c) of this section.

(1) An individual or organization which believes that a procedure identified in subsections (b) or (c) of this section has been misidentified as a dangerous or hazardous procedure, or should be included in the subsections as a dangerous or hazardous procedure, may submit a proposal to amend the subsections. The proposal shall be in writing and shall identify the procedures which are believed to be dangerous or hazardous which do not appear in subsections (b) or (c) of this section, or those which are believed to be not dangerous or hazardous which do appear in subsections (b) or (c) of this section, with supporting information or documentation explaining why the procedure(s) is or is not dangerous or hazardous.

(2) The proposal must be accompanied by an sworn affidavit from a Texas licensed medical physicist holding a license in the medical physics specialty area(s) which covers the type of procedure in question. The physicist shall attest that the information or documentation submitted is correct, whether the procedure is or is not dangerous or hazardous and whether the procedure can be performed safely by persons who are not MRTs, LMRTs or practitioners.

(3) The department shall refer the proposal to the next scheduled meeting of the Medical Radiologic Technologist Advisory Committee (committee) for its recommendation. If the committee recommends favorably, the department staff shall forward a proposed amendment to this section to the Texas Board of Health (board) to be included with the next proposed amendments or new rules for publication in the Texas Register. If the committee does not recommend favorably, the department shall respond in writing to the individual or organization submitting the request and shall give the reason(s) for the unfavorable recommendation. The individual or organization may resubmit its request with additional supporting documentation for further consideration by the committee or may petition the board for a rule change in accordance with the Administrative Procedure Act, Government Code, §2001.021.

§143.17. Mandatory Training Programs for Non-Certified Technicians.

(a) Purpose. The purpose of this section is to set out the minimum standards for approval of mandatory training programs, as required by the Medical Radiologic Technologist Certification Act (Act), §2.05(f), which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Individuals who complete an approved training program will not qualify for a general or limited certificate or any temporary certificate. Effective January 1, 1998, before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(1)(A)-(D) of this section, and at least one unit in subsection (d)(2)(A)-(F) of this section.

(b) Instructor direction required. All hours of the training program completed

for the purposes of this section must be live and inter-active and directed by an approved instructor. No credit will be given for training completed by self-directed study or correspondence.

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the Texas Department of Health (department) to teach in a training program if the individual meets the requirements of §143.9(h)(1)-(2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) An limited medical radiologic technologist (LMRT) may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. For example, an LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements. In order to successfully complete a program, each student must complete the following training:

(1) courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others-40 classroom hours;

(B) radiographic equipment, including safety standards, operation and maintenance-25 classroom hours;

(C) image production and evaluation-25 classroom hours;

(D) methods of patient care and management essential to radiologic procedures, excluding CPR-8 classroom hours; and

(2) one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) chest-15 classroom hours;

(B) spine-20 classroom hours;

(C) abdomen, not including any procedures utilizing contrast media-15 classroom hours;

(D) upper extremities-15 classroom hours;

(E) lower extremities-15 classroom hours; or

(F) podiatric-5 classroom hours.

(e) Application procedures for training programs. An application shall be submitted to the department at least 30 days prior to the starting date of the training program. Official application forms are available from the department and must be completed and signed by an approved instructor, who shall be designated as the training program director. The training program director shall be responsible for the curriculum, the instructors, and determining whether students have successfully completed the training program.

(1) Official application forms must be executed in the presence of a notary public and shall be accompanied by the application fee in accordance with §143.4 of this title (relating to Fees). Photocopied signatures will not be accepted.

(2) Application forms and fees shall be mailed to the address indicated on the application materials. The department is not responsible for lost, misdirected, or undeliverable application forms. An application received without the application fee will be returned to the applicant.

(f) Application materials. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

(5) the location, mailing address, phone and facsimile numbers of the program;

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach, and a list of management and administrative personnel and any practitioners who will participate in conducting the program;

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured preplanned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Education Agency, Proprietary Schools Section (or the successor organization) indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (d) of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §143.16 of this title (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, MRT or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation instruments and grades for not less than five years. Such records shall be made available upon request by the department or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the department within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the department to determine compliance with this section.

(g) Application approval.

(1) The administrator shall be responsible for reviewing all applications for training program approval. The administrator shall approve any application which is in compliance with this section. A letter of approval shall be issued for a period of one year

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The training program director shall be notified in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals.)

(3) If approval is proposed to be denied, the training program director shall be notified in writing of the proposed denial and shall be given an opportunity to request a formal hearing within ten days of the training program director's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(h) Application processing. The department shall use the same process as described in §143. 6(f) of this title (relating to Application Requirements and Procedures), except the time periods are as follows:

(1) letter of acceptance-30 days;

(2) letter of application deficiency-30 days;

(3) letter of approval-42 days; and

(4) letter of denial of approval-42 days.

(i) Renewal.

(1) The training program director shall be responsible for renewing the approval of the training program on or before the anniversary date of the initial application.

(2) The department shall send a renewal notice to the training program at least 60 days prior to the anniversary date. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form and fee in accordance with §143.4 of this title are postmarked or delivered to the department on or before the anniversary date.

(4) Failure to submit the renewal form and renewal fee in accordance with §143.4 of this title by the deadline will result in the expiration of the training program's approval.

(5) A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify, or cause the notification of currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(6) The training program may reapply for approval and meet the then current requirements for approval under this section.

(j) Previously completed training. A person who has completed part or all of the training described in subsection (d) of this section shall be considered to have completed an approved training program for part or all of the training but shall be required to complete the remainder of the training program described in subsection (d) of this section prior to the person's placement on the registry, as set out in §143.18 of this title (relating to Registry of Non-Certified Technicians).

(1) Unless the person is a registered nurse or certified physician assistant, the previously completed training shall be acceptable only if completed within two years of the time of the person's initial placement on the registry.

(2) Previously completed training shall be acceptable only if it was:

(A) completed at an education program approved under §143.9 of this title; or

(B) live, inter-active, and instructor-directed and meets the requirements for acceptance as continuing education credit for an medical radiologic technologists (MRTs) and LMRTs as set out in §143.11 of this title (relating to Continuing Education Requirements).

(3) If a person has completed part of the training described in subsection (d) of this section, the program director of the training program shall verify that the previously completed hours comply with this section.

(4) If a person has completed all of the training described in subsection (d) of this section, the department shall verify that the previously completed hours comply with this section at the time of the person's placement on the registry.

(5) Verification of previously completed training shall be made by reviewing only original certificates or official transcripts issued in the name of the person who is seeking credit for previously approved training. Photocopied certificates or transcripts will not be accepted for review.

(6) This subsection shall expire on January 1, 1998.

§143.18. Registry of Non-Certified Technicians.

(a) Purpose. The purpose of this section is to set out the rules for administering the registry of non-certified technicians performing radiologic procedures, established in accordance with the Medical Radiologic Technologist Certification Act (Act), §2.05(a)(4). The purpose of the department's registry is to provide a mechanism for consumers or employers to ascertain or verify that a person performing radiologic procedures has complied with the Act, §2.05(f) by successfully completing a training program in accordance with §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians).

(b) Information on the registry. The registry, at a minimum, shall include the information as follows for each person on the registry:

(1) full name;

(2) current mailing address;

(3) place of employment, including address, city and state;

(4) date of birth;

(5) social security number;

(6) gender;

(7) the name and location of the training program approved in accordance with §143.17 of this title which the person successfully completed;

(8) the date of successful completion of the training program; and

(9) the types of radiologic procedures covered in the person's training program. A person listed on the registry may not perform a dangerous or hazardous procedure as set out in §143.16 of this title (relating to Dangerous or Hazardous Procedures).

(c) Initial placement on the registry. In order to be listed on the registry for the first time, the information described in subsection (b) of this section shall be reported to the Texas Department of Health (department) by the training program approved under §143.17 of this title after the person's successful completion of the training. A person who has completed all the training program through previously completed courses in accordance with subsection (j) of §143.17 of this title may apply directly to the department to be placed on the registry.

(d) Renewal of registration.

(1) Each person on the registry shall be responsible for renewing his or her status on the registry between January 1 and March 1 of each year.

(2) The department shall send a renewal notice to each registrant at the address indicated on the registry by December 1 of each year. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form is postmarked or delivered to the department on or before March 1 of the renewal year. The renewal form shall include, at a minimum, the person's name, social security number, current mailing address, and current place of employment. The renewal form shall also include the current date and the signature of the renewal applicant.

(4) Failure to submit the renewal form by the deadline will result in the removal of the person's name from the registry.

(5) A person whose name is removed from the registry due to failure to renew may be relisted on the registry by submitting a late renewal form to the department.

(e) Changes in name, address or place of employment. A person listed on the registry is responsible for submitting changes in name, address or place of employment to the department, in writing, within 30 days of any change. Name changes must be accompanied by a copy of the person's social security card indicating the new name. The copy must be notarized as a copy of the unaltered original social security card.

(f) Inquiries regarding registration status. Inquiries regarding a person's registration status may be made in writing or by telephone. The department will issue a nontransferable registration certificate or other document indicating that the person is registered by the department.

(g) Employer responsibility. If a person performing radiologic procedures is not an medical radiologic technologist, limited medical radiologic technologist or is not registered under this section, the employer shall be responsible for determining whether the person performing radiologic procedures is in compliance with §143.17 of this title. This subsection does not apply to a hospital, federally qualified health center (FQHC), or practitioner granted a hardship exemption by the department within the previous 12-month period.

(h) Complaints. Complaints regarding persons on the registry may be submitted in writing to the Texas Department of Health, Professional Licensing and Certification Division, Complaints Management and Investigation Section, 1100 West 49th Street, Austin, Texas 78756-3183, or by calling 1-800-942-5540.

§143.19. Hardship Exemptions.

(a) Purpose. The purpose of this section is to set out the procedure for applying for a hardship exemption under the Medical Radiologic Technologist Certification Act (Act), §2.05(i) and (j) for a hospital, federally qualified health center (FQHC) or practitioner.

(b) General.

(1) A hospital, FQHC or practitioner may apply to the Texas Department of Health (department) for an exemption from employing an medical radiologic technologist (MRT), limited medical radiologic technologist (LMRT) or non-certified technician (NCT).

(2) The applicant must demonstrate a hardship as described in subsection (c)(4) of this section in employing an MRT, LMRT or NCT.

(3) The applicant may not allow a person who is not an MRT, LMRT or NCT to perform a radiologic procedure until the department grants a hardship exemption.

(c) Required application materials.

(1) The applicant must apply for a hardship on the forms prescribed by the department. The date of application shall be the date the application is postmarked. If there is no visible postmark, or if the application is hand-delivered, the application date shall be the date the administrator receives the application.

(2) The application must be accompanied by documentation clearly indicating that the applicant is a licensed hospital, FQHC or licensed practitioner. A copy of the current hospital license, certificate of qualification issued to the FQHC, or current license of the practitioner shall be acceptable documentation.

(3) If the application is from a hospital or FQHC, the administrator or chief executive officer of the hospital or FQHC must sign the application form. If the applicant is a practitioner, the practitioner must sign the application form.

(4) The application shall be accompanied by one or more of the following:

(A) evidence that the hospital, FQHC, or practitioner is located in a rural area and if unable to attract or retain an MRT, a sworn affidavit describing in narrative form the applicant's attempts, during the six-month period immediately preceding application to the department for the hardship exemption, to attract and retain an MRT at a reasonable salary according to an industry wage survey of at least five other employers of the same type as the applicant. The survey must be conducted by or for the applicant within the six-month period immediately preceding the date of the application for a hardship exemption;

(B) evidence that the hospital, FQHC, or practitioner is located in a rural area and if the distance between the applicant and the nearest school of medical radiologic technology approved in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) is more than 100 highway miles, a sworn affidavit describing in narrative form the physical address of the nearest school of medical radiologic technology; the physical address of the applicant hospital, FQHC or primary practice location of the practitioner; and the actual distance in highway miles between the school and the applicant hospital, FQHC or practitioner's primary practice. The applicant shall include a map of the area clearly indicating the locations of each entity;

(C) evidence that the hospital, FQHC, or practitioner is located in a rural area and if the nearest school of medical radiologic technology approved in accordance with §143.9 of this title has a waiting list of applicants due to a lack of faculty or space, a letter from the program director of the approved school of medical radiologic technology located nearest the applicant hospital, FQHC or practitioner's primary practice location indicating that admissions to the school are pending because of a lack of faculty or space. The letter must be dated within the 90-day period immediately preceding the date of the application for the hardship exemption;

(D) evidence that the hospital, FQHC, or practitioner is located in a rural area and if the demand for graduates in medical radiologic technology exceeds the number of graduates, a letter from the program director of the school of medical radiologic technology approved in accordance with §143.9 of this title nearest the applicant hospital, FQHC or practitioner's primary practice location indicating that the demand for graduates in medical radiologic technology exceeds the number of graduates from the program. The letter must be dated within the 90-day period immediately preceding the date of the application for the hardship exemption;

(E) if emergency conditions have occurred during the 90 days prior to making application for the hardship exemption, a sworn affidavit from the applicant hospital, FQHC or practitioner describing the emergency conditions, the hardship(s) the emergency conditions have created and how long the hardship(s) is anticipated to continue. For the purposes of this

subparagraph, emergency conditions may include a disaster, epidemic, or other catastrophic event; or

(F) documentation that the United States government has declared a state of war.

(5) All application materials are subject to verification of authenticity by the department.

(6) The department shall send a written notice listing the additional materials required to an applicant whose application is incomplete. An application not completed within 30 days after the date of the written notice shall be invalid unless the applicant has advised the department of a valid reason for the delay.

(d) Application approval.

(1) The administrator shall be responsible for reviewing all applications. The administrator shall approve any application which is in compliance with this section and which properly documents applicant eligibility.

(2) If granted by the department, a letter of exemption shall be issued for a period of one year.

(e) Disapproved applications.

(1) The department shall disapprove the application if the applicant has not met the application requirements set out in this section or has failed or refused to complete or submit any form or documentation required by the department to verify the eligibility for the exemption.

(2) If the administrator determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the disapproval. The applicant may appeal the decision to the associate commissioner over the administrator by submitting a written request within ten days after receipt of the written notice of the reason(s) for the disapproval.

(3) Based upon the application and any additional information submitted by the applicant or the administrator, the associate commissioner shall approve or disapprove the application.

(4) An applicant whose application has been disapproved under this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit a new application and supporting information.

(f) Application processing. The department shall use the same process as described in §143.6(f) of this title (relating to Processing an Application for a Hardship Exemption), except the time periods are as follows:

(1) letter of acceptance-30 days;

(2) letter of application deficiency-30 days;

(3) letter of approval-42 days; and

(4) letter of denial of exemption-42 days.

(g) Reapplication for hardship exemption.

(1) The hospital, FQHC or a practitioner must reapply annually for the exemption and meet the then current requirements for a hardship exemption.

(2) A hospital, FQHC or a practitioner who does not reapply for an exemption shall not allow a person to perform a radiologic procedure unless the person is a practitioner, MRT, LMRT or NCT.

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 14, 1995.

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Susan K. Steeg
General Counsel
Texas Department of Health

Earliest possible date of adoption: January 22, 1996

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

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 11. Health Maintenance Organizations

The Texas Department of Insurance proposes amendments to Chapter 11, concerning health maintenance organizations, by amending §§11.2, 11.207, 11. 301, and 11.806, and new §§11.1503, 11.1604, and 11.1702-11.1704. These proposed amendments are necessary to implement Insurance Code, Article 21.52F (enacted by the 74th Legislature in House Bill 3111 relating to certification of certain nonprofit health corporations), and amendments to the HMO Act, Insurance Code, Articles 20A.02, 20A.06(a)(3), and 20A.26(f) (enacted by the 74th Legislature in Senate Bill 1407 relating to contractual arrangements among HMOs, physicians, and other providers). The commissioner proposes sections necessary to implement Article 21.52F after consideration of recommendations submitted by the Certified Nonprofit Advisory Committee appointed by the commissioner pursuant to the 74th Legislature's directive in Section 2 of House Bill 3111. In addition, these proposed amendments are necessary to impose oversight and monitoring requirements on HMOs that contract with approved nonprofit health corporations (ANHCs) or other HMOs to provide health care services on a risk-sharing or capitated risk arrangement on behalf of the HMOs as part of the HMOs' delivery network; to clarify financial reporting requirements related to claim liabilities; and to establish and clarify filing procedures for applications for certificate of authority and form filings.

Section 11.2(b)(5) adds the definition of approved nonprofit health corporation set forth in Insurance Code, Article 21.52F, §1(2) and includes the acronym ANHC as an alternative term. Section 11.2(b)(14), (16), (17), and (22) add the definitions of HMO delivery network, person, physician, and provider set forth in recent amendments to Insurance Code, Article 20A.02. Section 11.2(b)(8) adds a new definition of contract holder because that term is used throughout the text of this chapter. Section 11.2(b)(19) and (22) add new definitions of primary HMO and provider HMO to differentiate between HMOs that contract directly with individuals or groups to provide or arrange to provide a health care plan and HMOs that contract with other HMOs to provide health care services.

Section 11.207, as amended, clarifies existing language relating to an HMO applicant's request to withdraw an application for certificate of authority from consideration by the department and adds a provision to clarify that upon receipt of a request to withdraw an application the name reservation for the HMO applicant will be canceled .

Section 11.301, as amended, amends paragraph (1) and adds paragraph (7). Amended paragraph (1) clarifies that a filing will not be accepted for review by the department until it is complete. New paragraph (7) establishes procedures for incomplete filings and complete filings, and provides for the department to pend a filing upon receipt of an HMO's consent to waive the statutory deemer period.

Section 11.806(c) has been deleted because amendments to Article 20A.26 (enacted by the 74th Legislature in Senate Bill 1407), new Article 21.52F (enacted by the 74th Legislature in House Bill 3111), and Article 3.10 of the Insurance Code cause this subsection to be no longer necessary.

New §11.1604(a) requires an HMO that enters into a contract with an ANHC or provider HMO to provide health care services on behalf of the primary HMO on a risk-sharing or capitated risk-sharing arrangement to:

(1) submit to the department a monitoring plan;

(2) file with the department, pursuant to §11.301(5) a copy of the form of the agreement with an ANHC or provider HMO which must meet certain described regulatory requirements; and

(3) conduct an on site audit of the ANHC or provider HMO.

New §11.1503 prohibits an HMO from contracting for a physician, provider, ANHC or provider HMO to reinsure any risk or part of risk or provide indemnity type benefits to HMO enrollees for any out of area and emergency care services performed by nonnetwork physicians or providers.

New §11.1702 implements legislation enacted by the 74th Legislature in House Bill 3111 by providing for issuance of a certificate of authority to an ANHC. New §11.1703 establishes that an agent for an ANHC with a certificate of authority or provisional certificate of authority under Insurance Code, Article 21.52F is considered an HMO agent subject to the same requirements as an HMO agent. New §11.1704 clarifies that an ANHC with a certificate of authority or provisional certificate of authority is an HMO for purposes of regulation and regulatory enforcement.

Tyrette Hamilton, acting deputy commissioner for life/health, has determined that for each year of the first five years the proposed sections are in effect, any fiscal implications to state government are the result of the legislative enactment of new Article 21.52F and amendments to Articles 20A.06 and 20A.26 of the Insurance Code, and are not as a result of the adoption and implementation of these proposed sections.

Ms. Hamilton also has determined that for each year of the first five years the proposed sections will be in effect, there will be no fiscal implications to local government nor to small business as a result of enforcing or administering the sections. There will be no measurable effect on local employment or the local economy as a result of the proposal.

Ms. Hamilton 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 proposed sections will be effective and efficient mechanisms to assure accountability to enrollees and prospective enrollees of HMOs, including licensed approved nonprofit health corporations, for the maintenance of quality of care and financial soundness of HMO health care plans.

Ms. Hamilton estimates that for the first year that the sections are in effect, the cost to persons required to comply with the sections will be nominal. The only component of the proposed rules expected to result in cost to those required to comply are the monitoring and contractual requirements for certain contracts between primary HMOs and ANHCs and primary HMOs and provider HMOs. However, the monitoring and contractual requirements should be no more costly than the costs already incurred by HMOs and ANHCs for doing business as ordinarily prudent business persons. Those HMOs and ANHCs required to comply are contractually accountable to their enrollees and others and should have controls in place to secure their information systems. 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 HMOs, it is anticipated that there will be no adverse economic impact on small business. There is no anticipated difference in the cost of compliance between small and large employers.

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 A. General Provisions

• 28 TAC §11.2

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A.04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06; 20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature) ; 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature); 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A.04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05, and shall notify the applicant that an application is deficient and in what respects it is deficient. 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or providers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5.01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06, 20A.10; 20.13; 20A.15; 20A.17; 20A.26; 21.52F; 3.10; 1.15; and 1.03A.

§11.2. Definitions.

(a) (No change.)

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

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

(5) ANHC or approved nonprofit health corporation–A nonprofit health corporation certified under Medical Practice Act, §5.01(a) (Texas Civil Statutes, Article 4495b).

(6)[(5)] Capitation–A method of compensation to a physician or provider based on a predetermined payment per enrollee for a specified period of time for certain enrollees in exchange for arranging

for or providing a defined set of covered health care services to such enrollees for a specified period of time, regardless of the amount of services actually provided.

(7)[(6)] Code-The Texas Insurance Code, 1951, as amended.

(8) Contract holder-An individual or organization to which an individual or group contract for health care services has been issued.

(9)[(7)] Copayment-An additional charge to an enrollee for a service which is not fully prepaid.

(10)[(8)] Dentist-A person licensed to practice dentistry by the Texas State Board of Dental Examiners.

(11)[(9)] Emergency Care-As defined in the Insurance Code, Article 20A.02(t). Bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(A) placing the patient's health in serious jeopardy;

(B) serious impairment to bodily functions; or

(C) serious dysfunction of any bodily organ or part.

(12)[(10)] Excess surplus-The surplus that is in excess of the minimum surplus required by the Insurance Code, Article 20A.13, excluding from surplus those assets a health maintenance organization finds necessary for its operations as set forth in §11.803(5) of this title (relating to Investments, Loans and Other Assets).

(13)[(11)] HMO-A health maintenance organization which has been issued a certificate of authority under the Act.

(14) HMO delivery network-A health care delivery system in which an HMO arranges for health care services directly or indirectly through contracts and subcontracts with providers, physicians, other HMOs and approved nonprofit health care corporations.

(15)[(12)] Out of area benefits-The benefits that the HMO covers when its members are outside the geographical limits of the HMO service area.

(16) Person-Any natural or artificial person, including, but not limited to, individuals, partnerships, associations, organizations, trusts, hospital districts, limited liability companies, limited liability partnerships, or corporations.

(17) Physician-Consists of the following:

(A) An individual licensed to practice medicine in this state;

(B) a professional association organized under the Texas Professional Association Act (Texas Civil Statutes, Article 1528f) or a nonprofit health corporation certified under Medical Practice Act, §5.01, (Texas Civil Statutes, Article 4495b); or

(C) another person, as defined in paragraph (16) of this subsection, wholly owned by physicians.

(D) any other person wholly owned by physicians.

(18)[(13)] Premium-The prospectively determined rate, based on the capitation, that is paid by or on behalf of a subscriber for specified health services.

(19)[(14)] Primary care physician or primary care provider-A physician or provider who is responsible for providing initial and primary care to patients, maintaining the continuity of patient care, and initiating referral for care.

(20) Primary HMO-An HMO that contracts directly with, and issues an evidence of coverage to, individuals or organizations for the primary HMO to arrange for or provide a health care plan or a single health care service plan to enrollees on a prepaid basis.

(21)[(15)] Prospective Enrollee-In the case of a member of a group, an HMO, an individual eligible for enrollment in an HMO purchased through that individual's group. In the case of an individual who is not a member of a group or whose group has not purchased or does not intend to purchase an HMO plan, "prospective enrollee" means an individual who has expressed an interest in purchasing individual HMO coverage and who is eligible for coverage by the HMO.

(22) Provider-Consists of the following:

(A) any person, as defined in paragraph (16) of this subsection, other than a physician, including a licensed doctor of chiropractic, registered nurse, pharmacist, optometrist, pharmacy, hospital, or other institution or organization or person that is licensed or otherwise authorized to provide a health care service in this state;

(B) a person, as defined in paragraph (16) of this subsection, who is wholly owned or controlled by a provider or by a group of providers who are licensed to provide the same health care service; or

(C) a person, as defined in paragraph (16) of this subsection, who is wholly owned or controlled by one or more hospitals and physicians, including a physician-hospital organization.

(23) Provider HMO-An HMO that contracts directly or indirectly, through contracts or subcontracts, with a primary HMO to provide or arrange to provide health care services on behalf of the primary HMO within an HMO delivery network.

(24)[(16)] Qualified HMO-An entity which has been federally approved under Title XIII of the Public Health Service Act, Public Law 93-222, as amended.

(25)[(17)] Rules-All sections under this chapter.

(26)[(18)] Schedule of charges-The specific rates or premiums to be charged for a single enrollee, a two-member family, three-member family, etc.

(27)[(19)] Service area-The geographical area within which direct service benefits are available and accessible to HMO enrollees.

(28)[(20)] Subscriber-If nongroup coverage, the person who is the policyholder and is responsible for payment of premiums to the HMO; or if group coverage, the person who is the certificate holder and whose employment or other status, except for family dependency, is the basis for eligibility for membership in the HMO.

(29)[(21)] Surplus-The admitted assets minus uncovered liabilities.

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 15, 1995.

TRD-9516431 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

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Subchapter C. Application for Certificate of Authority

• 28 TAC §11.207

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A. 04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06;

20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature) ; 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature); 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A. 04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05, and shall notify the applicant that an application is deficient and in what respects it is deficient. 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or providers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5. 01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06, 20A.10; 20.13; 20A.15; 20A.17; 20A.26; 21.52F; 3.10; 1.15; and 1.03A.

§11.207 Withdrawal of an Application.

(a) Upon written notice **to the department**, an applicant may request withdrawal of an application **from consideration by the department.**

(b) Upon the department's receipt of a request to withdraw an application pursuant to this section, the applicant's name reservation shall be canceled.

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 15, 1995.

TRD-9516430 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

Subchapter D. Regulatory Requirements for an HMO Subsequent to Issuance of a Certificate of Authority

• 28 TAC §11.301

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A. 04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06; 20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature) ; 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature); 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A. 04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05, and shall notify the applicant that an application is deficient and in what respects it is deficient. 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or providers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or au-

thorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5. 01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06, 20A.10; 20.13; 20A.15; 20A.17; 20A.26; 21.52F; 3.10; 1.15; and 1.03A.

§11.301. Filing Requirements Subsequent to the issuance of a certificate of authority, each **HMO** [health maintenance organization (HMO)] is required to file certain information with the commissioner, either for approval prior to effectuation or for information only, as outlined in paragraphs (4) and (5) of this section and in §11.302 of this title (relating to Service Area Expansion Requests). These requirements include filing any changes necessitated by federal or state law or regulation.

(1) Completeness of filings. **The department shall not accept a filing for review until the filing is complete. A re**quest to modify the approved application for a certificate of authority which requires the commissioner's approval is considered complete when all necessary supporting documentation identified in this section or in §11.302 of this title (relating to Service Area Expansion Requests) has been filed.

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

(7) Filing Review Procedure. Within 20 days after the department's receipt of an initial filing for commissioner's approval under this section, the department shall determine the filing to be complete or incomplete for purposes of acceptance for review and issue written notice to the HMO of an incomplete filing.

(A) Incomplete filing. The written notice for an incomplete filing shall state that the filing is not complete and has not been accepted for filing for review and shall set out specific information, documentation or corrections necessary to make the filing complete as provided in paragraph (1) of this section. If a filing is resubmitted in whole or in part and is still incomplete, an additional written notice is not required.

(B) Processing of complete filing. The department shall in writing approve or disapprove a complete filing within the period of time set forth in paragraph (6) of this section beginning on the date the filing is determined to be complete, unless the HMO waives in writing the statutory deemer of approval.

(C) Pending status. Complete filings will be affirmatively approved or disapproved in writing within the statutory deemer of approval period of time set forth in paragraph (6) of this section unless, prior to the department's issuance of actual notice for proposed negative action pursuant to §1.704(a) of this title (relating to Summary Procedure; Notice), the HMO has been contacted by the department regarding corrections necessary for commissioner's approval and files with the department a written consent to waive the statutory deemer of approval set forth in the Insurance Code, Article 20A.04(b) and paragraph (6) of this section. The deemer shall be waived upon the department's receipt of a written consent from the HMO to waive the statutory deemer and the filing shall be held in a pending status for 45 days from the date of the applicable statutory deemer, either on the 30th or 60th day from the date the filing is complete. If the necessary corrections have not been filed by the end of the 45-day period, the department shall return one copy of the filing which shall be considered withdrawn from further consideration until and unless refiled. An HMO may request a specific longer period of time if the filing cannot be corrected within 45 days. The department may deny a request for a specific longer period of time if the department determines the HMO has not used due diligence to correct the filing.

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 15, 1995.

TRD-9516432 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

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Subchapter I. Financial Requirements

• 28 TAC §11.806

The amendment is proposed under the Insurance Code, Articles 20A.22; 20A. 04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06; 20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature) ; 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature); 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A. 04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05, and shall notify the applicant that an application is deficient and in what respects it is deficient. Article 20A.05(d) provides a certificate of au-

thority 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or providers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5. 01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06, 20A.10; 20.13; 20A.15; 20A.17; 20A.26; 21.52F; 3.10; 1.15; and 1.03A.

§11.806. Liabilities

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

[(c) An HMO may cede by contract any part of its claim liability as set forth in subsection (b)(4) of this section to a physician, physician association or other provider of health care services. A claim liability is considered ceded to a physician, physician association, or provider when that physician, physician association, or provider, in consideration for a compensation by means of a capitation, percentage of premium, or some other method other than fee for service, assumes the risk of paying other physicians and/or other providers for services they render.]

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 15, 1995.

TRD-9516433 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

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Subchapter P. Prohibited Practices

• 28 TAC §11.1503

The new section is proposed under the Insurance Code, Articles 20A.22; 20A.04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06; 20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature); 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature); 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A.04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05, and shall notify the applicant that an application is deficient and in what respects it is deficient. 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or providers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5. 01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06,

20A.10; 20.13; 20A.15; 20A.17; 20A.26; 21.52F; 3.10; 1.15; and 1.03A

§11 1503. Reinsurance. An HMO shall not contract for a physician, provider, ANHC or provider HMO to reinsure any risk or part of risk or provide indemnity-type benefits to HMO enrollees for any out of area and emergency care services performed by non-network physicians or providers.

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 15, 1995.

TRD-9516434 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

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Subchapter Q. Other Requirements

• 28 TAC §11.1604

The new section is proposed under the Insurance Code, Articles 20A.22; 20A.04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06; 20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature); 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature), 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A.04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05,.and shall notify the applicant that an application is deficient and in what respects it is deficient. 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or providers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5. 01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06, 20A.10; 20 13; 20A.15; 20A.17; 20A.26; 21 52F; 3.10; 1 15; and 1.03A.

§11 1604 Requirements for Certain Contracts between Primary HMOs and ANHCs and Primary HMOs and Provider HMOs. A primary HMO that enters into a contract with an ANHC or provider HMO in which the ANHC or provider HMO agrees to provide health care services on a risk-sharing or capitated risk arrangement on behalf of the primary HMO as part of the primary HMO delivery network shall:

(1) submit to the Texas Department of Insurance a monitoring plan setting out:

(A) how the primary HMO will ensure that the ANHC or provider HMO has an effective administrative system for providing timely and accurate reimbursement to all physicians and providers under contract with the ANHC or provider HMO; and

(B) how the primary HMO will ensure that all HMO functions which are delegated or assigned under contract with the ANHC or provider HMO are consistent with full compliance by the primary HMO with all regulatory requirements of the Texas Department of Insurance and the Texas Department of Health;

(2) file with the Texas Department of Insurance, pursuant to §11.301(5) of this title (relating to Filings for Information), a copy of the form of the written agreement with an ANHC or provider HMO that:

(A) requires that the agreement cannot be terminated by the ANHC or provider HMO without 90 days written notice;

(B) contains a hold harmless provision providing that the ANHC or provider HMO and its contracted physicians and providers are prohibited from billing or attempting to collect from HMO members (except for authorized co-payments and deductibles) under any circumstance, including the insolvency of the primary HMO, ANHC or provider HMO;

(C) contains a provision stating that nothing in the primary HMO-ANHC or primary HMO-provider HMO contract shall be construed to in any way limit the HMO's authority or responsibility to comply with all regulatory requirements of the Texas Department of Insurance and the Texas Department of Health;

(D) includes the ANHC's or provider HMO's acknowledgment and agreement that:

(i) the primary HMO is required to establish, operate and maintain a health care delivery system, quality assurance system, provider credentialing system and other systems and programs meeting Texas Department of Insurance and Texas Department of Health standards and is directly accountable for compliance with such standards;

(ii) the role of the ANHC or provider HMO in contracting with the primary HMO is limited to implementing certain systems of the primary HMO, utilizing standards approved by the primary HMO and subject to the primary HMO's oversight and monitoring of the ANHC's of provider HMO's performance; and

(iii) the primary HMO may take whatever action is deemed necessary by the primary HMO, Texas Department of Insurance or Texas Department of Health to assure that all HMO systems and functions which are delegated or assigned under the contract with the ANHC or provider HMO are in full compliance with all regulatory requirements of the Texas Department of Insurance and the Texas Department of Health;

(E) requires the ANHC or provider HMO to make available to the primary HMO the ANHC's or provider HMO's contracts with physicians and providers so as to ensure compliance with contractual requirements set out in subparagraph (B) and (C) of this paragraph; and

(F) requires the ANHC to provide the primary HMO with evidence of both financial solvency and financial ability to perform, such as a certified financial audit of the ANHC conducted by independent certified public accountants, utilizing generally accepted accounting and auditing principles.

(G) requires the ANHC or provider HMO to provide the primary HMO on at least a monthly basis with the data necessary for the HMO to comply with the Texas Department of Insurance and Texas Department of Health reporting requirements with respect to any services provided pursuant to the HMO-ANHC or HMO-provider HMO agreement, including the following data:

(i) number of primary HMO enrollees served (including number added and terminated since the last reporting period);

(ii) contracts and subcontracts between the ANHC or provider HMO and physicians and providers within the primary HMO delivery network;

(iii) co-payments received by the ANHC or provider HMO;

(iv) amounts paid by the ANHC or provider HMO to physicians and providers;

(v) methods by which physicians and providers were paid by the ANHC or provider HMO (capitation, fee-for services, other risk-sharing arrangements);

(vi) utilization data;

(vii) amounts paid by the ANHC or provider HMO for administrative services relating to the primary HMOs;

(viii) time period that claims and debts related to claims owed by the ANHC or provider HMO have been pending;

(ix) information required for the primary HMO to be able to file claims for reinsurance, coordination of benefits and subrogation;

(x) provider-enrollee satisfaction data;

(xi) complaint data;

(xii) inquiries and investigation of the ANHC or provider HMO made by regulatory agencies; and

(xiii) any other data necessary to assure proper monitoring and control of the primary HMO delivery network by the primary HMO;

(3) conduct an on site audit of the ANHC or provider HMO no less frequently than semi-annually to obtain information necessary to verify compliance with all regulatory requirements of the Texas Department of Insurance and the Texas Department of Health. Written documentation of each audit required by this paragraph shall be made available to the Texas Department of Insurance or Texas Department of Health upon request; and

(4) take immediate action to correct any failure by the ANHC or provider HMO to comply with regulatory requirements of the Texas Department of Insurance or Texas Department of Health.

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 15, 1995.

TRD-9516435 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

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Subchapter R. Approved Non-profit Health Corporation (ANHC)

• 28 TAC §§11.1702-11.1704

The new sections are proposed under the Insurance Code, Articles 20A.22; 20A.04(a)(13) and (b); 20A.05(b), (c), and (d); 20A.06; 20A.10; 20A.13; 20A.15; 20A.17; 20A.26 (as amended by Senate Bill 1407 enacted by the 74th Legislature); 21.52F (as amended by House Bill 3111 enacted by the 74th Legislature); 3.10; 1.15; and 1.03A; and the Government Code, §§2001.004 et seq (Administrative Procedure Act). The Insurance Code, Article 20A.22 provides that the department may promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of the Texas HMO Act. Article 20A.04(a)(13) provides that in addition to items to be accompanied with each application for an HMO certificate of authority as set forth in Article 20A.04(a)(1)-(12), the commissioner may require other information to make determinations required by the HMO Act. Article 20A.04(b) provides the State Board of Insurance may promulgate such reasonable rules and regulations as it deems necessary to the proper administration of the HMO Act to require an HMO, subsequent to receiving its certificate of authority, to submit the modifications or amendments to the operations or documents submitted upon application for a certificate of authority to the commissioner, either for his approval or for information only, prior to the effectuation of the modification or amendment or to require the HMO to indicate the modifications to both the Texas Board of Health and the Commissioner of Insurance at the time of the next site visit or examination. 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(c) provides that the commissioner shall not issue the certificate of authority if the Texas Board of Health or the Commissioner of Insurance, or both, certify that the HMO's proposed plan of operation does not meet the requirements of Article 20A.05, and shall notify the applicant that an application is deficient and in what respects it is deficient. 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.06(a)(3) (as amended by the enactment of the 74th Legislature in Senate Bill 1407) authorizes HMOs to furnish or arrange for medical care only through other HMOs or physicians or groups of physicians who have independent contracts with the HMOs; and for the delivery of health care services only through other HMOs or providers or groups of providers who are under contract with or employed by the HMO or through other HMOs or physicians or provid-

ers who have contracted for health care services with those other HMOs or physicians or providers; except for the furnishing of or authorization for emergency services, services by referral, and services to be provided outside of the service area as approved by the commissioner. Article 20A.10 requires an HMO to file a report with the department on an annual basis including information relating to the performance of the HMO as is necessary to enable the commissioner to carry out his duties under the HMO Act. Article 20A.13 provides guidelines and requirements for protection of an HMO against insolvency. Article 20A.15 sets forth requirements for the licensure and regulation of HMO agents. Article 20A.17 provides for examination of the affairs of any HMO by the commissioner. Article 20A.26 (as amended by enactment of the 74th Legislature in Senate Bill 1407) provides exceptions to the HMO Act and describes certain contractual arrangements permitted by the HMO Act. Article 21.52F (as amended by enactment of the 74th Legislature in House Bill 3111) establishes requirements for the issuance of a certificate of authority or provisional certificate of authority to, and powers and duties of, a nonprofit health corporation certified under the Medical Practice Act, §5. 01(a); and provides for the commissioner to adopt rules to implement Article 21.52F. Article 3.10 authorizes reinsurance of risk by HMOs and other insurers subject to certain requirements set forth in Article 3.10. Article 1.15 authorizes the department to examine HMOs and other insurers. 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: Statute Insurance Code, Articles 20A.22; 20A.02; 20A.04; 20A.05, 20A.06, 20A.10; 20.13; 20A.15; 20A.17; 20A.26; 21.52F; 3.10; 1.15; and 1.03A.

§11 1702. Requirements for Issuance of Certificate of Authority to ANHC.

(a) Prior to obtaining a certificate of authority under the Insurance Code, Article 21.52F (relating to Certification of Certain Nonprofit Health Corporations), an applicant ANHC must:

(1) comply with each requirement for the issuance of a certificate of authority imposed on an HMO under the Insurance Code, Chapter 20A; this title, Chapter 11; and applicable insurance laws and regulations of this state; and

(2) demonstrate by appropriate documentation that the applicant ANHC has established and maintains accreditation by:

(A) the National Committee on Quality Assurance; or

(B) the Joint Commission on Accreditation of Healthcare Organizations-network accreditation program.

(b) The commissioner shall grant a provisional certificate of authority to an applicant ANHC under the Insurance Code, Article 21.52F §4(b), if:

(1) the applicant ANHC complies with each requirement for the issuance of a certificate of authority imposed on an HMO under the Insurance Code, Chapter 20A; this title, Chapter 11; and applicable insurance laws and regulations of this state;

(2) the applicant ANHC demonstrates that it has applied for accreditation;

(3) the applicant ANHC is diligently pursuing accreditation as determined by the commissioner; and

(4) the accrediting organization has not denied the accreditation.

(c) An ANHC with a certificate of authority or a provisional certificate of authority must comply with all the appropriate requirements that an HMO must comply with under the Insurance Code, Chapter 20A; this title, Chapter 11; and applicable insurance laws and regulations of this state in order to maintain a certificate of authority.

§11.1703. Requirements for Agents of an ANHC Certificate of Authority Holder. Any agent for an ANHC with a certificate of authority or a provisional certificate of authority shall be considered an HMO agent and shall comply with the requirements of the Insurance Code, Article 20A.15 or Article 20A.15A, as applicable, and §§11.401-11.409 of this title (relating to Licensure and Regulation of HMO Agents).

§11.1704. Statutes and Rules Applicable to ANHC With a Certificate of Authority. An ANHC with a certificate of authority or provisional certificate of authority under Insurance Code, Article 21.52F and this subchapter shall be subject to the same statutes and rules as an HMO and considered an HMO for purposes of regulation and regulatory enforcement.

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 15, 1995.

TRD-9516436 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Earliest possible date of adoption: January 22, 1996

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 57. Fisheries

The Texas Parks and Wildlife Commission proposes amendments to §57.45 and §57.61, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed amendments contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed amendments affect the disturbance of sand, shell, gravel, or marl under the provisions of Parks and Wildlife Code, Chapter 86. The proposed thresholds for sand, shell, gravel, or marl dredging are equivalent to a zero threshold, in that the ability of the Council to review an action is triggered when an administratively complete application is received.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code,

§2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4433 or 1-800-792-1112, Extension 4433.

Shell Dredging on the Texas Gulf Coast

• 31 TAC §57.45

The amendment is proposed under Parks and Wildlife Code, Chapter 86, which gives the commission authority to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state.

The proposed amendment implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapters 43, 76, and 86.

§57.45 Permit Applications.

(a) The following procedures will be followed for the issuance of general permits:

(1)-(14) (No change.)

(15) **Prior to issuing a permit under this section for shell dredging within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary) the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a permit under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.**

(b) (No change.)

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

Issued in Austin, Texas, on December 15, 1995.

TRD-9516400 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

Issuance of Marl, Sand, and Gravel Permits

• 31 TAC §57.61

The amendment is proposed under Parks and Wildlife Code, Chapter 86, which gives the commission authority to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state.

The proposed amendment implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapters 43, 76, and 86.

§57 61 Management and Protection.

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

(c) **Prior to issuing a permit under this section for the disturbance of marl, sand, and gravel within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary) the department shall comply with the requirements of §69. 91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a permit under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.**

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 15, 1995.

TRD-9516401 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants

• 31 TAC §§57.111, 57.114, 57.119, 57.129

The Texas Parks and Wildlife Department proposes amendments to §§57.111, 57.114, 57.119, and 57.129, concerning harmful or potentially harmful exotic fish, shellfish and aquatic plants. The amendments add definitions, require the quarantining of pathogen-infected exotic shellfish, require notification of the department in the event of mortalities in cultured exotic shellfish stocks, and provide for department certification of exotic shellfish stocks as disease free. The amendments are necessary to protect the aquatic life resources of the state.

Robin Riechers, staff economist, has determined that during the first five-year period the rules as proposed are in effect, there will be fiscal implications to state government as a result of administering and enforcing the rules. There will be no fiscal implications for units of local government. Additional costs incurred by state government are associated with determinations of when stocks can be certified as disease-free and when quarantine conditions can be removed; however, no data exists to predict how frequently quarantines may be imposed, so such costs are therefore unquantifiable.

Mr. Riechers also has determined that for each year of the first five years the proposed rules are in effect the public benefits anticipated as a result of enforcing or administering the rules as proposed will be the protection of indigenous stocks of aquatic life in the natural waters of Texas.

Small businesses will incur costs associated with the ability to establish and maintain quarantine conditions, and those small businesses which experience quarantine conditions will accrue losses associated with the postponement of movement or sale of the quarantined product until the conditions are met to remove the quarantine. The anticipated economic cost to persons required to comply with rules as proposed will be the additional costs associated with establishing the ability to impose quarantine conditions, which will vary depending on the facility.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Joedy Gray, Inland Fisheries Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8037 or 1-800-792-1112, extension 8037.

The amendments are proposed under the Parks and Wildlife Code, Chapter 66, Subchapter A, which gives the commission authority to regulate the possession and sale of exotic shellfish.

The proposed amendments affect Parks and Wildlife Code, Chapter 66, Subchapter A, §66.007.

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

Exotic Disease-Contagious pathogens or injurious parasites not recognized as part of aquatic life in the natural waters of Texas and which are considered threatening to the health and wholesome-

ness of natural populations of aquatic organisms.

Exotic Disease-Free-A status, based on the results of examinations conducted by state-approved specialists, that certifies a group of aquatic organisms as being free of contagious exotic pathogens or injurious exotic parasites.

Quarantine condition-Confinement **of all life stages of exotic fish, shellfish or aquatic plant species, and the water and containment materials in which they are or were maintained** [nauplii, postlarvae or adults of exotic shellfish such that neither the shellfish nor the water in which they are maintained comes into contact with other fish or shellfish].

§57.114. Health Certification of Exotic Shellfish.

(a) All **exotic** disease-free certifications of exotic shellfish must be conducted by a shellfish disease specialist approved by the department.

(b) **Any person importing live exotic shellfish from facilities outside the state of Texas must, prior to importation:**

(1) provide documentation to the department that the shellfish to be imported have been inspected and certified as Exotic Disease-Free by a department-approved shellfish disease specialist; and

(2) receive acknowledgment from the department that the requirements of paragraph (1) of this subsection have been met. [Any person importing nauplii of exotic shellfish from facilities outside the state must provide documentation to the department, prior to importation of such nauplii, that the producing facility from which the nauplii are to be received has been certified as being free of disease.]

(c) Any person in possession of nauplii of exotic shellfish for the purpose of production of postlarvae must provide to the department monthly certification that such postlarvae have been examined and certified to be free of exotic disease. **If certification cannot be provided, the exotic shellfish must be maintained in quarantine conditions until the department acknowledges that the stock is free of exotic diseases or specifies conditions under which quarantine can be removed.**

(d) **Any person in possession of exotic shellfish stocks that experience mortalities due to exotic disease shall promptly notify the department of such mortalities and shall institute and maintain all infected portions of the facility, including all shellfish stock, under quarantine conditions until either the department removes the quarantine or authorizes an appropriate disposal method.** [Any shipment of exotic shellfish received by an Exotic Species permittee must be:

[(1) certified as being disease free; and

[(2) maintained under quarantine conditions until the Department acknowledges that the additional stock is free of disease.

[(e) Prior to removal of exotic shellfish from quarantine conditions, an Exotic Species Permit holder must have:

[(1) obtained certification that any new shipment of exotic shellfish imported from outside the state have been examined and found to be free of disease;

[(2) forwarded a copy of the disease free certification to the department; and

[(3) received acknowledgment from the department that the shellfish stock is free of disease.]

§57.119. Exotic Species Permit: Requirements for Permittee.

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

(g) A holder of an Exotic Species Permit authorizing possession of *Penaeus vannamei* may sell or transfer ownership of live *P. vannamei* **only if such stock is certified exotic disease-free and only** to the holder of a valid Exotic Species Permit specifically authorizing possession of *P. vannamei.*

(h)-(m) (No change.)

§57.129. Exotic Species Permit: Private Facility Criteria.

(a) -(e) (No change.)

(f) **Facilities and/or harboring harmful or potentially harmful exotic species shall have the capability to establish and maintain quarantine conditions.**

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 18, 1995.

TRD-9516451 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Issuance of Oyster Leases

• 31 TAC §57.241

The Texas Parks and Wildlife Commission proposes an amendment to §57. 241, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed amendment contains a general requirement of consistency and proposes a threshold for referral. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed amendment affects leases for oyster transplant or harvest. The proposed threshold for oyster leases is equivalent to a zero threshold, in that the ability of the Council to review an action is triggered when an administratively complete application is received.

Robin Reichers, staff economist, has determined that for each of the first five years the rule as proposed is in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Reichers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed. The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4433 or 1-800-792-1112, Extension 4433.

The amendment is proposed under Parks and Wildlife Code, Chapter 76, which gives the commission authority to regulate the planting and taking of oysters in public waters.

The proposed amendment implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapter 76

§57 241 Application for Oyster Lease

(a)-(s) (No change.)

(t) Prior to issuing a lease under this section, the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination). Grant or denial of an application for a lease under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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 15, 1995

TRD-9516402 Bill Harvey, Ph D
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption. January 25, 1996

For further information, please call: (512) 389-4642

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Commercially Protected Finfish

• 31 TAC §§57.371-57.373

The Texas Parks and Wildlife Department proposes amendments to §§57 371-57 373, concerning importation of commercially protected finfish. Senate Bill 733, enacted by the 74th Legislature, directs the department to remove four species of fish from the list of commercially protected finfish species

The amendment to §57.371 would remove cobia, king mackerel, Spanish mackerel, and wahoo from the list of commercially protected finfish The amendments to §57.372 and §57.373 remove language which exempted shipments of Spanish and king mackerel from listing the number of fish on invoices The removal of these species from the list of commercially protected finfish species renders this language redundant.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for each of the first five years the rules as proposed are in effect, there will be no fiscal implications for state or local governments

Dr. Harvey also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be implementation of statutory intent relative to protection of fisheries resources of the state.

There will be minimal effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Assistant Commander Bill Robinson, Law Enforcement Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4628 or 1-800-792-1112, ext. 4628.

The amendments are proposed under Parks and Wildlife Code, §66.020 which provides the Parks and Wildlife Commission's authority to regulate the importation of commercially protected finfish.

The proposed amendment affect Parks and Wildlife Code, §66.020, and implements Senate Bill 733, Acts of the 74th Texas Legislature, 1995.

§57 371. Commercially Protected Finfish The following species are commercially protected finfish:
Figure: 31 TAC §57.371

§57 372 Packaging Requirements.

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

(d) An Import Commercially Protected Finfish Shipping Invoice shall:

(1) (No change.)

(2) contain all of the following information, correctly stated and legibly written:

(A)-(E) (No change)

(F) number and weight of whole fish or fillets, by species, contained in the shipment [except that invoices for shipments of king mackerel and Spanish mackerel are not required to contain the number of fish]; and

(G) (No change.)

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

(e) An Intrastate Commercially Protected Finfish Shipping Invoice (Figure 1 §57.371 of this title (relating to Finfish) shall:

(1) (No change.)

(2) contain all of the following information, correctly stated and legibly written:

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

(F) number and weight of whole fish or fillets, by species, contained in the shipment [except that invoices for shipments of king mackerel and Spanish mackerel are not required to contain the number of fish]; and

(G) (No change.)

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

(f) An Export Commercially Protected Finfish Shipping Invoice (Figure 1 §57.371 of this title) shall:

(1) (No change.)

(2) contain all of the following information, correctly stated and legibly written:

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

(F) number and weight of whole fish or fillets, by species, contained in the shipment [except that invoices for shipments of king mackerel and Spanish mackerel are not required to contain the number of fish]; and

(G) (No change.)

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

(g)-(i) (No change.)

§57 373. Package Labels.

(a) (No change.)

(b) The package label shall be placed on the outside of each package and shall contain all of the following information, correctly stated and legibly written:

(1) (No change.)

(2) The number, kind and weight of whole fish or fillets by species contained in each package [except that package labels for shipments of king mackerel and Spanish mackerel are not required to contain the number of fish].

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 15, 1995.

TRD- 9516412 Bill Harvey, Ph D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Expiration Provision

• 31 TAC §57.901

The Texas Parks and Wildlife Commission proposes new §57.901, concerning expiration

provision for regulations in Chapter 57, concerning Fisheries.

The new rule would effectively "sunset" all regulations in Chapter 57 unless the specific regulations were amended or repealed and readopted by September 1, 1997. The goal of the Commission in setting the sunset provision is to provide a thorough and complete review and recodification of all Parks and Wildlife regulations. The intended effect is that of streamlining the regulations promulgated by the Commission.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five years that the rule is in effect there will be fiscal implications to state government. However, these costs are not quantifiable at this time. There will be increased costs related to review and recodification processes, however, the long term effect is anticipated to be a decrease in the overall costs of administering the Parks and Wildlife Department regulatory process. There are no fiscal implications for local governments.

Dr. Harvey also has determined that for each of the first five years the rule is proposed are in effect the public benefits anticipated as a result of the proposal will be simplification in regulations concerning fisheries and other aquatic programs. It is anticipated there may be fiscal implications to persons as a result of proposed sunset provision. The costs related to application for certain permits codified in Chapter 57 may decline and the permit application procedures may be streamlined, thereby decreasing the costs related to these permits. There will be minimal costs to small businesses.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on the rule as proposed may be submitted to Dr. Bill Harvey, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4642 or 1-800-792-1112, Extension 4642.

The new rule is proposed under authority of Parks and Wildlife Code, §§11. 011, 11.033, 12.001, 12.015, 43.551-43.554, 49.001-49.017, 86.001-86.019, 66. 007, 66.015, 66.018, 66.020, 76.001-76.118, 77.004, 77.007, and 88.006.

Parks and Wildlife Code, §§11.011, 11.033, 12.001, 12.015, 43.551-43.554, 49.001-49.017, 86.001-86.019, 66.007, 66.015, 66.018, 66.020, 76.001-76.118, 77.004, 77.007, and 88.006 are affected by the proposed new expiration section.

§57.901. Expiration Provisions. Unless readopted, amended or repealed in accordance with Government Code, Chapter 2001, Subchapter B, all sections in this chapter expire on September 1, 1997.

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 15, 1995.

TRD-9516395 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Chapter 59. Parks

Administration of the Texas State Park System

• 31 TAC §59.75

The Texas Parks and Wildlife Commission proposes new §59.75, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development in state parks, wildlife management areas, and preserves by entities other than the department. The proposed new rule contains a general requirement of consistency and proposes a threshold for referral. The threshold for referral determines which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process.

The new rule affects development in state parks, wildlife management areas, and preserves by entities other than the department. The proposed thresholds for outside development on department lands are equivalent to a zero threshold in that the ability of the Council to review an action is triggered when an administratively complete application is received or initial commission approval for development on department lands is secured.

Robin Reichers, staff economist, has determined that for each of the first five years the rule as proposed is in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rule.

Mr. Reichers also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be consistency of rules and activities under the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rule as proposed will not impact local economies.

Comments on the proposed rule may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4433 or 1-800-792-1112, ext. 4433.

The proposed new rule is proposed under Parks and Wildlife Code, Chapter 26, which gives the commission authority to protect public parks and recreational lands.

The proposed new rule implements Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapter 26.

§59.75. Coastal Management Program. Before approving development on any state park, state wildlife management area, or state preserve located wholly or partially within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the Texas Parks and Wildlife Department shall ensure that the applicable requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) have been met. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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 15, 1995.

TRD- 9516404 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Chapter 59. Parks

Expiration

• 31 TAC §59.301

The Texas Parks and Wildlife Commission proposes new §59.301, concerning expiration provision for regulations in Chapter 59, concerning Parks.

Proposed new §59.301 would effectively "sunset" all regulations in Chapter 59 unless the specific regulations were amended or repealed and readopted by September 1, 1997. The goal of the Commission in setting the

sunset provision is to provide a thorough, complete review and recodification of all Parks and Wildlife regulations. The intended effect is that of streamlining the regulations promulgated by the Commission.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five years that the rules are in effect there will be fiscal implications to state government. However, these costs are not quantifiable at this time. There will be increased costs related to review and recodification processes, however, the long term effect is anticipated to be a decrease in the overall costs of administering the Parks and Wildlife Department regulatory process. There are no fiscal implications for local governments.

Dr. Harvey has also determined that for each of the first five years the rules are proposed are in effect the public benefits anticipated as a result of the proposal will be simplification in regulations concerning state parks programs. It is anticipated there may be fiscal implications to persons as a result of proposed sunset provision. The costs related to activities codified in Chapter 59 may decline and procedures may be streamlined, thereby decreasing the costs related to these activities undertaken on state park lands. There will be minimal costs to small businesses.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on the rule as proposed may be submitted to Dr. Bill Harvey, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112, extension 4642.

The new rule is proposed under authority of Parks and Wildlife Code, §§11. 011, 11.035, 13.002, 13.005, 13.015, 13.101-13.110, 13 301-13.313, 21.001-21. 111, and 62 061-62.069.

Parks and Wildlife Code, §§11.011, 11.035, 13.002, 13 005, 13.015, 13 101-13.110, 13.301-13.313, 21.001-21.111, and 62.061-62.069 are affected by the proposed new expiration section

§59.301 Expiration Provisions Unless readopted, amended or repealed in accordance with Government Code, Chapter 2001, Subchapter B, all sections in this chapter expire on September 1, 1997.

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 15, 1995.

TRD-95164397 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Chapter 65. Wildlife

Subchapter G. Regulations for Taking, Possessing, and Transporting Threatened Nongame Species

• 31 TAC §65.174, §65.182

The Texas Parks and Wildlife Commission proposes amendments to §65.174 and §65.182, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed amendments contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The amendments affect permits for taking, transporting, and possessing threatened or endangered species. The proposed threshold for permits to take, transport, or possess endangered or threatened species provides for Council review regarding zoological and commercial propagation permits.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of rules and activities under the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4433 or 1-800-792-1112, ext. 4433.

The amendments are proposed under Parks and Wildlife Code, Chapter 43, which gives the commission authority to regulate the taking, transporting, and possession of protected wildlife for scientific, zoological, rehabilitation, and propagation purposes.

The proposed amendments implement Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapter 43.

§65.174. Permit Required.

(a) No person may take, possess, or transport fish or wildlife from the wild, classified as threatened by §65.173 of this title (relating to Threatened Species), for scientific or zoological purposes unless a valid scientific or zoological permit has been obtained from the department as required by the Texas Parks and Wildlife Code, §§43.021-43.030.

(b) If the department determines that a permit issued under this section authorizes the take, transport, or possession of threatened species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application for a lease under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

§65.182. Permits to Take Certain Fish or Wildlife.

(a) No person may take, possess, or transport fish or wildlife classified as endangered species and named in §65.183 of this title (relating to Closed Seasons) for zoological gardens or scientific purposes, or take or transport fish or wildlife classified as endangered species from the wild or from their natural habitat, for propagation for commercial purposes, unless he has obtained a valid permit from the department as required by the Texas Parks and Wildlife Code, §§43.021-43.030.

(b) If the department determines that a permit issued under this section authorizes the take, transport, or possession of endangered species from within the Coastal Management Program Boundary as defined in §503.1 of this title

(relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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 15, 1995.

TRD-9516399 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Chapter 65. Wildlife

Subchapter U. Sunset Provisions

• 31 TAC §65.701

The Texas Parks and Wildlife Commission proposes new §65.701, concerning expiration provision for regulations in Chapter 65.

The new rule would effectively "sunset" all regulations in Chapter 65 unless the specific regulations were amended or repealed and readopted by September 1, 1997. The goal of the Commission in setting the sunset provision is to provide a thorough and complete review and recodification of all Parks and Wildlife regulations. The intended effect is that of streamlining the regulations promulgated by the Commission.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five years that the rule is in effect there will be fiscal implications to state government. However, these costs are not quantifiable at this time. There will be increased costs related to review and recodification processes, however, the long term effect is anticipated to be a decrease in the overall costs of administering the Parks and Wildlife Department regulatory process. There will be no costs to state governments.

Dr. Harvey also has determined that for each of the first five years the rule is proposed are in effect the public benefits anticipated as a result of the proposal will be simplification in regulations concerning wildlife programs. It is anticipated there may be fiscal implications to persons as a result of proposed sunset provision. The costs related to activities codified in Chapter 65 may decline and procedures may be streamlined, thereby decreasing the costs related to participation in wildlife activities. There will be minimal costs to small businesses.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on the rule as proposed may be submitted to Dr. Bill Harvey, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4642 or 1-800-792-1112, Extension 4642.

The new rule is proposed under authority of Parks and Wildlife Code, §§12. 013, 13.101-13.111, 43.021-43.030, 61.054, 62.021, 64.021-64.026, 65.003, 67. 001-67.005, 68.014, 71.002, 81.303, 81.501-81.506.

Parks and Wildlife Code, §§12.013, 13.101-13.111, 43.021-43.030, 43.357, 61.054, 62.021, 62.061-066, 64.021-64.026, 65.003, 67.001-67.005, 68.014, 71. 002, 81.303, and 81.501-81.506 are affected by the proposed new expiration section.

§65.701. Expiration Provisions. Unless readopted, amended or repealed in accordance with Government Code, Chapter 2001, Subchapter B, all sections in this chapter expire on September 1, 1997.

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 15, 1995.

TRD-9516398 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Chapter 69. Resource Protection

Endangered, Threatened, and Protected Native Plants

• 31 TAC §69.6, §69.9

The Texas Parks and Wildlife Commission proposes amendments to §69.6 and §69.9, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development in state parks, wildlife management areas, and preserves by entities other than the department. The proposed amendments contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The amendments affect permits for take endangered, threatened, and protected native plants. The proposed threshold for permits provides for Council review regarding endangered, threatened, and protected native plants.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of rules and activities under the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, §2001. 022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed rules may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4433 or 1-800-792-1112, ext. 4433.

The amendments are proposed under Parks and Wildlife Code, Chapter 88, which gives the commission authority to regulate the taking of endangered, threatened, and protected native plants.

The proposed amendments implement Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affect Parks and Wildlife Code, Chapter 88.

§69.6. Scientific Plant Permit-Criteria for Issuance.

(a) The department will consider the following criteria in determining whether to issue or deny an application for a scientific plant permit:

(1) the performance of the applicant with respect to the observance of the terms of past permits;

(2) whether the information obtained will benefit the department in the management of the species requested by the applicant;

(3) whether the applicant has supplied adequate justification to substantiate the need to conduct the research;

(4) whether the research would substantially or unnecessarily duplicate existing research being conducted by other permittees who hold permits from the department;

(5) whether the applicant has adequate facilities to properly care for the plants requested;

(6) whether the applicant has adequate experience and professional qualifications in the field of study relating to the research requested to properly conduct the research with reasonable expectations of success; and

(7) whether the applicant has submitted a research proposal adequate to allow the department to properly evaluate the proposed research.

(b) If the department determines that a permit issued under this section authorizes the take, transport, or possession of endangered or threatened species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

§69.9. Commercial Plant Permit.

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

(d) If the department determines that a permit issued under this section authorizes the take, transport, or possession of endangered or threatened native species from within the Coastal Management Program Boundary as defined in §503.1 of this title (relating to Coastal Management Program Boundary), the department shall comply with the requirements of §69.91 and §69.93 of this title (relating to Consistency; Thresholds for Referral) and §505.30 of this title (relating to Agency Consistency Determination) prior to the issuance of the permit. Grant or denial of an application under this section is not a final agency action appealable for purposes of judicial review under the Texas Administrative Procedure Act, Texas Government Code, Title 10, Subtitle A, §2001.171, until the jurisdiction of the Coastal Coordination Council to review that action has lapsed.

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 15, 1995.

TRD-9516405 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Chapter 69. Resource Protection

Sunset Provisions

• 31 TAC §69.81

The Texas Parks and Wildlife Commission proposes new §69.81, concerning expiration provision for regulations in Chapter 69, concerning Resource Protection.

The new rule would effectively "sunset" all regulations in Chapter 69 unless the specific regulations were amended or repealed and readopted by September 1, 1997. The goal of the Commission in setting the sunset provision is to provide a thorough, complete review and recodification of all Parks and Wildlife regulations. The intended effect is that of streamlining the regulations promulgated by the Commission.

Dr. Bill Harvey, Regulatory Coordinator, has determined that for the first five years that the rules are in effect there will be fiscal implications to state government. However, these costs are not quantifiable at this time. There will be increased costs related to review and recodification processes, however, the long term effect is anticipated to be a decrease in the overall costs of administering the Parks and Wildlife Department regulatory process. There are no costs to local governments.

Dr. Harvey has also determined that for each of the first five years the rules are proposed are in effect the public benefits anticipated as a result of the proposal will be simplification in regulations concerning resource protection programs. It is anticipated there may be fiscal implications to persons as a result of proposed sunset provision. The costs related to activities codified in Chapter 69 may decline and procedures may be streamlined, thereby decreasing the costs related to participation in resource protection permitting activities. There will be minimal costs to small businesses.

The Department has not filed a local employment impact statement with the Texas Employment Commission as it has been determined there are only minimal fiscal implications to small business.

Comments on the rule as proposed may be submitted to Dr. Bill Harvey, Executive Office, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, TX, 78744; (512) 389-4642 or 1-800-792-1112, Ext. 4642.

The new rule is proposed under authority of Parks and Wildlife Code, §12. 301-12.307, §43.027 and §68.014.

Parks and Wildlife Code, §12.301-12.307, §43.027 and §68.014 are affected by the proposed new expiration section.

§69.81. Expiration Provisions. Unless re-adopted, amended or repealed in accordance with Government Code, Chapter 2001, Subchapter B, all sections in this chapter expire on September 1, 1997.

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 15, 1995.

TRD- 95164396 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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Compliance with Coastal Management Plan

• 31 TAC §69.91, §69.93

The Texas Parks and Wildlife Commission proposes new §69.91 and §69. 93, concerning department compliance with the provisions of the Coastal Management Program.

The Coastal Management Program (CMP) was developed by the General Land Office (GLO) in conjunction with other agencies and the public. The regulations for that program direct the department to develop rules which ensure consistency with the CMP for four classes of activities: leases for oyster transplant or harvest; permits for taking, transporting, , and possessing threatened or endangered species; disturbance of sand, shell, gravel, or marl under Parks and Wildlife Code, Chapter 86; and development by entities other than the department in state parks, wildlife management areas, and preserves. The proposed new rules contain a general requirement of consistency and propose thresholds for referral. The thresholds for referral determine which actions can be taken to the Coastal Coordination Council for review if a consistency issue is raised during the permit process. The GLO interprets the threshold requirement to apply only to permit and lease issuance, not denial.

The proposed new rules affect leases for oyster transplant or harvest; permits for tak-

ing, transporting, and possessing threatened or endangered species; the disturbance of sand, shell, gravel, or marl under the provisions of Parks and Wildlife Code, Chapter 86; and the development by entities other than the department in state parks, wildlife management areas, and preserves.

Robin Reichers, staff economist, has determined that for each of the first five years the rules as proposed are in effect there will be minimal fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Reichers also has determined that for each of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be consistency of department rules and activities with the Coastal Management Plan.

There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by the Administrative Procedure Act, Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

Comments on the proposed new rules may be submitted to Paul Shinkawa, Resource Protection Division, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4433 or 1-800-792-1112, ext. 4433.

The new rules are proposed under Parks and Wildlife Code, Chapter 43, which gives the commission authority to regulate the taking, transporting, and possession of protected wildlife for scientific, zoological, rehabilitation, and propagation purposes; Chapter 76, which gives the commission authority to regulate the planting and taking of oysters in public waters; Chapter 86, which gives the commission authority to manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state; and Chapter 88, which gives the commission authority to regulate the taking of endangered, threatened, or protected native plants for the purpose of propagation, education, or scientific studies. .

The proposed new rules implement Senate Bill 1053, Subchapter F, Acts of the 72nd Legislature, and affects Parks and Wildlife Code, Chapters 43, 76, and 86.

§69.91. Consistency. Pursuant to the requirements of Chapter 501 of this title (relating to Coastal Management Program), the actions and rules of the Texas Parks and Wildlife Department with regard to the items listed in §505(a)(2)(G)(i)-(iv) of this title (relating to Actions and Rules Subject to the Coastal Management Program) shall be consistent with the applicable goals, policies, and procedures set forth by the Coastal Coordination Council in Chapters 501 and 505, when such actions or rules may adversely affect a coastal natural resource area as defined in §503.1 of this title (relating to Coastal Management Program Boundary). Specifically, permits or actions authorized by the Texas Parks and Wildlife Department related to activities listed in §505.11(a)(2)(G)(i)-(iv) shall include the statements and determinations required by §505.30 of this title (relating to Agency Consistency Determination).

§69.93. Thresholds for Referral. The thresholds for referral of actions of the Texas Parks and Wildlife Department listed in §505.11(a)(2) (G)(i)-(iv) of this title (relating to Actions and Rules Subject to Coastal Management Program) shall be as follows:

(1) For oyster leases issued pursuant to §57.241 of this title (relating to Application for Oyster Lease), the threshold for referral shall be an administratively complete application for a lease.

(2) For permits issued pursuant to §§57.271-57.281 of this title (relating to Scientific or Zoological Permits) as they concern the taking, transporting, or possession of threatened or endangered species; §§65. 171-65.177 and 65.181-65.184 of this title (relating to Regulations for Taking, Possessing, and Transporting Threatened Nongame Species); or permits issued pursuant to §§69.1-69.14 and 69.41, 69.43, 69.45, 69.47, 69.49, 69.51, 69. 53, 69.55, 69.57, and 69.71 of this title (relating to Endangered, Threatened, and Protected Native Plants; Wildlife Rehabilitation Permits), the threshold shall be an administratively complete application for the taking from the wild of such species for zoological or commercial propagation purposes.

(3) For permits authorizing the disturbance or removal of sand, shell, gravel, and marl issued pursuant to §§57.11, 57.41-57.51, and 57.61-57.76 of this title (relating to Authorized Methods for Removing Sand and Gravel from Public Waters; Shell Dredging on the Texas Gulf Coast; and Issuance of Marl, Sand, and Gravel Permits), the threshold shall be an administratively complete application for a permit.

(4) For approval of development which requires the use or taking of any public land in state parks, wildlife management areas, and preserves by a person or entity other than the Texas Parks and Wildlife Department and which would be subject to Parks and Wildlife Code, Chapter 26 and §§59.31-59.34, 59.41-59.47, and 59.62-59.64 of this title (relating to Park Planning and Development Projects, Acquisition and Development of Historic Sites and Structures, and Administration of the Texas State Park System), the threshold for referral shall be initial approval by the Texas Parks and Wildlife Commission of the project concept.

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 15, 1995.

TRD-9516406 Bill Harvey, Ph.D.
Regulatory Coordinator
Texas Parks and Wildlife Department

Proposed date of adoption: January 25, 1996

For further information, please call: (512) 389-4642

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 21. Equipment and Vehicle Standards

• 37 TAC §21.7

The Texas Department of Public Safety proposes an amendment to §21.7, concerning equipment and vehicle standards. The amendment is necessary to implement the provisions of House Bill 3208, 74th Legislature, 1995, which took effect September 1, 1995. The rule is amended to require passenger cars, light trucks, and semitrailers to have safety chains of a type approved by the department and attached in a manner approved by the department. Paragraph (2) and (3) are deleted from subsection (e).

Tom Haas, Chief of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Haas 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 a reduction in traffic accidents involving trailer, semitrailer or house trailer disconnecting from the towing vehicle while being towed. There will be no effect on small or large businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be the $25.00 cost of installing a safety chain.

Comments on the proposal may be submitted to John C. West, Jr., Chief of Legal Services, Texas Department of Public Safety, Box 4087, Austin, Texas, 78773-0001, (512) 465-2890.

The amendment is proposed pursuant to Texas Transportation Code, Chapter 545, §545.410, which provides the Texas Department of Public Safety with the authority to adopt rules which set forth the type of safety chains required to be used based on the weight of the trailer, semitrailer, or house trailer being towed.

The proposal affects Texas Transportation Code, Chapter 545, §545.410.

§21.7. Safety Chains.

(a) A person may not operate a passenger car **or light truck** [vehicle] while towing a trailer, **semitrailer**, or house trailer on a public highway unless safety chains of a type approved by the department are attached in a manner approved by the department from the trailer, **semitrailer**, or house trailer to the towing vehicle.

(b) Exceptions.

(1) does not apply to trailers, **or semitrailers**, used for agricultural purposes.

(2) does not apply to trailers, **semitrailers, or house trailers** operated in compliance with the Federal Motor Carrier Safety Regulations.

(3) does not apply to trailers, **semitrailers, or house trailers** which are equipped with safety chains installed by the original manufacture before the effective date of this section.

(4) does not apply to fifth wheel or gooseneck semitrailers.

(c) Definition of Terms.

(1) House Trailer–A trailer or semitrailer

(A) which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and equipped for use as a conveyance on streets and highways; or

(B) whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subparagraph (A) of this paragraph, but which is used instead permanently or temporarily for the services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(2) Light truck–Any truck with a manufacturer's rated carrying capacity not to exceed 2,000 pounds and is intended to include those trucks commonly known as pickup trucks, panel delivery trucks and carryall trucks.

(3)[(2)] Passenger car–Every motor vehicle, designed for carrying ten passengers or less and used for the transportation of persons.

(4)[(3)] Safety chains–a series of metal links or rings connected to or fitted into one another, and are inclusive of the hooks, coupling devices, and other connections, necessary in the coupling together of a towing or towed vehicle.

(5) Semitrailer–every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(6)[(4)] Trailer–every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so connected that no part of its weight rests upon the towing vehicle.

(7) Truck–every motor vehicle designed, used, or maintained primarily for transportation of property.

(d) (No change.)

(e) Enforcement Policy.

[(1)] When the use of safety chains are required in accordance with subsection (a) of this section, enforcement actions should be initiated against all persons apprehended who are operating a towing and towed vehicle in combination:

(1)[(A)] without both safety chains securely attached,

(2)[(B)] when safety chains are improperly attached to the degree that one or both are in contact with surface of the road,

(3)[(C)] when the failure of either or both safety chains or the manner in which they are attached allow the vehicles to become disconnected or allow the tongue or connecting apparatus of the towed vehicle to come into contact with the road surface during ordinary towing operations, or

(4)[(D)] when the failure of either or both safety chains or the manner in which they are attached results in an accident.

[(2) The provisions apply to passenger cars only and not light trucks towing trailers or house trailers in accordance with subsection (a) of this section.

[(3) The provisions do not apply to any vehicle towing semi trailers such as boat and utility trailers.]

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-9516300 James R. Wilson
Director
Texas Department of Public Safety

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 465-2890

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Part IX. Commission on Jail Standards

Chapter 269. Records and Procedures

The Commission on Jail Standards proposes new §§269.10-269.14 and §§269.20-269.32, concerning Records and Procedures. Though rules regarding payments to counties in Chapter 300 are being repealed, the rules regarding jail population reports and felony backlog reports of that chapter need to remain in effect. Moving the reports requirements to the Records and Procedures chapter is appropriate as Chapter 300 addresses Fees, not reports.

Jack E. Crump, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to provide administrative rules consistent with statute.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Jail Population Reports

• 37 TAC §§269.10-269.14

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§269.10. General. The commission is required by Government code, Chapter 499, §499.122 (concerning Inmate Counts) to analyze monthly the population of each jail.

§269.11. Reports.

(a) Each sheriff shall submit to the commission reports for each month indicating the number and type of inmates confined in the jail.

(b) Reports shall be delivered to the commission not later than five days after the last day of the reporting month.

(c) The sheriff shall certify over his signature that the information provided in each report is complete and accurate.

§269.12. Forms. The commission adopts by reference Form PR-1, Monthly Paper Ready Inmate Report, Form PR-2, Monthly Paper-Ready Inmate Roster, and Form POP-2, Jail Population Report. Copies of the forms are available at the offices of the Texas Commission on Jail Standards at 300 West 15th Street, Suite 503, Austin, Texas 78701. Each sheriff shall utilize the referenced forms or similar forms, approved by the Executive Director, for submission of monthly reports.

§269.13. Records. Each sheriff shall maintain complete records of the information required under §269.11 of this title (relating to Reports) and make the records available to commission staff upon request for review. The sheriff shall retain completed copies of each inmate's TDCJ-ID Document Checklist and copies of issued white warrants for a period of one year from the date of transfer or release of the inmate from the jail.

§269.14. Revisions. The sheriff shall notify the commission immediately upon determination that an inaccurate report, required under §269.11 of this title (relating to Reports), was submitted by the sheriff to the commission. Revised complete reports shall be submitted to the commission within 60 days of the end of the affected reporting period indicating the correct information for all paper ready inmates confined during the reporting period.

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

Issued in Austin, Texas, on December 15, 1995.

TRD-9516314 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 463-5505

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Transfer of Felony Backlog

• 37 TAC §§269.20-269.32

The new rules are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§269.20. General. The commission is required by Government Code, Chapter 499, §499.125 (concerning the Transfer of Felony Backlog) to transfer inmates awaiting transfer to the Texas Department of Criminal Justice-Institutional Division (TDCJ-ID) from an applicable county jail to appropriate facilities.

§269.21. Applicable County Jail. A jail is an applicable county jail when the commission determines that a jail meets the following criteria:

(1) a state or federal court determines that conditions in a county jail are unconstitutional;

(2) on or after October 1, 1991 the percentage of inmates in the jail awaiting transfer to the TDCJ-ID is 20% or more of the total number of inmates in the jail.

§269.22. Appropriate Facility. The Executive Director will develop a list of facilities which are appropriate to house the transferred inmates following determination by the commission that a jail is an applicable county jail. An appropriate jail may include a jail, detention center, work camp, or correctional facility.

§269.23. Administrative Order. The commission will issue to the sheriff and commissioners court (by and through the county judge) of an applicable county jail upon determination by the commission that the jail meets the criteria of §269.21 of this title (relating to Applicable County Jail) a written administrative order to transfer felony backlog inmates to appropriate facilities.

§269.24. Request for Hearing. The sheriff or commissioners court of an applicable county jail to which the commission has issued an administrative order may, within 15 days after the date of the order, request a hearing upon any matter of fact or law with which he or the court disagrees. The request for hearing shall be in writing and shall comply with §297.8 of this title (relating to Request for Hearing). Upon receipt of a timely request for hearing, the commission may schedule a hearing to be conducted at a regular or special meeting of the commission.

§269.25. Amendments to Administrative Orders. The commission may review and amend an administrative order as necessitated by changes in the status of court orders, jail population, jail conditions, availability of appropriate facilities or other conditions, by commission action at a regular or special meeting.

§269.26. Limits of Transfer. The commission will determine the number of inmates who shall be transferred from an applicable county jail and the frequency of transfers required to comply with this section and Government Code, Chapter 499, §499.125 (concerning Transfer of Felony Backlog).

§269.27. Reports

(a) The sheriff of an applicable county jail shall submit a report to the commission of transferred inmates on a form prescribed by the commission. The report shall be delivered to the commission not later than five days after the date of each transfer of inmates.

(b) The sheriff of a county for which an appropriate facility receiving transferred inmates is operated shall submit a report and billing statement to the commission representing the costs of maintenance of transferred inmates on a form prescribed by the commission. The report and billing statement shall be submitted not later than five days after the first and 15th day of each month.

(c) Sheriffs may submit reports on forms produced by automated data processing equipment which provide required information when approved by the Executive Director. Such approved reports shall be considered forms prescribed by the commission.

(d) A county is not eligible for payment under this section if reports are not submitted by the sheriff or if information required by the form(s) is not complete.

§269.28. Payments. The commission is liable to a county operating a facility receiving transferred inmates for payment of the costs of maintenance of transferred inmates. The commission is liable to counties for the payment of costs of transportation of transferred inmates.

§269.29. Determination of Costs.

(a) The costs of maintenance shall be the actual costs, as determined by the agreement between the Texas Board of Criminal Justice and the county operating the appropriate facility receiving transferred inmates.

(b) The costs of transportation shall be the agreed cost between the transporting county and the commission. Such costs shall be determined and agreed upon by the commission and the transporting county prior to the movement of inmates. The cost of transportation may be adjusted as appropriate when evidenced by sufficient documentation and approved by the commission.

§269.30. Felony Backlog Inmates. This chapter is applicable only to the transfer of inmates confined in a jail who are awaiting transfer to the TDCJ-ID following conviction of a felony or revocation of probation, parole, or release on mandatory supervision and to whom all paperwork and processing required under Code of Criminal Procedure, Article 42.09, §8(a), (concerning Commencement of Sentence and Delivery to Place of Confinement) for transfer have been completed.

§269.31. Forms The commission adopts by reference Inmate Transfer Roster (form ITR-1) and Transferred Inmate Maintenance Report (form Trans-1). Copies of the forms are available at the offices of the Texas Commission on Jail Standards at 300 West 15th Street, Suite 503, Austin, Texas 78701.

§269.32. Order to Accept Inmates. The commission may order the sheriff and commissioners court (by and through the county judge) of a county to accept inmates transferred under this chapter when the commission determines that the housing of transferred inmates in a facility operated by or for the county is necessary in order to effectuate the mandated authority of the commission to transfer inmates in accordance with Government Code, Chapter 499, §499.125 (concerning Transfer of Felony Backlog).

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 15, 1995.

TRD-9516315 Jack E Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 463-5505

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Chapter 275. Supervision of Inmates

• 37 TAC §275.4

The Commission on Jail Standards proposes an amendment to §275.4, concerning Supervision of Inmates to clarify the requirement for jails to staff supervisors to oversee jail staff.

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

Mr. Crump 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 section as proposed will be to provide safer and more efficient jail operations.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules establishing minimum standards for the number of jail supervisory personnel and for programs and services to meet the needs of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, §351.002 and §351.015.

*§275.4.**Staff** [Supervisory Personnel].* Inmates shall be supervised by an adequate number of corrections officers to comply with state law and these standards. One corrections officer shall be provided on each floor of the facility where ten or more inmates are housed, with no less than one corrections officer per 48 inmates or increment thereof on each floor for direct inmate supervision. This officer shall provide visual inmate supervision not less than hourly. Sufficient **staff to include supervisors, correctional officers and other essential personnel** [corrections officers] as accepted by the commission shall be provided to perform **required** functions. [required by minimum jail standards such as booking, classification, discipline and grievance, education and rehabilitation, inmate movement, library, visitation, correspondence, telephone, commissary, religious services, and recreation and exercise. A waiver may be granted by the commission as to minimal supervisory personnel-to-inmate ratios required elsewhere in these rules.] A plan, concurred in by both commissioners' court and sheriff's department may be submitted to the commission **for approval** which provides for adequate and reasonable staffing of a facility. This rule shall not preclude the Texas Commission on Jail Standards from requiring staffing in excess of minimum requirements when deemed necessary to provide a safe, suitable, and sanitary facility nor preclude submission of variance requests as provided by statute or these rules.

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 15, 1995.

TRD-9516316 Jack E Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 463-5505

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Chapter 300. Fees [and Payments]

The Commission on Jail Standards proposes repeal of §§300.21-300.28, 300.51-300.63 and 300.80-300.84, concerning Fees to delete the rules regarding payments to counties for housing state ready inmates. The statutory requirement for the commission to make these payments expired September 1, 1995. Deleting the payment sections also necessitates changing the chapter title from Fees and Payments to Fees.

Jack E. Crump, executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Crump also has determined that for each year of the first five years the repeals are in effect the public benefits anticipated as a result of enforcing the repeals as proposed will be to have administrative rules which are consistent with statute.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Emergency Overcrowding Relief

• 37 TAC §§300.21-300.28

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend or change rules and procedures if necessary.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§300.21. General.

§300.22. Qualifying County.

§300.23. Method of Calculation.

§300.24. Reports.

§300.25. Payment Days.

§300.26. Forms.

§300.28. Adjustments.

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 15, 1995.

TRD-9516317 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 463-5505

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Transfer of Felony Backlog

• 37 TAC §§300.51-300.63

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend or change rules and procedures if necessary.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§300.51. General.

§300.52 Applicable County Jail.

§300.53. Appropriate Facility.

§300.54. Administrative Order.

§300.55. Request for Hearing.

§300.56. Amendments to Administrative Orders.

§300.57. Limits of Transfer.

§300.58. Reports.

§300.59. Payments.

§300.60. Determination of Costs.

§300.61. Felony Backlog Inmates.

§300.62. Forms.

§300.63. Order to Accept Inmates.

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 15, 1995.

TRD-9516318 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 463-5505

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Tuberculosis Screening Payment

• 37 TAC §§300.80-300.84

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend or change rules and procedures if necessary.

The statutes that are affected by these rules are Local Government Code, Chapter 351, §351.002 and §351.015.

§300 80. General.

§300.81. Method of Calculation.

§300 82. Reports.

§300.83. Forms.

§300 84. Records.

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 15, 1995.

TRD-9516319 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 463-5505

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 17. Tel-assistance Service (TAS) Program

General Information

• 40 TAC §17.1

The Texas Department of Human Services (DHS) proposes an amendment to §17.1, concerning age and residency requirements, in its Tel-assistance Service (TAS) Program chapter. The purpose of the amendment is to eliminate the requirement that recipients be age 65 or older and to establish residency requirements. As a result of action by the 74th Texas Legislature, the deletion of the age requirement is required by Texas Civil Statutes, Article 1446c-0, §3.602.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in the number of clients eligible for a reduction in their basic monthly telephone service of 65%. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Helen McMeen at (512) 490-0312 in DHS's Data Control Section, Long Term Care. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-069, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs; and under Texas Civil Statutes, Article 1446c-0, which provide for the Tel-assistance Service Program.

The amendment implements the Human Resources Code, §§22.001-22.024 and Texas Civil Statutes, Article 1446c-0.

§17.1. Tel-assistance Service (TAS) Program.

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

(c) Eligibility and certification.

(1) General eligibility requirements. To be eligible for TAS, an applicant must:

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

(C) be:

(i) a citizen of the United States; or

(ii) an alien lawfully admitted for permanent residency in the United States; or

(iii) permanently residing in the United States under color of law;

[(C) be 65 or older on the date of application;]

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

(2)-(5) (No change.)

(d)-(e) (No change.)

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

Issued in Austin, Texas, on December 18, 1995.

TRD-9516457 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Earliest possible date of adoption: January 22, 1996

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

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Chapter 19. Nursing Facilities Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes new §19.1810, concerning vendor hold, an amendment to §19.2308, concerning change of ownership, an amendment to §19.2312, concerning surety bonds or letters of credit, an amendment to §19.2314, concerning financial audits, an amendment to §19.2322, concerning additional participation requirements, an amendment to §19.2404, concerning utilization review effective dates, and new §19. 2703, concerning vendor hold, in its Nursing Facilities Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments and new sections is to allow DHS to hold vendor payments of facilities until financial irregularities are resolved.

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

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that vendor payments will not be made to Medicaid nursing facilities until financial irregularities have been resolved. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-070, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter S. Reimbursement Methodology for Nursing Facilities

• 40 TAC §19.1810

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

The new section implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.040.

§19.1810. Vendor Hold. The information in this section will govern cost reports for provider's fiscal years ending in calendar years 1994 and 1995. The Texas Department of Human Services (DHS) may delay or withhold vendor payment to a provider in order to investigate or correct financial or accounting irregularities or to obtain required documentation regarding facility costs.

(1) Circumstances which may result in vendor hold are:

(A) failure to maintain records that support the information submitted on the cost report in a form which is in compliance with DHS's chart of accounts for long-term care providers;

(B) failure to file an acceptable cost report by the cost report due date; or

(C) failure to allow inspection of records necessary to verify information submitted to DHS on Medicaid cost reports within ten workdays following written notice from DHS.

(2) Vendor payments will be held until the circumstances resulting in vendor hold are corrected.

(3) A provider has the right to appeal a vendor hold as specified in §79.1602 of this title (relating to Right to a Hearing).

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 14, 1995.

TRD-9516325 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: February 1, 1996

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

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Subchapter X. Requirements for Medicaid-Certified Facilities

• 40 TAC §§19.2308, 19.2312, 19.2314, 19.2322

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

The amendments implement the Human Resources Code, §§22.001-22.024 and §§32.001-32.040.

§19.2308. Change of Ownership. An ownership change is any change in the business organization that changes the identity of the legal entity licensed to operate the facility. For purposes of this section, prior owner is defined as the legal entity licensed to operate the facility before the change of ownership. The new owner is the legal entity licensed to operate the facility after the change. **The Texas Department of Human Services (DHS)** [DHS] will recognize ownership changes effective as of the date of the legally effective transfer of ownership subject to the following conditions:

(1) (No change.)

(2) When DHS receives information about a proposed or actual change of ownership, DHS has the option to place vendor payments to the prior owner and/or the new owner on hold **until completion of a billing and claims reconciliation, or up to 12 months, whichever is sooner. Money owed to DHS will be recouped from the funds placed on hold.** [Release

of the vendor] **Vendor payments may be released prior to the reconciliation if** [depends upon]:

(A) **DHS receives** [DHS's receiving] information sufficient to verify the ownership change, if DHS requests such information;

(B) the prior owner **provides** [providing] DHS with an acceptable final cost report, and

(C) the prior owner **provides** [providing], at DHS's option, one of the following documents in a format acceptable to DHS to cover possible liabilities of the prior owner:

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

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

[(6) A financial audit will follow each change in ownership. When audit discrepancies are found, restitution settlement will be the responsibility of the appropriate party based on the split agreement.]

(6)[(7)] The prior owner of the facility may remove the financial records pertaining to his period of ownership from the facility, but must maintain them for the time period prescribed by law [or until such time as all audit exceptions are reconciled, whichever period is the longer]. The trust fund records, including ledger cards, must remain with the new owner.

§19.2312. Surety Bonds or Letters of Credit.

(a) (No change.)

(b) At its sole option, the Texas Department of Human Services (DHS) may allow the prior owner to obtain a surety bond or an irrevocable letter of credit (collateral) for a period of **one year** [three years] to cover the adjustments or exceptions resulting from an audit. **Money owed DHS will be recovered through the surety bond or the letter of credit.** The **one-year** [three-year] period begins with DHS's recognized effective date of the facility's ownership change. Usually, the surety bond equals the average monthly vendor payments paid to the facility. Facilities terminating a contract for long-term care services may furnish a surety bond or letter of credit only if all required long-term care facility cost reports have been filed with DHS. If an acceptable surety bond or letter of credit is presented to DHS, the vendor payments may be released. Facilities must ensure that this bond or irrevocable letter of credit is in a format acceptable to DHS, and does not include requirements that DHS, as a condition of receiving payment, either:

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

§19.2314. Financial Audits.

(a) The Texas Department of Human Services (DHS) **may audit** [audits] all facilities, **including facilities' trust fund accounts,** periodically. A facility is notified of audit plans and is given a report of the final audit findings. If vendor payment problems are found, Provider Enrollment requests that the Nursing Facility Billing Unit work with the facility to reconcile the discrepancies. If the findings show that refunds are due residents or their responsible parties, Provider Enrollment requests that the regional staff assist the facility in reconciling the audit findings. **Facilities which fail to provide documentation for audit exceptions or evidence of federally-mandated surety bonds or fail to keep other records required for audit are subject to the withholding of vendor payments until such problems are resolved. Money owed to DHS will be recouped from the funds placed on hold.**

(b) Upon receipt of an audit exception, the facility must provide additional documentation, reach a final agreement, make restitution within 60 days, or request a hearing within 15 days. Requests for an informal hearing are to be directed to DHS, Provider Enrollment. Requests for a formal hearing are to be directed to DHS's Hearings Department, P.O. Box 149030 (W-613), Austin, Texas 78714-9030.

(c)[(b)] If the facility does not pay the amount due the resident within the specified time frame, DHS may withhold other funds due the facility beginning on the 60th day without providing advance notice. DHS releases funds when the facility produces documentation that it has refunded the proper amount to the resident or responsible party.

(d)[(c)] DHS may require the facility to pay the resident refund amount to DHS plus any anticipated cost, including personnel salaries, which is incurred by DHS in making the refund to the proper party.

[(d) On change of ownership, the facility is audited before final settlement with the prior owner.]

§19.2322. Additional Participation Requirements.

(a) Facilities must submit properly completed monthly occupancy report forms to **the Texas Department of Human Services (DHS)** [DHS] each month. This report must be submitted on or before the fifth day of the month following the reporting period month. **Failure to submit occupancy reports may result in DHS's withholding vendor payments until the reports, which substantiate data regarding payments made to the facility, have been received.**

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

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

Issued in Austin, Texas, on December 14, 1995.

TRD-9516326 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: February 1, 1996

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

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Subchapter Y. Medical Review and Re-evaluation

• 40 TAC §19.2404

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

The amendment implements the Human Resources Code, §§22.001-22.024 and 32.001-32.040.

§19.2404. Utilization Review Effective Dates. When the recipient is admitted to or discharged from the Medicaid Nursing Facility vendor payment system, the facility must submit a Resident Transaction Notice form within 72 hours. **Failure to submit forms regarding discharges may result in the withholding of vendor payment until the documentation is obtained.**

(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 14, 1995.

TRD-9516327 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: February 1, 1996

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

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Subchapter BB. Nursing Facility Program Cost Determination Process

• 40 TAC §19.2703

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

The new section implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.040.

§19.2703. Vendor Hold. The information in this section will govern cost reports for providers' fiscal years ending in calendar year 1996 and subsequent years. The Texas Department of Human Services (DHS) may delay or withhold vendor payment to a provider in order to investigate or correct financial or accounting irregularities or to obtain required documentation.

(1) Circumstances which may result in vendor hold are:

(A) failure to maintain records that support the information submitted on the cost report in a form which is in compliance with DHS's chart of accounts for long-term care providers;

(B) failure to file an acceptable cost report pursuant to Chapter 20 by the cost report due date;

(C) failure to allow access to any and all records necessary to verify information submitted to DHS on cost reports including records pertaining to related party transactions or other business activities engaged in by the provider;

(D) failure to disclose a change in an allocation method used for cost reporting purposes or failure to use the allocation method approved or required by DHS; or

(E) failure to reimburse DHS for the actual costs for DHS staff to travel and review the records necessary to verify information submitted to DHS on cost reports when such records are not available to DHS audit staff within the State of Texas.

(2) Vendor payments will be held until the circumstances resulting in vendor hold are corrected.

(3) A provider has the right to appeal a vendor hold as specified in §79.1602 of this title (relating to Right to a Hearing).

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 14, 1995.

TRD-9516328 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Proposed date of adoption: February 1, 1996

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

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Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter D. Denial, Suspension, or Revocation of a Certificate

• 40 TAC §183.501

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §183.501, concerning Grounds for Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application. This amendment is proposed to identify specific violations of the Board for Evaluation of Interpreters (BEI) rules and/or Code of Ethics which will allow disciplinary action against interpreters who violate the rules as they are set forth.

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

Mr. Myers 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 an impact on the board's authority to enforce the rules of operation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Angela Bryant, Board for Evaluation of Interpreters, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

The proposed amendment affects Texas Administrative Code, Title 40, Chapter 183, Subchapter D, §183.501.

§183.501. Grounds for Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application. The Texas Commission for the Deaf and Hard of Hearing **may** [shall] deny application; suspend or **revoke** [revoked] certification; or otherwise discipline, reprimand, or place on probation an interpreter for any of the following causes:

(1) conviction of a felony or any offense involving moral turpitude. In determining if the criminal conviction has a direct bearing on whether the interpreter or applicant should be entrusted to serve the public, the commission considers the particular facts and circumstances of each case to include evidence of those matters required by Texas **Government Code, §§2001.001 et seq** [Civil Statutes, Article 6252-13c]. The crimes having such a direct bearing include criminal conduct of homicide, rape, sexual abuse, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, perjury, and those relating to controlled substances;

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

(5) representing that the interpreter has a level of certification different from the actual level of certification awarded by the commission;

(6)[(5)] using fraud, deception or misrepresentation in an application for certification;

(7)[(6)] willfully violating or aiding in the violation of any of the standards of ethical behavior;

(8)[(7)] being grossly incompetent or grossly negligent in his or her duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of his or her duties;

(9)[(8)] being adjudicated mentally incompetent by a court of competent jurisdiction;

(10)[(9)] intentionally harassing, abusing, or intimidating a board member, candidate, or any supportive staff either physically or verbally;

(11)[(10)] intentionally divulging any aspect of confidential information relating to the certification evaluation including content, topic, vocabulary, identity of individuals involved in the tests, skills, written tests, and any other testing materials;

(12)[(11)] failure to meet requirements for certification [validation/] maintenance; or

(13)[(12)] engaging in the practice of interpreting while certification is suspended [or placed on probation].

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 14, 1995.

TRD-9516312 David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 451-8494

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• 40 TAC §183.505

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §183.505, concerning Certificate Holders' Rights to Information Regarding Revocation and Suspension. This amendment is proposed to update current grievance procedures to comply with those of the Office of Administrative Hearings.

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

Mr. Myers also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of a consistent means of due process, giving interpreters an opportunity to be notified of a grievance filed against them, as well as outlining their rights to respond to that allegation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Angela Bryant, Board for Evaluation of Interpreters, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

The proposed amendment affects Texas Administrative Code, Title 40, Chapter 183, Subchapter D, §183.505.

§183.505. Certificate Holders' Rights to ***a Hearing and*** *Information Regarding Revocation and Suspension.*

(a) A Certificate holder is entitled to a **hearing** [be notified by certified mail] before the commission suspends or revokes his or her certification. The certificate holder is entitled to be:

(1) informed of the reason for **the proposed action** [suspension or revocation];

(2) informed of the **proposed** time **and place of the hearing on the violation** [period of suspension];

(3) informed of his or her right to request probation in lieu of suspension or revocation;

[(4) advised of his or her right to appeal within 30 days of the revocation or suspension notice. If no appeal is requested, the action is final at the end of the 30-day period.]

(4)[(5)] provided a copy of the **hearing** [appeal] procedures consistent with the Administrative Procedure and Texas Register Act (**Texas Government Code, §§2001.001 et seq** [Civil Statutes, Article 6252-13a]).

(b) If a hearing is not requested, the matter will be scheduled as an agenda item at the next regular meeting of the commission.

(c) If a hearing is requested, the interpreter or applicant will have an opportunity to present evidence and testimony to an administrative law judge of the State Office of Administrative Hearings in a hearing held in accordance with the rules of that office. The rules of the State Office of Administrative Hearings, 1 TAC §§155.1 et seq are hereby adopted by reference as the hearing rules for the Commission.

(d) Following the hearing, if held, the commission shall consider the recommendation of the Administrative Law Judge and shall make a determination of the penalty to be imposed, if any.

(e) The interpreter or applicant or the commission staff may request an informal conference to discuss the matter prior to the hearing.

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 14, 1995.

TRD-9516311 David W. Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing

Earliest possible date of adoption: January 22, 1996

For further information, please call: (512) 451-8494

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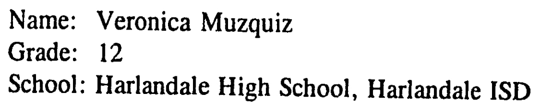


Name: Veronica Muzquiz
Grade: 12
School: Harlandale High School, Harlandale ISD

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 12. Loans and Investments

Subchapter A. Lending Limits

• 7 TAC §§12.1-12.11

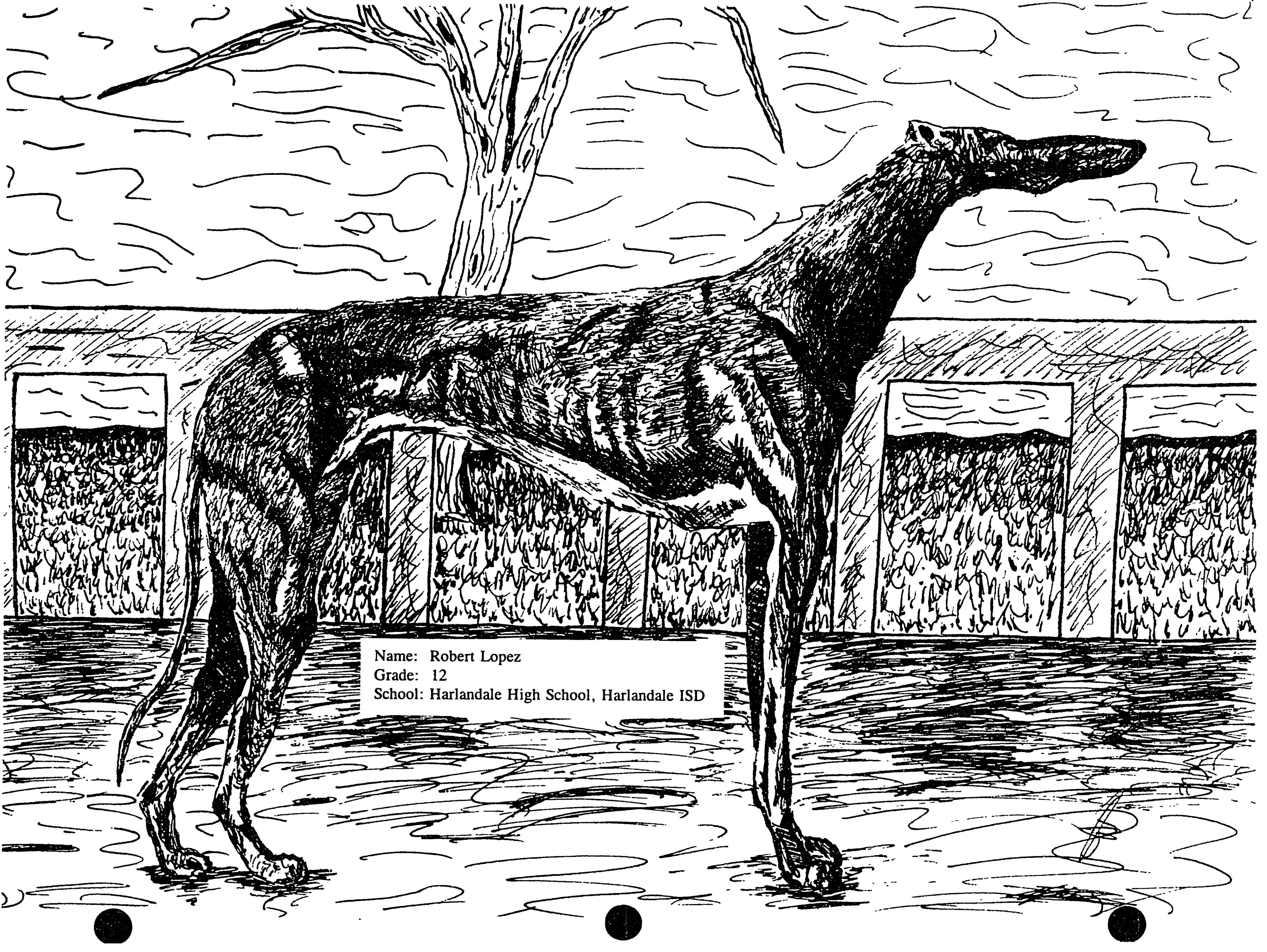
The Texas Department of Banking has withdrawn from consideration for permanent adoption a proposed new §§12.1-12.11, which appeared in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9335). The effective date of this withdrawal is December 15, 1995.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516371 Everette D. Jobe
General Counsel
Texas Department of Banking

Effective date: December 15, 1995

For further information, please call: (512) 475-1300


Name: Robert Lopez
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 IV. Office of the Secretary of State

Chapter 91. Texas Register

Publication Schedule

• 1 TAC §91.113

The Office of the Secretary of State adopts an amendment to §91.113, concerning publication deadlines, without changes to the proposed text as published in the November 17, 1995, issue of the *Texas Register.*

The section is being amended to change the filing deadlines for documents published in the *Texas Register.*

Earlier filing deadlines are proposed to give the *Texas Register* more time to process a greater number of documents without adding new employees. Earlier filing deadlines also will permit more flexible printing deadlines and more competitive bidding for the *Texas Register* printing contracts.

One comment was received from the Texas Workers' Compensation Commission regarding the deadline amendment.

The commission commented that by backing up the deadline for document submission, the Register staff should have plenty of time to notify the agencies when a document is rejected for publication. The commission has found it difficult in the past to re-submit a document which was rejected because they were notified after the deadline. This has been a concern of the commission because it meets only once a month.

The Register agrees with the comment. *Texas Register* staff will notify an agency's liaison of a rejection on the same day it is rejected.

The amendment is adopted under the Texas Government Code, Chapter 2002, §017, which provides the Secretary of State with the authority to adopt rules relating to the administration of the *Texas Register.*

§91.113. Deadlines

(a) For a Tuesday edition, all rule submissions must be received by Monday, 10:00 a.m. of the immediately preceding week. Miscellaneous documents and open meetings must be received by Wednesday, 10:00 a.m. of the immediately preceding week.

(b) For a Friday edition, all rule submissions must be received by Wednesday, 10:00 a.m. of the immediately preceding week. Miscellaneous documents and open meetings must be received by 10:00 a.m. of the immediately preceding Monday.

(c) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on December 14, 1995.

TRD-9516357 Clark Kent Ervin
Assistant Secretary of State
Secretary of State

Effective date: January 4, 1996

Proposal publication date: November 17, 1995

For further information, please call: (512) 463-5561

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Part V. General Services Commission

Chapter 111. Executive Administration Division

Historically Underutilized Business Certification Program

• 1 TAC §111.24

The General Services Commission adopts new §111.24, concerning the Historically Underutilized Business Certification Program, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9235)

Section 111.24 will allow for program review at least once every five years, but no later than two years following the release of the Federal Census Report.

The new section ensures that goals for the utilization of women and minority-owned firms are "narrowly tailored" and are updated in accordance with more recent, relevant data.

No comments were received regarding adoption of the new section.

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

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 13, 1995.

TRD-9516296 David Ross Brown
Assistant General Counsel
General Services Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.8

The General Services Commission adopts an amendment to §113.8, concerning bidder preferences in purchasing, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9236).

Amendment to §113.8 changes the name of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons to the Texas Council on Purchasing from People with Disabilities as amended by House Bill 2658, §1, Acts, 74th Legislature (1995).

The amendment correctly identifies the Texas Council on Purchasing from People with Disabilities.

No comments were received regarding adoption of the amendment.

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

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 13, 1995.

TRD-9516295 David Ross Brown
Assistant General Counsel
General Services Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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Chapter 125. Travel and Transportation Division

Texas Alternative Fuels Program

• 1 TAC §§125.63, 125.65, 125.69

The General Services Commission adopts amendments to §125.63 and §125. 65; and new §125.69, concerning the Texas Alternative Fuels Program, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9236)

Amendments to §125.63 and §125.65 updates the language to correctly identify the name change from the Texas Air Control Board to the Texas Natural Resource Conservation Commission. New §125.69 will require all state agencies to use an alternative fuel exclusively in vehicles that are equipped from the manufacturer or modified by a conversion facility to be capable of operating on an alternative fuel. It also allows fore exceptions in certain cases.

Amendments §125.63 and §125.65 will reduce confusion by deleting reference to the Texas Air Control Board. and correctly referring to the Texas Natural Resource Conservation Commission. New §125.69 adds the requirement that users of any state-owned vehicle capable of functioning on an alternative fuel to operate only on that fuel with certain exceptions.

No comments were received regarding adoption of the amendments and new section.

The amendments and new section are adopted under the Government Code, Title 10, Subtitle D, §2171.103, which provides the General Services Commission with authority to promulgate rules consistent with the 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 13, 1995.

TRD-9516294 David Ross Brown
Assistant General Counsel
General Services Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 3. Banking Section

Subchapter A. Securities Activities and Subsidiaries

• 7 TAC §3.6

The Finance Commission of Texas (the commission) adopts the repeal of §3.6, concerning state-chartered bank purchase of stock issued by corporations organized solely for the purpose of making agriculture loans, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9328).

The repeal is necessary because §3.6 has been superseded by Texas Civil Statutes, Article 342-5.105(a)(2), which render the section obsolete.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to rulemaking authority under Texas Civil Statutes, Article 342-1.012(a)(1), which authorize the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act, Texas Civil Statutes, Articles 342-1.001 et seq.

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 15, 1995.

TRD-9516386 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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Subchapter B. General

• 7 TAC §§3.36-3-38

The Finance Commission of Texas (the commission) adopts new §§3.36-3.38, concerning the imposition and collection of ratable and equitable fees from banks and foreign bank agencies, to provide for recovery of the cost of maintenance and operation of the Texas Department of Banking (the department) and the cost of enforcing Texas Civil Statutes, Articles 342-1.001 et seq (the Texas Banking Act, §§1.001 et seq) (the Act). Nonsubstantive changes are made to the proposed text of each section as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9328). Existing §3.37 and §3.38 are repealed in this issue of the *Texas Register*.

The fee system as adopted is substantially similar to the assessment system, used in prior fiscal periods by the department and is merely being reduced to rule format as directed by the Act. The department revised its fee structure for the 1993-1995 biennium to incorporate a straight assessment basis, collected in installments. This system has advantages for both the department, banks and foreign bank agencies, in that it allows banks and foreign bank agencies to accrue for the amount due the department for its supervisory responsibility; provides a structure by which banks and foreign bank agencies pay their equitable costs of supervision; eliminates erratic and needed fluctuations in the department's receipts that result from a per examination billing method; allows the department to more accurately predict cash flows; allows the department to more properly schedule much-needed training and more adequately provide for staff educational requirements; and avoids the inordinate accumulation of excess funds. One difference from the former fee system used by the department is the provision for a reduction in fees for banks on an 18-month examination schedule.

Section 3.36 provides that the department will make assessments on an annual basis (September 1-August 31). Assessments are calculated on a total of on-book and off-book assets. Because off-book assets generally require additional time and resources to examine, the assessment base includes both on-book and off-book assets to more equitably distribute the cost of bank regulation to those banks that require more resources to examine. Off-balance sheet items may fluctuate widely and §3.36(c) provides that the average balance of off-balance sheet items reflected in four sequential quarterly call reports, the last of which is the most recent March 31st call report, will be added to on-book assets to derive the assessment base for the next year. The assessment is billed annually effective September 1 of each year and is due in quarterly installments billed on the first day of September, December, March, and June. Section 3.36(e) requires the department to review all appropriations and expenditures and present the information to the Finance Commission no less frequently than once each biennium.

The department, under §3.36(f), may adjust assessments for an individual bank or foreign bank, which during a year, falls into a different examination frequency. The department may adjust the annual assessment of a bank or foreign bank agency in the event of an acquisition or merger in subsections (f) or (g). The annual assessment will be based on combined assets on the date of the acquisi-

tion or merger. The department will make the adjustment during the quarter of the change in asset size. A financial institution converting to a state charter must pay an assessment beginning the quarter of conversion. Each bank or foreign bank agency, on the due date of the installment, must pay the full quarterly installment without proration for any reason.

Section 3.36(g) provides that, after reviewing the results of actual expenditures to date and projected expenditures for the remainder of the fiscal year, the banking commissioner may lower the amount of any quarterly installment due from banks or foreign bank agencies, without commission approval.

Section 3.36(h) provides that the department also may charge for special examinations and investigations in addition to other examinations at the rate of $500 per examiner day. The bank or foreign bank agency must also pay to the department an amount to cover actual travel expenses incurred by examiners. The commissioner may lower the uniform rate without commission approval.

The commission, in subsection (i), may approve a special assessment to cover material expenditures, such as facilities repair and improvements and other extraordinary expenses.

New §3.37 and §3.38 establish bank and foreign bank agency assessment schedules. These sections enable each bank and foreign bank agency to calculate their annual assessment with predictability.

A bank's annual assessment is calculated using three factors: (1) a base assessment amount; (2) an incremental percentage rate; and, (3) the examination frequency. A foreign bank agency's annual assessment is calculated using a base assessment amount and an incremental percentage rate.

The Office of the Comptroller of the Currency bases its assessments for national banks solely on asset size. The department believes that the use of a factor based on the frequency of a bank's examination schedule more accurately reflects the use of departmental resources related to the examination function. Banks that fall into an 18-month examination frequency, which consume fewer departmental resources, are therefore, subject to a factor that reduces their annual assessment. This advantage for smaller, well-managed banks is not available in the national bank system.

In determining the percentage rate, the department had two goals. First, the department's goal was to keep costs the same or reduce costs to banks and foreign bank agencies. For example, in the fiscal year ending 1995, the department forgave one quarterly installment and reduced another. The department intends to continue to allow banks and foreign bank agencies to benefit from departmental cost reduction. Secondly, the department attempted to quantify the reduction in use of the departmental staff and resources by those banks that the department examines less frequently. Employee salaries, benefits and travel expenses account for approximately 85% of the department's expenditures. For this reason, the department conducted an extensive review of current and projected staffing needs in accordance with the statutory mandate to periodically examine banks and foreign bank agencies and to safeguard the safety and soundness of the state banking system. The department reviewed each division and its statutory responsibilities, revised application and other fees, and developed a system to provide that each of the department's supervisory programs become self-funding. The percentage rate also includes an historical overhead factor, which has remained unchanged for four years. The department will review this factor in 1996 for any necessary adjustments.

State-chartered banks in Texas vary in size, complexity, nature of services and products offered to the public, nature of business locations, and degree of supervision required if the bank exhibits problem characteristics. For these reasons, state-chartered banks are placed into one of three examination frequencies: six-month, twelve-month, and 18-month. Any individual bank's placement in a specific examination frequency is the result of a combination of these factors. The criteria for placement in one examination frequency or another are currently set forth in the Commissioner's Examination Frequency Memorandum, Commissioner Numbered Memo 95-03, dated April 24, 1995. These criteria are subject to change, and the banking commissioner may reissue a pronouncement on examination frequencies.

No comments were received regarding adoption of the new sections. The agency has made several nonsubstantive changes to better conform to *Texas Register* form and style guidelines, to correct an erroneous title to §3. 38, and to conform statutory citations to new codification references.

The new sections are adopted under the Act, §1 012(a)(4), which authorizes the commission to adopt rules to provide for the recovery of the cost of maintenance and operation of the department and the cost of enforcing the Act through the imposition and collection of ratable and equitable fees for notices, applications, and examinations. The Act, §2.008(b) and §9. 002(b), specifically provide that each bank or foreign bank agency must pay the cost of examination, the equitable or proportionate cost of maintenance and operation of the department, and the cost of enforcement of the Act through the imposition and collection of fees established by the commission under the Act, §1.012(a)(4). As required by the Act, §1.012(b), in proposing these sections, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

§3.36. Annual Assessments and Specialty Examination Fees.

(a) Authority. The assessment schedule contained in this section is made under the authority contained in Texas Civil Statutes, Article 342-1. 012(a)(4) (the Texas Banking Act, §1.012(a)(4)).

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

(1) Assessable assets–The sum of on-book assets and average off-book assets of a bank or foreign bank agency.

(2) Average off-book assets–The average of the off-balance sheet items reported by a bank in its most recent March 31st call report and the three immediately preceding call reports, as adjusted under subsection (c) of this section and pursuant to the instructions accompanying the assessment form applicable to and submitted by the bank or foreign bank agency.

(3) Call report–The quarterly, consolidated report of condition and income (including domestic and foreign subsidiaries) promulgated in a form by the Federal Financial Institutions Examination Council and prepared and filed by a bank or foreign bank agency under state and federal law.

(4) Examination frequency–The frequency of which a bank is subject to examination by the department. The criteria for placement into one of three examination frequencies are set forth in Commissioner Numbered Memo 95-03.

(5) On-book assets–The total assets reported by a bank on the balance sheet contained in its most recent March 31st call report.

(c) Calculation of average off-book assets. A bank must calculate a four-quarter average of off-book assets, as adjusted under this subsection, using the most recent March 31st call report and the three preceding call reports, as a component of assessable assets. In general, the bank must sum all line items for which values are included on "Schedule RC-L-Off-Balance Sheet Items," with the exception of:

(1) amount of financial standby letter of credit conveyed to others;

(2) amount of performance standby letter of credit conveyed to others;

(3) participations in acceptances conveyed to others by the reporting bank; and

(4) gross commitments to sell.

(d) Annual assessment. The department will establish the annual assessment for each bank and foreign bank agency effective September 1 of each year. Each bank and foreign bank agency must pay to the department the annual assessment fee, in quarterly installments as billed effective September 1, December 1, March 1, and June 1 of each year, except that an install-

ment may be adjusted under subsections (f) and (g) of this section. Assessments will be calculated on the total assessable assets. The assessment will be calculated on the basis of the factors identified in and in the manner described in §3. 37 of this title (relating to Calculation of Annual Assessment for Banks) or §3.38 of this title (relating to Calculation of Annual Assessment for Foreign Bank Agencies).

(e) Review of assessment factors. The department will review all appropriations authorities, expenditure patterns, and other costs related to bank or foreign bank agency examination and supervision functions, and present to the finance commission no less frequently than once each biennium such information and a calculation chart that sets forth the annual assessment factors.

(f) Interim adjustments.

(1) If a bank or foreign bank agency's size, condition, or other characteristics change sufficiently during a year to cause the bank or foreign bank agency to fall into a different examination frequency, the department will adjust the annual assessment in the quarter of the change to reflect only the quarter or quarters of the year in which the bank or foreign bank agency falls into a different examination frequency.

(2) In the event of an acquisition or merger involving a surviving state bank or foreign bank agency, the department will adjust the annual assessment in the quarter of the acquisition or merger to reflect only the quarter or quarters of the year in which the bank or foreign bank agency falls into a different asset group as a result of the acquisition or merger. The asset group will be calculated on the basis of the combined assessable assets, including branches, of the surviving bank or foreign bank agency.

(3) A financial institution converting to a state bank must pay to the department an assessment beginning in the quarter of the conversion to reflect only the quarter or quarters of the year in which the financial institution is a state bank.

(4) Each bank or foreign bank agency, on the due date of an assessment installment, must pay to the department the full quarterly installment of the assessment for the next three-month period without proration for any reason.

(g) Adjustment of an installment. The commissioner may, after review and consideration of actual expenditures to date and projected expenditures for the remainder of the fiscal year, lower the amount of an installment due from banks or foreign bank agencies, without the prior approval of the finance commission.

(h) Specialty examination fees.

(1) Examinations of fiduciary activities and other special examinations and investigations, including but not limited to examinations of representative offices of foreign bank agencies, affiliates, and third-party contractors, are subject to a separate charge to cover the cost of time and expenses incurred in these examinations.

(2) The bank or foreign bank agency shall pay to the department a fee for examination under this subsection calculated at a uniform rate of $500 per examiner per day to cover the cost of the examinations including the salary expense of examiners plus a proportionate share of department overhead allocable to the examination function. The commissioner may lower the uniform rate without the prior approval of the finance commission.

(3) In connection with an examination under this subsection, a bank or foreign bank agency shall also pay to the department an amount for actual travel expenses incurred by the examiners, including mileage, public transportation, food, and lodging, in addition to paying the examination fee set forth in paragraph (2) of this subsection.

(i) Special assessments. The finance commission may approve a special assessment to cover material expenditures, such as major facility repairs and improvements and other extraordinary expenses.

§3.37. Calculation of Annual Assessment for Banks. The annual assessment for a state bank is calculated as described in §3.36 of this title (relating to Annual Assessments and Speciality Examination Fees), based on the values in the following table:
Figure 1: 7 TAC §3.37

§3.38. Calculation of Annual Assessment for Foreign Bank Agencies. The annuai assessment for a foreign bank agency is calculated as described in §3.36 of this title (relating to Annual Assessments and Speciality Examination Fees), based on the values in the following table:
Figure 2: 7 TAC §3.38

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 15, 1995.

TRD-9516389 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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• 7 TAC §3.37

The Finance Commission of the State of Texas (the commission) adopts the repeal of §3.37, concerning application fees and recovery of investigative costs, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9330).

This section is amended and recodified as §15.2, and adopted in this issue of the *Texas Register*. Adoption of the repeal is therefore necessary to avoid conflict with new §15.2.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to rulemaking authority under Texas Civil Statutes, Article 342-1.012(a)(1) (the Texas Banking Act, §1.012(a)(1)), which authorize the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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 15, 1995.

TRD-9516387 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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• 7 TAC §3.38

The Finance Commission of Texas (the commission) adopts the repeal of §3.38, concerning conversion between a state banking association and a limited banking association, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9331).

The repeal is necessary because recently enacted Texas Civil Statutes, Article 342-3.502 (the Texas Banking Act, §3.502), incorporate the provisions of §3.38, rendering the section obsolete.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to rulemaking authority under the Texas Banking Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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 15, 1995.

TRD-9516388 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The Finance Commission of Texas (the commission) adopts the repeal of §3.91, concerning establishment and closing of a branch facility, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9331).

This section is amended and recodified as §15.42, and is adopted in this issue of the *Texas Register* to address establishment and closing of a branch facility. The repeal is therefore necessary to avoid conflict with new §15.42, and is further necessary because of changes made regarding branch facilities by enactment of Texas Civil Statutes, Articles 342-1.001 et seq (Texas Banking Act, §§1.001 et seq), and the adoption of a new chapter governing corporate activities in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to rulemaking authority under the Texas Banking Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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 15, 1995.

TRD-9516390 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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• 7 TAC §3.92

The Finance Commission of Texas (the commission) adopts the repeal of §3.92, concerning naming and advertising of bank facilities, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9332). A new §3.92 is adopted in this issue of the *Texas Register*, concerning a different subject, security at unmanned teller machines.

The repeal is necessary because Texas Civil Statutes, Article 342-917, the statute that underlies §3.92, was repealed effective September 1, 1995, by Act of May 18, 1995, 74th Legislature, Chapter 914, §26(1), 1995 Texas Session Law Service 4451, 4551, in connection with enactment of the Texas Banking Act, Texas Civil Statutes, Articles 342-1.001 et seq. No provision similar to Article 342-917 is contained in the Texas Banking Act, although the commission may have adequate authority to regulate identification of bank facilities should it choose to do so.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to rulemaking authority under Texas Civil Statutes, Article 342-1.012(a)(1) (the Texas Banking Act, §1.012(a)(1)), which authorize the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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 15, 1995.

TRD-9516391 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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The Finance Commission of Texas (the commission) adopts new §3.92, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines or ATMs, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9332). The text of §3.92 will not be republished. Existing §3.92 concerned a different subject and is repealed in this issue of the *Texas Register*.

Texas Civil Statutes, Article 342-903d (referred to as the ATM User Safety Act), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines. Provisions in the ATM User Safety Act purport to cross-reference to other provisions of the Texas Banking Code, Texas Civil Statutes, Articles 342-101 et seq, for definitional purposes, but the Texas Banking Code was in large part repealed by Act of May 18, 1995, 74th Legislature, Chapter 914, §26, 1995 Texas Session Law Service 4451, 4551, in connection with the adoption of the Texas Banking Act. Section 3.92(a) therefore contains definitions designed to facilitate understanding of these cross-references to repealed statutes.

The commission is aware that physical security of customers, employees, and property is of great concern to financial institutions and has been federally regulated by the Bank Protection Act of 1968 (12 United States Code, §1882) and Regulation P (12 Code of Federal Regulation, §§216.1 et seq). The ATM User Safety Act expands these requirements by specifying detailed requirements for unmanned teller machine security procedures, and further requires the commission to adopt rules to implement it. Accordingly, the section provides additional clarification in those areas in which the ATM User Safety Act is not already explicit or is otherwise ambiguous. Safety procedures at ATMs must be in place no later than September 1, 1996, and required notices to customers must occur no later than January 1, 1996 and annually thereafter.

In developing the section, the commission was mindful of trends relating to the Bank Protection Act. That federal statute was implemented by extremely detailed regulations with specifications relating to security cameras and specific requirements for all manner of equipment and procedures. Over a period of time, the regulation became outdated on a more and more frequent basis so that the requirements of the regulation did not keep pace adequately with changes in the security field. As a result, in 1991 the regulatory scheme was amended to provide a broad

framework with each financial institution expected to implement the security requirements as fit the institution, its community, changes in technology, and other relevant factors. In developing the section, the commission expects the same sort of procedure to be used by affected institutions. In other words, only a broad framework is established by the section.

One comment was received that was generally supportive of adoption of the section. Additional suggestions made by the commenter were rejected as explained further in the following paragraphs.

Section §3.92(b) clarifies that candle foot power of lighting is to be measured under normal conditions, i.e., without complicating factors such as fog, rain, snow, sand or dust storm. The commenter suggested that the standard for lighting be expressed in terms of wattage. This suggestion is rejected. Wattage is a measure of power consumption, not light. Further, the statutory standard is expressed in terms of candle foot power, and candle foot power is readily measurable by a conventional light meter.

Special procedures for addressing noncompliance by landlords or owners of leased property on which ATMs are located is addressed by §3.92(c). Annual safety evaluations are required in proposed §3.92(d). Financial institutions should notify landlords who fail to follow recommendations to improve the safety of an access area.

The requirement of ATM User Safety Act, §5, that customers be notified of basic safety precautions, is set forth in proposed §3.92(e), including required timing and recommended content of the notice. The commenter suggested permitting the notice to be printed on the back of the customer's monthly statement as a method of simplifying the disclosure, pointing out that the disclosure would thus be available year round rather than once annually. After careful consideration, the agency respectfully rejects the suggestion on the basis that a special disclosure will more likely attract the attention of the customer and be read. However, the section will not prohibit printing the disclosures on the back of the statement as an additional step if a bank is so inclined.

The ATM User Safety Act, §7(b)(1), grants authority to the commission to require video surveillance equipment at ATM sites. The commission has determined that video surveillance equipment at ATM sites has limited utility and practicality, and may in fact lead a customer into a false sense of security. Accordingly, the commission declines to require video surveillance equipment at all ATM sites. Whether video surveillance equipment, alarm systems, or security officers are appropriate at a particular ATM sites will depend on the safety evaluation of the owner or operator of the ATM that is required under the ATM User Safety Act, §4. The owner or operator may determine that unconnected or fake video surveillance equipment is appropriate. If the owner or operator determines that working video surveillance equipment is appropriate, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

Section 3.92(g) indicates that the ATM User Safety Act applies to ATMs located in a bank vestibule if there is 24 hour access from outside the building. Section §3.92(h) requires that the security officer of a financial institution certify compliance with the ATM User Safety Act and this subchapter on an annual basis.

The new section is adopted under the authority of Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which requires the commission to adopt rules regarding enforcement and implementation of that statute.

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 15, 1995.

TRD-9516392 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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• 7 TAC §3.93

The Finance Commission of Texas (the commission) adopts the repeal of §3.93, concerning loan production offices, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9334).

The repeal is necessary because §3.93 has been superseded by Texas Civil Statutes, Article 342-3.205 and Article 342-8.003, which render the section obsolete.

No comments were received regarding adoption of the repeal.

The repeal is adopted pursuant to rulemaking authority under Texas Civil Statutes, Article 342-1.012(a)(1), which authorize the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act, Texas Civil Statutes, Articles 342-1.001 et seq.

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 15, 1995.

TRD-9516393 Everette D. Jobe
General Counsel
Finance Commission of Texas

Effective date: January 5, 1996

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For further information, please call: (512) 475-1300

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Part II. Banking Department of Texas

Chapter 10. Trust Companies

• 7 TAC §10.5

The Finance Commission of Texas (the commission) adopts the repeal of §10.5, regarding authorized investments of trust companies, without changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 5975). A new §10.5 is adopted in this issue of the *Texas Register*.

The repealed section is outdated and ambiguous regarding permissible investments of trust companies. The new adopted section is directly in response to a petition for rulemaking filed by a regulated trust company seeking clarification of existing §10.5 and the meaning of "readily marketable investments." Other flaws were noted in existing §10.5 and the section is therefore repealed and replaced.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 342-1106(b), which authorize the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation, and Texas Civil Statutes, Article 342-1.012(a)(2) (the Texas Banking Act, §1.012(a)(2)) , which authorize the commission to adopt rules to preserve the safety and soundness of trust companies. The Texas Banking Act is applicable to trust companies by virtue of Texas Civil Statutes, Article 342-1102, §1. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable trust company environment, provide the public with convenient, safe, and competitive trust services, and allow for economic development within 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 authority.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516374 Everette D. Jobe
General Counsel
Banking Department of Texas

Effective date: January 5, 1996

Proposal publication date: August 8, 1995

For further information, please call: (512) 475-1300

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The Finance Commission of Texas (the commission) adopts new §10.5, regarding the investment of corporate assets of trust companies, with nonsubstantive changes to

the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9334). Former §10.5 is repealed in this issue of the *Texas Register.*

The proposed rule is directly in response to a petition for rulemaking filed by a regulated trust company seeking clarification of existing §10.5 and the meaning of "readily marketable investments." Other flaws were noted in existing §10.5 and the section is therefore repealed and replaced.

Under the section as adopted, a trust company is required to maintain a measure of liquidity by maintaining an amount at least equal to 40% of its capital and certified surplus in readily marketable investments, defined to include insured certificates of deposit, investment securities in which state banks can invest without limitation, publicly traded corporate debt or equity securities, or another investment that can be converted to cash within four business days. The remainder of a trust company's corporate assets may be invested at the discretion of the trust company except that a trust company may not invest an amount in excess of 15% of its capital and certified surplus in the securities of a single issuer without the prior written consent of the banking commissioner. The adopted section further authorizes the banking commissioner, on application and in the exercise of discretion, to reduce the amount of investments in readily marketable investments from the 40% restriction.

No comments were received regarding adoption of the new section.

The citation form for the Texas Banking Act has been changed in the adopted section to conform to the manner in which the Texas Banking Act has been codified. One cross reference to §10.1 has been corrected to refer to the proper title of that section.

The new section is adopted under Texas Civil Statutes, Article 342-1106(b), which authorize the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation, and Texas Civil Statutes, Article 342-1.012(a)(2) (Texas Banking Act, §1.012(a)(2)), which authorize the commission to adopt rules to preserve the safety and soundness of trust companies. The Texas Banking Act, §1.012, is applicable to trust companies by virtue of Texas Civil Statutes, Article 342-1102, §1. As required by the Texas Banking Act, §1.012(b), the commission has considered the need to promote a stable trust company environment, provide the public with convenient, safe, and competitive trust services, and allow for economic development within this state.

§10.5. Authorized Investments.

(a) A trust company shall maintain an amount equal to 40% of its capital and surplus as defined in §10.1 of this title (relating to Ratable Increases in Required Capital) in investments that are readily marketable and can be converted to cash within four business days, including:

(1) federally insured certificates of deposit issued by a depository institution;

(2) securities in which state banks can invest without limitation under Texas Civil Statutes, Article 342-5.101 (Texas Banking Act, §5.101); or

(3) corporate debt or equity securities registered or approved for registration and traded on a national securities exchange or authorized for quotation on an automated quotation system sponsored by a registered securities association.

(b) The banking commissioner may, on application and in the exercise of discretion consistent with protecting safety and soundness, reduce the amount of investments required under subsection (a).

(c) Subject to Subsection (a) of this section, a trust company may invest its corporate assets in any investment permitted by law. Without the prior written consent of the banking commissioner, a trust company may not invest an amount in excess of 15% of its capital and certified surplus in the securities of a single issuer except as otherwise provided in the Texas Banking 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 authority.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516375 Everette D. Jobe
General Counsel
Banking Department of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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Chapter 15. Orders of Commissioner

• 7 TAC §15.1, §15.2

The Finance Commission of Texas (the commission) adopts the repeal of §15.1 and §15.2, or the entirety of Chapter 15, concerning removal orders and appeal of supervisor and conservator decisions, respectively, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9343). Chapter 15 is now the repository of new sections regarding corporate activities, adopted in this issue of the *Texas Register.*

Section 15.1 established a procedure for review of conservator or supervisor actions, and is now obsolete in that such review procedures are incorporated into Texas Civil Statutes, Article 342-6.010 (the Texas Banking Act, §6.110). Section 15.2 construed the law with respect to two conflicting sections of now repealed Texas Civil Statutes, Article 342-412, and clarified that the banking section of the commission no longer existed and references to the banking section should be understood to be references to the commission Those difficulties are also eliminated by the Texas Banking Act, §§6.003-6. 012, rendering this section obsolete

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to rulemaking authority under the Texas Banking Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Texas Banking Act. As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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 authority.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516376 Everette D. Jobe
General Counsel
Banking Department of Texas

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 475-1300

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Chapter 15. Corporate Activities

The Finance Commission of Texas (the commission) adopts §§15.1-15.6 (Subchapter A); §15.23 and §15.24 (Subchapter B); §15.41 and §15.42 (Subchapter C); and §15.61 and §15.62 (Subchapter D), of new Chapter 15, concerning corporate activities. Sections 15.1, 15.3-15.6, 15.23, 15.41, 15.42, 15.61, and 15.62 are adopted with nonsubstantive changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9343). Section 15.2 and §15.24 are adopted without changes from the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9343), and will not be republished. Adopted sections are published separately by subchapter as required by the *Texas Register*, preceded by this common preamble. Existing §15.1 and §15.2 are repealed in this issue of the *Texas Register*, as are other sections in this title that the adopted sections replace, as noted further in the following discussion.

With some exceptions, the adopted sections represent rewrites of previously existing sections to conform regulations on corporate ac-

tivities to newly enacted Texas Civil Statutes, Articles 342-1.001 et seq (the Texas Banking Act, §§1.001 et seq) (the Act). Pursuant to the Act, the State Banking Board is eliminated effective September 1, 1995, and its powers and duties transferred to the Banking Commissioner of Texas (banking commissioner) and the commission. The substantive provisions of Chapter 31 of this title (relating to the State Banking Board) that have continuing vitality are rewritten and adopted as new sections in Chapter 15, and all sections of Chapter 31 are repealed in this issue of the *Texas Register* Section §3.37 of this title (relating to Application Fees and Cost Deposits) and §3.91 of this title (relating to Establishment and Closing of a Branch Facility) are also repealed in this issue of the *Texas Register* and replaced by new sections in Chapter 15.

Subchapter A (relating to Fees and Other Provisions of General Applicability)

In Subchapter A, §15.1 is the definitions section for Chapter 15; §15.2 is a rewrite of now repealed §3 37; §15 3 is new for the purpose of providing expedited application handling for certain banks and trust companies, §15.4 is new for the purpose of providing for disposition of abandoned applications; and §15.5 is new setting out general guidelines and requirements for the contents and confirmation of public notices in newspapers of general circulation. Finally, §15 6 is a rewrite of now repealed §31.4 of this title (relating to Applications to Engage in Certain Businesses: Notices to Applicants; Application Processing Times, Appeals).

Section 15.1 (relating to Definitions)

Section 15.1 is the general definitions section for the chapter. Several definitions have been clarified in response to comments

Section 15 2 (relating to Filing Fees and Cost Deposits)

The purpose of the commission in adopting now repealed §3.37 was to reduce the heavy reliance of the Texas Department of Banking (the department) on examination fees and to impose appropriate application and filing fees and cost deposits to make identifiable services self-sustaining to the extent possible. Since §3 37 became effective in November of 1993, the need for changes in the fee structure has become apparent as a result of passage of the Act, changes in the banking and trust industries, policy changes made within the department, and inadvertent omissions made when existing §3.37 was first adopted.

Repealed §3.37 did not set a fee for an application for authorization to purchase assets and assume liabilities. The department incurs material costs in processing such applications. In addition, a significant shift in assets is occurring in the banking industry, and the department anticipates the number of purchase of assets and assumption of liabilities transactions will increase, straining the resources of the department New §15.2(b) sets a $4,000 fee for purchase of assets and assumption of liabilities transactions.

Section 15.2 also increases the fee for applications involving acquisition of control (change of control) to $5,000 because these applications consume a great deal of staff time in reviewing the applications for the purpose of making recommendations for decision. In comparison, the Office of the Comptroller of the Currency charges a fee of $10,200 for processing a change of control application, and the Texas Savings and Loan Department recently revised its rules to require a $10,000 fee for change of control applications The fee for holding company filings is also increased in §15 2 to $500 for transactions involving both bank and nonbank subsidiaries because processing costs continue to rise, largely due to the complexity of the transactions. Standard branch application filing fees will remain at $1,500 under the adopted section, although under certain conditions this fee may be lowered to $500 for eligible institutions. Because Texas Civil Statutes, Article 3921, was repealed by the 74th Legislature in connection with adoption of the Act, the additional filing fee for amendments to the articles of association, expressed as a percentage of any increase in authorized capital, is deleted in the adopted new section.

Section 15.3 (relating to Expedited Filings)

Section 15.3 establishes a procedure by which an eligible bank may file an expedited branch application (relating to the establishment and closing of a branch facility) or an expedited application for branch or home office relocations less than one mile with no abandonment of the community. Adopted §15 3 also allows an eligible trust company to file an expedited application for home office relocation where there is no abandonment of the community Subject to certain exceptions set out in the section, eligible bank and trust companies are allowed to file less detailed applications which will reduce department processing time which will, in turn, reduce expense to the department. The filing fee for an expedited application is $500 and is the sole filing fee.

Section 15.4 (relating to Required Information and Abandoned Filings).

Section 15.4 is a new section This section authorizes the department to investigate and evaluate facts related to submitted filings (applications, requests, notices, and protests) and to require the submission of additional information, including an opinion of counsel or an opinion, review or compilation prepared by a certified public accountant In addition, §15.4 permits the department to consider as abandoned any submitted or accepted filing which is not complete within the established time periods, or with regard to which the necessary filing fees are not timely paid. The department has found that, in many instances, submitted filings are unnecessarily delayed because of failure to pay necessary fees or to provide requested information in a timely manner. Applications and other filings must be processed based on current information. In addition, submitted filings that are not accompanied by the necessary fees strain the resources of the department and utilize processing time which could be expended on submitted filings which are in full compliance.

Section 15.5 (relating to Public Notices)

Section 15.5 is the general section related to required public notices. This section as adopted sets out, in general, the required contents of public notices. The new §15.5 prohibits the publication of the required notice solely in specialized newspapers which are directed to a specific interest group or occupation, such as legal or court related newspapers.

Section 15.6 (relating to Applications to Engage in Certain Businesses: Notices to Applicants; Application Processing Times; Appeals)

Section 15.6 is based on existing §31.4, repealed in this issue of the *Texas Register*. Promulgation of procedural rules for processing permit applications and issuing permits is required by Government Code, §2005.003. Although adopted §15.6 is a version of now repealed §31.4 as edited to conform to the Act, no significant changes are made.

Subchapter B (relating to Bank and Trust Company Charters)

The two adopted sections of Subchapter B are based on two of the three sections in Chapter 31, Subchapter B, of this title (relating to Bank Applications), which are repealed in this issue of the *Texas Register*. Because of the elimination of the State Banking Board, all sections in Chapter 31 are rewritten and adopted as part of Chapter 15. The commission anticipates additional rulemaking under Subchapter B and therefore reserves the numbers for §15.21 and §15.22 for future expansion. Adopted §15.23 is a rewrite of now repealed §31.20 without significant change except to conform to the Act and to this chapter. Adopted §15.24 is a rewrite of now repealed §31. 21, also without significant change except to conform to the Act and to this chapter.

Subchapter C (relating to Bank Offices)

Subchapter C contains two sections, §15.41 and §15.42. Adopted §15.41 is based on now repealed §31.22 (relating to Applications for Change of Domicile) and is substantially similar as rewritten to adapt to changes made in law by the Act. Adopted §15.42 is based on now repealed §3.91 (relating to Establishment and Closing of a Branch Facility) without substantive changes except to conform to the Act and to this chapter.

Subchapter D (relating to Trust Company Applications)

Subchapter D is based on Chapter 31, Subchapter C, of this title (relating to Trust Company Applications), all sections of which are repealed in this issue of the *Texas Register*. Adopted §15.61 is based on now repealed §31.40 and to this chapter. Adopted §15.62 is based on now repealed §31. 41, edited to conform to the Act and to this chapter. Section 15.62 also adds a new subsection requiring that an exempt trust company seeking nonexempt status comply with all requirements for a new charter application.

Comments Received

Two comments were received regarding adoption of the sections, both generally favorable to adoption but with suggestions.

One commenter argues that the provisions of §15.42(f)(2) requiring an applicant for a branch office to respond within ten days after

a detailed protest is filed with the department is inherently uncertain because the date of filing may vary from the date received by the applicant, and suggests that the response time be measured by the date the protest is received by the applicant. The agency respectfully disagrees on the basis that the methodology chosen permits the hearings officer to more objectively determine filing deadlines. Further, §15.42(f)(3) permits extensions of time for good cause, which includes failure of a party to timely serve filed documents on an opposing party. To clarify how time is measured the agency has added a reference to Rule 21a, Texas Rules of Civil Procedure, as governing methods and manner of authorized service and the computation of time periods, also see 7 TAC §9.3(b). The commenter also points to allegedly redundant language in §15.42(f)(2). The agency disagrees; the concluding sentence of §15.42(f)(2) refers to distribution of comments from persons who are not parties to the proceeding and is therefore not redundant of the requirement that parties serve each other with copies of filed documents.

The second commenter, Texas Bankers Association (TBA), requested clarification in a number of instances. First, the definition of eligible bank refers to the existence of an enforcement order as a disqualification. The definition is clarified to refer to enforcement orders issued by a banking regulatory agency as a disqualification. Second, TBA requested the addition of language to §15.2(e) to ensure that cost reimbursement is based on actual, reasonable costs and that the banking commissioner's authority to waive or reduce collection of fees and costs is applied on a nondiscriminatory basis. The agency generally concurs and has made changes to both subsections (d) and (e) of §15.2. Actual cost is determined with reference to §3.36(h), as adopted in this issue of the *Texas Register*. Third, TBA requested clarification that the $500 fee for expedited filing under §15.3 is the entire fee and not an additional fee. The agency concurs that the $500 fee is the entire fee and has slightly modified the text of §15.3(d) to address this issue.

TBA questions whether the $2,500 fee for authorization of additional mergers is justified, stating that the historic practice has been to charge one fee for a merger regardless of the number of parties. The comment is based on a misconception and the agency disagrees. Under repealed §3.37, the department charged $3,000 for a simple two party merger and an additional $1, 500 for the corollary branch application, for a total fee of $4,500. Each additional party to the merger in excess of two resulted in another fee of $3, 000. New §15.2(b) actually reduces the filing fee in both instances. The branch application fee is no longer charged, so the total fee is always lower than under repealed §3.37. Further, in the case of a multiple party merger, the fee for each additional party is reduced to $2,500 if the parties are affiliated.

TBA also questions the appropriateness of a $4,000 fee for authorization to establish a subsidiary and the factors that distinguish that fee and the $500 fee for a standard subsidiary notice letter. The agency declines to change either fee. Under repealed §3.37, the fee for a subsidiary application was $1,500, and the experience of the department has demonstrated that questions of first impression regarding whether a bank may engage in a novel activity through a subsidiary require an inordinate amount of time and research to resolve. Applicants have not dependably submitted exhaustive research on the question to aid the department and the $1,500 fee has not recouped the cost of processing. On the other hand, routine subsidiary formation has been simplified under the Act. Therefore, the fee in such an instance has been reduced to $500.

TBA suggests that §15.3 contain a time line for department response to expedited filings. The agency concurs, and a new subsection (f) is added based in part on §15.42(f). TBA also suggests that §15.4(b) contain a time line for the department to notify an applicant that an application is complete. The agency concurs with the comment and amends §15.4 to add a new subsection (b). Conforming changes are made to §§15.3(c)(10), 15.6(b) §15.41(a), and 15. 42(b).

TBA also requests that §15.5, relating to form and content of public notice, be amended to apply to "any other activity requiring public notice." The agency concurs and §15.5(a) has been edited in clarification.

Finally, TBA requested deletion of §15.42(e)(3)(F) as overly broad and confusing. The agency disagrees with the comment. Repealed §13.91(g)(3)(G) contained substantially the same language and no confusion has arisen to the knowledge of the agency. The indicated factor, responsiveness to criticisms in examination reports and operation in substantial compliance with law, are directly relevant to whether the banking commissioner has or should have supervisory or regulatory concerns. The agency also notes that the list of considerations in §15.42(e)(3) is open-ended; deletion of the factor in §15.42(e)(3)(G) would not therefore remove the item from consideration.

The agency has further made minor corrections to §§15.1, 15.4-15.6, 15.23, 15.41, 15.61, and 15.62 to change the legal citation to the Act to its recent codification in Texas Civil Statutes and to better conform to *Texas Register* form and style guidelines, especially with regard to cross-references to other sections. Section 15.41(c) is also clarified to provide, as required by the Act, §3.202(c), that an application to relocate home office is subject to the same standards as a branch application.

All changes made to the adopted sections are considered nonsubstantive and in the nature of clarifications or corrections.

Subchapter A. Fees and Other Provisions of General Applicability

• 7 TAC §§15.1-15.6

The new sections are adopted under the Texas Banking Act (the Act), §1. 012(a)(1), which authorizes the commission to adopt rules necessary or reasonable "to implement and clarify" the Act, and under Texas Civil Statutes, Article 342-1106(b), which authorize the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation. In addition, the sections are adopted under the Act, §1.012(a)(4) and §2.006(b), which provides the commission with the authority to establish reasonable and necessary fees for the maintenance and administration of the Act. Additional statutory authority for certain fees can be found in the Act, §3.003(a) (bank charter fees and costs), §3.004(b) (expenses for charter investigation), §4.002(a) (fees and costs for review of acquisition of control), §9.004(a) (registration fees for foreign bank agencies), and §9.006(a) (registration fees for foreign bank representative offices). With respect to application of the adopted sections to trust companies, Texas Civil Statutes, Article 342-1102, specifically makes selected provisions of the Act applicable to trust companies.

As required by the Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

§15.1. Definitions. Words and terms used in this chapter that are defined in Texas Civil Statutes, Article 342-1.001 et seq (the Texas Banking Act, §1.001 et seq) (the Act), have the same meanings as defined in the Act. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Accepted filing-Includes any application, request, notice, or protest filed under the Act, this chapter or any rule or regulation adopted pursuant to the Act in which the banking commissioner has received sufficient information to reach an informed decision, the appropriate fee has been paid pursuant to §15.2 of this title (relating to Filing Fees and Cost Deposits), and the banking commissioner has notified the person or entity who submitted the filing, in writing, that the submission is complete and has been accepted for filing.

Community-The area delineated by a state bank as the local community or communities that comprise a state bank's entire community pursuant to the Community Reinvestment Act (CRA), 12 United States Code (USC), §§2901 et seq and any rules or regulations adopted pursuant to CRA. The community may include the delineated area for the purposes of CRA in which the person or entity that is required or authorized to publish public notice proposes to engage in business, is currently engaged in business, or wishes to abandon.

Day-A calendar day.

Eligible bank-A state bank that:

(A) possesses tangible equity capital in excess of 6.0% of tangible assets or is operating in compliance with a capital plan approved in writing by the banking commissioner;

(B) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institutions Rating System at the most recent examination by the department or federal regulatory agencies;

(C) received a CRA rating of either outstanding or satisfactory at the bank's most recent inspection by the appropriate federal regulatory agency;

(D) is not presently operating in violation of a regulatory condition or commitment letter imposed by a state or federal banking regulatory agency; and

(E) is not presently operating under a memorandum of understanding; determination letter or other notice of determination; order to cease and desist, or other state or federal administrative enforcement order issued by a state or federal banking regulatory agency.

Eligible trust company–A Texas chartered trust company that:

(A) possesses capital and surplus that equals or exceeds current minimum statutory or regulatory requirements;

(B) received a composite rating of either 1 or 2 as defined by the Uniform Financial Institution Rating System at the most recent examination by the department or federal regulatory agencies;

(C) is not presently operating in violation of a regulatory condition or commitment letter; and

(D) is not presently operating under a memorandum of understanding, determination letter or other notice of determination, order to cease and desist, or other state or federal administrative enforcement order.

General interest items–Include, but are not limited to, local and international news, weather, sports, features, comics, entertainment and advertisements directed to the general public.

Newspaper of general circulation–A newspaper that:

(A) devotes not less than 25% of its total column lineage to general interest items, provided that a newspaper of general circulation does not include a specialized newspaper or other periodical directed to a specific interest group or occupation, such as a legal notice or court related newspaper;

(B) is published at least once a week;

(C) is entered as second class postal matter in the county where published; and

(D) has been published regularly and continuously for at least 12 months before the applicant, protesting party or other entity publishes notice, provided that a weekly newspaper is considered to have been published regularly and continuously if the newspaper omits not more than three issues in a 12-month period.

Public notice–Any matter including an application, request, notice, or protest, whether by proclamation or declaration, required or authorized to be published in a newspaper of general circulation by the Act, this chapter, or any rule or regulation adopted pursuant to the Act, or required to be published by the banking commissioner.

Submitted filing–Includes any initial application, request, notice, or protest filed under the Act, this chapter or any rule or regulation adopted pursuant to the Act, that is neither an accepted filing nor been abandoned.

§15.3. Expedited Filings.

(a) Eligible banks may file an expedited filing according to forms and instructions provided by the department solely for the following matters:

(1) branch applications pursuant to the Act, §3.203, and §15.42 of this title (relating to Establishment and Closing of a Branch Facility);

(2) branch relocations less than one mile with no abandonment of the community pursuant to the Act, §3.203; and

(3) home office relocations less than one mile with no abandonment of the community pursuant to the Act, §3.202(c).

(b) Eligible trust companies may file an expedited filing according to forms and instructions provided by the department solely for home office relocations where there is no abandonment of the community pursuant to the Act, §3.202(b) and (c) (applicable to trust companies pursuant to Texas Civil Statutes, Article 342-1102, §1).

(c) Notwithstanding another provision of this section, the banking commissioner may deny expedited filing treatment to an eligible bank or eligible trust company, in the exercise of discretion, if the banking commissioner finds that the filing involves one or more of the following:

(1) the proposed transaction involves significant policy, supervisory, or legal issues;

(2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;

(3) the proposed transaction will result in a fixed asset investment in excess of the limitation contained in the Act, §5.001(b);

(4) the proposed transaction requires the approval of the banking commissioner under the Act, §4.107(b);

(5) the proposed transaction involves an issue of parity between state and national banks pursuant to the Act, §3.010;

(6) the proposed transaction significantly impacts the strategic plan of the bank or trust company;

(7) the proposed transaction will result in a decrease in the tangible leverage capital ratio of a state bank below 6.0% of assets or, in the case of a trust company, would cause capital and surplus to fall below current minimum statutory or regulatory requirements;

(8) the proposed transaction will result in an abandonment of the community pursuant to the Act, §3.202(d);

(9) the proposed transaction involves an issue of regulatory concern as determined by the banking commissioner in the exercise of discretion; or

(10) the application is deficient and specific additional information is required, or the filing fee has not been paid.

(d) The sole filing fee for an expedited filing is $500.

(e) The department shall notify the applicant on or before the 15th day after receipt of the application if expedited filing treatment is not available under this section. Such notification must be in writing and must indicate the reason why expedited treatment is not available. Notification is effective when mailed by the department and is not subject to appeal.

(f) Unless the applicant is otherwise notified by the department, an expedited filing is approved on the 15th day after the later of the date the application is complete and accepted for filing, or expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur, unless a protest is filed. If a protest is filed, the application will be processed under §15.41 of this title (relating to Written Notice or Applications for Change of Home

Office) or §15.42, whichever is applicable.

§15.4. Required Information and Abandoned Filings.

(a) Required Information. The banking commissioner may investigate and evaluate facts related to a submitted filing or accepted filing to the extent necessary to reach an informed decision. The banking commissioner may require any person or entity connected with the matter to which the submitted or accepted filing pertains to submit additional information, including, but not limited to, an opinion of counsel with respect to a matter of law or an opinion, review or compilation prepared by a certified public accountant.

(b) On or before the 15th day after initial submission of an application, the banking commissioner shall issue a written notice informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Time Limit For Providing Required Information. Unless otherwise provided for in the Act, this chapter or rules and regulations adopted pursuant to the Act, all required information necessary for the banking commissioner to declare that a submission is an accepted filing shall be provided to the department on or before the 61st day after the date of the initial submission of the filing. A person or entity may request an automatic 30-day extension of time to submit required information if the request is in writing and is received by the department prior to the end of the initial 60-day period provided for in this subsection. An additional extension may be requested in writing if such request is received prior to the expiration of the automatic extension. The additional extension shall be granted only if there is a finding of good and sufficient cause, in the banking commissioner's discretion, to grant an extension. Notice of the decision of the banking commissioner shall be mailed to the person or entity seeking the extension within ten days of the receipt of the request by the department.

(d) Abandoned Filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Act, this chapter, or any rule or regulation adopted pursuant to the Act, or additional requested information, is not furnished within the time period specified by subsection (b) of this section or as requested by the banking commissioner in writing to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing for which fees required by the Act or by this chapter are not paid within 30 days of receipt of the initial submission to be abandoned.

(e) Notice. The banking commissioner shall give written notice of any submitted or accepted filing considered to be abandoned. Notice of abandonment shall be effective upon mailing by the department. Fees paid related to an abandoned filing are nonrefundable.

§15.5. Public Notice.

(a) General. A person or entity required or authorized to file public notice, including a person or entity requesting authorization for a merger, purchase of assets, a conversion, an applicant for a foreign bank agency, or another application requiring public notice, shall publish notice in a newspaper of general circulation in its specified community and in such other locations as may be required by the banking commissioner.

(b) Contents. The public notice must state that a filing is being made; the date (or expected date) of the filing; sufficient information describing the proposed transaction, and other related information required by the Act, this chapter, or rules and regulations adopted pursuant to the Act; and any other information as may required by the banking commissioner. In addition, the notice must include substantially the following text as a separately stated paragraph: "Any person wishing to comment on this application, either for or against, may file written comments with the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 on or before the 14th day after the date of this publication. Such comments will be made a part of the record before and considered by the banking commissioner. Any person wishing to formally protest and oppose (describe type of application in general terms) and participate in the application process may do so by filing a written notice of protest with the Texas Department of Banking on or before the 14th calendar day after the date of this publication accompanied by a protest filing fee of $2,500. The protest fee may be reduced or waived by the banking commissioner upon a showing of substantial hardship."

(c) Publisher's Affidavit. A person or entity required to file public notice under this section shall file with the banking commissioner a copy of the notice and a publisher's affidavit attesting to the date of publication.

(d) One Publication Sufficient. Unless otherwise required by the Act or rules and regulations adopted pursuant to the Act, one public notice publication per submitted or accepted filing in each community specified by the banking commissioner is sufficient if in substantial compliance with this section and chapter and with the Act, as determined by the banking commissioner. The banking commissioner reserves the right to require additional publication based on a determination that a particular publication is insufficient or is otherwise not in compliance.

(e) Other Acceptable Public Notice. The banking commissioner may determine that public notice required by another regulatory agency satisfies the public notice requirements of this section.

§15.6. Applications for Bank & Trust Charter: Notices to Applicants; Application Processing Times; Appeals.

(a) Form of Application. An application to engage in a business under the Act, §3.003, or Texas Civil Statutes, Article 342-1101, must be filed on a form prescribed by the banking commissioner.

(b) Notice to Applicant. The banking commissioner shall issue a written notice as required by §15.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Action on Applications. The banking commissioner shall approve or deny an application for a state bank or trust company charter or an application for conversion of a financial institution to a state bank on or before the 180th day after the date the application is accepted for filing, unless extended by written agreement between the applicant and the banking commissioner; provided that, if the application is protested, the banking commissioner shall convene a hearing on or before the 90th day after the date the protest is received and shall render a decision in accordance with Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(d) Violation of Processing Times. If an application is not protested or a hearing is not convened, an applicant may appeal directly to the banking commissioner for a timely resolution of a dispute arising from a violation of a processing period set forth in this section. An applicant may appeal by filing a written request with the banking commissioner on or before the 30th day after the date the decision is made on the application, requesting review by the banking commissioner to determine whether the established period for the granting or denying of the application has been exceeded. The decision on the appeal shall be based on the written appeal filed by the applicant, any response by the department,

and any agreements between the parties. The banking commissioner may convene a hearing to take evidence on the matter.

(e) Decision on Appeal. The banking commissioner shall decide the appeal in the applicant's favor if the banking commissioner determines that the time periods established in this secrion have been exceeded and the department has failed to establish good cause for the delay. The banking commissioner shall issue a written decision to the applicant on or before the 60th day after the filing of an appeal. If an appeal is decided in an applicant's favor, the department will reimburse the application fee paid by the applicant. A decision in favor of the applicant under this subsection does not affect a decision to grant or deny the application based on applicable substantive law without regard to whether the application was timely processed.

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 December 15, 1995.

TRD-9516377 Everette D. Jobe
General Counsel
Texas Department of Banking

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For further information, please call: (512) 475-1300

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Subchapter B. Bank Charters

• 7 TAC §15.23, §15.24

The new sections are adopted under the Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable "to implement and clarify" the Act, and under Texas Civil Statutes, Article 342-1106(b), which authorize the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation. In addition, the sections are adopted under the Act, §1.012(a)(4) and §2. 006(b), which provides the commission with the authority to establish reasonable and necessary fees for the maintenance and administration of the Act. Additional statutory authority for certain fees can be found in the Act, §3.003(a) (bank charter fees and costs), §3.004(b) (expenses for charter investigation), §4.002(a) (fees and costs for review of acquisition of control), §9.004(a) (registration fees for foreign bank agencies), and §9. 006(a) (registration fees for foreign bank representative offices). With respect to application of the adopted sections to trust companies, Texas Civil Statutes, Article 342-1102, specifically makes selected provisions of the Act applicable to trust companies.

As required by the Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

§15.23. Application For Interim Bank Charters.

(a) General. The banking commissioner may issue an interim state bank charter solely for the purpose of facilitating the acquisition, reorganization, or merger of a pre-existing bank, if the resulting bank will engage in the business of banking in substantially the same markets. The applicant must submit the application for an interim bank charter on a form prepared and prescribed by the banking commissioner and tender the required filing fee pursuant to §15.2 of this title (relating to Filing Fees and Cost Deposits). The applicant must describe in detail the entire transaction in which the interim bank charter is proposed to be used and identify the resulting bank after completion of the transaction.

(b) Public Notice. Upon submission of application, the applicant shall publish notice as required by §15.5 of this title (relating to Public Notice) and in the community where the resulting bank is to be located.

(c) Public Comment. No hearing will be held regarding the issuance of an interim bank charter unless the banking commissioner, in the exercise of discretion, sets and convenes a hearing. Persons or entities submitting comments will not be entitled to further notice of or participation in the interim bank charter application proceedings.

(d) Adequacy of Capital. The banking commissioner shall determine the adequacy of capital for a proposed interim bank charter, except that an interim bank may not be chartered with a capital less than $5,000.

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.

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General Counsel
Banking Department of Texas

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Subchapter C. Bank Offices

• 7 TAC §15.41, §15.42

The new sections are adopted under the Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable "to implement and clarify" the Act, and under Texas Civil Statutes, Article 342-1106(b), which authorize the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation. In addition, the sections are adopted under the Act, §1.012(a)(4) and §2. 006(b), which provides the commission with the authority to establish reasonable and necessary fees for the maintenance and administration of the Act. Additional statutory authority for certain fees can be found in the Act, §3.003(a) (bank charter fees and costs), §3.004(b) (expenses for charter investigation), §4.002(a) (fees and costs for review of acquisition of control), §9.004(a) (registration fees for foreign bank agencies), and §9. 006(a) (registration fees for foreign bank representative offices). With respect to application of the adopted sections to trust companies, Texas Civil Statutes, Article 342-1102, specifically makes selected provisions of the Act applicable to trust companies.

As required by the Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

§15.41. Written Notice or Applications for Change of Home Office.

(a) General. A state bank may change its home office to one of its previously established branch locations pursuant to the Act, §3.202(b), by filing a written notice with and in the form prescribed by the banking commissioner and submitting the required filing fee pursuant to §15.2 of this title (relating to Filing Fees and Cost Deposits). A state bank desiring to change its home office to any other location pursuant to the Act, §3. 202(c), must file an application with and in the form prescribed by the banking commissioner along with appropriate filing fee pursuant to §15.2 of this title (relating to Filing Fees and Cost Deposits). Eligible banks may file an expedited application pursuant to §15.3 of this title (relating to Expedited Filing). The banking commissioner shall issue a written notice as required by §15.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(b) Public Notice.

(1) Within 14 days of the initial submission of a written application under the Act, §3.202(c), the applicant shall publish notice of the submission, as required by §15.5 of this title (relating to Public Notice). Notice shall be published in the community where the current home office of the bank is located and in the community of proposed home office.

(2) The notice must comply with the content requirements of §15.5(b) of this title (relating to Public Notice) and must also disclose the current location and the proposed home office location.

(c) Public Comment and Protest. For a period of 14 days after publication of notice or such longer period as the banking commissioner may allow for good cause shown, the public may submit written comments or protests regarding an application under the Act §3.202(c). Persons submitting comments are not be entitled to further notice of or participation in the proceedings. In the event of a properly filed protest, each protesting party has the rights and responsibilities of a protesting party to a branch application under §15.42 of this title (relating to Establishment and Closing of a Branch Office).

§15 42. Establishment and Closing of a Branch Office.

(a) Forms. A state bank that desires to establish and operate a branch office must complete and file a branch application on forms prescribed by the department. Eligible banks may file an expedited application pursuant to §15. 3 of this title (relating to Expedited Filing).

(b) Filing. The banking commissioner shall issue a written notice as required by §15.4 of this title (relating to Required Information and Abandoned Filings) informing the applicant either that all filing fees have been paid and the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Public Notice.

(1) Within 14 days of the initial submission of its application, the applicant shall publish notice of the application as required by §15.5 of this title (relating to Public Notice). Notice shall be published in the community of the proposed branch.

(2) The notice must comply with the content requirement of §15.5(b) of this title (relating to Public Notice) and shall also include the proposed location of the branch or service area.

(d) Public Comment and Protest. For a period of 14 days after publication of notice or such longer period as the banking commissioner may allow for good cause shown, the public may submit written comments or protests regarding the application. Persons submitting comments will not be charged any fees or costs, but are not entitled to further notice of or participation in the branch application proceedings. Each protesting party has the rights and responsibilities set forth in subsections (f) and (g) of this section.

(e) Criteria for branch approval: "Significant supervisory or regulatory concerns."

(1) In concluding whether the banking commissioner should have significant supervisory concerns regarding a proposed branch, the banking commissioner will consider the financial condition of the applicant, the financial effect of the branch on the applicant, the management abilities of the applicant, and the history and prospects of the applicant and its affiliates regarding fulfillment of responsibilities to regulatory agencies and to the public, including, but not limited to, the responsibility of the applicant to meet the credit needs of its entire community pursuant to the Community Reinvestment Act (CRA), 12 United States Code, §2901 et seq. An application will ordinarily be denied if the applicant is in less than satisfactory financial condition as of its most recent examination or has a less than satisfactory rating regarding compliance with CRA.

(2) In concluding whether the banking commissioner should have significant regulatory concerns regarding a proposed branch, the banking commissioner will consider the need to maintain a sound banking system. The banking commissioner will follow the principles that the marketplace normally is the best regulator of economic activity, and that healthy competition promotes a sound and more efficient banking system that serves customers well. Accordingly, absent significant supervisory concerns, the general policy of the banking commissioner is to approve applications to establish and operate branches, provided that approval would not otherwise violate the provisions of federal or state law (including any requirements for federal banking agency approval).

(3) In evaluating whether the banking commissioner should have significant supervisory or regulatory concerns as set forth in paragraphs (1) and (2) of this subsection, the banking commissioner will consider written material in the record, including the application, comments on file, protests on file, and any replies of the applicant, the department's files as they relate to the current financial condition of the applicant, and any data that the banking commissioner may properly officially notice. Specifically, the banking commissioner shall approve a branch if the following considerations are met:

(A) the department's files do not indicate significant regulatory concerns as they relate to the current financial condition of the applicant, including but not limited to its capital, asset quality, management, earnings and liquidity (these files are confidential pursuant to Texas Banking Act, Chapter 2, Subchapter B, and such rules and regulations adopted pursuant to the Act, are not open or available to either the applicant or a protesting party or to the public);

(B) the costs of establishing the proposed branch office, including costs of purchasing or leasing the branch site, necessary furnishings, staffing and equipment and the effect of these costs do not significantly affect the operations of the applicant as a whole;

(C) the projected earnings appear reasonable and sufficient to support expenses attributable to the branch without jeopardizing the safety and soundness of the applicant;

(D) the depth and quality of management of the applicant and the proposed branch is sufficient to justify a belief that the bank will operate in compliance with the Act;

(E) the bank has demonstrated compliance with CRA as determined by the rating assigned in the applicant's most recent CRA evaluation;

(F) the applicant has demonstrated a responsiveness to recommendations made in past state and federal bank examination reports and the applicant has generally been operated in substantial compliance with all applicable state and federal laws, and

(G) there are no areas of general supervisory concern as determined by the banking commissioner in the exercise of discretion.

(4) The banking commissioner will direct the department to assemble, evaluate, and make a recommendation regarding all relevant documentation and data as set forth in this subsection within 30 days after the later of the date the application is complete and accepted for filing, or expiration of the period for filing a comment, protest, response or reply, whichever is the last to occur; provided, however, that if a hearing is granted pursuant to subsection (g) of this section, the banking commissioner will request the administrative law judge for the

Finance Commission of Texas (administrative law judge) to discharge this function through the hearings process. Portions of the record so assembled that are confidential pursuant to Texas Banking Act, Chapter 2, Subchapter B, must be segregated and clearly marked as confidential.

(5) The banking commissioner shall either approve, conditionally approve or deny the application on or before the 30th day after receipt of the department's recommendation in the event no hearing is to be held.

(f) Protest.

(1) A protest may be initiated by notifying the department in writing of the intent to protest the application within the time period allowed by subsection (d) of this section, accompanied by the filing fee as set forth in §15.2(c) of this title (relating to Filing Fees and Cost Deposits). If the protest is untimely, the filing fee will be returned to the protesting party. If the protest is timely, the department will notify the applicant of the protest and mail or deliver a complete copy of the non-confidential sections of the application to the protesting party on or before the 14th day after receipt of the protest or the application, whichever occurs later.

(2) The protesting party shall file a detailed protest responding to each substantive statement contained in the non-confidential sections of the application within 20 days after receipt of the application. The protesting party's response must indicate with regard to each such statement whether it is admitted or denied. The applicant shall file a written reply to the detailed response on or before the tenth day after the response is filed. Both the detailed response and the reply thereto must be verified by affidavit and must contain a certificate of service on the opposing party. When applicable, statements in the response and in the reply may be supported by references to data available in sources of which official notice may properly be taken. Comments received by the department and any replies of the applicant to such comments will also be made available to the protesting party.

(3) The banking commissioner may extend any time period set forth in this subsection for good cause shown. Good cause includes, but is not limited to, failure of the department to furnish required documentation, forms or information within a reasonable time to permit its effective use by the recipient, or failure of a party to timely serve a filed document on an opposing party. The filing date is the date the document is actually received by the department and not the date of mailing. Failure to timely file a required document is considered an abandonment of the application or protest, as applicable. Rule 21a, Texas Rules of Civil Procedure, shall govern methods and manner of authorized service and the computation of time periods under this subsection.

(g) Hearing.

(1) Pursuant to Texas Banking Act, §3.203, the banking commissioner may not be compelled to hold a hearing prior to granting or denying approval to establish a branch.

(2) In the exercise of discretion, the banking commissioner may consider granting a hearing on a branch application at the request of either the applicant or a protesting party. The banking commissioner may order a hearing even if no hearing has been requested by the parties. A party requesting a hearing must indicate with specificity what issues are involved that cannot be determined on the basis of the record compiled pursuant to subsection (e) of this section and why the issues cannot be so determined. The request for hearing and the banking commissioner's decision with regard to granting a hearing will be made a part of the record.

(3) If a hearing is not requested or if a request for hearing is denied, the banking commissioner will consider the application in the manner set forth in and solely on the basis of the written record established pursuant to subsection (e) of this section.

(4) If a hearing is granted, the administrative law judge shall enter appropriate order(s) and conduct the hearing within 30 days after the date the hearing was granted, or as soon thereafter as is reasonably possible, under Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings) and the Administrative Procedure Act (Texas Government Code, Chapter 2001). Issues will be limited to those on which testimony is absolutely necessary, and the administrative law judge may require testimony to be submitted in written form and prefiled. No evidence will be received on matters that are not in dispute. No issues or evidence will be considered that are not relevant to the standards set forth in subsection (e) of this section or that are not supported by the application, response, or reply.

(5) A proposal for decision, exceptions and replies to such proposal for decision, the final decision of the banking commissioner, and motions for rehearing are governed by Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings).

(h) Beginning Operations. Any activity approved pursuant to this section must commence within 18 months from the date of approval unless the banking commissioner extends that date in writing. Approval will automatically expire 18 months from the date of approval if no extension is granted.

(i) Emergency Branches. The procedures set forth in subsections (c), (d), (f), and (g) of this section do not apply to branch applications made as a part of a transaction for the purpose of assuming all or a portion of the assets and liabilities of any financial institution deemed by the banking commissioner to be in hazardous condition. The banking commissioner may authorize banks to establish temporary branch locations in the event of an emergency as defined by the Act, §8.201. The procedures set forth in subsections (c), (d), (f) and (g) of this section do not apply to situations in which the banking commissioner has authorized a temporary branch location because of an emergency.

(j) Branch Relocation. A bank may, with prior written approval of the banking commissioner, relocate an approved branch. The bank shall file an application to relocate a branch accompanied by the required application fee pursuant to §15.2 of this title (relating to Filing fees and Cost Deposits). The bank shall also publish notice pursuant to §15.5 of this title (relating to Public Notice). Notice shall be published in the community, of the current branch and of the proposed branch.

(k) Closing a Branch. Before closing an approved branch, a bank shall comply with the notice requirements of federal law, and shall provide the department with a copy of the branch closing notice filed with the appropriate federal banking regulator simultaneously with its filing. Once the branch has been closed, the bank cannot thereafter reopen the branch except upon application for a new branch in compliance with this section.

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.

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TRD-9516379 Everette D. Jobe
General Counsel
Banking Department of Texas

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Subchapter D. Trust Company Applications

• 7 TAC §15.61, §15.62

The new sections are adopted under the Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable "to implement and clarify" the Act, and under Texas Civil Statutes, Article 342-1106(b), which authorize the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation. In addition, the sections are adopted under the Act, §1.012(a)(4) and §2. 006(b), which provides the commission with the authority to establish reasonable and necessary fees for the maintenance and administration of the Act. Additional statutory authority for certain fees can be found in the Act, §3.003(a) (bank charter fees and costs), §3.004(b) (expenses for charter investigation), §4.002(a) (fees and costs for review of acquisition of control), §9.004(a) (registration fees for foreign bank agencies), and §9. 006(a) (registration fees for foreign bank representative offices). With respect to application of the adopted sections to trust companies, Texas Civil Statutes, Article 342-1102, specifically makes selected provisions of the Act applicable to trust companies.

As required by the Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

§15.61. Applicability of Texas Banking Act.

(a) Applications for state trust company charters shall be made pursuant to Texas Civil Statutes, Article 342-1101, the Act, §§3.003-3.006, and §15.6 of this title (relating to Applications for Bank and Trust Charter) . A trust company is required to incorporate and may not organize as a limited banking association.

(b) A trust company may not change its home office without prior approval from the banking commissioner pursuant to the Act, §3.202(c). A trust company that desires to change its home office shall file an application with and in the form prescribed by the banking commissioner in accordance with §15.41 of this title (relating to Written Notice or Application for Change of Home Office).

§15.62. Exempt Trust Companies.

(a) Texas Civil Statutes, Article 342-1103, §6, states that a trust company that has been granted an exemption by the banking commissioner remains subject to certain provisions of the Texas Banking Code, including "Articles 5 and 14, Chapter III of this code (Articles 342-305 and 342-314, Vernon's Texas Civil Statutes)." Such statutory references are to provisions regarding the granting of charters, currently the Act, §§3.003-3.006, and change of home office, currently the Act, §3.202, as they were numbered prior to renumbering and rearrangement by Acts 1993, 73rd Legislature, Chapter 765, effective August 30, 1993, and repeal and re-enactment by Acts 1995, 74th Legislature, Chapter 914, effective September 1, 1995. The Act, §§3.003-3. 006 and 3.202, will be applied to exempt trust companies as if correctly referenced in Texas Civil Statutes, Article 342-1103, §6.

(b) An approval granted to an exempt trust company for a change of home office without proof of the factors listed in the Act, §3.003(b), is conditioned upon the trust company maintaining its exempt status. An exempt trust company that is granted such a conditional change of home office may not transact business with the general public from its new home office, regardless of a change in its exempt status, until and unless the banking commissioner affirmatively makes the findings listed in the Act, §3.003(b).

(c) No approval will be granted to an exempt trust company for a change to nonexempt trust company status, until and unless the banking commissioner affirmatively makes the findings listed in the Act, §3.003. The exempt trust company must comply with the provisions of the Act, §§3.003-3.006 and with the provisions of this chapter.

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.

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TRD-9516380 Everette D. Jobe
General Counsel
Banking Department of Texas

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Part III. State Banking Board

Chapter 31. Miscellaneous

The Finance Commission of Texas (the commission) adopts the repeal of the entirety of Title 7, Chapter 31, specifically §§31.1-31.4 (Subchapter A), §§31.20-31.22 (Subchapter B), and §31.40 and §31.41 (Subchapter C), concerning rules and procedures governing the affairs of the State Banking Board, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9355). Notice of the repeal of each subchapter is published separately as required by the *Texas Register*, preceded by this common preamble.

Pursuant to recently enacted Texas Civil Statutes, Articles 342-1.001 et seq (the Texas Banking Act, §§1.001 et seq) (the Act), the State Banking Board is eliminated effective September 1, 1995, and its powers and duties transferred to the Banking Commissioner and the commission. The substantive provisions of these sections that have continuing vitality are adopted as new sections in Title 7, Chapter 15, in this issue of the *Texas Register*.

No comments were received regarding adoption of the repeals.

Subchapter A. Procedures

• 7 TAC §§31.1-31.4

The repeals are adopted pursuant to rulemaking authority under the Act, §1.012(a)(1)), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Act. As required by the Act, §1. 012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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.

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TRD-9516381 Everette D. Jobe
General Counsel
State Banking Board

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Subchapter B. Bank Applications

• 7 TAC §§31.20-31.22

The repeals are adopted pursuant to rulemaking authority under the Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Act. As required by the Act, §1. 012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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.

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TRD-9516382 Everette D. Jobe
General Counsel
State Banking Board

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Subchapter C. Trust Company Applications

• 7 TAC §31.40, §31.41

The repeals are adopted pursuant to rulemaking authority under the Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Act. As required by the Act, §1. 012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within 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.

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For further information, please call: (512) 475-1300

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Part IV. Texas Savings and Loan Department

Chapter 67. Savings and Deposit Accounts

• 7 TAC §67.17

The Finance Commission of Texas adopts new §67.17, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines (ATMs), or remote service units, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9107).

Texas Civil Statutes, Article 342-903d (referred to as the ATM User Safety Act), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines. Provisions in the ATM User Safety Act purport to cross-reference to other provisions of the Texas Bank Code, Texas Civil Statutes, Articles 342-101 et seq, for definitional purposes, but the Texas Banking Code was in large part repealed by Act of May 18, 1995, 74th Legislature, Chapter 914, §26, 1995 Texas Session Law Service 4451, 4551, in connection with the adoption of the Texas Banking Act. Section 77.115(a) therefore contains definitions designed to facilitate understanding of these cross-references to repealed statutes.

The commission is aware that physical security of customers, employees, and property is of great concern to financial institutions and has been federally regulated by the Bank Protection Act of 1968 (12 United States Code, §1882) and Regulation P (12 Code of Federal Regulations, §§216.1 et seq). The ATM User Safety Act expands these requirements by specifying detailed requirements for unmanned teller machine security procedures, and further requires the commission to adopt rules to implement it. Accordingly, the proposed section provides additional clarification in those areas in which the ATM User Safety Act is not already explicit or is otherwise ambiguous. Safety procedures at ATMs must be in place no later than September 1, 1996, and required notices to customers must occur no later than January 1, 1996 and annually thereafter.

In developing this section, the commission was mindful of trends relating to the Bank Protection Act. That federal statute was implemented by extremely detailed regulations with specifications relating to security cameras and specific requirements for all manner of equipment and procedures. Over a period of time, the regulation became outdated on a more and more frequent basis so that the requirements of the regulation did not keep pace adequately with changes in the security field. As a result, in 1991 the regulatory scheme was amended to provide a broad framework with each financial institution expected to implement the security requirements as fit the institution, its community, changes in technology, and other relevant factors. In developing this section, the commission expects the same sort of procedure to be used by affected institutions. In other words, only a broad framework is established by this section.

Section 67.17(b) clarifies that candle foot power of lighting is to be measured under normal conditions, i.e., without complicating factors such as fog, rain, snow, sand or duststorm. One commenter to the Department of Banking suggested that the standard for lighting be expressed in terms of wattage. This suggestion is rejected. Wattage is a measure of power consumption, not light. Further, the statutory standard is expressed in terms of candle foot power, and candle foot power is readily measurable by a conventional light meter.

Special procedures for addressing noncompliance by landlords or owners of leased property on which ATMs are located is addressed by §67.17(c). Annual safety evaluations are required in §67.17(d). Financial institutions should notify landlords who fail to follow recommendations to improve the safety of an access area.

The requirement of ATM User Safety Act, §5, that customers be notified of basic safety precautions, is set forth in §67.17(e), including required timing and recommended content of the notice. The commenter to the Department of Banking suggested permitting the notice to be printed on the back of the customer's monthly statement as a method of simplifying the disclosure, pointing out that the disclosure would thus be available year round rather than once annually. After careful consideration, the agency rejected the suggestion on the basis that a special disclosure will more likely attract the attention of the customer and be read. However, the section will not prohibit printing the disclosures on the back of the statement as an additional step if an institution is so inclined.

The ATM User Safety Act, §7(b)(1), grants authority to the commission to require video surveillance equipment at ATM sites. The commission has determined that video surveillance equipment at ATM sites has limited utility and practicality, and may in fact lead a customer into a false sense of security. Accordingly, the commission declines to require video surveillance equipment at all ATM sites. Whether video surveillance equipment, alarm systems, or security officers are appropriate at a particular ATM site will depend on the safety evaluation of the owner or operator of the ATM that is required under the ATM User Safety Act, §4. The owner or operator may determine that unconnected or fake video surveillance equipment is appropriate. If the owner or operator determines that working video surveillance equipment is appropriate, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

Section 67.17(g) indicates that the ATM User Safety Act applies to ATMs located in a savings bank vestibule if there is 24-hour access from outside the building. Section 67.17(h) requires that the security officer of a financial institution certify compliance with the ATM User Safety Act and this subchapter on an annual basis.

One comment was received by the Department of Banking that was generally supportive of adoption of the section. Additional suggestions made by the commenter were rejected as explained in the previous paragraphs.

The new section is adopted under Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 15, 1995.

TRD-9516408 James L. Pledger
Commissioner
Texas Savings and Loan Department

Effective date: January 5, 1996

Proposal publication date: November 3, 1995

For further information, please call: (512) 475-1350

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Chapter 77. Loans, Investments, Savings and Deposits

Savings and Deposits

• 7 TAC §77.115

The Finance Commission of Texas adopts new §77.115, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines (ATMs), or remote service units, without changes to the proposed text as published in the November 3, 1995, issue of the *Texas Register* (20 TexReg 9109).

Texas Civil Statutes, Article 342-903d (referred to as the ATM User Safety Act), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines. Provisions in the ATM User Safety Act purport to cross-reference to other provisions of the Texas Bank Code, Texas Civil Statutes, Articles 342-101 et seq, for definitional purposes, but the Texas Banking Code was in large part repealed by Act of May 18, 1995, 74th Legislature, Chapter 914, §26, 1995 Texas Session Law Service 4451, 4551, in connection with the adoption of the Texas Banking Act. Section 77.115(a) therefore contains definitions designed to facilitate understanding of these cross-references to repealed statutes.

The commission is aware that physical security of customers, employees, and property is of great concern to financial institutions and has been federally regulated by the Bank Protection Act of 1968 (12 United States Code, §1882) and Regulation P (12 Code of Federal Regulations, §§216.1 et seq). The ATM User Safety Act expands these requirements by specifying detailed requirements for unmanned teller machine security procedures, and further requires the commission to adopt rules to implement it. Accordingly, the proposed section provides additional clarification in those areas in which the ATM User Safety Act is not already explicit or is otherwise ambiguous. Safety procedures at ATMs must be in place no later than September 1, 1996, and required notices to customers must occur no later than January 1, 1996 and annually thereafter.

In developing this section, the commission was mindful of trends relating to the Bank Protection Act. That federal statute was implemented by extremely detailed regulations with specifications relating to security cameras and specific requirements for all manner of equipment and procedures Over a period of time, the regulation became outdated on a more and more frequent basis so that the requirements of the regulation did not keep pace adequately with changes in the security field. As a result, in 1991 the regulatory scheme was amended to provide a broad framework with each financial institution expected to implement the security requirements as fit the institution, its community, changes in technology, and other relevant factors. In developing this section, the commission expects the same sort of procedure to be used by affected institutions. In other words, only a broad framework is established by this section.

Section 77.115(b) clarifies that candle foot power of lighting is to be measured under normal conditions, i.e., without complicating factors such as fog, rain, snow, sand or duststorm. One commenter to the Department of Banking suggested that the standard for lighting be expressed in terms of wattage This suggestion is rejected. Wattage is a measure of power consumption, not light. Further, the statutory standard is expressed in terms of candle foot power, and candle foot power is readily measurable by a conventional light meter.

Special procedures for addressing noncompliance by landlords or owners of leased property on which ATMs are located is addressed by §77.115(c) Annual safety evaluations are required in §77.115(d) Financial institutions should notify landlords who fail to follow recommendations to improve the safety of an access area.

The requirement of ATM User Safety Act, §5, that customers be notified of basic safety precautions, is set forth in §77.115(e), including required timing and recommended content of the notice. The commenter to the Department of Banking suggested permitting the notice to be printed on the back of the customer's monthly statement as a method of simplifying the disclosure, pointing out that the disclosure would thus be available year round rather than once annually. After careful consideration, the agency rejected the suggestion on the basis that a special disclosure will more likely attract the attention of the customer and be read. However, the section will not prohibit printing the disclosures on the back of the statement as an additional step if an institution is so inclined.

The ATM User Safety Act, §7(b)(1), grants authority to the commission to require video surveillance equipment at ATM sites. The commission has determined that video surveillance equipment at ATM sites has limited utility and practicality, and may in fact lead a customer into a false sense of security. Accordingly, the commission declines to require video surveillance equipment at all ATM sites Whether video surveillance equipment, alarm systems, or security officers are appropriate at a particular ATM site will depend on the safety evaluation of the owner or operator of the ATM that is required under the ATM User Safety Act, §4. The owner or operator may determine that unconnected or fake video surveillance equipment is appropriate. If the owner or operator determines that working video surveillance equipment is appropriate, the owner or operator must provide for selecting, testing, operating, and maintaining appropriate equipment.

Section 77.115(g) indicates that the ATM User Safety Act applies to ATMs located in a savings bank vestibule if there is 24 hour access from outside the building. Section 77.115(h) requires that the security officer of a financial institution certify compliance with the ATM User Safety Act and this subchapter on an annual basis.

One comment was received by the Department of Banking that was generally supportive of adoption of the section. Additional suggestions made by the commenter were rejected as explained further in the previous paragraphs.

The new section is adopted under Texas Banking Act, §1.013, House Bill 1543, Acts, 74th Legislature, Regular Session, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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 15, 1995.

TRD-9516409 James L. Pledger
Commissioner
Texas Savings and Loan Department

Effective date: January 5, 1996

Proposal publication date: November 3, 1995

For further information, please call: (512) 475-1350

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TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 305. Licenses for Pari-mutuel Racing

Subchapter B. Individual Licenses

General Provisions

• 16 TAC §305.35

The Texas Racing Commission adopts an amendment to §305.35, concerning license fees, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7912).

The amendment is adopted to ensure that occupational licensees will be licensed in the appropriate category and the commission's licensing function will be self-sufficient in terms of cost.

The amendment adds licensing categories and annual fees for chart writers, training

facility employees, and training facility general managers.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §5.01, which authorizes the commission to prescribe reasonable license fees for each category of license issued; and §7.05, which authorizes the commission to adopt a rule that sets a fee schedule for occupational licenses.

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 December 11, 1995.

TRD-9516271 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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• 16 TAC §305.37

The Texas Racing Commission adopts an amendment to §305.37, concerning restrictions on licensing, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7913).

The amendment is adopted to ensure that the commission's licensing function will operate efficiently and effectively.

The amendment permits a racing official to be licensed in another capacity, subject to the approval of the stewards or racing judges.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.07, which authorizes the commission to specify the authority and duties of each racing official; and §7.02, which authorizes the commission to specify the qualifications and experience required for each category of 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 authority.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516272 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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Subchapter D. Suspension and Revocation of Licenses

• 16 TAC §305.241

The Texas Racing Commission adopts an amendment to §305.241, concerning the applicability of the commission's rules regarding suspending and revoking licenses, without changes to the proposed text published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9240).

The amendment is adopted to ensure that pari-mutuel racing will be of the highest integrity.

The amendment clarifies that if one occupational license held by a person is suspended, all other occupational licenses issued by the commission to that person are considered suspended.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to revoke and suspend racetrack licenses; and §7.04, which authorizes the commission to revoke and suspend occupational licenses.

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 December 11, 1995.

TRD-9516273 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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Chapter 307. Practice and Procedure

Subchapter C. Proceedings by Stewards and Racing Judges

Appeals to Commission

• 16 TAC §307.262

The Texas Racing Commission adopts an amendment to §307.262, concerning the hearing procedure for appeals from stewards' and judges' rulings, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9240).

The amendment is adopted to ensure that the commission's administrative procedures will be efficient and effective.

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

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §3.08, which requires appeals from stewards' and judges' decision to be appealable under the Administrative Procedure Act; and Texas Government Code, §2001.004, which requires the commission to adopt rules of practice for all available formal and informal procedures.

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 December 11, 1995.

TRD-9516274 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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Chapter 309. Operation of Racetracks

Subchapter A. General Provisions

Facilities and Equipment

• 16 TAC §309.14

The Texas Racing Commission adopts an amendment to §309.14, concerning accessibility of racetrack facilities by disabled persons, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7914).

The amendment is adopted to ensure that pari-mutuel racetracks will be safe and accessible to all patrons.

The amendment requires each pari-mutuel racetrack to have a plan for accommodating the wagering and entertainment needs of its disabled patrons.

No comments were received regarding adoption of the amendment.

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

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 December 11, 1995.

TRD-9516275 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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Subchapter B. Horse Racetracks

Operations

• 16 TAC §309.199

The Texas Racing Commission adopts an amendment to §309.199, concerning the horsemen's bookkeeper, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9241).

The amendment is adopted to ensure that pari-mutuel racing is conducted in accordance with applicable law.

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

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all matters relating to the planning, construction, and operation of racetracks; and §6.08, which prohibits a racetrack from deducting any portion from a horse owner's account for payment to an organization except to an organization of the owner's choice.

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 December 11, 1995.

TRD-9516276 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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Subchapter C. Greyhound Racetracks

Operations

• 16 TAC §309.357

The Texas Racing Commission adopts an amendment to §309.357, concerning schooling, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7914).

The amendment is adopted to ensure that the commission's rules will avoid duplication and be internally consistent.

The amendment deletes a reference to schooling requirements for greyhounds, to avoid duplication with another commission rules.

No comments were received regarding adoption of the amendment.

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

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 December 11, 1995.

TRD-9516277 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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Chapter 313. Officials and Rules of Horse Racing

Subchapter A. Officials

Duties of Other Officials

• 16 TAC §313.56

The Texas Racing Commission adopts an amendment to §313.56, concerning the duties of the stable superintendent, without changes to the proposed text published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7915).

The amendment is adopted to ensure that the commission's rules will avoid duplication and be internally consistent.

The amendment deletes the requirement that the stable superintendent collect health certificates on horses arriving in the stable area. Although a current health certificate is required for a horse to enter the grounds of a pari-mutuel racetrack, the commission no longer requires the certificate to be filed in the racing office.

No comments were received regarding adoption of the amendment.

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

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 December 11, 1995.

TRD-9516278 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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Subchapter E. Training Facilities

• 16 TAC §313.504

The Texas Racing Commission adopts an amendment to §313.504, concerning the operational requirements of licensed training facilities, without changes to the proposed text published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7915).

The amendment is adopted to ensure that patrons will have accurate information regarding the experience and fitness of race horses running at pari-mutuel racetracks.

The amendment prohibits a training facility licensee from conducting a race at its facility or permitting its facility to be used to conduct a race. Nonpari-mutuel races which are not regulated by the commission permit a horse to participate in competition before participating in a pari-mutuel race. As such, a horse may have much more experience and talent than that which would be reflected in the officially reported past performance information for publication in the program. Therefore, the patrons would not receive the most accurate and complete information regarding a horse's abilities which is necessary for handicapping purposes. Prohibiting a training facility licensee from conducting such races which have the potential to mislead pari-mutuel patrons will remove any impression that such races are sanctioned by the Texas Racing Commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for ad-

ministering the Texas Racing Act; §3.021, which authorizes the commission to adopt rules regulating races and workouts at racetracks that do not offer pari-mutuel wagering; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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 December 11, 1995.

TRD-9516279 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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Chapter 315. Officials and Rules for Greyhound Racing

Subchapter B. Entries and Pre-Race Procedures

• 16 TAC §315.101

The Texas Racing Commission adopts an amendment to §315.101, concerning registration of greyhounds, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7915).

The amendment is adopted to ensure that the pari-mutuel greyhound racing program will operate efficiently and effectively. The amendment eliminates the requirement that greyhound leases be record the lease with the National Greyhound Association.

No comments were received regarding adoption of the amendment.

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

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 December 11, 1995.

TRD-9516280 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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• 16 TAC §315.111

The Texas Racing Commission adopts an amendment to §315.111, concerning schooling requirements for greyhounds, without changes to the proposed text published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7916).

The amendment is adopted to ensure that pari-mutuel greyhound racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing greyhounds.

The amendment clarifies the time frame for requiring a greyhound to school.

No comments were received regarding adoption of the amendment.

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

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 December 11, 1995.

TRD-9516281 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date. January 3, 1996

Proposal publication date: September 29, 1995

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

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Chapter 319. Veterinary Practices and Drug Testing

Subchapter A. General Provisions

• 16 TAC §319.7

The Texas Racing Commission adopts an amendment to §319.7, concerning the medication labeling requirements, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7916).

The amendment is adopted to ensure that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals.

The amendment requires all medications possessed on the grounds of a pari-mutuel racetrack to include on its label the manufacturer, the active ingredients, and the expiration date.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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 December 11, 1995.

TRD-9516282 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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• 16 TAC §319.14

The Texas Racing Commission adopts an amendment to §319.14, concerning possession of controlled substances, without changes to the proposed text as published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7917).

The amendment is adopted to ensure that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals.

The amendment adds legend drugs to the list of substances that may not be prescribed or administered solely for racing or training purposes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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 December 11, 1995.

TRD-9516283 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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• 16 TAC §319.15

The Texas Racing Commission adopts new §319.15, concerning storage of certain medications, without changes to the proposed text published in the September 29, 1995, issue of the *Texas Register* (20 TexReg 7917).

The new section is adopted to ensure that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals.

The new section requires a person possessing a vaccine, antitoxin, or immune serum to ensure the product is kept in an appropriate container to preserve the product's potency and efficacy.

No comments were received regarding adoption of the new section.

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

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 December 11, 1995.

TRD-9516284 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: September 29, 1995

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

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Subchapter B. Treatment of Horses

• 16 TAC §319.111

The Texas Racing Commission adopts an amendment to §319.111, concerning the bleeders and furosemide (Lasix) program of the commission, without changes to the proposed text published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9241).

The amendment is adopted to ensure that pari-mutuel racing will be of the highest caliber, will be conducted with the utmost integrity, and will be safe for the racing animals.

The amendment eliminates the requirement that the commission verify certification criteria for a horse certified as a bleeder in another state before admitting the horse to the Texas bleeder program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3. 02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks; and §14.03, which authorizes the commission to adopt rules prohibiting the illegal influencing of the outcome of a race.

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 December 11, 1995.

TRD-9516285 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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Chapter 321. Pari-mutuel Wagering

Subchapter B. Distribution of Pari-mutuel Pools

• 16 TAC §§321.110, 321.116, 321.117

The Texas Racing Commission adopts amendments to §§321.110, 321.116, and 321.117, concerning the distribution of the trifecta, superfecta, and tri-superfecta pools. §321.116 is adopted with changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9242). Section 321.110 and §321.117 are adopted without changes and will not be republished.

The amendments are adopted to ensure that pari-mutuel wagering will be of the highest caliber and will be conducted with the utmost integrity.

The amendments modify the priority of distribution of the pools in the event no ticket is sold correctly selecting all the winning animals, clarify when coupled entries or mutuel fields may start in races with these wagers, and specify when the pool will be canceled because of a small running field. These amendments are proposed to make the rules of the commission regarding similar wagers consistent. The changes to the proposed text in §321.116 clarify that the minimum number of animals required for the superfecta pool applies only to horses. The change is necessary to make the superfecta rule consistent with the trifecta rule.

No comments were received regarding adoption of the amendments.

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

§321.116. Superfecta.

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

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

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

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 December 11, 1995.

TRD-9516286 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: February 1, 1996

Proposal publication date: November 7, 1995

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

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Subchapter C. Simulcast Wagering

General Provisions

• 16 TAC §§321.203-321.205

The Texas Racing Commission adopts amendments to §§321.203-321.205, concerning the procedure for approving applications for simulcasting, without changes to the proposed text as published in the November 7, 1995, issue of the *Texas Register* (20 TexReg 9243).

The amendments are adopted to ensure that pari-mutuel wagering on simulcast races will be conducted with the utmost integrity and in accordance with applicable law.

The amendments modify the procedure for applying for and approving simulcasting.

No comments were received regarding adoption of the amendments.

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

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

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 December 11, 1995.

TRD-9516287 Paula Cochran Carter
General Counsel
Texas Racing Commission

Effective date: January 3, 1996

Proposal publication date: November 7, 1995

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

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TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 75. Curriculum

Subchapter AA. Driver Education

• 19 TAC §75.1010

The Texas Education Agency (TEA) adopts new §75.1010, concerning the certificate of completion of an approved driver education course, with changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9362). The rule is necessary to provide an increase in accountability for driver education certificates and a decrease in unauthorized use of the certificates. The rule establishes the fee for a driver education certificate and requirements relating to issuing, completing, and maintaining the certificate.

The changes to the rule, which occur throughout the text, delete any language allowing TEA to transfer a driver education certificate (DE-964E) to the Texas Department of Public Safety. The Driving School Association of Texas requested these changes.

The new section is adopted under Senate Bill 964, §9A, which authorizes TEA to provide by rule for the design and distribution of the driver education certificate and to charge a fee for each certificate.

§75.1010. Procedures for Student Certification.

(a) The Texas Education Agency (TEA) shall be responsible for providing the driver education certificate (Form DE-964E) to public schools, education service centers (ESCs), and colleges or universities exempt from the Texas Driver and Traffic Safety Education Act. On this form, the driver education instructor and the chief school official, ESC director, or individuals designated by the chief school official or ESC director must certify that the driver education course was conducted according to TEA and DPS education standards for an approved course in driver education for Texas schools.

(1) For schools exempt from the Texas Driver and Traffic Safety Education Act, the DE-964E certificate shall consist of five parts to be designated as follows: Texas Department of Public Safety Copies (Instruction Permit and Driver's License), Insurance Copy, Texas Education Agency Copy, and School Copy. The DE-964E certificate is used to certify completion of an approved driver education course and is a government record.

(2) The TEA shall charge a fee of $1.00 for each DE-964E certificate provided.

(3) The DE-964E certificates shall be issued to the chief school official, ESC director, or individuals designated by the chief school official or ESC director to be responsible for managing the certificates.

(4) Responsibilities of the chief school official, ESC director, or a designee.

(A) The chief school official, ESC director, or a designee may request to receive serially numbered DE-964E certificates for exempt schools by submitting a completed order on the form provided by the commissioner of education stating the number of certificates to be purchased and including payment of all appropriate fees.

(B) The chief school official, ESC director, or a designee shall be responsible for accounting for each DE-964E certificate he or she has been issued. All DE-964E certificates and records of certificates shall be maintained in an orderly fashion.

(C) All DE-964E certificates and records of certificates must be provided to TEA or DPS upon request. The chief school official, ESC director, or a designee shall maintain the school copies of the certificates and submit the TEA copies of all issued certificates to TEA no later than February 15, June 15, and September 15 of each year. The chief school official, ESC director, or a designee shall return unissued DE-964E certificates to TEA within 30 days from the date the school discontinues the driver education program, unless otherwise notified.

(D) Each chief school official, ESC director, or a designee shall ensure that the policies concerning DE-964E certificates are followed by all individuals who have responsibility for the certificates.

(E) The chief school official, ESC director, or a designee shall maintain effective protective measures to ensure that unissued DE-964E certificates and records of certificates are secure. The chief school official, ESC director, or a designee shall report any incident of unaccounted DE-964E certificates to TEA immediately upon discovering the incident. If such an incident occurs, the chief school official, ESC director, or a designee shall conduct an investigation to determine the circumstances of the unaccounted certificates. A report of the findings of the investigation, including measures taken to prevent the incident from recurring, shall be submitted to TEA within 30 days of the discovery.

(F) The right to receive DE-964E certificates may be immediately suspended for a period determined by TEA if:

(i) a TEA investigation is in progress and TEA has reasonable cause to believe the certificates have been misused or abused or that adequate security was not provided; or

(ii) the chief school official, ESC director, or a designee fails to provide information on records requested by TEA or DPS within the allotted time.

(5) The DPS copy of a DE-964E certificate must contain the original signature of the certified instructor. The name of the chief school official, ESC director, or a designee may be written, stamped, or typed.

(6) The chief school official, ESC director, or a designee may issue a duplicate DE-964E certificate to a student who completed a course under the responsibility of the chief school official, ESC director, or a designee. The duplicate shall indicate the control number of the original DE-964E certificate.

(b) A student may take the examination for an instruction permit when the DE-964E certificate showing completion of class instruction or of specified lessons in concurrent programs is presented to any driver's license office.

(c) The instruction permit restricts a student to driving "accompanied by a licensed driver, age 18 or over, in the front seat." An examination to remove this restriction cannot be given until the licensee is 18 or presents the DE-964E certificate showing that he or she completed an approved driver education program, including the laboratory phase, after reaching the age of 16.

(d) An authorized DPS employee shall accept a DE-964E certificate when a certified driver education instructor certifies that the driver education program was completed according to the standards for an approved course and that the student has achieved the competencies specified in the

curriculum guide. The school official shall make a copy of the teacher's certificate for driver education available to authorized DPS representatives when requested.

(e) When a student completes a driver education course under more than one certified driver education instructor, each instructor shall complete a separate DE-964E certificate for the part of the course he or she taught, attach to it a statement of the hours taught, and number the certificate in the order in which the student received instruction. However, the chief school official or ESC director may designate one certified driver education teacher to sign the DE-964E certificate. In a concurrent program, only one teacher shall be required to sign a DE-964E certificate, but each teacher giving instruction in the concurrent program must be a fully certified driver education teacher or state-approved teaching assistant. In each case, the teacher signing the DE-964E certificate must compile all records and verify the student's successful completion.

(f) When a student changes schools before completing the classroom or laboratory instruction, he or she shall receive credit for the hours completed, provided the student enrolls within 90 days and completes courses at least comparable to those in which the student was first enrolled. The teacher of the course in which the student was originally enrolled shall prepare a DE-964E certificate, attaching to it a statement showing the number of hours completed and the titles of the lessons in the state-approved curriculum guide completed for each phase of the program, and mail the form to the chief official of the school to which the student is transferring. When the student completes the course, the second teacher shall issue a second DE-964E certifying the student's instruction in the manner explained in subsection (e) of this section.

(g) When more than one certificate is necessary to show completion of a course, each certificate must be presented to the driver's license office when the student applies for a Texas instruction permit or for removal of restrictions. However, the chief school official or ESC director may designate one teacher to compile all records, verify the student's successful completion, and issue only one DE-964E.

(h) When it is impossible or inconvenient for the certified driver education instructor to sign a driver education certificate (because of transfer, illness, or death, etc.), the superintendent, ESC director, or chief school official or individuals designated by the chief school official or ESC director may, by completing the driver education affidavit form on the reverse side of the DE-964E certificate, certify that official records show a particular student completed an approved driver education course.

(i) Each record must be included as part of the student's record when it is necessary to compile records to verify that a student successfully completed a driver education course.

(j) A student may receive credit for course hours completed before a teacher's endorsement was suspended provided the suspension was not for an infraction that would conclusively establish the course as inadequate.

(k) The DPS shall accept DE-964E certificates marked "innovative program" only when the program has been approved in advance by TEA and DPS. When an innovative program has been approved, DPS shall be notified.

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 15, 1995.

TRD-9516419 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 463-9701

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Chapter 176. Driver Training Schools

The Texas Education Agency (TEA) adopts new §§176.1001-176.1003, 176. 1101, and 176.1102, concerning Texas driver education and driving safety schools, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9363). The new rules are necessary to increase awareness of traffic safety and move toward reducing the toll in human suffering and property loss inflicted by vehicle crashes. The rules establish minimum requirements for teenage and adult driver education courses; the circumstances under which course approval may be revoked or denied; and responsibilities concerning issuance of the certificate of completion of an approved driver education course and the uniform certificate of completion for driving safety.

No comments were received regarding adoption of the new sections.

Subchapter AA. Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools

- **19 TAC §§176.1001-176.1003**

The new sections are adopted under Texas Civil Statutes, Article 4413(29c), §6(b), which authorize the commissioner of education to establish by rule the curriculum and designate the textbooks that must be used in a driver education course; Texas Civil Statutes, Article 4413(29c), §9A, which authorize TEA to provide by rule for the design and distribution of the certificate of completion of an approved driver education course; and Texas Civil Statutes, Article 6701d, §143A(f), which authorize TEA to provide by rule for the design and distribution of the uniform certificate of course completion.

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 15, 1995.

TRD-9516420 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 463-9701

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Subchapter BB. Commissioner's Rules on Minimum Standards for Operation of Texas Driving Safety Schools and Course Providers

- **19 TAC §176.1101, §176.1102**

The new sections are adopted under Texas Civil Statutes, Article 4413(29c), §6(b), which authorize the commissioner of education to establish by rule the curriculum and designate the textbooks that must be used in a driver education course; Texas Civil Statutes, Article 4413(29c), §9A, which authorize TEA to provide by rule for the design and distribution of the certificate of completion of an approved driver education course; and Texas Civil Statutes, Article 6701d, §143A(f), which authorize TEA to provide by rule for the design and distribution of the uniform certificate of course completion.

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 15, 1995.

TRD-9516421 Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 537. Professional Agreements and Standard Contracts

• 22 TAC §§537.11, 537.43, 537.44

(Editor's note. The following adopted sections were published in the December 19, 1995 issue of the Texas Register (20 TexReg 10898). The adopted sections contained the proposed preamble from the October 10, 1995 issue of the Texas Register These sections are being republished in this issue for clarification.)

The Texas Real Estate Commission adopts an amendment to §537.11, new §537.43, and new §537.44, concerning standard contract forms. Section 537. 11 is adopted with changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8300). New §537.43 and §537.44 are adopted without changes and will not be republished. The amendment to §537.11 adds two forms to the list of standard contract forms promulgated by the commission. The forms were developed by the Texas Real Estate Broker-Lawyer Committee, a committee of six real estate brokers appointed by the commission and six attorneys appointed by the State Bar of Texas. The two new forms are TREC Number 36-0, Addendum for Property Subject to Mandatory Membership in an Owner's Association, and TREC Number 37-0, Resale Certificate for Property Subject to Mandatory Membership in an Owner's Association. On final adoption, a nonsubstantive change was made to the text of §537.11 to correct a misidentification of form TREC Number 11-2.

New §537.43 adopts TREC Number 36-0 by reference. The form is an addendum for use with other TREC contract forms. The form would be used to specify whether the buyer requires the seller of the property to deliver a resale certificate or other documents to the buyer; if the resale certificate is required but is not timely delivered, the buyer may terminate the contract within three days after time for the certificate to have been delivered. If the resale certificate is required and is timely delivered, the buyer may terminate the contract upon reasonable objection to the resale certificate within 72 hours after the certificate is delivered. The buyer would waive the right of termination if it is not exercised within 72 hours after the certificate is delivered. The addendum also addresses repairs to the property which are the obligation of the owners' association. The addendum sets up a process for the buyer to obtain the assurance of the owners' association that required repairs to such property will be performed or the buyer may terminate the contract. Transfer fees and current assessments may also be disclosed to the buyer in the addendum. Form TREC Number 36-0 was revised at the suggestion of a member of the commission to include restrictive covenants among the documents that the buyer could require to be delivered, to specify to whom and at what address assessments are paid and to indicate the name and address of the manager of the association. Nonsubstantive changes were also made to rearrange the text for ease of reading and to clarify the choices for the persons using the form.

New §537.44 adopts TREC Form Number 37-0 by reference. The form is a resale certificate to be completed by or on the behalf of the owners' association. The form would be used to provide the buyer with information concerning rights of first refusal held by the association, assessments, unpaid obligations of the seller, capital expenditures, reserves, pending law suits, insurance coverage, violations of by-laws, rules of the association or material physical defects in the property, violations of health of building codes, transfer fees and leasehold estates affecting the property. At the suggestion of a member of the commission, restrictive covenants were added to the list of documents that would be provided along with the resale certificate.

No comments were received regarding adoption of the amendment and new sections.

The amendment and new sections are adopted under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

§537.11. Use of Standard Contract Forms

(a) Standard Contract Form TREC No. 2-4 is promulgated for use as an addendum only to another promulgated standard contract form. Standard Contract Form TREC No. 9-2 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC No. 10-2 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 11-2 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC No. 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC No. 13-1 is promulgated for use as an addendum concerning new home insulation to be attached to promulgated forms of contracts. Standard Contract Form TREC No. 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC No. 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-2 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 21-2 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 23-1 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC No. 24-1 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC No. 25-1 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC No. 26-2 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC No. 27-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is an inspection with a right to terminate. Standard Contract Form TREC No. 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC No. 29-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC No. 30-0 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC No. 31-0 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC No. 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC No. 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form No. 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form No. 35-0 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form No. 36-0 is promulgated for use as an addendum to be added to promulgated forms in the sale of property

subject to mandatory membership in an owners' association. Standard Contract Form TREC Form No. 37-0 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association.

(b)-(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 12, 1995.

TRD-9516257 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date: January 3, 1996

Proposal publication date: October 10, 1995

For further information, please call: (512) 465-3900

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter H. Dental Program

• 25 TAC §406.351, §406.352

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts the repeal of §406.351 and §406.352, governing the dental program in the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program in Texas. The repeal is adopted contemporaneously with the adoption of new sections of Chapter 406, Subchapter H, in this issue of the *Texas Register.*

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

There were no written public comments received during the pubic comment period.

The repeals are adopted under the Health and Safety Code, §532.015(a), which provides the Texas Department Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

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 13, 1995.

TRD-9516269 Ann Utley
Chairman
Texas Department of Mental Health and Mental Retardation

Effective date: January 3, 1996

Proposal publication date: October 3, 1995

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

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• 25 TAC §§406.351-406.381

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§406.351-406.381 of Chapter 406, Subchapter H, governing the dental program in the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program in Texas. Sections 406.351, 406.354, 406.357, 406.363, 406. 366, 406.367, 406.369, 406.371, 406.378, 406.380 and 409.381 are adopted with changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8064). Sections 406.352, 406.353, 406.355, 406.356, 406.358-406.362, 406.364, 406.365, 406.368, 406.370, 406.372-406.377 and 406.379 are adopted without changes to the proposed text. The repeal of §§406.351-406.352 of existing Chapter 406, Subchapter H, governing the dental program, is published contemporaneously in this issue of the *Texas Register.*

TDMHMR adopts new §§406.351-406.381 of Chapter 406, Subchapter H governing the dental program in the Intermediate Care Facilities for the Mentally Retarded (ICF/MR) program in Texas as part of the transfer of ICF/MR state operating agency functions from the Texas Department of Human Service (TDHS) to TDMHMR. The adoption will allow TDMHMR to assume policymaking responsibility for the ICF/MR dental program. These rules will be updated at a later date to reflect the current operating policy in the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Dental Program. This transfer is enacted under the authority of the Health and Human Services Commission as the Medicaid single state agency.

Language in §§406.351, 406.354, 406.357, 406.363, 406.366, 406.367, 406. 369, 406.378, 406.380 and 409.381 was changed to reference TDMHMR rather than TDHS.

Language in §406.351(b) was changed to state that rates are derived from the state's EPSDT dental fee schedule.

Language in §406.352(a)(1) was changed to state that information contained in the individual's record may be provided only to legally authorized persons.

Language in §406.367(a)(2) was changed to further clarify the definition of maximum fee.

Language in §406.371 was changed to state that claims must be received by the National Heritage Insurance Corporation (NHIC) within 95 days rather than 90 days, and to delete text regarding a five-day allowance for mail time.

Language in §406.381(b) was changed to reference the administrative rules of TDMHMR rather than TDHS.

There were no written public comments received during the pubic comment period.

The new sections are adopted under the Health and Safety Code, §532.015(a) , which provides the Texas Department Mental Health and Mental Retardation Board with broad rulemaking authority; and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provide the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

§406.351. Program Basis.

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

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

§406.354. Freedom of Choice.

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

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

(c) The facility must advise the individual of the right to request a hearing conducted by TDMHMR if the individual believes that the right to freely choose providers has been abridged without due process. §406.355. Allowable Services and Limitations. The ICF/MR dental program pays only for medically necessary covered and allowable services as specified by the department. §406.356. Dental Examination and Treatment. The ICF/MR dental program provides emergency, preventive, therapeutic, and orthodontic dental services.

§406.357. Emergency Services.

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

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

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

§406.363. Requirements for Participation.

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

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

(c) Participation in the program is voluntary.

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

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

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

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

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

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

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

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

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

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

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

§406.367. Maximum Payment.

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

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

(2) Maximum fee–The highest fee that the NHIC pays for an allowable procedure, derived from the state's EPSDT dental fee schedule. NHIC shall advise participating providers in writing of the maximum fee schedule when the provider is enrolled in the program and whenever maximum fees change.

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

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

(1) the provider's usual fee,

(2) the maximum fee listed on the fee schedule, or

(3) the adjusted authorized fee.

§406.369. Payment of Claims.

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

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

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

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

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

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

(1) Dental services claims must be received by the NHIC within 95 days of the service date.

(2) If a service is billed to another insurance resource, the NHIC claim must be filed within 95 days of the disposition by the other resource.

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

(b) If the services of a treatment plan cannot all be completed within the 95-day filing limit, the provider must complete a claim form for the completed services and request authorization for the uncompleted services. The provider submits the claim and the authorization request together to NHIC. As appropriate, NHIC pays for the completed services and authorizes the remaining services.

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

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

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

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

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

(3) the claim is submitted after the 95-day time limit;

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

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

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

(7) required information is missing from the claim; or

(8) the lifetime limitations on certain procedures have been exhausted.

§406.378. Report of Findings. ICF/MR dental program utilization review staff must notify the provider in writing of the review findings. The provider must also be notified of any administrative action to be taken by TDMHMR. The notification may occur after an action taken by another professional dental or governmental organization.

§406.380. Restitution of Overpayments. If, during the review, exceptions are found which indicate overpayment for services rendered or payment for services not rendered, the department requires restitution. The provider must reimburse the TDMHMR for all amounts owed as a result of overpayments and payments for services not rendered. The amount of money to be repaid includes the dollar value of the discrepancies in the claims reviewed. The amount also includes a dollar value derived by applying the monetary discrepancy rate to all of the provider's other treatment claims paid during the period under review.

§406 381. Administrative Actions.

(a) If discrepancies or irregularities are found during the review, the TDMHMR may take one or more administrative actions. These actions include, but are not limited to, the following:

(1) recoupment of funds;

(2) referral to a professional dental advisory and review committee for review and recommendation;

(3) probation;

(4) referral to peer review committee for review and recommendation;

(5) termination of the provider agreement;

(6) referral to the Texas State Board of Dental Examiners; and

(7) referral to the Texas Attorney General's Medicaid Fraud Control Unit.

(b) If TDMHMR takes adverse action against a provider, the provider has a right to a formal hearing as specified in rules of TDMHMR §§409.031-409.035.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on December 13, 1995.

TRD-9516270 Ann Utley
Chairman
Texas Department of Mental Health and Mental Retardation

Effective date: January 3, 1996

Proposal publication date: October 3, 1995

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.2

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §101.2, concerning Multiple Air Contaminant Sources or Properties, with changes to the proposed text as published in the August 22, 1995, issue of the *Texas Register* (20 TexReg 6391). The amendment is in response to a petition filed by a corporation.

The Multiple Air Contaminant Sources or Properties rule allowed two or more property holders in counties with populations less than 50,000 to petition the TNRCC to have their properties designated as a single property for the purpose of controlling air emissions. The rule could have been applied to properties which were contiguous except for intervening roads, railroads, rights-of-way, canals, and watercourses considered to be part of the area for purposes of this provision.

The amendment eliminates the 50,000 population limitation and limits the use of the provision to property under the control of a single entity which has been or will be divided and placed under the control of separate entities, creating a new property line configuration and/or for those properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity. The amendment will further restrict contiguous properties to those separated only by roads, railroads, and rights-of-way which are a part of the property. Properties separated by a public right-of-way will not be considered contiguous.

A public hearing was held on September 21, 1995. Five commenters submitted testimony during the public comment period which closed on September 22, 1995. The commenters were: Lone Star Chapter of the Sierra Club (Sierra Club); the United States Environmental Protection Agency (EPA); Jones & Neuse; Kelly, Hart & Hallman; and Exxon Company, USA.

The Sierra Club commented that the rule revision does not appear to allow for any change in air quality protection; however, it could be made more clear that facilities petitioning must clearly demonstrate that there are no adverse impacts and that the citizens in the area are not or have not complained about air pollution as to reflect a potential condition for air pollution in violation of the Texas Clean Air Act (TCAA). The Sierra Club also commented that the rule should require a thorough case-by-case review, such as modeling to support that there will be no adverse impacts to public health.

All petitions will be reviewed on a case-by-case basis to ensure compliance with the rule language. The rule only affords the regulated community the availability of a petition for continued treatment as a single property and does not provide any exemption from current TNRCC regulations. The single property designation does not relieve any party from compliance with state and federal regulations or existing permit conditions. The petition must include information on how compliance with regulations will be administered and controlled.

The Sierra Club commented that the TNRCC may no longer be able to issue violations for excessive air pollution measured off-site and also that the rule change may impede violations or enforcement based on samples taken by the TNRCC in public rights-of-way. The Sierra Club suggested adding language indicating that if the air pollution potentially impacting a nearby community is measured or confirmed in a public right-of-way, then the agency maintains the jurisdiction to determine if corrective action is required of the source.

This rule change will not interfere with the agency's ability to enforce any regulations or the TCAA. The rule requires the petitioning parties to name the party or parties accepting responsibility for off-property impacts and detail in writing the mechanism of control exercised on both properties. The rule language also allows the agency to place such conditions on the approval as it deems necessary to avoid a condition of air pollution or ensure compliance with state and federal regulations. Additionally, the rule language in subsection (b)(1) is intended to exclude properties separated by a public right-of-way from being considered contiguous. To clarify this point, the

language has been revised to make clear that properties separated by public rights-of-way will not be considered contiguous.

The Sierra Club commented that a concern is environmental justice through disparate treatment. The commenter questioned whether the proposed rule change will create, perpetuate, and promote disparate treatment of racial minorities so as to discriminate, even unintentionally, in violation of Title VI.

The proposed rule change will not promote, perpetuate, or create disparate treatment of racial minorities in any fashion.

The EPA had no adverse comments regarding the proposed rule change, provided that each transaction be accompanied by a positive statement indicating ownership, control, and any requirements which shall apply upon completion of the transaction.

The proposed language addresses the issues raised by the EPA and will ensure that there is a clear understanding between the petitioners and the agency as to ownership, control, off-property impacts responsibility, and that the single property designation does not exempt the property and/or properties from compliance with any applicable state and federal regulations.

Jones & Neuse commented that the language is vague regarding multiple changes in ownership of a subdivided property. In other words, if Company A sells a portion of its property to Company B and Company B then sells to Company C, is the single property designation available to Companies A and C?

The rule language allows for successive changes in ownership of a property designated a single property. However, this would apply only in the case of change of ownership with no changes to the responsibility for off-property impacts or the mechanism of control exercised over the properties. Changes in the executed written agreement would require the companies to submit a new petition. Jones & Neuse commented that it would appear that by deleting the existing language, any existing single property designations would be negated.

It is the TNRCC's intent that the deletion of the existing language not be construed as altering any existing air pollution control zones established under the old rule. Properties designated as such are allowed to operate under the single property designation.

Kelly, Hart & Hallman expressed concern that the new language not be construed to alter any existing air pollution control zones. The commenter mentioned that the rule change likely would not have that effect, but requested clarification of this point.

The TNRCC agrees with the commenter that the intent of the rule change and deletion of the existing language will have no effect on any existing air pollution control zones or on any existing single property designations.

Exxon supported the proposed rule change, stating that the adoption of the rule will allow more flexibility to the regulated community in achieving the state's air quality goals.

The TNRCC agrees with the commenter that the rule change will add flexibility while maintaining progress toward the state's air quality goals.

§101.2. Multiple Air Contaminant Sources or Properties.

(a) (No change.)

(b) Two or more property owners/operators may petition the commission to have their properties designated a single property for purposes of demonstrating compliance with TNRCC regulations and the control of air emissions. The petition shall be subject to the following criteria.

(1) The properties must be contiguous except for intervening roads, railroads, and/or rights-of-way, which are a part of the property. Properties separated by a public right-of-way will not be considered contiguous.

(2) The use of this section is intended for a property under the control of a single entity that has been or will be divided and placed under the control of separate entities, creating a new property line configuration or for properties operated or intended to be operated as an integrated plant or plants where individual facilities are owned by separate entities, but all facilities are under the control of a single entity.

(3) The petition shall describe generally the manner in which the control of emissions and demonstration of compliance with TNRCC regulations will be administered and controlled. The petition shall name the party or parties accepting responsibility for off-property impacts. The petition shall be accompanied by a copy of an executed written agreement between the property holders who consent to having their properties so designated and shall also be accompanied by a United States Geological Survey map or equivalent indicating geographical features such as roads, watercourses, and prominent landmarks, the boundaries of the petitioners' properties, the area to be included in the single property designation, and present land uses in the areas surrounding the area to be included. The written agreement must detail the mechanisms of control exercised on both properties. The commission may place such conditions on the approval of the petition as it may deem appropriate to avoid a condition of air pollution or ensure compliance with state and federal regulations.

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 13, 1995.

TRD-9516455 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Effective date: January 8, 1996

Proposal publication date: August 22, 1995

For further information, please call: (512) 239-1966

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter L. Motor Fuels Tax

• 34 TAC §3.171

The Comptroller of Public Accounts adopts an amendment to §3.171, concerning records required; information required, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8410).

The State of Texas became a member of a multistate fuel tax agreement on July 1, 1995. Liquefied gas interstate truckers are required to maintain mileage records and fuel purchase invoices. Permitted liquefied gas dealers are required to maintain records of taxable deliveries.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 14, 1995.

TRD-9516337 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 4, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.175

The Comptroller of Public Accounts adopts an amendment to §3.175, concerning liquefied gas tax decal, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8411).

The amendment reflects a legislative change concerning when the tax on liquefied gas used in interstate motor vehicles registered in the State of Texas and operating under a

multistate tax agreement shall be paid.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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, §153.302.

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 14, 1995.

TRD-9516338 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 4, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.177

The Comptroller of Public Accounts adopts new §3.177, concerning separate liquefied gas tax permits required, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8411).

The State of Texas became a member of a multistate fuels tax agreement on July 1, 1995. Interstate truckers registered under the multistate tax agreement and that deliver liquefied gas into the fuel supply tanks of certain motor vehicles from their own bulk storage must secure a liquefied gas dealer's permit. A liquefied gas dealer's permit is required when making taxable deliveries of liquefied gas. A permitted liquefied gas dealer operating certain motor vehicles interstate must secure a separate interstate trucker's permit.

No comments were received regarding adoption of the new section.

The new section is adopted 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 new section implements the Tax Code, §153.302.

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 14, 1995.

TRD-9516339 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 4, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.179

The Comptroller of Public Accounts adopts the repeal of §3.179, concerning liquefied gas dealers operating as interstate truckers, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8412).

The State of Texas became a member of a multistate fuels tax agreement on July 1, 1995. This agreement will require permitted liquefied gas dealers to secure a separate liquefied gas interstate trucker permit for certain motor vehicles. The separate permit requirement is included in new §3.177 concerning Separate Liquefied Gas Permits Required.

No comments were received regarding adoption of the repeal.

The repeal is adopted 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.

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 14, 1995.

TRD-9516340 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 4, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-4062

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• 34 TAC §3.196

The Comptroller of Public Accounts adopts an amendment to §3.196, concerning reports, due dates, bonding requirements, and qualifications for annual filers, without changes to the proposed text as published in the October 17, 1995, issue of the *Texas Register* (20 TexReg 8412).

The State of Texas became a member of a multistate fuels tax agreement on July 1, 1995. Interstate truckers registered under the multistate tax agreement are required to file reports based on different criteria than interstate truckers not registered under the multistate tax agreement.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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, §153.302.

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 14, 1995.

TRD-9516341 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 4, 1996

Proposal publication date: October 17, 1995

For further information, please call: (512) 463-4062

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Subchapter O. State Sales and Use Tax

• 34 TAC §3.323

The Comptroller of Public Accounts adopts an amendment to §3.323, concerning imports and exports, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8597).

The Tax Code, §151.006 and §151.152, was amended effective September 1, 1995, to exempt sales for resale to Mexico. The amendment provides a reference to §3.285 concerning the acceptance of valid and properly completed resale certificates from Mexican retailers.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 13, 1995.

TRD-9516305 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 3, 1996

Proposal publication date: October 20, 1995

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

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Subchapter V. Franchise Tax

• 34 TAC §3.559

The Comptroller of Public Accounts adopts an amendment to §3.559, concerning earned surplus: temporary credit, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8599).

Subsection (d)(4) was amended to correct an improper rule reference. Subsection (f) was amended to reflect a change in policy.

No comments were received regarding adoption of the amendment.

The amendment is adopted 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.

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 14, 1995.

TRD-9516342 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Effective date: January 4, 1996

Proposal publication date: October 20, 1995

For further information, please call: (512) 463-3725

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Part IV. Employees Retirement System of Texas

Chapter 73. Benefits

• 34 TAC §73.11

The Employees Retirement System of Texas adopts an amendment to §73.11, concerning the supplemental retirement program, without changes to the proposed text as published in the October 24, 1995, issue of the *Texas Register* (20 TexReg 8783).

The amendment will implement legislation passed by the 74th Legislature regarding an increase of the disability payment for certain retirees who are occupationally disabled.

Requirements for an increase in the occupational disability annuity will now be clarified for retirees.

The amendment is adopted under the Government Code, §815.102, which provides the Employees Retirement System of Texas with the authority to adopt rules for the administration of the funds of the retirement system and the transaction of any other business of 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 15, 1995.

TRD-9516364 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Effective date: January 5, 1996

Proposal publication date: October 24, 1995

For further information, please call: (512) 867-3336

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Chapter 87. Deferred Compensation

• 34 TAC §§87.1, 87.3, 87.5, 87.9, 87.13, 87.15, 87.17, 87.19, 87.21

The Employees Retirement System of Texas adopts amendments to §§87.1, 87.3, 87.5, 87.9, 87.13, 87.15, 87.17, 87.19, and 87.21, concerning the deferred compensation program, with changes to the proposed text as published in the October 27, 1995, issue of the *Texas Register* (20 TexReg 8898). Changes made were typographical only in subparagraphs (N) and (O) of §87.3(b) (3).

These amendments clarify that agency coordinators have the responsibility to ensure that the participant does not exceed the plan's annual deferral limits or the catch-up limits and provide that vendors will promptly process emergency withdrawals.

These changes will allow the plan administrator to more effectively administer the state deferred compensation plan and to better serve plan participants.

The amendments are adopted under the Government Code, Title 6, Subtitle A, Chapter 609, §609.508, which provides authorization for the board to adopt rules, regulations, plans, and procedures to carry out the purposes of this Act.

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

Non-filer-A qualified vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to Reporting and Record Keeping by Qualified Vendors).

§87.3. Administrative and Miscellaneous Provisions.

(a) (No change.)

(b) Participation by state agencies in the plan.

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

(3) Agency Coordinators. An agency coordinator is responsible for:

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

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $7,500 or 25% of the participant's gross income is not exceeded;

(F) calculating and monitoring catch-up limits and furnishing the plan administrator with the applicable catch-up forms;

(G) ensuring that all forms and other paperwork are properly completed and forwarded to the appropriate party;

(H) balancing participant records and reconciling those records with the data provided by qualified vendors and the plan administrator;

(I) informing employees and participants about the plan, including the necessity to file distribution agreements in accordance with §87.17 concerning Distributions;

(J) acting as a buffer between employees and participants on the one hand and qualified vendors on the other, although an agency coordinator is not required to provide investment advice;

(K) attempting to locate missing participants and beneficiaries in accordance with §87.17(q) concerning Distributions;

(L) assisting a participant who has retired or left state employment if the participant's last position in state government was with that particular agency that employs the agency coordinator;

(M) continuing to assist a participant with all deferred compensation matters if a participant transfers from a participating state agency to a non-participating state agency until the participant returns to a different participating agency;

(N) assisting the beneficiary of a participant whose last position in state government was with that particular state agency that employs the agency coordinator;

(O) notifying the plan administrator when a participant dies or separates from service; and

(P) performing any other duties specified in the sections in this chapter.

(c) Miscellaneous provisions.

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

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, the plan administrator, or the State of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency.

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

§87.5. Participation by Employees.

(a)-(e) (No change.)

(f) Normal maximum amount of deferrals.

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

(4) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of $7,500 or 25% of a participant's gross income is not exceeded. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken.

(A) Upon notification by the participant's agency, the vendor will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of $7,500 or 25% of the participant's gross income without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(g) Catch-up exception to the normal maximum amount of deferrals.

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

(6) The participant's employing agency will calculate and monitor all catch-up limits and furnish the plan administrator with the applicable catch-up forms. If a participant makes deferrals in excess of the participant's catch-up limit, the following actions will be taken.

(A) Upon notification by the participant's agency, the vendor will return to the participant's agency, the amount of deferrals in excess of the catch-up limit without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(7) This subsection applies only if the participant has not previously used the catch-up exception with respect to a different normal retirement age under the plan or another deferred compensation plan governed by the Internal Revenue Code of 1986, §457.

(8) No participant shall be permitted to participate in any catch-up provision during or after the calendar year in which the participant reaches normal retirement age. If a participant makes deferrals in excess of the normal plan limits under the catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the vendor will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of $7,500 or 33 1/3% of includible compensation without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's state agency will reimburse the participant through its payroll system.

(h)-(n) (No change.)

§87.9. Investment Products.

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

(c) Eligibility of investment products. The investment products that are eligible for approval as qualified investment products are:

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

(4) money market accounts, certificates of deposit, share certificates or passbook savings accounts offered by a bank, savings and loan association, or credit union.

(d)-(e) (No change.)

(f) Withdrawal of a qualified investment product from the plan.

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

(6) When a qualified vendor that is an insurance company with existing life policies in the plan withdraws a life insurance product from the plan, this paragraph applies in addition to the preceding paragraphs of this subsection.

(A) (No change.)

(B) A participant whose deferrals and investment income have been invested in a withdrawn life insurance product may continue life insurance coverage with the insurance company offering the product.

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

(E) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the coverage directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(F) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the insurance company written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the withdrawal of the life insurance product from the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(G) When a participant elects to continue life insurance coverage, the insurance company with which the coverage is continuing may not:

(i) -(viii) (No change.)

(H) (No change.)

(I) a vendor does not comply with subparagraph (H) of this paragraph, then a participant may exercise the participant's right to continue insurance up to the 120th day after the vendor actually mails written notice to the participant containing a full explanation of the participant's rights.

§87.13. Disclosure.

(a) Approval of a disclosure form.

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

(3) Upon receipt, the plan administrator shall review a disclosure form to determine whether it complies with the requirements of this section in addition to any other applicable state or federal regulatory requirements. The plan administrator must approve the disclosure form if it complies. Otherwise, the plan administrator shall disapprove the disclosure form.

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

(b) Contents of disclosure forms.

(1) A qualified vendor must uni-

formly state on all its disclosure forms basic information common to all qualified investment products offered by the vendor and also disclose any other state or federal regulatory information required.

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

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

§87.15. Transfers.

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

(h) Telephone transfers within qualified vendors.

(1) (No change.)

(2) When a participant is in distribution, the telephone transfer option may be used; however, it must be used in accordance with §87.17(i)(6) (C) of this title (relating to Transfers).

(3) (No change.)

§87.17 Distributions.

(a)-(b) (No change)

(c) Content of a distribution agreement.

(1) (No change.)

(2) The person filing the distribution agreement must attach a properly executed Form W-4 to the agreement.

(3) (No change.)

(d) (No change.)

(e) Filing of distribution agreements by participants.

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

(7) Nowithstanding anything to the contrary in this subsection, a participant who has not separated from service and who has reached age 70.5 must file a distribution agreement only if the participant wants distributions to begin. The distribution agreement must be filed with the participant's agency coordinator. The agency coordinator shall review and forward the distribution agreement in accordance with paragraphs (4) and (5) of this subsection. A participation agreement to stop deferrals effective no later than the distribution begin date must also be filed with the participant's agency coordinator.

(8) (No change.)

(f)-(h) (No change.)

(i) Amendments of distribution agreements.

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

(6) Transfers after a distribution has begun.

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

(C) Unless previously approved by the plan administrator in accordance with subparagraph (D) of this paragraph, deferrals and investment income may not be transferred from one qualified investment product to two or more qualified investment products. In other words, deferrals and investment income that have been invested in a single qualified investment product may not be separated into two or more qualified investment products.

(D) A participant may apply for approval from the plan administrator to transfer funds from one qualified investment product to two or more qualified investment products prior to the transfer. Upon approval, the participant and the vendor must follow all instructions and procedures prescribed by the plan administrator. The plan administrator may not grant such approval unless distributions continue in essentially the same manner as prior to the transfer and in accordance with subsections (g), (h), and (i) of this section and with federal regulations relating to distributions.

(7)-(8) (No change.)

(j) (No change.)

(k) Emergency withdrawals.

(1) (No change.)

(2) The participant must request the emergency withdrawal by filing a completed emergency withdrawal application with the plan administrator. An emergency withdrawal application:

(A) (No change.)

(B) must be accompanied by two copies of a Form W-4 specifically tailored to the withdrawal.

(3)-(10) (No change.)

(l)-(q) (No change.)

(r) Processing of distributions and emergency withdrawals. A qualified vendor shall process distributions and emergency withdrawals and resolve administrative problems with the plan administrator within a reasonable length of time, not to exceed the 30th day after receiving a letter of authorization for distributions and not to exceed the 15th day after receiving a letter of authorization for emergency withdrawals.

(s) (No change.)

(t) Federal withholding and reporting requirements.

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

(4) Federal tax withholding is mandatory for distributions to participants. A qualified vendor shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4 submitted by the participant at the time of a distribution. If no Form W-4 is provided, the participant must be considered single with no dependents. The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Internal Revenue Code of 1986, §457.

(5)-(6) (No change.)

§87.19. Reporting and Recordkeeping by Qualified Vendors.

(a) (No change.)

(b) Reports to participants or beneficiaries.

(1) Generally.

(A) A qualified vendor shall issue a report after the end of each calendar quarter to each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the vendor, except if the investment is in a product that is annuitized.

(B) (No change.)

(C) A qualified vendor shall ensure that the participant or beneficiary receives the report no later than the 45th day after the end of each calendar quarter.

(D) The report must show for each qualified investment product:

(i) amount of the participant's or beneficiary's deferrals and investment income in the product, including transfers;

(ii)-(iii) (No change.)

(iv) current market value of the participant's or beneficiary's deferrals and investment income.

(2) (No change.)

(3) Final reports. If a participant or beneficiary receives a lump-sum distribution, the qualified vendor from whom the lump-sum distribution is made shall issue a final report to the participant or beneficiary containing the information required in paragraph (1) of this subsection. The report must accompany the lump-sum distribution.

(c) (No change.)

(d) Quarterly reports to the plan administrator.

(1) Frequency and coverage of quarterly reports. Every vendor that has participant or beneficiary deferrals, investment income, and/or annuitized accounts must ensure that the plan administrator receives a

report no later than the 35th day after the end of each calendar quarter. The report must be in the format specified in this subsection and must cover all transactions during the calendar quarter.

(2) Intent of quarterly reports. For each participant or beneficiary whose deferrals and investment income are invested in a qualified investment product offered by the vendor, the report required by this subsection must contain but is not limited to:

(A) participant's or beneficiary's name, agency code and social security number(s);

(B) list of the qualified investment products in which the participant's or beneficiary's deferrals and investment income have been invested even if the investment is in a product that is annuitized;

(C)-(E) (No change.)

(F) current market value of each participant's or beneficiary's deferrals and investment income in each qualified investment product, including annuitized accounts and, including, if appropriate, the number of shares and per share market value;

(G)-(I) (No change.)

(J) the amount of each separate net distribution to the participant or beneficiary.

(3) Format of quarterly reports.

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

(D) The product types must be defined and coded as prescribed by the plan administrator and as in the DCP quarterly reporting specifications.

(E) If a participant or beneficiary has invested deferrals and investment income in two or more qualified investment products offered by the same qualified vendor and the products are of the same type, then the vendor must report a cumulative total of those deferrals and investment income.

(F) Failure to submit a quarterly report with an authorized signature will result in a formal reprimand. After three formal reprimands, a vendor is subject to suspension or expulsion from the plan.

(4) (No change.)

(e) (No change.)

(f) Quarterly reconciliation. In accordance with §87.3(b)(3)(H) of this title (relating to Participation by State Agencies), an agency coordinator is responsible for balancing participant and beneficiary records and reconciling those records with the data provided by qualified vendors and the plan administrator. Vendors shall assist the plan administrator and state agencies with correcting and explaining any discrepancies. Failure to assist the plan administrator and state agencies with this reconciliation will be considered a rules violation, and the plan administrator may take appropriate action under §87.21 of this title (relating to Remedies).

§87.21. Remedies.

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

(c) Continuation of life insurance coverage.

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

(3) A participant whose deferrals and investment income were invested in a terminated life insurance product may continue life insurance coverage with the insurance company offering the terminated life insurance product.

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

(6) If a participant continues life insurance coverage in a life insurance product that is not a qualified investment product, the participant must pay the premiums for the product directly to the insurance company. The premiums may not be paid with deferrals or investment income.

(7) A participant may exercise the participant's right to continue life insurance coverage only if the participant mails to the qualified vendor written notice of intention to continue the coverage. The written notice must be postmarked no later than the 60th day after the effective date of the termination of participation in the plan. However, an insurance company may increase the 60-day time limit for a participant or for all participants.

(8) When a participant elects to continue life insurance coverage, the life insurance company offering the product via which the participant is continuing coverage may not:

(A)-(G) (No change.)

(9) An insurance company must ensure that each participant entitled to continue life insurance coverage under this subsection receives written notice of the participant's right by no later than the 30th day after the plan administrator mails notice to the company of a termination described in paragraph (1) of this subsection.

(10) an insurance company does not comply with paragraph (9) of this subsection, then a participant may exercise the participant's right to continue life insurance coverage up to the 60th day after the insurance company actually mails written notice to the participant containing a full explanation of the participant's rights.

(d)-(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 15, 1995.

TRD-9516362 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Effective date: January 5, 1996

Proposal publication date: October 27, 1995

For further information, please call: (512) 867-3336

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Part III. Texas Youth Commission

Chapter 85. Admission and Placement

Placement Planning

• 37 TAC §§85.21, 85.23, 85.25, 85.27, 85.29, 85.30, 85.33, 85.35, 85.37, 85.47

The Texas Youth Commission (TYC) adopts amendments to §§85.21, 85.23, 85.25, 85.27, 85.29, 85.30, 85.33, 85.35, and 85.37, concerning the program assignment system, classification, minimum length of stay, program restriction levels, program comoletion and movement, involvement of victims, parole of undocumented nationals, sentenced offender disposition, discharge; and new §85.47, concerning sex offender registration. Sections 85.21, 85.23, 85.25, 85.27, 85.29, 85.35, and 85.37 are adopted with changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9384). Sections 85.30, 85.33, and 85.47 are adopted without changes and will not be republished.

The amendments and new section are being adopted for compliance with legislation of the 74th legislative session and with legislative intent to better protect the public from destructive delinquent behavior.

In order to simplify and reduce unnecessary procedural language, the adopted sections have been edited and language rearranged. More significant changes are detailed.

The change in §85.21 elements the TYC classification violator of children in need of supervision (CINS) since commitment for this offense is no longer legal.

Changes in §85.23 correct references to Pe-

nal Code offenses and their application listed under sentenced offender offenses and the offense of burglary was changed from the general offender classification to the type B violent offender classification to be more consistent with new sentenced offender laws. The section allowing staff to waive a classification has been eliminated.

Changes to §85.25 clarify the intent of assigning a minimum length of stay for TYC youth and for time credited toward that assignment.

Changes to §85.27 reflect an explanation of the security of a facility being provided by a high number staff rather than a physical means. Examples of programs which provide varying restriction levels have been made less specific to promote a broader understanding.

Changes in §85.29 add for clarity, information on the types of due process required to return youth to facilities, though the same information could be found in other sections. Criteria set by law and or by TYC for transferring youth from TYC to the Department of Criminal Justice (TDCJ) has been specified and the paragraphs of this section rearranged. Detail has been added on population control release.

Changes to §85.35 simplify procedures for transferring youth to TDCJ consistent with legislation of the 74th Legislature.

A change was made to §85.37 to eliminate unnecessary language resulting when TYC management policy to discharged general offenders at age 18 was eliminated. The order of the information in this section has been rearranged.

The amendments herein implement changes in TYC systems to provide for youth being held for longer periods of time in secure facilities and in requirements in the Family Code and Human Resources Code effective in 1996 for youth sentenced to commitment in TYC.

No comments were received regarding adoption of the amendments and new section

The amendments and new section are adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine placement and treatment, §61.079, which provides the Texas Youth Commission with the authority to refer youth for transfer to TDCJ, §61.081, which provides the Texas Youth Commission with the authority to release youth under supervision, and §61.084, which provides the Texas Youth Commission with the authority to terminate custody of youth.

The proposed amendments and new section implement the Human Resource Code, §61.034.

§85.21. Program Assignment System.

(a) Policy. The Texas Youth Commission (TYC) utilizes an objective, equitable system of program assignment for each youth in TYC care. Based on each youth's offense(s), and risk level, TYC has predetermined the most appropriate level of restriction and minimum length of stay requirements for public protection and to promote rehabilitation. The assessment and placement process provides current information on individual youth needs. Youth in coeducational facilities have equal access to agency programs and activities.

(b) Rules.

(1) Placement System Factors. The program placement system incorporates the following factors.

(A) Classification is determined by the classifying offense and a finding regarding extenuating circumstances.

(B) The minimum length of stay is designated by the classification. See GOP.47.05, §85.25 of this title (relating to Minimum Length of Stay).

(C) Risk is assessed and used as a guideline in designating restriction level.

(D) Placements are made according to restriction and needs.

(i) Initial placements are always to residential programs, except for some youth classified as violators of CINS probation.

(ii) The youth's assessed service needs are considered in the selection of a placement within the required level of restriction.

(2) System Description. The determining factors result in the following placement and length of stay determinations for all TYC youth on initial commitment, for youth recommitted for the commission of a felony or high risk offense, and for youth found at an administrative level I hearing to have committed a felony or high risk offense.

(A) A sentenced offender is assigned a minimum length of stay set by the court and, regardless of risk level, is assigned to a program of high restriction with a fenced perimeter.

(B)• A type A violent offender is assigned a minimum length of stay of 24 months and with any risk level, is assigned to a program of high restriction with a fenced perimeter.

(C) A type B violent offender is assigned a minimum length of stay of 12 months, and with any risk level, is assigned to a program of high restriction.

(D) A chronic serious offender, controlled substances dealer, or firearms offender classified on or after January 1, 1996 is assigned a minimum length of stay of twelve months and with any risk level, is assigned to a program of high restriction. The minimum length of stay for these youth classified before January 1, 1996 is nine months.

(E) A general offender classified:

(i) on or after January 1, 1996 is assigned a minimum length of stay of nine months, and with a:

(I) high risk level, is assigned to a program of high restriction;

(II) low or medium risk level, is assigned to a program of medium restriction.

(ii) before January 1, 1996 is assigned a minimum length of stay of six months, and with a:

(I) high risk level, is assigned to a program of high restriction;

(II) low or medium risk level, is assigned to a program of medium restriction.

(3) Responsibility. The specific program placement selection for each youth is the responsibility of the centralized placement unit for all placements.

(4) Waivers and Exceptions. Waivers and exceptions may be granted under special circumstances.

(A) A restriction level designation, except that of sentenced offender or type A violent offender, may be waived by the assessment unit superintendent when a youth is qualified. A designated restriction may be waived in order to provide specialized treatment not available in the designated restriction when it is determined that a youth is physically/mentally handicapped, has a special medical condition, or is emotionally disturbed, if such condition would prevent the youth from functioning in the designated placement.

(B) Any placement designation except those of sentenced offenders and type A violent offenders may be waived by the assessment unit superintendent when population is at or above established capacity.

(C) For waiver of classification, see GOP. 47.03, §85.23 of this title

(relating to Classification).

(D) For movement for population control see GOP.47.09, 85.29 of this title (relating to Program Completion and Movement).

(5) Parent Notification. Parents/guardians are notified of all placements.

§85.23. Classification.

(a) Policy. Classification is based on the youth's offense history, the classifying offense, and a finding regarding extenuating circumstances incident to the classifying offense. A youth who commits an offense while in TYC custody may be administratively reclassified through a Level I hearing.

(b) Explanation of Terms Used.

(1) Classifying Offense. The classifying offense is the most serious of the relevant offenses documented in the youth's record. Relevant offenses are:

(A) on commitment, the committing offense and any offense(s) for which the youth was on probation at the time of the committing offense; or

(B) following a level I hearing, the offense(s) found at the hearing.

(2) Committing Offense. The committing offense is the most serious of the offenses found at the youth's most recent judicial proceeding.

(3) Most Serious Offense. The most serious offense is determined according to the following hierarchy, with each subsequent factor being considered only if two or more relevant offenses yield the same result under the preceding factor. If two or more offenses yield the same results through all steps of the hierarchy, determination of the most serious offense is left to the discretion of the staff assigning classification. The most serious offense is:

(A) an offense which carries determinate sentence;

(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TYC;

(C) the offense which requires the highest level of restriction in placement;

(D) the offense which carries the most severe criminal penalty; and

(E) the most recently adjudicated offense.

(4) Federal Offenses. If a committing and/or classifying offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal statute. Federal violations will be identified by the code number assigned to the corresponding substantive state statute preceded by an "F".

(c) Rules.

(1) Classifications.

(A) Sentenced Offender. A sentenced offender is a youth committed to TYC pursuant to the Family Code, §54.04(d)(3) or §54.05(f) for offenses committed:

(i) prior to January 1, 1996, for:

(I) murder, 19.02, all

(II) capital murder, 19.03, all

(III) aggravated kidnapping, 20.04, all

(IV) aggravated sexual assault, 22.021, all

(V) deadly assault on a law enforcement officer, corrections officer, or court participant, 22.03

(VI) criminal attempt, 15.01, only if the offense attempted was Capital Murder (§19.03)

(ii) on or after January 1, 1996, for an offense listed in clause (i) of this subparagraph or:

(I) sexual assault, 22.011, all

(II) aggravated assault, 22.02, all

(III) aggravated robbery, 29.03, all

(IV) injury to a child, elderly individual, or disabled individual, 22.04, first, second or third degree felony only

(V) deadly conduct, 22.05, felony only

(VI) aggravated or first degree controlled substances felony, Subchapter D, Chapter 481, Health and Safety Code, aggravated or first degree felony only

(VII) criminal solicitation, 15.03, all

(VIII) indecency with a child, 21.11, second degree felony only

(IX) criminal solicitation of a minor, 15.031, all

(X) criminal attempt, 15.01, only if offense attempted was a murder (§19.02), indecency with a child (§21.11(a)(1)), aggravated kidnapping (§20.04), sexual assault 22.011(a)(2) upon a child only, aggravated sexual assault (§22.021), aggravated robbery (§29.03), or repeat conviction under Health and Safety Code, §481.134(c), (d), (e), or (f).

(XI) habitual felony conduct as defined in Juvenile Justice Code, 51. 031

(B) Type A-Violent Offender. A type A violent offender is a youth whose classifying offense is one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition (Title 5) for each offense in its entirety except where TYC policy limits the applicability to the specific subsections or under the conditions named.

(i) murder 19.02 all

(ii) capital murder 19.03 all

(iii) criminal attempt, 15.01, only if the offense attempted was Capital Murder (§19.03) or murder (§19. 02)

(C) Type B-Violent Offender. A type B violent offender is a youth whose classifying offense is the commission, attempted commission, conspiracy to commit, solicitation, or solicitation of a minor to commit one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition for each offense listed in clauses (i)-(xvii) of this subparagraph in its entirety except where TYC policy limits the applicability to specific subsections or under the conditions named.

(i) murder. 19.02, conspiracy, solicitation, or solicitation of a minor only;

(ii) capital murder, 19.03, conspiracy, solicitation, or solicitation of a minor only;

(iii) manslaughter, 19.04, all;

(iv) kidnapping, 20.03, all;

(v) aggravated kidnapping, 20.04, all;

(vi) indecency with a child, 21.11, second degree felony only;

(vii) sexual assault, 22.011, all;

(viii) aggravated assault, 22.02, all;

(ix) aggravated sexual assault, 22.021, all;

(x) injury to child, elderly or disabled individual 22.04, first, second or third degree felony only;

(xi) deadly conduct, 22.05, felony only;

(xii) aiding suicide, 22.08, felony only;

(xiii) tampering with a consumer product, 22.09, first or second degree felony only;

(xiv) arson, 28.02, all;

(xv) aggravated robbery, 29.03, all;

(xvi) burglary 30.02, only with intent to commit any other violent offense defined in this paragraph;

(xvii) intoxication manslaughter, 49.08, all;

(xviii) intentionally participating with six or more persons in conduct at a TYC facility that endangers persons or property and substantially obstructs the performance of facility operations;

(xix) intentionally, knowingly, or recklessly causing bodily injury to a TYC:

(I) employee;

(II) contract program employee; or

(III) volunteer.

(D) Chronic Serious Offender. A chronic serious offender is a youth whose classifying offense is a felony and who has been found to have committed at least one felony in each of at least three separate and distinct due process hearings, where the second felony was committed after the disposition of the first felony and the third felony was committed after the disposition of the second felony.

(E) Controlled Substances Dealer. A controlled substances dealer is a youth whose classifying offense is any felony grade offense defined as a manufacture or delivery offense under the Texas Controlled Substances Act, Chapter 481, Health and Safety Code.

(F) Firearms Offender. A firearms offender is a youth whose classifying offense involved a finding by the court or TYC hearings examiner that the youth possessed a firearm during the offense. Classifying offenses for this classification are not limited to offenses specified in Chapter 46 of the Texas Penal Code.

(G) Violator of CINS Probation (Commitments were allowed prior to January 1, 1996). A violator of CINS probation is a youth who:

(i) is committed for violating terms of probation by an act which would not be punishable by imprisonment or confinement in jail if committed by an adult; and

(ii) was on probation at the time of the probation revocation for no act more serious than Conduct Indicating a Need for Supervision (CINS) as defined in the Texas Family Code, Title 3.

(H) General Offender. A general offender is a youth who is not eligible for any other classification.

(2) Extenuating Circumstances.

(A) A designated classification except sentenced offender may be waived and a less restrictive classification assigned by a TYC hearings examiner at a TYC Level I due process hearing when the hearings examiner finds extenuating circumstances.

(B) Extenuating circumstances incident to a violent offense are those facts which indicate that the youth is not a significant danger to the physical or emotional well-being of another. Examples of such facts include, but are not limited to:

(i) the youth was an indirect or passive participant in a violent act;

(ii) the youth set fire to an abandoned vehicle;

(iii) the youth engaged in consensual sexual intercourse with someone who was capable of appraising the nature of that act and of resisting it.

(C) Extenuating circumstances incident to offenses other than violent offenses are those facts which explain a youth's conduct but do not constitute a legally recognized defense to the conduct. Examples of such facts include, but are not limited to acts in which:

(i) the only property involved in the offense was of minimal value and was returned undamaged to its owner;

(ii) the only bodily injury intended or inflicted by the youth consisted of brief or minor discomfort;

(iii) the youth's conduct was an impulsive response to perceived provocation and posed no threat to persons or property;

(iv) the youth was persuaded to participate in the offense by a parent or other authority figure.

(D) When extenuating circumstances incident to the classifying offense are found, the designated classification may be waived.

§85.25. Minimum Length of Stay

(a) Policy. The Texas Youth Commission (TYC) complies with orders of the committing court regarding sentences for youth sentenced to commitment to TYC. Except where specifically named, requirements herein do not apply to sentenced offenders. See GOP.47.15 §85.35 of this title (relating to Sentenced Offender Disposition), for additional information. For all other youth, TYC establishes by policy, the minimum period of time a youth will spend in residential placements under specific conditions. The maximum period of time a youth may spend in residential placement is the total time until he/she reaches age 21. Release from residential placement anytime prior to age 21 is based on the youth's successful completion of release criteria. TYC has established two types of minimum lengths of stay (MLOS) requirements for TYC youth, classification MLOS and assigned disciplinary MLOS. The classification MLOS is established on initial commitment, for youth recommitted for the commission of a felony or high-risk offense, and for youth found at an administrative level I hearing to have committed a felony or high-risk offense. Classification minimum lengths of stay of youth classified before January 1, 1996 may include creditable time prior to commitment. An assigned disciplinary MLOS may be levied in accordance with GOP.63.11, §91.11 of this

title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences) and is subject to provisions therein. Youth may be eligible for transition to medium restriction to complete the minimum length of stay requirement in accordance with GOP.47. 09, §85.29 of this title (relating to Program Completion and Movement).

(b) Rules.

(1) Classification Minimum Length of Stay.

(A) Sentenced offenders serve the time assessed by the juvenile court.

(B) Type A violent offenders must complete a minimum of 24 months.

(C) Type B violent offenders must complete a minimum length of stay of 12 months.

(D) Chronic serious offenders, controlled substances dealers, and firearms offenders must complete a minimum length of stay of twelve months if classified on or after January 1, 1996 or nine months if classified before that date.

(E) General offenders must complete a minimum length of stay of nine months if classified on or after January 1, 1996, or six months if classified before that date.

(2) Disciplinary Assigned Minimum Length of Stay. A disciplinary assigned length of stay of up to six months may be assigned in accordance with GOP.63.11, §91.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

(3) Creditable Time.

(A) On initial classification or recommitment classification, the minimum length of stay is counted from the first day a youth reaches any TYC operated or assigned facility.

(B) On reclassification, if previous classification MLOS:

(i) has been completed, the new classification minimum length of stay is counted from the date of the most recent due process hearing.

(ii) has not yet been completed, the new classification minimum length of stay is counted from the completion of the previous MLOS.

(C) All minimum lengths of stay will run consecutively except when a youth is recommitted, in which case, any incomplete MLOS at the time of recommitment is eliminated.

(D) Classification MLOSs must be completed before any assigned disciplinary MLOS begins.

(E) After the count begins, all time spent in program, on furlough or in detention or jail (except as a disposition in a criminal case) counts toward meeting a minimum length of stay requirement.

(F) Time spent as an escapee from a TYC placement or time spent in jail or a court ordered placement in an adult correctional residential program as disposition in a criminal case does not count toward meeting the minimum length of stay requirement.

(G) Sentenced offenders are credited with days detained in connection with the committing offense as assessed by the court.

(4) Waivers and Reductions.

(A) The classification minimum length of stay requirement may be reduced by the deputy executive director in extenuating circumstances when it is documented that the minimum length of stay is not justified because of the nature of the youth's classifying offense and offense history.

(B) The disciplinary assigned MLOS may be reduced in accordance with GOP.63.11, §91.11 of this title (relating to Disciplinary Transfer/Assigned Minimum Length of Stay Consequences).

§85.27. Program Restriction Levels.

(a) Policy. To assist Texas Youth Commission (TYC) staff in placing youth in the least restrictive appropriate placement available, programs of like restriction are categorized.

(b) Rules.

(1) Explanation of Terms Used

(A) Self-contained Program-a 24 hour supervision program in which the treatment, training and education program is conducted on the premises. A self-contained program is a program without routine unsupervised access to the community, unless otherwise stated.

(B) Routine Unsupervised Access to the Community-a privilege offered by some programs whereby a youth may be absent from the program without staff supervision for 48 hours or more per month prior to the youth's last month in the program.

(C) Staff secure-a staff to youth ratio appropriate to ensure security of high risk youth.

(2) Levels.

(A) High Restriction-a self-contained program which is staff secure or which is secured by a perimeter fence. For example:

(i) TYC training schools;

(ii) intermediate sanctions facilities;

(iii) boot camps;

(iv) Corsicana Residential Treatment Center;

(v) self-contained residential contract placement designated by TYC as appropriate;

(vi) state hospitals;

(B) Medium Restriction-any residential program which provides routine unsupervised access to the community. For example:

(i) TYC halfway houses;

(ii) any residential contract program which is not self-contained, e.g., certain substance abuse programs, residential treatment centers, group homes, or organizational foster care;

(C) Minimum Restriction-any non residential program which provides treatment or training at least eight hours per day five days a week. For example:

(i) day treatment;

(ii) independent living preparation in structured apartments;

(D) Home-the home of the parent, other relative or individual acting in the role of parent, managing conservator, or guardian, or an independent living arrangement, in which there is treatment or training less than eight hours per day, five times a week. For example:

(i) home or home substitute;

(ii) independent living in any approved location.

§85.29. Program Completion and Movement.

(a) Policy. The Texas Youth Commission (TYC) uses specific objective criteria to determine when a youth has completed a program and is eligible to be moved to another program or released home. Progress toward successful completion of criteria is evaluated at specific regular intervals. When criteria are completed, a youth is eligible for movement to an equal or less restrictive placement. Parole status is earned or granted. Prior to a scheduled movement, a youth may request and in doing so will be granted a level II hearing except in a disciplinary movement in which case an appropriate hearing is required. TYC does not accept the presence of a detainer as an automatic bar to earned release. The agency releases a youth to authorities pursuant to a warrant. Additional procedures and restrictions are applied prior to transition or release on parole for all sentenced offender youth. See GOP.47.15, §85.35 of this title (relating to Sentenced Offender Disposition). Youth may be moved to a placement of equal or more restriction as a disciplinary consequence. Each of these and other types of placement changes are subject to policies in this chapter and in the Disciplinary Practices chapter, GOP.63.

(b) Rules.

(1) Program Completion Criteria and Movement.

(A) Movement from high to medium restriction.

(i) Youth in high restriction become eligible for transition to medium restriction when the following criteria are met:

(I) completion of minimum length of stay except three months;

(II) completion of required Individual Case Plan (ICP) objectives;

(III) completion of phase three resocialization goals, (not applicable to youth in contract placements); and

(IV) no major violation of rules of conduct within 30 days prior to the review.

(ii) Youth who are transitioned under these criteria may be returned to high restriction through a level II due process hearing at any time prior to attaining parole status. If not returned prior to attaining parole, youth may be returned to high restriction only through a level I due process hearing to revoke parole status.

(B) Movement from any residential program to minimum restriction or home/home substitute:

(i) Youth in any residential program become eligible for residential program release to minimum restriction or home or home substitute when the following criteria are met:

(I) completion of the minimum length of stay;

(II) completion of required Individual Case Plan (ICP) objectives;

(III) completion of phase four resocialization goals, (not applicable to youth in contract placements); and

(IV) no major violations of rules of conduct within 30 days:

(-a-) prior to the case review to determine eligibility for parole release; and

(-b-) prior to the actual release.

(ii) Youth who are released under these criteria are on parole status and thus may be returned to a high restriction program, only through a level I due process hearing to revoke parole status.

(C) TYC program staff where the youth is assigned determine when criteria have been met.

(D) Program completion criteria are explained to every youth during orientation to each placement.

(2) Release Review and Movement.

(A) Periodic reviews are held specifically to evaluate a youth's progress in meeting all program completion criteria.

(B) If, at the release review, it is determined the youth has not completed criteria required for a transition movement, the youth continues in the current program.

(C) If, at the release review, it is determined the youth has completed criteria required for transition, movement is considered. A transition placement is always to a placement of equal or less restriction than the youth's current placement.

(3) Parole Status.

(A) Parole status means that a youth, having parole status, shall not be moved into a placement of high restriction without a level I hearing. A youth either earns parole status or is granted parole status under specific conditions.

(B) A youth earns parole status when he is deemed to have completed criteria for release. When a youth has earned parole status and release is pending, he attains parole status in the current program prior to the release, unless he is in a high restriction program, in which case, he attains parole status on leaving the facility.

(C) If a youth has not previously earned parole status, he is granted parole status at completion of six consecutive months in medium restriction program(s) regardless of:

(i) progress toward completing minimum length(s) of stay;

(ii) progress toward completion of ICP objectives or phase requirements;

(iii) the number of consecutive medium restriction placements (positive or negative); or

(iv) whether the youth is in medium restriction following a transition movement or as an initial placement.

(D) Release of Type A violent offenders must be approved by the deputy executive director. A release packet includes a program completion release review form with recommendations and justifications by either the institutional superintendent and director of institutions or the regional director and director of community services, the ICP, record of progress through the phase system, record of major rule violations, the home assessment, initial commitment psychological, and a current psychiatric and/or psychological report. The deputy executive director notifies the youth, superintendent and director of institutions or the regional director and director of community services in writing of the decision. If release is denied, the deputy executive director indicates a date for resubmitting the release packet.

(E) When it is determined that a youth will be paroled out of state upon completion of the program, see GOP.47. 23, §85.43 of this title (relating to Interstate Compact for TYC Youth). Arrangements for out-of-state supervision requires a minimum of six to eight weeks to complete.

(4) Disciplinary Movements.

(A) A disciplinary movement is the movement of a youth, following appropriate due process, as a consequence of violation of rule(s). Disciplinary movements are always to placements of equal or more restriction than the current placement, as defined by GOP.47.07, §85.27 of this title (relating to Program Restriction Levels).

(B) Disciplinary movements and/or assigned minimum lengths of stay must be justified through an appropriate due process hearing. See chapter on Disciplinary Practices.

(C) Any disciplinary movement requires that an Individual Case Plan be developed in the new placement.

(5) Six Month Justification. Retention of a youth in any community residential placement beyond six months must be justified to and approved by the regional director. Retention of a youth in order to complete a minimum length of stay is adequate justification.

(6) Release Exceptions in Hardship Cases. Youth may be released and paroled home without meeting completion criteria in hardship cases upon the recommendation by community corrections staff. Release in hardship cases requires approval of the deputy executive director.

(7) Release Exceptions to Control Population. When necessary to control population and/or manage available funds concerning youth in residential placement, the deputy executive director may approve one or more of following options.

(A) Youth sentenced to commitment in TYC for offenses committed on or after January 1, 1996, except those sentenced for capital murder, may be considered for movement from high to medium restriction if the following criteria are met:

(i) completion of a portion of the minimum period of confinement applicable to the youth's committing offense in high restriction:

(I) first degree felony, complete 30 months;

(II) second degree felony, complete 18 months;

(III) third degree felony, complete all of the minimum period confinement applicable to the committing offense, e.g. 12 months; and

(ii) completion of ICP objectives; and

(iii) completion of resocialization goals and phases; and

(iv) successful completion of a specialized treatment program; and

(v) low risk to reoffend according to a recent psychological evaluation; and

(vi) recommended by the superintendent or regional director; and

(vii) cases individually approved by the deputy executive director.

(B) Youth other than sentenced offenders may be:

(i) moved into similar residential placements of equal restriction without meeting completion criteria when early release or movement to a less restrictive placement is not indicated, but movement is necessary to manage available funds; or

(ii) released early without meeting completion criteria when population is at or above established capacity. Youth who have completed the minimum length of stay and are low risk as determined by a psychological are released first. In general, youth who are closest to completing criteria may be released next; however, type B violent, chronic serious, controlled substance dealer, firearms and general offenders with a minimum length of stay must meet the following criteria:

(I) completion of a portion of the minimum length of stay:

(-a-) if 12 months, complete nine months;

(-b-) if nine months, complete seven months;

(II) substantial completion of ICP objectives;

(III) substantial completion of phase three resocialization;

(IV) no major violations of rules of conduct within 30 days prior to consideration for waiver and prior to the actual release; and

(V) approved by superintendent or regional director.

(8) Sentenced Offenders. Due to the nature of determinate sentences, some rules governing the classification, placement, release, transition, parole status, and disciplinary movement of TYC youth must be applied differently to sentenced offenders.

(A) Classification. A youth classified at commitment as a sentenced offender retains that classification as long as the youth remains in the custody of TYC as a result of that commitment. See GOP.47.03, §85.23 of this title (relating to Classification).

(B) Initial Placement. All sentenced offenders are assigned to high restriction perimeter-secure facilities unless the deputy executive director waives such placement for a particular youth.

(C) Youth who are sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996 are subject to requirements in this subsection.

(i) Requirements.

(I) The minimum period of confinement is ten years for youth sentenced for capital murder; three years for youth sentenced for an aggravated controlled substance felony or a felony of the first degree; two years for a felony of the second degree; and one year for a felony of the third degree or completion of the sentence, whichever occurs first.

(II) TYC custody is terminated and a sentenced offender is discharged when his/her sentence is complete. All movement and transfer options occur prior to completion of sentence.

(III) Sentenced offenders serve the minimum period of confinement applicable to the youth's committing offense in a high restriction facility.

(ii) Movement Between TYC Programs.

(I) Following a sentenced offender's completion in high restriction, of the minimum period of confinement applicable to the youth's committing offense, the youth's eligibility for release on parole or transition to a medium restriction program shall be governed by the criteria and procedures for the classification the youth would have received if not a sentenced offender.

(II) Prior to a sentenced offender's completion of the minimum period of confinement applicable to the youth's committing offense, a youth may be released on parole only with the

approval of the juvenile court. Prior to that completion, TYC may request a hearing by the juvenile court to obtain approval for release on TYC parole for a youth:

(-a-) who has participated and successfully completed a specialized treatment program as evidenced by completion of all ICP objectives and all resocialization goals; and

(-1-) has not reached age 19; and

(-2-) the superintendent or regional director recommends the release; and

(-3-) the deputy executive director approves recommendation; and

(-4-) court approves release.

(-b-) who is sentenced for capital murder; and

(-1-) has completed at least three years in a high restriction facility; and

(-2-) has completed all ICP objectives and all resocialization goals; and

(-3-) the superintendent or regional director recommends the release; and

(-4-) the deputy executive director approves recommendation; and

(-5-) court approves release.

(iii) Transfer From TYC High Restriction To TDCJ, Institution. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Institutional Division (TDCJ, ID) may occur as follows.

(I) TYC may request a juvenile court hearing and the youth transferred if the following occurs:

(-a-) youth is at least age 16; and

(-b-) has met behavior criteria:

(-1-) youth has committed a felony or Class A misdemeanor; or

(-2-) youth has spent at least six months in a high restriction facility and has engaged in disruptive behavior and alternative interventions have been tried without success (for example: special treatment plans, disciplinary transfer, extended stay); and

(-c-) the superintendent or regional director recommends transfer; and

(-d-) the deputy executive director approves recommendation; and

(-e-) court orders the transfer.

(II) A transfer is automatic for a youth at age 21 who:

(-a-) was sentenced for capital murder; and

(-b-) has not completed the minimum period of confinement applicable to the youth's committing offense (ten years) or the sentence if less than ten years.

(iv) Transfer From TYC High Restriction To TDCJ, Pardons and Parole. Transfer from a high restriction facility to the Texas Department of Criminal Justice, Pardons and Paroles (TDCJ, PP). A youth is automatically transferred:

(I) at any time after age 19 that a youth has completed the minimum period of confinement applicable to the youth's committing offense and TYC releases the youth.

(II) at age 21 if youth was sentenced for any offense other than capital murder and has not completed the sentence.

(v) Transfer From TYC Home Parole To TDCJ, Pardons and Parole. Transfer from TYC under supervision (parole at home) to the Texas Department of Criminal Justice, Pardons and Paroles (TDCJ, PP) may occur. A youth is automatically transferred at age 21 if youth has not completed his sentence.

(vi) Transfer From TYC Home Parole To TDCJ Institution. Transfer from TYC under supervision (parole at home) to the Texas Department of Criminal Justice, Institutional Division (TDCJ, ID) may occur. TYC may request a juvenile court hearing and the youth transferred if the following occurs:

(I) youth is at least age 16; and

(II) youth's conduct indicates that the welfare of the community requires transfer following a due process hearing where parole is revoked for:

(-a-) felony, Class A misdemeanor, or reclassifiable violation: or

(-b-) any other violation which resulted in placement in an intermediate sanction program at which the youth has failed to progress.

(III) the superintendent or regional director recommends the transfer: and

(IV) deputy executive director approves recommendation; and

(V) the court orders the transfer.

(D) For youth sentenced for offenses committed before January 1, 1996:

(i) Movement and Parole. Sentenced offenders who meet program completion criteria for transition or parole may not be released without proper authorization:

(I) Prior to a sentenced offender's 18th birthday, a youth may be transitioned to an appropriate placement if approved by the deputy executive director. The placement may be to any location other than home or home substitute.

(II) When a juvenile court orders that a sentenced offender be released under supervision, the youth shall be transitioned or paroled, as appropriate to the youth's progress at the time of the court's order.

(III) When the juvenile court orders that a sentenced offender be recommitted to TYC without a determinate sentence, the youth's eligibility for release on parole or transition shall be governed by the release criteria and procedures for the classification the youth would have received if not a sentenced offender.

(ii) Disciplinary Movement. A sentenced offender may be assigned to any appropriate placement, including a high restriction facility, following a disciplinary hearing. The appropriate placement is selected according to the totality of the circumstances, including the youth's age, sentencing offense, length of time and progress in TYC custody, and the

nature of the misconduct for which the youth is being disciplined.

(iii) Release Exceptions. Sentenced offenders will be considered for release under a hardship or for population control only if:

(I) the youth is less than 18 years of age and the release is approved by the committing court; or

(II) the youth is 18 years of age or older and meets the exception criteria for the classification the youth would have received if not a sentenced offender.

(9) Notification.

(A) Parents or guardians are notified of all movements.

(B) Send original Notification to the Juvenile Court, CCF-181, to the committing juvenile judge and copies to the prosecuting attorney and community corrections officer no later than 15 days prior to the youth's:

(i) release under supervision (release to youth's home or home substitute);

(ii) authorization for an absence from custody (out-of-state placement); or

(iii) discharge.

(C) Send original Notification to Chief Juvenile Probation Officer, CCF-185 to the county chief juvenile probation officer in the county to which the youth is being moved (any placement other than into an institution) within ten days of the placement.

§85.35. Sentenced Offender Disposition.

(a) Youth who are sentenced to commitment in the Texas Youth Commission (TYC) for offenses committed on or after January 1, 1996 are subject to requirements in this subsection.

(1) Movement Types. The following types of movements may occur under specific conditions addressed in GOP.47.09, §85.29 of this title (relating to Program Completion and Movement). The movements are either automatic or may be requested of the juvenile court:

(A) Movement between the TYC programs;

(B) Transfer from a TYC high restriction facility to the Texas Department of Criminal Justice, Institutional Division (TDCJ, ID);

(C) Transfer from a TYC high restriction facility to the TDCJ, Pardons and Paroles (TDCJ, PP);

(D) Transfer from TYC under supervision (parole at home) to the TDCJ, PP;

(E) Transfer from TYC under supervision (parole at home) to the TDCJ, ID;

(2) Transfers.

(A) The TYC superintendent of the facility where the youth resides or the regional director in the region where youth previously resided (in the case of a revocation) requests a hearing by the court and directs TYC participation in the hearing.

(B) When a transfer to TDCJ, ID is imminent, a male youth residing in any program other than a TYC operated high restriction facility at the time a transfer hearing is requested, will be moved to a TYC operated high restriction facility for the time remaining before the youth's transfer. Females may be moved to a contract high restriction facility or TYC operated high restriction facility depending on space available. If the transfer is not automatic, in accordance with law, a level I parole revocation hearing is required prior to returning the youth to the institution.

(C) When transfers are automatic (court approval is not required) the superintendent or regional director for the youth's most recent permanent placement is responsible for notifying the committing court of the transfer in accordance with TYC policy.

(b) Youth who are sentenced to commitment in the Texas Youth Commission (TYC) before January 1, 1996 are subject to requirements in this subsection.

(1) Court Hearing Preparation.

(A) During the sixth month before the month in which the youth will turn 18 years old prior to completing sentence, the TYC program administrator of the youth's placement sends the committing court "notice of transfer to TDCJ."

(B) The committing court sets a date for a hearing on the notice of transfer and notifies all parties.

(C) The superintendent or regional director appoints appropriate TYC staff to represent TYC at the hearing.

(2) Youth Under 1987 Sentencing Law.

(A) This section applies to youth committed to TYC under determinate sentences for conduct that occurred on or after September 1, 1987, and before September 1, 1991.

(B) On conclusion of the transfer hearing, the court will order:

(i) release under supervision; or

(ii) transfer to TDCJ.

(C) A youth residing in an any program other than a high restriction facility at the time of a court order directing the youth's transfer to TDCJ will be moved to a high restriction facility for the time remaining before the youth's transfer at age 18.

(3) Youth Under 1991 Sentencing Law.

(A) This section applies to youth committed to TYC under determinate sentences for conduct that occurred on or after September 1, 1991.

(B) On conclusion of the hearing, the court will order:

(i) recommitment to TYC without a determinate sentence;

(ii) transfer to TDCJ; or

(iii) final discharge.

(C) On entry of an order that the youth be transferred to TDCJ, the youth is immediately transported and transferred to TDCJ.

§85.37. Discharge.

(a) Policy. All Texas Youth Commission youth are discharged by age 21. Youth may be recommended for early discharge when specific criteria have been met.

(b) Rules.

(1) Controlling Classification. Discharge criteria are applied according to classification or to special circumstance. Eligibility for discharge according to classification is controlled by the most serious offense for which the youth has ever been classified.

(2) Discharge Criteria.

(A) Classification.

(i) Youth who are sentenced for an offense committed before January 1, 1996 are discharged when one of the following occurs:

(I) expiration of the sentence imposed by the juvenile court, including the time spent in detention in connection with the offense plus time spent at TYC under the order of commitment;

(II) the youth is transferred to the Texas Department of Criminal Justice (TDCJ) pursuant to an order issued by the juvenile court at a transfer hearing;

(III) prior to age 18 if ordered by committing court; or

(IV) age 21 is reached.

(ii) Youth who are sentenced for an offense committed after January 1, 1996 are discharged when one of the following occurs:

(I) expiration of the sentence imposed by the juvenile court;

(II) the youth is transferred to the Texas Department of Criminal Justice, Institutional Division, pursuant to an order issued by the juvenile court at a transfer hearing;

(III) the youth has been sentenced for the offense of capital murder, has not completed the ten-year minimum period of confinement and is transferred to the Texas Department of Criminal Justice, Institutional Division, at age 21 to serve the remainder of the sentence; or

(IV) the youth has been released on parole, has reached the age of 21 (or younger, if the youth is released on parole after age 19) and is transferred to the Texas Department of Criminal Justice, Pardons and Paroles Division, to serve the remainder of the sentence.

(iii) Youth ever classified as type A violent offenders are discharged when age 21 is reached.

(iv) Youth ever classified as a type B violent offender, chronic serious offender, controlled substance dealer, or firearms offender are discharged when one of the following occurs:

(I) age 21 is reached; or

(II) completion of 12 consecutive months on parole status in the home or home substitute and the youth:

(-a-) has had no delinquency adjudications or criminal convictions during the period;

(-b-) has no pending delinquency petitions or criminal charges;

(-c-) is on minimum supervision level; and

(-d-) has had a positive parole adjustment, as defined in this policy.

(v) General offenders and violators of CINS probation are discharged when one of the following occurs:

(I) age 21 is reached; or

(II) completion of nine consecutive months on parole status in the home or home substitute and the youth:

(-a-) has had no delinquency adjudications or criminal convictions during the period;

(-b-) has no pending delinquency petitions or criminal charges;

(-c-) is on minimum supervision level; and

(-d-) has had a positive parole adjustment as defined in this policy.

(B) Special Circumstances.

(i) Youth of any classification except sentenced offenders are discharged under the following circumstances:

(I) Court ordered reversal of commitment.

(II) The youth being sentenced to prison.

(III) Commitment to Texas Department of Mental Health and Mental Retardation.

(IV) Enlistment in the military.

(V) Closing of records following a youth's death or recommitment.

(VI) Discharge by the executive director or his designee for any other reason, such as an illness or injury which prevents return to active program participation.

(VII) TYC youth placed out of state may be discharged when requested by the placement state for satisfactory adjustment or when court action is taken by the placement state in accordance with GOP.47.23, §85.43 of this title (relating to Interstate Compact for TYC Youth).

(ii) Youth of any classification except sentenced offender and type A violent offender are discharged under the following circumstances:

(I) Placement on adult probation while on parole in a nonresidential placement.

(II) Court ordered placement for a minimum of 12 months in an adult correctional residential program as part of the disposition of a criminal case.

(III) Immediately on release from any residential placement, if the youth was placed on adult probation while in residential placement.

(3) Positive Parole Adjustment. For purposes of discharge, positive parole adjustment shall be shown by documentation that a youth:

(A) has completed ICP objectives including substantial completion of phase five of resocialization and community service requirements; and

(B) has, for 90 consecutive days, been:

(i) enrolled and participating in an appropriate educational or training program; or

(ii) satisfactorily employed.

(4) Approvals. Youth discharges are requested by the primary service worker and approved by the institutional superintendent or regional director as appropriate. A brief closing summary of the youth's adjustment while on parole supervision at home is included. Approvals ensure that discharge criteria have been met. Discharge of TYC youth placed out of state is requested by the deputy administrator of interstate compact and approved by the director of community services. Discharges for other special circumstances are approved by the executive director.

(5) Waiver. Youth of any classi-

fication except sentenced offender and Type A violent offender who is age 18 or older may be discharged prior to completion of discharge criteria for the purpose of obtaining services that cannot be obtained for a juvenile. Such early discharge must be justified to and approved by the deputy executive director.

(6) Notification.

(A) Fifteen days prior to discharge the program to which the youth is assigned shall send Notification to Juvenile Court form, CCF-181, to the committing court and prosecuting attorney.

(B) Immediately on a youth's discharge, the program to which the youth is assigned shall send a letter of discharge, LS-300, to the youth. The youth is informed of the procedure for sealing records, LS-301.

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 15, 1995.

TRD-9516366 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 483-5244

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Chapter 89. Youth Rights and Remedies

• 37 TAC §§89.7, 89.9-89.11, 89.13, 89.15, 89.17, 89.19, 89. 21, 89.23

The Texas Youth Commission (TYC) adopts the repeal of §§89.7, 89.9-89. 11, 89.13, 89.15, 89.17, 89.19, 89.21, and 89.23, concerning youth complaint resolution system terms and rules, complaint resolution procedure for TYC operated facilities, probationary complaint program for TYC operated facilities, complaint resolution procedure for residential contract programs, complaint resolution procedure for youth at home, alleged mistreatment rules and definitions, alleged mistreatment procedure for TYC operated facilities, alleged mistreatment procedure for striking incidents, alleged mistreatment procedure for residential contract programs, and alleged mistreatment procedure for youth at home, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9396).

The justification for the repeals is to remove sections that will be replaced by new sections.

The repeals will allow new sections to be adopted that will streamline new procedures in the youth complaint system and the alleged mistreatment resolution system.

No comments were received regarding adoption of the repeals.

The repeals 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 repeals implement 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 15, 1995.

TRD-9516368 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 483-5244

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• 37 TAC §89.7, §89.15

The Texas Youth Commission (TYC) adopts new §89.7 and §89.15, concerning youth complaint resolution system and alleged mistreatment system, without changes to the proposed text as published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9397).

The justification for the new sections is the streamlining of centralized requirements to promote more efficient use of resources.

New §89.7 defines qualifications of the staff member having authority to resolve a youth's complaint, the procedures required for the resolution, and provides for appeals to the executive director. New §89.15 defines behaviors subject to alleged mistreatment procedures, establishes investigation and reporting requirements, and provides for appeals to the executive director.

No comments were received regarding adoption of the new sections.

The new sections 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 new sections implement 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 15, 1995.

TRD-9516367 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: January 5, 1996

Proposal publication date: November 14, 1995

For further information, please call: (512) 483-5244

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

(Editor's note: The following adopted rules were originally adopted and published in December 12, 1995 issue of the Texas Register (20 TexReg 10621). However, the text to §1.38 which was adopted with changes, was inadvertently omitted from that publication. Both the repeal and new sections are being republished in this issue for clarification.)

The Texas Department of Transportation adopts the repeal of existing §§1.21-1.63, concerning contested case procedure, and adopts new §§1.21-1. 61, concerning contested case procedure with changes to the proposed text as published in the September 8, 1995, issue of the Texas Register (20 TexReg 7040). New §§1.32-1.33 and §1.38 are adopted with changes and §§1.21-1. 31, §§1.34-1.37, and §§1.39-1.61 are adopted without changes and will not be republished.

The repeal and new sections are necessary to: update the applicable rules in accordance with revisions to Government Code, Chapter 2001, the Administrative Procedure Act (APA), and procedures established by the State Office of Administrative Hearings (SOAH); make the contested case procedure clearer and more concise; and provide an efficient process for default judgments that will expedite the resolution of a contested case against a respondent who fails to appear at an administrative hearing

Existing §§1.21-1.63 described the department's procedures for contested cases.

New §§1.21-1.61 provide updated procedures for contested cases in accordance with recent revisions to the Government Code, Chapter 2001 and the procedures established by SOAH.

On September 8, 1995, the department conducted a public hearing on the proposed new sections and no oral or written comments were received.

In order to provide an effective and efficient process the department has revised: §1.32 to require that a pleading be sent only to the attorney for a party instead of to the party and the party's attorney; §1.33 to allow a filing to be deemed filed when the pleading is received by SOAH or the executive director instead of upon receipt by the hearing officer or the executive director in accordance with SOAH's internal procedures; and §1.38 to remove the requirement for an affidavit in motions for postponement, continuance, withdrawal, or dismissal.

Contested Case Procedure

• 43 TAC §§1.21-1.63

The repeals 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 Government Code, Chapter 2001, the Administrative Procedure Act, which provides a minimum standard of uniform practice and procedure for state agencies.

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 5, 1995.

TRD-9515797 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

• 43 TAC §§1.21-1.61

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 Government Code, Chapter 2001, the Administrative Procedure Act, which provides a minimum standard of uniform practice and procedure for state agencies.

§1.32 Service.

(a) A copy of all pleadings in any proceeding shall be sent by mail or otherwise delivered by the party filing the same to every other party of record, except that notice of a hearing will be made by hand delivery, via facsimile, or by certified mail, return receipt requested. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made on such attorney or other representative.

(b) A certificate signed by the person filing the pleading, showing the manner of service, stating that it has been served on the other parties, and identifying those parties shall be contained in or attached to all pleadings. The certificate is prima facie evidence of such service.

(c) If a filing does not conform to the requirements of this section, the hearing officer may:

(1) return the pleading to the filing party;

(2) send a notice to all parties stating that the pleading will not be considered unless and until the office is notified that all parties have been served with the pleading; or

(3) send a copy of the pleading to all parties.

§1.33. Filing. All pleadings, affidavits, or other filings relating to any proceeding pending or to be instituted before the department shall be filed with the State Office of Administrative Hearings or the executive director. Filings shall be deemed filed only when actually received by the State Office of Administrative Hearings or the executive director, accompanied by the fee or deposit, if any, required by statute or department rules.

§1.38. Motions for Postponement, Continuance, Withdrawal or Dismissal of Applications or Other Materials Before the Department. Motions for postponement or continuance of matters which have been duly set for hearing shall be in writing, shall be filed with the hearing officer, and shall be distributed to all parties not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, the specific grounds upon which the moving party seeks such action and shall make reference to all prior motions of the same nature filed in the same proceeding. Failure to comply with the provisions of this section, except for good cause shown, may be construed as lack of diligence on the part of the moving party and, at the discretion of the hearing officer, shall be grounds for refusal of the motion. Once a cause has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the hearing officer without the consent of all parties of record except for good cause shown.

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 5, 1995.

TRD-9515796 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Effective date: December 26, 1995

Proposal publication date: September 8, 1995

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

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure 1: 7 TAC §3.37.

First determine the bank's assessable asset group, then:

Steps	*Assessment Calculation*	*Assessable Asset Group*			
1	For assessable assets of at least . . .	$0	$10 Million	$25 Million	$40 Million
	But not greater than . . .	$10 Million	$25 Million	$40 Million	$70 Million
2	Take the total assessable assets over:	$0	$10 Million	$25 Million	$40 Million
3	And multiply by this percentage:	0.0610668%	0.0285323%	0.0129468%	0.0127916%
4	Add this result to the base assessment amount of:	$1,000	$7,107	$11,387	$13,329
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	*(As Per Department Memo No. 95-03)*			
	6-month frequency	162%	162%	162%	162%
	12-month frequency	100%	100%	100%	100%
	18-month frequency	85%	85%	85%	85%

Steps	*Assessment Calculation:*	*Assessable Asset Group*			
1	For assessable assets of at least . . .	$70 Million	$100 Million	$250 Million	$1 Billion
	But not greater than . . .	$100 Million	$250 Million	$1 Billion	-
2	Take the total assessable assets over:	$70 Million	$100 Million	$250 Million	$1 Billion
3	And multiply by this percentage:	0.0121225%	0.0075111%	0.0047745%	0.0047179%
4	Add this result to the base assessment amount of:	$17,166	$20,803	$32,069	$67,878
5	And multiply the total by the percentage corresponding to the bank's examination frequency factor to get the assessment:	*(As Per Department Memo No. 95-03)*			
	6-month frequency	162%	162%	162%	162%
	12-month frequency	100%	100%	100%	100%
	18-month frequency	85%	85%	85%	85%

Figure 1: 7 TAC §3.38.

determine the agency's assessable asset group, then:

Steps	Assessment Calculation:	Assessable Asset Group			
1	For assessable assets of at least . . . But not greater than . . .	$0 $10 Million	$10 Million $25 Million	$25 Million $40 Million	$40 Million $70 Million
2	Take the total assessable assets over:	$0	$10 Million	$25 Million	$40 Million
3	And multiply by this percentage:	0.0652469%	0.0065574%	0.0060984%	0.0054730%
4	For the assessment, add this result to the base assessment amount of:	$0	$6,525	$7,508	$8,423

Steps	Assessment Calculation:	Assessable Asset Group			
1	For assessable assets of at least . . . But not greater than . . .	$70 Million $100 Million	$100 Million $250 Million	$250 Million $1 Billion	$1 Billion -
2	Take the total assessable assets over:	$70 Million	$100 Million	$250 Million	$1 Billion
3	And multiply by this percentage:	0.0050753%	0.0051357%	0.0009891%	0.0009853%
4	For the assessment, add this result to the base assessment amount of:	$10,065	$11,588	$19,291	$26,709

Figure 1. 25 TAC <*>143.9(e)(2)

TYPE OF LIMITED CERTIFICATE	CLINICAL INSTRUCTION (# OF CLOCK HOURS)	CLINICAL EXPERIENCE (# OF CLOCK HOURS)
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
[Dental	10	100]
Chiropractic	60	100
Podiatric	4	50

Figure : 31 TAC <*>57.371. Commercially Protected Finfish.

The following species are commercially protected finfish:

Bass of the genus Micropterus.

Bass, striped.

Bass, white.

Bass, yellow.

Catfish, flathead.

[Cobia]

Crappie.

Drum, red.

Jewfish.

[Mackerel, king].

[Mackerel, Spanish].

Marlin, blue.

Marlin, white.

Muskellunge.

Pike, northern.

Sailfish.

Sauger.

Seatrout, spotted.

Snook.

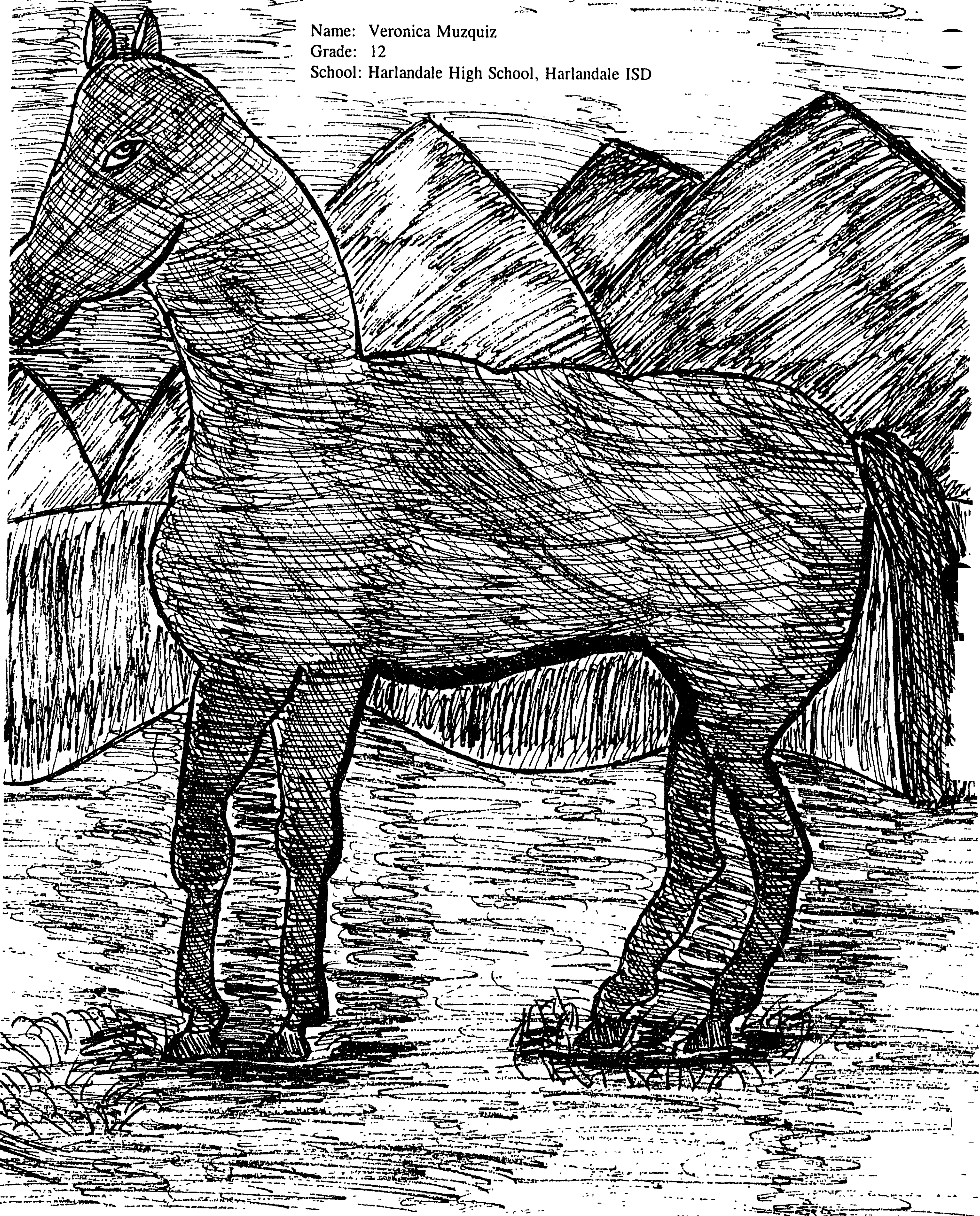
Spearfish, longbill.

Tarpon.

[Wahoo].

Walleye.

Hybrids of any of the fish listed.


Name: Veronica Muzquiz
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).

Texas Department of Agriculture

Thursday, January 11, 1996, 10:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

Office of Hearings

AGENDA:

Alleged violation of Texas Agriculture Code Annotated §§101.1-101.21 and/or §§102.1-102.172 (Vernon 1995) by Mendez Brothers Produce as petitioned by Winter Garden Produce.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: December 18, 1995, 10:12 a.m.

TRD-9516464

Thursday, January 11, 1996, 11:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

Office of Hearings

AGENDA:

Alleged violation of Texas Agriculture Code Annotated §§101.1-101.21 and/or §§102.1-102.172 (Vernon 1995) by Mendez Brothers Produce as petitioned by Mission Shippers, Inc.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: December 18, 1995, 10:12 a.m.

TRD-9516463

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Texas Board of Chiropractic Examiners

Friday, December 29, 1995, 1:30 p.m.

333 Guadalupe, Room 100

Austin

Rules Committee

AGENDA:

The Rules Committee of the Texas Board of Chiropractic Examiners will meet on Friday, December 29, 1995, at 1:30 p.m. to consider, discuss, take any appropriate action and/or approve: 1) rule on injectables; 2) rules submitted by the Chiropractic Society of Texas.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: December 18, 1995, 3:38 p.m.

TRD-9516491

♦ ♦ ♦

Texas State Board of Examiners of Professional Counselors

Friday, December 29, 1995, 9:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on: discussion with representatives of Texas Counseling Association concerning committee procedures and nature of complaints; request by John M. Abell concerning sufficient avenues of rehabilitation; and pending complaints (94-C008; 94-C042; 94-C044; 94-C053; 94-C054; 94-C058; 94-C074; 94-C107; 94-C116; 95-C012; 95-C016; 95-C017; 95-C018; 95-C021; 95-C023; 95-C025; 95-C031; 95-C034; 95-C039; 95-C040; 95-C042; 95-C044; 95-C046; 95-C047; 95-C048; 95-C049; 95-C050; 95-C053; 95-C055; 95-C058; 95-C062; 95-C065; 95-C066; 95-C067; 95-C068; 95-C069; 95-C070; 95-C071; 95-C074; 95-C075; 95-C076; 95-C077; 95-C078; 95-C079; 95-C080; 95-C081; 95-C082; 95-C083; 95-C084; 95-C086; 95-C087; 95-C090; 95-C091; 95-C092; 95-C093; 95-C094; 95-C095; 95-C096; 95-C097; 95-C098; 95-C099; 95-C100; 96-C001; 96-C002; 96-C003; 96-C004; 96-C005; 96-C006; 96-C007; 96-C008; 96-C009; 96-C010; 96-C011; 96-C012; 96-C013; 96-C014; 96-C015; 96-C016; 96-C017; 96-C018; 96-C019; 96-C020; 96-C024).

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. To request an accommodation under the ADA, please contact Renee

Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: December 19, 1995, 9:14 a.m.

TRD-9516503

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Texas Education Agency

Thursday, January 11, 1996, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Public testimony; commissioner's comments; presentation on the Texas Tomorrow Fund; discussion of advanced placement indicator for the Academic Excellence Indicator System and update on the Texas Advanced Placement Incentive Program; request for approval and recommendation for adoption of bylaws and employees' benefit package of the Texas Permanent School Fund Management Company, Inc. and review and comment on budget of the Texas Permanent School Fund Management Company, Inc., for fiscal year 1995-1996; request for approval of asset management agreement between the Texas Permanent School Fund Management Company, Inc. and the State Board of Education; request for approval of external audit report of the Texas Permanent School Fund; presentation on the Texas Growth Fund by the Texas Growth Fund Management Corporation; discussion of pending litigation (this discussion will be held in executive session in accordance with §551.071(1)(A), Texas Government Code, and will include a discussion of Edgewood ISD et al v. Meno and related school finance litigation; Angel G. et al v. Meno, et al relating to students with disabilities residing in care and treatment facilities; Maxwell, et al v. Pasadena ISD relating to Texas Assessment of Academic Skills (TAAS) testing; and Casias, et al v. Moses, et al relating to accountability intervention–the Committee of the Whole will meet in Room 1-103 to discuss pending litigation).

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:18 p.m.

TRD-9516423

Thursday, January 11, 1996, 10:30 a.m. or upon adjournment of the State Board of Education Committee of the Whole.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

Board of Directors of the Texas Permanent School Fund Management Company, Inc.

AGENDA:

Organizational meeting of the Board of Directors of the Texas Permanent School Fund Management Company, Inc. (TPSFMCI). This will be an organizational meeting of the board of directors of the TPSFMCI. This meeting is required in order to adopt the administrative structure of the management company consistent with pending recommendations and approval of the State Board of Education. Actions to be considered: Approval of pending recommendations and approval of the State Board of Education. Actions to be considered: Approval of the bylaws of the TPSFMCI; appointment of officers and committee members as outlined in the bylaws of the corporation; adoption of the fiscal year 1995-1996 budget and approval of the employees' benefits package; approval of the asset management contract with the State Board of Education; authorization of the executive secretary to execute contracts necessary for the administration of the TPSFMCI. Notice provided should the State Board of Education desire to conduct a meeting of the Board of Directors of the TPSFMCI.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:18 p.m.

TRD-9516422

Thursday, January 11, 1996, 1:00 p.m.

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Personnel

AGENDA:

Public testimony; proposed repeal of 19 TAC §61.61, Training for School Board Members, and adoption of proposed new 19 TAC §61.1, Continuing Education for School Board Members; proposed adoption of framework for school board development; proposed repeal and readoption of 19 TAC Chapter 97, Planning and Accreditation; recommendation for trustee appointment to the Lackland Independent School District; recommendation for trustee appointments to the Fort Sam Houston, ISD; recommendation for appointment to the Masonic Home Independent School District board of trustees; discussion of ongoing communications activities; status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:19 p.m.

TRD-9516424

Thursday, January 11, 1996, 1:00 p.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Students

AGENDA:

Public testimony; proposed repeal of 19 TAC Chapter 63, Student Services; proposed repeal of 19 TAC Chapter 75, Curriculum, Subchapters A and E-J, and proposed new 19 TAC Chapter 74, Curriculum Requirements; proposed repeal of 19 TAC Chapter 78, Vocational and Applied Technology Education; discussion of proposed repeal of 19 TAC Chapter 75, Subchapter K, Extracurricular Activities, and proposed new 19 TAC Chapter 76, Extracurricular Activities; discussion of proposed repeal and readoption of 19 TAC Chapter 89, Adaptations for Special Populations; discussion of proposed repeal of 19 TAC Chapter 133, Pupil School Relations; update on the clarification of essential knowledge and skills process.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:19 p.m.

TRD-9516425

Thursday, January 11, 1996, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on School Finance

AGENDA:

Public testimony; school finance update; proposed repeal of 19 TAC Chapter 49; internal operations; proposed repeal and readoption of 19 TAC Chapter 61, School Districts; proposed repeal of 19 TAC Chapter 68, Transportation; proposed repeal and readoption of 19 TAC Chapter 105, Foundation School Program; proposed repeal of 19 TAC Chapter 113, Federal Funds to Support Public Education in Texas; proposed repeal of 19 TAC Chapter 121, Public School Finance–Personnel; proposed repeal and readoption of 19 TAC Chapter 129, Student Attendance; proposed repeal and readoption of 19 TAC Chapter 176, Driver Training Schools; proposed amendments to Proclamation 1994 of the State Board of Education; recommendations re-

garding readoption of instructional materials; discussion of proposed new 19 TAC Chapter 105, Subchapter B, Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments; status report on proprietary schools; annual report of the school financial audits division.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:19 p.m.

TRD-9516426

Friday, January 12, 1996, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

AGENDA:

Public testimony; expert speaker presentation; issues related to comprehensive reading programs; proposed repeal of 19 TAC Chapter 65, Technology; discussion of proposed repeal and readoption of 19 TAC Chapter 53, Regional Education Service Centers; development of the Long-Range Plan for Technology, 1996-2010; discussion of federal governmental relations activities.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:20 p.m.

TRD-9516427

Friday, January 12, 1996, 8:30 a.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund (PSF)

AGENDA:

Public testimony; proposed new 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines; request for approval of changes to Section F of the Texas Permanent School Fund's investment procedures manual; ratification of the purchases and sales in the investment portfolio of the Permanent School Fund for the months of November and December; review of Permanent School Fund securities transactions and the investment portfolio; report of the Permanent School Fund (PSF) executive administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:20 p.m.

TRD-9516428

Friday, January 12, 1996, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE)

AGENDA:

Approval of November 10, 1995 SBOE minutes; public testimony; SBOE resolutions; approval of the external audit report of the Texas Permanent School Fund; 19 TAC §61.61, Training for School Board Members and 19 TAC §61.1, Continuing Education for School Board Members; proposed adoption of a framework for school board development; 19 TAC Chapter 97, Planning and Accreditation; recommendation for board of trustee appointments to Lackland ISD, Fort Sam Houston ISD, and Masonic Home ISD; 19 TAC Chapter 63, Student Services, proposed repeal 19 TAC Chapter 75, Curriculum, Subchapters A and E-J and proposed new 19 TAC Chapter 74, Curriculum Requirements; 19 TAC Chapter 78, Vocational and Applied Technology Education; 19 TAC Chapter 49, Internal Operations; 19 TAC Chapter 61, School Districts; 19 TAC Chapter 68, Transportation; 19 TAC Chapter 105, Foundation School Program; 19 TAC Chapter 113, Federal Funds to Support Public Education in Texas; 19 TAC Chapter 121, Public School Finance-Personnel; 19 TAC Chapter 129, Student Attendance; 19 TAC Chapter 176, Driver Training Schools; proposed amendments to Proclamation 1994 of the SBOE; recommendations regarding readoption of instructional materials; 19 TAC Chapter 95, Technology; 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines; request for approval of new Section F in the investment procedures manual relating to standards of performance to be expected of internal and external asset managers; ratification of purchases/sales in investment portfolio of the Permanent School Fund for November and December; consideration of ratification of actions of the Texas Permanent School Fund Management Company, Inc., and authorization for the executive secretary of the SBOE to execute contracts necessary for the administration of the management company; information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: December 15, 1995, 3:21 p.m.

TRD-9516429

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Office of the Governor

Saturday, January 6, 1995, 8:30 a.m.

Texas State Aquarium, Board Room, 2710 Shoreline Drive

Corpus Christi

Commission for Women

AGENDA:

I. Call to order

II. Approval of minutes

III. Committee reports

A. Public relations

1. Hall of Fame fundraising

2. Timeline

B. Women's health and problems

1. Breast cancer

2. Interactive CD-ROM

C. Information, education, and legislative

1. 1-800 cards

2. Home page

IV. Break out into committees

V. Reports from committees

VI. Discussion on any new subjects

VII. Wrapup and adjourn

Contact: Lucy Weber, P.O. Box 12428, Austin, Texas 78711, (512) 475-2615.

Filed: December 18, 1995, 11:45 a.m.

TRD-9516478

♦ ♦ ♦

Texas Department of Insurance

Thursday, January 11, 1996, 10:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1743.c

To consider whether disciplinary action should be taken against Theodis Walsh, Houston, Texas, who holds a Group I, Legal Reserve Insurance Agent's License, Group II Insurance Agent's, and a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe, Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: December 19, 1995, 9:46 a.m.

TRD-9516505

Friday, January 12, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-1759.c

To consider whether disciplinary action should be taken against Patrick M. Benner, Showlow, Arizona, who holds a Non-Resident, Property and Casualty Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: December 19, 1995, 9:46 a.m.

TRD-9516506

Tuesday, January 16, 1996, 1:00 p.m.

State Office of Administrative Hearings, 3300 West 15th Street, Suite 502

Austin

AGENDA:

494-95-1758.c

To consider whether disciplinary action should be taken against Debra A. Epps, Fort Worth, Texas, who holds a Group I Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: December 19, 1995, 9:46 a.m.

TRD-9516507

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Texas Council on Offenders with Mental Impairments

Wednesday, January 10, 1996, 10:00 a.m.

8610 Shoal Creek Boulevard

Austin

Planning/Legislative

AGENDA:

I. Call to order

II. Public comments

III. Approval of minutes

IV. Status report on MOU/action plans

V. Review/discussion on system issues impacting offenders with special needs

VI. Committee assignments/tasks

VII. Committee report to the Council

Adjournment

Each item above includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: December 18, 1995, 3:38 p.m.

TRD-9516492

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Midwestern State University

Thursday, December 21, 1995, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The board will consider a recommendation concerning the extension of a fill easement with the City of Wichita Falls.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: December 18, 1995, 7:59 a.m.

TRD-9516445

♦ ♦ ♦

Texas Department of Protective and Regulatory Services

Friday, December 22, 1995, 9:00 a.m.

701 West 51st Street, First Floor, Public Hearing Room

Austin

Texas Board of Protective and Regulatory Services

AGENDA:

1. Call to order. 2. Consideration and appointment of executive director of the Texas Department of Protective and Regulatory Services. 3. Consideration and appointment of an acting executive director. 4. Adjournment.

Contact: Marty Chung, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 438-4435.

Filed: December 14, 1995, 3:37 p.m.

TRD-9516348

♦ ♦ ♦

Public Utility Commission of Texas

Wednesday, January 3, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A prehearing conference has been scheduled in Docket Number 15120-Application of Southwestern Public Service Company for approval of PURA §1.251 transactions.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: December 18, 1995, 11:00 a.m.

TRD-9516476

Tuesday, January 16, 1996, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Legal Administration

AGENDA:

A hearing has been scheduled in Docket Number 15101-Complaint of Plexnet, Inc. and DFW-Direct against GTE Southwest, Inc. and Docket Number 15116-Complaint of Virtual Communications, Inc. against GTE Southwest, Inc.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: December 18, 1995, 12:57 p.m.

TRD-9516484

♦ ♦ ♦

Texas Residential Property Insurance Market Assistance Program

Tuesday, January 9, 1996, 9:00 am.

333 Guadalupe, Rooms 1250A and 370A, Tower I

Austin

Executive Committee

AGENDA:

1. General meeting (Room 1250A-9:00 a.m.-Noon)

Anti-trust statement

Public input forum

General administrative matters

Working group reports and discussion

Discussion of initial draft of plan of operation

Discussion of draft letter to commissioner concerning factors for designation of underserved areas

Other House Bill 1367 provisions that relate to MAP

Any other general business

2. Working Group 1 issues (Room 1250A-1:00 p.m.-3:30 p.m.)

Anti-trust statement

Eligibility

Criteria for mandatory participation

Monitoring MAP activity

Suggestions for designating underserved areas

Other House Bill 1367 provisions that relate to MAP

Working Group 2 issues (Room 370A-1:00 p.m.-3:30 p.m.)

Anti-trust statement

Participating insurers

Participating agents

Operations

Other House Bill 1367 provisions that relate to MAP

Contact: Lyndon Anderson, 333 Guadalupe Street, Austin, Texas 78701, (512) 322-2235.

Filed: December 14, 1995, 3:08 p.m.

TRD-9516354

♦ ♦ ♦

Stephen F. Austin State University

Thursday, December 21, 1995, 11:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents Telephone Meeting

AGENDA:

I. Consideration of resolution authorizing the issuance of State of Texas constitutional appropriation bonds (Stephen F. Austin State University), Series 1996, and approving and authorizing instruments and procedures related thereto and other matters related thereto.

II. Consideration of resolution authorizing the issuance of Board of Regents of Stephen F. Austin University consolidated university revenue bonds, Series 1996, and approving and authorizing instruments and procedures related thereto and other matters related thereto.

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: December 15, 1995, 10:53 a.m.

TRD-9516369

♦ ♦ ♦

Texas Council on Workforce and Economic Competitiveness

Friday, January 12, 1996, 10:00 a.m.

Quality Inn-Intercontinental Airport, 6115 Will Clayton Parkway

Houston

Strategic Planning Committee

AGENDA:

10:00 a.m.-Call to order, announcements, public comment; 10:30 a.m. -Action item: Workforce Development area and JTPA service delivery area redesignation for the Coastal Bend area; 11:00 a.m.-Action item: Workforce Development area and JTPA service delivery redesignation for the Alamo Council of Governments and the City of San Antonio; 11:30 a.m.-Break; 11:45 a.m. -Tentative action item: Service delivery area redesignation for the North Central Texas and Collin County service delivery areas; 12:15 p.m.-Tentative action item: Service delivery area redesignation for the Fort Worth and Tarrant County service delivery areas; 12:45 p.m.-Policy briefing item: Preliminary recommendations on the JTPA Section 123 Education Coordination Program; 1:15 p.m.-Adjourn.

Notice: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services should contact Val Blaschke, (512) 912-7158 (or Relay Texas 1-800-735-2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, P.O. Box 2241, Austin, Texas 78768, (512) 912-7158.

Filed: December 14, 1995, 2:39 p.m.

TRD-9516333

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Regional Meetings

Meetings Filed December 14, 1995

The Cass County Appraisal District Board of Directors met at 502 North Main Street, Linden, December 19, 1995, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9516332.

The Gillespie Central Appraisal District Board of Directors met at the Gillespie County Courthouse, County Courtroom, 101 West Main, Fredericksburg, December 21, 1995, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9516331.

The Hickory Underground Water Conservation District Number 1 Board and Advisors met at 100 Congress Avenue, Suite 1100, Austin, December 21, 1995, at 10:00 a.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9516343.

The Hunt County Appraisal District Appraisal Review Board will meet at 4801 King Street, Greenville, January 9, 1996, at 9:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9516334.

The Hunt County Appraisal District Appraisal Review Board will meet at 4801 King Street, Greenville, January 11, 1996, at 8:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9516335.

The Johnson County Rural Water Supply Corporation (Revised Agenda.) Insurance Committee met at the Corporation Office, 2849 Highway 171 South, December 18, 1995, at 5:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9516330.

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Meetings Filed December 15, 1995

The Alamo Area Council of Governments Rural Area Judges met at 204 Alamo Plaza, Menger Hotel, San Antonio, December 20, 1995, at 9:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9516410.

The Alamo Area Council of Governments Board of Directors met at 204 Alamo Plaza, Menger Hotel, San Antonio, December 20, 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-9516411.

The Alamo Area Council of Governments (Revised Agenda.) Board of Directors met at 204 Alamo Plaza, Menger Hotel, San Antonio, December 20, 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-9516438.

The Austin Transportation Study Governance Review Subcommittee A met at 301 West Second Street, Second Floor, Large Conference Room, Austin, December 18, 1995, at 1:30 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088-Annex, Austin, Texas 78767, (512) 499-2275. TRD-9516407.

The Carson County Appraisal District Appraisal Review Board met at 102 Main Street, Panhandle, December 20, 1995, at 9:00 a.m. Information may be obtained from Donita Herber, Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9516437.

The East Texas Council of Governments Private Industry Council met at 3800 Stone Road, Kilgore, December 21, 1995, at 9:30

a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9516365.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, December 18, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9516359.

The Golden Crescent Private Industry Council (Revised Agenda.) Executive Committee met at 2401 Houston Highway, Victoria, December 20, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9516360.

The Johnson County Rural Water Supply Corporation (Revised Agenda.) Finance Committee met at the Corporation Office, 2849 Highway 171 South, December 19, 1995, at 5:30 p.m. Information may be obtained from Peggy Johnson, P.O Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9516413.

The Johnson County Rural Water Supply Corporation (Revised Agenda.) Board (Regular Meeting) met at the Corporation Office, 2849 Highway 171 South, December 19, 1995, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9516414.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, December 21, 1995, at 7:00 p.m. Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9516439.

The Lee County Appraisal District Board of Directors will meet at 218 East Richmond Street, Giddings, December 27, 1995, at 9:00 a.m. Information may be obtained from Roy L. Holcomb, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9516417.

The Lower Neches Valley Authority Finance and Water Rates Committees met at 7850 Eastex Freeway, Beaumont, December 18, 1995, at 10:00 a. m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9516361.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Meeting) met at the District Office, 300 South Omohundro Street, White Deer, December 20, 1995, at 7:00 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9516416.

The Rockwall County Central Appraisal District Appraisal Review Board met at 106 North San Jacinto, Rockwall, December 19, 1995, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9516358.

The Swisher County Appraisal District Board of Directors met at 130 North Armstrong, Tulia, December 21, 1995, at 11:00 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9516370.

Meetings Filed December 18, 1995

The Hunt County Appraisal District (Rescheduled from: January 11, 1996.) Appraisal Review Board will meet at 4801 King Street, Greenville, January 16, 1996, at 8:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9516465.

The Johnson County Rural Water Supply Corporation (Emergency Meeting.) Personnel Committee met at the Corporation Office, 2849 Highway 171 South, December 19, 1995, at 5:50 p.m. (Reason for emergency: Unable to meet 72-hour deadline.) Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9516452.

The Middle Rio Grande Development Council (Emergency Meeting.) Executive Committee met at the Uvalde Operations, Conference Room, 209 North Getty Street, Uvalde, December 20, 1995, at 6:00 p.m. (Reason for emergency: Need to review and get approval prior to end-of-year in order to meet deadline requirements.) Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9516488.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Task Force will meet at the Municipal Plaza Building, "B" Room, Corner of Main and Commerce, San Antonio, January 3, 1996, at 4:00 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9516477.

The Wood County Appraisal District (Revised Agenda.) Board of Directors met at 210 Clark Street, Quitman, December 21, 1995, at 1:30 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891 TRD-9516447.

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

Finding of Fact About the Appropriation for Benefit Replacement Pay

The Comptroller of Public Accounts has determined that an appropriation described by Senate Bill 102, §7(a), 74th Legislature, 1995, has become law. This determination is published under §7(c) of the bill, which requires the comptroller to publish a finding in the *Texas Register* before January 1, 1996, about whether the appropriation has become law. The publishing of this finding prevents the bill from having no effect.

Issued in Austin, Texas, on December 14, 1995.

TRD-9516336 Martin Cherry
Chief, General Law Section
Comptroller of Public Accounts

Filed: December 14, 1995

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Texas Education Agency

Correction of Errors

The Texas Education Agency proposed new §§176.101-176.122. The rules appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9650).

On page 9661, an error as submitted appeared in §176.111(c)(4). The phrase "...Driver Training, Texas Education TEA..." should read "...Driver Training, Texas Education Agency..."

The Texas Education Agency adopted the repeal of §157.26. The rule appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9695).

On page 9695, an error as published appeared in the adopted repeal of §157.26. The effective date of the adoption was listed erroneously as December 15, 1996. The correct date is December 15, 1995.

The Texas Education Agency adopted new §157.41. The rule appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9695).

On page 9696, as error as submitted appears in §15741(i). The catchline for subsection (i), which was inadvertently omitted, should read "Voluntary evaluation."

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The Texas Education Agency proposed new §§176.1-176.21 and §§176. 101-176.122. The rules appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9638).

An error as submitted appeared on page 9638 in the preamble to proposed new §§176.1-176.21 and §§176.101-176.12. The following paragraph, which was inadvertently omitted, should appear following the first paragraph in the preamble.

"Under Senate Bill 1, a rule adopted by the State Board of Education (SBOE) normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that an SBOE rule may take effect earlier under certain circumstances. The SBOE, by an affirmative vote of at least two-thirds of the board members, proposes an earlier effective date of February 15, 1996. The earlier date is necessary to implement Senate Bill 964, 74th Texas Legislature, 1995, which has an effective date of September 1, 1995.

The Texas Education Agency proposed the repeal of §§176.10-176.20, 176. 22, 176.23, and 176.25-176.34. The rules appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9663).

An error as submitted appeared on page 9663 in the preamble. The following paragraph, which was inadvertently omitted, should appear following the first paragraph in the preamble.

"Under Senate Bill 1, a rule adopted by the State Board of Education (SBOE) normally does not take effect until the beginning of the school year that begins at least 90 days after the date the rule is adopted. However, the Bill provides that an SBOE rule may take effect earlier under certain circumstances. The SBOE, by an affirmative vote of at least two-thirds of the board members, proposes an earlier effectively date of February 15, 1996. Because SBOE is proposing an earlier effective date of February 15, 1996, for new Chapter 176, Subchapter A and Subchapter B, the earlier effective date proposed for the repeal of current Chapter 176, Subchapter B, must be the same to avoid regulatory overlap.

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Request for Applications Concerning the Public Charter Schools Program, 1995-1996.

Filing Authority. The availability of federal grant funds under Request for Applications (RFA) #701-96-005 is authorized by Public Law 103-382, Title X, Part C, Public Charter Schools.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications for federal funds to support the

planning, design, and initial implementation of either program or campus charters as defined in Senate Bill 1 and/or open-enrollment charters in accordance with the published State Board of Education guidelines. Eligible applicants include school districts and/or other entities, such as a public or private college or university, an organization that is exempt from taxation under the Internal Revenue Code of 1986 (20 USC, §501(c)(3)),or a governmental entity.

Description. In accordance with the purpose of the federal Charter School Grant Program and in support of the newly-enacted Texas state statute, Senate Bill 1, the objectives of the program are to: provide incentives and support for the planning and development of campus charters designed to serve populations of predominately educationally disadvantaged students and to enable the students to meet the state education standards of performance; assist in the development and initial implementation of several different models of charter schools as provided under state law and/or State Board of Education guidelines, serving elementary, middle school, and high school level students in urban, suburban, and rural areas; and document, evaluate, and disseminate information identifying effective practices used in campus and/or open-enrollment charter schools that result in notable academic gains by educationally disadvantaged students and other students.

Funds received from this grant may be applied to support the planning and development of campus charters, campus program charters, and open-enrollment charter schools. The open-enrollment charters must be established in accordance with the adopted State Board of Education guidelines and in response to a previous public notice published in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9488). Any charter school applicant must comply with the federal requirements of this planning section, addressing the requirement that at least 25% of the student population to be served be made up of educationally disadvantaged students.

The evaluation of charter schools will be based in large part on the outcomes on the statewide accountability system for students served by the charter schools funded under this grant. Therefore, a related program objective will be for the grant recipients to demonstrate how a significant increase in performance for educationally disadvantaged students served by the charter schools over a three-year planning and implementation period will be attained.

At the end of June 1996 and June 1997, student performance data of the educationally disadvantaged students and other students must be submitted to TEA. From October 1996 through November 1996, an on-site peer review visit will also be conducted on each charter school. Evaluations will be conducted for each of the campus or campus program charters and/or open-enrollment charter schools receiving a grant. The evaluation will be twofold. It will include an assessment of student performance of the educationally disadvantaged students and other students, as well as a summary report on a program evaluation of each of the grant sites as developed by an annual on-site peer review team.

Dates of Project. The federal Public Charter schools Program will be implemented during the 1995-1996 school year. Applicants should plan for a starting date the first year of no earlier than February 1, 1996, and an ending date of no later than February 1, 1997.

Project Amount. Funding will be provided for not more than 15 charter schools. These can be campus or campus program charter schools or open-enrollment charter schools. Each project will receive an amount not to exceed $15,850 for the grant period from February 1996 through February 1997. Project funding may be available through reapplication in the second and third years based on satisfactory progress of the first-year objectives and activities, and approval by the State Board of Education, the commissioner of education, and the federal government. This project is funded 100% from the Public Charter Schools federal grant.

Selection Criteria. Applications will be selected based on the ability of each applicant to implement all requirements contained in the RFA. The charters will be selected to receive a grant under the federal Public Charter Schools Program based on the quality and completeness of the applications. As many as 15 open-enrollment charter schools, campus, or campus program charters may be represented from each of the following categories: urban, suburban, and rural campuses at the elementary, middle (or junior high), and high school levels.

To be considered for a grant, a charter must indicate that at least 25% of the student population to be served is made up of educationally disadvantaged students. In the selection process, preference will be given to charters that would serve the highest percentage of educationally disadvantaged students that fall in the various categories. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-96-005 may be obtained by writing to: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Deborah Nance or Belinda Flores, Division of Accountability Development, Training, and Support, Texas Education Agency, (512) 463-9716.

Deadline for Receipt of Applications. To be considered, Applications must be received in the Document Control Center of the Texas Education Agency by 5: 00 p.m. (Central Standard Time), Thursday, April 4, 1996, to be considered.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516462 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: December 18, 1995

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State Employee Charitable Campaign Policy Committee

Notice of Application

The State Policy Committee for the State Employee Charitable Committee is currently accepting applications from

federated community campaign organizations desiring to participate as State Campaign Manager in the 1996 State Employee Charitable Campaign. Federations desiring to apply should contact the 1995 Communications Coordinator for the State Campaign Manager by phone (512) 450-0840 or fax (512) 450-0108 for an application. All applications must be received by the State Policy Committee at 505 East Huntland Drive, Suite 455, Austin, Texas 78752-3714 no later than 5:00 p.m. Wednesday, January 17, 1996. Applications received after 5:00 p.m. on January 17, 1996 will not be accepted.

Issued in Austin, Texas, on December 13, 1995.

TRD-9516304 Mary Ellen Burns
Senior Vice President
State Employee Charitable Campaign

Filed: December 13, 1995

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Employees Retirement System of Texas

Request For Proposals Texas Employees Uniform Group Insurance Program Dental Health Maintenance Plan

In accordance with the Texas Insurance Code, Article 3.50-2, §4, as amended, the Employees Retirement System of Texas (ERS) announces a request for proposals (RFP) to provide dental health maintenance benefits for the Texas Employees Uniform Group Insurance Program (UGIP) beginning September 1, 1996. The dental health maintenance plan must provide the level of benefits as required in the RFP.

The RFP is available upon request from the ERS.

The deadline for receipt of the completed proposals in response to this request will be 5:00 p.m. on January 26, 1996.

The ERS reserves the right to accept or reject any proposal submitted. The ERS is under no legal requirement to execute a resulting contract on the basis of this advertisement.

The ERS will base its selection of a dental vendor on demonstrated capacity to provide adequate services to UGIP participants, superior qualifications, and evidence of conformance with the proposal criteria.

This RFP 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 14, 1995.

TRD-9516363 Charles D. Travis
Executive Director
Employees Retirement System of Texas

Filed: December 15, 1995

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General Land Office

Invitation for Offers of Consulting Services

The Texas General Land Office (GLO) previously contracted for consultant services to obtain professional and technical assistance for the development of a draft consistency review framework and process for the Texas Coastal Management Program (CMP) and for the development of options for the organizational structure necessary to implement the program. The GLO is now requesting offers of consultant services to provide further guidance and assistance with the CMP.

Pursuant to the Texas Government Code, §§2254.021, et seq, the GLO is requesting offers of consulting services to assist in obtaining federal approval of the CMP, with drafting the Environmental Impact Statement required for federal approval, and with the further development of state and federal consistency review processes. Consultant may also provide other related assistance, such as the review of draft CMP documents and environmental assessments, and regular telephone consultation, as needed by the CMP staff, through August 31, 1996.

The requested consultant services will require an understanding of and the ability to build upon the work previously provided by Richard F. Delaney, a private consultant, under the provisions of GLO Contract Number 93-038R and GLO Contract Number 94-167R. It is the GLO's intent to award this contract to Mr. Delaney to obtain maximum benefit of the prior work unless a substantially better offer is submitted.

The closing date for the receipt of offers of these consulting services is 5:00 p.m. on January 22, 1996. Further information can be obtained by contacting Tom Nuckols, Texas General Land Office, Coastal Division, 1700 North Congress Avenue, Room 620, Austin, Texas 78701, (512) 463-5054.

The consultant selected must demonstrate extensive knowledge of the CMP, have knowledge and experience working with other federally designated Coastal Zone Management state programs, and maintain contacts within the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516415 Garry Mauro
Commissioner
General Land Office

Filed: December 15, 1995

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Texas Department of Health

Correction of Error

The Texas State Board of Examiners adopted amendments to §§761.2, 761.7, 761.9, 761.10, 761.13, and 761.20. The rules appeared in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9850).

Due to an error in the department's submission and a publishing error, §761.20(h) incorrectly cross-referenced a

cite. Subsection (h) should read as follows: "(h) The individual must pay a reinstatement fee set out at §761. 2(S)(2)(F) of this title (relating to The Board's Operation) prior to issuance of the license."

Also, the header information which lists the sections affected by the action incorrectly listed a section "61.9." The correct section number should be §761.9.

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Texas Department of Human Services

Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on proposed Heavy Care reimbursements for the Assisted Living/Residential Care Services of the Community Based Alternatives Waiver program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement for medical assistance programs. The public hearing will be held on January 9, 1996, at 2: 00 p.m. in Room 460 on the Fourth Floor of the West Tower of the John H. Winters Center, 701 West 51st Street, Austin, Texas. If you are unable to attend the hearing, but wish to comment on the proposed reimbursements, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sonya Battle. Written comments may be mailed to the address noted, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 438-3014. Interested parties may request to have mailed to them or may pick up briefing packages concerning the proposed reimbursements on or after December 21, 1995, by contacting Sonya Battle, MC W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sonya Battle, (512) 438-4817 by January 2, 1996, so that appropriate arrangements can be made.

Issued in Austin, Texas, on December 18, 1995.

TRD-9516458 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Filed: December 18, 1995

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted new §330.70. The rule appeared in the November 24, 1995, issue of *Texas Register* (20 TexReg 9898).

Section 330.70(e)(8) contained an error as submitted, in the second column the word "of" should be "and". Paragraph (8) should read "Evidence of financial assurance. Municipal solid waste landfill facilities are subject to the Subchapter K requirements and §330.9 of this title (relating to Financial Assurance)".

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Application for Standby Fees

Notice of application to Levy Standby Fees issued during the period of December 11-15, 1995.

Application by MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 48 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 1994 and 1995. Any revenues collected from the standby fees shall be used to pay operation and maintenance expenses and debt service on the bonds. The uniform operations and maintenance standby fee is $194 per acre (based on 8.0 equivalent single family connections per acre) per year for the calendar years 1996-1997. The non-uniform debt service standby fee is based on tiers of service and specific capacity allocations.

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 15, 1995.

TRD-9516442 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 15, 1995

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Notices of Application for Permits to Appropriate Public Waters of the State of Texas

Notices of application issued during the period of November 20-24, 1995.

Application by ALUMINUM COMPANY OF AMERICA, Application Number 5540, to authorize construction and maintenance of two reservoirs on an unnamed tributary (known locally as Country Club Creek) of East Yegua Creek, tributary of Yegua Creek, tributary of the Brazos River, Brazos River Basin. The reservoirs are to be a portion of the final reclamation of an area (referred to as "Area E") at the applicant's Sandow Surface Lignite Mine and, after reclamation of the area is complete, will be used for domestic and livestock purposes. The upstream reservoir, referred to as "North End Lake" will be incised (no dam) and the downstream reservoir, referred to as "E-Area End Lake" will be created by a dam. E-Area End Lake will also function as a sediment pond for the reclaimed area until sediment control is no longer needed. Notth End Lake will be approximately 18.3 miles south of Cameron in Milam County, Texas. The reservoir will be in the James Stephens Survey, Abstract Number 322 and the centerline of the spillway for the reservoir will be north 62 degrees 54 feet west, 6,824 feet from the southeast corner of the survey. The reservoir will have a surface area of 21.6 acres and a capacity of 356.1 acre-feet at a spillway crest elevation of 415 feet above mean sea level. E Area End Lake will be downstream of North End Lake and will be approximately 18.9 miles south of Cameron in Milam County, Texas. The dam for the reservoir will be in the William Isaacs Survey, Abstract Number 219 and the centerline of the spillway in the dam will be at latitude 30.585 degrees north and longitude 97.083 degrees west, which is also north 19 degrees 56 feet east, 2,248 feet from the aforesaid Stephens survey corner. The reservoir will have a surface area of 92.2 acres and a capacity of 4,173.3 acre-feet at a spillway crest elevation of 390 feet above mean sea level.

The Executive Director will issue the permit unless a written hearing request is filed within 30 days after newspaper publication of this notice. To request a hearing, you must submit the following: your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; the name of the applicant and the permit number; the statement "I/we request a public hearing"; a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; the location of your property relative to the applicant's operations; and your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

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 Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516440 Gloria A Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 15, 1995

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Notices of Applications for Waste Disposal Permits

Notices of applications for waste disposal permits issued during the period of December 12-15, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a,public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

LeTourneau, Inc., the facility is located in Longview, Gregg County, Texas, transfer, HW-50263-000, 45-day.

CITY OF BROWNWOOD, the wastewater treatment fa-

cilities are north of Willis Creek at the southeast end of Hoover Avenue in the City of Brownwood in Brown County, Texas, renewal, 10565-01.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE, the wastewater treatment facilities are on the east bank of Oyster Creek, on FM Road 655, approximately nine miles northwest of the City of Angleton in Brazoria County, Texas, new, 13804-01.

EXXON CHEMICAL ASSET MANAGEMENT PARTNERSHIP, the permittee operates the Baytown Olefins Plant, the plant site is at 3525 Decker Drive (Spur 330) in the City of Baytown in Harris County, Texas, amendment, 02184.

CITY OF HOUSTON, the wastewater treatment facilities are adjacent to the confluence of Rummel Creek and Buffalo Bayou at 12901 Hermitage Street in the City of Houston in Harris County, Texas, amendment, 10495-030.

CITY OF HALLSVILLE, the wastewater treatment facilities are approximately 6, 200 feet east of the intersection of FM Road 450 and U.S. Highway 80 and 1,100 feet south of U.S. Highway 80 in Harrison County, Texas, amendment, 10460-01.

AGE REFINING, INC., the applicant operates a petroleum refinery, the plant site is at 7811 South Presa Street in the City of San Antonio in Bexar County, Texas, renewal, 02921.

CITY OF ORCHARD, the wastewater treatment facilities are approximately 500 feet southeast of the intersection of State Highway 36 and FM Road 1489, approximately 2,500 feet southwest of the City of Orchard in Fort Bend County, Texas, renewal, 11545-01.

LAMAR CONSOLIDATED INDEPENDENT SCHOOL DISTRICT, the wastewater treatment facilities are approximately 3.5 miles generally south of the City of Rosenberg and approximately 1,300 feet east of the intersection of J. Meyer Road and State Highway 36 in Fort Bend County, Texas, renewal, 13006-01.

CITY OF PECAN GAP, the wastewater treatment facilities are approximately 0. 5 mile west and 0.3 mile south of the intersection of FM Road 64 and FM Road 128 and immediately west of South Third Street in Delta County, Texas, renewal, 10744-01.

RED RIVER AUTHORITY OF TEXAS, the wastewater treatment facilities are east of the City of Estelline, about one-half mile east of U.S. Highway 287 and south of the Fort Worth and Denver Railroad in Hall County, Texas, renewal, 11252-01.

CITY OF ODEM, the wastewater treatment facilities are approximately 0.5 mile northeast of the intersection of U.S. Highway 77, State Highway 234 and FM Road 631 in San Patricio County, Texas, renewal, 10237-01.

PIONEER CONCRETE OF TEXAS, the applicant operates the Chico Crushed Stone site, a stone quarrying, crushing and washing operation, the plant site is on FM Road 1810 approximately one mile east of the intersection of State Highway 101 and FM Road 1810 in the City of Chico in Wise County, Texas, renewal, 00679.

OXID INCORPORATED, the applicant operates a plant which manufactures, distills and blends glycols and glycol ethers, the plant site is at the southeast corner of the intersection of Loop 610 and the Houston Ship Channel, at 101 Concrete Street in the City of Houston in Harris County, Texas, renewal, 02102.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516441 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 15, 1995

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Notice of Opportunity to Comment on Permitting Actions-For the Week Ending December 15, 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 applications of the City of Rockdale to Amend Water CCN Number 10012 and Sewer CCN Number 20004 in Milam County, Texas (Application Numbers 30943-C and 30944-C, City of Rockdale).

Consideration of the application of City of Buda to Cancel Sewer Certificate of Convenience and Necessity Number 20647 in Hays County, Texas (Application Number 30838-Q, Vera Poe).

Consideration of the application of Southwest Milam Water Supply Corporation to Decertify a Portion of Water Certificate of Convenience and Necessity Number 10027 in Milam County, Texas (Application Number 30899-C, Darrell Nichols).

CITY OF COLLEGE STATION, Public Utilities Department for a minor amendment to Permit Number

10024-01 in order to allow disinfection by ultraviolet light and the deletion of chlorination test requirements. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 4,900,000 gallons per day, which will remain the same. The wastewater treatment facilities are to the west side of Carters Creek approximately 0.75 mile east of the State Highway 6 Bypass, and approximately 4,000 feet north and 1800 feet east of the intersection of State Highway 6 East Bypass and Texas Avenue in Brazos County, Texas.

CITY OF COLLEGE STATION, Public Utilities Department for a minor amendment to Permit Number 10024-02 in order to allow disinfection by ultraviolet light and the deletion of chlorination test requirements. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 4,000,000 gallons per day, which will remain the same. The wastewater treatment facilities are approximately 1.5 miles southeast of the intersection of State Highway 6 Bypass and State Highway 30, approximately 1.9 miles north-northeast of the intersection of State Highway 6 and State Highway 6 Bypass in Brazos County, Texas.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516443 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 15, 1995

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Notice of Public Comment Opportunity and Hearing

The Texas Natural Resource Conservation Commission (commission) staff will conduct a hearing to receive evidence from the public on the threat to the Edwards Aquifer water quality resulting from activities in Bell County and to receive evidence regarding the inclusion of Bell County under 30 Texas Administrative Code, Chapter 313 Edwards Aquifer Rules. This hearing is being conducted pursuant to a commission order issued September 27, 1995, denying a petition for rulemaking which requested the inclusion of Bell County into the Edwards Aquifer Rules.

The hearing will be held on January 10, 1996, beginning at 2:00 p.m. and ending at 4:00 p.m. in the city council room at the City of Belton City Hall, 333 East Avenue A, Belton, Texas. The hearing will be structured for the formal receipt of oral or written comments by interested persons. Individuals may present written and/or oral statements at the hearing. Open discussion within the audience and between the audience and commission staff will not occur during the hearing; however TNRCC staff will be available to discuss the Edwards Aquifer Protection Program 30 minutes prior to the hearing and immediately following the hearing.

Written comments should mention the Edwards Aquifer Bell County Hearing and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Written comments must be received by 5:00 pm, January 22, 1996. For further information or questions concerning the hearing, please contact Mary Ambrose, Water Policy and Regulations Division, (512) 239-4813.

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

Issued in Austin, Texas, on December 13, 1995.

TRD-9516446 Kevin McCalla
Legal Division
Texas Natural Resource Conservation Commission

Filed: December 18, 1995

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Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony regarding a site-specific revision to the SIP, concerning a request from Bell Helicopter Textron Incorporated for an alternate reasonably available control technology (ARACT).

Pursuant to 30 TAC §115.423(a)(4), the Executive Director of the TNRCC may approve requirements different from reasonably available control technology (RACT) requirements specified in 30 TAC §115.421(a)(9) based upon the determination that such requirements are an appropriate ARACT which will result in the lowest emissions rate that is technologically and economically reasonable. Bell has demonstrated in their application that they cannot completely meet the compliant coating requirements due to either the lack of commercially-available compliant coatings which meet product and military specifications, or the lack of a technically or economically viable alternative by re-engineering the processes or adding further control equipment.

A public hearing on the proposal will be held on January 16, 1996 at 2:00 p. m. in Room 5108 of TNRCC Building F, located at 12100 North IH-35, Park 35 Technology Center, Austin. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be January 22, 1996. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Copies of the proposal are available at the central office of the TNRCC located at 12100 North IH-35, Building E, Austin. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 and reference Rule Log Number 95166-SIP-AI. For further information, please contact Alan Henderson at (512) 239-1510, Richard Hughes at (512) 239-1554, or Jean Xu at (512) 239-1823.

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

Issued in Austin, Texas, on December 13, 1995.

TRD-9516313 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: December 14, 1995

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Notices of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Management for the Week Ending December 15, 1995

APPLICATION BY THE CITY OF DENTON; Proposed Permit Amendment Number MSW1590-A, authorizing a Type I permit amendment for their existing municipal solid waste management facility. The permit amendment would authorize the City to vertically and laterally expand the existing facility. The site covers approximately 243 acres of land and will continue to receive approximately 104, 000 tons of municipal solid waste per year. The site is bounded on the north by Foster Road, on the west by Mayhill Road, on the south by Edwards Road, on the east by an unnamed tributary of Pecan Creek, and is approximately 1.5 miles east of the intersection of Loop 288 and Interstate Highway 35E in southeast Denton, Denton County, Texas.

APPLICATION BY HDJ HOLDING, INC; Proposed Permit Number MSW2254, authorizing a Type V (Grit and Grease Trap Processing) municipal solid waste management permit. The proposed site covers approximately 0.616 acres and is to daily receive approximately 35,000 gallons of municipal solid waste (grease trap waste) per day for disposal or other processing. The proposed site is located at 1102 West Laurel in the city of San Antonio, Bexar 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 15, 1995.

TRD-9516444 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: December 15, 1995

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Texas Department of Protective and Regulatory Services

Notice of Consultant Contract Award

In accordance with the Texas Government Code, Chapter 2254, Subchapter B, Title 10, the Texas Department of Protective and Regulatory Services announces this consultant contract award. The invitation for offers was published in the October 24, 1995 issue of the *Texas Register* (20 Tex Reg 8867).

Description of Services: The selected contractor will submit deliverables required by the contract and other reports requested by the Department in an appropriate format and on a timely basis; and make available at reasonable times and for reasonable periods offeror's work- papers, records, other programmatic reports and supporting documents for reviewing and copying by the Department, or their authorized representatives. The first deliverable which was due January 2, 1996, under the RFP, will not be due until January 15, 1996. All other deliverables will follow the schedule set forth in the RFP specifications. The deliverables are reports analyzing the Child and Adult Protective System (CAPS) Project from a risk management perspective.

Name of Consultant: The contract for consulting has been awarded to AmeriData Consulting, Inc., 3307 Northland Drive, Suite 210, Austin, Texas 78731.

Amount and Term of Contract: This contract will not exceed $120, 000. The contract will begin December 15, 1995. and August 31, 1996.

Reporting Dates: The one time reports for Field Test Release 2.1, 2.2, and full applications Initiation will be due 30 calendar days prior to roll out. Field Test Release 2.1 is scheduled for rollout on February 1, 1996. As stated previously in the description of services, the first deliverable which was due January 2, 1996 has been extended until January 15, 1996 because not all necessary approvals to award this contract were received by December 1, 1995. Field test Release 2.2 is scheduled for rollout on April 1, 1996. Reports for Field Test Release 2.2 will be due to IRT management on March 1, 1996. Full Application Initiation is scheduled for rollout on June 1, 1996. Reports for Full Application Initiation will be due to IRT management on May 1, 1995. All other reports will be due the first business day of the calendar month.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516466 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Filed. December 15, 1995

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Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on December 11, 1995, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific contract for billing and collection services with

LDC Telecommunications, Inc.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with LDC Telecommunications, Inc. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15070.

The Application: Southwestern Bell Telephone Company seeks approval of a customer-specific billing and collection services contract with LDC Telecommunications, Inc. The services pursuant to this customer-specific contract will be offered anywhere within the state of Texas where LDC Telecommunications, Inc. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 13, 1995.

TRD-9516288 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 13, 1995

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application on December 15, 1995, pursuant to Public Utility Commission Substantive Rule 23.27 for approval of an amendment to a customer-specific contract for billing and collection services with Southwestern Bell Messaging Services, Inc.

Tariff Title and Number: Application of Southwestern Bell Telephone Company for Approval of an Amendment to a Customer-Specific Contract for Billing and Collection Services with Southwestern Bell Messaging Services, Inc. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15093.

The Application: Southwestern Bell Telephone Company seeks approval of an amendment to the customer-specific billing and collection services contract for Southwestern Bell Messaging Services, Inc. The services pursuant to this customer-specific contract will be offered anywhere within the state of Texas where Southwestern Bell Messaging Services, Inc. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Section at (512) 458-0223, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on December 13, 1995.

TRD-9516289 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 13, 1995

Notice of Workshop

The staff of the Public Utility Commission of Texas (PUC) will conduct a workshop on Thursday, January 11, 1996, at 10:00 a.m. in Hearing Room D on a new rule concerning documentation requirements to be filed by electing companies seeking to adjust rates under PURA 1995, §3.353. The purpose of the new rule would be to establish documentary filing requirements for Basket I rate adjustment pursuant to PURA 1995, §3.354(a).

A list of questions regarding issues to be discussed at the workshop will be made available after December 20, 1995. Parties should be prepared to discuss their responses to the questions at the workshop. Following this workshop, Staff will develop a draft of the proposed rule to be presented to the Commissioners and recommended for publication. This project has been assigned Project Number 14510.

Persons who plan to attend the public hearing and/or wish to obtain the list of questions should register with Laura Velasquez at (512) 458-0370. For further information, contact Ann Coffin at (512) 458-0365 or Nelson Parish at (512) 458-0205.

Issued in Austin, Texas, on December 14, 1995.

TRD-9516356 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 14, 1995

Telecommunications Infrastructure Fund Board

Request for Proposal–Request for Assistance in Identifying Nominees for the Executive Director for the Telecommunications Infrastructure Fund (TIF)

The Texas Telecommunications Infrastructure Fund Board is requesting proposals from December 11, 1995 to December 21, 1995. One contract will be awarded in an amount not to exceed $10,000. Historically underutilized businesses (HUBs) are encouraged to submit a proposal.

I. Brief description of services required: The Telecommunications Infrastructure Fund Board is requesting proposals from private companies, partnerships or individuals in identifying candidates for the position of Executive Director of the Telecommunications Infrastructure Fund.

II. Background Information: The Executive Director serves as the Chief Operating Officer of the Fund. Major duties will include:

1. Interpreting, administering and directing the laws pertinent to the agency.

2. Developing, managing and administering a strategic plan to award $150 million per year offering grants and loans to schools, hospitals and libraries for distance learning and telemedicine.

3. Representing the TIF before the Legislature, state agencies and the leaders of the telecommunications industry.

4. Advising a governing board of nine members on issues of advanced technology including the integration of the network hardware and software.

5. Creating an administrative structure including staffing and budgetary decisions.

6. Directing the development of procedures, operating instructions, and training for activities within the division.

7. Working with foundations and private sector firms to form partnerships with education institutions to help achieve goals.

8. Developing and funding state of the art distance learning and telemedicine programs in Texas.

9. Reporting to the Board.

Qualifications for the Executive Director are:

Graduation from an accredited college or university

Five years of management experience required in academia, government

or private business or a combination thereof.

Financial and budgetary experience preferred.

Strategic planning experience preferred.

Experience in long-term project planning, evaluation and management.

Ability to plan and direct the work of the division; to train and supervise; to

analyze and solve problems; to interpret and apply policies and regulations;

and to work effectively with a variety of individuals and groups.

High degree of commitment in improving education especially in K-12 education, and rural telemedicine.

Monthly salary range is $6,666.66-$10,000 commenserate with experience and further board definition of responsibilities.

Interpersonal skills.

Reports and accountable to the board.

III. Timelines or time frames during which the requested services will be performed: The proposer should plan on a starting date of January 2, 1996, and an ending date of March 1, 1996.

The proposed calendar for the selection process is:

November 27, 1995-TIF Board posts for position of Executive Director in the *Texas Register*.

December 11, 1995-TIF Board issues RFP for consulting assistance in selecting an Executive Director.

December 21, 1995-RFPs for consulting service due by 5:00 p.m. in the TIF Office (Post Office Box 12428, Austin, Texas 78711).

December 22, 1995-January 1, 1996-Search contract awarded.

November 27, 1995-January 19, 1996-Applications for Executive Director accepted.

January 25, 1996-Identify candidates to be interviewed.

January 26-27 1996-TIF Board interviews candidates early February 1996.

Mid February 1996-TIF Board selects executive director.

IV. Specifications/Requirements: The proposer must be willing to provide the minimally required services and may choose to propose additional services within the budget guidelines of the contract.

A. Services that must be provided as part of this contract include:

1. Contact each member of the Board to obtain his or her perspective on any additional qualifications or attributes for an Executive Director. Provide summary of results to board members.

2. Provide guidance to the Search Committee and Board during the search and selection process.

3. Conduct a national search to the extent possible within the timelines provided for exceptionally qualified candidates.

4. Participate in the screening of candidates who meet the established qualifications and who are capable of performing the duties of the position and are worthy of board interview.

5. Provide sufficient copies of applications/resumes of qualified applicants to the Board for consideration.

6. Provide a list of all persons considered for the position.

7. Prior to the interview phase, provide an extensive resume for each candidate to be interviewed.

8. By the conclusion of the interview phase, conduct a background check to include verification of academic credentials and contact of two former employers for each candidate to be interviewed.

B. Services that may be provided as part of this contract include:

1. Provide written confidential executive summaries of candidates to be interviewed.

2. Debrief candidates after the board interview.

V. Proposer Qualifications/Experience: The proposer should provide satisfactory evidence of capability to manage and coordinate the types of activities described in Section IV and to produce the specified product or service on time.

A. Proposers should have had highly responsible search experience such as at least one of the following:

1. have been in the executive search business for five or more years;

2. have had selected from a list of recommended candidates a chief executive officer or chief operating officer for a company in the telecommuncations arena or for a senior technology officer of a large organization.

B. To provide information on qualifications, the proposers should include the following information:

1. evidence of working on similar projects, including names of the clients served, contact persons, and a description of activities performed;

2. names of staff member(s) and resumes who will direct the project throughout the duration of the project.

VI. Budget and Payment Schedule: A maximum amount of $10,000 will be set for proposal submission.

Payments will be made to the selected contractor upon satisfactory performance of services/activities and upon receipt of a proper invoice which corresponds to the tasks outlined in the proposed budget.

VII. Submission of Proposals: To be eligible for consider-

ation, 20 copies of the proposal must be received in the Telecommunications Infrastructure Fund Office no later than 5:00 p.m. on the Thursday, December 21, 1995. The address is:

The Telecommunications Infrastructure Fund, c/o The Office of the Governor Post Office Box 12428 Austin, Texas 78711 or

The Telecommunication Infrastructure Fund c/o The Office of the Governor Policy Division, 1100 San Jacinto, Fourth Floor Austin, Texas 78701

In establishing the date and time of receipt, the Telecommunications Infrastructure Fund Board will rely solely upon the date/time stamp of the Governor's Office.

Proposals should be submitted with a cover page which clearly identifies:

1. the project name and RFP number;
2. the proposer's name, address, and telephone number;
3. the identification number requested in Section VIII;
4. the name, address, and telephone number of the contact person if different from the proposer;
5. the total cost requested.

VIII. Certificate of Good Standing: The proposer, if incorporated, shall attach to the proposal a current franchise tax Certificate of Good Standing, issued by the Texas State Comptroller's office. The proposer shall also provide to the agency the proposer's 9-digit Federal Employer's Identification Number (FEI#); Social Security Number if proposer is an individual; or 14-digit Sate of Texas Vendor's Identification Number (VIN).

X. Selection of Contractor: A contractor will be selected based on demonstrated competence and qualifications of the proposer, upon the ability of the proposer to complete the services/activities in the manner and time frame requested, and upon the reasonableness of the proposed fee. Contract award will be made as soon a possible on or after December 22, 1995, depending on any necessary interviews, references, approvals, etc.

All proposals in response to this request must meet the following conditions in order to be considered:

A. Proposals are required to address adequately the content in the RFP.

B. The Telecommunications Infrastructure Fund Board reserves the right to reject any and all proposals and to negotiate portions thereof.

C. The proposer selected may not necessarily be funded for the full proposal price if a lesser price is determined to be more appropriate. The payment schedule submitted by the proposer is subject to negotiation by the Telecommunications Infrastructure Fund Board or its search subcommittee.

D. The Telecommunications Infrastructure Fund Board reserves the right to select the proposal containing the best price considering the outcomes desired.

E. All materials and products resulting form this contract will become the property of the Telecommunications Infrastructure Fund;

XI. Assistance to Proposer: Question regarding this request for proposal may be directed to: c/o Telecommunications Infrastructure Fund Board Office of the Governor, Margaret La Montagne, Senior Advisor, Post Office Box 12428 Austin, Texas 78711, (512) 463-0791.

Issued in Austin, Texas, on December 18, 1995.

TRD-9516461 Pete Wassdorf
Deputy General Counsel, Governor's Office
Telecommunications Infrastructure Fund Board

Filed: December 18, 1995

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Texas Department of Transportation

Request for Proposals

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC, §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract(s): #17-645P5003, for Engineering Services to conduct environmental assessment/public involvement process, schematic design, right-of-way map, and PS&E development for the widening of SH 6 in Robertson County.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by Fax at (409) 778-9702, or hand-delivered or mailed to TxDOT, Bryan District Office, 1300 North Texas Avenue, Bryan, Texas 77803-2760. Letters of interest will be received until 5:00 p.m. on Friday, January 12, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet.) TxDOT will not issue Request for Proposal packet without receipt of letter of interest.

Pre-proposal Meeting: A pre-proposal meeting will be held on Wednesday, January 17, 1996, at 10:00 a.m., at the Brazos Center, Assembly Room 3 and 4, 3232 Briarcrest Drive, Bryan, Texas. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

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 the TxDOT Agency Contact listed in this notice, at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for contract #17-645P5003 will be accepted until 5:00 p.m. on Friday, February 2, 1996, at the TxDOT, Bryan District Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Phillip E. Russell, P.E., (409) 778-9713, FAX (409) 778-9702.

Notice of Invitation: The Texas Department of Transportation (TxDOT) intends to engage an architectural/engineering consultant, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC, §§9.30-9.40, to

provide the following services. The architect/engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract(s): #44-645P8015, for Architectural/Engineering Services to provide design and construction services of a District Headquarters Facility in El Paso, Texas. Services include design of all buildings, structures, site appurtenances, utilities, and construction administration. The project is estimated at $7.5 million.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by Fax at (512) 416-3072, or hand-delivered to TxDOT, General Services Division, 150 East Riverside Drive, Suite 406N, Austin, Texas 78704, or mailed to 125 East 11th Street, Austin, Texas 78701-2483. Letters of interest will be received until 5:00 p.m. on Wednesday, January 17, 1996. The letter of interest must include the firm name, address, telephone number, name of contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet.) TxDOT will not issue Request for Proposal packet without receipt of letter of interest.

Proposal Submittal Deadline: Proposals for contract #44-645P8015 will be accepted until 5:00 p.m. on Tuesday, February 13, 1996, at the TxDOT, General Services Division Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Craig Russell, (512) 416-3041 or Mark Craig, P.E., (512) 416-3047.

Issued in Austin, Texas, on December 15, 1995.

TRD-9516456 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: December 18, 1995

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Texas Water Development Board

Notice of Hearing

An attorney with the Texas Water Development Board will conduct a public hearing beginning at 10:30 a.m., February 5, 1996, Room 118 Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78711 on the proposed Project Priority List for the State Water Pollution Control Revolving Fund.

The Project Priority List is an alphabetical listing of wastewater treatment projects which will be considered for funding during FY 1995-2000 through the State Revolving Fund program. The amendment will add one or more projects to the Project Priority List so that they may receive SRF assistance in accordance with the Clean Water Act of 1987, §603(g).

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed Project Priority List. In addition, persons may participate in the hearing by mailing written comments before the previous listed date to Frank R. Forsyth, Jr., Project Support Section Chief, Engineering Division, Texas Water Development Board, P. O. Box 13231, Capitol Station, Austin, Texas, 78711. Copies of the proposed Project Priority List will be available January 15, 1996 on request from the listed address.

The hearing is being conducted pursuant to 31 TAC Chapter 363 (Rules of the Texas Water Development Board) and 40 Code of Federal Regulations, §25.5.

Issued in Austin, Texas, on December 14, 1995.

TRD-9516329 Craig D. Pedersen
Executive Administrator
Texas Water Development Board

Filed: December 14, 1995

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Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission adopted new §134.1002. The rule appeared in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9882).

On page 9891, §134.1002(f)(6)(B), the text was submitted as "Figure 17: 28 TAC §134.1002(f)(6)(B)" but it was incorrectly published as "Figure 16... ".

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