

TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 10 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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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.

Open Meetings - notices of open meetings.

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

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

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

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

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year)

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

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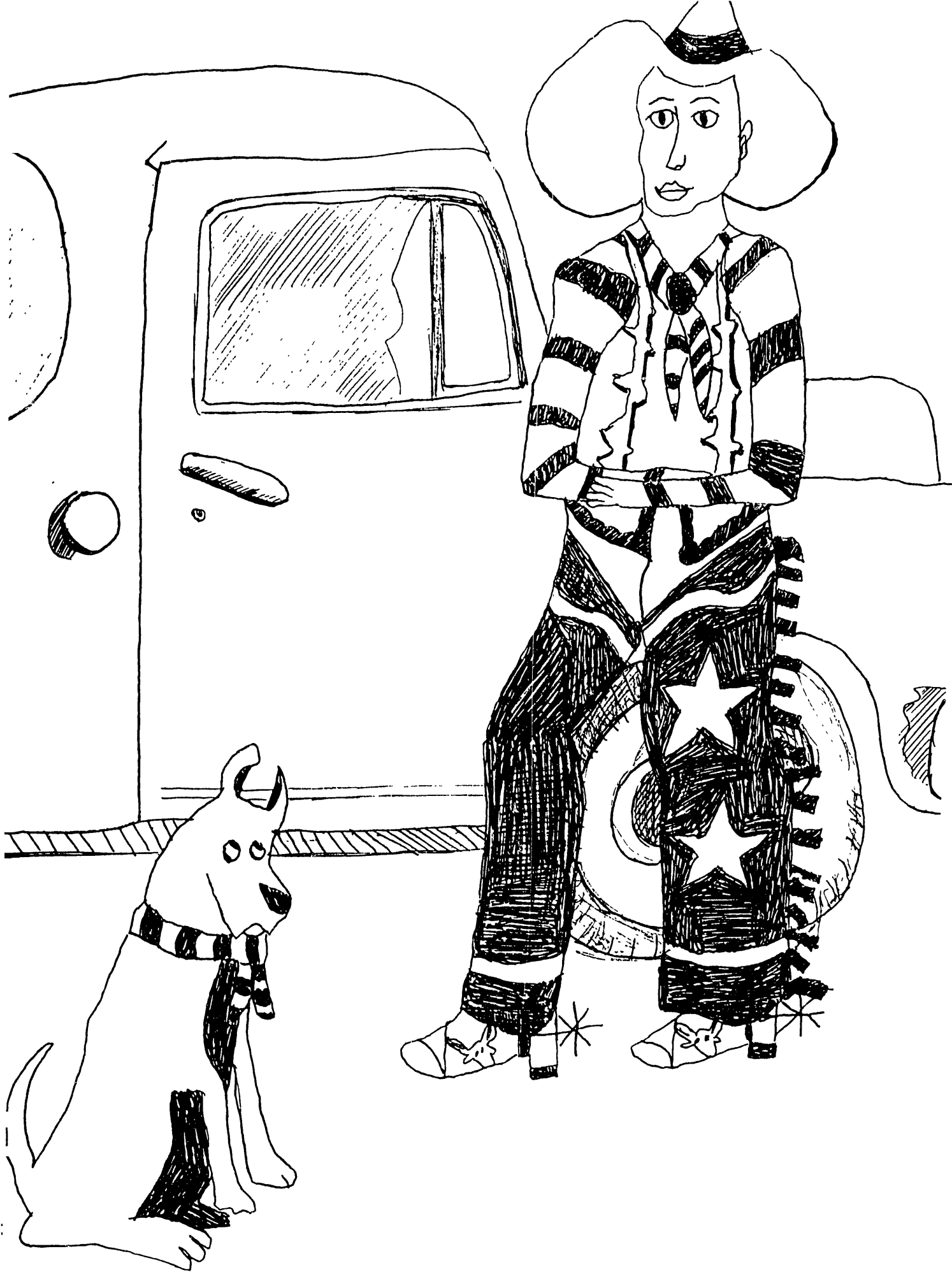
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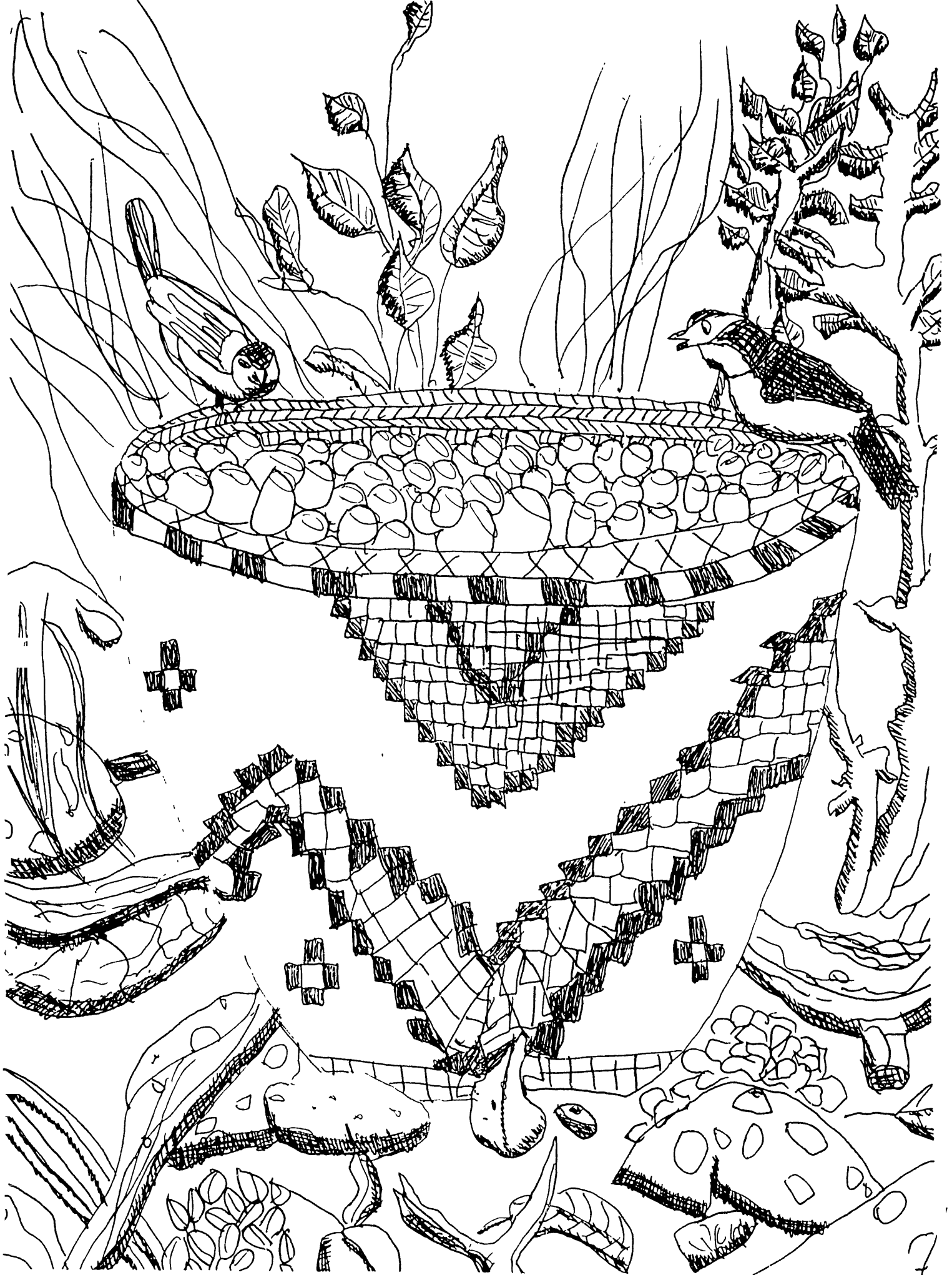
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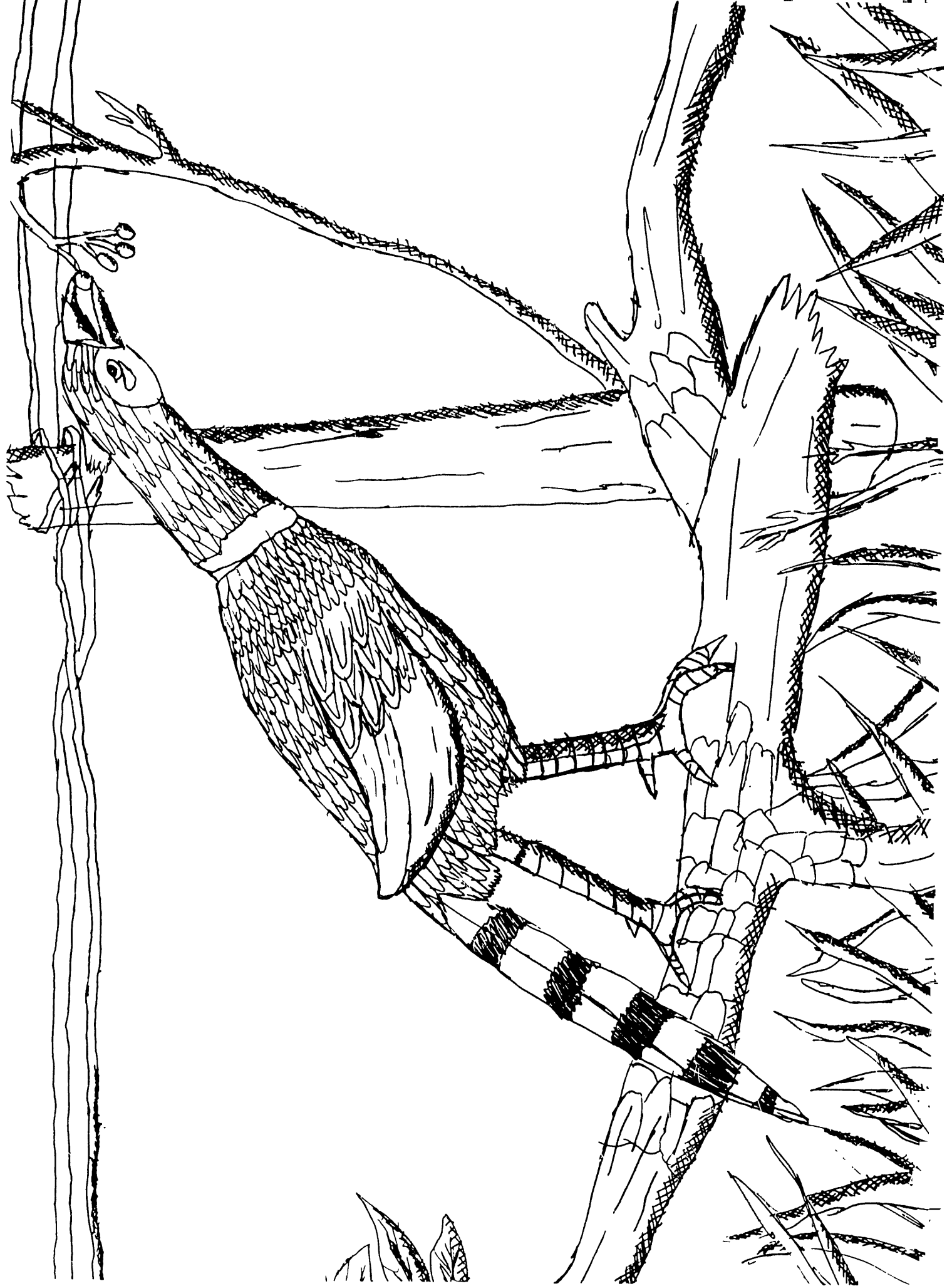
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TEXAS ETHICS COMMISSION

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

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

Texas Ethics Commission

Opinions

AOR-192. Filed Closed. No opinion issued.
Withdrawn by requestor.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

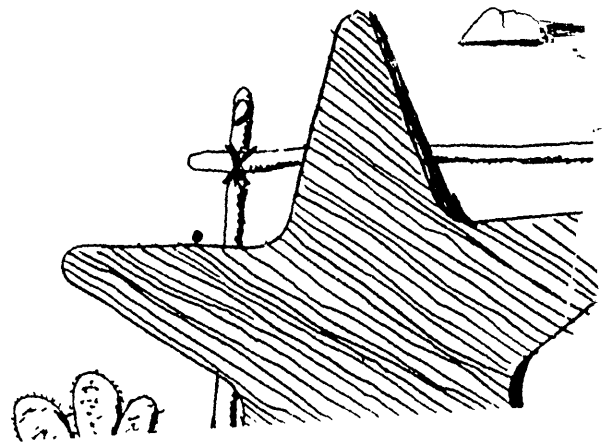
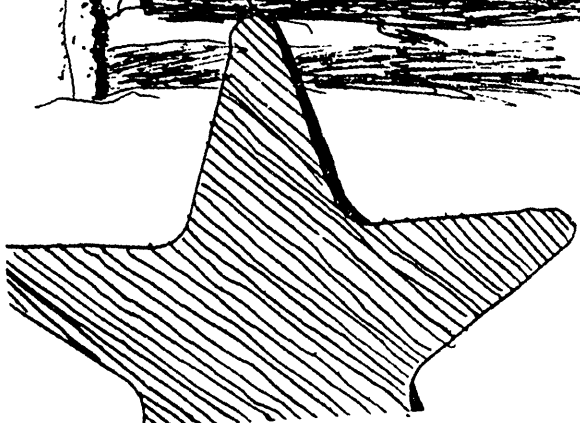
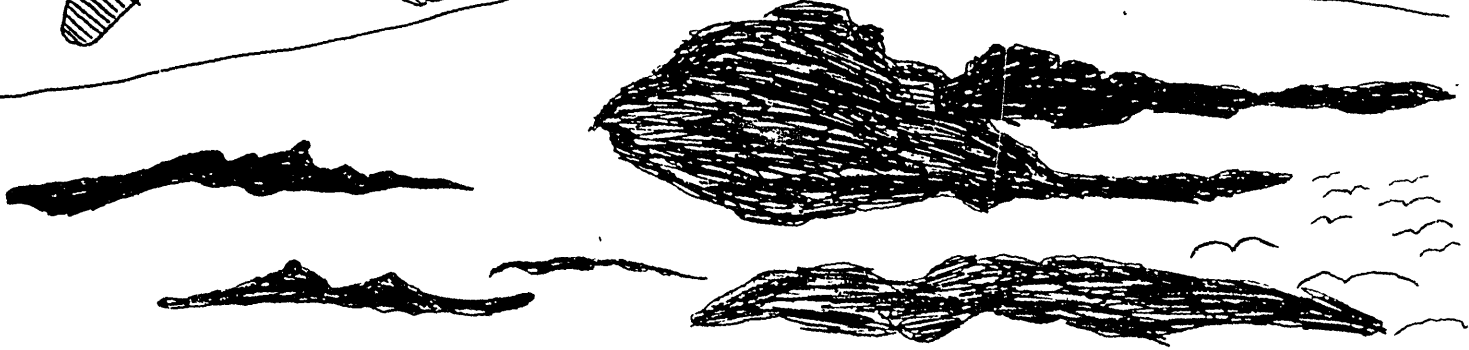
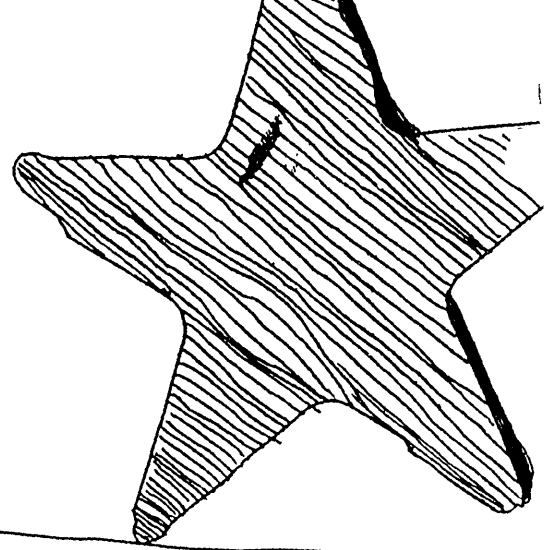
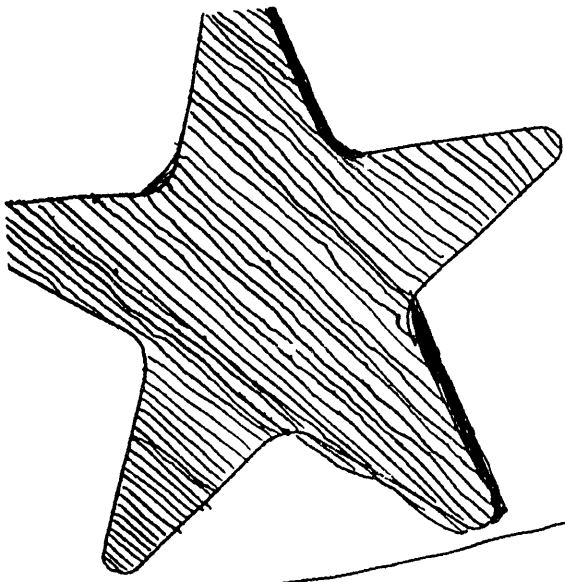
Issued in Austin, Texas, on June 29, 1994

TRD-9443220

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed. June 30, 1994





EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 185. Physician Assistants

• 22 TAC §§185.1-185.16

The Texas State Board of Medical Examiners adopts on an emergency basis the repeal of §§185.1-185.16, concerning the practice of physician assistants. Pursuant to House Bill 2498, 73rd Legislature, extensive rewrite of this section was necessary; therefore repeal, with simultaneous new section is proposed.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

Cross Index to Statute-Physician Assistant Licensing Act, House Bill 2498, 73rd Legislature.

§185.1 Purpose.

§185.2 Definitions.

§185.3 Registry.

§185.4. Grounds for Denial of Registry Certification.

§185.5 Discipline of Physician Assistant.

§185.6 Disciplinary Entity

§185.7 Enforcement

§185.8. Supervising Physician

§185.9. Application for Approval to Supervise.

§185.10 Supervision

§185.11. Physician Assistant Scope of Practice.

§185.12. Tasks Not Permitted to Delegated to a Physician Assistant.

§185.13. Identification Requirements

§185.14. Notification of Termination of Employment.

§185.15. Employment Guidelines

§185.16. Exceptions

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

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Expiration date: October 28, 1994

For further information, please call (512) 834-7728, Ext 422

◆ ◆ ◆ • 22 TAC §§185.1-185.29

The Texas State Board of Medical Examiners adopts on an emergency basis new §§185.1-185.29, concerning the practice of physician assistants. The proposed new sections set forth the requirements for licensure, annual registration, and discipline of those persons practicing as physician assistants. The statute related to physician assistants mandates that all physician assistants must be licensed by September 1, 1994. The new sections are adopted on an emergency basis under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this act.

Cross Index to Statute-Physician Assistant Licensing Act, House Bill 2498, 73rd Legislature

§185.1 Purpose The purpose of these rules and regulations is to encourage the more effective utilization of the skills of physicians by enabling them to delegate health care tasks to qualified physician assistants. These sections are not intended to, and shall not be construed to, restrict the physician from delegating technical and clinical tasks to technicians, other assistants, or employees who perform delegated tasks in the office of a physician and who are not rendering services as a physician assistant or identifying themselves as a physician assistant. Nothing in these rules and regulations shall be construed to relieve the supervising physician of the professional or legal responsibility for the care and treatment of his or her patients.

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

Alternate physician—That physician designated by the supervising physician to act in his or her stead.

Board—The Texas State Board of Medical Examiners.

Council—The Physician Assistant Advisory Council.

Physician assistant—A graduate of a physician assistant or surgeon assistant training program accredited by the American Medical Association's Committee on Allied Health, Education, and Accreditation or a person who has passed the certifying examination administered by the National Commission on the Certification of Physician Assistants, and who is licensed as a physician assistant by the Physician Assistant Advisory Council.

Supervising physician—A physician licensed by the Board either as a doctor of medicine or doctor of osteopathic medicine who is assuming responsibility and legal liability for the services rendered by the physician assistant, and who has received approval from the Council to supervise a specific physician assistant.

Supervision—Overseeing the activities of, and accepting responsibility for, the medical services rendered by a physician assistant. Supervision does not require the constant physical presence of a the supervising physician but includes a situation where a supervising physician and the person being supervised are, or can easily be, in contact with one another by radio, telephone, or another telecommunication device

§1853 Meetings

(a) The physician assistant advisory council shall meet at least four times a year to carry out the mandates of the Physician Assistant Licensing Act

(b) Special meetings may be called by the presiding officer of the Council, by resolution of the Council, or upon written request to the presiding officer of the Council signed by at least three members of the Council

(c) Physician assistant advisory council and committee meetings shall, to the extent possible, be conducted pursuant to the provisions of Robert's Rules of Order Newly Revised unless, by rule, the council adopts a different procedure

(d) All elections and any other issues requiring a vote of the council shall be decided by a simple majority of the members present. A quorum for transaction of any business by the council shall be one more than half the council's membership at the time of the meeting. If more than two candidates contest an election or if no candidate receives a majority of the votes cast on the first ballot, a second ballot shall be conducted between the two candidates receiving the highest number of votes

(e) The council, at a regular meeting or special meeting, may elect from its membership all presiding officer and a secretary for one year

(f) The council, at a regular meeting or special meeting, upon majority vote of the members present, may remove the presiding officer or the secretary from office.

(g) The following are standing and permanent committees of the council. The responsibilities and authority of these committees shall include those duties and powers as defined in paragraphs (1)-(3) of this subsection and such other responsibilities and authority which the council may from time to time delegate to these committees

(1) Licensure Committee

(A) Draft and review proposed rules regarding licensure, and make recommendations to the council regarding changes or implementation of such rules

(B) Draft and review proposed rules pertaining to the overall licensure process, and make recommendations to the council regarding changes or implementation of such rules.

(C) Receive and review applications for licensure in the event the eligibility for licensure of an applicant is in question

(D) Present the results of reviews of applications for licensure, and make recommendations to the council regarding licensure of applicants whose eligibility is in question

(E) Make recommendations to the council regarding matters brought to the attention of the Licensure Committee

(2) Disciplinary and Ethics Committee

(A) Draft and review proposed rules regarding the discipline of physician assistants and enforcement of §18 and §19 of the Physician Assistant Licensing Act

(B) Oversee the disciplinary process and give guidance to the council and staff regarding methods to improve the disciplinary process and more effectively enforce §18 and §19 of the Physician Assistant Licensing Act

(C) Monitor the effectiveness, appropriateness, and timeliness of the disciplinary process

(D) Make recommendations regarding resolution and disposition of specific cases and approve, adopt, modify, or reject recommendations from staff or representatives of the council regarding actions to be taken on pending cases. Approve dismissals of complaints and closure of investigations

(E) Draft and review proposed ethics guidelines and rules for the practice of physician assistants, and make recommendations to the council regarding the adoption of such ethics guidelines and rules

(F) Make recommendations to the council and staff regarding policies, priorities, budget, and any other matters related to the disciplinary process and enforcement of §18 and §19 of the Physician Assistant Licensing Act

(G) Make recommendations to the council regarding matters brought to the attention of the Disciplinary Committee.

(3) Long Range Planning Committee

(A) Formulate and make recommendations to the council concerning future council goals and objectives and the establishment of priorities and methods for their accomplishment

(B) Study and make recommendations to the council regarding the role and responsibility of the council officers and committees

(C) Study and make recommendations to the council regarding ways to improve the efficiency and effectiveness of the administration of the council.

(D) Study and make recommendations to the council regarding council rules or any area of a council function that, in the judgment of the committee needs consideration.

(E) Study and make recommendations to the Council regarding legislative changes pertinent to the practice of Physician Assistants.

(F) Study and make recommendations to the Council regarding financial issues

(h) Meetings of the council and of its committees are open to the public unless such meetings are conducted in executive session pursuant to the Open Meetings Act, the Physician Assistant Licensing Act, or the Medical Practice Act. In order that council meetings may be conducted safely, efficiently, and with decorum, members of the public shall refrain at all times from smoking or using tobacco products, eating, or reading newspapers and magazines. Members of the public may not engage in disruptive activity that interferes with council proceedings, including excessive movement within the meeting room, noise or loud talking, and resting of feet on tables and chairs. The public shall remain within those areas designated as open to the public. Members of the public shall not address or question council members during meetings unless recognized by the council's presiding officer pursuant to a published agenda item.

(i) Journalists have the same right of access as other members of the public to council meetings conducted in open session, and are also subject to the rules of conduct described in subsection (h) of this section

Observers of any council meeting may make audio or visual recordings of such proceedings conducted in open session subject to the following limitations: the council's presiding officer may request periodically that camera operators extinguish their artificial lights to allow excessive heat to dissipate; camera operators may not assemble or disassemble their equipment while the council is in session and conducting business; persons seeking to position microphones for recording council proceedings may not disrupt the meeting or disturb participants; journalists may conduct interviews in the reception area of the board's offices or, at the discretion of the council's presiding officer, in the meeting room after recess or adjournment; no interview may be conducted in the hallways of the medical board's offices; and the council's presiding officer may exclude from a meeting any person who, after being duly warned, persists in conduct described in this subsection and subsection (h) of this section.

(j) The secretary of the council shall assume the duties of the presiding officer in the event of the presiding officer's absence or incapacity.

(k) In the event of the absence or temporary incapacity of the presiding officer, and the secretary, the members of the council may elect another member to act as the presiding officer of a council meeting or may elect an interim acting presiding officer for the duration of the absences or incapacity.

(l) Upon the death, resignation, removal, or permanent incapacity of the presiding officer or the secretary, the council shall elect from its membership an officer to fill the vacant position. Such an election shall be conducted as soon as practicable at a regular or special meeting of the council.

§185.4. Licensure.

(a) Except as otherwise provided in this section, an individual shall be licensed by the council before the individual may function as a physician assistant. A license shall be granted to an applicant who:

(1) submits an application on forms approved by the council;

(2) pays the appropriate application fee as prescribed by the council;

(3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Committee on Allied Health Education and Accreditation, or by that committee's predecessor or successor entities, or has passed the Physician Assistant National Certifying Examination administered by the National Commission on Certification of Physician Assistants;

(4) certifies that the applicant is mentally and physically able to function safely as a physician assistant;

(5) does not have a license, certification, or registration as a physician assistant in this state or from any other licensing authority that is currently revoked or on suspension or the applicant is not subject to probation or other disciplinary action for cause resulting from the applicant's acts as a physician assistant, unless the council takes that fact into consideration in determining whether to issue the license,

(6) is of good moral character; and

(7) submits to the council any other information the council considers necessary to evaluate the applicant's qualifications

(b) The following documentation shall be submitted as a part of the licensure process

(1) Name Change Any applicant who submits documentation showing a name other than the name under which the applicant has applied must present copies of marriage licenses, divorce decrees, or court orders stating the name change. In cases where the applicant's name has been changed by naturalization the applicant should send the original naturalization certificate by certified mail to the council for inspection.

(2) Certification. Each applicant for licensure must submit.

(A) a certificate from the National Commission on Certification of Physician Assistants (NCCPA) directly from NCCPA on a form provided by the Council; and/or

(B) a certificate of successful completion of an educational program submitted directly from the program on a form provided by the council.

(3) Fingerprint Card Each applicant must complete and submit a fingerprint card. This fingerprint card must be completed through an agency trained in taking fingerprints.

(4) Verification from other states. Each applicant for licensure who is licensed, registered, or certified in another state must have that state submit directly to the council, on a form provided by the council, that the physician assistant's license, registration, or certification is current and in full force and that the license, registration, or certification has not been restricted, canceled, suspended, or revoked. The other state shall also include a description of any sanctions imposed by or disciplinary matters pending in the state

(5) State License Registration Each applicant, if licensed, registered, or certified in another state as a physician assistant, must submit a copy of the license registration certificate to the council. The license, registration, or certificate number and the date of expiration must be visible and the date of expiration must be visible on the copy

(6) Arrest Records If an applicant has ever been arrested, a copy of the arrest and arrest disposition need to be requested from the arresting authority and that authority must submit copies directly to the council

(7) Malpractice. If an applicant has ever been named in a malpractice claim filed with any liability carrier or if an applicant has ever been named in a malpractice suit, the applicant must

(A) have each liability carrier complete a form furnished by this council regarding each claim filed against the applicant's insurance,

(B) for each claim that becomes a malpractice suit, have the attorney representing the applicant in each suit submit a letter directly to the council explaining the allegation, dates of the allegation, and current status of the suit. If the suit has been closed, the attorney must state the disposition of the suit, and if any money was paid, the amount of the settlement. If such letter is not available, the applicant will be required to furnish a notarized affidavit explaining why this letter cannot be provided, and

(C) provide a statement, composed by the applicant, explaining the circumstances pertaining to patient care in defense of the allegations.

(8) Additional Documentation Additional documentation as is deemed necessary to facilitate the investigation of any application for licensure must be submitted

§185.5 Relicensure If a physician assistant's license has been expired for one year, it is considered to have been canceled, and the physician assistant may not renew the license. The physician assistant may obtain a new license by complying with the requirements and procedures for obtaining an original license

§185.6 Annual Renewal of License

(a) Physician Assistants licensed under the Physician Assistant Licensure Act shall register annually and pay a fee. A physician assistant may, on notification from the council, renew an unexpired li-

license by submitting the required form and documents and by paying the required renewal fee to the council on or before the expiration date of the permit. The fee shall accompany the required form which legibly sets forth the licensee's name, mailing address, business address, and other necessary information prescribed by the council.

(b) The following documentation shall be submitted as part of the renewal process:

(1) Continuing Medical Education. As a prerequisite to the annual registration of a physician assistant's license, 40 hours of continuing medical education (CME) are required to be completed in the following categories:

(A) at least one-half of the hours are to be from formal courses that are designated for Category I credit by a CME sponsor approved by the American Academy of Physician Assistants,

(B) remaining hours may be from Category II composed of informal self-study, attendance at hospital lectures, grand rounds, or case conferences and shall be recorded in a manner that can be easily transmitted to the council upon request.

(2) A physician assistant must report on the annual registration form the number of hours and type of continuing medical education completed during the previous year.

(3) A physician assistant may request in writing an exemption for the following reasons:

(A) catastrophic illness,

(B) military service of longer than one year's duration outside the United States,

(C) medical practice and residence of longer than one year's duration outside the United States, or

(D) good cause shown on written application of the licensee that gives satisfactory evidence to the council that the licensee is unable to comply with the requirement for continuing medical education.

(4) Exemptions are subject to the approval of the licensure committee of the Physician Assistant Advisory Council.

(5) A temporary exception under paragraph (3) of this subsection may not exceed one year but may be renewed annually, subject to the approval of the council.

(6) This section does not prevent the council from taking disciplinary

action with respect to a licensee or an applicant for a license by requiring additional hours of continuing medical education or of specific course subjects.

(7) The council may require written verification of both formal and informal credits from any licensee within 30 days of request. Failure to provide such verification may result in disciplinary action by the council.

(c) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject a physician assistant to denial of the renewal and/or to discipline pursuant to §19 of the Physician Assistant Licensing Act.

(d) If the renewal fee and completed application form are not received on or before the expiration date of the permit, the following penalties will be imposed:

(1) one to 90 days late-\$50 plus the required annual registration fee;

(2) 91 days to one year late-\$100 plus the required annual registration fee,

(3) over one year late-license will automatically be canceled.

(e) The council shall not waive fees or penalties.

(f) The council shall stagger annual registration of physician assistants proportionally on a periodic basis.

§185.7 Temporary License.

(a) The council may issue a temporary license to an applicant who:

(1) meets all the qualifications for a license under the Physician Assistant Licensing Act but is waiting for the next scheduled meeting of the council for the license to be issued; or

(2) seeks to temporarily substitute for a licensed physician assistant during the licensee's absence, if the applicant

(A) is licensed or registered in good standing in another state, territory, or the District of Columbia,

(B) submits an application on a form prescribed by the council, and

(C) pays the appropriate fee prescribed by the council.

(b) A temporary license is valid for 45 days from the date issued and may be extended only for another 45 days after the date the initial temporary license expires.

§185.8 Schedule of Fees.

(a) The council shall charge the following non-refundable, non-transferable fees.

(1) Processing licensure application-\$200.

(2) Temporary License-\$50.

(3) Annual License Renewal-\$150.

(4) Duplicate license-\$45.

(5) Reinstatement following cancellation for cause-\$200.

(b) All licensure fees or penalties must be submitted in the form of a money order or cashier's check payable on or through a United States bank. Fees and penalties are not refundable. If a single payment is made for more than one individual permit, it must be made for the same class of permit, and a detailed listing on a form prescribed by the council must be included with each payment.

§185.9 Inactive License.

(a) A license holder may have the license holder's license placed on inactive status by applying to the council. A physician assistant with an inactive license is excused from paying renewal fees on the license and may not practice as a physician assistant.

(b) A license holder who practices as a physician assistant while on inactive status is considered to be practicing without a license.

(c) A physician assistant may return to active status by applying to the council, paying the license renewal fee, and complying with the requirements for license renewal under §10 of the Physician Assistant Licensing Act.

§185.10 Reinstatement of License Following Cancellation for Cause.

(a) The applicant must complete in every detail the application for reinstatement of license after cancellation for cause, including payment of the required application fee.

(b) The applicant must appear before the council to state the reasons for the request for reinstatement of license.

(c) Application for reinstatement following cancellation for cause cannot be considered more often than annually.

(d) Reinstatement of a license following cancellation for cause shall be at the discretion of the council upon a showing by the applicant that reinstatement is in the best interest of the public.

§185.11. Physician Assistant Scope of Practice. The physician assistant shall provide, within the education, training, and experience of the physician assistant, medical services that are delegated by the supervising physician. The activities listed in paragraphs (1)-(9) of this subsection may be performed in any place authorized by a supervising physician, including, but not limited to a clinic, hospital, ambulatory surgical center, patient home, nursing home, or other institutional setting. Medical services provided by a physician assistant may include, but are not limited to

- (1) obtaining patient histories and performing physical examinations;
- (2) ordering and/or performing diagnostic and therapeutic procedures;
- (3) formulating a working diagnosis;
- (4) developing and implementing a treatment plan,
- (5) monitoring the effectiveness of therapeutic interventions,
- (6) assisting at surgery,
- (7) offering counseling and education to meet patient needs,
- (8) requesting, receiving, and signing for professional samples and distributing the samples to patients at a site serving medically underserved populations, as provided by the Medical Practice Act, Texas Civil Statutes, Article 4495b, §3.06(d)(5), and its subsequent amendments, or as otherwise authorized by board rule; and
- (9) making appropriate referrals

§185.12. Tasks Not Permitted to be Delegated to a Physician Assistant Except at sites serving medically underserved populations, the supervising physician shall not allow a physician assistant to prescribe or supply medication, except as authorized by law

§185.13. Identification Requirements. A physician assistant licensed by the council shall keep the physician assistant's Texas license available for inspection at the physician assistant's primary place of business and shall, when engaged in professional activities, wear a name tag identifying the physician assistant as a physician assistant

§185.14. Notification of Intent to Practice

(a) A physician assistant licensed under the Physician Assistant Licensing Act must, before beginning practice, submit on a form prescribed by the council notification of the license holder's intent to begin practice. Notification under this section must include:

(1) the name, business address, Texas license number, and telephone number of the physician assistant,

(2) the name, business address, Texas license number, and telephone number of the supervising physician,

(b) A physician assistant must notify the council of any changes in, or additions to, the person acting as a supervising physician for the physician assistant not later than the 30th day after the date the change or addition is made

§185.15. Physician Supervision

(a) Supervision shall be continuous, but shall not be construed as necessarily requiring the constant physical presence of the supervising physician at a place where physician assistant services are performed while the services are performed. Telecommunication shall always be available

(b) It is the obligation of each team of physician(s) and physician assistant(s) to ensure that

(1) the physician assistant's scope of function is identified,

(2) delegation of medical tasks is appropriate to the physician assistant's level of competence,

(3) the relationship between the members of the team is defined, that the relationship of, and access to, the supervising physician is defined,

(4) and a process for evaluation of the physician assistant's performance is established.

(c) A physician assistant may have more than one supervising physician

(d) Physician assistants must utilize mechanisms which provide medical authority when such mechanisms are indicated, including, but not limited to, standing delegation orders, standing medical orders, protocols, or practice guidelines

§185.16. Supervising Physician To be authorized to supervise a physician assistant, a physician must

(1) be currently licensed as a physician in this state by the board,

(2) notify the council of the physician's intent to supervise a physician assistant, and

(3) submit a statement to the council that the physician will

(A) supervise the physician assistant according to rules adopted by the council, and

(B) retain professional and legal responsibility for the care rendered by the physician assistant; and

(4) submit the name, Texas license number, and signature of any alternate supervising physician(s)

(A) A physician assistant may be supervised by an alternate supervising physician in the absence of the supervising physician consistent with this chapter, Texas Medical Practice Act, Physician Assistant Licensing Act, council rules, board rules, and any standing orders or protocols established in accordance with these statutes and rules

(B) Any alternate supervising physician engaged in the supervision of a physician assistant shall be approved by and registered with the council on a form provided by the council

(C) The council shall require any alternate supervising physician to provide the council with the same information as required of supervising physicians and such alternate supervising physician engaged in the supervision of a physician assistant shall comply with all laws, regulations, statutes, and rules governing the supervision of physician assistants during any period of supervision

§185.17. Employment Guidelines

(a) Except as otherwise provided in this section, the equivalent of two full-time physician assistant positions shall be allowed for each supervising physician. A supervising physician may utilize more than two physician assistants to allow part-time employment or the employment of a substitute during the temporary absence of a supervising physician's primary physician assistant

(b) The physician assistant may not independently bill patients for their services except where provided by law

(c) Except at a site serving medically underserved populations, a physician assistant shall not be maintained in an office practice setting separate from that of his or her supervising physician

§185.18. Exceptions Upon written application to the council with the approval of the board, the council may grant exceptions to its rules if such exceptions are in the best interest of the public

§185.19. Grounds for Denial of License and for Disciplinary Action The council may refuse to issue a license to any person and may, following notice of hearing and a

hearing as provided for in the Administrative Procedure Act, take disciplinary action against any physician assistant who:

- (1) fraudulently or deceptively obtains or attempts to obtain a license;
- (2) fraudulently or deceptively uses a license;
- (3) violates any provision of these rules or of the Physician Assistant Licensing Act;
- (4) is convicted of a felony;
- (5) is a habitual user of intoxicants or nontherapeutic drugs to the extent that the person cannot safely perform as a physician assistant;
- (6) has been adjudicated as mentally incompetent or has a mental or physical condition that renders the person unable to safely perform as a physician assistant;
- (7) has committed an act of moral turpitude. An act involving moral turpitude shall be defined as an act involving baseness, vileness, or depravity in the private and social duties one owes to others or to society in general, or an act committed with knowing disregard for justice, honesty, principles, or good morals;
- (8) represents that the person is a physician; or
- (9) has acted in an unprofessional or dishonorable manner which is likely to deceive, defraud, or injure any member of the public

§185.20. Discipline of Physician Assistant. The council, upon finding a physician assistant has committed any offense described in §185.19 of this title (relating to Grounds for Denial of Licensure and for Disciplinary Action), may:

- (1) refuse to license the physician assistant;
- (2) order a public or private reprimand;
- (3) order revocation, suspension, limitation, or other restrictions of a physician assistant's license;
- (4) require a physician assistant to submit to care, counseling, or treatment by a physician or physicians designated by the council;
- (5) stay enforcement of its order and place the physician assistant on probation with the council retaining the right to vacate the probationary stay and enforce the original order for noncompliance with the terms of probation;
- (6) restore or reissue, at its discretion, a license or remove any disciplinary or corrective measure that the council may have imposed;

(7) order the physician assistant to perform public service as a part of any disciplinary order; or

(8) require the physician assistant to complete additional training.

§185.21. Disciplinary Entity. Hearings on alleged statutory or rules violations by a physician assistant and discipline of a physician assistant shall be conducted by the council in accordance with the rules for such hearings following review of the allegations against the physician assistant by representatives of the Physician Assistant Advisory Council and recommendation of such representatives that a hearing be conducted with regard to such allegations.

§185.22. Complaint Procedure Notification.

(a) **Methods of Notification.** Pursuant to the Medical Practice Act, §2.09(s)(2), for the purpose of directing complaints to the Texas State Board of Medical Examiners, the council and its licensees shall provide notification to the public of the name, mailing address, and telephone number for filing complaints by one or more of the following methods:

(1) displaying in a prominent location at their place or places of business, signs in English and Spanish of no less than 8-1/2 inches by 11 inches in size with the council-approved notification statement printed alone and in its entirety in black on a white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the council-approved statement; or

(2) placing the council-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each bill for services with no alterations, deletions, or additions to the language of the council-approved statement; or

(3) placing the council-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services with no alterations, deletions, or additions to the language of the council-approved statement.

(b) **Approved English Notification Statement.** The following notification statement in English is approved by the council for purposes of these rules and the Medical Practice Act, §2.09(s)(2) and is a sample of the type print referenced in subsection (a) of this section

(c) **Approved Spanish Notification Statement.** The following notification statement in Spanish is approved by the council for purposes of these rules and the Medical

Practice Act, §2.09(s)(2), and is a sample of the type print referenced in subsection (a) of this section.

§185.23. Investigations.

(a) **Confidentiality.** All complaints, adverse reports, investigation files, other investigation reports, and other investigative information in the possession of, received, or gathered by the council shall be confidential as provided by the Medical Practice Act, and no employee, agent, or member of the council may disclose information contained in such files except in the following circumstances:

(1) to the appropriate licensing or regulatory authorities in other states or the District of Columbia where the physician assistant is licensed, registered, or certified;

(2) to appropriate law enforcement agencies if the investigative information indicates a crime may have been committed;

(3) to a health-care entity upon receipt of written request. Disclosures by the council to a health-care entity shall include only information about a complaint filed against a physician assistant that was resolved after investigation by a disciplinary order of the council or by an agreed settlement, and the basis and current status of any complaint under active investigation; and

(4) to other persons if required during the investigation.

(b) **Request for Records.**

(1) **Renewal of licenses.** A licensee shall furnish a written explanation of his or her answer to any question asked on the application for license renewal, if requested by the Physician Assistant Advisory Council. This explanation shall include all details as the council may request and shall be furnished within 14 days of the date of the council's request.

(c) **Professional Liability Suits and Claims.** Following receipt of a notice of claim letter or a complaint filed in court against a licensee that is reported to the council, the licensee shall furnish to the council the following information within 14 days of the date of receipt of the council's request for said information:

(1) a completed questionnaire to provide summary information concerning the suit or claim;

(2) a completed questionnaire to provide information deemed necessary in assessing the licensee's competency;

(3) information on the status of any suit or claim previously reported to either the council or the Board.

(d) Impaired Physician Assistants

(1) The council may require a licensee to submit to a mental and/or physical examination by a physician or physicians designated by the council if the council has probable cause to believe that the licensee is impaired. Impairment is present if one appears to be unable to practice with reasonable skill and safety to patients by reason of age, illness, drunkenness, excessive use of drugs, narcotics, chemicals, or any other type of material, or as a result of any mental or physical condition

(2) Probable cause may include, but is not limited to, any one of the following

(A) sworn statements from two people, willing to testify before the council, medical board, or the State Office of Administrative Hearings that a certain licensee is impaired,

(B) a sworn statement from an official representative of the Texas Academy of Physician Assistants stating that the representative is willing to testify before the council that a certain licensee is impaired,

(C) evidence that a licensee left a treatment program for alcohol or chemical dependency before completion of that program,

(D) evidence that a licensee is guilty of intemperate use of drugs or alcohol,

(E) evidence of repeated arrests of a licensee for intoxication,

(F) evidence of recurring temporary commitments of a licensee to a mental institution, or

(G) medical records indicating that a licensee has an illness or condition which results in the inability to function properly in his or her practice

(e) Investigation of Professional Review Actions A written report of a professional review action taken by a peer review committee or a health-care entity provided to the council must contain the results and circumstances of the professional review action Such results and circumstances shall include

(1) the specific basis for the professional review action, whether or not such

action was directly related to the care of individual patients, and

(2) the specific limitations imposed upon the physician assistant's clinical privileges, upon membership in the professional society or association, and the duration of such limitations.

(f) Other Reports

(1) Relevant information shall be reported to the council indicating that a physician assistant's practice poses a continuing threat to the public welfare and shall include a narrative statement describing the time, date, and place of the acts or omissions on which the report is based.

(2) A report that a physician assistant's practice constitutes a continuing threat to the public welfare shall be made to the council as soon as possible after the peer review committee or the physician involved reaches that conclusion and is able to assemble the relevant information.

(g) Reporting Professional Liability Claims

(1) Reporting responsibilities The reporting form must be completed and forwarded to the Physician Assistant Advisory Council for each defendant physician assistant against whom a professional liability claim or complaint has been filed. The information is to be reported by insurers or other entities providing professional liability insurance for a physician assistant. If a nonadmitted insurance carrier does not report or if the physician assistant has no insurance carrier, reporting shall be the responsibility of the physician assistant

(2) Separate reports required and identifying information. One separate report shall be filed for each defendant physician assistant insured. When Part II is filed, it shall be accompanied by the completed Part I or other identifying information as described in paragraph (4)(A) of this subsection.

(3) Timeframes and attachments The information in Part I of the form must be provided within 30 days of receipt of the claim or suit A copy of the claim letter or petition must be attached The information in Part II must be reported within 105 days after disposition of the claim. Disposed claims shall be defined as those claims where a court order has been entered, a settlement agreement has been reached, or the complaint has been dropped or dismissed

(4) Alternate reporting formats. The information may be reported either on the form provided or in any other legible format which contains at least the requested data

(A) If the reporter elects to use a reporting format other than the council's form for data required in Part II, there must be enough identification data available to staff to match the closure report to the original file. The data required to accomplish this include:

- (i) name and license number of defendant physician assistant(s); and
- (ii) name of plaintiff.

(B) A court order or a copy of the settlement agreement is an acceptable alternative submission for Part II. An order or settlement agreement should contain the necessary information to match the closure information to the original file. If the order or agreement is lacking some of the required data, the additional information may be legibly written on the order or agreement.

(5) Penalty. Failure by a licensed insurer to report under this section shall be referred to the State Board of Insurance

(6) Definition. For the purposes of this subsection a professional liability claim or complaint shall be defined as a cause of action against a physician assistant for treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(7) Claims not required to be reported Examples of claims that are not required to be reported under this chapter but which may be reported include, but are not limited to, the following:

(A) product liability claims (i.e. where a physician assistant invented a device which may have injured a patient but the physician assistant has had no personal physician assistant-patient relationship with the specific patient claiming injury by the device);

(B) antitrust allegations;

(C) allegations involving improper peer review activities;

(D) civil rights violations.

(8) Claims that are not required to be reported under this chapter may, however, be voluntarily reported.

(9) The reporting form shall be as follows

PHYSICIAN ASSISTANT ADVISORY COUNCIL
P.O. Box 149134
Austin, Texas 78714-9134

PROFESSIONAL LIABILITY CLAIMS REPORT

FILE ONE REPORT FOR EACH DEFENDANT PHYSICIAN ASSISTANT

PART I COMPLETE FOR ALL CLAIMS OR COMPLAINTS AND FILE WITH THE PHYSICIAN ASSISTANT ADVISORY COUNCIL WITHIN 30 DAYS FROM RECEIPT OF COMPLAINT OR CLAIM. INCLUDE COPY OF CLAIM LETTER AND/OR PLAINTIFF'S COMPLAINT.

1. Name and address of insurer: _____

2. Defendant physician assistant:

License number: _____

3. Plaintiff's name:

4. Policy number:

5. Date claim reported to insurer/self-insured physician assistant:

6. Type of complaint: _____ claim only _____ lawsuit

7. Initial reserve amount after investigation: _____
(If this is not determined within 30 days, report this data within 105 days of filing the Part I report with the P.A.A.C.)

Person completing this report(SIGNATURE)

Person completing this report(PRINT NAME)

Phone number

PART II COMPLETE AFTER DISPOSITION OF THE CLAIM AS DEFINED IN 22 T.A.C., INCLUDING DISMISSALS OR SETTLEMENTS. FILE WITH THE PHYSICIAN ASSISTANT ADVISORY COUNCIL WITHIN 105 DAYS AFTER DISPOSITION OF THE CLAIM. A COPY OF A COURT ORDER OR SETTLEMENT AGREEMENT MAY BE USED AS PROVIDED IN 22 T.A.C.

8. Date of disposition: _____

9. Type of Disposition:

_____ (1) Settlement

_____ (2) Judgment after trial

_____ (3) Other (please specify)

10. Amount of indemnity agreed upon or ordered on behalf of this defendant:

\$ _____. Note: If percentage of fault was not determined by the court or insurer in the case of multiple defendants, the insurer may report the total amount paid for the claim followed by a slash and the number of insured defendants. (Example: \$100,000/3)

11. Appeal, if known: ____ Yes ____ No. If yes, which party:

Person completing this report(SIGNATURE)

Person completing this report(PRINT NAME)

Phone number

§185.24. Procedure-General.

(a) **Applicability.** These rules shall govern the procedures for the institution, conduct, and determination of all causes and proceedings before the council. The purpose of these sections is to provide for a simple and efficient system of procedure before the council; to ensure uniform standards of practice and procedure, public participation, and notice of council actions; and a fair and expeditious determination of causes.

(b) **Construction.** These rules shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers, or authority of the council or the substantive rights of any party. They shall be liberally construed with a view towards the purpose for which they were adopted.

(c) **Computation of Time.**

(1) **Computing time.** In computing any period of time prescribed or allowed by these sections, Order of the council, or any applicable statute, the period shall begin on the day after the act, event, or default in controversy and end on the last day of such computed period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, nor a legal holiday

(2) **Extensions.** Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties or order of the secretary, hearings examiner, or administrative law judge upon written verified motion duly filed prior to the expiration of the applicable time period, showing good cause for an extension of time and stating that the need therefor is not caused by the neglect, indif-

ference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

(d) **Agreement to be in Writing.** No stipulation or agreement between the parties, their attorneys, or representatives with regard to any matter involved in any proceeding before the council shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an Order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law

(e) **Expiration of Licenses.** When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, or unless it has been terminated according to statute and rule, and in case the application is denied or the terms of the new license limited, until the last day for seeking review of the council order or a later date fixed by order of the reviewing court

(f) **Pleadings**

(1) **Form Pleadings** shall be typewritten or printed upon paper 8 inches wide and 11 inches long with left and right margins at least one inch wide. Exhibits annexed thereto shall be folded to the same size and conform to subsection (f) of §185.26 of this title (relating to Procedure-Hearing). Reproductions are accept-

able, provided all copies are clear and permanently legible

(2) **Content.** Pleadings shall state their purpose, contain a concise statement of the facts in support thereof, and state a prayer for the desired relief

(3) **Signature and address.** The original of every pleading shall be signed in ink by the party filing the paper, his or her attorney, or by his or her authorized representative. Pleadings shall contain the name, address, and telephone number of the party filing the document or the name, telephone number, and business address of the representative

(4) **Certificate of service.** A certificate of service by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that I have this _____ day of _____, 19____, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service). Signature." Service of pleadings on and by parties shall be as specified in subsection (k) of this section

(5) **Numbering and Heading.** In a contested case the complaint and each pleading shall be numbered with the licensee's license number, centered and underscored six lines down from the top of the first page. In each matter heard before the State Office of Administrative Hearings (SOAH), the SOAH docket number shall be centered above the licensee's license number. If a SOAH docket number is not available when the complaint or pleading is filed, a space will be provided for its entry at a later date. Double spaced below the number shall be the heading, as follows:

SOAH Docket No. _____

X-0000

IN THE MATTER OF THE
COMPLAINT AGAINST

RESPONDENT

)(
)(
)(
)(

BEFORE THE PHYSICIAN ASSISTANT
ADVISORY COUNCIL TO THE
TEXAS STATE BOARD OF
MEDICAL EXAMINERS

NAME OF PLEADING

(6) **Other pleadings.** All pleadings for which no official form is prescribed shall contain:

(A) the name of the party seeking to bring about or prevent action by the council,

(B) the names of all other known parties in interest.

(C) a concise statement of the facts relied upon by the pleader;

(D) a prayer stating the type of relief, action, or order desired by the pleader;

(E) any other matter required by statute; and

(F) a certificate of service, if required by subsection (k) of this section.

(7) Amendments. Any pleading may be amended at any time upon motion or the filing of an amended application, complaint, or petition for which notice, if required, shall be issued pursuant to subsection (g) of this section.

(8) Incorporation by reference of agency records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency. This section shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his or her burden of proof imposed by law.

(9) Classification. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(10) Docketing. Upon receipt of a complaint, an application, or other pleading which is intended to institute a proceeding before the council, the secretary, executive director of the Board, designee, or council staff shall docket the same as a pending proceeding and serve notice thereon as specified in subsection (k) of this section.

(11) Filing of documents. All documents relating to any proceeding pending or to be instituted before the council shall be filed with the secretary of the council, the executive director, or Director of Hearings for the medical board. Documents shall be deemed filed only when actually marked with the official stamp of the medical board, accompanied by the filing fee, if any, required by statute or board rules.

(g) Notice of Adjudicative Hearing Proceedings.

(1) Notice. Before revoking or suspending any license or registration, or denying an application for a license or registration, or reprimanding any licensee or registrant, the council shall afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than ten days.

(2) Content. Such notice of adjudicative hearing shall include.

(A) a statement of time, place, and nature of the hearing,

(B) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) a reference to the particular sections of the statutes and rules involved; and

(D) a short and plain statement of the matters asserted.

(3) More definite statement. If the council is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on a timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; however, the council shall not be required to plead its evidence in its complaint.

(4) Service. The notice of adjudicative hearing shall be served as specified in subsection (k) of this section

(h) Conduct an Decorum. Each person, party, witness, attorney, or other representative shall comport himself or herself in all proceedings with proper dignity, courtesy, and respect for the council, the medical board, the secretary, the executive director, the examiner, and all other parties. Disorderly or disruptive conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

(i) Classification of Parties. Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding

(j) Parties in Interest. Any party in interest may appear in any proceeding before the council or the board. All appearances shall be subject to a motion to strike upon a showing that the party has no justifiable or administratively cognizable interest in the proceeding.

(k) Service in Nonrulemaking Proceedings.

(1) Personal service. Where personal service of notice by the council is required, the council shall serve in person or by mailing the notice of adjudicative hearing, certified or registered mail, return receipt requested, to the last address filed with the board by the person entitled to receive such notice.

(2) Service by publication. Where personal service cannot be made as

contemplated in paragraph (1) of this subsection, then service of notice shall be by publication of the notice of adjudicative hearing in a newspaper of general circulation once each week for two consecutive weeks in the county in which the licensee was last known to have practiced; the last publication to be at least ten days prior to the date of the hearing. When the licensee's whereabouts are unknown or his or her last known place of practice is outside the State of Texas, notice by publication is to be made by having published once a week for two consecutive weeks in a newspaper of general circulation published in the county of the last known place of practice in Texas if known, the last publication to be at least ten days prior to the date of the hearing. Return of the service of notice by publication shall be by publisher's affidavit together with a copy of the published notice which shall be introduced into the record at the hearing.

(3) Service of pleadings. A copy of any document filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered to all other parties of record by the filing party. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by the presiding officer or hearings examiner striking the document from the record.

(l) Appearances Personally or by Representative. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state. This right may be waived. Any person may appear on his or her own behalf or by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

(m) Filing Fees. Each application, petition, or complaint which is intended to institute a proceeding before the council shall be accompanied by the filing fee, if any, prescribed by law and these sections.

(n) Forms. Official forms for use in certain council proceedings are incorporated in the appendix to these sections. The previously-mentioned official forms shall be printed, when appropriate, under the supervision of the secretary or executive director who shall furnish copies thereof to any person upon request.

(o) Ex Parte Consultations. Unless required for the disposition of ex parte matters authorized by law, members or employees of the council assigned to render a

decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law, with any party or his representative except on notice and opportunity for all parties to participate

§185.25 Procedure—Prehearing

(a) Discovery After the initiation and filing of a formal complaint, or upon the filing of the council's initial pleading in any other contested matter, the following discovery rules shall apply

(1) Preliminary Discovery Not later than 30 days after receiving a written request from an opposing party, the responding party shall provide to the requesting party the following

(A) a preliminary list of the names and last known addresses of potential witnesses which the responding party reasonably anticipates may testify in its case-in-chief,

(B) a list or copy of all documents, records, photographs, moving pictures, films, videotapes, audio recordings, and other such material in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect and copy such items,

(C) a list identifying all tangible items in the possession of the responding party which the responding party intends to offer in its case-in-chief, and a reasonable opportunity to inspect such items, and

(D) a list of the names and last known addresses of any experts the responding party anticipates calling to testify in its case-in-chief

(2) Experts Upon written request, a list identifying all of the following documents and tangible items pertaining to the responding party's experts, or copies of such documents and tangible items, shall be provided to the requesting party before the initial deposition of such an expert, or no later than five days prior to the hearing on the case if no deposition of the expert has been taken

(A) documents and tangible items which have been provided to any expert who is expected to testify in the case,

(B) documents and tangible items which have been made or prepared by any expert used for consultation if such

documents and tangible items form the basis, either in whole or in part, of the opinion of an expert who is expected to testify in the case, and

(C) a report from each expert who is anticipated to testify in the case which generally synthesizes the expected testimony of the expert

(3) Inspection and Copying Documents and tangible items which are identified in a discovery response, but not provided, shall be made available for inspection and copying at a reasonable time and place upon the written request of an opposing party

(4) Depositions The taking and use of depositions shall be governed by the Administrative Procedure Act or by an agreement between the parties either on the record or in a writing signed by the parties or their representatives. Except by an agreement between the parties either on the record or in a writing signed by the parties or their representatives, depositions shall be conducted and completed no later than five days prior to the scheduled hearing date. Failure of a properly noticed witness who is a party to the case to attend a deposition for the purpose of taking the testimony of that party witness, or the failure of such a witness to attend such a deposition as agreed to by the parties on the record or in a writing signed by the parties or their representatives, may result in the imposition of the sanctions and remedies set forth in paragraph (5) of this subsection

(5) Remedies and Sanctions A failure to comply with a discovery request to the extent required by council rule, board rule, the Physician Assistant Licensing Act, the Medical Practice Act, or as agreed between the parties in a discovery agreement, may be remedied and sanctioned by ordering any or all of the following

(A) granting of a continuance,

(B) limitations or restrictions on the admissibility and use of the evidence, to include exclusion of the evidence,

(C) payment by a party of the actual travel, lodging, and court reporter costs, but not attorney fees, incurred by an opposing party as a result of the failure to comply with the discovery requirements under council rule,

(D) imposition of a scheduling order providing for discovery deadlines necessary to remedy the failure to comply with discovery requirements under council rules, and

(E) remedies and sanctions agreed to by the parties in writing or on the record

(6) Good Cause Good cause for failure to comply with a discovery request to the extent required by law, council rule, board rule, or as agreed between the parties in a discovery agreement, may justify the imposition of less severe remedies or sanctions which might otherwise be imposed. Good cause shall include but is not limited to the following

(A) lack of knowledge of the existence of the information or material,

(B) lack of access to or control of the information or material, and

(C) an act of God or providence

(7) Calculation of Deadlines and Time Limits

(A) For purposes of discovery under council rules, board rules, deadlines and time limits shall be based on calendar days, however, when a deadline falls on a Saturday, Sunday, or legal holiday, the deadline shall be extended to the next calendar day which is not a Saturday, Sunday, or legal holiday

(B) Discovery requests promulgated less than seven days prior to the scheduled hearing date shall not require a response unless agreed to by the parties on the record or in a writing signed by the parties or their representatives, however, other discovery requests promulgated at a time prior to the scheduled hearing date which by their timing allow less than the applicable deadline period for a response, shall not require a response until submitted for approval by motion of the requesting party to the administrative law judge and approved in whole or in part by order of the administrative law judge. Any such approval shall provide for one or more of the following

(i) modified response deadlines,

(ii) a continuance of the hearing date charged to the party requesting discovery, or

(iii) such reasonable requirements which are necessary to minimize any anticipated burden or inconvenience to the responding party as a result of the lateness of the discovery request

(8) Discovery Agreements Discovery requirements governing council pro-

ceedings may be modified by agreement of the parties either on the record or in a writing signed by the parties or their representatives

(9) **Ordered Modification of Discovery** Modification of discovery requirements under council rules may be ordered by an administrative law judge pursuant to an agreement of the parties or the discovery provisions under council rules pertaining to remedies and sanctions

(10) **Official Notice** No later than three days prior to the date of the hearing, the parties shall exchange lists specifying all matters which each party will seek to have officially noticed at the hearing

(11) **Final Witness List** No later than five days prior to the date of the hearing, the parties shall exchange final lists identifying the names and last known addresses of the witnesses each party intends to call to testify in its case-in-chief

(12) **Waiver of Privilege/Confidentiality** The provision of any information or material in response to a discovery request which may be the subject of a privilege or confidentiality requirement under the Medical Practice Act or other applicable law shall not constitute a waiver of any such privilege or confidentiality requirement with respect to other such information or material not provided

(13) **Supplementation** Upon receiving new information or material, or upon otherwise determining that an inaccuracy exists in a previous discovery response, each party shall supplement such responses as soon as practicable

(b) **Subpoenas**

(1) **Authority** Pursuant to the Medical Practice Act, §2 09(i), the council has the authority, through the medical board, to issue subpoenas to compel the attendance of witnesses and subpoenas duces tecum to compel the production of books, records, or documents when requested by a party or on the council's own motion

(2) **Request** A party may request at any time during the pendency of a proceeding, including a contested case, that the council, through the medical board, issue a subpoena or subpoena duces tecum upon a showing of good cause, the relevancy, and necessity of the testimony or documents, lack of undue inconvenience, imposition, or harassment of the party required to produce the testimony or documents, and the deposit of sums sufficient to ensure payment of expenses incident to the subpoenas

(A) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and neces-

sary expenses incurred by the witness who appears in response to the subpoena

(B) The party requesting a subpoena duces tecum shall describe and recite with great clarity, specificity, and particularity the books, records, or documents to be produced

(3) **Ministerial Act** When requested by a party to issue a subpoena or subpoena duces tecum, the council is performing a ministerial act and shall do so in accordance with the law; however, the council shall not be responsible for inadequacies, insufficiencies, or lack of pleading by the requesting parties or the consequences thereof

(4) **Service and Expenses.** A subpoena issued at the request of the staff may be served either by a council or board investigator or by certified mail, return receipt requested. The council shall pay reasonable charges for photocopies produced in response to a subpoena requested by the staff, but such charges may not exceed those billed by the council for producing copies of its own records

(5) **Fees and Travel** A witness called at the request of the council shall be paid a fee of \$25 per day and reimbursed for travel in like manner as council staff. An expert witness called at the request of the council shall be paid a fee of \$300 per day and shall be reimbursed for travel in like manner as council members

(c) **Show Compliance Proceeding.** Pursuant to the Administrative Procedure Act, §2001 054, the following rules shall apply to show compliance proceedings

(1) Prior to institution of council proceedings to revoke, suspend, or take disciplinary action relating to a license or to involuntarily modify restrictions on a license, the physician assistant shall be given an opportunity to show compliance with all requirements of law for the retention of an unrestricted license either in writing, or through a personal appearance at an informal meeting with three representatives of the council, at the option of the licensee

(2) The opportunity to show compliance under this section shall be extended to a licensee in writing by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the council.

(3) Prior to a show compliance proceeding under this section, the licensee shall be provided with a brief written statement of the nature of the allegations to be addressed at the show compliance proceeding along with a brief written statement of the provisions of the Physician Assistant Licensing Act which may be grounds for

disciplinary action. These statements shall be provided to the licensee by certified mail, return receipt requested, overnight or express mail, or registered mail to the last mailing address of the licensee or the licensee's attorney on file with the council. The licensee shall also be provided with written notice of the time, date, and location of the show compliance proceeding and the rules governing the proceeding by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the council

(4) A licensee shall be afforded an opportunity to show compliance with the law as provided for under this section; however, a licensee's refusal or failure to take such an opportunity when offered, or when scheduled with proper notice to the licensee, shall not require that an additional show compliance opportunity be made available. In the discretion of the council's representatives an additional show compliance opportunity may be afforded to a licensee who refused a previous opportunity or failed to attend a scheduled show compliance proceeding

(5) Three members of the council, consisting of a physician assistant, a physician, and a public member shall conduct the show compliance proceeding as the council's representatives. The representative who has seniority on the council shall chair the proceeding

(6) The show compliance proceeding shall allow

(A) the council staff to present a synopsis of the allegations and the facts which the staff reasonably believes could be proven by competent evidence at a hearing,

(B) the licensee to reply to the staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing,

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the council's representatives are relevant to the proceeding;

(D) representation of the licensee by counsel,

(E) presentation of oral or written statements by the licensee or the licensee's counsel,

(f) presentation of oral or written statements or testimony by witnesses, and

(g) questioning of witnesses

(7) The council's representatives shall exclude from the show compliance proceeding all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, council members, and council staff

(8) During the show compliance proceeding, the council's legal counsel or a representative of the Office of the Attorney General shall be present to advise the council's representatives and the council's staff

(9) Except with the agreement of the licensee, during the deliberations of the council's representatives at a show compliance proceeding, the council representatives shall exclude the council staff who presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, any witnesses, and the general public. The council's legal counsel or a representative of the Office of the Attorney General shall be available to assist the representatives in deliberations.

(10) After a show compliance proceeding has been held, the council staff and the council's representatives shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with council members and administrative law judges concerning the case.

(11) To the extent possible, council members are required to serve as representatives at show compliance proceedings an equal number of times during a calendar year. In the event a council member has a complaint regarding the frequency or infrequency of service as a representative the complaint may be routed in writing to the Director of Hearings for the medical board who shall then bring the complaint to the attention of the presiding officer of the council for submission to the council for a resolution by a majority vote.

(12) The show compliance proceeding may be held in conjunction with and simultaneously with an informal settlement conference held pursuant to subsection (h) of this section.

(13) The council's representatives may call upon council staff at any time for assistance in conducting the show compliance proceeding.

(14) The council's representatives shall prohibit or limit access to the council's investigative file by the licensee, the licensee's attorney or repre-

sentative, the complainant, witnesses, and the public consistent with the Medical Practice Act, §4 05(c) and §185 23 of this title (relating to Investigations)

(15) At the conclusion of the show compliance proceeding, the council's representatives shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representatives shall attempt to mediate the disputed matters and make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases.

(16) The licensee may have the show compliance proceeding recorded and reduced to writing at the licensee's expense after providing written notice to the Director of Hearings; for the medical board at least one day in advance of the show compliance proceeding. Recording and transcribing equipment shall be provided by the licensee. Efforts to mediate the disputed matters or discussions concerning possible settlement options shall not be recorded.

(d) Prehearing Conferences

(1) Appearance. In any contested case the hearings examiner or administrative law judge on his or her own motion or on the motion of a party, may direct the parties, their attorneys, or representatives to appear before him or her at a specified time and place for a conference prior to the hearing for the purpose of

(A) formulating issues,

(B) simplifying issues,

(C) discussing matters to be officially noticed,

(D) discussing the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as official records of the council or medical board, to the end of avoiding the unnecessary introduction of proof,

(E) ruling on any previously filed motions,

(F) discussing the procedure at a hearing,

(G) discussing the limitation, where possible of the number of witnesses, and

(H) discussing such other matters as may aid in the simplification of the proceedings

(2) Order. Action taken at the conference shall be recorded in an appropriate Order by the hearings examiner or administrative law judge.

(e) Motions.

(1) Any motion filed in a pending proceeding shall, unless made during a hearing

(A) be in writing,

(B) set forth the specific grounds and reasons therefore, and the relief sought,

(C) be distributed to all parties of record over a certificate of service as outlined in §185 24(g) and (k) of this title (relating to Procedure-General),

(D) be filed with the hearings examiner not less than five days prior to the hearing date,

(E) if based on facts or matters which are not of record, be supported by an affidavit, and

(F) be ruled on by the hearings examiner at the prehearing conference or at the hearing.

(2) Motions for continuance or for dismissal of a complaint shall

(A) comply with subsection (a)(1)-(6) of this section,

(B) make reference to all prior motions of the same nature filed in the same proceeding.

(3) When a complaint has proceeded to its hearing date, pursuant to the notice issued therein, no continuance or dismissal shall be granted by the hearings examiner or administrative law judge without the consent of all parties involved.

(f) Consolidated Hearings. A motion for consolidation of two or more complaints, applications, petitions, or other proceedings shall comply with subsection (e) of this section. Proceedings shall not be consolidated unless the council shall find that

(1) the proceedings involve common questions of law and fact, and

(2) separate hearings would result in unwarranted expense, delay, or substantial injustice

(g) Place and Nature of Hearings. All hearings conducted in any proceedings shall be open to the public. All hearings shall be held in Austin, Texas, unless for good and sufficient cause the council shall designate another place of hearing in the interest of the public

(h) Informal Disposition Pursuant to the Administrative Procedure Act, §2001.056, the following rules shall apply to informal dispositions of any complaint or matter relating to the Physician Assistant Licensing Act or of any contested case

(1) The council may make an informal disposition of any complaint or matter relating to the Act or of any contested case by stipulation, agreed order, agreed settlement, consent order, or default

(2) In the event the council makes such a disposition of a complaint, contested case, or other matter, the disposition shall be in writing and, if appropriate, the writing shall be signed by the licensee

(3) To facilitate the expeditious disposition of complaints or contested cases, the council may provide a licensee with an opportunity to attend an informal settlement conference. The informal settlement conference may be held in conjunction with, and simultaneously with, a show compliance proceeding held pursuant to subsection (c) of this section

(4) If the opportunity for an informal settlement conference is provided to a licensee, the licensee shall be provided with a brief statement of the nature of the allegations to be addressed at the conference along with a brief statement of the provisions of the Act which may be grounds for disciplinary action. These statements shall be provided to the licensee by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the council. The licensee shall also be provided with written notice of the time, date, and location of the conference and the rules governing the proceeding by certified mail, return receipt requested, overnight or express mail, or registered mail, to the last mailing address of the licensee or the licensee's attorney on file with the council

(5) Three members of the council, a physician assistant, a physician, and a public member, shall conduct the informal settlement conference as the council's representatives. The representative who has seniority on the council shall chair the conference.

(6) The informal settlement conference shall allow

(A) council staff to present a synopsis of the allegations and the facts which staff reasonably believes could be proven by competent evidence at a hearing,

(B) the licensee to reply to the council staff's presentation and present facts the licensee reasonably believes could be proven by competent evidence at a hearing,

(C) presentation of evidence by the staff and the licensee which may include medical and office records, x-rays, pictures, film recordings of all kinds, audio and video recordings, diagrams, charts, drawings, and any other illustrative or explanatory materials which in the discretion of the council's representatives are relevant to the proceeding,

(D) representation of the licensee by counsel,

(E) presentation of oral or written statements by the licensee or the licensee's counsel,

(F) presentation of oral or written statements or testimony by witnesses, and

(G) questioning of witnesses

(7) The council's representatives shall exclude from the informal settlement conference all persons except witnesses during their testimony or presentation of statements, the licensee, the licensee's attorney or representative, council members, and council staff

(8) During the informal settlement conference, the council's legal counsel or a representative of the Office of the Attorney General shall be present to advise the council's representatives or the council's staff

(9) Except with the agreement of the licensee, during the deliberations of an appropriate settlement, the council's representatives at an informal settlement conference shall exclude the council staff which presented the allegations and facts related to the complaint against the licensee, the licensee, the licensee's attorney or representative, the complainant, witnesses, and the general public. Legal counsel for the council or a representative of the Office of the Attorney General shall be available to assist the representatives in their deliberations

(10) After an informal settlement conference has been held, the staff of

the council and the council's representatives shall be subject to the ex parte provisions of the Administrative Procedure Act with regard to contacts with council members and administrative law judges concerning the case

(11) To the extent possible, council members are required to serve as representatives at informal settlement conferences an equal number of times during a calendar year. In the event a council member has a complaint regarding the frequency or infrequency of service as a representative, the complaint may be routed in writing to the Director of Hearings for the medical board who shall then bring the complaint to the attention of the presiding officer of the council for submission to the council for a resolution by a majority vote

(12) At the informal settlement conference, the council's representatives will attempt to mediate disputed matters, and the council's representatives may call upon the staff at any time for assistance in conducting the informal settlement conference

(13) The council's representatives shall prohibit or limit access to the council's investigative file by the licensee, the licensee's attorney or representative, the complainant, witnesses, and the public consistent with the Medical Practice Act, §4.05(c)

(14) Although notes may be made by the participants, mechanical or electronic recordings shall not be made of settlement discussions, mediation efforts, or the informal settlement conference

(15) The settlement conference shall be informal and shall not follow the procedures established under this title for contested cases

(16) At the conclusion of the informal settlement conference, the council's representatives shall make recommendations for disposition of the complaint or allegations which may include recommendations of dismissal and closure of the related investigation. In the event a dismissal and closure of the investigation is not recommended, the representatives shall make a recommendation regarding the disposition of the case in the absence of a hearing under the provisions of applicable law concerning contested cases. The council's representatives may make recommendations to the licensee for resolution of the issues. Such recommendations may include any disciplinary actions authorized by the Physician Assistant Licensing Act and such other reasonable restrictions or remedial actions that are in the public interest. These recommendations may be subsequently modified by the council's representatives or staff based on new information, a change of circumstance, or to expedite a resolution in the

interest of protecting the public. The council's representatives may also conclude that the council lacks jurisdiction or that a violation of the Physician Assistant Licensing Act or the council's rule has not been established, and may recommend that the investigation be closed or referred for further investigation. These recommendations may be adopted, modified, or rejected by the duly convened council or through the duly authorized actions of the council's Disciplinary and Ethics Committee.

(17) The licensee may either accept or reject the settlement recommendations proposed by the council's representatives. If the licensee accepts the recommendations, the licensee shall execute the settlement agreement in the form of an Agreed Order or affidavit as soon thereafter as is practicable. If the licensee rejects the proposed agreement, the matter shall be referred to the council's staff for appropriate disposition as directed by the council's representatives or the Disciplinary and Ethics Committee. The council through staff may also schedule the matter for a hearing as described in §185.26 of this title (relating to Procedure-Hearing).

(18) Following acceptance and execution by the licensee of the settlement agreement, the agreement shall be submitted to the council for approval.

(19) The following relate to consideration of an agreed disposition by the council:

(A) Upon an affirmative majority vote, the council shall enter an Order approving the proposed settlement agreement. The Order shall bear the signature of the presiding officer of the council at such meeting and shall be referenced in the minutes of the council.

(B) If the council does not approve a proposed settlement agreement, the licensee shall be so informed and the matter shall be referred to the staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an additional informal settlement conference, or a hearing.

(C) To promote the expeditious resolution of any complaint or matter relating to the Physician Assistant Licensing Act or of any contested case, with the approval of the executive director of the medical board, or the Disciplinary and Ethics Committee of the council, council staff may present a proposed settlement agreement to the council for consideration and acceptance without conducting an informal settlement conference. If the council does not approve such a proposed settlement agreement, the licensee shall be so informed and the matter

shall be referred to council staff for appropriate action to include dismissal, closure, further negotiation, further investigation, an informal settlement conference, or a hearing.

§185.26. Procedure-Hearing

(a) Presiding Officer. When the council en banc, or a committee or panel of the council, conducts a hearing pursuant to the Physician Assistant Licensing Act or the Medical Practice Act, the following apply:

(1) The hearing will be presided over by the presiding officer of the council.

(2) The presiding officer shall have the authority to:

- (A) administer oaths;
- (B) examine witnesses,
- (C) rule on the admissibility of evidence,
- (D) rule on motions,
- (E) rule on amendments to pleadings,
- (F) recess the hearing from day to day, and
- (G) refer the hearing to an administrative law judge at the State Office of Administrative Hearings.

(b) Administrative Law Judges/Hearings Examiners

(1) Authority. When the council utilizes an administrative law judge or hearings examiner such hearings shall be conducted in accordance with the Administrative Procedure Act, the Physician Assistant Licensing Act, the Medical Practice Act, the rules of this council, and all other applicable law.

(2) Duties. Except for accepting or rejecting proposed findings of fact or conclusions of law, issuing final orders on the merits, dismissing complaints, and making recommendations as to a licensee's discipline, the administrative law judge or hearings examiner shall have all the authority which the council has regarding the conduct of hearings including, without limitation, the following:

- (A) to hold hearings and issue notices,
- (B) to administer oaths and affirmations,

(C) to direct all parties to enter their appearance on the record.

(D) to subpoena and examine witnesses,

(E) to subpoena documents and other physical evidence;

(F) to hold conferences before, during, or after the hearing, to consider the matters specified in §185.25(d) of this title (relating to Procedure-Prehearing);

(G) to regulate the course and conduct of the hearing including, without limitation, setting the time and place of the hearing and/or continued hearings; fixing the time for filing of briefs and other documents; receiving relevant evidence, excluding evidence which is irrelevant, immaterial, repetitious, or cumulative; ruling upon offers of proof; regulating the manner of examination to prevent needless and unreasonable harassment, intimidation, expense, inconvenience, or embarrassment of any witness or party at a hearing, removing disruptive individuals; and ruling on motions.

(H) to submit in writing to the parties, a proposal for decision containing the elements specified in §185.27(a) of this title (relating to Procedure-Posthearing),

(I) to present and explain in person his or her proposal for decision to the council for its consideration and final action, and

(J) to dispose of any other matter that arises in the course of a hearing and to take any action authorized by the rules of the council, the Physician Assistant Licensing Act, the Medical Practice Act, the Administrative Procedure Act, and all other applicable law.

(c) Order of Proceeding

(1) Hearings. In all proceedings, the petitioner, applicant, or complainant, respectively, shall be entitled to open and close. Where several proceedings are heard on a consolidated record, the hearings examiner or administrative law judge shall designate who shall open and close. The hearings examiner or the Administrative Law Judge in all cases shall determine whether and at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, the hearings examiner or the Administrative Law Judge may call upon

any party or the council staff for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record

(2) Before the council During proceedings before the council, en banc, the order of proceeding shall be the following

(A) The hearings examiner or administrative law judge shall present his or her proposal for decision and recommended order, explaining the items as specified in subsection (b) of this section

(B) The party adversely affected shall briefly state their reasons for being so affected, supported by the evidence of record

(C) The other party or parties shall be given the opportunity to respond.

(D) The council as complainant shall have the right to close

(E) The presiding officer or a member of the council may question any party as to any matter relevant to the proceeding

(F) At the end of any argument by the parties, the council may deliberate the matter in executive session, but shall vote and announce its final decision in open meeting

(3) Limitation A party shall not inquire into the mental processes used by the council in arriving at its decision, nor be disruptive of the orderly procedure of the council's routine

(d) Reporter and Transcripts

(1) Option A party has the option of furnishing his or her own stenographic reporter at his or her own expense or using the reporter by the council If a party elects to provide his or her own reporter the party shall notify the council prior to the commencement of the hearing

(2) Original The original transcript shall be delivered to the council as soon as practicable A stenographic reporter may sell copies of a transcript If the respondent in the proceedings requests the original record (statement of fact) of the testimony and evidence of a disciplinary hearing, the costs for the original record (transcript) shall be borne by the respondent (appellant) physician assistant Any subsequent copies of the record (transcript) shall be borne by any person requesting same

(3) Corrections Suggested corrections to the transcript of the record may be offered within ten days after the tran-

script is filed in the proceeding, unless the council shall permit suggested corrections to be offered thereafter Suggested corrections shall be served in writing upon each party of record, the official reporter, and the council If suggested corrections are not objected to, the council will direct the corrections to be made and the manner of making them In case the parties disagree on suggested corrections, they may be heard by the council which shall then determine the manner in which the record shall be changed, if at all.

(e) Dismissal Without Hearing

(1) The council may entertain motions for dismissal for the following reasons

(A) failure to prosecute,

(B) unnecessary duplication of proceedings or res judicata,

(C) withdrawal,

(D) moot questions or stale petitions, or

(E) lack of jurisdiction

(2) Such motions must meet the criteria of §185.25(e) of this title (relating to Procedure-Prehearing)

(3) These motions may be argued prior to the council ruling thereon

(f) Evidence

(1) Rules The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs The council shall give effect to the rules of privilege recognized by law Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved

(2) Objections Objections to evidentiary offers shall be made and shall be noted in the record Formal exceptions to rulings of the hearings examiner or administrative law judge during a hearing shall be unnecessary It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the hearings examiner or administrative law judge the action which he or she desires

(3) Offer of proof If evidence is excluded from the record by an exclusionary ruling of the hearings examiner or administrative law judge, the evidence may be included in the record by an offer of proof by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence An offer of proof shall be sufficient to preserve the evidence for review

(4) Office records When subpoenaed by the council, the office records of each patient shall have stapled thereto an affidavit in the form approved and furnished by the council which contains the requisite elements to comply with the Texas Rules of Civil Evidence, 902(10) relating to the form of affidavits

(5) Documents Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form

(A) Copies Documentary evidence may be received in the form of copies or excerpts if the original is not readily available On request, parties shall be given an opportunity to compare the copy with the original When numerous documents are offered, the hearings examiner or administrative law judge may limit those admitted to a number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit, provided, however, that before making such requirement the hearings examiner or the Administrative Law Judge shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made

(B) Prepared testimony In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the hearings examiner or administrative law judge, the prepared testimony of any witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness' being sworn and identifying the same Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part

(6) Official notice Official notice may be taken of all facts judicially cognizable and of records of the council or medical board In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge Parties shall be notified either before

or during the hearing or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the council and its staff may be utilized in evaluating the evidence.

(7) Limitations on number of witnesses. The hearings examiner or administrative law judge shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

(8) Exhibits.

(A) Form. Documentary exhibits shall be 8 inches by 11 inches in length, so as to not unduly encumber the files and records of the council. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to fact material and relevant to the issues involved in a particular proceeding.

(B) Marking and service. The original of each exhibit offered shall be marked sequentially for identification and tendered for inclusion in the evidentiary record. One copy shall be furnished to the hearings examiner or administrative law judge and one copy to each party of record or his or her attorney or representative.

(9) After hearing. No exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing unless specifically directed by the hearings examiner, administrative law judge, presiding officer, or by the council with copies of the late-filed exhibit served on all parties of record.

§185.27 Procedure-Posthearing

(a) Proposals for Decision

(1) Elements. In addition to any other requirement of the Physician Assistant Licensing Act or the Administrative Procedure Act, the administrative law judge shall serve on the parties a proposal for decision which shall contain:

(A) a summary of the evidence adduced by each party,

(B) a statement of the hearings examiner's or administrative law judge's reasons for the proposed decision,

(C) findings of fact expressed in clear, concise factual terms, neither summarizing nor reciting the evidence. Findings of fact must be based explicitly on

the evidence and on matters officially noticed,

(D) conclusions of law necessary to the proposed decision;

(E) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the council, and

(F) recommended disposition or discipline.

(2) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the hearings examiner or the administrative law judge on each party, his or her attorney of record or representative, and the council. Service of the proposal for decision shall be in accordance with §185.24(f) and (k) of this title (relating to Procedure-General).

(3) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.

(4) Proposed findings. Only when the hearings examiner or administrative law judge requests a party or parties to submit findings of fact will it be necessary for the administrative law judge to rule on each proposed finding in the recommended order.

(b) Exceptions and Replies

(1) Entitlement. Any party of record who is aggrieved by the hearings examiner's or the administrative law judge's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within ten days of the filing of the exceptions. Exceptions and replies shall be filed with the hearings examiner or the administrative law judge. Any extensions of time shall be as provided by §185.24(c) of this title (relating to Procedure-General).

(2) Form. The form of exceptions and replies are as specified in §185.24(f) of this title (relating to Procedure-General).

(3) Content. Each exception or reply to a finding of fact shall be stated concisely and shall summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(4) Briefs. Briefs shall be filed only when requested or permitted by the council, presiding officer, hearings examiner, or administrative law judge.

(5) Service. Exceptions and replies shall be served upon every party of record by the filing party pursuant to §185.24(k) of this title (relating to Procedure-General).

(c) Oral Argument. Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the council. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing, or in separate pleadings.

(d) Final Decisions and Orders.

(1) Council action. The proposal for decision may be acted on by the council upon the expiration of ten days after the filing of replies to exceptions to the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his or her attorney of record.

(2) Recorded. All final decisions and orders of the council shall be in writing or stated in the record and shall be signed by the presiding officer of the council. A final order shall include findings of fact and conclusions of law, separately stated.

(3) Imminent peril. If the council finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a final decision or order in a contested case, it shall recite that finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered and no motion for rehearing is required as a prerequisite for appeal.

(4) Changes to Recommendation. To protect the public interest and ensure that sound principles govern the decisions of the council, it shall hereafter be the policy of the council to change a finding of fact or conclusion of law or to vacate or modify the proposed order of a hearings examiner or an administrative law judge when the proposed order is

(A) erroneous,

(B) against the weight of the evidence,

(C) based on unsound medical principles,

(D) based on an insufficient review of the evidence.

(E) not sufficient to protect the public interest; or

(F) not sufficient to adequately allow rehabilitation of the physician assistant.

(5) Amended order. If the council modifies, amends, or changes the hearing examiner's or the administrative law judge's recommended order, an order shall be prepared reflecting the council's changes as stated in the record.

(6) Administrative finality. A final order or council decision is administratively final:

(A) upon a finding of imminent peril to the public health, safety, or welfare as outlined in paragraph (3) of this subsection;

(B) when absent the filing of a timely motion for rehearing upon the expiration of 20 days from the date the final order or council decision is entered; or

(C) when a timely motion for rehearing is filed and the motion for rehearing is overruled by council order or operation of law as outlined in subsection (e) of this section.

(7) Rendering of final decision or order. The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by an administrative law judge, an extension of time for the issuing of a proposal for decision may be announced at the conclusion of the hearing.

(e) Motions for Rehearing.

(1) Filing Times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or

by mail, of the final decision or order of the council.

(2) Council Action. Action by the council on the motion must be taken within 45 days after the date of rendition of the final decision or order. If council action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The council may, by written order, extend the period of time for filing the motions and replies and taking council action, except that an extension may not extend the period for council action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may, by agreement, with the approval of the council, provide for a modification of the times provided in this section.

(f) The Record. The record in a contested case shall include:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on them;

(5) proposed findings of fact, conclusions of law, exceptions, and replies;

(6) any decision, opinion, or report by the officer presiding at the hearing; and

(7) all staff memoranda, correspondence from parties, or other data submitted to or considered by the hearings

examiner or the administrative law judge or members of the agency who are involved in making the decision.

(g) Costs of Appeal. A party appealing a final decision of the council in a contested case may be ordered by the council to pay all or a part of the cost of preparation of the original or a certified copy of the record of the proceeding that is required to be transmitted to the reviewing court.

§185.28. Medical Board Review and Approval. Medical board approval of council rules under this section shall be memorialized in the minutes of the medical board, the minutes of a committee of the medical board, or in a writing signed by the medical board's presiding officer, secretary-treasurer, or authorized committee chair after consideration of the rules recommended by the council.

§185.29. Construction. The provisions of this chapter shall be construed and interpreted so as to be consistent with the statutory provisions of the Physician Assistant Licensing Act and the Medical Practice Act. In the event of a conflict between this chapter and the provisions of the Act(s), the provisions of the Act(s) shall control; however, this chapter shall be construed so that all other provisions of this chapter which are not in conflict with the Act(s) shall remain in effect.

Issued in Austin, Texas, on June 28, 1994.

TRD-9443263

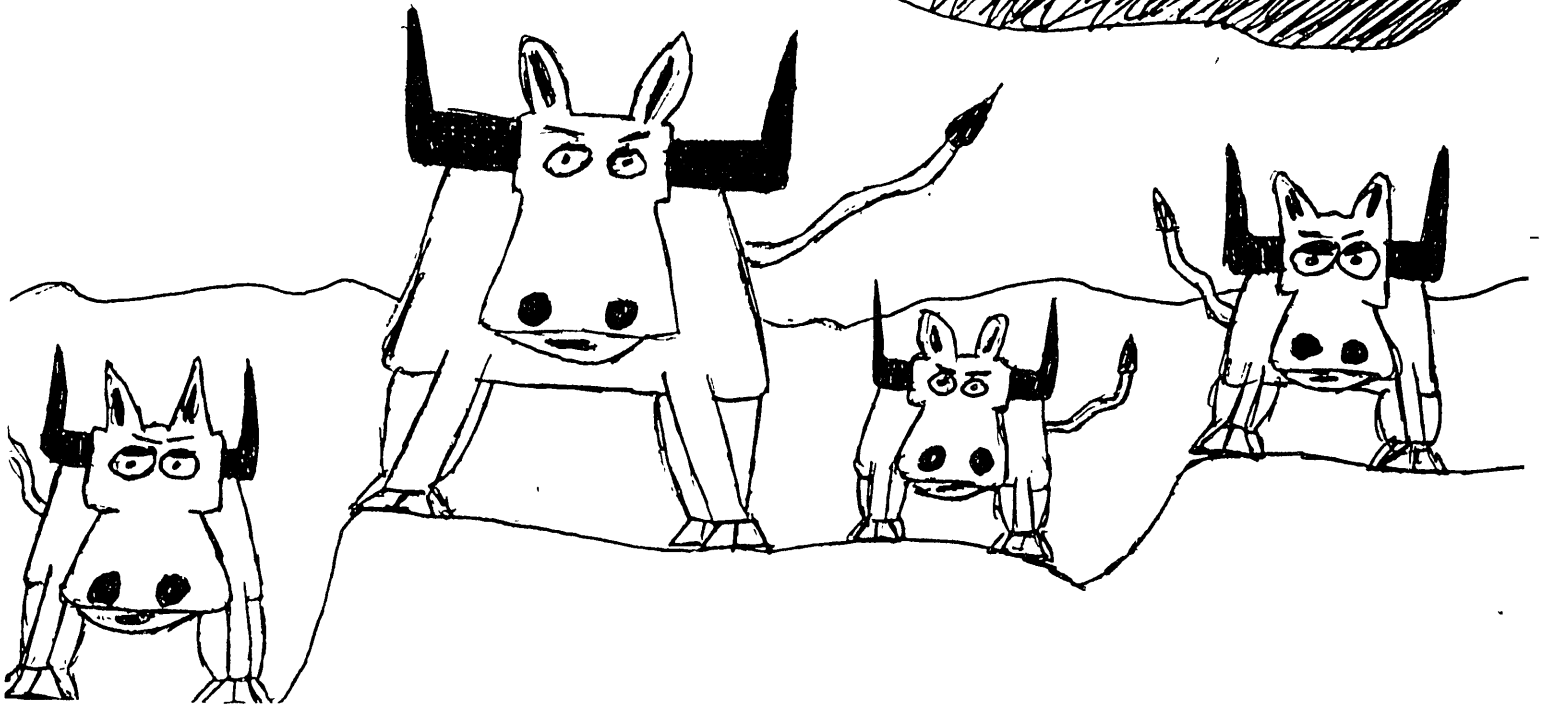
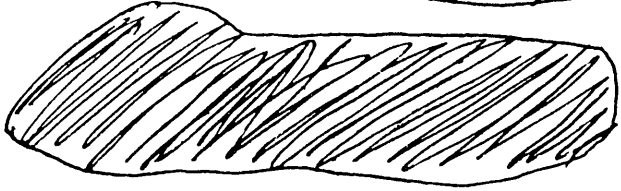
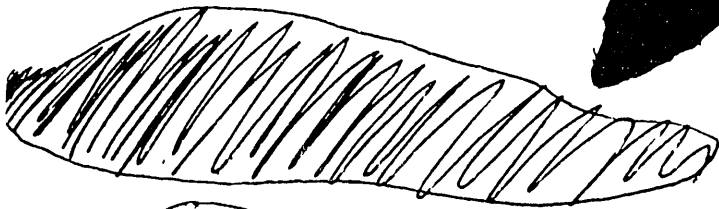
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: June 30, 1994

Expiration date: October 28, 1994

For further information, please call: (512) 834-7728, Ext. 422





PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before action is taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the section. Also, in the case of substantive action, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 5. Quarantines

Citrus Seed, Citrus Budwood and Citrus Nursery Stock Quarantine

• 4 TAC §§5.151-5.153

The Texas Department of Agriculture (the department) proposes amendments to §§5.151-5.153, concerning restricted shipments of citrus seed, citrus budwood and citrus nursery stock to require citrus seed and budwood to be tested and certified free of viruses before entry into the state. Currently, citrus seeds, citrus budded nursery stock or seedlings and citrus budwood may enter the state of Texas under permit from the department. However, it is necessary to amend the restricted shipment section and the restrictions on the citrus seed shipment section to require testing and certification of citrus products in order to assure that only disease-free and virus-free citrus budwood and citrus seed are allowed into this state.

Shashank Nilakhe, director, Agri-systems, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Nilakhe 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 Texas citrus growers will be importing only certified disease-free and virus-free products. 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 this proposal may be submitted to Shashank Nilakhe, Director, Agri-Systems, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §71.007, which pro-

vides the Texas Department of Agriculture with the authority to adopt rules necessary for the protection of agricultural and horticultural interests

The code chapter affected by this proposal is the Texas Agriculture Code, Chapter 71.

§5.151. Plant Diseases. It has been [is] determined [fact] that [such] plant diseases such as citrus canker, quick[,] decline, psorosis, leprosis, slow decline, creeping decline, tristeza virus, and other virus diseases are present in severe forms [all areas] outside of Texas; and the introduction of such diseases could [may] result from shipments of [by shipping] citrus seed, budwood, and nursery stock into Texas.

§5.152. Restricted Shipments. Citrus budded nursery stock or seedlings, citrus budwood, or any part of any citrus tree or seedling may not be shipped, carried or in any way transported by any means into the State of Texas from outside of the State of Texas; provided, however, that budwood or varieties of citrus not existing in the State of Texas may be shipped to the commissioner of agriculture from the State of Florida or the State of California under the following conditions:

(1) That before such budwood enters the State of Texas, a special permit from the commissioner of agriculture must be issued [has given express permission] for the admittance of that particular budwood into the State of Texas, and it is consigned to the commissioner of agriculture.

(2) That such shipping or mailing container is addressed to the Texas [State] Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

(3) Before any citrus budwood which originated outside the continental United States will be allowed to enter Texas and received by the commissioner of agriculture, it must be cleared through the [Division of Plant Exportation and Introduction, Bureau of Plant Industries and Agricultural Engineering,] United States

Department of Agriculture, Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Hyattsville [Beltsville], Maryland, and such clearance must be certified to the commissioner of agriculture before he will issue his permit for entrance or before he will accept such budwood shipment.

(4) All citrus budwood that is allowed to enter into the State of Texas must have been tested using the enzyme-linked-immuno-sorbent-assay (ELISA) method or alternative method approved by the commissioner of agriculture, and such test must have negative results, and such budwood shall be assigned to either a federal or state agency for the purpose of growing for confirmation tests [not less than two years to test and] to determine if the budwood is free from all virus and infectious diseases before it is released to the applicant. The budwood must be grown on three rootstock varieties: the Mexican Lime, the Sour Orange, and the Cleopatra Mandarin. Such growing must be in a partition, screened, quarantine house [and such houses may be] located [only] in [the counties of] Willacy, Hidalgo, or Cameron counties. Such citrus budwood shall be deemed free of all virus and infectious diseases when, and only when, the federal or state agency, to which the same has been assigned, shall certify that it has not exhibited any symptoms of any virus or infectious disease during the test [two-year] period that such agency has had such budwood in its custody.

§5.153. Restrictions on Citrus Seed Shipments. No citrus seed can be shipped, brought, or in any manner transported into the State of Texas from any area outside the state other than from the State of Florida or the State of California. Citrus seed from the State of Florida or State of California may be imported into the State of Texas under the following conditions:

(1) A certified statement from the originating state's department of agriculture stating that the seed is from registered stock and was harvested in territory

that is free from [the] citrus canker, and that the plants have been treated in Florida or California according to a procedure approved by the Texas Commissioner of Agriculture, witnessed by officials of the originating state's department of agriculture.

(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 June 29, 1994.

TRD-9443247 Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: August 8, 1994

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

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 185. Physician Assistants

• 22 TAC §§185.1-185.29

The Texas State Board of Medical Examiners proposes new §§185.1-185.29, concerning the practice of physician assistants. The proposed new sections set forth the requirements for licensure, annual registration, and discipline of those persons practicing as physician assistants. Extensive rewrite of the section was necessary due to new legislative mandates; therefore, simultaneous repeal of current sections is proposed.

Tim Weitz, General Counsel, has determined that there will be fiscal implications as a result of enforcing or administering the section. Estimated additional cost to implement the rules will be approximately \$240,000 per year for the first five-year period the section will be in effect. Estimated increase in revenue is anticipated at \$240,000 per year for the first five-year to offset the cost of implementation.

Mr. Weitz also has determined that the public benefits anticipated as a result of enforcing the section as proposed will be to establish an orderly system of licensing and disciplining those persons practicing as physician assistants in the state of Texas in a manner which protects the health, safety, and welfare of the public. The anticipated economic cost to persons who are required to comply with the section as proposed will be \$200 licensure fee plus \$150 annual renewal.

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

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

Cross Index to Statute-Physician Assistant Licensing Act, House Bill 2498, 73rd Legislature.

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 June 28, 1994.

TRD-9443264 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: August 8, 1994

For further information, please call: (512) 834-7728, Ext. 422

• 22 TAC §§185.1-185.16

(Editor's Note: The Texas State Board of Medical Examiners proposes for permanent adoption the repeals it adopts on an emergency basis in this issue. The text of the repeals is in the Emergency Rules section of this issue.)

The Texas State Board of Medical Examiners proposes the repeal of §§185.1-185.16, concerning the practice of physician assistants. Pursuant to House Bill 2498, 73rd Legislature, extensive rewrite of this section was necessary; therefore repeal, with simultaneous new section is proposed.

Timothy E. Weitz, general counsel, 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. Weitz also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be clarification of the rules by omission. 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 Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

Cross Index to Statute-Physician Assistant Licensing Act, House Bill 2498, 73rd Legislature.

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 June 30, 1994.

TRD-9443266 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: August 8, 1994

For further information, please call: (512) 834-7728, Ext. 422

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

The Texas Department of Health (department) proposes amendments to §§1.131, 1.132, 1.136, and 1.137; the repeal of §§1.133, 1.134, and 1.135; and new §§1.133, 1.134, and 1.135 concerning definition, treatment and disposition of special waste from health care related facilities, which are more commonly known as medical waste rules. Revisions to the rules include minimal changes to the definitions of some of the waste categories; adding some new definitions significant to the waste approval process; deleting some of the outdated terminology; and rewording definitions relating to cemeteries and handling of bodies to make them more applicable to medical waste rules. In addition, there will be references to current solid waste rules now administered through the Texas Natural Resource Conservation Commission (TNRCC) to more accurately reflect the split in regulatory activities between the department and the TNRCC. The most significant revision to the rules is the provision for systematic procedures to review and approve alternative treatment technologies for treatment of medical waste and related fees, which is proposed as new §1.135.

Mr. Charles R. Maddox, P.E., Chief, Bureau of Environmental Health, has determined that for the first five-year period the proposed sections are in effect there will be fiscal implications as a result of administering these sections. The cost to state government is estimated to be \$86,000 the first year, and \$54,000 for each of the succeeding four years. There will be no cost to local government.

Mr. Maddox also has determined that for each of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the proposed sections will be additional protection of the public's health through proper treatment and disposition of medical waste. The cost to all persons and businesses to comply with the new sections

will be the application fee of \$4,000 per alternate treatment process and annual listing fee of \$2,000. No impact on local employment is anticipated.

Comments on the proposed sections may be sent to Charles R. Maddox, P.E., Chief, Bureau of Environmental Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 834-6640. Mr. Maddox will accept comments for 30 days after publication in the *Texas Register*.

Definition, Treatment, and Disposition of Special LWaste from Health Care-Related Facilities

- 25 TAC §§1.131, 1.132, 1.136, 1.137

The amendments are proposed under the Health and Safety Code, §§81.081-81.092, which provides the Board of Health (board) the authority to prevent and control communicable disease; §142.012, which authorizes the board to adopt rules concerning home and community support services agencies; §241.026, which authorizes the board to adopt rules concerning hospital licensing; §243.009, which authorizes the board to adopt rules concerning ambulatory surgical centers; §244.009, which authorizes the board to adopt rules covering birthing centers; §§245.009-245.010, which authorize the board to adopt rules covering abortion facilities; §694.001, which authorizes the board to regulate the disposition of dead bodies; §773.050, concerning the department's authority to regulate emergency medical service providers; §12.032, which authorizes the board to charge fees for public health services; and §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 Texas Department of Health, and the Commissioner of Health. The new sections affect Health and Safety Code, §§12.001, 12.032, 81.081-81.092, 142.012, 241.026, 243.009, 244.009, 245.009-245.010, 694.001, 773.050.

§1.131. Purpose. The purpose of these sections is to provide a definition of the term "special waste from health care-related facilities (SWFHCRF)," approve methods for the treatment [and disposition] of the waste, identify the entities that are subject to the provisions of these sections, and provide for the orderly application of the sections to covered entities.

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

Approved alternate treatment process-A process for waste treatment which has been approved by the Texas Department of Health in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technolo-

gies for Special Waste from Health care-related Facilities).

Biological indicators-Commercially-available microorganisms (e.g., United States Food and Drug Administration-approved strips or vials of *Bacillus* species endospores) which can be used to verify the performance of waste treatment equipment and/or processes.

Body fluids-Those free-flowing body substances other than blood, plasma, or serum identified under universal precautions as recommended by the United States Centers for Disease Control and Prevention, and includes, but are not limited to:

- (A) semen;
- (B) vaginal secretions;
- (C) any body fluid containing visible blood;
- (D) saliva in dental settings;
- (E) amniotic fluid;
- (F) cerebrospinal fluid;
- (G) peritoneal fluid;
- (H) pleural fluid;
- (I) pericardial fluid; and
- (J) synovial fluid.

Bulk-A containerized, aggregate [Bulk blood or body fluids shall mean a] volume of 100 milliliters (mL) or more.

Bulk blood, [Blood and] blood products, and body fluids-All free-flowing waste: [bulk] human blood; [.] serum; [.] plasma; [.] and] other blood components; and body fluids; including disposable items saturated with blood or body fluids.

Burial park-A tract of land that is [which has been dedicated to the purposes of, and] used or [and] intended to be used[,] for the interment of pathological waste in graves.

Cemetery-A tract of land that is [which has been dedicated to the purposes of, and] used or [and] intended to be used for[,] the permanent interment of pathological waste, and includes:

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

- (C) a [crematory or crematorium and] columbarium for cinerary interments; or [and]

- (D) (No change.)

Challenge waste load-A surrogate waste load assembled for use during waste treatment protocols to evaluate the efficacy of microbial inactivation processes. The composition of the challenge waste load will vary depending on the technology being evaluated.

Chemical disinfection-The use of a chemical agent to reduce significantly the numbers of active microorganisms, but not necessarily their endospores, from the surfaces of inanimate objects. [microbial activity. The chemical agent used shall be registered with the United States Environmental Protection Agency as a disinfectant and shall be used in accordance with the manufacturer's instructions; or the waste shall be immersed for not less than three minutes in:]

[(A) a freshly prepared solution of household chlorine bleach diluted 1:10 with water; or

[(B) a solution of 70% by volume 2-propanol (isopropyl alcohol). Waste which has been immersed in a liquid disinfectant must be thoroughly drained before disposal.]

Chlorine disinfection/maceration-The process of shredding waste in the presence of a chlorine [disinfectant] solution under negative pressure. [The shredded waste must be unrecognizable as to source. The chlorine disinfectant must have a free available chlorine concentration of 1,100 ppm when applied to the waste. The disinfectant solution must be drained from the waste prior to disposal.]

Contagious-Capable of transmission from human or animal to human.

Contaminated-The presence or the reasonably anticipated presence of blood or those body fluids as defined elsewhere in this section.

Cremated remains-The bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the pathological waste.

Department-The Texas Department of Health.

Deposition in a sanitary landfill-Deposition in a sanitary landfill in accordance with 30 TAC Chapter 330. [Chapter 325 of this title (relating to Solid Waste Management).]

Discharge to sanitary sewer system-A discharge or flushing of waste into a sanitary sewer system which is done in accordance with provisions of local sewage discharge ordinances.

Disinfection-A somewhat less lethal process compared to sterilization, which destroys or inactivates viruses,

fungi, and bacteria (but not necessarily their endospores) on inanimate surfaces.

Grave—A space of ground in a burial park that is used, or intended to be used for the permanent interment in the ground of pathological waste.

Grinding—That physical process which pulverizes materials, thereby rendering them as unrecognizable, and for sharps, reduces the potential for the material to cause injuries such as puncture wounds.

Immersed—A process in which waste is submerged fully into a liquid chemical agent in a container, or that a sufficient volume of liquid chemical agent is poured over a containerized waste, such that the liquid completely surrounds and covers the waste item(s) in the container.

Incineration—That process as defined in 30 TAC Chapter 101, whereby special waste from health care-related facilities is consumed [To consume special waste from health care related facilities] by burning under conditions in conformance with standards prescribed in 30 TAC Chapter 111 by the Texas Natural Resource Conservation Commission [Air Control Board].

Interment—The disposition of pathological waste by cremation, entombment, [or] burial, or placement in a niche.

Log₁₀—Logarithm to the base ten (10)

Log₁₀ / reduction—A mathematically defined unit used in reference to level or degree of microbial inactivation. A 4 log₁₀ reduction represents a 99.99% reduction in the numbers of active microorganisms, while a 6 log₁₀ reduction represents a 99.9999% reduction in the numbers of active microorganisms.

Mausoleum—A structure or building of most durable and lasting fireproof construction used, or intended to be used, for the entombment [permanent interment in crypts and vaults of the remains of] pathological waste

Microbial inactivation—Inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 6 log₁₀

reduction or greater; and inactivation of *Bacillus subtilis* endospores or *Bacillus stearothermophilus* endospores at a 4 log₁₀ reduction or greater.

Microbiological waste—Microbiological waste includes.

(A) discarded cultures and stocks of infectious agents and associated biologicals;

(B) discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;

(C) discarded live and attenuated vaccines, but excluding the empty containers thereof;

(D) discarded, used disposable culture dishes; and

(E) discarded, used disposable devices used to transfer, inoculate or [and] mix cultures.

Moist heat disinfection—The subject of:

(A) internally shredded waste to moist heat, assisted by microwave radiation under those conditions which effect disinfection; [to a temperature of at least 95 degrees Celsius under atmospheric pressure for at least 30 minutes causing adequate disinfection as verified by routine performance monitoring using *Bacillus subtilis* test indicators;] or

(B) unshredded waste in sealed containers to moist heat, assisted by low-frequency radiowaves under those conditions which effect disinfection, [to a temperature of at least 90 degrees Celsius under atmospheric pressure for at least two hours.] followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

Niche—A recess or space in a columbarium[,] used, or intended to be used, for the permanent interment of the cremated remains of pathological waste.

Parametric controls—Measurable standards of equipment operation appropriate to the treatment equipment including, but not limited to pressure, cycle time, temperature, irradiation dosage, pH, chemical concentrations, or feed rates.

Pathological waste—Pathological waste includes but is not limited to.

(A) human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy, including:

(i)-(iv) (No change.)

(B) products of spontaneous or induced human abortions, regardless of the period of gestation, including: [body parts, tissues, fetuses, organs, and bulk blood and body fluids; regardless of the period of gestation;]

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

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

Saturated-Thoroughly wet such that liquid or fluid flows freely from an item or surface without compression.

Sharps—Sharps include, but are not limited to the following materials:

(A) when contaminated:

(i)[(A)] hypodermic needles,

(ii)[(B)] hypodermic syringes with attached needles;

(iii)[(C)] scalpel blades;

(iv)[(D)] razor blades, [and] disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures;

(v) intravenous stylets and rigid introducers (e.g., J wires);

(vi)[(E)] glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides; [and]

(vii)[(F)] broken glass from laboratories; and

(viii)[(G)] tattoo needles, acupuncture needles, and electrolysis needles;

(B) regardless of contamination:

(i) hypodermic needles; and

(ii) hypodermic syringes with attached needles.

Shredding—That physical process which cuts, slices, or tears materials into small pieces.

Special waste from health care-related facilities—A solid waste which if improperly treated or handled may serve to transmit an infectious disease(s) and which is comprised of the following.

(A) (No change)

(B) bulk blood, [and] blood products, and body fluids,

(C)-(E) (No change.)

Steam sterilization—The act of subjecting waste to steam under pressure under those conditions which effect disinfection. [The act of autoclaving at temperature of at least 121 degrees Celsius, and a pressure of at least 15 pounds per square inch for at least 30 minutes.]

Sterilization—The use of a physical or chemical process to destroy all microbial life, including bacterial endospores.

Thermal inactivation—The act of subjecting waste to dry heat under those conditions which effect disinfection. [of at least 160 degrees Celsius under atmospheric pressure for at least two hours.]

Unrecognizable—The original appearance of the waste item has been altered such that neither the waste nor its source can be identified.

§1.136. Approved Methods of Treatment and Disposition.

(a) Introduction. The following treatment and disposition methods for special waste from health care-related facilities are approved by the Texas Board of Health (board) for the waste specified. Where a special waste from a health care-related facility is also subject to the sections in Chapter 289 of this title (relating to [Occupational Health and] Radiation Control), the sections in Chapter 289 shall prevail over the sections in this undesignated head. Disposal of special waste from health care-related facilities in sanitary landfills or otherwise is under the jurisdiction of the Texas Natural Resource Conservation Commission and is governed by its rules found in 30 TAC Chapter 330.

(1) Animal waste. Animal waste shall be subjected to one of the following methods of treatment and disposal:

(A) Carcasses of animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

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

(iii) carcasses of animals intentionally exposed to pathogens which are not contagious may be buried on-site under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Texas; [or]

(iv) carcasses of animals intentionally exposed to pathogens which are not contagious may be sent to a rendering plant;[.]

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(B) Body parts of animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

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

(iii) incineration followed by deposition of the residue in a sanitary landfill; [or]

(iv) body parts of animals intentionally exposed to pathogens which are not contagious may be buried on site under the supervision of a veterinarian licensed to practice veterinary medicine in the State of Texas;[.]

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(C) Bulk whole blood, serum, plasma, and/or other blood components from animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

(i)-(viii) (No change.)

(ix) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(x) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(xi) an approved alternate treatment process followed by deposition in a sanitary landfill.

(D) Bedding of animals intentionally exposed to pathogens shall be subjected to one of the following methods of treatment and disposal:

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

(iv) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(v) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(vi) an approved alternate treatment process followed by deposition in a sanitary landfill.

(2) Bulk human blood, [and] blood products, and body fluids. Bulk human blood, [and] blood products, and body fluids shall be subjected to one of the following methods of treatment and disposal:

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

(F) thermal inactivation, followed by deposition in a sanitary landfill;

(G) thermal inactivation, followed by grinding and discharging into a sanitary sewer system;

(H)[F] moist heat disinfection followed by deposition in a sanitary landfill; [or]

(I)[G] chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(J) an approved alternate treatment process followed by deposition in a sanitary landfill.

(3) Microbiological waste. Microbiological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Discarded cultures [Cultures] and stocks of infectious agents and associated biologicals shall be subjected to one of the following methods of treatment and disposal:

(i)-(iv) (No change.)

(v) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(B) Discarded cultures [Cultures] of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, industrial and veterinary laboratories shall be subjected to one of the following methods of treatment and disposal.

(i)-(iv) (No change.)

(v) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(C) Discarded live and attenuated vaccines, but excluding the empty containers thereof, shall be subjected to one of the following methods of treatment and disposal:

(i)-(iv) (No change.)

(v) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(D) Discarded disposable [Disposable] culture dishes shall be subjected to one of the following methods of treatment and disposal. [.]

(i) All discarded, unused disposable culture dishes shall be disposed of in accordance with 30 TAC Chapter 330.

(ii) Discarded, used disposable culture dishes shall be subjected to the following methods of treatment and disposal:

(I)[(i)] steam sterilization followed by deposition in a sanitary landfill,

(II)[(ii)] incineration followed by deposition of the residue in a sanitary landfill;

(III)[(iii)] thermal inactivation followed by deposition in a sanitary landfill;

(IV)[(iv)] chemical disinfection followed by deposition in a sanitary landfill;

(V)[(v)] moist heat disinfection followed by deposition in a sanitary landfill, [or]

(VI)[(vi)] chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(VII) an approved alternate treatment process followed by deposition in a sanitary landfill.

(E) Discarded disposable [Disposable] devices used to transfer, inoculate or [and] mix cultures shall be subjected to one of the following methods of treatment and disposal

(i)-(iv) (No change.)

(v) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(vii) an approved alternate treatment process followed by deposition in a sanitary landfill.

(4) Pathological waste. Pathological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy shall be subjected to one of the following methods of treatment and disposal:

(i) body parts:

(I) (No change.)

(II) incineration followed by deposition of the residue in a sanitary landfill; [or]

(III) (No change.)

(IV) moist heat disinfection, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(V) chlorine disinfection/maceration, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill; or

(VI) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) tissues or fetuses:

(I)-(IV) (No change.)

(V) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) organs:

(I)-(IV) (No change.)

(V) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iv) bulk human blood and body fluids removed during surgery, labor and delivery, autopsy, embalming, or biopsy:

(I)-(VII) (No change.)

(VIII) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(B) The products of spontaneous or induced human abortion shall be subjected to one of the following methods of treatment and disposal:

(i) body parts, tissues, or organs regardless of the period of gestation:

(I)-(II) (No change.)

(III) steam sterilization followed by interment; [or]

(IV) (No change.)

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that

the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) blood and body fluids:

(I)-(VII) (No change.)

(VIII) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(C) Discarded laboratory [Laboratory] specimens of blood and/or tissues shall be subjected to one of the following methods of treatment and disposal:

(i) grinding and discharging [discharging with grinding if needed] into a sanitary sewer system;

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

(v) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(vii) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(D) (No change.)

(5) Sharps.

(A) All discarded unused sharps shall be disposed of in accordance with 30 TAC Chapter 330.

(B) Contaminated sharps [Sharps] shall be subjected to one of the following methods of treatment and disposal.

(i)[(A)] Hypodermic needles; and hypodermic syringes with attached needles, shall be subjected to one of the following methods of treatment and disposal:

(I)[(i)] chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant,

leak-proof container followed by [and] deposition in a sanitary landfill;

(II)[(ii)] steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by [and] deposition in a sanitary landfill;

(III)[(iii)] incineration, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by [and] deposition in a sanitary landfill;

(IV)[(iv)] encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds followed by [and] deposition in a sanitary landfill;

(V)[(v)] moist heat disinfection followed by deposition in a sanitary landfill; [or]

(VI)[(vi)] chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[]

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and no longer capable of causing puncture wounds, followed by deposition in a sanitary landfill.

[(B) Hypodermic syringes with attached needles shall be subjected to one of the following methods of treatment and disposal:]

[(i) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container and deposition in a sanitary landfill;

[(ii) steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant container, and deposition in a sanitary landfill;

[(iii) incineration, and if item can cause puncture wounds, placement in a puncture-resistant container, and deposition in a sanitary landfill;

[(iv) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds and deposition in a sanitary landfill;

[(v) moist heat disinfection followed by deposition in a sanitary landfill; or

[(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill;]

(ii)[(C)] Razor blades, [and] disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures, and scalpel blades shall be subjected to one of the following methods of treatment and disposal:

(I)[(i)] chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by [and] deposition in a sanitary landfill.

(II)[(ii)] steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by [and] deposition in a sanitary landfill,

(III)[(iii)] incineration, and if item can cause puncture wounds, placement in a puncture-resistant container followed by [and] deposition in a sanitary landfill,

(IV)[(iv)] encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds followed by [and] deposition in a sanitary landfill,

(V)[(v)] moist heat disinfection followed by deposition in a sanitary landfill; [or]

(VI)[(vi)] chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[]

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and no longer capable of causing puncture wounds, followed by deposition in a sanitary landfill.

(iii) Intravenous stylets and rigid introducers (e.g., J wires) shall be subjected to one of the following methods of treatment and disposal

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(III) incineration, and if the item can cause puncture

wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds, followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill; [or]

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and no longer capable of causing puncture wounds, followed by deposition in a sanitary landfill.

(iv)[(D)] glass pasteur [Pasteur] pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides; and broken glass from laboratories shall be subjected to one of the following methods of treatment and disposal:

(I)[(i)] chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by [and] deposition in a sanitary landfill;

(II)[(ii)] steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by [and] deposition in a sanitary landfill;

(III)[(iii)] incineration, and if the item can cause puncture wounds, placement in a puncture-resistant container followed by [and] deposition in a sanitary landfill;

(IV)[(iv)] encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds followed by [and] deposition in a sanitary landfill;

(V)[(v)] moist heat disinfection followed by deposition in a sanitary landfill; [or]

(VI)[(vi)] chlorine disinfection/maceration followed by deposition in a sanitary landfill; or[.]

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and no longer capable of causing puncture wounds, followed by deposition in a sanitary landfill.

[(E) Broken glass from laboratories shall be subjected to one of the following methods of treatment and disposal:]

(i) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container and deposition in a sanitary landfill;

(ii) steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant container and deposition in a sanitary landfill;

(iii) incineration, and if item can cause puncture wounds, placement in a puncture-resistant container and deposition in a sanitary landfill;

(iv) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds and deposition in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill, or

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill;]

(v) Tattoo needles, acupuncture needles, and electrolysis needles shall be subjected to one of the following methods of treatment and disposal:

(I) chemical disinfection, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(II) steam sterilization, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(III) incineration, and if the item can cause puncture wounds, placement in a puncture-resistant, leak-proof container followed by deposition in a sanitary landfill;

(IV) encapsulation in a matrix which will solidify and significantly reduce the possibility of puncture wounds, followed by deposition in a sanitary landfill;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable and no longer capable of causing puncture wounds, followed by deposition in a sanitary landfill.

(b) Records. The facility treating the wastes shall maintain records to document the treatment of the special waste from health care-related facilities processed at the facility as to method and conditions of treatment in accordance with 30 TAC Chapter 330.

(c) Facility responsibility. The facility treating the wastes shall be responsible for establishing the conditions necessary for operation of [treatment by] each method used at the facility to insure the [significant] reduction of microbial activity of any waste treated according to the manufacturer's specifications and according to any approval granted by the department.

§1.137. Enforcement.

[(a) Within one year of the effective date of these sections, the] The appropriate regulatory programs of the department shall incorporate the definition and methodology contained in these provisions into their respective general program rules and shall formulate and present for the board's consideration such additional rules as are necessary for the internal collection, storage, handling, movement, and treatment [and disposition] of special waste from health care-related facilities generated within or by the following facilities or activities:

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

(6) hospitals [special residential care facilities];

(7) special residential care facilities [hospitals]; and

(8) tattoo studios [long term care facilities].

[(b) Within one year of the effective date of these sections, the Solid Waste Management Division of the department shall incorporate the definition and methodology contained in these provisions into the general rules for the management of municipal solid waste and the division shall formulate and present for the board's

consideration such additional rules for collection, storage, handling, transportation, treatment and disposition of special waste from health care related facilities as are necessary.]

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 June 30, 1994

TRD-9443288 John T. Richards
Assistant General Counsel,
Office of General
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Texas Department of
Health

Proposed date of adoption: September 23, 1994

For further information, please call (512) 834-6640

◆ ◆ ◆
• 25 TAC §§1.133, 1.134, 1.135

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

The repeals are proposed under the Health and Safety Code, §§81.081-81.092, which provide the Board of Health (board) the authority to prevent and control communicable disease; §142.012, which authorizes the board to adopt rules concerning home and community support services agencies; §241.026, which authorizes the board to adopt rules concerning hospital licensing; §243.009, which authorizes the board to adopt rules concerning ambulatory surgical centers; §244.009, which authorizes the board to adopt rules covering birthing centers; §§245.009-245.010, which authorize the board to adopt rules covering abortion facilities; §694.001, which authorizes the board to regulate the disposition of dead bodies; §773.050, concerning the department's authority to regulate emergency medical service providers; §12.032, which authorizes the board to charge fees for public health services; and §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 Texas Department of Health, and the Commissioner of Health.

§1.133. *Effect.*

§1.134. *Exemptions.*

§1.135. *Application.*

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 June 30, 1994.

TRD-9443289 John T. Richards
Assistant General Counsel,
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Health

Proposed date of adoption September 23, 1994

For further information, please call: (512) 834-6640

◆ ◆ ◆
• 25 TAC §§1.133, 1.134, 1.135

The new sections are proposed under the Health and Safety Code, §§81.081-81.092, which provide the Board of Health (board) the authority to prevent and control communicable disease; §142.012, which authorizes the board to adopt rules concerning home and community support services agencies; §241.026, which authorizes the board to adopt rules concerning hospital licensing; §243.009, which authorizes the board to adopt rules concerning ambulatory surgical centers; §244.009, which authorizes the board to adopt rules covering birthing centers; §§245.009-245.010, which authorize the board to adopt rules covering abortion facilities; §694.001, which authorizes the board to regulate the disposition of dead bodies; §773.050, concerning the department's authority to regulate emergency medical service providers; §12.032, which authorizes the board to charge fees for public health services; and §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 Texas Department of Health, and the Commissioner of Health

§1.133. *Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health*

(a) Exemptions.

(1) Unless an item is specifically exempted, all special waste from health care-related facilities must be treated as provided in these sections.

(2) These sections do not apply to:

(A) teeth,

(B) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affili-

ated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Codes, §289;

(C) placentas designated for sale and obtained from a licensed hospital or a licensed birthing center,

(D) *in vitro* tissue cultures that have not been intentionally exposed to pathogens;

(E) any material included in the definition of special waste from health care-related facilities which has been sold, donated, or in any way transferred from one health care-related facility to a subsequent facility(s) and other entities specified in subparagraph (B) of this paragraph for research or teaching purposes until it is discarded; and

(F) disposition of fetal remains of a single pregnancy, body parts, or tissue (including bulk blood), transferred for disposition to a licensed funeral director in accordance with the Health and Safety Code, Chapter 711, and Chapter 181 of this title (relating to Vital Statistics) with the consent of the person or persons authorized to consent to the disposition of the fetal remains, body parts, or tissue (including bulk blood). All subcategories of pathological waste, unless otherwise exempted, must be treated and disposed of in accordance with §1.136 of this title (relating to Approved Methods of Treatment and Disposition).

(b) Minimum parametric standards for waste treatment technologies previously approved by the Texas Department of Health

(1) Chemical disinfection.

(A) Waste treatment via direct contact with chemical agents only shall utilize a registered chemical agent or an approved unregistered chemical agent as follows.

(i) Registered chemical agents.

(I) The chemical agent used shall be registered with the United States Environmental Protection Agency and the Texas Department of Agriculture.

(II) The chemical agent shall be used according to the manufacturer's instructions.

(ii) Unregistered chemical agents.

(I) Those unregistered chemical agents previously approved are:

(-a-) a freshly prepared solution of household chlorine bleach diluted 1:10 (volume/volume) with water; or

(-b-) a solution of 70% by volume 2-propanol (isopropyl alcohol).

(II) The containerized waste items shall be totally immersed in either solution for a period of time not less than three minutes.

(B) If a chemical agent has been included by a manufacturer of a commercially-available waste treatment technology as the principle step in the treatment process, then:

(i) the chemical agent (or its precursor(s)) or the microbial inactivating process must be registered with the United States Environmental Protection Agency for the purpose of waste treatment; or

(ii) the manufacturer must provide evidence that the technology utilizing said chemical agent (or its precursor(s)) or the microbial inactivating process has been approved for use in another state; or

(iii) the manufacturer must obtain approval for the process in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health care-related Facilities).

(C) Waste immersed in a liquid chemical agent must be thoroughly drained before disposal.

(2) Chlorine disinfection/maceration.

(A) The waste must be shredded prior to treatment and made unrecognizable as to source.

(B) The chlorine solution must have a free available chlorine concentration of at least 1,100 parts per million (ppm) when applied to the waste.

(C) The chlorine solution must be drained from the waste prior to disposal.

(3) Moist heat disinfection. Moist heat disinfection shall utilize either of the following processes.

(A) When subjecting internally shredded waste to moist heat assisted

by microwave radiation, the temperature of the waste must reach at least 95 degrees Celsius under atmospheric pressure for at least 30 minutes.

(B) When subjecting unshredded waste in sealed containers to moist heat assisted by low-frequency radiowaves, the temperature of the waste must reach at least 90 degrees Celsius under atmospheric pressure for at least two hours, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(4) Steam sterilization. Steam sterilization shall meet all of the following requirements.

(A) To allow for sufficient steam access to or penetration of the waste, the waste shall be:

(i) packaged according to the recommendations provided by the manufacturer; and

(ii) loaded into the chamber so as to not exceed the capacity limits as set by the manufacturer.

(B) When subjecting waste to steam under pressure, the temperature in the chamber of the autoclave must reach at least 121 degrees Celsius and there must be at least 15 pounds per square inch gauge pressure for at least 30 minutes.

(C) The autoclave must be operated according to the manufacturer's instructions.

(5) Thermal inactivation. Thermal inactivation shall meet all of the following requirements.

(A) To allow for sufficient dry heat access to or penetration of the waste, the waste shall be:

(i) packaged according to the recommendations provided by the manufacturer; and

(ii) loaded into the chamber so as to not exceed the capacity limits as set by the manufacturer.

(B) Waste shall be subjected to dry heat of at least 160 degrees Celsius under atmospheric pressure for at least two hours.

(C) Waste shall be subjected to dry heat according to the manufacturer's instructions.

§1.134. Application. These sections apply to special waste from health care-related facilities generated by the operation of the

following publicly or privately owned or operated health care-related facilities, including but not limited to:

(1) ambulatory surgical centers;
(2) abortion clinics;
(3) birthing centers;
(4) blood banks and blood drawing centers;

(5) clinics, including but not limited to medical, dental, veterinary;

(6) clinical, diagnostic, pathological or biomedical research laboratories;

(7) educational institution health centers;

(8) educational institution research laboratories;

(9) electrolysis facilities;

(10) emergency medical services;

(11) end stage renal dialysis facilities;

(12) funeral establishments;

(13) home health agencies;

(14) hospitals;

(15) long term care facilities;

(16) mental health and mental retardation facilities, including but not limited to hospitals, schools, and community centers;

(17) minor emergency centers;

(18) occupational health clinics and clinical laboratories;

(19) pharmacies;

(20) pharmaceutical manufacturing plants and research laboratories;

(21) professional offices, including but not limited to the offices of physicians, and dentists, and acupuncturists;

(22) special residential care facilities;

(23) tattoo studios; and

(24) veterinary clinical and research laboratories.

§1.135. Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities. All manufacturers of commercially-available alternate technologies, equipment, or processes designed or intended for the treatment of special waste from health care-related facilities, except those meeting the standards of §1.133 (b) of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health), shall apply to the Texas Department of Health (depart-

ment) on forms prescribed by the department for approval of said technologies, equipment, or processes to ensure that established performance standards are met.

(1) Levels of microbial inactivation.

(A) All laboratory evidence submitted to the department for review shall be provided by a laboratory that meets the standards of either the NSF International, the American Association for Laboratory Accreditation, or other accrediting agencies or organizations as approved by the department.

(B) All manufacturers of commercially-available alternate technologies, equipment, or processes designed and intended for the treatment of special waste from health care-related facilities shall provide specific laboratory evidence that demonstrates

(i) inactivation of representative samples of vegetative bacteria, mycobacteria, lipophilic/hydrophilic viruses, fungi, and parasites at a level of 6 log₁₀

reduction or greater, as determined by the department; and

(ii) inactivation of *Bacillus stearothermophilus* endospores or *Bacillus subtilis* endospores at a level of 4 log₁₀ reduction or greater, as determined by the department.

(C) One or more representative surrogate microorganisms from each microbial group shall be used in treatment efficacy evaluation. The department shall determine the appropriate microorganisms to serve as representative surrogate microorganisms

(D) The department shall prescribe those categories (types) and percent composition of special waste from health care-related facilities that present the most challenge to said treatment effectiveness under normal operating conditions of the equipment or process.

(E) Protocols developed for efficacy testing shall incorporate, as applicable, recognized, standard procedures. The protocols shall be congruent with the treatment method under review. The department shall determine the specific pieces of information to be provided by the manufacturer to assure a thorough evaluation of the alternate treatment technology

(2) Documentation requirements.

(A) The manufacturer of the alternate treatment technology, equipment, or process shall provide to the department the following information:

(i) a detailed description of the treatment equipment, equipment specifications, operating instructions, and parameters of normal operation, and information detailing the intended use and typical site for which the equipment is designed;

(ii) complete documentation that the alternate treatment technology, equipment, or process meets microbial inactivation criteria for all required representative microorganisms for all department-specified challenge waste load compositions, including a description of the test methods used, and, upon request, the original data from test procedures conducted by the manufacturer;

(iii) documentation on available parametric controls, and, where technically feasible, evidence that demonstrates the efficacy relationship between biological indicator data and data derived from real-time parametric monitoring equipment,

(iv) details relating to waste residues including their potential hazards/toxicities and their specific mode of disposal or recycling;

(v) documentation providing occupational health assurance, and the means of providing required training in equipment operations;

(vi) evidence of United States Environmental Protection Agency registration and Texas Department of Agriculture registration for those treatment processes that employ a chemical agent to inactivate microorganisms, or evidence of approval of the treatment process by a state other than Texas;

(vii) documentation that user verification testing protocols are workable and valid; and

(viii) documentation of approval of the alternate treatment process or technology in other state(s) utilizing performance standard review, if applicable.

(B) Documentation must be submitted to the Texas Department of Health, Bureau of Environmental Health on those forms provided by the department.

(3) Alternate treatment technology approval conditions.

(A) Alternate treatment technology approval is granted only for the conditions specified in the manufacturer's

instructions and equipment specifications, operating procedures and conditions, including but not limited to treatment times, temperatures, pressure, chemical concentrations, irradiation doses, feed rates, and waste load composition. Any significant revision to equipment and operating conditions will require re-application for approval to the department.

(B) Prior approval granted by a state other than Texas that utilizes a performance standards approach to review alternate treatment technologies shall be considered during the review process by the department.

(C) Facilities may keep whatever previously approved waste treatment technology they have on site. As this equipment is replaced, regardless of reason, with new or different technology with different parameters of operations, then the equipment or technology must be approved in accordance with the performance standards as outlined in this section.

(4) Fees.

(A) Initial application fee.

(i) The department shall charge an initial application fee for the evaluation of an alternate treatment technology pursuant to this section in the amount of \$4,000.

(ii) The initial application fee must be paid in full before the department undertakes its evaluation of the manufacturer's alternate treatment technology.

(B) Annual listing fee.

(i) Each manufacturer shall be assessed an annual listing fee of \$2,000 for each individual unit, process, or model listed.

(ii) Alternate treatment technologies must be listed at the time of purchase by a health care-related facility or any other person.

(iii) Failure by the manufacturer to maintain the listing after purchase does not preclude use of the alternate treatment technology, its transfer or re-sale, so long as compliance with §1.136(c) of this title (relating to Approved Methods of Treatment and Disposition) is achieved.

(iv) The department shall maintain a list of those approved alternate treatment technologies, including manufacturer, product name, model number, or other appropriate identifying information. The list shall be made available and distributed upon request by contacting 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 June 30, 1994.

TRD-9443290

John T Richards
Assistant General Counsel,
Office of General
Counsel
Texas Department of
Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 834-6640

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**Chapter 37. Maternal and
Child Health Services**

**Special Senses and Communi-
cation Disorders**

• 25 TAC §37.48

(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 Texas Department of Health (department) proposes the repeal of §37.48, concerning operating procedures for the Children's Vision Screening Advisory Committee. The section covers the committee name and place of business, its purpose, membership and participation, meeting and voting, responsibilities of members, officers, public participation, and compensation.

In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The Children's Vision Screening Advisory Committee was established in 1983. However, no formal committee meetings have been held in the last two years, and two of the six committee positions are currently vacant. Upon review, the department has determined that the committee no longer serves a useful purpose, that its functions can be more efficiently accomplished by department personnel and other professionals, and that it should be abolished.

Linda G. Prentice, M.D., Director of Clinical Operations, Division of Women's Health, Bureau of Women and Children, has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications for state or local government.

Dr. Prentice also has determined that for each of the first five years the repeal is in effect, the public benefits anticipated are continuing compliance by the department with Texas Civil Statutes, Article 6252-33, concerning state agency advisory committees, and more efficient and economical operation of the department's Vision, Hearing, and Speech Services programs. There are no anticipated economic costs to small or large

businesses or to persons who will be affected by the repeal, and no effect on local employment is anticipated.

Written comments on the proposed repeal may be submitted to Martha McGlothlin, Speech-Language Services, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Telephone inquiries also may be made to Martha McGlothlin at (512) 458-7700. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The repeal is proposed under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function, and under the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health. The repeal of §37.48 will affect Health and Safety Code, Chapter 36.

§37.48. Procedures of the Children's Vision Screening Advisory Committee.

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

Issued in Austin, Texas, on June 30, 1994.

TRD-9443292

John T Richards
Assistant General Counsel,
Office of General
Counsel
Texas Department of
Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 458-7700

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Midwives

• 25 TAC §37.185

The Texas Department of Health (department) proposes new §37.185, concerning standards of practice of midwifery by documented midwives in this state.

The new section is necessary to comply with the Texas Midwifery Act (Act), Texas Civil Statutes, Article 4512i, as amended by Chapter 337, Acts of the 73rd Legislature, Regular Session, 1993, which requires the Midwifery Board to adopt standards for the practice of midwifery by documented midwives in this state.

J. Scott Simpson, M.D., Division Director for Women's Health, Bureau of Women and Children, has determined that for the first five-year period the proposed amendment is in effect, there will be no fiscal implications for state or local government.

Dr. Simpson also has determined that for each of the first five-years the amendment is in effect, the public benefit anticipated is an improvement in the quality of midwifery practice and the continued efficient administration

of the Act. The standards of practice will help midwives make the most appropriate decisions when questions or problems arise in their care of women and their infants. The standards of practice will also enhance the ability of the board, a midwife's peers, and the public to evaluate a midwife's care. No additional costs to small or large businesses to comply with the proposed new section are anticipated. There will be no cost to persons. There will be no effect on local employment.

Written comments on the proposal may be submitted to Cecilia P. Nobles, Midwifery Program Coordinator, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. Telephone inquiries may also be made to Ms. Nobles at (512) 458-7700. Comments will be accepted for 60 days following the date of publication in the *Texas Register*. An open forum will be held at 10:00 a.m. on Monday, August 22, 1994, in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin to discuss the proposed standards.

This new section is proposed under Texas Civil Statutes, Article 4512i, §8A(a) and §9(a)(4), which requires the Midwifery Board to adopt standards for the practice of midwifery by documented midwives in this state; and the Health and Safety Code, §12.001(b), which provides the Texas Board of Health with authority to adopt rules for the performance of each duty imposed upon it by law. The proposed new section affects Texas Civil Statutes, Article 4512i.

§37.185. Standards for the Practice of Midwifery in Texas. Midwifery practice is based upon the acquisition of clinical skills necessary for the management and care of essentially normal pregnant women and newborns. These skills may be obtained through apprenticeship or within an institution. Management and care as defined by the Midwifery Board of the Texas Department of Health (department) includes antepartum, intrapartum, postpartum, and newborn services. The midwife is committed to maintaining a high standard of professional care, to participate in continuing education and to promote the concepts of high quality and safe practice among all Texas midwives.

(1) Standard I. Midwifery care shall be provided by qualified midwives as defined by the Texas Midwifery Act, Texas Civil Statutes, Article 4512i. The midwife:

(A) shall be documented through the Texas Department of Health, Midwifery Program;

(B) must have attended an approved mandatory basic midwifery education course or has been exempted from this requirement prior to January 1, 1994;

(C) must show evidence of continuing competency through an ongoing process of continuing education; and

(D) must be in compliance with the legal requirements of Texas while practicing in the state.

(2) Standard II. Midwifery care shall support individual rights and self-determination within the boundaries of safety. The midwife shall:

(A) provide clients with a description of the scope of midwifery practice, both in written and oral form, which includes but is not limited to her/his:

- (i) midwifery experience;
- (ii) limitations of practice;
- (iii) date of expiration of documentation;
- (iv) date of expiration of CPR certification;
- (v) compliance with continuing education;
- (vi) compliance with this section;
- (vii) compliance with the client's individual rights relative to this paragraph;
- (viii) medical consultation arrangements;
- (ix) procedures regarding newborn blood screening;
- (x) practice for ophthalmia neonatorum prevention; and (xi) the prohibited acts as detailed by the Midwifery Act of 1993; and

(B) provide information regarding the client's rights as follows. The client has the right:

- (i) prior to the administration of any drug or natural remedy to herself or her infant, to be informed by the midwife caring for her of the reason for such administration, all potential direct or indirect effects, and all risks or hazards to herself or her unborn or newborn infant which may result from the use of the drug or remedy;
- (ii) to be accompanied during the stress of labor and birth by someone she cares for, and to whom she looks for emotional comfort and encouragement;
- (iii) to be informed of any known or suspected condition which may cause her or her baby difficulty or problems. She has the right to care by a physician or other licensed health care professional operating under physician supervision for conditions or problems which are outside the scope of practice of the

midwife. The client has the right to timely referral in such situations;

(iv) to be informed of the name and qualifications of all individuals participating in her care;

(v) to have access to and receive copies upon request of her and her baby's midwifery records which must be complete, accurate and legible; and

(vi) of self-determination to decline care upon the midwife's recommendation. The client's decision to exercise this right must be made in writing. The midwife must retain a copy of this document to demonstrate compliance with this section.

(3) Standard III. Midwifery care shall be based upon the knowledge, skill, intuition and judgment that foster the delivery of safe and competent care to mother and newborn, giving the newborn the opportunity for a good beginning. The midwife shall:

(A) provide care only to clients determined to be at low or normal risk of developing complications during pregnancy, childbirth, and the postpartum and neonatal periods,

(B) provide clients with information on other providers and services when requested or when care required is not within the scope of midwifery practice;

(C) practice in accordance with this section;

(D) not knowingly accept or thereafter maintain responsibility for the prenatal, intrapartum or postpartum care of a woman or neonatal care of an infant who has or develops a high risk condition or complication, except as detailed in clauses (i) and (viii) this subparagraph.

(i) If on the initial assessment or subsequent assessments, the midwife determines or suspects that the client has any of the conditions or symptoms listed in clauses (ii) and (iii) of this subparagraph, a consult by a licensed physician who has current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision must be obtained in a timely manner. "Consultation" refers to a particular client, not generalized advice affecting more than one woman.

(I) The consultant shall be requested to evaluate the client and then advise the midwife that she/he may continue to manage the client, may co-manage the client with specified medical

supervision or must transfer the care of the client to an appropriate physician or licensed health care provider operating under a physician's supervision.

(II) The midwife must and the consultant shall be requested to document the consultation in writing.

(III) If reasonable and documented attempts have been made to consult with a licensed physician or other licensed health care provider operating under physician supervision and the physician or other provider refuses to see the client, then the midwife may continue to manage the client after obtaining written informed consent that the client agrees to such care and is aware that she has or may have a high risk condition which should be evaluated by a physician.

(IV) If the client refuses to be referred, the care may be continued by a midwife only after the client has signed an informed consent refusing referral.

(ii) The midwife must recommend consultation if the client's history concerning prior pregnancies includes any of the following:

(I) preterm (<36 weeks) labor during two or more previous pregnancies;

(II) preterm (<36 weeks) rupture of membranes;

(III) prior delivery of an infant weighing <5 1/2 pounds or 2,500 grams;

(IV) delivery of a large infant (weighing ≥10 pounds or 4,500 grams) that resulted in trauma to the infant;

(V) previous neonatal (first month of life) death;

(VI) severe postpartum hemorrhage (non-traumatic) requiring transfusion;

(VII) three or more spontaneous abortions;

(VIII) suspicious for an incompetent cervix;

(IX) mother or current conception's father having had a pre-

vious infant or fetus with a known or suspected genetic or familial disorder. Maternal, paternal or family history of a known or suspected genetic or familial disorder. (Refer to subsection 9 of this section for sample questions of prenatal genetic screening which is American College of Gynecologists (ACOG) Technical Bulletin 108);

(X) mother or current conception's father having had a previous infant or fetus with a significant congenital anomaly;

(XI) pregnancy induced hypertension, pre-eclampsia, or eclampsia;

(XII) gestational diabetes (diet controlled);

(XIII) multiple gestation;

(XIV) intrauterine fetal demise;

(XV) shoulder dystocia that resulted in trauma to the infant;

(XVI) placenta previa at time of labor;

(XVII) placental abruptio;

(XVIII) Rh or other blood group isoimmunization;

(XIX) inverted uterus;

(XX) pelvic or genital tract anomaly;

(XXI) cardiac disease;

(XXII) rheumatic fever;

(XXIII) renal disease, pyelonephritis, recurrent urinary tract infection, urinary calculi, or urinary tract anomaly;

(XXIV) cancer;

(XXV) vascular disease;

(XXVI) any previous non A-Hepatitis;

(XXVII) hepatic insufficiency;

(XXVIII) thyroid disease;

(XXIX) syphilis;

(XXX) thrombophlebitis or thromboembolism;

(XXXI) HIV positivity; and

(XXXII) any other history which poses a risk to the mother or fetus.

(iii) The midwife must recommend a consultation if the client's history or examination concerning her current pregnancy includes any of the following:

(I) age 15 or under;

(II) exposure to a teratogen during current pregnancy or six weeks prior to conception;

(III) drug, tobacco and/or alcohol abuse;

(IV) significant psychological dysfunction;

(V) vaginal bleeding;

(VI) significant abdominal pain;

(VII) decreased fetal movement;

(VIII) possible rupture of membranes prior to 36 weeks;

(IX) urinary tract infection or signs or symptoms of urinary tract infection unresponsive to natural remedies or in association with temperature ≥ 100.4 degrees Fahrenheit ;

(X) elevated temperature (≥ 100.4 degrees Fahrenheit) for more than 48 hours;

(XI) chest pain and/or

difficulty breathing;

(XII) signs or symptoms of thrombophlebitis or thromboembolism;

(XIII) persistent, severe headaches;

(XIV) visual disturbances;

(XV) seizure disorder requiring treatment;

(XVI) asthma requiring treatment ;

(XVII) pulmonary disease;

(XVIII) gastrointestinal or colon disease requiring treatment;

(XIX) contracted pelvis;

(XX) hypertension, a diastolic blood pressure of at least 90 mm Hg or systolic pressure of at least 140 mm Hg or a rise in the former of at least 15 mm Hg or in the latter of 30 mm Hg. The blood pressures cited should be manifested on at least two occasions 6 hours or more apart;

(XXI) severe edema of hands, face or lower extremities;

(XXII) severe varicosities of vulva or lower extremities;

(XXIII) intrauterine fetal demise;

(XXIV) non-vertex presentation after 36 weeks;

(XXV) anemia (hemoglobin < 10 g/dl or hematocrit $< 30\%$) not corrected by iron therapy;

(XXVI) active genital herpes;

(XXVII) gonorrhea, chlamydia, HIV, or pelvic inflammatory disease;

(XXVIII) syphilis;

(XXIX) HIV positivity;

(XXX) proteinuria, ≥ 1 on two visits or ≥ 2 on one visit;

(XXXI) ketonuria, ≥ 1 on two visits;

(XXXII) hematuria, ≥ 1 on two visits or ≥ 2 on one visit;

(XXXIII) glycosuria, ≥ 1 on two visits (if unable to perform blood glucose screening for this finding);

(XXXIV) abnormal pap smear;

(XXXV) abnormal fetal growth pattern:

(-a-) initial assessment size/date discrepancy \geq four weeks;

(-b-) growth in fundal height less than expected by two weeks or more over two visits; and

(-c-) growth of fundal height more than expected by two weeks or more over two visits;

(XXXVI) intrauterine growth retardation;

(XXXVII) post-term pregnancy, ≥ 42 and $0/7$ weeks;

(XXXVIII) possible preterm (< 36 weeks) labor;

(XXXIX) significant maternal trauma;

(XL) hyperemesis gravidarum;

(XLI) polyhydramnios or oligohydramnios;

(XLII) vaginitis other than simple, non-recurrent monilia;

(XLIII) hepatitis, chronic hepatic dysfunction, or positive Hepatitis B surface antigen;

(XLIV) thyroid disease; and

(XLV) any other med-

ical or obstetric condition or symptom which could adversely affect the mother or fetus, as assessed by a midwife exercising ordinary skill and training.

(iv) If on any assessment the midwife determines that the client has one or more of the following conditions, her care must be immediately transferred to a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision:

(I) history of incompetent cervix;

(II) history of gestational diabetes in a prior pregnancy requiring insulin therapy;

(III) history of autoimmune disease; e.g. systemic lupus erythematosus;

(IV) diabetes mellitus or gestational diabetes during current pregnancy;

(V) history of prior C-section or uterine surgery; As an example, a vaginal birth after C-section (VBAC) may be conducted by an experienced midwife if all the following conditions are met:

(-a-) the client is made aware of her increased risk of uterine rupture (1-2% vs .05%), a potentially catastrophic condition, during such labor and the national obstetric standards which recommend that such labors be carried out in a hospital so that immediate treatment can be initiated in the event that rupture occurs. The client has given written informed consent for the procedure to include acknowledgment of this subclause;

(-b-) the labor is conducted in an appropriate setting no more than 15 minutes from a licensed hospital which provides obstetric services and has:

(-1-) an obstetrician on site on a continuous 24-hour basis;

(-2-) an obstetric operating room personnel on site on a continuous 24-hour basis;

(-3-) an anesthesiologist on site on a continuous 24-hour basis;

(-4-) a pediatrician on site on a continuous 24-hour basis;

(-5-) blood bank personnel on site on a continuous 24-hour basis; and

(-6-) the capacity to perform an emergency C-section on a continuous 24-hour basis;

(-c-) a car is available during the entire labor for immediate transport of the client to the hospital;

(-d-) the client has had only one prior low cervical transverse C-section, without extension, as verified by review of the operative note;

(-e-) the prior C-section did not involve a classical or low vertical incision;

(-f-) the pregnancy is otherwise not high risk;

(-g-) the pregnancy is singleton;

(-h-) the labor occurs between 36 and 42 weeks of gestation;

(-i-) the presentation during labor is vertex;

(-j-) the estimated fetal weight is $< 4,000$ grams; and

(-k-) expanded fetal heart rate monitoring is employed i.e. auscultation every 15 minutes during the first stage of labor and every 5 minutes during the second stage;

(VI) chronic hypertension;

(VII) hemoglobinopathy;

(VIII) preterm labor (< 36 weeks);

(IX) preterm rupture of membranes (< 36 weeks);

(X) multiple gestation;

(XI) Rh or other blood group isoimmunization;

(XII) seizure activity;

(XIII) pyelonephritis;

(XIV) AIDS or HIV positivity with immune compromise; and

- (XV) cancer.
- (v) If any of the following conditions or symptoms are noted during labor, delivery, or immediately postpartum (the first 24 hours), the midwife must transfer the client immediately to a physician:
- (I) multiple gestation,
- (II) preterm (<36 weeks) labor;
- (III) estimated fetal weight <5 1/2 pounds or 2500 grams;
- (IV) non-vertex presentation, e.g. breech or transverse lie or face with position other than mentum anterior,
- (V) vaginal bleeding more than bloody show (prior to delivery),
- (VI) herpetic lesions,
- (VII) active phase dilatation <1cm/3-4 hours,
- (VIII) second stage >1-2 hours in a multiparous woman or >2-3 hours in a primiparous woman and delivery not imminent;
- (IX) rupture of membranes for >24 hours and not anticipated to deliver within four hours or delivery not imminent after an additional four hours;
- (X) premature rupture of membranes longer than 24 hours and not in the active phase of labor,
- (XI) moderate to severe meconium staining of amniotic fluid unless birth is imminent,
- (XII) foul smelling amniotic fluid;
- (XIII) non-reassuring fetal heart rate-Persistent baseline rate <120 beats per minute or >160 beats per minute Persistent decelerations (> 10 minutes without variability or >30 minutes with good variability) or recurring decelerations from baseline. A shorter observation interval prior to transfer may be indicated in the presence of large decreases in rate,
- (XIV) umbilical cord
- or extremity prolapse;
- (XV) hypertension, a diastolic blood pressure >90 mm Hg or systolic pressure blood pressure >140 mm Hg or a rise in the former of at least 15 mm Hg or in the latter of 30 mm Hg;
- (XVI) persistent fall in blood pressure to 80/50;
- (XVII) pulse persistently >120 or <50;
- (XVIII) respiratory rate persistently >30 or <10;
- (XIX) elevated temperature, ≥ 100.4 degrees Fahrenheit;
- (XX) faintness, pallor, or other signs/symptoms consistent with shock;
- (XXI) severe abdominal pain inconsistent with normal labor or involution,
- (XXII) loss of consciousness;
- (XXIII) persistent severe headache,
- (XXIV) visual disturbance,
- (XXV) seizure;
- (XXVI) chest pain and/or difficulty breathing,
- (XXVII) significant decrease in urine output;
- (XXVIII) persistent vomiting or diarrhea,
- (XXIX) client's desire for hospital birth;
- (XXX) foul smell to the placenta or infant;
- (XXXI) retained placenta or fragment, i.e. lack of spontaneous placental expulsion within 45 minutes or evidence of incomplete placenta on post expulsion exam;
- (XXXII) uterine inversion;
- (XXXIII) perineal laceration of three degrees or four degrees, or significant vulvar, vaginal, or cervical laceration;
- (XXXIV) uterine atony;
- (XXXV) inappropriate uterine involution;
- (XXXVI) significant postpartum bleeding, i.e. >1,000cc during the first twelve hours following delivery of the infant;
- (XXXVII) inability to void within six hours of delivery; and
- (XXXVIII) any other medical or obstetric condition which could adversely affect the mother or fetus, as assessed by a midwife exercising ordinary skill and training.
- (vi) If any of the following conditions or symptoms are noted during the postpartum period, the midwife must refer the client in a timely manner to a licensed physician who has current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision:
- (I) significant vaginal bleeding,
- (II) persistent severe headache,
- (III) visual disturbance,
- (IV) seizure;
- (V) significant abdominal pain inconsistent with involution;
- (VI) chest pain and/or difficulty breathing;
- (VII) signs or symptoms of thrombophlebitis,
- (VIII) absence of breast milk;
- (IX) urinary problems,

e.g. difficulty with initiation or emptying, pain, blood or frequency;

(X) blood pressure ≥ 140 mm Hg systolic or 90 mm Hg diastolic;

(XI) temperature ≥ 100.4 degrees Fahrenheit;

(XII) improper healing or infection of delivery site lacerations;

(XIII) inappropriate uterine involution;

(XIV) foul smelling lochia;

(XV) significant edema of hands, legs or face;

(XVI) signs or symptoms of mastitis;

(XVII) hemoglobin 10 g/dl and/or hematocrit 30%; and

(XVIII) any other medical or obstetric condition which could adversely affect the mother, as assessed by a midwife exercising ordinary skill and training.

(vii) If any of the following conditions or symptoms are noted in the neonate at birth or during the immediate postpartum period (the first 24 hours), the infant must be immediately transferred to a physician:

(I) vital signs that indicate the following:

(-a-) APGAR score less than seven at five minutes and/or less than eight at 20 minutes;

(-b-) pulse rate at rest persistently < 120 beats per minute or > 160 beats per minute during the first hour of life and then < 100 beats per minute or > 160 beats per minute;

(-c-) respiratory rate persistently < 30 breaths per minute or > 60 breaths per minute and/or difficulty breathing, and/or grunting, and/or nasal flaring, and/or sternal retraction;

(-d-) persistent temperature ≥ 100.4 degrees Fahrenheit or < 97.7 degrees Fahrenheit rectally; and

(-e-) neonate requires full CPR resuscitation;

(II) physical exam within 1-2 hours that indicate the following:

(-a-) foul smelling infant;

(-b-) birth injury;

(-c-) head/length ratio discrepancy; (moved to consult)

(-d-) flaccidity and/or lethargy and/or irritability;

(-e-) asymmetrical movements of extremities;

(-1-) spasticity;

(-2-) seizure and/or twitching and/or tremor;

(-3-) abnormal tone; and

(-4-) persistent jitteriness;

(-f-) shrill or abnormal cry;

(-g-) vomiting or choking;

(-h-) persistent poor suck or swallow;

(-i-) cyanotic;

(-j-) pale;

(-k-) persistent

"beefy" red skin;

(-l-) mottling of skin,

(-m-) jaundice;

(-n-) presence of rash or vesicles;

(-o-) loss of consciousness; and

(-p-) delivered with any meconium staining on infant's skin or vernix; and

(III) any other condition or symptom which could adversely affect the infant, as assessed by a midwife exercising ordinary skill and training.

(viii) If any of the following conditions or symptoms are noted in the neonate within the first 24 to 36 hours after birth, then a consult by a licensed physician who has current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision must be obtained within 24 hours or the time specified:

(I) birth weight $< 5 \frac{1}{2}$ pounds or > 10 pounds;

(II) congenital anomaly:

(-a-) cleft lip and/or palate;

Down's Syndrome; (-b-) possible

(-c-) umbilical abnormalities, e.g. umbilical cord with more or less than three vessels;

(-d-) abnormal abdominal wall; and

(-e-) spinal dimple;

(III) any non-vertex delivery;

(IV) absence of urination within 12-24 hours;

(V) absence of meconium passage within 24-36 hours;

(VI) absence of feeding within four hours; and

(VII) any other condition or symptom which could adversely affect the infant, as assessed by a midwife exercising ordinary skill and training.

(ix) If any of the following conditions or symptoms are noted in the infant during the first four-six weeks of life, she/he must be immediately referred to a licensed physician who has current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision:

(I) vital signs that indicate the following:

(-a-) pulse rate persistently < 110 beats per minute or > 160 beats per minute;

(-b-) respiratory rate persistently < 30 breaths per minute or > 60 breaths per minute and/or difficulty breathing and/or grunting and/or nasal flaring and/or sternal retraction; and

(-c-) temperature ≥ 98.5 degrees Fahrenheit or < 96.5 degrees Fahrenheit axillary;

(II) physical exam that indicate the following:

(-a-) flaccidity and/or lethargy and/or irritability general

health;
 (-b-) asymmetrical movements of extremities:
 (-1-) spasticity;
 (-2-) seizure and/or twitching and/or tremor;
 (-3-) abnormal tone; and
 (-4-) jittery,
 (-c-) vomiting and/or choking,
 (-d-) poor suck and/or poor swallow;
 (-e-) cyanotic;
 (-f-) pale;
 (-g-) "beefy" red skin,
 (-h-) mottling of skin;
 (-i-) jaundice,
 (-j-) presence of rash or vesicles;
 (-k-) loss of consciousness;
 (-l-) failure to appropriately wet eight to ten diapers per day,
 (-m-) failure to pass a stool in a normal pattern;
 (-n-) bloody stool and/or abdominal distention;
 (-o-) poor feeding, <8 feedings daily; and
 (-p-) failure to gain weight;
 (III) abnormal lab: screening; and
 (-a-) newborn syphilis serology; and
 (-b-) positive syphilis serology; and
 (IV) any other condition or symptom which could adversely affect the infant, as assessed by a midwife exercising ordinary skill and training
 (4) Standard IV. Midwifery care shall be provided in accordance with established minimal standards which promote safe and competent care

detailed obstetric, gynecologic, medical, social, and family history; a complete prenatal physical exam and appropriate laboratory testing. The midwife shall then develop and implement a plan of care and thereafter evaluate the client's condition on an ongoing basis and modify the plan of care as necessary.
 (i) Initial antepartum evaluation. The following components must be included in the initial antepartum evaluation.
 (I) History. The initial history must include an inquiry regarding all of the following historical categories:
 (-a-) client identification;
 (-b-) age,
 (-c-) race, ethnicity,
 (-d-) psychosocial/economic,
 (-e-) drug/alcohol/tobacco,
 (-f-) medications,
 (-g-) allergies,
 (-h-) gynecologic,
 (-i-) menstrual,
 (-j-) contraceptive;
 (-k-) sexual;
 (-l-) HIV risk;
 (-m-) obstetric;
 (-n-) current pregnancy,
 (-o-) perinatal risk;
 (-p-) current problems,
 (-q-) medical;
 (-r-) surgical;
 (-s-) anesthesia
 (-t-) hospitalizations;
 (-u-) transfusions;
 (-v-) family/genetic;
 (-w-) immunization status (Td, rubella, etc.),
 (-x-) nutrition, and
 (-y-) abuse/trauma.

(II) Physical exam. The initial physical exam must include at least the following.

(-a-) weight and height;
 (-b-) blood pressure;
 (-c-) pulse;
 (-d-) breast exam, to include teaching on self exam;
 (-e-) abdominal exam to include fundal height, estimated fetal weight and fetal heart tones;
 (-f-) pelvic exam to include external genitalia, vagina, cervix, uterus, adnexa and pelvimetry (unless contraindicated);
 (-g-) fetal lie, presentation if ≥36 weeks;
 (-h-) estimation of gestational age by physical exam findings; and
 (-i-) extremity exam.
 (III) Laboratory. The client must be encouraged to have the following laboratory tests performed:
 (-a-) hemoglobin and/or hematocrit or CBC;
 (-b-) urine dipstick for protein, glucose, nitrites, leukocytes, and ketones, or complete urinalysis;
 (-c-) syphilis serology;
 (-d-) blood group, Rh type, and antibody screen;
 (-e-) hepatitis B surface antigen;
 (-f-) rubella screen;
 (-g-) pap smear;
 (-h-) gonorrhea test, if at risk;
 (-i-) chlamydia test, if at risk;
 (-j-) HIV test, if at risk; and
 (-k-) hemoglobin electrophoresis if Black or of Italian, Greek, Mediterranean, Philippine or Oriental ancestry and not previously tested.
 (IV) Assessment. At the conclusion of the initial evaluation the antepartum client's overall health and risk status must be assessed. The assessment must include a consideration of at least the following.

(-a-) gestational age.

tus;
 (-b-) maternal status;
 (-c-) fetal status;
 (-d-) nutritional/Women, Infants, and Children (WIC) status;
 (-e-) psychosocial status; and
 (-f-) educational needs.

(V) Plan. A plan of care must be developed based upon the assessment of the antepartum client. The plan must include a management plan and a referral plan for diagnosis and treatment if necessary.

(VI) Education and counseling. Health education/counseling must be provided and must include consideration of at least the following (depending upon gestational age, certain of these items may be covered during subsequent visits as appropriate):

- (-a-) midwife services/routine;
- (-b-) reproductive physiology/anatomy;
- (-c-) roles of various members of the health care team;
- (-d-) caution concerning medications, recreational drugs, alcohol, tobacco, x-ray and chemical exposure, and sexual transmitted disease (STD) exposure;
- (-e-) HIV infection, "safer sex";
- (-f-) toxoplasmosis risk;
- (-g-) environmental/work hazards;
- (-h-) nutritional needs of pregnancy, weight gain, referral to WIC;
- (-i-) danger signs of pregnancy appropriate to gestational age;
- (-j-) when to seek medical care and where to obtain care in the case of an emergency;
- (-k-) delivery arrangements;
- (-l-) signs and symptoms of preterm labor;
- (-m-) labor;
- (-n-) rupture of membranes;
- (-o-) fetal move-

- ment;
 - (-p-) minor discomforts/symptoms of pregnancy;
 - (-q-) comfort measures;
 - (-r-) physical changes of pregnancy, fetal growth;
 - (-s-) sexual activity;
 - (-t-) self breast exam;
 - (-u-) physical activity/exercise/posture;
 - (-v-) preparation for labor and delivery, childbirth classes;
 - (-w-) preparation for parenthood and arrangement for infant health care;
 - (-x-) infant feeding choices, breastfeeding should be promoted; and
 - (-y-) family planning/ postpartum care.
- (ii) Subsequent antepartum evaluation. The following components must be included in each subsequent antepartum visit.

(I) History. Each follow-up history must include an inquiry regarding at least the following historical categories:

- (-a-) current problems;
- (-b-) progress of pregnancy to include an evaluation of fetal movement after 20 weeks;
- (-c-) perinatal risks; and
- (-d-) follow-up of problems identified in previous visits.

(II) Physical exam. Each follow-up exam must include at least the following:

- (-a-) weight;
- (-b-) blood pressure;
- (-c-) abdominal exam to include fundal height, estimated fetal weight and fetal heart tones;
- (-d-) fetal lie, presentation if ≥ 36 weeks;
- (-e-) estimation of gestational age by physical exam findings; and
- (-f-) extremity

exam.
 (III) Laboratory. Each follow-up exam must include at least the following:

- (-a-) urine dipstick for protein, glucose, nitrites, leukocytes, and ketones; and
- (-b-) laboratory tests performed at the times indicated:
- (-1-) hemoglobin and/or hematocrit at 28 and 36 weeks;
- (-2-) blood glucose screening one hour post oral 50 gram glucose load at 24 to 28 weeks;
- (-3-) if Rh negative, and initial antibody screen negative, repeat antibody screen at 28 weeks as precursor to Rh immune globulin administration. If the screen is still negative, the midwife must strongly recommend that the client receive Rh immune globulin. If antibody screen is positive refer to physician, and

(-4-) Maternal Serum Alpha-Fetoprotein (MSAFP) or triple screen, ideally at 16-18 weeks, may be done from 15 to 20 weeks.

(IV) Assessment. Each follow-up visit must conclude with an assessment which includes a consideration of at least the following:

- (-a-) gestational age;
- (-b-) maternal status;
- (-c-) fetal status,
- (-d-) nutritional/WIC status,
- (-e-) psychosocial status, and
- (-f-) educational needs.

(V) Plan. The current plan of care must be continued or modified based upon the assessment of the client. The plan must include a management plan and a referral plan for diagnosis and treatment if necessary.

(VI) Education and counseling. The following health education and counseling components must be discussed or reviewed at subsequent visits as

appropriate to the client's gestational age and needs:

(-a-) danger signs of pregnancy appropriate to gestational age;

(-b-) signs and symptoms of preterm labor, 24-36 weeks.

(-c-) true/false labor, if ≥ 36 weeks;

(-d-) rupture of membranes;

(-e-) fetal movement;

(-f-) comfort measures;

(-g-) weight gain;

(-h-) physical activity/exercise/posture;

(-i-) physical changes of pregnancy/fetal growth;

(-j-) delivery arrangements;

(-k-) preparation for labor and delivery, childbirth classes;

(-l-) preparation for parenthood and arrangement for infant health care;

(-m-) infant feeding choices, breastfeeding should be promoted; and

(-n-) family planning/postpartum care.

(iii) Routine antepartum visits. Routine antepartum visits must be scheduled according to the following intervals:

(I) every four weeks for the first 28 weeks;

(II) every two-three weeks from 28-36 weeks;

(III) every week after 36 weeks; and

(IV) additional antepartum visits should be scheduled if the client requires more frequent follow-up.

(iv) Recommended vitamins. The midwife should recommend to all clients that they take one, over-the-counter, prenatal, multi-vitamin supplement with folic acid/iron each day (unless allergic or contraindicated).

(B) The midwife shall appropriately evaluate the client when she presents for delivery, by obtaining a history,

performing a physical exam, and performing a laboratory evaluation. The following components must be included in the evaluation of the client when she presents for delivery.

(i) History. The history must include an inquiry regarding all of the following:

(I) contractions—onset, frequency, duration;

(II) other abdominal or pelvic pain;

(III) status of membranes—if ruptured, when, amount, clear vs meconium stained;

(IV) vaginal bleeding;

(V) fetal movement; and

(VI) other problems or concerns.

(ii) Physical exam. The physical exam must include at least the following:

(I) blood pressure;

(II) pulse;

(III) temperature;

(IV) abdominal exam to include, estimated fetal weight, fetal lie, presentation, and fetal heart tones;

(V) extremity exam; and

(VI) pelvic exam (unless contraindicated) which must include the following:

(-a-) external genitalia;

(-b-) cervix for dilatation, effacement, station, presentation, and position; and

(-c-) a sterile speculum exam may be necessary prior to or in lieu of the cervical exam to evaluate for possible rupture of membranes.

(iii) Laboratory. The laboratory exam must be a urine dipstick for protein, glucose, nitrites, leukocytes, and ketones.

(C) The midwife shall appropriately monitor the client after presentation for delivery and throughout labor.

(i) The following components must be included in the evaluation.

(I) Vital signs. The following vital signs must be obtained:

(-a-) blood pressure—to be measured at least every two hours, or more frequently if indicated;

(-b-) pulse—to be taken at least every four hours;

(-c-) respirations—to be evaluated at least every four hours; and

(-d-) temperature—to be measured at least every four hours unless ≥ 99 degrees Fahrenheit, then measured at least every one-two hours.

(II) Contractions. Contractions must be monitored as follows:

(-a-) frequency, duration, and intensity at least every two hours in the latent phase of the first stage;

(-b-) frequency, duration, and intensity at least every 30 minutes in the active phase of the first stage; and

(-c-) frequency, duration, and intensity at least every 15 minutes in the second stage;

(III) Fetal heart tones. Fetal heart tones must be auscultated as follows:

(-a-) for routine monitoring, first establish a baseline by listening for several minutes before, during, and after a contraction then listen during and for at least 30 seconds following a contraction according to the following schedule:

(-1-) at least every two hours in the latent phase of the first stage;

(-2-) at least every 30 minutes in the active phase of the first stage;

(-3-) at least every 15 minutes in the second stage; and

(-4-) for at least 30 seconds immediately after rupture of the membranes and during and for at least 30 seconds following the next contraction; and

(-b-) As indicated for bleeding or other signs of a possible problem.

(IV) Cervical and vertex status. Vaginal examinations are performed to assess the progress of labor. Although necessary, they must be kept to a minimum to reduce the risk of infection. Attention must be directed toward aseptic technique. Cervical dilatation and effacement, and vertex station and position must be evaluated during each exam.

(V) Membrane status. Membrane status must be monitored for rupture, relative fluid volume, and the presence of meconium once ruptured.

(VI) Intake/output status. The intake/output of the client must be monitored as follows:

(-a-) intake—all oral or other intake must be monitored on an ongoing basis; and

(-b-) urinary output—the client must be encouraged to void at least every two to three hours. Frequency and relative volume of voiding must be monitored on an ongoing basis.

(VII) Subjective status. The client must be monitored for complaints and concerns.

(ii) The following must not occur:

(I) application of pressure on the abdomen or uterus at any stage in labor; and

(II) administration by any method (buccal, vaginal, IM, IV, intranasal, etc.) of oxytocin (Pitocin, Syntocinon, Uteracon), ergot or prostaglandins prior to or during labor. Oxytocin or ergot may be administered after delivery of the placenta only under delegated authority of a licensed physician with current obstetric knowledge.

(D) The midwife shall appropriately assist in normal, spontaneous vaginal deliveries.

(i) When delivery is imminent the patient must not be left unattended, nor should any attempt be made to delay the birth of the infant by physical restraint

(ii) Forceps or vacuum extraction must not be utilized.

(E) The midwife shall appropriately monitor and advise the mother during the immediate postpartum period for at least two hours and until her condition is stable. The following components must be evaluated or covered during this time period.

(i) Vital signs. The following vital signs must be obtained:

(I) blood pressure—to be measured at least every 15 minutes during the first hour and then every hour if stable;

(II) pulse—to be taken at least every 15 minutes during the first hour and then every hour if stable;

(III) respirations—to be taken at least every 15 minutes during the first hour and then every hour if stable; and

(IV) temperature—to be taken at least every hour.

(ii) Intake/output status. Intake and output must be monitored.

(iii) Physical exam. The client must be examined frequently to assure that:

(I) the uterine fundus is well contracted; and

(II) bleeding is not excessive.

(iv) Subjective status. The client must be monitored for complaints and concerns.

(v) Laboratory. If unsensitized and Rh negative, the client must be referred to a licensed physician with current obstetric knowledge or another licensed health care provider with current obstetric knowledge operating under such a physician's supervision within 72 hours of delivery for administration of Rh immune globulin or the midwife must administer Rh immune globulin under standing delegation order from a licensed physician with current obstetric knowledge within 72 hours of delivery.

(vi) Education and counseling. Health education and counseling must be provided and must include consideration of at least the following (reinforcement must occur during subsequent postpartum visits):

(I) diet/nutrition;

- (II) bowel/bladder function;
- (III) postpartum bleeding;
- (IV) perineal care;
- (V) breastfeeding;
- (VI) warning signs;
- (VII) pain relief;
- (VIII) physical activity/exercise;
- (IX) sexual activity;
- (X) contraception; and
- (XI) infant care—located in subparagraph (F)(iii) and (J)(vi) of this paragraph.

(F) The midwife shall appropriately evaluate and manage the newborn by monitoring the vital signs, performing a physical exam, and obtaining the laboratory tests necessary for the infant during the immediate postpartum period and provide pertinent education and counseling to the mother.

(i) Evaluation and monitoring. The following components must be included in the evaluation and monitoring of the infant.

(I) Vital signs. APGAR scores must be obtained at one minute and five minutes. If the five minute score is <7, obtain additional scores every five minutes until twenty minutes has passed or two successive scores are ≥7. The following vital signs must be taken at 30 minute intervals for at least two hours or until the infant's temperature has stabilized, whichever is longer:

- (-a-) pulse;
- (-b-) respirations (rate and effort); and
- (-c-) temperature.

(II) Physical exam. The physical exam must include at least the following:

- (-a-) skin;
- (-b-) head and neck;

nose, and throat; (-c-) eyes, ears,
 (-d-) fontanel;
 (-e-) heart/lungs;
 (-f-) abdomen;
 (-g-) umbilical
 cord;
 talia;
 (-h-) external geni-
 talia;
 (-i-) back;
 (-j-) extremities
 (check for hip dislocation);
 (-k-) neurological
 exam; and
 (-l-) weight, length,
 head circumference.

(III) Laboratory.

(-a-) Cord blood must be taken and submitted to a state-approved lab for testing for syphilis.

(-b-) The blood specimen for the first newborn screening must be obtained at approximately 36 hours of age. It should be obtained after the baby has been breast feeding or on protein (milk) feeding for at least 24 hours. The second screen must be done between one and two weeks of age.

(IV) Monitoring. The newborn must be observed for a minimum of two hours if stable with no signs of distress.

(ii) Management of the infant. The following components must be included in the management of the infant.

(I) Prophylaxis. Eye treatment must be provided within two hours after birth using one of the CDC approved ophthalmic preparations, i.e. silver nitrate, erythromycin, or tetracycline.

(II) Feeding. Feeding can begin in the immediate newborn period if the infant is stable with no signs of distress.

(iii) Education and counseling. The following components must be included in education and counseling of the mother.

(I) Signs and symptoms. Significance of the following if observed in the newborn must be discussed:

- (-a-) poor suck;
- (-b-) abnormal cry;

lethargy; and (-c-) irritability,
 (-d-) elimination;
 (-1-) abnormalities with urine; and
 (-2-) abnormalities with stool.

(II) Health care and immunization. Information regarding health care and immunization must be provided:

(-a-) Routine pediatric care by a licensed physician with current pediatric knowledge or another licensed health care provider with current pediatric knowledge operating under such a physician's supervision must be strongly recommended to begin at approximately 12 hours of age. Arrangements with an appropriate physician or other health care provider should be made during the antepartum period.

(-b-) Hepatitis B vaccine must be recommended at 12 hours of life.

(-c-) Other vaccinations must be recommended according to Centers for Disease Control/ American Academy of Pediatrics (CDC/AAP) guidelines.

(G) The midwife shall appropriately evaluate the mother at one-two days postpartum, including the following components.

(i) History. The history must include consideration of at least the following:

- (I) current problems;
- (II) abdominal/uterine/perineal pain;
- (III) bleeding;
- (IV) intake/output;
- (V) breastfeeding.

(ii) Physical exam. The physical must include at least the following:

- (I) blood pressure;
- (II) pulse;
- (III) respirations;

(IV) temperature;
 (V) breast exam;
 (VI) abdominal/fundal exam;
 (VII) perineal observation; and
 (VIII) extremity exam.
 (iii) Laboratory. Hemoglobin and/or hematocrit or CBC must be done.

(iv) Assessment. The assessment must include at least the following:

- (I) physical status;
- (II) nutritional/WIC status; and
- (III) psychosocial status.

(v) Plan. A plan of care must be developed based upon the assessment of the client. The plan must include a management plan and a referral plan for diagnosis and treatment if necessary. The client must be counseled regarding family planning, contraception, and routine health care provided by a licensed physician or another licensed health care provider supervised by a licensed physician. The client's prenatal multi-vitamin supplement with folic acid/iron should be continued during the postpartum period unless contraindicated.

(H) The midwife shall appropriately evaluate the mother at two-three weeks postpartum, including the following components.

(i) History. The history must include consideration of at least the following:

- (I) drugs/alcohol/tobacco;
- (II) medications;
- (III) current problems;
- (IV) nutrition;
- (V) bowel/bladder function;

- (VI) abdominal/uterine/perineal pain;
- (VII) bleeding; and
- (VIII) breastfeeding.

(ii) Physical exam. The physical must include at least the following:

- (I) blood pressure;
- (II) pulse;
- (III) weight;
- (IV) abdominal/fundal exam;
- (V) perineal observation; and
- (VI) extremity exam.

(iii) Assessment. The assessment must include at least the following:

- (I) physical status;
- (II) nutritional/WIC status; and
- (III) psychosocial status.

(iv) Plan. The current plan of care must be continued or modified based upon the assessment of the client. Family planning, contraception and the client's medical postpartum follow up must be discussed.

(I) The midwife shall appropriately follow the mother at four-six weeks postpartum, including the following components.

(i) History. The history must include consideration of at least the following categories:

- (I) drugs/alcohol/tobacco;
- (II) medications;
- (III) allergies;
- (IV) current problems;
- (V) abdominal/uter-

ine/perineal pain;

- (VI) nutrition;
- (VII) bowel/bladder function;

(VIII) bleeding;

(IX) menstruation;

(X) gynecologic;

(XI) sexual activity;

(XII) contraception;

and (XIII) abuse/trauma.

(ii) Physical exam. The physical must include at least the following:

- (I) blood pressure;
- (II) pulse;
- (III) weight;
- (IV) abdominal exam;
- (V) pelvic exam to include external genitalia, vagina, cervix, uterus, and adnexa; and
- (VI) extremity exam.

(iii) Laboratory. Hemoglobin and/or hematocrit or CBC must be done.

(iv) Assessment. The assessment must include at least the following:

- (I) physical status;
- (II) nutritional/WIC status; and
- (III) psychosocial status.

(v) Plan of care. A plan of care must be developed based upon the assessment of the client. The plan must include a management plan and a referral plan for diagnosis and treatment if necessary. Family planning, contraception, and routine health care follow up provided by a licensed physician or other licensed health care provider operating under the supervi-

sion of a licensed physician should be reiterated.

(J) The midwife shall appropriately follow the infant in concert with the mother for the first 4-6 weeks postpartum. The following components must be included in each evaluation of the newborn.

(i) History. The history must include consideration of at least the following categories:

- (I) feeding;
- (II) elimination:
 - (-a-) urine; and
 - (-b-) stool;
- (III) concerns of mother;
- (IV) problems;
- (V) illnesses;
- (VI) allergies; and

* other health care providers.

(ii) Vital signs. The following vital signs must be taken:

- (I) pulse;
- (II) respiratory rate; and
- (III) temperature.

(iii) Physical exam. The physical exam must include at least the following:

- (I) weight, length, head circumference;
- (II) skin;
- (III) head and neck;
- (IV) eyes, ears, nose and throat;
- (V) fontanel;
- (VI) heart/lungs;
- (VII) breasts;
- (VIII) abdomen;
- (IX) cord, umbilicus

appearance;

(X) external genitalia;

(XI) extremities;

exam; and

(XIII) pulses.

(iv) Assessment. The infant's overall health and risk status must be assessed. The assessment must include at least the following:

(I) physical exam; and

(II) assessment of feeding and weight gain.

(v) Plan of care. A plan of care must be developed based upon the assessment of the infant. The plan must include a management plan and a referral plan for diagnosis and treatment if necessary.

(vi) Education and counseling. Health education and counseling must be provided to the mother and reviewed as appropriate to the infant's age and needs. It must include consideration of at least the following:

(I) diet, nutrition;

(II) elimination:

(-a-) urine; and

(-b-) stool;

gain;

(III) growth, weight

(IV) bathing;

(V) clothing;

prevention;

(VI) injury/poison

ness;

(VII) danger signs, illness;

and follow up; and

(VIII) medical care

(IX) immunizations.

(5) Standard V. Midwifery care is provided in a safe environment. The midwife shall:

(A) assess the practice setting for reasonable freedom from environmental hazards;

(B) arrange, with the cooperation of the woman and family, the intended birth place;

(C) bring her/his own equipment and supplies;

(D) not make arrangements for a home delivery if there is no phone or adequate emergency transport;

(E) demonstrate accessibility to an emergency transport system;

(F) promote involvement of family and support persons in the practice setting;

(G) promote adequate personal support in the setting where the midwife practices;

(H) not leave the client unattended during established labor;

(I) be available and respond promptly to her client's needs;

(J) follow accepted infection control procedures regarding equipment, examinations, and procedures; and

(K) practice and follow universal precautions established by Occupational Safety and Health Administration (OSHA) guidelines.

(6) STANDARD VI. Midwifery care shall utilize the community health care and social system to meet medical, psychosocial, economic and cultural or family needs. The midwife shall:

(A) collaborate and consult with and refer to the available medical and health care community;

(B) utilize ancillary health and social community services; and

(C) demonstrate knowledge of psychosocial, economic, cultural and family factors that may affect care, appropriate collaboration, and referral.

(7) STANDARD VII. Midwifery care shall be documented in complete, legible health records. The midwife shall:

(A) completely and accurately document the client's history, physical exam, laboratory test results, antepartum visits, consultation reports, referrals, labor, delivery, postpartum visits, and neonatal evaluations at the time midwifery services are delivered and when reports are received;

(B) utilize a record format that facilitates communication of information to consultants or other appropriate providers of care;

(C) facilitate clients' access to their own records;

(D) maintain the confidentiality of client records; and

(E) retain records for a minimum of five years.

(8) Standard VIII. Midwifery care shall include an ongoing process of evaluation and quality assurance. The midwife shall:

(A) collect client care data systematically and shall be involved in analysis of that data for evaluation of the process and outcome of care;

(B) seek consultation to review problems identified by the midwife or by other professionals or consumers in the community; and

(C) act to resolve problems that are identified.

(9) Sample Prenatal Genetic Screen. The following questions on this sample prenatal genetic screening form should be answered to determine possible risks.

Name _____ Date _____

1. Will you be 35 years or older when your baby is born? Yes___ No__

2. Have you, the baby's father, or anyone in either of your families ever had any of the following disorders.

* Down's Syndrome (mongolism) Yes___ No__

* Other Chromosomal abnormality Yes___ No__

* Neural Tube defect, ie, spina bifida (myelomeningocele or open spine),
anencephaly Yes___ No__

* Hemophilia Yes___ No__

* Muscular Dystrophy Yes___ No__

* Cystic fibrosis Yes___ No__

If yes, indicate the relationship of the affected person to you or to the baby's father:

3. Do you or the baby's father have a birth defect? Yes___ No__

If yes, who has the defect and what is it? _____

4. In any previous marriages, have you or the baby's father had a child, born dead or alive, with a birth defect not listed in question #2 above? Yes___ No__

If yes, what was the defect and who had it? _____

5. Do you or the baby's father have close relatives with mental retardation? Yes___ No__

If yes, indicate the relationship of the affected person to you or to the baby's father:

6. Do you, the baby's father, or a close relative in either of your families have a birth defect any familial disorder, or chromosomal abnormality not listed above? Yes___ No__

If yes, indicate the condition and the relationship of the affected person to you or to the baby's father: _____

7. In any previous marriages, have you or the baby's father had a stillborn child or three or more first trimester spontaneous pregnancy losses? Yes___ No__

Have either of had a chromosomal study? Yes___ No__

If yes, indicate who and the results: _____

8. If you or the baby's father are of Jewish ancestry, have either of you been screened for Tay-Sachs disease? Yes___ No__

If yes, indicate who and the results: _____

9. If you or the baby's father are black, have either of you been screened for sickle cell trait? Yes ___ No ___

If yes, indicate who and the results: _____

10. If you or the baby's father are of Italian, Greek, or Mediterranean background, have either of you been tested for B-thalassemia? Yes ___ No ___

If yes, indicate who and the results: _____

11. If you or the baby's father are of Philippine or Southeast Asian ancestry, have either of you been tested for α -thalassemia? Yes ___ No ___

If yes, indicate who and the results: _____

12. Excluding iron and vitamins, have you taken any medications or recreational drugs since being pregnant or since your last menstrual period? (include nonprescription drugs.) Yes ___ No ___

If yes, give name of medication and time taken during pregnancy: _____

(Any patient replying "Yes" to questions should offer appropriate counseling. If the patient declines further counseling or testing, this should be noted in the chart. Given that genetics is a field in a state of flux, alteration or updates to this form will be required periodically.)

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 June 30, 1994.

TRD-9443294

Susan K. Steeg
General Counsel
Texas Department of
Health

Proposed date of adoption: September 8, 1994

For further information, please call: (512) 458-7700

◆ ◆ ◆
Chapter 38. Chronically Ill and Disabled Children's Services Program

• 25 TAC §38.17, §38.18

The Texas Department of Health (department) proposes an amendment to §38.17 and new §38.18. The amended section covers the department's authority to use task forces to obtain ad hoc advice and counsel in the Chronically Ill and Disabled Children's Services (CIDC) Program. The new section establishes the Children with Special Health Care Needs Advisory Committee to advise the Bureau of Women and Children and the board. Specifically, the proposed new section covers applicable law, purpose, tasks, abolishment, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board, reimbursement of members' expenses, and the rule's effective date.

In accordance with Texas Civil Statutes, Article 6252-33, the department must evaluate each of its advisory committees to determine whether the committee should be continued, modified, consolidated with other committees, or abolished. The department has reviewed the structure, composition, and purpose of the Health Service Systems Advisory Committee and the Community Advisory Committee which advise the CIDC Program. Those committees have been consolidated to better balance gender, minority representation, regional representation, and consumer and professional membership, and the committee's size has been reduced. The consolidation will also enable association and state agency representatives, providers, and CIDC parents to meet together.

Susan Penfield, M.D., Director, Division of Children's Health, Bureau of Women and Children, has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of administering the amended and new sections as proposed.

Dr. Penfield also has determined that for each of the first five years the section is in effect, the public benefits anticipated are the department's continued compliance with Texas Civil Statutes, Article 6252-33, concerning state agency advisory committees, and the department's continued access to an effective forum in which providers and consumer can offer advice to the Bureau of Women and Children and to the board. There are no anticipated economic costs to small or large businesses or individuals who are required to comply with the section as proposed, and no effect on local employment is anticipated.

Written comments on the proposed addition may be submitted to Robbie Davis, Ph.D., System Development/Strategic Planning Manager, Planning, Research, Information System Management Division, Bureau of Women and Children, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3179. Telephone inquiries also may be made to Robbie Davis, Ph.D., at (512) 458-7700. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

The amendment and new section are proposed under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function, and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health. The new section will affect Health and Safety Code, Chapter 35.

§38.17. Development and Improvement of Standards and Services. To ensure that cost effective, quality, appropriate medical and related services are available and delivered to Chronically Ill and Disabled Children's Services (CIDC) Program clients, the CIDC Program may establish a system of program evaluation that provides management information about the CIDC Program's operation and effectiveness; establishes guidelines and standards for CIDC Program health care services upon Texas Board of Health (board) approval; monitors compliance with these established standards and guidelines; and identifies and analyzes patterns and trends in provider billing and services delivered.

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

(3) **Task Forces. The CIDC Program may establish task forces to advise the CIDC Program.** [Advisory Committees. The board may establish advisory committees to advise the CIDC Program in areas of policy alternatives, medical criteria for CIDC Program coverage and standards for health care services. The composition of advisory committees includes representation by physicians, dentists, facilities, other providers, parents, and advocates.]

(4) (No change.)

§38.18. Children with Special Health Care Needs Advisory Committee.

(a) The committee. The Children with Special Health Care Needs Advisory Committee (committee) shall be appointed under and governed by this section.

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

(c) Purpose. The purpose of the committee is to provide advice to the Texas Board of Health (board) in the area of developing comprehensive systems of health care for children with special health care needs and their families.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the Chronically Ill and Disabled Children's Services (CIDC) Program and any other programs administered by the department that provide services to children with special health care needs.

(2) The committee shall promote the development of systems of care for all children with special health care needs consistent with the Social Security Act, Title V, by participating in long range planning activities including:

(A) discussion of contemporary health care issues affecting children with special health care needs, their families, and service providers; and

(B) as needed:

(i) development of recommendations for proposed legislation, appropriations, rules, policies, needs-assessment and grant project activities, as needed;

(ii) review of alternatives for and assistance in the development of program policies including service criteria for program coverage, as needed;

(iii) review of and comment on proposed service and quality assurance standards and guidelines for services and providers, as needed;

(iv) review of and comment on program quality assurance and utilization review reports, as needed; and

(v) review of and comment on program fiscal status reports and cost containment methodologies and advising the program about funding alternatives, as needed.

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

(e) Committee abolished. The committee shall be automatically abolished on January 1, 1999.

(f) Composition. The committee shall be composed of 18 members.

(1) The composition of the committee shall include nine consumer representatives and nine nonconsumer representatives.

(A) Consumer members include parents of children with special health care needs receiving CIDC, Medicaid or other publicly-funded services for children with special health care needs, adults with disabilities who have received services as children with special health care needs, and representatives of consumer advocacy organizations that represent children with special health care needs.

(B) Nonconsumer members include service providers for children with special health care needs who are enrolled as CIDC or Medicaid providers, representatives of professional associations whose members provide services to children with special health care needs and their families, representatives from institutions of higher education with expertise in public health and children with special health care needs, and other service providers who deliver services to children with special health care needs.

(2) The members of the committee shall be appointed by the board.

(g) Terms of office. The term of office of each member shall be 6 years.

(1) Members shall be appointed for staggered terms so that the terms of six members will expire on December 31st of each even-numbered year beginning in 1996.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) The agenda for each committee meeting shall include an opportunity for any person to address the committee on matters relating to committee business. The presiding officer may establish procedures for such public comment, including a time limit on each comment.

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

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

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

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

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

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

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

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

(2) Each member shall have one vote

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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) Effective date. This section shall become effective on January 1, 1995

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

Issued in Austin, Texas on June 30, 1994

TRD-9443293

John T. Richards
Assistant General Counsel,
Office of General
Counsel
Texas Department of
Health

Proposed date of adoption: September 23, 1994

For further information, please call: (512) 458-7700

◆ ◆ ◆
Chapter 229. Food and Drugs
Licensure of Wholesale Device
Distributors

• 25 TAC §§229.291-229.303

The Texas Department of Health (department) proposes new §§229.291-229.303 concerning the licensure of wholesale device distributors Senate Bill 564, 73rd Legislature, 1993, amended the Texas Health and Safety Code, Chapter 431, to require that the department establish a licensing system and minimum standards for wholesale device distributors

These sections provide for the minimum licensure standards necessary to ensure the safety and efficacy of devices distributed by wholesale device distributors

These new sections will enable the department to collect licensure fees to recover the costs of establishing an official establishment inventory, implementing surveillance activities, monitoring violative facilities, and removing adulterated and misbranded devices from commerce

Dennis E. Baker, Deputy Chief, Bureau of Food and Drug Safety, Texas Department of Health, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government for the

first five years will be an estimated increase in revenue of \$250,115 based on the fee rates established in the sections. The additional cost of administering the program is expected to equal the revenue generated. There will be no effect on local government.

Mr. Baker also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the protection of public health by establishing minimum standards for wholesale device distributors. The anticipated costs to small businesses and individuals who are required to comply with the proposed sections will be the cost of the required license fee. There will be no effect on local employment.

Comments on the proposed sections may be submitted to Dennis E. Baker, Acting Director, Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756 (512) 719-0200. Comments will be accepted for 30 days following the date of publication of the proposed sections in the *Texas Register*. In addition, a public hearing on the proposed rule will be held in the Texas Department of Health Auditorium, 1100 West 49th Street, Austin, Texas on July 20, 1994, beginning at 9:00 a.m.

The sections are proposed under the Texas Health and Safety Code, §431.241, which provides TDH with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, The Texas Department of Health, and the Commissioner of Health.

§229.291. *Purpose.* These sections provide for the minimum licensure standards necessary to ensure the safety and efficacy of devices distributed by wholesale device distributors.

§229.292. *Applicable Laws and Regulations.*

(a) The Texas Department of Health (department) adopts by reference the following laws and regulations:

(1) Federal Food, Drug, and Cosmetic Act, 21 United States Code, et seq (1994);

(2) 21 Code of Federal Regulations (CFR), Part 801, Labeling (1994);

(3) 21 CFR, Part 803, Medical Device Reporting (1994);

(4) 21 CFR, Part 804, Medical Device Distributor Reporting (1994);

(5) 21 CFR, Part 807, Establishment Registration and Device Listing for Manufacturers and Distributors of Devices (1994);

(6) 21 CFR, Part 820, Good Manufacturing Practice for Medical Devices: General (1994);

(7) 21 CFR, Part 814, Premarket Approval of Medical Devices (1994); and

(8) 21 CFR, Subchapter J-Radiological Health (1994).

(b) The effective date for all referenced federal regulations refers to the regulations on the date specified and does not include any additions or deletions subsequent to the date specified.

(c) Copies of these laws and regulations are indexed and filed in the office of the Division of Food and Drugs, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for inspection during normal working hours.

(d) Nothing in these sections shall relieve any person of the responsibility for compliance with other applicable Texas and federal laws and regulations.

§229.293. *Definitions.* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Act-The Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

Adulteration-Has the meaning given in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, as interpreted in the rules of the Texas Board of Health (board) and judicial decision.

Advertising-All representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

Authorized agent-An employee of the department who is designated by the commissioner to enforce the provisions of this chapter.

Board-The Texas Board of Health.
Commissioner-The Commissioner of Health.

Department-The Texas Department of Health.

Device-An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component, part, or accessory, that is:

(A) recognized in the official United States Pharmacopoeia National Formulary or any supplement to it;

(B) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in man or other animals; or

(C) intended to affect the structure or any function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and is not dependent on metabolism for the achievement of any of its principal intended purposes.

Electronic product radiation-Any ionizing or nonionizing electromagnetic or particulate radiation, or any sonic, infra-sonic, or ultrasonic wave, which is emitted from an electronic product as the result of the operation of an electronic circuit in such product.

Finished device-A device, or any accessory to a device, which is suitable for use, whether or not packaged or labeled for commercial distribution.

Health authority-A physician designated to administer state and local laws relating to public health.

Importer-Any person who initially distributes a device imported into the United States.

Ionizing radiation-Any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, in its passage through matter. Ionizing radiation includes gamma rays and x-rays, alpha and beta particles, high speed electrons, neutrons, and other nuclear particles.

Labeling-All labels and other written, printed, or graphic matter:

(A) upon any article or any of its containers or wrappers, or

(B) accompanying such article.

Manufacturing-The making by chemical, physical, biological, or other procedures of any article that meets the definition of device. The term includes the following activities:

(A) repackaging or otherwise changing the container, wrapper, or labeling of any device package in furtherance of the distribution of the device from the original place of manufacture to the person who makes final delivery or sale to the ultimate consumer;

(B) initial distribution of imported devices; or

(C) initiation of specifications for devices that are manufactured by a second party for subsequent commercial distribution by the person initiating specifications.

Misbranding-Has the meaning given in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431, as

interpreted in the rules of the board and judicial decision.

Person—Includes individual, partnership, corporation, and association.

Place of business—Each location at which a device for wholesale distribution is located.

Radiation machine—Any device capable of producing ionizing radiation except those devices with radioactive material as the only source of radiation.

Radioactive material—Any material (solid, liquid, or gas) that emits radiation spontaneously.

Reconditioning—Has the meaning given in the Texas Food, Drug, Device, and Cosmetic Salvage Act, Health and Safety Code, Chapter 432, as interpreted in the rules of the board in §229.192 of this title (relating to Regulation of Food, Drug, Device and Cosmetic Salvage Establishments and Brokers) and judicial decision.

Restricted device—Has the meaning given in the Federal Food, Drug, and Cosmetic Act, as amended, §520(e)(1).

Wholesale distribution—Distribution to a person other than a consumer or patient, including, but not limited to, distribution to any person by a manufacturer, repacker, own label distributor, jobber, importer, or wholesaler. The term does not include:

(A) the manufacture of raw materials or components to be used in the manufacture or assembly of a device who would otherwise not be required to license under the provisions of these sections;

(B) the manufacture of general purpose articles such as chemical reagents or laboratory equipment whose uses are generally known by persons trained in their use and which are not labeled or promoted for medical uses;

(C) the manufacture or otherwise altering of devices by licensed practitioners, including physicians, dentists, and optometrists solely for use in their practice;

(D) the manufacture, preparation, propagation, compounding, or processing of devices used solely in research, teaching, or analysis and which are not introduced into commercial distribution;

(E) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(F) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(G) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device for emergency medical reasons. For purposes of this definition, "emergency medical reasons" includes transfers of prescription devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(H) the sale, purchase, or trade of a device, an offer to sell, purchase, or trade a device, or the dispensing of a device pursuant to a prescription; or

(I) the distribution of device samples by manufacturers' representatives or distributors' representatives.

§229.294. Exemptions.

(a) A person is exempt from licensing under these sections if the person engages only in the following types of wholesale device distribution:

(1) intracompany sales; or

(2) the sale, purchase, or trade of a distressed or reconditioned device by a salvage broker or a salvage operator licensed under §229.203 of this title (relating to Regulation of Food, Drug, Device, and Cosmetic Salvage Establishments and Brokers).

(b) An exemption from the licensing requirements under these sections does not constitute an exemption from other applicable provisions of the Texas Food, Drug, and Cosmetic Act (Act) or the rules adopted by the Texas Board of Health to administer and enforce the Act.

§229.295. Licensure Requirements.

(a) General. Except as provided by §229.294 of this title (relating to Exemptions), a person may not engage in the wholesale distribution of devices in Texas unless the person has a valid license from the Commissioner of Health (commissioner) for each place of business.

(b) Display of license. The license shall be displayed in an open public area at each place of business.

(c) Existing place of business. Each person involved in the wholesale distribu-

tion of devices in Texas on the effective date of these sections must apply for a wholesale device distributor license no later than 60 days following the effective date of these sections.

(d) New place of business. Each person acquiring or establishing a place of business for the purpose of wholesale device distribution after the effective date of these sections shall apply to the Texas Department of Health (department) for a license of such business prior to beginning operation

(e) Two or more places of business. If the wholesale device distributor operates more than one place of business, the wholesale device distributor shall license each place of business separately.

(f) Issuance of license. The department may license a wholesale distributor of devices who meets the requirements of this section and §229.301 of this title (relating to Minimum Standards for Licensure).

(g) Transfer of license. Licenses shall not be transferable from one person to another or from one place of business to another.

(h) License expiration. Unless the department revokes or suspends a license as provided in §229.300 of this title (relating to Refusal, Cancellation, Suspension, or Revocation of a License), the initial license shall be valid for one year from the date of issuance which becomes the anniversary date.

(i) Renewal of license.

(1) Each year prior to the anniversary date, the wholesale distributor of devices shall renew its license following the requirements of this section and §229.296 of this title (relating to Licensing Procedures).

(2) The renewal license shall be valid for one year from the anniversary date.

(3) The license renewal application and fee for each place of business shall be submitted to the department 30 days prior to the expiration date of the current license in accordance with department procedures in §229.296 of this title. A person who files a renewal application after the expiration date must pay an additional \$100 as a delinquency fee.

(4) Failure to submit the renewal application prior to the current licensure expiration date may subject the wholesale device distributor to the enforcement provisions under the Act and also to the provisions of §229.300 of this title.

(j) Amendment of license. A license that is amended, including a change of name, ownership, or a notification of a

change in the location of a licensed place of business will require submission of fees as outlined in §229.299 of this title.

(k) Notification of change of location of place of business. Not fewer than 30 days in advance of the change, the licensee shall notify the commissioner or the commissioner's designee in writing of the licensee's intent to change the location of a licensed place of business. The notice shall include the address of the new location, and the name and residence address of the individual in charge of the business at the new location. Not more than ten days after the completion of the change of location, the licensee shall notify the commissioner or the commissioner's designee in writing to verify the change of location, the specific date of change, the new location, the address of the new location, and the name and residence address of the individual in charge of the business at the new address. Notice will be deemed adequate if the licensee provides the intent and verification notices to the commissioner or the commissioner's designee by certified mail, return receipt requested, mailed to the Texas Department of Health, 1100 West 49th Street, Austin, Texas.

§229.296. Licensing Procedures.

(a) License application forms. License application forms may be obtained from the Texas Department of Health, Division of Food and Drugs, 1100 West 49th Street, Austin, Texas, 78756.

(b) License application. The wholesale device distributor license application shall be signed and verified, shall be made on a license application form furnished by the Texas Department of Health (department), and shall contain the following information:

- (1) the legal name under which the business is conducted,
- (2) the address of each place of business that is licensed;
- (3) if a proprietorship, the name and residence address of the proprietor; if a partnership, the names and residence addresses of all partners; if a corporation, the date and place of incorporation and name and address of its registered agent in the state and a copy of the Articles of Incorporation; or if any other type of association, then the names of the principals of such association,
- (4) the name, residence address, and valid driver license number for each individual in an actual administrative capacity which, in the case of proprietorship, shall be the managing proprietor, partnership, the managing partner, corporation, the officers and directors; or those in a managerial capacity in any other type of association;

(5) for each place of business, the residence address of the individual in charge thereof;

(6) a list of categories which must be marked and adhered to in the determination and payment of the fee; and

(7) a statement verified by the applicant's signature that acknowledges the applicant has read, understood, and agrees to abide by the provisions of these sections and those of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431.

§229.297. *Report of Changes*. The license holder shall notify the Texas Department of Health (department) in writing within 10 days of any change which would render the information contained in the application for the license, reported pursuant to §229.296 of this title (relating to Licensing Procedures), no longer accurate. Failure to inform the department no later than ten days of a change in the information required in the application for a license may result in a suspension or revocation of the license.

§229.298. Licensure Requirements for Wholesale Device Distributors Located in Other Jurisdictions.

(a) A person who engages in the wholesale distribution of devices outside Texas may engage in wholesale distribution of devices in Texas if the person holds a license issued by the Commissioner of Health (commissioner).

(b) The commissioner may accept reports from state and federal authorities in other jurisdictions to determine the extent of compliance with the minimum requirements specified in these sections and the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act). On examination of those reports and the person's compliance history and current compliance record, the commissioner may issue a license to the person if the commissioner determines that the person is in compliance with these sections and the Act.

(c) The commissioner shall consider on an individual basis each license application filed by a person who wishes to engage in the wholesale distribution of devices in Texas.

§229.299. Licensure Fees.

(a) License fee. All wholesale device distributors who distribute devices in Texas shall obtain a license annually and must apply for a license no later than 60 days following the effective date of these sections with the Texas Department of Health (department) and shall pay a licensure fee for each place of business operated as follows:

(1) \$100 per wholesale distributor having gross annual sales of \$0-\$19,999.99,

(2) \$400 per wholesale distributor having gross annual sales of \$20,000-\$199,999.99;

(3) \$900 per wholesale distributor having gross annual sales of \$200,000-\$19,999,999.99, and

(4) \$1500 per wholesale distributor having gross annual sales greater than or equal to \$20,000,000.

(b) Exemption from licensure fees. A person is exempt from the licensure fees required by this section if the person is

(1) licensed under §289.121 of this title (relating to Licensing of Radioactive Materials) or registered under §289.122 of this title (relating to Registration of Radiation Machines and Services) and engages only in the following types of wholesale device distribution.

(A) the manufacture or distribution of radiation machines which are devices, or

(B) the manufacture or distribution of devices which contain radioactive materials, or

(2) a charitable organization, as described in the Internal Revenue Code of 1986, §501(c)(3), or a nonprofit affiliate of the organization, to the extent otherwise permitted by law.

§229.300. Refusal, Cancellation, Suspension, or Revocation of License

(a) The Commissioner of Health (commissioner) may refuse an application or may suspend or revoke a license if the applicant or licensee

(1) has been convicted of a felony or misdemeanor that involves moral turpitude,

(2) is an association, partnership, or corporation and the managing officer has been convicted of a felony or misdemeanor that involves moral turpitude;

(3) has been convicted in a state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs, barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs,

(4) is an association, partnership, or corporation and the managing officer has been convicted in state or federal court of the illegal use, sale, or transportation of intoxicating liquors, narcotic drugs,

barbiturates, amphetamines, desoxyephedrine, their compounds or derivatives, or any other dangerous or habit-forming drugs;

(5) has violated any of the provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or these sections;

(6) has failed to pay a license fee or an annual renewal fee for a license; or

(7) has obtained or attempted to obtain a license by fraud or deception.

(b) The commissioner may refuse an application for a license or may suspend or revoke a license if the commissioner determines from evidence presented during a hearing that the applicant or licensee:

(1) has violated the Health and Safety Code, §431.021(1)(3), relating to the counterfeiting of a drug or the sale or holding for sale of a counterfeit drug;

(2) has violated the Health and Safety Code, Chapter 481 (Texas Controlled Substance Act), or the Health and Safety Code, Chapter 483 (Dangerous Drugs Act); or

(3) has violated the rules of the director of the Department of Public Safety, including being responsible for a significant discrepancy in the records that state law requires the applicant or licensee to maintain.

(c) The Texas Department of Health (department) may, after providing opportunity for hearing, refuse to license a wholesale distributor of devices, or may suspend or revoke a license for violations of the requirements in these sections or for any of the reasons described in the Act.

(d) Any hearings for the refusal, revocation or suspension of a license are governed by the department's formal hearing procedures in Chapter 1 of this title (relating to the Board of Health) and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Chapter 2001.

(e) A license issued under these sections shall be returned to the department if the wholesale device distributor's place of business:

(1) ceases business or otherwise ceases operation on a permanent basis;

(2) relocates; or

(3) changes ownership. For a corporation, an ownership change is deemed to have occurred, resulting in the necessity to return the license to the department, when 5.0% or more of the share of stock of a corporation is transferred from one person to another.

§229.301. Minimum Standards for Licensure.

(a) Minimum requirements. All wholesale distributors of devices engaged in manufacturing, packing, storage, or installation of devices must comply with the minimum standards of this section in addition to the statutory requirements contained in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act). For the purpose of this section, the policies described in the United States Food and Drug Administration's (FDA's) Compliance Policy Guides as they apply to devices shall be the policies of the Texas Department of Health (department).

(b) Federal establishment registration and device listing. All persons who operate as wholesale device distributors in Texas shall meet the applicable requirements in 21 Code of Federal Regulations (CFR), Part 807, titled "Establishment Registration and Device Listing for Manufacturers and Distributors of Devices." Devices distributed by wholesale device distributors shall have met, if applicable, the premarket notification requirements of 21 CFR, Part 807, or the premarket approval provisions of 21 CFR, Part 814, titled "Premarket Approval of Medical Devices."

(c) Good manufacturing practices. Wholesale device distributors engaged in the manufacturing, packing, storage, or installation of finished devices shall be in compliance with the applicable requirements of 21 CFR, Part 820, titled "Good Manufacturing Practice For Medical Devices: General." This regulation sets forth the current good manufacturing practices for methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of all finished devices intended for human use.

(d) Buildings and facilities. All manufacturing, assembling, packaging, packing, holding, testing, or labeling of devices shall take place in buildings and facilities described in 21 CFR, Part 820, Subpart C, titled "Buildings." No manufacturing, assembling, packaging, packing, holding, testing, or labeling operations of devices shall be conducted in any personal residence.

(e) Device labeling. Devices distributed by wholesale device distributors shall meet the labeling requirements of the Act and 21 CFR, Part 801, titled "Labeling."

(f) Device labeling exemptions. Device labeling or packaging exemptions adopted under the Federal Food, Drug, and Cosmetic Act, as amended, shall apply to devices in Texas except insofar as modified or rejected by rules of the Texas Board of Health (board).

(g) Reconditioned devices. Reconditioned devices must comply with the provisions of the Act and these sections and are subject to the provisions of the Texas Food, Drug, Device and Cosmetic Salvage Act, Health and Safety Code, Chapter 432.

(h) Medical device reporting. Wholesale device distributors shall meet the medical device reporting requirements of 21 CFR, Part 803, titled "Medical Device Reporting" or 21 CFR, Part 804, titled "Medical Device Distributor Reporting".

(i) Radiation emitting devices. Devices which emit electronic product radiation and are distributed by wholesale device distributors shall meet the applicable requirements of the Act and 21 CFR, Subchapter J, titled "Radiological Health".

§229.302. Advertising.

(a) An advertisement of a device shall be deemed to be false if it is false or misleading in any particular.

(b) An advertisement of a device is false if the advertisement represents that the device affects

(1) infectious and parasitic diseases;

(2) neoplasms;

(3) endocrine, nutritional, and metabolic diseases and immunity disorders;

(4) diseases of blood and blood-forming organs,

(5) mental disorders;

(6) diseases of the nervous system and sense organs,

(7) diseases of the circulatory system;

(8) diseases of the respiratory system;

(9) diseases of the digestive system;

(10) diseases of the genitourinary system,

(11) complications of pregnancy, childbirth, and the puerperium;

(12) diseases of the skin and subcutaneous tissue;

(13) diseases of the musculoskeletal system and connective tissue;

(14) congenital anomalies;

(15) certain conditions originating in the perinatal period;

(16) symptoms, signs, and ill-defined conditions; or

(17) injury and poisoning.

(c) Subsection (b) of this section does not apply to an advertisement of a device if the advertisement does not violate §431.182(a) of the Act and is disseminated:

(1) to the public for self-medication and is consistent with the labeling claims permitted by the United States Food and Drug Administration (FDA);

(2) only to members of the medical, dental, and veterinary professions and appears only in the scientific periodicals of those professions; or

(3) only for the purpose of public health education by a person not commercially interested, directly or indirectly, in the sale of the device

(d) This section does not indicate that self-medication for a disease other than a disease listed under subsection (b) of this section is safe and effective.

§229.303. Enforcement and Penalties.

(a) Inspection.

(1) To enforce these sections of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act), the Commissioner of Health (commissioner), an authorized agent, or a health authority may, on presenting appropriate credentials to the owner, operator, or agent in charge of a place of business

(A) enter at reasonable times a place of business, including a factory or warehouse, in which a device is manufactured, assembled, packed, or held for introduction into commerce or held after the introduction,

(B) enter a vehicle being used to transport or hold a device in commerce; or

(C) inspect at reasonable times, within reasonable limits, and in a reasonable manner, the place of business or vehicle and all equipment, finished and unfinished materials, containers, and labeling of any item and obtain samples necessary for the enforcement of these sections or the Act.

(2) The inspection of a place of business, including a factory, warehouse, or consulting laboratory, in which a restricted device is manufactured, assembled, packed, or held for introduction into commerce extends to any place or thing, including a record, file, paper, process, control, or facility, in order to determine whether the device:

(A) is adulterated or misbranded;

(B) may not be manufactured, introduced into commerce, sold, or offered for sale under the Act; or

(C) is otherwise in violation of these sections or the Act

(3) An inspection under paragraph (2) of this subsection may not extend to.

(A) financial data,

(B) sales data other than shipment data,

(C) pricing data,

(D) personnel data other than data relating to the qualifications of technical and professional personnel performing functions under the Act, or

(E) research data other than data

(i) relating to devices, and

(ii) subject to reporting and inspection under regulations issued under §519 or §520(g) of the Federal Food, Drug, and Cosmetic Act, as amended

(4) An inspection under paragraph (2) of this subsection shall be started and completed with reasonable promptness

(b) Receipt for samples An authorized agent or health authority who makes an inspection of a place of business, including a factory or warehouse, and obtains a sample during or on completion of the inspection and before leaving the place of business, shall give to the owner, operator, or the owner's or operator's agent a receipt describing the sample

(c) Access to records A person who is required to maintain records under the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or §519 or §520(g) of the Federal Food, Drug, and Cosmetic Act or a person who is in charge or custody of those records shall, at the request of an authorized agent or health authority, permit the authorized agent or health authority at all reasonable times access to and to copy and verify the records.

(d) Adulterated and misbranded device. If the Texas Department of Health (department) identifies an adulterated or misbranded device, the department may enforce the applicable provisions of Subchapter C of the Act including, but not limited to, detention, emergency order, re-

call, condemnation, destruction, civil penalties, criminal enforcement, and/or administrative penalties, using the Severity Levels set out in §229.261 of this title (relating to Assessment of Administrative or Civil Penalties).

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 July 1, 1994.

TRD-9443366

John T. Richards
Assistant General Counsel,
Office of General
Counsel
Texas Department of
Health

Proposed date of adoption September 23, 1994

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

◆ ◆ ◆
TITLE 30. ENVIRONMENTAL QUALITY
Part I. Texas Natural Resource Conservation Commission
Chapter 334. Underground and Aboveground Storage Tanks

The Texas Natural Resource Conservation Commission (TNRCC) proposes amendments to §§334.49, 334.51, 334.55, and 334.77, concerning the underground and aboveground storage tank program. The TNRCC is required by the U.S. Environmental Protection Agency (EPA) to amend these four regulations to satisfy criteria for EPA program approval of the TNRCC's storage tank program. The amendments proposed here are intended to satisfy the "no-less stringency" requirement for program approval as required by EPA Region 6 staff.

EPA has established requirements for approving state underground storage tank programs. These requirements, found in 40 CFR Part 281, include demonstration that state regulations are at least as stringent as the federal requirements for the design and installation of underground storage tanks (USTs), upgrading USTs, operating USTs, and reporting releases. EPA staff has identified four state regulations that need to be amended for clarification on meaning before state program approval can be considered. More specifically, these regulations pertain to alternative systems that will be allowed for corrosion protection of USTs, alternative systems that will be allowed for spill and overflow prevention equipment on USTs, and the reporting requirements of initial abatement measures for confirmed releases. The fourth regulation proposed for amendment involves correction of a cross-reference to another regulation previously renumbered by rule amendment.

Stephen Minick, Division of Budget and Planning, has determined that for the first five years these sections as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcement and administration of the sections.

Mr. Minick also has determined that during the first five-year period the sections as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be improvements in the consistency between federal and state programs related to the regulation of underground storage tanks. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to David Duncan, Senior Attorney, Legal Services Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600. Comments will be accepted until 5:00 p.m., 30 days following publication of this proposal in the *Texas Register*.

Subchapter C. Technical Standards

• 30 TAC §§334.49, 334.51, 334.55

The amendments are proposed under the Texas Water Code, §5.103, which authorizes the TNRCC to promulgate rules necessary to carry out the powers and duties under the Texas Water Code and other laws of this state.

§334.49. Corrosion Protection.

(a) General requirements.

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

(3) Any alternative methods for corrosion protection or variances from the requirements of this section are prohibited, except when reviewed and approved by the executive director pursuant to procedures for variances found in §334.43 [in accordance with §334.43] of this title (relating to Variances and Alternative Procedures).

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

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

§334.51. Spill and Overfill Prevention and Control.

(a) (No change.)

(b) Spill and overfill prevention equipment. Except as provided in paragraph (4) of this subsection, all underground storage tanks systems shall be equipped with spill and overfill prevention equipment which shall be designed, installed, and maintained in a manner that will prevent any spilling or overflowing of regulated substances resulting from transfers to such systems, as provided in this subsection.

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

(4) Exceptions.

(A) UST systems are not required to be equipped with the spill and overfill prevention equipment prescribed in this subsection if one or more of the following conditions are applicable to such system:

(i) (No change.)

(ii) the underground storage tank system is equipped with alternative equipment which has been reviewed and determined by the executive director to prevent spills and overfills of regulated substances in a manner that is no less protective of human health and the environment than the equipment prescribed in this subsection, pursuant to procedures for variances found in §334.43 [as provided in §334.43] of this title (relating to Variances and Alternative Procedures); or

(iii) the installation of the spill and overfill prevention equipment prescribed in this subchapter has been reviewed and determined by the executive director to be impracticable or unreasonable due to the type, design, or use of the underground storage tank system, pursuant to procedures for variances found in §334.43 [as provided in §334.43] of this title (relating to Variances and Alternative Procedures).

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

(c) (No change.)

§334.55. Permanent Removal from Service.

(a) General provisions.

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

(6) As part of the required procedure for the permanent removal of any underground storage tank system from service, the owner or operator shall determine whether or not any prior release of a stored regulated substance has occurred from the system.

(A) (No change.)

(B) This determination shall be made by visual inspection of the area in and immediately surrounding the excavation zone for any aboveground releases and for any exposed belowground releases, and by using one or both of the following methods or procedures:

(i) the continual operation (through the time that the stored regulated substances are removed from the underground storage tank system) of one or more of the external release monitoring and detection methods operating in accordance

with §334.50(d) (5)-(d)(9) [§334.50(d)(4)-(d)(8)] of this title (relating to Release Detection); or

(ii) (No change.)

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

(7)-(9) (No change.)

(b)-(f) (No change.)

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

Issued in Austin, Texas, on July 1, 1994.

TRD-9443365

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: August 8, 1994

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

Subchapter D. Release Reporting and Corrective Action

• 30 TAC §334.77

The amendment is proposed under the Texas Water Code, §5.103, which authorizes the TNRCC to promulgate rules necessary to carry out the powers and duties under the Texas Water Code and other laws of this state.

§334.77. Initial Abatement Measures and Site Check.

(a) (No change.)

(b) Within [Unless directed to do otherwise by the executive director, within] 20 days after release confirmation, owners and operators must submit a report to the executive director summarizing the initial abatement steps taken under subsection (a) of this section and any resulting information or data unless another reporting period is specified by the executive director.

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 July 1, 1994.

TRD-9443364

Mary Ruth Holder
Director, Legal Services
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: August 8, 1994

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing-[through] Electronic Funds Transfers

• 34 TAC §5.11, §5.13

The Comptroller of Public Accounts proposes amendments to §5.11 and §5.13, concerning claims processing—electronic funds transfers. The amendments will conform the sections with new §5.16, concerning the use of electronic funds transfers to reimburse state employees for travel expenses incurred while conducting official state business.

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

Mr. Reissig also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be in providing new information regarding electronic funds transfers. There will be no significant fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rules.

Comments on the proposals may be submitted to Kenny McLeskey, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711

The amendments are proposed under the Texas Government Code, §403.016, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the electronic funds transfer system. The amendments implement the Government Code, §403.016

§5.11. Miscellaneous Provisions. (Government Code, §403.016).

(a) (No change.)

(b) References to payments by the comptroller. When a rule of this undesignated head refers to the comptroller paying or reimbursing an individual or entity, the reference means

(1) (No change.)

(2) the comptroller's payment or reimbursement of an individual or entity in satisfaction of obligations owed to the individual or entity by the comptroller as a result of the fulfillment of the comptroller's constitutional or statutory duties.

(c) (No change.)

§5.13. Paying State Employees Through Electronic Funds Transfers. (Government Code, §403.016).

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

(1)-(14) (No change.)

(15) Travel expense—A transportation, meals, lodging, or incidental expense incurred by a state employee while traveling on official state business according to state law and the State of Texas Travel Allowance Guide.

(b) (No change.)

(c) Payments by the comptroller.

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

(6) Claiming an exemption.

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

(C) A state employee may claim an exemption for payments of compensation without claiming an exemption for travel reimbursements. When a state employee claims an exemption only for payments of compensation from a state agency, the agency is solely responsible for ensuring that the payments are not paid through the electronic funds transfer system.

(D)[(C)] A custodial state agency must retain the authorization forms on which state employees and participating state employees have claimed the exemptions provided by this subsection. The agency may not send the forms to the comptroller. The agency must make the forms available to the state auditor and the comptroller upon request. The agency may destroy a form no earlier than the second anniversary of the employee's termination of employment with the agency.

(d)-(i) (No change.)

(j) Compensatory per diem and[.] salary per diem[, travel expense and subsistence] payments. The comptroller intends to adopt rules at a later date concerning compensatory per diem and [.] salary per diem[, travel expense, and subsistence] payments to state employees through the electronic funds transfer system. Until then, the comptroller has determined that it would be impractical to make those payments through the electronic funds transfer system.

(k) Miscellaneous provisions.

(1) General effective date. Except as otherwise provided in this subsection, this section first took effect on June 10, 1992 [, takes effect on the earliest date

it may take effect under the Texas Civil Statutes, Article 6252-13a, Administrative Procedure and Texas Register Act].

(2) (No change.)

(3) Applicability of section. This section applies to all state employees whose compensation is paid through the electronic funds transfer system, including employees whose compensation was first paid through the electronic funds transfer system before June 10, 1992 [the effective date of this section].

(4) Existing accounts.

(A) This subparagraph applies to each account of a state employee that received a payment of the employee's compensation through the electronic funds transfer system before June 10, 1992 [the effective date of this section]. Each account is an EFT account for the purpose of this section unless:

(i) the employee properly notified the employer of the employee before June 10, 1992, [the effective date of this section] that the account would no longer be available to receive electronic funds transfers; and

(ii) the notification was [is] still in effect on June 10, 1992 [the effective date of this section].

(B) A state employee that has one or more EFT accounts under subparagraph (A) of this paragraph on June 10, 1992, [the effective date of this section] is a participating state employee on that date for the purpose of this section.

(C) An employer of a state employee that is the custodial state agency for more than one EFT account of the employee on June 10, 1992, [the effective date of this section] may terminate the designation of one or more of those accounts only if subsection (e)(4) of this section authorizes the termination. The requirement in subsection (e)(2) of this section to obtain the consent of an employer before designating a second or subsequent EFT account does not apply to the accounts that are EFT accounts under subparagraph (A) of this paragraph on June 10, 1992 [the effective date of this section].

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 June 30, 1994.

TRD-9443222

Martin E. Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption: August 8, 1994

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

◆ ◆ ◆
• 34 TAC §5.16

The Comptroller of Public Accounts proposes new §5.16, concerning claims processing—electronic funds transfers. The new section covers requirements and procedures for using the electronic funds transfer system to reimburse state employees for travel expenses incurred while conducting official state business.

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

Dr. Plaut also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding electronic funds transfers. There will be no significant fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the new section may be submitted to Kenny McLeskey, Manager of Claims Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Texas Government Code, §403.016, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the electronic funds transfer system. The amendment implements the Government Code, §403.016.

§5.16. Reimbursing the Travel Expenses of State Employees Through Electronic Funds Transfers.

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

(1) Above group 7—Group 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, or 21.

(2) Annuitant—An individual who receives substantially equal and periodic benefit payments from one or more retirement plans administered by a retirement system.

(3) Authorization form—The form designed by the comptroller and used in accordance with this section.

(4) Below group 8—Group 2, 3, 4, 5, 6, or 7.

(5) Classification salary schedule—The classification salary schedule and the detailed listing of all classified positions table in the General Appropriations Act.

(6) Compensation—The salary, wages, and other compensation that a state employee earns as consideration for providing services to a state agency. The term excludes a payment of compensatory or salary per diem; a lump sum payment of accrued vacation leave; a lump sum payment of accrued sick leave; a lump sum payment of amounts deducted under the Federal Insurance Contributions Act; a reimbursement of meal expenses incurred while conducting official state business; and any payment made pursuant to a supplemental payroll voucher submitted to the comptroller.

(7) Custodial state agency—The state agency to which a state employee or a participating state employee submitted a properly completed authorization form to designate an EFT account, claim an exemption from the requirement to reimburse travel expenses through the electronic funds transfer system, or transfer custodianship of an EFT account from one state agency to another.

(8) EFT account—An account that has been designated in accordance with this section to receive credit entries.

(9) Participating state employee—A state employee who receives credit entries initiated by the comptroller.

(10) Paying state agency—With respect to a particular credit or debit entry, the state agency that requested the comptroller to initiate the entry.

(11) Retirement system—The Employees Retirement System of Texas or the Teacher Retirement System of Texas.

(12) State agency—A governmental entity that employs one or more state employees. The term includes the comptroller.

(13) State employee—An individual whose compensation either is paid by warrant issued by the comptroller and made payable to the individual or is paid through the comptroller's electronic funds transfer system. The fact that an individual is a head of agency, a parttime employee, an hourly employee, a temporary employee, an employee who is not covered by the Position Classification Act of 1961, a member of a governmental body, an appointed or elected officer or official of the state, a member of the legislature, or a combination of the preceding is irrelevant when determining whether the individual is a state employee. However, the term does not include an independent contractor, the employee of an independent contractor, or an annuitant.

(14) Travel expense—A transportation, meal, lodging, or incidental expense incurred by a state employee while traveling on official state business according to state law and the *State of Texas Travel Allowance Guide*.

(b) Mandatory or voluntary participation.

(1) Mandatory participation.

(A) Except as provided in subparagraph (C) of this paragraph, a state employee who holds a position included in the classification salary schedule must be a participating state employee.

(B) Except as provided in subparagraph (C) of this paragraph, a state employee who does not hold a position included in the classification salary schedule must be a participating state employee.

(C) A state employee is not required to be a participating state employee if subsection (c)(2)-(5) of this section would prohibit the employee's travel expenses from being reimbursed through the electronic funds transfer system if the employee were a participating employee. An employee who is not required to be a participating state employee under this subparagraph must claim an exemption for each state agency that reimburses the employee's travel expenses in accordance with subsection (c)(6) of this section.

(2) Voluntary participation

(A) A state employee who is not required by paragraph (1) of this subsection to be a participating state employee may be a participating state employee.

(B) This subparagraph applies only to reimbursements of travel expenses that are not required by this section to be made through the electronic funds transfer system. A state employee and a state agency may agree on which reimbursements of travel expenses from the agency will be made through the electronic funds transfer system. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement; and

(ii) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(3) Powers and responsibilities of the comptroller and state agencies.

(A) This paragraph applies only to a state employee who is required by paragraph (1) of this subsection to be a participating state employee.

(B) A state agency must ensure that each state employee to whom the agency reimburses travel expenses is a participating state employee.

(C) If a state employee is required but refuses or fails to become a participating state employee, then the employee's travel expense reimbursements may be retained by the paying state agency until the employee becomes a participating state employee.

(c) Payments by the comptroller.

(1) Payment methods.

(A) Except as otherwise provided in this subsection, the comptroller must reimburse a participating state employee's travel expenses through the electronic funds transfer system.

(B) The comptroller may not reimburse a nonparticipating state employee's travel expenses through the electronic funds transfer system.

(C) The state agency on whose behalf the comptroller reimburses travel expenses is responsible for determining whether the reimbursement must be made through the electronic funds transfer system. The comptroller may rely on that determination.

(2) Exemption based on classification.

(A) Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not reimburse through the electronic funds transfer system the travel expenses of a participating state employee who holds a position classified below group 8 of the classification salary schedule unless the employee has been approved to be paid in this way under subsection (b)(2) of this section.

(B) When a participating state employee holds a position classified below group 8 of the classification salary schedule, the employee holds that position for the purpose of this paragraph even if the compensation paid to the employee exceeds the compensation paid to certain state employees who hold positions classified above group 7.

(C) When a participating state employee holds a position classified above group 7 of the classification salary schedule, the employee holds that position for the purpose of this paragraph even if the compensation paid to the employee is less than the compensation paid to certain state

employees who hold positions classified below group 8.

(3) Exemption based on cost. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not reimburse the travel expenses of a participating state employee through the electronic funds transfer system if:

(A) the comptroller determines that making the reimbursement by warrant would cost less to the state,

(B) the employee determines that making the reimbursement by warrant would cost less to the employee, or

(C) the paying state agency determines that making the reimbursement by warrant would cost less to the agency

(4) Exemption based on impracticality.

(A) Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not reimburse the travel expenses of a participating state employee through the electronic funds transfer system if:

(i) the comptroller determines that making the reimbursement through the electronic funds transfer system would be impractical to the state;

(ii) the employee determines that making the reimbursement through the electronic funds transfer system would be impractical to the employee; or

(iii) the paying state agency determines that making the reimbursement through the electronic funds transfer system would be impractical to the agency.

(B) Notwithstanding subparagraph (A)(iii) of this paragraph, a state agency must adopt a written policy before it may determine that reimbursing the travel expenses of any state employee through the electronic funds transfer system is impractical to the agency. The policy must clearly state the circumstances under which the agency will find impracticability. The policy must be made available to the comptroller, the state auditor, and state employees upon request.

(5) Exemption based on inability to obtain an account. Notwithstanding paragraph (1)(A) of this subsection, the comptroller may not reimburse the travel expenses of a participating state employee through the electronic funds transfer system if the employee is unable to obtain an account at a financial institution that may be used to receive credit entries

(6) Claiming an exemption.

(A) The exemption provided in paragraph (2)(A), (3)(B), (4)(A)(ii), or (5) of this subsection does not apply until a state employee or participating state employee properly claims the exemption in accordance with this paragraph

(B) A state employee or participating state employee may claim an exemption only by properly completing an authorization form and submitting the form to the paying state agency. An exemption applies only to travel reimbursements from the paying state agency to which the state employee or participating state employee submitted the authorization form

(C) A state employee may claim an exemption for travel expense reimbursements without claiming an exemption for payments of compensation. When a state employee claims an exemption only for travel expense reimbursements from a state agency, the agency is solely responsible for ensuring that the reimbursements are not paid through the electronic funds transfer system

(D) A custodial state agency must permanently retain the authorization forms on which state employees and participating state employees have claimed the exemptions provided by this subsection. The agency may not send the forms to the comptroller. The agency must make the forms available to the state auditor and the comptroller upon request

(d) Commencement and termination of participation

(1) Obtaining authorization forms. Except as provided in subsection (c) (3) and (5) of this section, a state employee or a participating state employee may obtain an authorization form from any state agency.

(2) Becoming a participating state employee.

(A) A state employee who is required or who wants to be a participating state employee must properly designate an EFT account in accordance with subsection (e)(1) of this section

(B) A state employee is not a participating state employee until the employee has properly designated at least one EFT account and the designation has become effective

(3) A participating state employee's termination of the employee's participation.

(A) A participating state employee may terminate the employee's participation if.

(i) the employee voluntarily became a participating state employee under subsection (b)(2) of this section, or

(ii) none of the employee's travel expense reimbursements are still required by law to be made through the electronic funds transfer system

(B) A participating state employee may terminate the employee's participation only by terminating the designation of each of the employee's EFT accounts in accordance with subsection (e)(3) of this section

(C) The comptroller may not initiate a credit entry to a state employee on or after the effective date of the termination of the designation of the employee's last EFT account

(4) A custodial state agency's termination of a participating state employee's participation.

(A) A custodial state agency may terminate a participating state employee's participation only if the agency is the only custodial state agency for the employee

(B) A custodial state agency may terminate the participation of a participating state employee if:

(i) the agency determines in accordance with subsection (c)(4) of this section that continued participation would be impractical to the agency, or

(ii) the agency no longer reimburses the travel expenses of the employee

(C) If a custodial state agency is authorized under this paragraph to terminate the participation of a participating state employee, then the agency may do so only by terminating the designation of each of the employee's EFT accounts in accordance with subsection (e)(4) of this section.

(D) The comptroller may not initiate a credit entry to a state employee on or after the effective date of the termination of the designation of the employee's last EFT account.

(E) A participating state employee's participation may be terminated under this paragraph without prior notice to the employee

(5) Inquiries.

(A) A participating state employee may contact only the paying state agency when the employee has a question about a particular credit entry or debit entry.

(B) If a participating state employee receives an unidentified credit entry or debit entry, the employee must first contact its financial institution to obtain necessary information about the entry. If the financial institution is unable to provide the information, then the employee may ask the comptroller for the information

(C) A participating state employee may contact any state agency if the employee has a question about this section

(6) Rules. A participating state employee shall comply with the rules as amended from time to time

(e) EFT accounts.

(1) Designating an EFT account.

(A) A state employee or a participating state employee may designate an EFT account if:

(i) the employee properly completes an authorization form and submits the form to a state agency;

(ii) the account to be designated as an EFT account is a checking or savings account of the employee; and

(iii) the account to be designated as an EFT account is at a financial institution that allows credit entries to be made to the account

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) If a state employee or a participating state employee properly designates an EFT account, the effective date of the designation is the fourteenth calendar day after the comptroller processes the information on the authorization form. The comptroller may initiate credit entries to the EFT account on or after the effective date

(2) Multiple EFT accounts.

(A) Notwithstanding anything else in this paragraph, a state employee may require each state agency that reimburses the employee's travel expenses to be the custodial state agency for one EFT account of the employee. The employee

may impose this requirement without obtaining the consent of any state agency.

(B) This subparagraph applies when a state employee wants a state agency to be the custodial state agency for more than one of the employee's EFT accounts. The employee may not designate a second or subsequent EFT account unless the state agency consents to each account beyond the first account.

(C) Subject to the other requirements of this paragraph, a participating state employee may designate a second or subsequent EFT account by properly completing an authorization form and submitting the form to the appropriate state agency.

(D) A state agency may not submit a participating state employee's authorization form to the comptroller if:

(i) the form would designate an EFT account for the employee, and

(ii) the employee has already designated the same account as an EFT account.

(E) A participating state employee that has multiple EFT accounts and a state agency may agree that a certain type of travel expense reimbursement will be paid only to the account or accounts designated in the agreement. Unless the comptroller is a party to the agreement:

(i) the comptroller is not required to take any actions to facilitate or ensure the agency's compliance with the agreement, and

(ii) the comptroller is not liable for any damages that result from the agency's failure to comply with the agreement.

(3) A participating state employee's termination of the designation of an EFT account

(A) A participating state employee may terminate the employee's designation of an EFT account if the termination would not result in a violation of subsection (b)(1) of this section

(B) A participating state employee may terminate the designation of all the employee's EFT accounts if the employee is authorized by subsection (d)(3) of this section to terminate the employee's participation.

(C) A participating state employee may terminate the employee's designation of an EFT account only by.

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the agency.

(D) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(E) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(4) A custodial state agency's termination of the designation of an EFT account.

(A) A state agency may terminate the designation of an EFT account if:

(i) the agency is the custodial state agency for the account;

(ii) the agency properly completes an authorization form and submits the form or the information on the form to the comptroller in accordance with the comptroller's requirements; and

(iii) the termination would not result in a violation of subsection (b)(1) of this section.

(B) The comptroller may not initiate a credit entry to an EFT account on or after the date on which the comptroller processes the information on the authorization form that terminates the designation of the account.

(C) The designation of an EFT account may be terminated under this paragraph without prior notice to the state employee or the participating state employee that owns the account.

(5) Modifying information about an EFT account.

(A) A participating state employee may modify information about an EFT account of the employee only by:

(i) obtaining an authorization form from the custodial state agency for the account;

(ii) properly completing the form; and

(iii) submitting the form to the agency.

(B) A custodial state agency shall promptly submit a properly completed authorization form or the information on the form to the comptroller in accordance with the comptroller's requirements.

(C) New information about an EFT account applies to credit entries that the comptroller initiates on or after the fourteenth calendar day after the comptroller processes the information on the authorization form that provides the new information.

(6) Number of custodial state agencies. An EFT account has only one custodial state agency at any given time.

(f) The comptroller's powers and responsibilities.

(1) Initiating debit entries.

(A) The comptroller may initiate a debit entry to an EFT account of a participating state employee if the appropriate paying state agency determines that an erroneous credit entry has been made to the account.

(B) The comptroller may initiate a debit entry to an account of a state employee if:

(i) the appropriate paying state agency determines that an erroneous credit entry has been made to the account;

(ii) the erroneous credit entry was made to the account when it was an EFT account; and

(iii) the erroneous credit entry was made when the state employee was a participating state employee.

(C) The comptroller may initiate a debit entry without prior notice to a state employee or a participating state employee.

(2) Compliance with the rules. The comptroller must comply with the rules when initiating credit entries and debit entries.

(3) Contacts. The comptroller may contact a state agency or a participating state employee if the comptroller has a question about a credit entry or debit entry.

(4) Termination of a participating state employee's participation.

(A) The comptroller may terminate the participation of a participating state employee at any time if the termina-

tion would not result in a violation of subsection (b)(1) of this section.

(B) The comptroller may terminate participation under this paragraph without providing prior notice to the participating state employee.

(5) Termination of the designation of an EFT account.

(A) The comptroller may terminate the designation of an EFT account at any time if the termination would not result in a violation of subsection (b) (1) or (c)(1)(A) of this section.

(B) The comptroller may terminate the designation of an EFT account without providing prior notice to the participating state employee that owns the account.

(6) Stop payments. The comptroller's authority to stop the payment of a credit entry is equivalent to the comptroller's authority to stop the payment of a warrant.

(g) Acceptance and return of credit entries.

(1) Voluntary acceptance of credit entries. Neither a participating state employee nor a participating state employee's financial institution is required to accept a credit entry. However, a rejected credit entry must be returned in accordance with the rules.

(2) Liability resulting from the rejection of credit entries.

(A) The comptroller, the state treasurer, and a state agency are not liable for the consequences of the rejection of a credit entry by a participating state employee or the employee's financial institution.

(B) When a credit entry is rejected, the State of Texas and its state agencies:

(i) are not in default on any obligation; and

(ii) shall not incur any penalty, interest, or late charge by reason of the rejection.

(3) Rejection of credit entries. Even if a participating state employee or the employee's financial institution does not reject a credit entry in accordance with the rules, the employee does not accept a credit entry as being in the correct amount if:

(A) the employee ensures that the paying state agency receives written

notice by no later than the thirtieth calendar day after the employee's financial institution receives the credit entry; and

(B) the written notice clearly states that the amount of the credit entry is erroneous

(h) Credit for paying state agencies.

(1) Applicability. This subsection applies unless a participating state employee returns a credit entry in accordance with subsection (g) of this section

(2) When credit required. A participating state employee shall credit the paying state agency for the amount of a credit entry on the effective date of the credit entry, regardless of when the employee's financial institution posts the credit entry to the employee's account.

(3) Accrual of interest and other charges or fees. The accrual of interest or other charges or fees payable with respect to the amount of a credit entry shall cease when a participating state employee credits the paying state agency for the credit entry.

(i) Liability

(1) Liability for actions of certain parties. A participating state employee, the State of Texas, a state agency, a paying state agency, the comptroller, the state treasurer, and a custodial state agency are not liable for the act or omission of any automated clearing house, financial institution, or other person or entity except as specified in the rules.

(2) Liability for actions of state agencies or paying state agencies. Neither the comptroller nor the state treasurer is liable for damages arising out of delays caused or errors committed by a state agency or a paying state agency.

(j) Miscellaneous provisions.

(1) General effective date. Except as otherwise provided in this subsection, this section takes effect on the earliest date it may take effect under the Administrative Procedure Act, Government Code, Chapter 2002.

(2) Applicability of section. This section applies to all state employees whose travel expense reimbursements are made through the electronic funds transfer system, including employees whose travel expense reimbursements were first made through the electronic funds transfer system before the effective date of this section.

(3) Existing accounts.

(A) This subparagraph applies to each account of a state employee that received a travel expense reimbursement through the electronic funds transfer

system before the effective date of this section. Each account is an EFT account for the purpose of this section unless:

(i) the employee properly notified the custodial state agency of the account before the effective date of this section that the account would no longer be available to receive electronic funds transfers; and

(ii) the notification is still in effect on the effective date of this section.

(B) A state employee that has one or more EFT accounts under subparagraph (A) of this paragraph on the effective date of this section is a participating state employee for the purpose of this section.

(C) A custodial state agency for more than one EFT account of a state employee on the effective date of this section may terminate the designation of one or more of those accounts only if subsection (e)(4) of this section authorizes the termination. The requirement in subsection (e)(2) of this section to obtain the consent of a state agency before designating a second or subsequent EFT account does not apply to the accounts that are EFT accounts under subparagraph (A) of this paragraph on the effective date of this section.

(4) Existing exemptions relating to the payment of compensation.

(A) In this paragraph, "compensation exemption" means an exemption claimed under §5 13 of this undesignated head (relating to Claims Processing—Electronic Funds Transfer) from the requirement to pay compensation through the electronic funds transfer system.

(B) A compensation exemption that is in effect on the effective date of this section is also an exemption from the requirement in this section to reimburse travel expenses through the electronic funds transfer system. The exemption remains in effect until properly rescinded or superceded.

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 June 30, 1994.

TRD-9443319

Martin E Cherry
Chief, General Law
Section
Comptroller of Public
Accounts

Earliest possible date of adoption. August 8, 1994

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

Subchapter OO. Electronic Benefit Transfer (EBT) Retailer Requirements

• 40 TAC §§3.5001-3.5010

The Texas Department of Human Services (DHS) proposes new §§3.5001-3.5010, concerning Electronic Benefit Transfer (EBT) retailer requirements in the Aid to Families with Dependent Children (AFDC) and Food Stamp Programs, in its Income Assistance Services rule chapter. In the June 10, 1994, issue of the *Texas Register* (19 TexReg 4515), DHS proposed rules which describe benefit issuance via EBT as it affects AFDC and Food Stamp clients. The purpose of this proposal is to establish rules regarding the relationship between retailers and the primary EBT contractor and between retailers and DHS.

The proposed new sections delineate the qualifications and general conditions for retailer participation, requirements for retailers operating point-of-sale (POS) terminals supplied by the EBT contractor, and provisions for POS terminal deployment. The rules will also govern off-line (manual) transactions, settlements and credits, and third-party processor requirements. In addition, the rules will outline appeal rights regarding disputes between a retailer, third-party processor, and the primary EBT contractor.

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

Mr. Raiford also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be rules that govern EBT retailer participation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of the proposal may be directed to Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-201, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

The proposal implements the Human Resources Code, §22.001 and §33.002.

§3.5001. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

ACF—The Administration for Children and Families Office of Family Assistance, of the United States Department of Health and Human Services.

ACH—Automated Clearing House Network. The ACH network is operated by the Federal Reserve and financial institutions to electronically process funds transfers between financial institutions.

AFDC—Aid to Families with Dependent Children. AFDC program benefits are administered federally by ACF.

Advice—Message that notifies a party of an action that has already been taken and that requires no approval, but requires acknowledgement of receipt. An Advice may be declined if the transaction data does not match the corresponding voice authorization.

Banking Business Day—A calendar day (beginning at 12:00 midnight and ending the following 12:00 midnight) other than a calendar day that is a Saturday, Sunday, or day on which banks and federal institutions are closed.

CFR—The United States Code of Federal Regulations.

Cash back—The disbursement of funds from a cash benefit account transacted through a point-of-sale (POS) terminal.

Client—A household member and/or his authorized representative eligible to receive AFDC and/or Food Stamp program benefits and to perform transactions using an EBT card.

DHS—The Texas Department of Human Services.

EBT—Electronic Benefit Transfer. The delivery of government benefits through electronic means and media.

EBT system—A computer-based system in which the benefit authorization is received from a central computer through a POS terminal.

EBT program transactions—Transactions involving the authorization, issuance, redemption, accounting, settlement, and/or reconciliation of, and/or query with respect to, EBT program benefits, and/or EBT program benefit accounts.

Equipment—The hardware and equipment, if any, to be provided to a retailer by the primary EBT contractor on behalf of the Texas Department of Human Services (DHS).

Food and Nutrition Service (FNS)—Division of the United States Department of Agriculture responsible for administering the Food Stamp Program.

Food stamps—The federal food assistance program administered by FNS.

Primary Account Number (PAN)—The client's EBT number embossed and encoded on the EBT card. The number identifies the issuer and specifies an individual account or hierarchy of accounts.

POS terminal—Point-of-sale terminal used in connection with the authorization and redemption of EBT program benefits, whether or not the terminal is used for other purposes.

Primary EBT contractor—The vendor who has been awarded the contract by DHS to provide EBT services in Texas.

Software—The software operating on and/or in connection with the equipment.

Third-party processor—Financial institution; cardholder authorization processor, other than the primary EBT contractor; and a retailer, in the event the retailer drives POS terminals for itself and/or other retailers that are capable of relaying EBT program transactions to the EBT system central-database computer for authorization through its own systems.

§3.5002. Qualifications for Retailers and Third-Party Processors.

(a) Participation in the Electronic Benefit Transfer (EBT) program is limited to retailers and third-party processors who do business in and along the state borders of the state of Texas.

(b) A retailer must be either.

(1) currently authorized by the Food and Nutrition Service (FNS) to participate in the Food Stamp program, or

(2) a non-FNS-certified retailer that has executed a written agreement with the primary EBT contractor to provide Aid to Families with Dependent Children (AFDC) cash back.

(c) A retailer or third-party processor must represent and warrant that it validly exists and is in good standing under the laws of the jurisdiction of its organization.

(d) A retailer must represent and warrant that the facility in which a point-of-sale (POS) terminal(s) is or will be located complies with all applicable building and zoning codes and ordinances.

(e) A retailer or third-party processor must not have been debarred from contracting by any unit of the federal government or any unit of a state government.

(f) A retailer or third-party processor that is a for-profit corporation must not be delinquent in making state franchise tax payments.

§3.5003. General Conditions for Retailer and Third-Party Processor Participation.

(a) Compliance with program regulations. Retailer participation is governed by federal regulations set forth in 7 Code of Federal Regulations (CFR), §274.12(g). A retailer must also comply with all program regulations governing retailer participation in the Food Stamp program as codified in 7 CFR, §§274 and 278 and this title of the Texas Administrative Code.

(b) Written agreement. A retailer or third-party processor and the primary Electronic Benefit Transfer (EBT) contractor must execute a written agreement adopted in compliance with 7 CFR §274.12(g)(6)

(c) Voluntary participation

(1) Participation in the EBT program by a retailer is voluntary. A Food and Nutrition Service-certified retailer must notify the primary EBT contractor in writing that it wishes to decline participation in the EBT program.

(2) If a retailer is suspended or terminated as a redeemer of Food Stamp program benefits, for any reason, the retailer must immediately notify the primary EBT contractor and cease utilization of the EBT system to redeem Food Stamp benefits

(d) Training. Retail store employees must be trained in EBT system operation prior to implementation.

(1) The primary EBT contractor must provide a retailer with training in the processing of EBT program transactions, including the operation of the equipment (if supplied by the primary EBT contractor). The primary EBT contractor must notify the retailer in advance of the retailer's scheduled time for in-person training.

(2) In lieu of in-person training, retailers may receive training by mail. These retailers must certify that they have undertaken the course of written instruction with their staff.

(e) Systems testing. After training has been completed, the primary EBT contractor visits the site to determine whether a retailer's equipment, whether supplied by the primary EBT contractor, a third-party processor, or the retailer has passed system testing. When system testing has been approved, access to the EBT system is granted

(f) Nondiscrimination. A retailer must not, on the grounds of race, color, national origin, age, sex, disability, religious belief, or political belief, refuse to process a client's EBT program transaction, or otherwise subject any client, employee, or applicant to actions which are discriminatory in nature.

(g) No charge. A retailer may not charge a fee to a client to access the EBT system.

(h) Sufficient cash. A retailer redeeming Aid to Families with Dependent Children (AFDC) program benefits by providing cash back on a no-purchase-required basis must maintain a sufficient amount of cash on hand to accommodate cash-back transaction volumes.

(i) Certifications. A retailer must complete and agree to comply with the terms of:

(1) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion for Covered Contracts; and

(2) Texas Corporate Franchise Tax Certification (if applicable).

(j) Compliance Audits. A retailer and third-party processor must conduct audits of itself and its processing agents at least annually to ensure compliance with the terms of the Retailer or Third-Party Processor Agreement and the processor interface specifications. These audits may be conducted by either the retailer's or third-party processor's internal auditing staff or by their external auditors, at their option. The resulting letter of compliance must be filed annually with the primary EBT contractor.

§3.5004. Requirements for Retailers Operating Point-of-Sale (POS) Terminals Supplied by the Primary EBT Contractor.

(a) Site survey. A retailer must permit the primary Electronic Benefit Transfer (EBT) contractor to conduct all necessary site surveys at all locations of a retailer participating in the EBT program. During the course of this survey, the primary EBT contractor must determine the equipment needs for each qualified location to comply with the applicable POS terminal deployment provisions stated in §3.5005 of this title (relating to Deployment of Point-of-Sale (POS) Terminals (Food Stamp Redeemers Only)).

(b) Equipment. A retailer may, but is not required to, obtain equipment from the primary EBT contractor which is needed to allow the retailer to participate in the EBT program. The primary EBT contractor must supply equipment necessary to participate in the Food Stamp program at no charge to Food and Nutrition Service-certified retailers who choose to receive this equipment. The equipment must be the sole property of the primary EBT contractor.

(c) Terminal software license. Software provided to retailers is provided by the primary EBT contractor under license. The terms and conditions of the license must be contained in the terms and conditions of the Retailer Agreement.

§3.5005. Deployment of Point-of-Sale (POS) Terminals (Food Stamp Redeemers Only).

(a) General. POS terminals, whether provided by the primary Electronic Benefit Transfer (EBT) contractor or a third-party processor, must be deployed in accordance with 7 CFR §272.12(g)(4)(ii).

(b) Optional terminals. A retailer has the option to deploy a POS terminal(s) within their respective store office, customer service area, or other location, to enable clients not making a purchase to complete account balance inquiries, credit transactions, and cash back transactions.

(c) Minimum redemptions. The primary EBT contractor must supply equipment at no cost to the retailer only if a retailer's Food Stamp program redemptions average more than \$100 per month over any six-month period. A retailer whose Food Stamp program redemptions average less than \$100 per month over any six-month period may participate in the EBT program using the manual voucher transaction process. These retailers may participate in the electronic system, if they choose; however, these retailers must acquire the hardware and equipment necessary to interface with the primary EBT contractor's system at their own expense.

(d) Special checkout lanes. A retailer may not establish special checkout lanes that are only for EBT program transactions. If special lanes are designated for the purpose of accepting other electronic debit or credit cards and/or other methods of payment, such as by checks, clients with EBT system cards may also be assigned to these lanes as long as other commercial customers are assigned there as well.

§3.5006. Off-Line (Manual) Transactions.

(a) Maximum authorization. The maximum authorized off-line (manual) transaction and benefit account encumbrance is \$50 per purchase. The primary Electronic Benefit Transfer (EBT) contractor, and not the Texas Department of Human Services (DHS), is liable to a retailer in the amount of the difference between the \$50 maximum and the actual authorized transaction amount when the authorized amount is higher.

(b) Manual vouchers with delayed telephone verification. The following procedures apply when a retailer uses manual vouchers with delayed telephone verification:

(1) A retailer who does not have immediate access to telephones at the time of purchase must use a manual voucher system with delayed telephone verification when selling food to eligible Food Stamp

customers. These retailers include stationary food stores which make home deliveries to Food Stamp households, house-to-house trade routes which operate on standing orders from customers (such as milk and bread delivery routes), food-buying cooperatives, and other food retailers authorized under 7 CFR §278.1.

(2) The retailer must telephone the primary EBT contractor before redeeming the manual voucher in order to log the transaction and obtain an authorization number.

(c) Manual vouchers with preliminary telephone verification. The following procedures apply when a retailer uses manual vouchers with preliminary telephone verification:

(1) A retailer must process off-line (manual) Food Stamp program redemptions accounts when he is able to contact the primary EBT contractor by telephone. A retailer may, at his option, process off-line (manual) Aid to Families with Dependent Children (AFDC) program cash back redemptions when he is able to contact the primary EBT contractor by telephone.

(2) An authorization number for the amount of purchase must be received by the retailer from the primary EBT contractor via telephone before completing the sale.

(d) Manual voucher submission and processing. This subsection applies to manual vouchers with delayed telephone verification and preliminary telephone verification.

(1) The following information must be entered properly and legibly on the manual voucher form:

(A) full names of the client and the sales clerk;

(B) client's primary account number (PAN) (this is the embossed number on the client's EBT debit card);

(C) total purchase amount;

(D) date of purchase; and

(E) telephone authorization number.

(2) The manual voucher must be submitted to the primary EBT contractor for processing within seven calendar days following the date of purchase.

(3) The primary EBT contractor must process submitted manual vouchers within two banking business days of receipt.

(4) A manual voucher found to be incomplete or otherwise improperly prepared and submitted must be returned to the retailer for correction and/or completion within four banking business days of the date the primary EBT contractor received it.

(e) Electronic voucher transaction (store-and-forward). When the link to the EBT System is down, a retailer may use off-line processing of EBT transactions if the retailer's system, or that of its designated third-party processor, has the capability to electronically store-and-forward an EBT program transaction. Store-and-forward transactions cannot be completed if the point-of-sale (POS) terminal system malfunctions. The following procedures apply to electronic voucher transactions:

(1) A retailer must complete a manual voucher as specified in subsection (d)(1) of this section.

(2) A retailer must obtain voice authorization from the primary EBT contractor prior to completing the manual voucher transaction. The authorization code must be entered on the manual voucher and in the advice.

(3) The period within which a retailer or third-party processor may submit the electronic voucher (advice) transaction to the primary EBT contractor shall not exceed seven calendar days from the date of the original EBT program transaction.

(f) Liability for off-line transactions. Liability is assessed as follows:

(1) DHS may be held liable only for those off-line (manual) transactions performed in accordance with the provisions set forth in the federal EBT regulations under 7 CFR §274.12(g)(6)(iv) and the processing standards specified under 7 CFR §274.12(h).

(2) The primary EBT contractor, and not DHS, is liable to the retailer for off-line (manual) transactions that are conducted in accordance with terms and conditions of the Retailer Agreement but for which an insufficient amount of benefits remain in the client's account at the time the manual voucher is presented for processing and payment.

(3) A retailer is not required to process off-line (manual) transactions except when he is able to contact the primary EBT contractor by telephone for authorization. If authorization cannot be obtained before or at the time of purchase, a retailer assumes the risk of insufficient benefits being available in the client's account.

(4) A retailer is liable for EBT program transactions completed using voice authorization and electronic voucher store-and-forward capabilities of a retailer's or third-party processor's system which are re-

jected by the primary EBT contractor upon electronic submission because the retailer and/or third-party processor failed to follow the procedures in subsection (e) of this section.

(g) Re-presentation of manual voucher. Neither the primary EBT contractor nor the retailer may "re-present" a manual voucher for payment if insufficient funds exist when the voucher is submitted for processing and payment.

§3.5007. *Third-Party Processors.* Retailers may choose to use a third-party processor. A third-party processor must comply with performance and technical standards set forth in 7 CFR, §274.12(h)(1) and (2). In order to participate, a third-party processor must:

(1) be able to meet all third-party interface specifications and certification standards associated with 7 CFR, §274.12 (h)(5);

(2) execute a written agreement adopted in accordance with 7 CFR, §274.12(g)(6) with the primary EBT contractor;

(3) meet the qualifications established in §3.5002(a), (c), (e), and (f) of this title (relating to Qualifications for Retailers and Third-Party Processors); and

(4) comply with applicable general conditions established in §3.5003 of this title (relating to General Conditions for Retailer and Third-Party Processor Participation).

§3.5008. *Settlements and Credits.*

(a) Settlement account. A retailer or third-party processor must maintain a settlement account with a federally insured financial institution capable of accepting credits and debits in the Automated Clearinghouse Network (ACH) format. A retailer or third-party processor must give the primary Electronic Benefit Transfer (EBT) contractor at least 30 days' advance notice of any changes in settlement account information.

(b) Retailer/processor cutoff time. A retailer or third-party processor must establish the daily time at which their banking business day ends for purposes of EBT program transactions.

(c) Primary EBT contractor cutoff time. The Texas Department of Human Services (DHS) establishes the daily time at which the primary EBT contractor's settlement day ends for purposes of EBT program transactions. The primary EBT contractor gives retailers and third-party processors a minimum of 15 days advance written notice of changes to the daily cutoff time

(d) Discrepancies and adjustments. Any discrepancy between the primary EBT contractor's and a retailer's or third-party processor's total must be communicated by the retailer or third-party processor within ten banking business days of discovery. Adjustment requests must be reported in writing and include the applicable documentation. Discrepancies or adjustments reported after 90 days from the settlement date are rejected by the primary EBT contractor.

§3.5009. *Resolution Procedures for Primary Electronic Benefit Transfer (EBT) Contractor, Retailer, and/or Third Party Processor Disputes*

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

(1) Initiator-The party initiating the process to resolve a dispute with the respondent.

(2) Respondent-The second party to the dispute identified by the initiator.

(3) Chargeback-A food account adjustment entry, against the respondent's settlement account, made as a result of the resolution of the dispute in favor of the Initiator.

(b) Subject matter of disputes. A dispute may be initiated for any reason deemed valid by the initiator, including, but not limited to, the reasons specified in paragraphs (1)-(3) of this subsection. However, client-related disputes are resolved in accordance with §3 2406 of this title (relating to Right to Appeal).

(1) processing errors, including duplicate processing,

(2) incorrect manual voucher; and

(3) delayed benefit draft recovery, if requested.

(c) Maximum time to initiate dispute. All disputes must be initiated with the respondent no later than 90 calendar days from the date the initiator knows or has reason to know of the dispute.

(d) Maximum time to complete the investigation and respond. The primary Electronic Benefit Transfer (EBT) contractor must respond in writing to all disputes within 20 banking business days of initiation.

(e) Funds flow. Funds flow only on resolution of the disputed EBT program transaction and is affected by use of the chargeback transaction. A chargeback may be issued against the primary EBT contractor, the retailer, or the third-party processor's settlement account.

§3.5010. Administrative Remedies Regarding Disputes. The following procedures concern contract-related complaints between a retailer or third-party processor and the primary Electronic Benefit Transfer (EBT) contractor

(1) All complaints must be referred to the primary EBT contractor for investigation and resolution.

(2) A retailer or third-party processor has the right to request an informal review of any decision of the primary EBT contractor. A written request for an informal review must be filed with the Texas Department of Human Services (DHS) so that DHS receives it within 15 days after the retailer or third-party processor receives the official notice of action from the primary EBT contractor. The request for a hearing must be addressed to the Texas Department of Human Services; Electronic Benefit Transfer Contract Management Unit, Mail Code E-304; P. O. Box 149030, Austin, Texas 78714-9030.

(3) Any retailer, third-party processor, or the primary EBT contractor who is dissatisfied with the results of an informal review may obtain an administrative hearing by written request submitted to the Texas Department of Human Services, Hearings Department (Mail Code W-613), P.O. Box 149030, Austin, Texas, 78714-9030.

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 July 1, 1994

TRD-9443371 Nancy Murphy
Section Manager, Policy
and Document Support
Texas Department of
Human Services

Proposed date of adoption October 1, 1994

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

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**Chapter 10. Self-support
Services [Family Self-
Support Services]**

Employment Services

- 40 TAC §§10.2312, 10.2313,
10.2314

The Texas Department of Human Services (DHS) proposes new §§10.2312, 10.2313, and 10.2314, concerning employment services in its Self-support Services chapter, formerly titled Family Self-support Services. The purpose of the new sections is to establish rules regarding employment services contracting to include administrative requirements, audits, and basis of payment

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

Mr Raiford also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be that employment services contracting will be conducted based on federal and state regulations and policies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections

Questions about the content of the proposal may be directed to Carol Barron at (512) 450-4242 in DHS's Self-support Services Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-173, Texas Department of Human Services W-402, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*

The new sections are proposed under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs

The new sections implements the Human Resources Code §22.001-22.024 Employment Services §10.2312 Administrative Requirements for the Employment Services Programs. The Texas Department of Human Services (DHS) and the Employment Services contractor must comply with Office of Management and Budget Circulars A-102 or A-110 as clarified by federal regulations and DHS guidelines. These circulars contain administrative requirements, such as property management and procurement, applicable to entities receiving federal funds

§10.2313 Audits of Employment Services Contractors

(a) All Employment Services contractors are subject to audit or review by the Texas Department of Human Services (DHS). DHS may audit all relevant records or statistically sample records and project findings, including overpayments, based on that sample. DHS may also audit cost or rate study data submitted by the contractor

(b) Employment Services contractors subject to the Single Audit Act must have an independent audit performed in compliance with either the Office of Management and Budget Circulars A-128 or A-133. The audit must be approved by the cognizant agency for the contractor, with a copy provided by the contractor to DHS for review by DHS. The contractor may be reimbursed by DHS for the DHS's share of audit expenses if prior approval by DHS is obtained, funding is available, the audit is found to be acceptable upon review by DHS, and the audit and reimbursement request are acceptable

§10.2314. Basis of Payment for Employment Services Program

(a) The Texas Department of Human Services (DHS) uses cost reimbursement or fixed fee methodologies as the basis of payment for Employment Services contractors. Cost reimbursement is used for program services and a fixed-fee unit rate is used for supportive services.

(b) Under cost reimbursement, the contractor is paid based on periodic actual, reasonable, allowable, properly allocated cost, up to the allocation of funds available. Budget and expenditure shifts are allowed subject to the terms of the contract.

(c) Costs are determined to be reasonable, allowable, and properly allocated in accordance with Office of Management and Budget Circulars A-21, A-87, and A-122; other applicable federal statutes and regulations, and DHS guidelines in the contract. There is no provision for profit in budgeting, payment, or reimbursement of Employment Services program services expense.

(d) Under fixed-fee, the supportive services contractor is paid a set unit rate for services delivered. Periodically, the contractor bills DHS a set rate(s) based on the actual units of service provided during the period. If the rate is cost-based, it is subject to reconciliation after the end of the contractor's fiscal year. At the end of the contractor's fiscal year, the contractor reconciles actual, reasonable, allowable, properly allocated rate per unit of service to the billed rate. If the rate paid by DHS was less than the actual, reasonable, allowable, properly allocated rate, the contractor is entitled to payment for the difference. If the actual, reasonable, allowable, properly allocated rate is less than the rate paid by DHS, the contractor must refund the difference.

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 June 30, 1994

TRD-9443326 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption September 1, 1994

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

Chapter 90. Nursing Facilities and Related Institutions

Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

• 40 TAC §90.215

The Texas Department of Human Services (DHS) proposes an amendment to §90.215, concerning investigations of incidents and complaints, in its Nursing Facilities and Related Institutions rule chapter. The purpose of the amendment is to incorporate into §90.215 recent changes in the Health and Safety Code, §242.126. The amendment clarifies that complaint investigations may include a visit to the resident's facility if DHS determines this is appropriate. The amendment makes this rule consistent with DHS's Personal Care Facility rules.

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

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a

result of enforcing the section will be elimination of a mandatory facility visit to investigate complaints. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Susan Syler at (512) 450-3111 in DHS's Institutional Policy Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-002, Texas Department of Human Services W-402, P O Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to regulate long-term care nursing facilities and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186.

§90.215. Investigations of Incidents and Complaints.

(a)-(c) (No change)

(d) Complaint investigations may [shall] include a visit [or visits] to the resident's facility [resident and the facility] and an interview with the resident, if DHS determines that these actions are appropriate. If the facility fails to admit DHS [department] staff for complaint [such] investigations, DHS [the department] will seek a probate or county court order for admission.

(e)-(g) (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 June 30, 1994

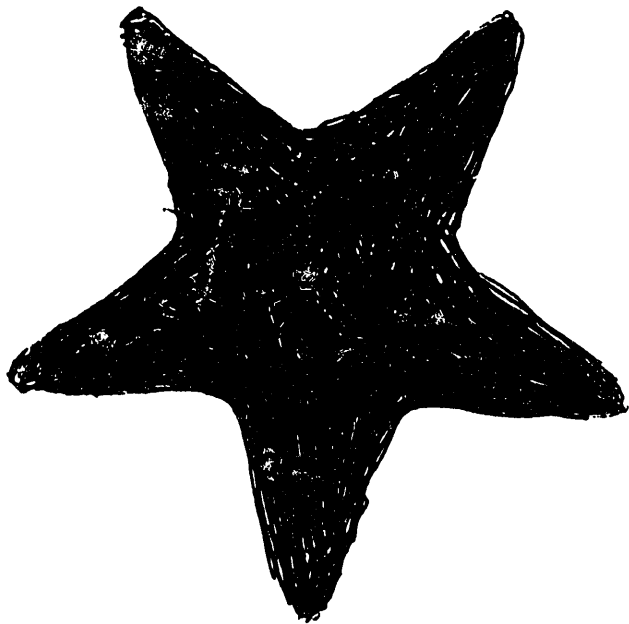
TRD-9443325

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

Proposed date of adoption September 1, 1994

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

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

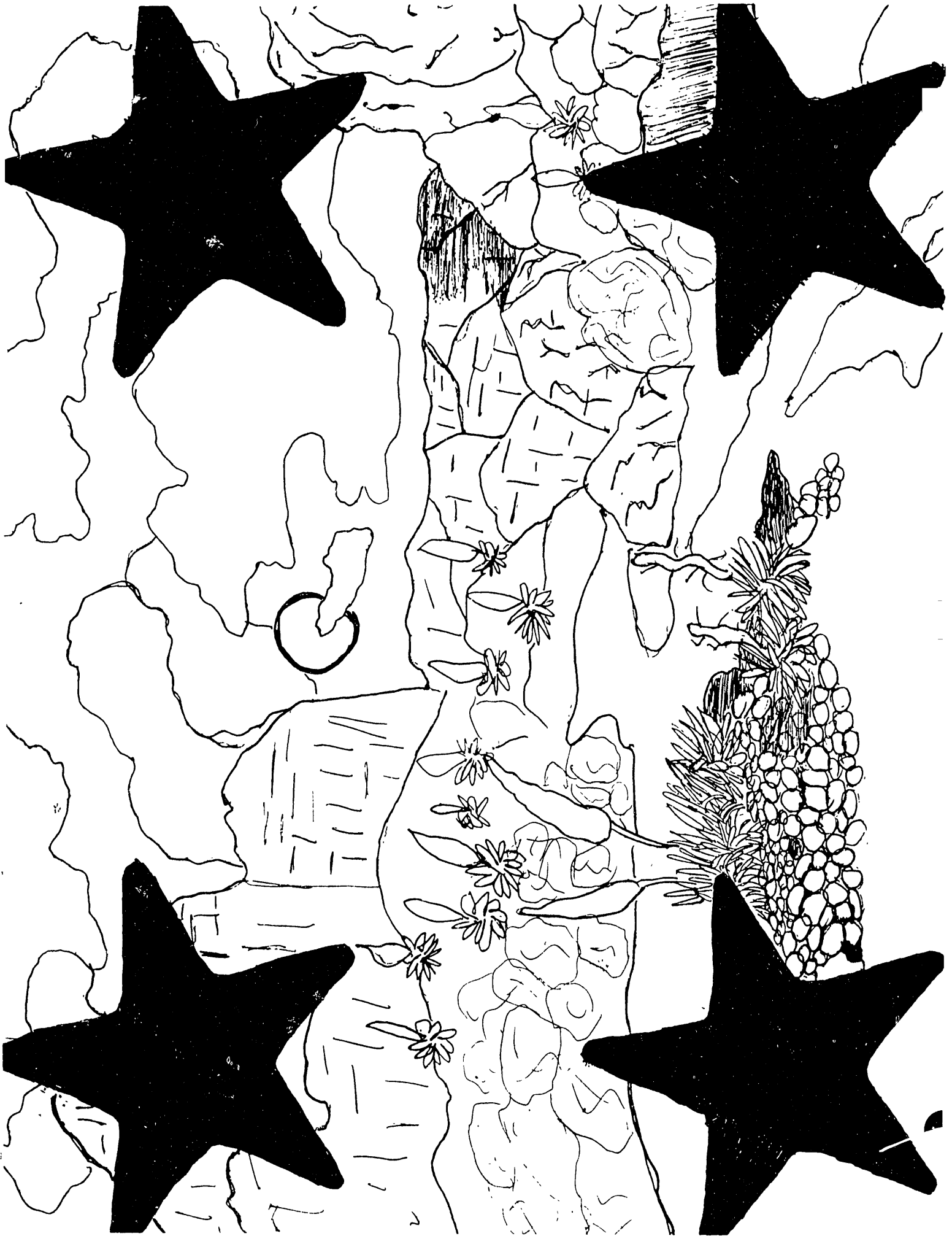
Chapter 10. Trust Companies

• 7 TAC §10.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §10.1, concerning trust companies, submitted by the Banking Department of Texas has been automatically withdrawn, effective July 5, 1994. The new §10.1 as proposed appeared in the April 29, 1994, issue of the *Texas Register* (19 TexReg 3209)

TRD-9443475





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 V. General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.19

The General Services Commission adopts an amendment to §113.19, concerning the catalogue purchase procedure for automated information systems. Section 113.19 is being adopted without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3398).

The amendment to §113.19 will eliminate unnecessary requirements for vendors to be designated as qualified information system vendors.

The amendment to §113.19 will have a positive effect on small business by eliminating compliance requirements for all vendors.

One comment was received recommending that an explicit recognition of the inapplicability of the catalogue purchase procedure to certain complex types of acquisitions be added to the proposed rules.

The commission disagrees. Texas Civil Statutes, Article 601b, §102(4), defines automated information systems broadly to include products and services. With these two definitions in place, the GSC feels that any further recognition of products and services is not necessary.

Akin, Gump, Strauss, Hauer and Feld, L.L.P. commented on the proposed rule, but were neither for or against adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 601b, §3081, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the 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 legal authority.

Issued in Austin, Texas, on June 28, 1994

TRD-9443258

Judith M. Porras
General Counsel
General Services
Commission

Effective date July 21, 1994

Proposal publication date May 6, 1994

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

Surplus Property Sales

• 1 TAC §113.73

The General Services Commission adopts an amendment to §113.73, concerning sale of surplus firearms. Section 113.73 is adopted without changes to the proposed text as published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1509).

Section 113.73 is adopted to address concerns raised by internal audit, namely, to ensure that the sale of surplus firearms is not made to persons with criminal backgrounds.

The amendment will provide safeguards for the disposal of surplus firearms.

One comment was received requesting affirmation that the proposed amendment is not in conflict with provisions under Government Code, §§411.020, 614.051, and 614.052, allowing for the sale of firearms to law enforcement officers, retired law enforcement officers and the family members of deceased law enforcement officers.

The commission agrees. The rule applies only to surplus sales under Texas Civil Statutes, Article 601b, Article 9.

The Texas Department of Public Safety commented in favor of adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 601, §909, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of Article 9.

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 June 28, 1994

TRD-9443257

Judith M. Porras
General Counsel
General Services
Commission

Effective date July 21, 1994

Proposal publication date March 4, 1994

For further information, please call (512) 463-3583

Cooperative Purchasing Program

• 1 TAC §§113.81, 113.83, 113.85, 113.87

The General Services Commission adopts amendments to §§113.81, 113.83, 113.85, and 113.87, concerning the commission's cooperative purchasing program. The amendments are adopted without changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2345).

The amendments are adopted to update rules to conform to Texas Civil Statutes, Article 601b, §304, as amended by the 73rd Legislature.

The amendments will allow certain service organizations and mental health and mental retardation centers to enjoy the savings offered by participation in the cooperative purchasing program.

The amendments are adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the 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 legal authority.

Issued in Austin, Texas, on June 28, 1994

TRD-9443256

Judith Monaco Porras
General Counsel
General Services
Commission

Effective date July 21, 1994

Proposal publication date April 5, 1994

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

**TITLE 7. BANKING AND
SECURITIES**

**Part III. State Banking
Board**

Chapter 31. Miscellaneous

Subchapter A. Procedures

The State Banking Board (the Board) adopts new §§31.1-31.4 (Subchapter A), §§31.20-31.22 (Subchapter B), and §31.40 and §31.41 (Subchapter C), concerning rules and procedural regulations considered necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before the Board, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3320) All pre-existing sections of Chapter 31 are repealed in this issue of the *Texas Register* All sections of Chapters 33 and 35 of Title 7 are also repealed in this issue of the *Texas Register*

The new sections comprise all of Chapter 31 and generally are part of a comprehensive revision and recodification of all Board, Finance Commission, Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Substantive revisions are made in new §31.4 from its predecessor section consistent with and pursuant to the provisions of the Government Code, §2005.003, as discussed in the proposal preamble (19 TexReg 3320) Section 31.40 and §31.41 are new in that they did not have counterparts in the pre-existing regulations, and were also discussed in the proposal preamble

New §31.1 and §31.2 replace Chapters 33 and 35 of Title 7, by incorporating the procedures of Chapter 13 of Title 7 to apply to proceedings on behalf of the Board, although a portion of §31.2 is directly derived from pre-existing and now repealed §35.6. New §§31.3, 31.4, and 31.20 are amendments to and relocation of certain sections previously contained in Chapter 31 of Title 7 (pre-existing and now repealed §§31.5, 31.7, and 31.6, respectively). Substantive amendments are made to §31.4 and §31.20, as discussed in the proposal preamble

No comments were received regarding adoption of the new section

• 7 TAC §§31.1-31.4

The new sections are adopted under Texas Civil Statutes, Article 342-115(6) and Article 342-1106(a), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, the Government Code, §2005.003, which requires an agency to adopt procedural rules for processing permit applications and issuing permits, and the Government Code, §2001.004(1), which requires all administra-

tive agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443332 Everette D Jobe
 General Counsel
 State Banking Board

Effective date July 22, 1994

Proposal publication date May 3, 1994

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



• 7 TAC §§31.1-31.7

The State Banking Board (the Board), adopts the repeal of §§31.1-31.7 concerning miscellaneous rules governing the affairs of the Board, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3320)

The repeal is part of a comprehensive revision and recodification of all Board, Finance Commission, Banking Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Several new sections for Chapter 31 of Title 7 are adopted in this issue of the *Texas Register*.

The sections are repealed to remove obsolete or ineffective provisions, to eliminate superseded references to statutes that have been amended, repealed, or recodified, and to correct erroneous cross-references

No comments were received regarding adoption of the repeals

The repeals are adopted under Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443335 Everette D Jobe
 General Counsel
 State Banking Board

Effective date July 22, 1994

Proposal publication date May 3, 1994

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



Subchapter B. Bank Applications

• 7 TAC §§31.20-31.22

The new sections are adopted under Texas Civil Statutes, Article 342-115(6) and Article 342-1106(a), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, the Government Code, §2005.003, which requires an agency to adopt procedural rules for processing permit applications and issuing permits; and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas on July 1, 1994.

TRD-9443333 Everette D Jobe
 General Counsel
 State Banking Board

Effective date July 22, 1994

Proposal publication date. May 3, 1994

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



Subchapter C. Trust Company Applications

• 7 TAC §§31.40-31.41

The new sections are adopted under Texas Civil Statutes, Article 342-115(6) and Article 342-1106(a), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; the Government Code, §2005.003, which requires an agency to adopt procedural rules for processing permit applications and issuing permits, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas on July 1, 1994.

TRD-9443334 Everette D Jobe
 General Counsel
 State Banking Board

Effective date. July 22, 1994

Proposal publication date: May 3, 1994

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



Chapter 33. Procedures for Hearing

Pleadings and Applications

The State Banking Board (the Board), adopts the repeal of §§33.1-33.10, 33.21-33.34, 33.51-33.55, 33.61, 33.71, and 33.101-33.115 concerning practice and procedure before the Board, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3323).

The sections are repealed as part of a comprehensive revision and recodification of all Board, Finance Commission, Banking Commission, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Existing §33.34 and §33.61 are amended and adopted under new section numbers as part of proposed Chapter 31 of Title 7 in this issue of the *Texas Register*. No sections are proposed for Chapter 32 of Title 7, and the chapter is reserved for future use.

No comments were received regarding adoption of the repeals.

• 7 TAC §§33.1-33.10

The repeals are adopted under Texas Civil Statutes, Article 342-115(6), which authorizes the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443336
Everette D. Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

Evidence and Witnesses

• 7 TAC §§33.21-33.34

The repeals are adopted under Texas Civil Statutes, Article 342-115(6), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code,

§2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443337
Everette D. Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

Hearings

• 7 TAC §§33.51-33.55

The repeals are adopted under Texas Civil Statutes, Article 342-115(6), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994

TRD-9443338
Everette D. Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

Change of Domicile

• 7 TAC §33.61

The repeal is adopted under Texas Civil Statutes, Article 342-115(6), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443339
Everette D. Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

Conversion of National Bank to State Bank

• 7 TAC §33.71

The repeal is adopted under Texas Civil Statutes, Article 342-115(6), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443340
Everette D. Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

General Rules

• 7 TAC §§33.101-33.115

The repeals are adopted under Texas Civil Statutes, Article 342-115(6), which authorize the State Banking Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it, and the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443341
Everette D. Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

Chapter 35. Rulemaking

Procedure

• §§35.1-35.6

The State Banking Board (the Board), adopts the repeal of §§35. 1-35.6 and 35.11-35.16, concerning rulemaking by the Board, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3325).

The sections are generally considered unnecessary because the Government Code, §2001.021 et seq provides comparable requirements regarding rulemaking procedures. Further, the sections are being repealed as part of a comprehensive revision and recodification of all Board, Finance Commission, Banking Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Rulemaking proceedings will be governed by 7 TAC §31.2, adopted in this issue of the *Texas Register* for comment. No sections are proposed for Chapter 35 of Title 7, and the chapter will be reserved for future use.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443342
Everette D Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

Petitions

• 7 TAC §§35.11-35.16

The repeals are adopted under the Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of 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 legal authority.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443343
Everette D Jobe
General Counsel
State Banking Board

Effective date: July 22, 1994

Proposal publication date: May 3, 1994

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

TITLE 22. EXAMINING BOARDS

Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

• 22 TAC §§153.1, 153.20, 153.21, 153.35, 153.37

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.1, Definitions; §153.20, Guidelines for Revocation and Suspension; §153.21, Appraiser Trainees; §153.35, Recordkeeping, and §153.37, Offenses, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3622).

The amendment to §153.1 adds the words "or appraiser services" to duties an appraiser trainee may perform. The amendment to §153.20 use the words "appraiser services" in place of "appraisal services" or "appraisals" to clarify the intention. Provisions were added concerning full disclosure. False or misleading conduct or advertising is specifically prohibited. The amendment to §153.21 adds "appraiser services" to the duties an appraiser trainee may perform and conforms with the amendment to §153.1. The amendments to §153. 35 and §153.37 replace the words "appraisal" with "appraiser services" to clarify intentions.

No comments were received regarding adoption of the rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 29, 1994.

TRD-9443213
Fenil C Liner
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: July 21, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 465-3950

• 22 TAC §§153.5, 153.9, 153.20

The Texas Appraiser Licensing and Certification Board adopts amendments to §153.5, relating to fees; §153.9, relating to applications; and §153. 20, relating to guidelines for revocation and suspension; investigations. Section 153.9 was adopted with changes to the proposed text as published in the April 5, 1994, issue of the *Texas Register* (19 TexReg 2347). Section 153.5 and §153.20 are adopted without changes and will not be republished.

The amendment to §153.5(a) provides for the collection of a fee for a returned check. The adopted amendment to §153.5(b) eliminates the cashier's check or money order requirement for fee submission except for applications for Temporary Non-Resident Appraiser Registration in §153.9(b)(6) and for the Supplement to Application for Appraiser Certification or Licensing by Reciprocity in §153.9(b)(9). It also requires future fees paid by those who have not made good on a returned check to be in the form of a cashier's check or money order.

The amendment to §153.9 removes terminology from various applications and other forms specifying that fees must be submitted in the form of a cashier's check or money order.

The amendment to §153.20 adds failure to make good on a returned check within 30 days to those causes for which a license or certification could be suspended or revoked.

No comments were received regarding adoption of the rules.

§153.9. Applications.

(a) (No change.)

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board in 1991 and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188.

(1) TALCB Form 1.3, Application for Appraiser Certification or Licensing;

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

(4) TALCB Form 4.4, Application for Approval as an Appraiser Trainee;

(5) (No change.)

(6) TALCB Form 6.1, Temporary Non-Resident Appraiser Registration;

(7) TALCB Form 8.2, Change of Office Address;

(8) TALCB Form 9.1, Addition or Termination of Appraiser Trainee Sponsorship;

(9) TALCB Form 10.0, Supplement to Application for Appraiser Certification or Licensing by Reciprocity.

(c)-(g) (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 June 29, 1994.

TRD-9443211

Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: July 21, 1994

Proposal publication date: April 5, 1994

For further information, please call: (512) 465-3950

Chapter 157. Rules Relating to Professional Conduct and Ethics

• 22 TAC §§157.1-157.5

The Texas Appraiser Licensing and Certification Board adopts new §§157.1-157.5, concerning Rules Relating to Professional Conduct and Ethics, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3623).

New §157.1 requires a certified or licensed real estate appraiser to communicate his or her opinion and advice in a way that will not be misleading and prohibits conduct that is unlawful, unethical or improper. Section 157.2 concerns Professional Independence. Section 157.3 relates to Hypothetical Conditions. Section 157.4 deals with Undisclosed Fees. Section 157.5 relates to Confidentiality. The new rules help clarify appropriate professional conduct and ethics and provide the listed unethical behaviors as a violation of §153.20(a)(2), which could result in revocation or suspension of licensure. The adopted rules are in compliance with federal Title XI, FIRREA (12 U.S.C. §3331 et seq.), and its interpretations and guidelines.

No comments were received regarding adoption of the rules.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 29, 1994

TRD-9443212

Renil C. Limer
Commissioner
Texas Appraiser Licensing
and Certification Board

Effective date: July 21, 1994

Proposal publication date: May 13, 1994

For further information, please call (512) 465-3950

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 265. General Sanitation

Standards for Public Restroom Facilities

• 25 TAC §§265.121-265.123

The Texas Department of Health (department) adopts new §§265.121-265.123, with changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1010).

The new sections cover general provision, definitions, and minimum standards for toilet facilities and toilet rooms at facilities where the public congregates.

COMMENT: A commenter requested extending coverage to restaurant/bars with an occupant load of 300 or more, thus excluding restaurant/bars with an occupant load of less than 300.

RESPONSE: The statute specifically exempts "restaurants" from the provisions of the regulations.

COMMENT: A commenter suggested that libraries associated with colleges and universities or financed by the public should be excluded from the scope of the rules.

RESPONSE: The department disagrees because these entities are not exempted in the statute.

COMMENT: A commenter requested that a "portable toilet facility" be defined.

RESPONSE: The department agrees and a definition is included.

COMMENT: A commenter requested that the definition of the term "Standards" be expanded to include authorities with local jurisdiction.

RESPONSE: The department agrees and has revised the definition.

COMMENT: A commenter requested the definition of the term "temporary" be addressed.

RESPONSE: The department disagrees because the statute does not provide sufficient latitude for defining the term.

COMMENT: A commenter requested that we clearly state that toilets must be accessible to the handicapped also.

RESPONSE: The department agrees and included wording stating the toilets would be accessible to all users.

COMMENT: A commenter requested limiting the use of portable toilet facilities to only temporary outdoor activities.

RESPONSE: The statute does not give the department the authority to limit use.

COMMENT: A commenter requested the inclusion of more detail regarding the maintenance

of toilet rooms and facilities in a sanitary condition.

RESPONSE: The department agrees and included such detail in §265.123(a)(4), (b)(1) and (2).

COMMENT: A commenter requested that the mode of ventilation be addressed in the standards for toilet rooms at fixed locations that are not ventilated by mechanical means.

RESPONSE: The department agrees and included such a reference in §265.123 (b)(4).

COMMENT: A commenter expressed his belief that the table provided for the ratio of women's to men's water closets (toilets) would not meet the minimum 2:1 women's to men's ratio at higher numbers.

RESPONSE: The department disagrees and believes the commenter erred in his calculations.

COMMENT: A commenter requested that the Texas State Board of Plumbing Examiners be included in the rules due to the technical nature of the building process. The commenter also expressed concern with the "lack of enforcement of the intent of HB 274 (sic)".

RESPONSE: The department believes that the Texas State Board of Plumbing Examiners can be involved through a Memorandum of Understanding with the department. Senate Bill 274 amends Chapter 341 of the Health and Safety Code. Chapter 341 has no provision for enforcement other than by the Commissioner of Health or agents acting in his behalf.

COMMENT: A commenter requested that local authorities be permitted to adopt more stringent regulations.

RESPONSE: The department agrees and referenced this in §265.121 (b).

Written comments were received from the Texas Board of Plumbing Examiners, the City of Austin, and Hampton Associates. Oral comments were received from one individual. None of the commenters were against adoption of the rules, however, some expressed concerns about specific parts of the rule, raised questions, and made recommendations.

The new sections are adopted under Chapter 341 of the Health and Safety Code which provides the Texas Board of Health (board) with the authority to adopt rules consistent with Chapter 341 and establish standards and procedures for the management and control of sanitation and for health protection measures, and §12.001 which provides the board with authority to adopt rules to implement every duty imposed on the board, the department and the commissioner of health.

§265.121 General Provisions.

(a) Scope. These sections apply to facilities where the public congregates. This includes sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, and amusement facilities.

(b) Exclusion. The term "facilities where the public congregates" does not include hotels, churches, restaurants, bowling centers, public or private elementary or secondary schools, or historic buildings. If local standards or regulations are at least as or more stringent than these standards, these rules do not apply.

(c) Purpose. The purpose of these sections is to prescribe minimum standards for the availability of sufficient temporary or permanent restrooms to meet the needs of the public at peak hours at publicly- and privately-owned facilities where the public congregates.

(d) Penalty and enforcement. The statutory penalty and enforcement provisions covering violations of Chapter 341 and these sections are contained in the Health and Safety Code, Chapter 341, §341.091 and §341.092.

(e) Applicability date. These sections apply to facilities on which construction is started on or after January 1, 1994, and on which structural alterations, repairs, or improvements exceeding 50% of the entire facility are undertaken on or after January 1, 1994.

§265.122 Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Approved—Approved by the Texas Department of Health, the local health authority, or the local building code enforcement officer, whichever shall maintain jurisdiction.

Chemical toilets—A toilet facility in which human waste is collected in a container charged with a chemical for the purpose of disinfecting and deodorizing prior to disposal.

Construction—The actual, physical initiation of the building process such as the clearing of land, moving of dirt or preparation of a building to begin work.

Exceeding 50% of the entire facility—Structural alterations, repairs, or improvements with a cost exceeding 50% of the worth of the facility, as determined by the taxing authority maintaining jurisdiction.

Facilities where the public congregates—Sports and entertainment arenas, stadiums, community and convention halls, specialty event centers, and amusement facilities. The term does not include hotels, churches, restaurants, bowling centers, public or private elementary or secondary schools, or historic buildings.

Historic buildings—Buildings listed as historic by the Texas Historical Commission.

May—Used to denote authorized alternatives to mandatory provisions of this regulation.

Restroom—Toilet, chemical toilet, or water closet.

Sanitary condition—That condition of good order and cleanliness which precludes the probability of disease transmission.

Shall (or must)—Used to denote mandatory provisions of these sections.

Should—Indicates provisions which are not mandatory, but which are recommended as good practice.

Standards—Methods, practices, processes or operations necessary or appropri-

ate to establish healthful conditions as determined by the authority having jurisdiction.

Temporary toilet facilities—mobile trailers or prefabricated, skid-mounted, or otherwise portable structures.

Toilet or toilet facility—A plumbing device for the purpose of defecation or urination, or both, including water closets and biological or chemical toilets, and urinals.

Toilet room—An enclosed area containing one or more toilet facilities and offering personal privacy. Toilet rooms may be either permanently located (fixed) or portable.

Urinal—A water-flushed fixture connected with a sewer, maintained within a toilet room for the sole purpose of urination.

Water closet—A toilet facility which is connected to a sewer and flushed with water.

§265.123. Standards for Toilet Facilities and Toilet Rooms.

(a) General standards.

(1) Toilet facilities shall be provided in separate toilet rooms for both sexes in all facilities where the public congregates. They shall be readily accessible to all users.

(2) Toilet facilities shall be either water-actuated, chemical, or biological toilets. Other systems may be used only upon specific permission of the health authority having local jurisdiction.

(3) If the use of restrooms is designated by gender, toilet facilities shall be provided for each sex at a ratio of not less than 2:1 women's to men's or according to the following table:

Water Closets
(Fixtures per Person)

Male	Female
1:1-100	3:1-50
2:101-200	4:51-100
3:201-400	8:101-200
	11:201-400

Over 400, add one fixture for each additional 500 males and 2 for each 300 females.

Urinals
(Fixtures per Person)

1:1-100
2:101-200
3:201-400
4:401-600

Over 600 add 1 fixture for each additional 500 males.

(4) Toilet rooms and facilities shall be maintained in a sanitary condition, free of objectionable odors during all hours the facility is open to the public. The floors, walls, ceilings, partitions and doors of all toilet rooms shall be of a finish that can be easily cleaned. Floors shall have a smooth, hard nonabsorbent surface such as portland cement, concrete, ceramic tile or other approved material which extends upward onto the walls at least five inches. Materials used in such walls shall be of a type not adversely affected by moisture. Walls within two feet of the front and sides of a urinal and water closets shall have a smooth, hard nonabsorbent surface of portland cement, concrete, ceramic tile or other smooth, hard nonabsorbent surface to a height of four feet. An adequate supply of toilet paper in a suitable holder shall be maintained for each toilet. Covered waste receptacles shall be provided in all toilet rooms used by women.

(b) Specifications for toilet facilities and rooms at fixed locations.

(1) Each toilet facility (water closet) at a fixed (permanent) location shall occupy a separate compartment equipped with a door and latch. Walls within two feet of the front and sides of a urinal and water closet shall have a smooth, hard nonabsorbent surface of portland cement, concrete, ceramic tile or other smooth, nonabsorbent surface to a height of four feet. Walls or partitions between fixtures shall be sufficiently high to assure privacy. Urinals do not need to occupy separate compartments.

(2) Each toilet facility shall be so installed that the space around it can be easily cleaned. Walls within two feet of the front and sides of a urinal and water closet shall have a smooth, hard nonabsorbent surface of portland cement, concrete, ceramic tile or other smooth, nonabsorbent surface to a height of four feet. This provision does not prohibit the use of wall-hung toilet stools or urinals.

(3) Each toilet seat shall have a seat made of substantial material having a nonabsorbent finish.

(4) Toilet rooms at fixed locations that are not ventilated by mechanical means shall be provided with screened ventilation with openings of not less than 1/20th of the floor area.

(c) Specifications for temporary toilet facilities and rooms.

(1) Temporary toilet facilities shall be so constructed as to be readily accessible.

(2) Buildings housing temporary toilet rooms may be mobile trailers or prefabricated, skid-mounted, or otherwise portable structures. If they contain more than one facility, each shall occupy a separate compartment with a door and a latch. Walls or partitions between toilets shall be sufficiently high to assure privacy. Urinals need not occupy separate compartments.

(3) If the structure contains a tank in which waste is stored, the tank shall be vented to the outside of the structure.

(4) Temporary toilet rooms that are not ventilated by mechanical means shall be provided with an adequate screened ventilation opening.

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 June 30, 1994.

TRD-9443291

John T. Richards
Assistant General Counsel,
Office of General
Counsel
Texas Department of
Health

Effective date: July 21, 1994

Proposal publication date: February 11, 1994

For further information, please call: (512) 834-6635

◆ ◆ ◆
TITLE 34. PUBLIC FI-
NANCE

Part I. Comptroller of
Public Accounts

Chapter 5. Funds Management
(Fiscal Affairs)

Uniform Statewide Accounting
System

• **34 TAC §5.200**

The Comptroller of Public Accounts adopts new §5.200, concerning the state property accounting system, with changes to the proposed text as published in the January 28,

1994, issue of the *Texas Register* (19 TexReg 574).

The new section is necessary because of the recent implementation of the state property accounting system (SPAS) as the personal property fixed asset component of the uniform statewide accounting system.

The following change was made to subclause (II) of subsection (e)(3)(B)(ii) of the proposed text. As changed, the subclause requires a state agency's report to the comptroller about its annual physical inventory to identify the individual that the comptroller may contact for information about the inventory. The subclause as proposed would have required the report to identify the individuals who conducted the inventory.

The Texas Department of Transportation (TxDOT) submitted several written questions and comments about the proposed new section.

Subsection (e)(3)(A) requires the head of a state agency to submit a report to the comptroller about the agency's annual physical inventory. Subclause (II) of subsection (e)(3)(B)(ii) requires the report to contain a signed statement that identifies the individuals who conducted the inventory. TxDOT said about this subclause: "Agencies reporting individuals who conducted the inventory should only name those individuals at the local level. Otherwise, TxDOT requests clarification on how to report names of people conducting inventories, and the methods used." The comptroller agrees that the names of the individuals who conduct the inventory should not be reported to the comptroller. However, the comptroller believes the report should name an individual that the comptroller may contact for more information about the inventory. Subclause (II) has been changed accordingly.

Subsection (g)(1)(D) requires the head of a state agency to inform the comptroller, the state auditor, the attorney general, and law enforcement personnel if the agency head has reasonable cause to believe that the agency's personal or trust property has been stolen. The report to the state auditor must be made by entering a deletion request into SPAS. The agency head should transmit to the state auditor by facsimile the appropriate form and police report within 24 hours after entering the deletion request. The report to law enforcement personnel must be made not later than the 48th hour after the reasonable cause arises. TxDOT believes there is an inconsistency between the 24 and 48 hour reporting requirements. More specifically, TxDOT believes a state agency's obligation to report stolen property to law enforcement personnel within 48 hours conflicts with the agency's discretion to provide a copy of the police report to the state auditor within 24 hours. The comptroller does not believe an inconsistency exists. Subsection (g)(1)(D)(ii) does not specify a deadline for a state agency to enter a deletion request into SPAS. But once the deletion request is entered, the subsection says that an agency should transmit a copy of the police report to the state auditor within 24 hours. Therefore, even if a state agency takes the entire 48 hours to report a theft to law enforcement personnel, it is still possible for the agency to send a copy of the

police report to the state auditor within 24 hours after entering the deletion request. TxDOT also questioned the deadline for the reporting of a theft that occurs during a weekend or holiday. The comptroller believes that if the head of a state agency becomes aware that a theft has occurred during a weekend or holiday, then the agency head should report the theft to law enforcement personnel within 48 hours. The agency head should not necessarily wait until the next business day.

Subsection (h)(1)(C) requires the property manager of a state agency to inform the comptroller, the state auditor, the attorney general, and law enforcement personnel if the manager has reasonable cause to believe that the agency's personal property has been stolen. TxDOT believes that this subsection duplicates subsection (g)(1)(D), discussed in the preceding paragraph. The comptroller does not believe a duplication exists. The intention of the subsections is to make both the head of a state agency and the agency's property manager responsible for reporting thefts. If a property manager has already reported a theft, then the subsections impliedly would not require the agency head to also report the theft. The reverse is also true.

The proposed rule generally requires state agencies to report the value of personal property to SPAS. For personal property that has been donated to a state agency, subsection (j)(3)(B) requires the agency to report the fair market value of the property as determined through a reasonable market study. TxDOT has requested clarification on the type of study required, who would conduct the study, and the usefulness of the study in managing the state's assets. The comptroller believes that reporting the value of donated personal property is a universally recognized accounting procedure. The reports help the comptroller prepare accurate statements of the state's financial condition and provide state leaders with important information about state property. Because there is no current standard for appraising donated personal property, the subsection allows state agencies to use any reasonable market study. The comptroller has already issued a manual that identifies several acceptable study methods. That manual has been made available to TxDOT and other state agencies.

Subsection (k)(3)(C) encourages reporting state agencies to reconcile quarterly the personal property balances on their internal accounting systems with the balances the agencies have reported to SPAS. TxDOT has asked who is responsible for performing the reconciliation. The subsection does not require a state agency to use particular individuals to perform the reconciliation. Therefore, a state agency is free to determine who should perform the reconciliation.

Subsection (l)(5)(E) requires a state agency to report surplus personal property to SPAS before transferring, selling, or disposing of the property. TxDOT recommends that a "special code" should be developed for state agencies that want to list, as surplus, personal property that has not been reported to SPAS. TxDOT believes its recommendation would save employee time in entering property records on and deleting property records from SPAS. The comptroller is uncertain about how

TxDOT's recommendation would be implemented. The purpose of the subsection's reporting requirement is to advertise the property's availability to the General Services Commission and the public. At this time, the reporting is the only available method for the advertising.

Subsection (m)(2)(A) requires a state agency to print on a label the unique property inventory number of each item of personal property that is tracked on a unit basis. The label must be attached to the item in a highly visible location so that conducting a physical inventory is facilitated. TxDOT has said that printing an inventory number on a label would not be practical for certain equipment. For example, TxDOT says that a label on road equipment would be difficult to see and possibly would fall off the equipment. TxDOT recommends that vehicles and road equipment be identified as state property according to Texas Civil Statutes, Article 6701m-1. That statute requires each vehicle owned by the state to have the word "Texas" and the name of the agency that has custody of the vehicle inscribed on the side of the vehicle. The comptroller disagrees with TxDOT's recommendation. The possibility that a label will fall off can be minimized by placing the label in an appropriate location. If a label with a property number is not affixed to a vehicle, then inventorying the vehicle will be more difficult for state agencies. Article 6701m-1's requirements are not a substitute for the labels because the statute does not require an inventory number to be placed on a vehicle.

TxDOT's final request is that the rule should be changed to provide more detail about the comptroller's requirements in various areas. For example, subsection (d)(2) requires a state agency that has not yet been certified as an internal or a reporting state agency to properly complete and submit the form required by the comptroller. The subsection does not describe the form. The comptroller disagrees with TxDOT's request because the comptroller has described and will continue to describe those requirements in manuals and publications that have been made available to state agencies.

The new section is adopted under the Texas Government Code, §403.271(b), which requires the comptroller to adopt necessary rules for the implementation of the state property accounting system.

§5.200. State Property Accounting System.

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

(1) Annual physical inventory—The physical inventory that a state agency must conduct once each year in accordance with this section.

(2) Betterment of personal property—An improvement of personal property that materially increases its serviceability or useful life, or both.

(3) Capital asset—A possession of the state that has a value of at least

\$1,000 and an estimated useful life of more than one year. The term does not include real property, improvements to real property, or infrastructure.

(4) Capital lease—A lease of personal property under which the lessee substantially assumes the risks and benefits of ownership as specified under generally accepted accounting principles

(5) Comptroller—The comptroller of public accounts for the State of Texas

(6) Controlled asset—A possession of the state that a state agency has determined must be secured and tracked because of the nature of the possession. The term does not include a capital asset, real property, an improvement to real property, or infrastructure

(7) Fiduciary fund—A fund held by a state agency as trustee of the fund. The term includes pension funds and non-expendable trust funds.

(8) Include—A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded

(9) May not—A prohibition. The term does not mean "might not" or its equivalents

(10) Personal property—A capital asset or a controlled asset

(11) Proprietary fund—A self-supporting fund whose resources are generated through user charges. The term includes enterprise and internal service funds

(12) Reassignable personal property—Personal property that retains usage value for the state, continues to be functionally capable of serving a state agency, and is not surplus personal property.

(13) Replacement of personal property—A replacement of an internal or external part of personal property that allows it to complete its normal useful life

(14) Salvage personal property—Personal property that no longer serves its original purpose because it is depleted, worn out, damaged, consumed, outdated, or obsolete. The term does not include personal property that has a remaining useful life

(15) State agency—A state governmental entity that manages, administers, or controls personal property

(16) State employee—An officer or employee of a state agency

(17) State property accounting system—The personal property fixed asset

component of the uniform statewide accounting system

(18) Supplemental physical inventories—The optional physical inventories that a state agency conducts in addition to the required annual physical inventory.

(19) Surplus personal property—Personal property in the possession of a state agency that is not currently needed by the agency and is not required for the agency's foreseeable needs. The term does not include salvage personal property

(20) Trust property—Property not owned by the state that a state agency temporarily holds on behalf of the owner.

(b) Controlled assets. The state agency that manages, administers, or controls a possession of the state should use good business practices when determining whether the possession is a controlled asset

(c) Exemptions

(1) Equipment and supplies purchased through programs, contracts, or grants with the Texas Department of Health

(A) An item of equipment or a supply is exempt from the requirements of subsections (b) and (d)-(s) of this section if it is

(i) used to promote and maintain public health,

(ii) is purchased by or for a qualified entity, and

(iii) is purchased through a program, contract, or grant with the Texas Department of Health

(B) The exemption ends if the item or supply is returned to the Texas Department of Health upon the termination of the applicable program, contract, or grant. When the exemption ends, the formerly exempt equipment or supply must be reported to the state property accounting system in accordance with the comptroller's requirements

(C) A state agency that purchases an exempt item of equipment or a supply shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items exempt under subparagraph (A) of this paragraph

(D) In this paragraph, "qualified entity" includes an individual, a corporation, a local unit of government, and a state agency

(2) The Texas Rehabilitation Commission and the Texas Commission for the Blind

(A) A material, tool, book, or other necessary apparatus provided to a client by the Texas Rehabilitation Commission or the Texas Commission for the Blind is exempt from subsections (b) and (d)-(s) of this section

(B) The Texas Rehabilitation Commission and the Texas Commission for the Blind shall each develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph.

(C) The state auditor may request to review an inventory required by subparagraph (B) of this paragraph at any time

(D) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be added to the state property accounting system

(3) Items provided to clients of state agencies

(A) The comptroller may exempt from the reporting requirements of this section a material, tool, book, or other necessary apparatus if the item is provided to a client by a qualifying state agency.

(B) The appropriate state agency shall develop and maintain internal control procedures for keeping a complete and accurate inventory of the items that are exempt under subparagraph (A) of this paragraph

(C) The state auditor may request to review an inventory required by subparagraph (B) of this paragraph at any time

(D) An item that no longer qualifies for an exemption under subparagraph (A) of this paragraph must be added to the state property accounting system.

(d) Certification of internal state agencies and reporting state agencies

(1) General requirement. A state agency must be certified as an internal state agency or a reporting state agency

(2) Initial certification. A state agency that has not been certified before the effective date of this section must properly complete and submit to the comptroller the form required by the comptroller. The agency must specify on the form whether the agency wants certification as an internal

state agency or a reporting state agency. The comptroller shall review the form and consider the agency's ability to comply with this section before certifying the agency.

(3) State agency requests for changes in certification.

(A) A reporting state agency may change its certification to an internal state agency by:

(i) properly completing the form required by the comptroller; and

(ii) obtaining the comptroller's approval of the change

(B) An internal state agency may change its certification to a reporting state agency by:

(i) properly completing the form required by the comptroller, and

(ii) obtaining the comptroller's approval of the change.

(C) When considering whether to approve or disapprove a state agency's request for a certification change, the comptroller shall:

(i) consider the agency's history of complying or not complying with this section's requirements for the agency's current certification; and

(ii) determine the agency's capability to comply with this section's requirements for the agency's requested certification.

(D) This subparagraph applies if the comptroller receives a state agency's request for a certification change not later than the 30th day before the start of the next fiscal year. If the comptroller approves the change, then the change is effective on the later of:

(i) the first day of the fiscal year following the fiscal year during which the comptroller approves the change; or

(ii) the date the state property accounting system receives a full and accurate reporting from the agency of its property balances as of the end of the fiscal year during which the comptroller approves the change.

(E) This subparagraph applies if the comptroller receives a state agency's request for a certification change during the last 29 days of a fiscal year. If the comptroller approves the change, then the change is effective on the later of:

(i) the first day of the second fiscal year following the fiscal year

during which the comptroller receives the request; or

(ii) the date the state property accounting system receives a full and accurate reporting from the agency of its property balances as of the end of the fiscal year following the fiscal year in which the comptroller receives the request.

(4) Certification changes initiated by the comptroller.

(A) The comptroller may change a state agency's certification from a reporting state agency to an internal state agency or vice versa anytime the comptroller determines the change is needed.

(B) If the comptroller changes a state agency's certification under subparagraph (A) of this paragraph, then the change is effective on the date specified by the comptroller.

(5) Criteria for certification as an internal state agency. A state agency may be an internal state agency only if:

(A) the agency determines that it will use the state property accounting system as its own property accounting system; and

(B) the agency agrees to maintain a perpetual inventory

(6) Criteria for certification as a reporting state agency.

(A) A state agency is a reporting state agency if it:

(i) is not exempt from this section; and

(ii) is not an internal state agency.

(B) A reporting state agency shall modify its personal property accounting system to comply with the comptroller's reporting requirements, as periodically amended.

(C) A reporting state agency shall demonstrate to the comptroller's satisfaction that the agency has disaster recovery capability.

(e) Physical inventories

(1) Frequency and timing of physical inventories

(A) Except as provided by subsection (n) of this section, a state agency shall conduct an annual physical inventory of the personal property and trust property

in the agency's possession. The agency may choose the date of the inventory.

(B) The comptroller encourages a state agency to conduct each year one or more supplemental physical inventories of the personal property and trust property in the agency's possession.

(2) Requirements for annual physical inventories.

(A) When a state agency conducts an annual physical inventory of the personal property and trust property in the agency's possession, the agency shall:

(i) ensure that each property item is still within the agency's possession;

(ii) determine whether the person who has custody of each property item as indicated on the agency's records still has custody of the item; and

(iii) determine the condition of each property item.

(B) A state agency may use any method for conducting an annual physical inventory that is acceptable to the comptroller.

(C) If the results of a state agency's annual physical inventory vary from the records on the state property accounting system, then the agency shall immediately report the discrepancies to the comptroller through the system. The report must provide a reason for each discrepancy.

(3) Reports to the comptroller about annual physical inventories.

(A) The head of a state agency shall send a report to the comptroller about the agency's annual physical inventory.

(B) The report must contain:

(i) a copy of the results of the inventory; and

(ii) a signed statement that:

(I) provides the date the inventory was conducted;

(II) identifies the individual who the comptroller may contact for information about the inventory;

(III) describes the methods used to conduct the inventory;

(IV) summarizes the values received from the inventory; and

(V) contains the other information required by the comptroller.

(C) **Deadline for reports.** The head of a state agency shall ensure that the comptroller receives a copy of the results of the agency's inventory and the signed statement not later than the earliest of:

(i) the 45th day after the date the inventory is conducted, or

(ii) the 20th day after the end of the fiscal year for which the inventory is conducted.

(4) **Requirements for supplemental physical inventories**

(A) A state agency may use any method for conducting a supplemental physical inventory that is acceptable to the comptroller. Statistical sampling and dollar unit sampling techniques are acceptable if they are properly used and comply with the comptroller's requirements

(B) A state agency shall maintain in its records the results of each supplemental physical inventory.

(C) If the results of a state agency's supplemental physical inventory vary from the records on the state property accounting system, then the agency should consider the immediate conducting of an annual physical inventory

(5) **Loaned personal property** Personal property that a state agency has loaned to another state agency is the responsibility of the lending state agency for the purpose of this subsection.

(6) **Transferred personal property.** Personal property, including reassignable personal property, that a state agency has transferred to another state agency is the responsibility of the transferring state agency until the transfer has been completed in accordance with the comptroller's requirements

(7) **Missing, stolen, salvage, or surplus personal property.** A state agency must include in a physical inventory the agency's missing, stolen, salvage, or surplus personal property until it has been deleted from the state property accounting system in accordance with this section

(f) **Records and reporting**

(1) **Internal state agencies**

(A) An internal state agency shall maintain a perpetual inventory. The

agency shall record personal property and trust property on the state property accounting system at the time of acquisition. The information must be recorded in accordance with the comptroller's requirements

(B) The comptroller shall maintain an internal agency's property records on the state property accounting system.

(2) **Reporting state agencies.**

(A) A reporting state agency shall report information to the state property accounting system in accordance with the comptroller's schedules, procedures, and classification system. The comptroller may require a reporting state agency to submit information at any time. The comptroller shall notify reporting state agencies in writing about the required frequency of the agencies' reports

(B) A reporting state agency shall maintain its property records in the manner and format required by this section and the comptroller. The agency shall ensure that its property accounting system is always capable of providing the information required by the state property accounting system.

(3) **Group and unit tracking of personal property.**

(A) A state agency shall track personal property on a unit basis

(B) Possessions of the state other than personal property may be tracked on a group basis only if the requirements of subparagraphs (C) and (D) of this paragraph are satisfied.

(C) A state agency may track possessions of the state on a group basis only if all the possessions in the group:

(i) have the same characteristics;

(ii) have the same purchase and in-service dates,

(iii) have the same class code,

(iv) are visually identifiable as logically belonging to the group, and

(v) may be depreciated using the same methods

(D) Notwithstanding anything in this paragraph, possessions of the state that are purchased with debt financing by the Texas Public Finance Authority may be tracked on a group basis only if all the

possessions in the group are included in the same lease supplement.

(4) **Missing, stolen, damaged, or destroyed personal property**

(A) Upon receiving a report about stolen, damaged, or destroyed personal property from a head of agency under subsection (g)(1)(C) or (D) of this section or from a property manager under subsection (h)(2)(B) or (C) of this section, the comptroller shall forward necessary records about the property to the state auditor and the attorney general.

(B) The attorney general may investigate and take appropriate legal action to recover the value of stolen, damaged, or destroyed personal property. The attorney general shall determine the value of the property to be recovered based on the market value of the property and the degree of responsibility of the person who was entrusted with the property

(C) A state agency may not delete missing personal property from the state property accounting system before three annual physical inventories have been conducted or three calendar years have elapsed since it was determined to be missing

(D) A state agency may delete missing, stolen, damaged, or destroyed personal property from the state property accounting system only in accordance with the comptroller's procedures

(g) **Responsibilities of heads of state agencies**

(1) **Care, custody, and control of personal property**

(A) The head of a state agency is responsible for the custody and care of personal property and trust property in the agency's possession. This responsibility does not end when a property manager is designated

(B) The head of a state agency is responsible for ensuring that the agency maintains adequate inventory controls on personal property and trust property. Upon request, the state auditor may advise and make recommendations to the agency about those controls

(C) If the head of a state agency has reasonable cause to believe that the agency's personal property or trust property is missing, damaged, or destroyed because of a state employee's negligence, then the head of agency shall file a report

with the comptroller, the state auditor, and the attorney general

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A head of agency should transmit to the state auditor by facsimile the appropriate form within 24 hours after entering the deletion request

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises

(D) If the head of a state agency has reasonable cause to believe that the agency's personal property or trust property has been stolen, then the head of agency shall inform the comptroller, the state auditor, the attorney general, and law enforcement personnel

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A head of agency should transmit to the state auditor by facsimile the appropriate form and police report within 24 hours after entering the deletion request

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises

(iv) A report to law enforcement personnel must be made not later than the 48th hour after reasonable cause for the belief arises

(2) Designation, supervision, and training of property managers

(A) The head of a state agency shall

(i) designate a property manager for the agency,

(ii) inform the comptroller of the designation by properly completing and submitting the form required by the comptroller, and

(iii) ensure that the property manager receives training about this

section and the state property accounting system.

(B) The head of a state agency may designate more than one property manager for the agency only if the comptroller approves.

(C) The head of a state agency may designate one or more alternate property managers for the agency. The head of agency shall inform the comptroller of the designation by properly completing and submitting the form required by the comptroller

(D) If a state agency's property manager or alternate property manager changes, then the head of the agency shall inform the comptroller of the change by properly completing and submitting the form required by the comptroller

(E) The head of a state agency shall ensure that the property manager for the agency properly carries out the property manager's duties as required by this section.

(3) Providing receipts. The head of a state agency shall provide the receipt required by subsection (h)(4) of this section if the head of agency is entrusted with personal property or trust property.

(4) Use of personal property or trust property. The head of a state agency may use personal property and trust property only for state purposes

(5) Change in the head of a state agency.

(A) When the head of a state agency changes, the outgoing head of agency shall complete the form required by the comptroller and deliver the form to the incoming head of agency

(B) After verifying and signing the form, the incoming head of agency shall send copies of the form to the comptroller and the state auditor.

(6) Liability. The head of a state agency is financially liable for the loss sustained by the state if the head of agency is entrusted with personal property or trust property and

(A) the property disappears because the head of agency fails to exercise reasonable care for its safekeeping,

(B) the property deteriorates because the head of agency fails to exercise reasonable care to maintain and service it, or

(C) the property is damaged or destroyed because of the head of agency's negligent or intentional wrongful act.

(h) Responsibilities of property managers.

(1) Determining the responsibilities of alternate property managers. The property manager of a state agency shall determine the responsibilities of the agency's alternate property managers. The property manager shall ensure that the alternate property managers properly fulfill their responsibilities.

(2) Custody of personal property and trust property.

(A) The property manager of a state agency is the custodian of all personal property and trust property possessed by the agency.

(B) If a property manager has reasonable cause to believe that personal property or trust property is missing, damaged, or destroyed because of a state employee's negligence, then the property manager shall inform the comptroller, the state auditor, and the attorney general. A report to the comptroller must be made in the form and manner required by the comptroller.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the state auditor must be made through a deletion request entered into the state property accounting system. A property manager should transmit to the state auditor by facsimile the appropriate form within 24 hours after entering the deletion request.

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(C) If a property manager has reasonable cause to believe that the agency's personal property or trust property has been stolen, then the property manager shall inform the comptroller, the state auditor, the attorney general, and law enforcement personnel.

(i) A report to the comptroller must be made immediately and by entering the appropriate disposal code into the state property accounting system.

(ii) A report to the state auditor must be made through a deletion

request entered into the state property accounting system. A property manager should transmit to the state auditor by facsimile the appropriate form and police report within 24 hours after entering the deletion request.

(iii) A report to the attorney general must include the appropriate form. The form must be transmitted to the attorney general by facsimile. The report must be made not later than the fifth working day after reasonable cause for the belief arises.

(iv) A report to law enforcement personnel must be made not later than the 48th hour after reasonable cause for the belief arises.

(3) Maintaining records. The property manager of a state agency shall maintain the records required by the comptroller and this section.

(4) Entrusting personal property or trust property to other persons.

(A) A property manager may not entrust personal property or trust property to a person unless the person provides a signed, written, and dated receipt to the property manager.

(B) The receipt must contain a statement similar to the following. "I understand that I am financially liable to the state for the disappearance of the personal property or trust property if I fail to exercise reasonable care for its safekeeping; the deterioration of the property if I fail to exercise reasonable care to maintain and service it; and the damage or destruction of the property if it occurs because of my negligent or intentional wrongful act."

(C) A property manager may not entrust personal property or trust property to a person if the property manager knows or reasonably should know that the person will use the property for other than state purposes.

(5) Use of personal property and trust property. A property manager may use personal property and trust property only for state purposes.

(6) Changes in property managers.

(A) When a property manager changes, the outgoing property manager shall complete the form required by the comptroller and deliver the form to the incoming property manager.

(B) After verifying and signing the form, the incoming property man-

ager shall send copies of the form to the comptroller and the state auditor.

(7) Liability. A property manager is financially liable for the loss sustained by the state if the property manager is entrusted with personal property or trust property and:

(A) the property disappears because the property manager fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the property manager fails to exercise reasonable care to maintain and service it; or

(C) the property is damaged or destroyed because of the property manager's negligent or intentional wrongful act

(i) Responsibilities of state employees.

(1) Providing receipts. A state employee shall provide the receipt required by subsection (h)(4) of this section if the employee is entrusted with personal property or trust property.

(2) Use of personal property and trust property. A state employee may use personal property and trust property only for state purposes.

(3) Liability. A state employee is financially liable for the loss sustained by the state if the employee is entrusted with personal property or trust property and

(A) the property disappears because the employee fails to exercise reasonable care for its safekeeping;

(B) the property deteriorates because the employee fails to exercise reasonable care to maintain and service it; or

(C) the property is damaged or destroyed because of the employee's negligent or intentional wrongful act

(j) Valuation of personal property.

(1) General provision. This subsection governs the valuation of personal property as reported to the state property accounting system.

(2) Newly acquired personal property. The value of newly acquired personal property must be equal to the sum of.

(A) the cost of the property; and

(B) the costs required to place the property into service

(3) Donated personal property

(A) The value of personal property acquired through donation must be equal to its fair market value on the date of donation

(B) The fair market value of donated personal property must be determined through a reasonable market study

(C) A state agency that conducts a market study shall fully document the methods used to conduct the study. The agency shall keep the documentation in the agency's records in accordance with the comptroller's requirements. The agency shall send a copy of the documentation to the state property accounting system

(4) Personal property manufactured by the state. The value of personal property manufactured by the state must be equal to the total cost of labor and materials. Overhead costs may be included in the value if the manufacturing state agency determines it would be cost-effective

(5) Betterments and replacements of personal property

(A) A state agency shall determine the value of a betterment or replacement of personal property

(i) immediately following the completion of the betterment or replacement, or

(ii) at the agency's earliest opportunity as deemed appropriate by the agency and the comptroller

(B) The value of a betterment of personal property must be expensed unless the betterment increases the value or useful life of the property by at least 25%. If a betterment is not expensed, then the value of the property must be increased on the state property accounting system in accordance with the comptroller's requirements

(C) The value of a replacement of personal property is equal to the cost of the replacement less the original cost of the part being replaced. The value of the replacement must be expensed unless the replacement materially increases the value or estimated useful life of the property. If a replacement is not expensed, then the value of the property must be increased on the state property accounting system in accordance with the comptroller's requirements

(D) If a state agency is required to increase the value of personal

property on the state property accounting system because of a betterment or replacement, then the agency shall keep documentation in its records that supports the amount of the increase. The agency shall make the documentation available for inspection upon request. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(b) Debt-financed personal property

(A) In this paragraph, the total principal of debt-financed personal property is equal to the purchase price of the property plus the applicable service charge imposed by the Texas Public Finance Authority

(B) The acquisition cost of debt-financed personal property other than manufactured items must reflect the total principal of the property and the costs required to place the property into service.

(C) The acquisition cost of debt-financed personal property that has been manufactured should be equal to the total cost of acquiring the property plus the cost of placing the property into service. This includes the principal, interest, finance charges, costs of issuance, and administrative fees

(7) Leased personal property.

(A) Personal property that a state agency has leased under a capital lease must be valued in accordance with this paragraph

(B) Subject to subparagraph (C) of this paragraph, the cost of leased personal property is equal to the present value of the minimum lease payments plus the cost of placing the property into service. The cost of the property does not include any costs not paid by the agency

(C) The cost of leased personal property may not exceed the property's fair market value.

(8) Trade-ins. If a state agency is authorized to trade personal property for other personal property, then the agency must report the trade to the state property accounting system in accordance with the comptroller's requirements.

(9) Condition of personal property. When a state agency reports reassignable, surplus, or salvage personal property to the state property accounting system, the agency must include the condition of the property in the report. The agency should use the categories adopted by

the comptroller when reporting the condition of personal property

(10) Previously depreciated personal property. If a state agency obtains ownership of personal property that was previously purchased with federal funds and depreciated for federal reporting purposes, then the agency shall value the property at its original cost. The previous depreciation has no effect on the value of the personal property for the purposes of the state property accounting system

(k) Accounting practices.

(1) Depreciation of personal property

(A) The depreciable personal property of proprietary and fiduciary funds must be depreciated in accordance with generally accepted accounting principles

(B) An internal state agency shall depreciate personal property that is a general fixed asset by using the straight-line method. The depreciation must be recorded on the state property accounting system on a memorandum basis unless generally accepted accounting principles require depreciation. Regardless of how the depreciation is recorded, it shall be recorded at the end of each fiscal year unless the comptroller specifies otherwise.

(C) The amount that personal property depreciates over a fiscal year by using the straight-line method is equal to the difference between the property's acquisition cost and its salvage value, divided by the estimated useful life of the property expressed in years

(D) A state agency shall use the state property accounting system's default value for the estimated useful life of personal property unless the agency documents a different value based on the agency's experience. This subparagraph applies only when a state agency is calculating depreciation for the purpose of recording it on the state property accounting system

(2) Transfer of personal property between funds

(A) If a state agency transfers personal property from a proprietary fund to a governmental fund, then a new cost basis must be established for the property in the governmental fund. The new cost basis must be based on the acquisition cost of the property as recorded in the proprietary fund less any accumulated depreciation earned on the property. There is no requirement for the agency to modify the estimated useful life of the property

(B) If a state agency transfers personal property from a governmental fund to a proprietary or fiduciary fund, then the acquisition cost of the property must be recorded in the proprietary or fiduciary fund. The acquisition cost as recorded in the proprietary or fiduciary fund must be equal to the acquisition cost as recorded in the governmental fund. The estimated useful life of the property must be adjusted to reflect the best estimate of useful life available to the proprietary or fiduciary fund.

(C) If a state agency transfers personal property from a governmental fund to another governmental fund, then the acquisition cost of the property as recorded in the new fund must be the same as the cost recorded in the old fund.

(3) Reporting and reconciliation of personal property inventory balances

(A) A state agency shall:

(i) report to the state property accounting system general ledger information using generally accepted accounting principles,

(ii) track beginning balances at the beginning of each year; and

(iii) report additions, deletions, and adjustments in personal property throughout the year so that year end balances can be determined.

(B) An internal state agency should reconcile its general ledger balances for personal property to the supporting financial detail in the state property accounting system. The agency should accomplish the reconciliation on a monthly basis at the month-end closing. All adjustments made during the reconciliation should be supported and documented. The agency may destroy the documentation only in accordance with the comptroller's requirements

(C) A reporting state agency should reconcile its corresponding balances to the detail reported to the state property accounting system on a quarterly basis. Adjustments should be entered not later than the 20th day after the end of the quarter. All adjustments should be supported and documented. The agency may destroy the documentation only in accordance with the comptroller's requirements.

(l) Maintaining records

(1) Forms. A state agency shall use the forms prescribed by the comptroller when taking any action authorized or required by this section. The comptroller may adopt and modify forms as the comptroller deems necessary

(2) Loans of personal property.

(A) A state agency that loans personal property to another state agency shall document the loan as required by the comptroller.

(B) A state agency that loans personal property to another state agency does not suspend or eliminate its responsibilities toward the property under this section and applicable law.

(3) Transfers of personal property.

(A) A state agency that transfers personal property to another state agency shall comply with the procedures and requirements adopted by the comptroller.

(B) A state agency that receives personal property from another state agency shall comply with the procedures and requirements adopted by the comptroller.

(C) Personal property that is transferred from one state agency to another is in the possession of the transferring agency until the receiving agency properly enters its receipt of the property in the state property accounting system.

(D) A state agency may not transfer property purchased through the master lease financing program administered by the Texas Public Finance Authority unless the authority provides advance approval of the transfer in accordance with the authority's requirements.

(4) Reassignable personal property.

(A) A state agency that has possession of reassignable personal property shall identify the property to the state property accounting system. The system shall then advertise the availability of the property to other state agencies.

(B) A state agency that transfers reassignable personal property to another state agency and the state agency that receives the property shall comply with the comptroller's procedures for the transfer.

(C) This subparagraph applies if a state agency transfers to at least two state agencies reassignable personal property that is tracked on a group basis on the state property accounting system. The transferring state agency shall identify to the system the property that is transferred to

each state agency. Each receiving state agency shall record its receipt of the property on the state property accounting system in accordance with subsection (f) of this section.

(5) Surplus and salvage personal property

(A) A state agency shall comply with applicable law and rules when transferring, selling, or disposing of its surplus or salvage personal property

(B) When a state agency determines that it possesses surplus or salvage personal property, the agency shall notify the state property accounting system in accordance with the comptroller's requirements.

(C) The notification provided under subparagraph (B) of this paragraph constitutes official notice to the General Services Commission that the surplus or salvage personal property is available for sale or other disposition

(D) A state agency may delete surplus or salvage personal property from the state property accounting system only by requesting the comptroller's approval. An approval request must comply with the comptroller's procedures.

(E) Surplus personal property that has not been reported to the state property accounting system must be added to the system before the property may be deleted from the system

(F) Salvage personal property shall be removed from the state property accounting system in accordance with the comptroller's requirements

(G) Each house of the legislature is exempt from the surplus property provisions of the State Purchasing and General Services Act, Article 9, if the rules and regulations of the administration committee of the house has adopted a system for disposing of the property

(H) Subparagraphs (A)-(F) of this paragraph do not apply to products and by-products of research, forestry, agriculture, livestock, and industrial enterprises that exceed the quantity required for consumption by the producing state agency if the agency has a continuing and adequate system of marketing research and sales. The deletion of those products and by-products from the state property accounting system must comply with the comptroller's requirements

(I) State eleemosynary institutions and institutions and agencies of higher learning are exempt from the provisions in the State Purchasing and General Services Act, Article 9, that relate to the disposition of surplus or salvage property.

(m) Inventory control.

(1) Marking of personal property. A state agency shall permanently mark each item of personal property in the agency's possession as property of the State of Texas. The marking is permanent for the purpose of this paragraph if the marking can be removed only through considerable or intentional means. The marking shall be highly visible so that conducting a physical inventory is facilitated.

(2) Property inventory numbers.

(A) A state agency shall assign a unique property inventory number to each item of personal property that is tracked on a unit basis. The number shall be printed on a label. The label shall be attached to the item in a highly visible location so that conducting a physical inventory is facilitated.

(B) A property inventory number may not be reused, even if property has been deleted from the state property accounting system

(3) Responsibility for securing and tracking personal property. A state agency is responsible for ensuring that its personal property and trust property are tracked and secured in the manner that is most likely to prevent damage to and the theft, loss, or misuse of the property

(4) Locating personal property. A state agency must know where all of its personal property and trust property is located at all times

(n) Abolished state agencies

(1) Application of this subsection. This subsection applies to an abolished state agency only to the extent this section is consistent with the law that abolishes the agency.

(2) Responsibilities of the head of an abolished state agency

(A) The head of an abolished state agency shall

(i) conduct a complete and accurate physical inventory of the agency's possessions in accordance with the comptroller's requirements,

(ii) furnish a copy of the inventory to the General Services Commission not later than the effective date of the abolition, and

(11) transfer all personal property of the agency to the General Services Commission in accordance with the comptroller's requirements

(B) The physical inventory required by subparagraph (A)(i) of this paragraph is in addition to the annual physical inventory required by subsection (e) of this section

(3) Responsibilities of the General Services Commission The General Services Commission shall care for the personal property transferred to the commission under paragraph (2) of this subsection until the commission distributes or sells the property in accordance with applicable law

(o) Real property

(1) Using the state property accounting system to track real property. A state agency may use the state property accounting system to track real property if the agency

(A) establishes its own coding and accounting structures, and

(B) complies with the comptroller's requirements

(2) Submitting information to the General Land Office A state agency may not use the state property accounting system to track real property instead of submitting information about the property to the General Land Office

(p) Access to the state property accounting system An individual may have access to the state property accounting system only in accordance with the procedures and security limitations prescribed by the comptroller

(q) Consequences of violating this section The comptroller may refuse to draw warrants or initiate electronic funds transfers on behalf of a state agency that fails to comply with this section

(r) Conflict with federal laws or regulations. If a federal law or regulation conflicts with this section, then the law or regulation prevails over this section to the extent necessary to avoid the conflict

(s) Transition

(1) Application of this subsection This subsection applies to personal property of a state agency only if

(A) the agency was not required to report the property to the General Services Commission by the State Purchasing and General Services Act, Article 8, and

(B) this section requires the agency to report the property to the state property accounting system

(2) Deadline for initial reporting of personal property. Notwithstanding anything in subsections (a)-(r) of this section, a state agency shall complete its initial reporting of personal property to the state property accounting system not later than August 31, 1994.

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 June 29, 1994.

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3, Income Assistance Services

The Texas Department of Human Services (DHS) adopts amendments to §§3 704, 3 902, and 3 1003, concerning types of resource and income exclusions and types of earned income deductions allowed in determining Aid to Families with Dependent Children (AFDC) and Food Stamp Program eligibility, in its Income Assistance Services rule chapter

The justification for the amendments is to comply with changes mandated in Public Laws 101-201, 101-425, 101-426, and 103-66

The amendments to §3 704 and §3 902 will function by exempting certain disability payments from income and resources in the AFDC program The amendment to §3 1003 will function by increasing the excess shelter deduction from \$207 to \$231 per month used in determining eligibility for the Food Stamp Program

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs The amendment is effective July 1, 1994, in compliance with federal requirements

Subchapter G. Resources

• 40 TAC §3.704

The amendment implements the Human Resources Code, §22 001 and §31 003

§3.704. Types.

(a) (No change.)

(b) Aid to Families with Dependent Children. Exclusions from resources in AFDC are as follows

(1) Burial plot. DHS exempts one burial plot for each household member.

(2) Disability payments. DHS exempts disability payments resulting from Agent Orange Settlement Agreements or the Radiation Exposure Compensation Act.

(3) Homestead DHS exempts the usual residence and surrounding property which is not separated by property owned by others

(A) The exemption remains in effect if the surrounding property is separated from the home by public right of way, such as roads

(B) The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, casualty, or natural disaster and the household intends to return

(4) Sale of a homestead. DHS counts the proceeds from the sale as an available resource

(5) Inaccessible resources DHS exempts cash values of resources that are not legally available to the household.

(6) Lump sum payments. DHS counts income tax refunds as resources as stipulated in 45 Code of Federal Regulations §233 20(a)(3)(iv)(E).

(7) Earned income credits (EIC). EIC payments are exempt for the month the payment is received and for the following month

(8) Prepaid burial insurance. DHS exempts one prepaid burial insurance policy, prepaid funeral plan, or prepaid funeral agreement with a cash value of \$1500 or less for each member of the certified group

(9) Personal possessions. DHS exempts personal possessions such as clothing, jewelry, furniture, livestock, and farm equipment, if used to meet personal needs essential for daily living.

(10) Resources of an alien's sponsor. DHS determines the sponsor's countable resources in the same manner as the applicant's. DHS reduces the total value of the sponsor's resources by \$1,500 and considers the remainder available to the alien

(11) Resources exempted by federal law DHS exempts government payments by the Individual and Family Grant Program or the Small Business Administra-

tion provided to rebuild a home or replace personal possessions damaged in a disaster, if the household is subject to legal sanction if the funds are not used as intended. DHS exempts payments made under the following acts:

(A) Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241);

(B) Sac and Fox Indian Claims Agreement;

(C) Grand River Band of Ottawa Indians;

(D) Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians received according to the Maine Indian Claims Settlement Act of 1980;

(E) Confederated Tribes and Bands of the Yakima Indian National and the Apache Tribe of the Mescalero Reservation received from the Indian Claims Commission;

(F) Seneca Nation Settlement Act of 1990 (Public Law 101-503);

(G) DHS exempts payments from Indian lands held jointly with the tribe or land that can be sold only with approval of the Bureau of Indian Affairs;

(H) DHS exempts funds distributed by the Secretary of the Interior, as stipulated in Public Law 98-64, §2 (relating to Tribal Trust Funds) and in Public Law 97-458, §4 (relating to Judgement Funds Granted due to a Claim Against the United States);

(I) DHS exempts reimbursements from the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970;

(J) DHS exempts payments or allowances made under any federal law for the purpose of energy assistance.

(12) DHS exempts the value of one vehicle owned and used by the certified group for transportation if the equity is less than \$1,500. If the equity exceeds \$1,500, DHS counts the excess as a resource. DHS counts the equity of all other vehicles

(13) Reimbursements for repairing or replacing a lost or damaged resource which would not otherwise affect eligibility are exempt if the applicant uses the reimbursement for the intended purpose.

(c) (No change.)

(d) Food stamps. Exclusions from resources for food stamps are those stipulated in 7 Code of Federal Regulations, the United States Code, §2014(g) and (j), and Public Laws 101-426 and 101-201.

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 June 30, 1994

TRD-9443327

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

Effective date July 1, 1994

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

Subchapter I. Income

• 40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs. The amendment is effective July 1, 1994, in compliance with federal requirements.

The amendment implements the Human Resources Code, §22.001 and §31.003) §3.902. *Types.*

(a) (No change.)

(b) Aid to families with dependent children. Exclusions from income for AFDC are

(1) disability payments DHS exempts disability payments resulting from Agent Orange Settlement Agreements or the Radiation Exposure Compensation Act;

(2) diverted income. DHS diverts income for all persons allowed in 45 Code of Federal Regulations §233.20(a)(3)(ii)(C),

(3) Domestic Volunteer Service Act. DHS exempts payments received by volunteers for services performed in programs stipulated in the Domestic Volunteer Service Act of 1973, Title II (Public Law 93-113). DHS exempts payments made to applicants serving as VISTA volunteers under Title I;

(4) earned income credits DHS exempts this income in the 185%, 100%, and recognizable needs tests,

(5) educational assistance DHS exempts general education assistance payments as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv) and §233.20(a)(4)(ii)(d). DHS also exempts remaining amounts of educational assistance

pursuant to 45 Code of Federal Regulations §233.20(a)(3)(vii);

(6) energy assistance. DHS exempts home energy assistance as stipulated in 45 Code of Federal Regulations §233.53(a)-(c),

(7) food stamp value;

(8) foster care payments;

(9) in-kind income DHS exempts the value of unearned in-kind assistance,

(10) job training allowances. DHS exempts payments from other agencies that do not duplicate assistance provided under the AFDC needs standard as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(vii)(a)-(b). DHS also exempts unearned income payments from the Job Training Partnership Act (JTPA) of 1982 for AFDC children and JTPA payments of \$375 or less per month for AFDC adults participating in the Work Experience Program, Limited Work Experience Program, or Summer Youth Program,

(11) native and Indian claims DHS exempts payments made under the Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241), Seneca Nation Settlement Act of 1990 (Public Law 101-503), and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Laws 92-254, 94-540; 94-114, §6, 95-433, 96-420, 98-64, §2, and 93-134, §7 (as amended by Public Law 97-458, §4),

(12) noneducational loans,

(13) nutrition program assistance DHS exempts the value of supplemental food assistance under the Child Nutrition Act of 1966 and special food services programs for children under the National School Lunch Act DHS exempts benefits received under the Older Americans Act of 1965, Title VII, Nutrition Program for the Elderly,

(14) relocation assistance benefits DHS exempts benefits received under the Uniform Relocation Assistance and Real Property Acquisition Act, Title II,

(15) SSI as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(x),

(16) third-party funds DHS exempts money received and used for care and maintenance of a third-party beneficiary who is not a household member,

(17) vendor payments. DHS does not count payments made directly to the applicant's creditor or person providing the service if the person or organization making the payments is outside the household,

(18) children's earned income. DHS exempts this income if the child is a full-time student as defined by the school or a part-time student working less than 30 hours a week. There is no limit on the number of hours a full-time student can work;

(19) government housing assistance. DHS exempts government rent or housing subsidies as stipulated in 45 Code of Federal Regulations §233.20(a) (3)(xii).

(c) (No change.)

(d) Food stamps. DHS excludes as income the types of income stipulated in Public Laws 101-201 and 101-425, and 7 Code of Federal Regulations §273.9(c) except for child support payments, educational assistance, and certain types of income of SSI recipients. DHS excludes educational assistance and income of SSI recipients as stipulated in United States Code, §2014, Part 5(d) and (e). DHS does not exclude any portion of child support payments.

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 June 30, 1994.

TRD-9443328

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

Effective date: July 1, 1994

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



Subchapter J. Budgeting

• 40 TAC §3.1003

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs. The amendment is effective July 1, 1994, in compliance with federal requirements.

The amendment implements the Human Resources Code, §22.001 and §31.002.

§3.1003. Deductions.

(a) (No change.)

(b) Food Stamps. DHS allows deductions from income as stipulated in 7 Code of Federal Regulations §273.9(d) and in Public Law 103-66. Regarding a standard utility deduction, DHS allows a single deduction as specified in 7 Code of Federal Regulations §273.9(d)(6)(i)(B). Regarding a standard shelter deduction for homeless households, DHS allows the standard computed annually by the Food and Nutrition Service as specified in 7 Code of Federal Regulations §273.9(d)(5) (i).

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 June 30, 1994.

TRD-9443329

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

Effective date: July 1, 1994

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



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

Tuesday, August 9, 1994, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

According to the agenda summary, the Office of Hearings will hold an administrative hearing to review alleged violations of Texas Agriculture Code, §76.116(a)(1) and §76.114(a), and 4 Texas Administrative Code, §7.18 and §7.22, by Darryl Woods doing business as Sun Valley Dusting.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: July 1, 1994, 10:16 a.m.

TRD-9443379

Anatomical Board of the State of Texas

Friday, July 29, 1994, 9:30 a.m.

UTMB Administration Building, Ballinger Mills Room, Sixth Floor

Galveston

According to the agenda summary, the Anatomical Board of the State of Texas will call to order; approval of agenda; approval of the 1993 minutes; chairman's comments, report of the secretary; report of the treasurer; report on 1992-1993 cadaver procurement and use, distribution of cadavers for

1994-1995; old business; determine location for 1995 meeting, and adjourn.

Contact: Dr. Andrew F. Payer, 200 University Boulevard, Galveston, Texas 77555-0843, (409) 772-1166

Filed: July 1, 1994, 2:13 p.m.

TRD-9443427

Texas Animal Health Commission

Thursday, July 14, 1994, 1:00 p.m.

1001 Junction Highway, Inn of the Hills, Medallion Convention Center

Kerrville

According to the complete agenda, the Finance Committee will discuss review of the staffing and organization review team (SORT) recommendations, possible recommendations from the Finance Committee, review and possible recommendations on legislative appropriations request (LAR), review of and possible recommendations of proposed schedule for user fees; and public comment.

Notice: Persons with disabilities attending this meeting who may need auxiliary aids or services such as interpreters, readers, large print or braille, are requested to contact Melissa Nitsche at (512) 719-0714 two working days prior to the meeting so appropriate arrangements can be made.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714

Filed: July 1, 1994, 2:05 p.m.

TRD-9443416

State Board of Barber Examiners

Tuesday, July 12, 1994, 10:00 a.m.

9101 Burnet Road, Suite 103

Austin

According to the agenda summary, the Board Members will call the meeting to order with roll call, read and possibly approve minutes from May 3, 1994 meeting, sign letters, appearances of Linda Lung, Thelma Walker, Santa Morales before the board; discussion and possible action on reports to the Board by the Executive Director, read, discuss and possibly act on communication to or from the Board; old business, new business, then the Board will go into executive session to meet with assistant attorney general's to seek legal advice regarding the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director, Mike Rice, and/or to hear complaints or charges against the Executive Director, Mike Rice, and/or to discuss pending or contemplated litigation, pursuant to Texas Government Code, §551.071, return to open session for further discussion and possibly act on items in preceding executive session as required; return to executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, or dismissal of the Executive Director, Mike Rice, and/or

to hear complaints or charges against the Executive Director, Mike Rice, pursuant to Texas Government Code, §551.074; return to open session for further discussion and possibly act on items in preceeding executive session as required; return to executive session to consider the appointment, employment, and duties of an Acting Executive Director, pursuant to Texas Government Code, §551.074; return to open session for further discussion and possibly act on items in preceeding executive session as required; and adjourn.

Contact: B. Michael Rice, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: July 1, 1994, 2:03 p.m.

TRD-9443421

Texas Bond Review Board

Tuesday, July 12, 1994, 10:00 a.m.

300 West 15th Street, Clements Building, Committee Room 5, Fifth Floor

Austin

According to the agenda summary, the Staff Planning will call to order, approval of minutes; discussion of proposed issues; other business; and adjourn.

Contact: Albert Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: July 1, 1994, 2:05 p.m.

TRD-9443417

Texas Board of Chiropractic Examiners

Saturday, July 9, 1994, 11:00 a.m.

2914 North Main

Houston

According to the complete agenda, the Licensing Committee will meet to discuss committee procedures, provisional licensure with other states, and application of statute

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: July 1, 1994, 10:16 a.m.

TRD-9443380

Texas Cosmetology Commission

Sunday, July 10, 1994, 9:00 a.m.

Doubletree Hotel, 6505 IH-35 North

Austin

Revised Agenda

According to the complete agenda, the Commission will add supplement to complete agenda: 11a. discussion of strategic plan.

Contact: Alicia Ayers, P.O. Box 26700, Austin, Texas 78755-0700, (512) 454-4674

Filed: July 1, 1994, 3:29 p.m.

TRD-9443429

Texas Office for Prevention of Developmental Disabilities

Monday, July 18, 1994, 6:30 p.m.

604 Brazos, the Citadel Room, Driskill Hotel

Austin

According to the complete agenda, the Bicycle Helmet and Safety Coalition Meeting will call to order; introductions of members/special guests; legislation discussion; task force reports; other reports; meeting schedule; and adjournment

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 463-5042.

Filed: June 30, 1994, 4:45 p.m.

TRD-9443323

Texas Planning Council for Developmental Disabilities

Thursday, July 14, 1994, 9:00 a.m.

Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Room 4240

Austin

According to the agenda summary, the Planning and Evaluation Committee will call to order; introduction of council members, staff and guests; approval of minutes of April 7-8, 1994, comparison of TPCDD draft state plan and UAP and P&A state plans; presentation: result; from draft state plan public input activities; break; committee discussion and recommendations for revision of draft state plan; lunch recess; reconvene; 1995 staff proposed funding activities; department of health funding request; break, presentation and committee discussion. consumer stipend survey, future funding activities proposed for development; and adjourn.

Contact: Roger Webb, 4900 North Lamar Boulevard, Suite 4157, Austin, Texas 78751, (512) 483-4081

Filed: July 1, 1994, 3:39 p.m.

TRD-9443428

Friday, July 15, 1994, 8:30 a.m.

Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Room 4240

Austin

According to the complete agenda, the Executive Committee will call to order; introductions; public comments; approval of minutes of April 7, 1994; chair's report; executive director's report: fiscal year 1994 budget status report and TPCDD staff organizational chart; consideration of proposed TPCDD bylaws revisions; review of TPCDD/TRC management agreement; consideration of fiscal year 1995 budget; consideration of withdrawal from NADDCC; review of concurrent committee meetings; 1995 council meeting schedule; review of stipends grant applications; and adjourn.

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 Rosalinda Lopez at (512) 483-4094

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: July 1, 1994, 2:03 p.m.

TRD-9443420

Interagency Council on Early Childhood Intervention

Wednesday, July 13, 1994, 9:00 a.m.

Conference Room 201-A, Texas Department of Health, 4412 Spicewood Springs

Austin

According to the complete agenda, the Interagency Council on Early Childhood Intervention will receive public comment and discuss approval of the minutes from the June 15, 1994 meeting; and discuss and possibly act on: Advisory Committee and director's forum report; performance measures for the executive director; proposed amendments to the Early Childhood Intervention (ECI) rules, §621.44(12)(B)(v), which will allow parents to give their consent for the release of information for a period of three years in order to participate in the statewide eligibility screening system; proposed amendments to §621.31 of the ECI rules related to formal hearing procedures, proposed new §§621.81-621.86 to the ECI rules which will establish program requirements for the Milestones program; proposed new §621.65, which will describe the council's relationships with other health and human services agencies regarding the establishment of the community resource coordination group as required in the Health

and Human Services Commission's memorandum of understanding; continuation funding for intervention an Milestones Programs for fiscal year 1995; proposed language for legislative initiatives and discussion of the "draft" legislative appropriations request; and schedule meeting of the Interagency Council on Early Childhood Intervention for fiscal year 1995; and an information session not requiring action by the council

Contact: Mary Elder, 1100 West 49th Street, Austin, Texas 78756, (512) 502-4900. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D (512) 458-7708 at least two days prior to the meeting.

Filed: July 1, 1994, 10:15 a.m.

TRD-9443373

◆ ◆ ◆
**Advisory Commission on
State Emergency Commu-
nications**

Wednesday, July 13, 1994, 10:30 a.m.

1101 Capital of Texas Highway South,
Suite B-100

Austin

Revised Agenda

According to the complete agenda, the Poison Control Coordinating Committee will call the meeting to order and recognize guests, hear public comment, approval of May 13, 1994 committee meeting minutes, report of subcommittee on medical management and protocols priority for development of specific protocols, report of Subcommittee on Operations, status of evaluation of poison severity score, approach to telephone answering by SPIs, training plans for new SPIs, and standard of care and qualifications of SPIs, report of Subcommittee on Education development of educational goals for local community; report of Subcommittee on Finance budget projections for contract preparations, report of Subcommittee on Telecommunications: specific task/job function enhancement items of the system for SPIs, report on status of NTLA grant application; report on projects and timetables from strategic planning workshop in El Paso, contract and grant preparations, format and forms for interim funds, contact persons for assistance, budget operation, personnel, and timetable for submitting contracts/grants, naming of network; choice of 800 phone number; and adjourn.

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 30, 1994, 4:28 p.m.

TRD-9443316

◆ ◆ ◆
**State Employee Charitable
Campaign**

Thursday, July 7, 1994, 10:00 a.m.

3601 Fourth Street, Texas Tech University
Health Sciences Center, Room 2AB 101

Lubbock

According to the complete agenda, the Local Employee Committee-Lubbock discussed continued planning for campaign and review of budget

Contact: Jim Bob Jones, Room 2AB 101, Lubbock, Texas 79401, (806) 747-2711

Filed: July 1, 1994, 5:49 p.m.

TRD-9443471

Friday, July 8, 1994, 9:00 a.m.

1300 East 40th Street, Texas Department of
Human Services, Regional Office Building

Houston

According to the complete agenda, the Local Employee Committee-Houston will discuss budget and campaign implementation

Contact: Clara Cooper, P O Box 924507,
Houston, Texas 77292, (713) 685-2300

Filed: July 1, 1994, 5:49 p.m.

TRD-9443469

Monday, July 11, 1994, 4:00 p.m.

United Way of Denton County, 525 North
Locust Street

Denton

According to the complete agenda, the Local Employee Committee-Denton will hold a meeting to approve minutes of previous meeting, approve budget of the LCM, and discussion of the plan of the campaign

Contact: Derrell W Bulls, Box 23805,
Denton, Texas 76204, (817) 898-2111

Filed: July 1, 1994, 5:49 p.m.

TRD-9443470

Thursday, July 14, 1994, 10:00 a.m.

2000 East Martin Luther King, Jr Boulevard

Austin

According to the complete agenda, the Local Employee Committee-Capital Area will call to order, approval of minutes, overall campaign planning, budget consideration, and adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267.

Filed: July 1, 1994, 5:49 p.m.

TRD-9443472

◆ ◆ ◆
**Texas Employment Commis-
sion**

Tuesday, July 12, 1994, 9:00 a.m.

Room 644, TEC Building, 101 East 15th
Street

Austin

According to the agenda summary, the Texas Employment Commission will discuss prior meeting notes, executive session to consider *Ovide Duncantell vs Texas Employment Commission, et al*, actions, if any, resulting from executive session, staff reports, internal procedures of Commission Appeals, consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 28, and set date of next meeting

Contact: C Ed Davis, 101 East 15th Street,
Austin, Texas 78778, (512) 463-2291

Filed: July 1, 1994, 3:58 p.m.

TRD-9443440

◆ ◆ ◆
Texas Ethics Commission

Friday, July 8, 1994, 9:30 a.m.

1101 Camino La Costa, Room 235

Austin

According to the agenda summary, the commission will take roll call, hear comments by the commissioners and the executive director, and communications from the public, approve the minutes of the June 10, 1994, meeting, conduct a briefing, discussion, and possible action regarding the project to establish an electronic database under Government Code, §571 066, conduct a briefing, discussion, and possible action regarding the Ethics Commission strategic plan and the legislative appropriation request for the 1996-1997 biennium, conduct briefing, discussion, and possible action to waive certain fines assessed for late filing of a report, and discussion and possible action in response to the following Advisory Opinions Requests Numbers 238, 243, 244, and 246, and adjournment

Contact: John Steiner, 1101 Camino La
Costa, Austin, Texas 78752, (512)
463-5800

Filed: June 30, 1994, 11:45 a.m.

TRD-9443269

Texas Department of Health

Wednesday, July 13, 1994, 11:00 a.m.

Room S-400, The Exchange Building, 8407 Wall Street

Austin

According to the complete agenda, the Advisory Council of the Opticians' Registry will discuss approval of the minutes from the February 9, 1994 meeting; and discuss and possibly act on: program manger's report, National Committee of State Opticianry Licensing Boards, final adoption of amendments to 25 Texas Administrative Code, Chapter 129, policy interpretation of Texas Civil Statutes, Article 4551-1; and election of officers.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6661. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D (512) 458-7708 at least two days prior to the meeting

Filed: July 1, 1994, 10.15 a.m

TRD-9443374

Monday, July 25, 1994, 10:00 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the HIV/AIDS Coordinating Council will hear public comments on HIV/AIDS issues and recommendations which were published in the June 7, 1994, issue of the *Texas Register*. After lunch the council will discuss approval of the minutes of May 25, 1994 meeting and overview of council meeting format; and discuss and possibly act on public comments received during the open forum, adoption of final HIV/AIDS issues and recommendations to be made to the governor and legislature, client services; provider education, youth education; regulation, coordination of state efforts; adoption of final document; discussion about the development of the annual report; and set date for future meeting.

Contact: Linda Moore, M.S., R.N., 1100 West 49th Street, Austin, Texas 78756, (512) 458-6403. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D (512) 458-7708 at least two days prior to the meeting.

Filed: July 1, 1994, 9.09 a.m

TRD-9443350



State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Friday, July 15, 1994, 7:00 p.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis

San Antonio

According to the complete agenda, the Continuing Education Subcommittee will discuss and possibly act on. sponsors (Qualitone (manufacturer); Texas Association of Parents and Educators of the Deaf (non-manufacturer), courses (Starkey Labs "Connecting with Success"; Oklahoma Hearing Aid Association "Education Symposium"; Academy of Dispensing Audiologists "Update in Audiology", Starkey Labs "Course for Accreditation as an Occupational Hearing Conservationist"; and Beltone Electronics "International Convention"; approval of continuing education, and qualifications for continuing education.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657 For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D (512) 458-7708 at least two days prior to the meeting

Filed: July 1, 1994, 9.09 a.m

TRD-9443349

Friday, July 15, 1994, 8:00 p.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis

San Antonio

According to the complete agenda, the Applications Subcommittee will discuss and possibly act on. applications (Douglas Norris, and D. Lasley Taliaferro), surety bond cancellations (Greg Brenner, and Don Mills); and report on approval (Roland Denison, Kyle Durbin, Greg Keeney, and Gary A. Utley)

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657 For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting

Filed: July 1, 1994, 9:09 a.m.

TRD-9443348

Saturday, July 16, 1994, 8:30 a.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis

San Antonio

According to the complete agenda, the Complaints Subcommittee will discuss and possibly act on the following complaints

3-001, F2-018, F2-019, F3-002, F3-008, FD/94-0005, FD/94-0006, FD/94-0019, FD/94-0024, FD/94-0028, FD/94-0029, FD/94-0030, FD/94-0031, FD/94-0032, and FD/94-0034.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting

Filed: July 1, 1994, 9:09 a.m.

TRD-9443347

Saturday, July 16, 1994, 10:30 a.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis

San Antonio

According to the complete agenda, the Examination Subcommittee will discuss and possibly act on: examination (examination blueprints: California; Vermont; and National versions; mechanics of validation; written, and practical examinations), and appointment of Ad Hoc Examination Subcommittee.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657 For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 1, 1994, 9:09 a.m.

TRD-9443346

Saturday, July 16, 1994, 12:30 p.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis

San Antonio

According to the complete agenda, the Rules Subcommittee will, during a working lunch, discuss and possibly act on: draft of rules; rules for 30-day trial period; and audiometric testing not conducted in a stationary acoustical enclosure.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 1, 1994, 9:09 a.m.

TRD-9443345

Saturday, July 16, 1994, 3:00 p.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis

San Antonio

According to the complete agenda, the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments will dis-

cuss approval of the minutes from the April 15, 1994 meeting; and discuss and possibly act on: subcommittee recommendations for proposed rules; attorney general's opinion; committee president report, and executive director's report.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, contact Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting

Filed: July 1, 1994, 9 09 a m

TRD-9443344

Texas Higher Education Coordinating Board

Wednesday, July 13, 1994, 3:00 p.m.

Chevy Chase Office Complex, Building Five, Room 5211, 7745 Chevy Chase Drive

Austin

According to the complete agenda, the Access and Equity Committee will hear presentation and discussion of the A&E Texas Plan 2000 training sessions, the role of A&E as it relates to the Minority Doctoral Incentive Program, and an overview of the Ogden Report Rider 30, III-42 by Dr Pat Brown, new director for the Access and Equity Division

Contact: Dr Betty James, P O Box 12788, Austin, Texas 78711, (512) 483-6140

Filed: July 1, 1994, 10 36 a m

TRD-9443392

Thursday, July 14, 1994, 9:00 a.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive

Austin

According to the complete agenda, the Administration and Financial Planning Committee will discuss consideration of amendment of the Coordinating Board budget for fiscal year 1994, consideration of the Coordinating Board budget for fiscal year 1995, consideration of the Coordinating Board Legislative Appropriations Request for fiscal years 1996 and 1997, consideration of final adoption of a rule (§19) requiring members of the Board of Regents of Texas public universities and Boards of Trustees of Texas public community and technical colleges to undergo a training program pursuant to Senate Bill 485, 73rd Texas Legislature, consideration of recommendations from a study of the funding methodology for Texas A&M University-Galveston and duplication in marine and maritime programs as called for in rider five, page III-128, Senate Bill 5, 73rd Legislature, consid-

eration of authorization for the commissioner to allocate fiscal year 1995 funds trustee to the Texas Higher Education Coordinating Board for Baylor College of Medicine and Baylor College of Dentistry, consideration of a plan for distributing funds trustee to the Texas Higher Education Coordinating Board for TASP-related and non-course-based remedial instruction, and consideration of approval of the Coordinating Board's internal audit plan for fiscal year 1995

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483 6101

Filed: July 1, 1994, 10 36 a.m.

TRD-9443391

Thursday, July 14, 1994, 10:00 a.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive

Austin

According to the complete agenda, the Technology Committee will discuss consideration of staff recommendations for implementing the TEX-SHARE Library Resources Sharing program

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483-6101

Filed: July 1, 1994, 10 36 a m

TRD-9443390

Thursday, July 14, 1994, 10:15 a.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive

Austin

According to the agenda summary, the Universities Committee will discuss consideration of matters relating to universities

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483-6101

Filed: July 1, 1994, 10 36 a m

TRD 9443389

Thursday, July 14, 1994, 11:15 a.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive

Austin

According to the agenda summary, the Health Affairs Committee will discuss consideration of matters relating to health affairs

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711 (512) 483-6101

Filed: July 1, 1994, 10 37 a m

TRD-9443388

Thursday, July 14, 1994, 11:45 a.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive
Austin

According to the agenda summary, the Access and Equity Committee will discuss report on Rider 30, III-42, of the Appropriations Bill, an analysis of recruitment and retention programs at the 35 general academic teaching institutions

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483-6101

Filed: July 1, 1994, 10 37 a m

TRD-9443387

Thursday, July 14, 1994, 1:00 p.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive

Austin

According to the agenda summary, the Campus Planning Committee will discuss consideration of matters relating to campus planning

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483-6101

Filed: July 1, 1994, 10 37 a m

TRD-9443386

Thursday, July 14, 1994, 2:00 p.m.

Chevy Chase Office Complex, Building One, Room 1 100, 7700 Chevy Chase Drive

Austin

According to the agenda summary, the Community and Technical Colleges Committee will discuss consideration of matters relating to community and technical colleges

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483 6101

Filed: July 1 1994, 10 37 a m

TRD-9443385

Thursday, July 14, 1994, 3:15 p.m.

Chevy Chase Office Complex, Building One, Room 1 100 7700 Chevy Chase Drive

Austin

According to the complete agenda, the Student Services Committee will discuss consideration of final adoption of an amendment to Board rules for the Tuition Equalization Grant Program regarding the eligibility of students enrolled in remedial or developmental courses (§21 125)

Contact: Dr Kenneth H Ashworth, P O Box 12788, Austin, Texas 78711, (512) 483 6101

Filed: July 1, 1994, 10 37 a m

TRD 9443384

Friday, July 15, 1994, 8:30 a.m.

Chevy Chase Office Complex, Building One, Room 1.100, 7700 Chevy Chase Drive
Austin

According to the agenda summary, the Coordinating Board will discuss consideration of matters relating to the Committee on Administration and Financial Planning; the Committee on Technology; the Committee on Universities; the Committee on Health Affairs; the Committee on Access and Equity; the Committee on Campus Planning; the Committee on Community and Technical Colleges; the Committee on Student Services; and reports to the board.

Contact: Dr. Kenneth H. Ashworth, P.O. Box 12788, Austin, Texas 78711, (512) 483-6101.

Filed: July 1, 1994, 10:37 a.m.

TRD-9443383

◆ ◆ ◆
Texas Department of Insurance

Tuesday, July 12, 1994, 10:00 a.m.

12th Floor, William P. Hobby Building, 333 Guadalupe Street

Austin

According to the agenda summary, the Board of Directors of the Texas Title Insurance Guaranty Association will consider and approve minutes from previous meeting; special deputy receiver's report; title examiner's report; financial report; conservator's report; counsel's report; discussion and possible action on writing off loan balance for Summit Title Company; Financial Committee report; and discussion of proposals for legislation.

Contact: Burnie Burner, 301 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 474-1587.

Filed: June 30, 1994, 12:47 p.m.

TRD-9443270

◆ ◆ ◆
Texas State Library and Archives Commission

Tuesday, July 19, 1994, 1:00 p.m.

1201 Brazos, Lorenzo de Zavala Archives and Library Building, Room 202

Austin

According to the complete agenda, the Library Systems Act Advisory Board will welcome; appeals by libraries failing to qualify for system membership; discussion of interpretation of Rule §1.72, discussion of rules for membership in the Texas Li-

brary System by non-public libraries; and adjournment.

Contact: Ed Seidenberg, P.O. Box 12927, Austin, Texas 78711, (512) 463-5459.

Filed: July 1, 1994, 11:00 a.m.

TRD-9443403

◆ ◆ ◆
Texas Department of Licensing and Regulation

Wednesday, July 13, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations, Manufactured Housing Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Stephen Toulouse for violation of the Texas Civil Statutes, Article 5221f, §§7(b) and (c), Article 9100, 16 TAC §§69.125(b) and (c), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1:38 p.m.

TRD-9443280

Thursday, July 14, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations, Manufactured Housing Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Ambrose Gerner doing business as Mobile Home City for violation of the Texas Civil Statutes, Article 5221f, §7(k)(2) and §8(d), Article 9100, 16 TAC §69.28(a), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1:38 p.m.

TRD-9443282

Monday, July 18, 1994, 10:00 a.m.

920 Colorado, E.O. Thompson, Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations, Auctioneers Committee will hold an administrative hearing to consider the possible assessment of

an administrative penalty and denial, suspension, or revocation of the license for John Joseph Lucius, Jr. doing business as I-35 Auto Auction for violation of the Texas Civil Statutes, Article 8700, §3(a), Article 9100, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1:38 p.m.

TRD-9443284

Tuesday, July 19, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations, Manufactured Housing Committee will hold an administrative hearing to consider the application of Charles F. Thornton for registration as a Manufactured Housing Salesperson in accordance with the Texas Civil Statutes, Article 5221f, Article 9100, 16 TAC Chapter 69, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1:39 p.m.

TRD-9443286

Wednesday, July 20, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations, Air Conditioning Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Alvaro Martinez doing business as J. A. Martinez and Son Service for violation of the Texas Civil Statutes, Article 8861 §8, Article 9100, 16 TAC §75.90(f), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1:38 p.m.

TRD-9443283

Thursday, July 21, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Third Floor

Austin

According to the complete agenda, the Inspections and Investigations, Air Conditioning Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for

Paul Novotny doing business as Alamo Engineering for violation of the Texas Civil Statutes, Article 8861, §5(a), Article 9100, 16 TAC §75.40(d) and §75.70(e), and the Texas Government Code, Chapter 2001

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1 38 p m

TRD-9443281

Tuesday, August 2, 1994, 9:00 a.m.

920 Colorado, E.O Thompson Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations, Auctioneers Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Sam Wesley Underwood doing business as Underwood Auctioneers for violation of the Texas Civil Statutes, Article 8700, §7(a)(4), Article 9100, 16 TAC §67.101(4) and the Texas Government Code, Chapter 2001

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 30, 1994, 1 39 p m

TRD-9443285

◆ ◆ ◆
Texas State Board of Medical Examiners

Friday, July 8, 1994, 10:30 a.m.

1812 Centre Creek Drive, Suite 203

Austin

According to the agenda summary, the Physician Assistance Advisory Council will discuss consideration of waiver requested by Ronald J Peron, M.D to supervise six physician assistants, and waiver requested by Rosa A Fuentes, M. D to supervise a physician assistant Discussion of policy and procedures relating to investigations, and discussion on requirement to report to National Practitioner Data Bank Discussion and possible action concerning amendments to physician assistant rules as recommended by Standing Orders Committee.

Contact: Pat Wood, P.O Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext 402

Filed: June 30, 1994, 4 31 p m

TRD-9443318

Texas Natural Resource Conservation Commission

Tuesday-Wednesday, July 12-13, 1994, 9:30 a.m. and 8:30 a.m. respectively.

12118 Park 35 Circle, Room 201S, Building E

Austin

According to the complete agenda, the 40% Task Force, as required by Senate Bill 1051 of the 73rd Legislature, will meet to research and discuss the implications of a statewide phased-in yard trimmings disposal ban on the environment and economy of Texas and to make recommendations to the TNRCC and the state legislature based upon their findings. Open files consisting of meeting notes and any additional associated material will be maintained at the Colonnade Building (Building F), 12105 Park 35 Circle, Room 1927, Austin, Texas 78753. These files will be listed as "40% Task Force" July 12-discussion of the implications of a statewide phased-in yard trimmings disposal ban July 13-discussion of the implications of a statewide phased-in yard trimmings disposal ban.

Contact: Wendy Audette, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-6757

Filed: June 30, 1994, 4:21 p.m

TRD-9443302

Wednesday, July 13, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will consider approving the following matters on the contested agenda. water quality enforcements; municipal solid waste enforcement; remedial investigation/feasibility study, rules; waste tire processing audits, hearing examiner matters; executive session, in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8.30 a.m. until 9:00 a.m.)

Filed: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: June 30, 1994, 4:33 p.m.

TRD-9443320

Wednesday, July 13, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the commission will consider approving the following matters on the uncontested agenda: Class Two modification; Class Three modification; district matters; water utility matters; water right matter; on-site disposal; settled hearings; in addition, the commission will consider items previous posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:30 a.m. until 9:00 a.m.)

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: June 30, 1994, 4:28 p.m.

TRD-9443315

Thursday, July 14, 1994, 10:00 a.m.

6300 Ocean Drive, Texas A&M University Corpus Christi, Conrad Blucher Institute

Corpus Christi

According to the complete agenda, the Management Committee of the Corpus Christi Bay National Estuary Program will call to order/introduction/minutes; program update; subcommittee reports; presentation on NRI project, discuss/approve remaining fiscal year 1995 scopes of services; discuss proposal evaluation criteria and form proposal evaluation subcommittee(s); discuss/approve committee bylaw amendment; priority problems list; and additional items/adjourn.

Contact: Richard Volk, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: July 1, 1994, 10:16 a.m.

TRD-9443381

Tuesday, July 26, 1994, 10:00 a.m.

Building C-Room 308E, 12124 Park 35 Circle

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on an appeal by Ridge Investors, Ltd. concerning Dessau Utility Company, Inc.'s fee for new connections for wastewater service in Travis County, Texas. Docket Number 30469-X.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: July 1, 1994, 3:29 p.m.

TRD-9443431

Wednesday, August 3, 1994, 10:00 a.m.

TNRCC, 12100 Park 35 Circle, Building A, Room 110

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold a hearing on an appeal of a denial of medical waste transporter registration to West, Inc

Contact: Robin Smith, P O Box 13087, Austin, Texas 78711, (512) 239-0463

Filed: July 1, 1994, 3 29 p m

TRD-9443430

Friday, August 5, 1994, 9:00 a.m.

Room 310D of Building A (ENRCC Building at Park 35 Location), 12124 Park 35 Circle

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on Oxy USA, Inc's Application Number 5491 for a permit to redirect a portion of an unnamed tributary of Harris Creek, tributary of Grace Creek, tributary of the Sabine River, Sabine River Basin, within the city limits of Longview in Gregg County, Texas to facilitate the drilling of a gas well

Contact: Nina Fantl, P O Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: July 1, 1994, 3 28 p m

TRD-9443435

Tuesday, August 23, 1994, 10:00 a.m.

Room 202S of Building E (Formerly known as Technology Center A) Park 35 ENRCC Location, 12118 IH-35

Austin

According to the agenda summary, the Office of Hearings Examiners will hold a hearing on an application submitted by Virgil B Petugrew, Docket Number RE:0293, for Commission approval of plans for an existing levee Applicant seeks to repair and raise 22,400 linear feet of an existing levee located immediately south of FM 85 at the Trinity River, Trinity River Basin, Navarro County, Texas The project is further located approximately ten miles west of the town of Seven Points. These repairs and raising of the levee would change the levee protection from nine-year to 25-year flood protection for 3,800 acres of agricultural land

Contact: Nina Fantl, P O Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: July 1, 1994, 3 28 p m

TRD-9443434

Board of Nurse Examiners

Tuesday-Wednesday, July 12-13, 1994, 8:00 a.m.

1812 Centre Creek Drive, Room 203

Austin

Revised Agenda

According to the complete agenda, the Board of Nurse Examiners will meet in executive session on July 12, 1994, pursuant to Government Code, §551.074.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675

Filed: July 1, 1994, 3 55 p m

TRD-9443439

Texas Board of Nursing Facility Administrators

Thursday, July 21, 1994, 1:00 p.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis Street

San Antonio

According to the complete agenda, the Complaints Committee will discuss and possibly act on complaints from August, 1993-June, 1994, report and comments from former legal counsel concerning complaints prior to August, 1993, and complaints prior to August, 1993

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657 For ADA assistance, call Richard Butler (512) 458-7488 or TDD (512) 458-7708 at least two days prior to the meeting

Contact: July 1, 1994, 10 17 a m

TRD-9443375

Friday, July 22, 1994, 9:00 a.m.

Coronado Room, Third Floor, Saint Anthony Hotel, 300 East Travis Street

San Antonio

According to the complete agenda, the Texas Board of Nursing Facility Administrators will discuss approval of the minutes from the March 7, 1994 and April 7, 1994 meetings and discuss and possibly act on delays in the scheduling of the meeting, report/comments from the former legal counsel concerning outstanding complaints, committee reports and recommendations for rule changes (complaints, education, finance, and policies and procedures), board chairman report/comments, executive secretary's report (legal representations and office of general counsel issues, Texas Department of Health mailroom and fiscal update, toll free complaint number, complaint sign, complaint investigations/approval of investigator, report on health profession council, citizens advocacy center conference, CLEAR, 1994, Boston, Massachusetts, and preceptor seminar update), state standards examination (mechanism of validation, and ad hoc committee for examinations), proposed rules, authorization to set public hearings on proposed rules, and setting of future board and committee meetings

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657 For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting

Filed: July 1, 1994, 10:17 a.m.

TRD-9443376

Texas Board of Pardons and Paroles

Monday-Friday, July 18-22, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the impositions of special conditions of parole, and requests for parole services

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78779, (512) 406-5407

Filed: July 5, 1994, 9 39 a m

TRD-9443487

Monday-Wednesday, July 18-20, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the impositions of special conditions of parole, and requests for parole services

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: July 5, 1994, 9 39 a m

TRD-9443489

Monday-Friday, July 18-22, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles

composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the impositions of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: July 5, 1994, 9:39 a.m.

TRD-9443490

Thursday-Friday, July 21-22, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the impositions of special conditions of parole, and requests for parole services

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: July 5, 1994, 9:39 a.m.

TRD-9443488

Thursday-Friday, July 21-22, 1994, 1:00 p.m. and 9:00 a.m. respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, a panel(s) of the Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the impositions of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: July 5, 1994, 9:39 a.m.

TRD-9443491



Texas State Board of Plumbing Examiners

Monday, July 11, 1994, 9:00 a.m.

929 East 41st Street

Austin

According to the agenda summary, the Board will take roll call, recognize visitors, minutes of May, 1994 meeting; consideration of approval of providers and instructors to teach medical gas classes-Texas Engineering Extension Service, Texas A&M University System; Chris Maczka, Assistant Attorney General, action on rules, rules to be adopted §§361.1, 361.6, 361.8, 361.26, 363.1, 363.5, 363.6, 363.11, 365.1-365.3, 365.11, 365.12, 367.1, rules to be published 363.1(c)(2), 363.1(e)(2), 363.11(a)(1), and 365.4; enforcement committee hearings report-acceptance or rejection of agreed settlement-Joe Wayne Todd M16195; citations; Alonzo Starkey-concerns of plumbing contractors regarding board rules; committee reports, continuing education, field utilization, legislative, master examination and training interval, medical gas, personnel, plumbing inspector examination, water supply protection specialist, agency and telephone company, agency name and phone number published statewide through telephone directories, request telephone companies require master license number in yellow pages ad, financial report, administrator's report, examination report, field department report; request for staff travel; hardship cases, Steven A. Davis, Adam Garza J29118, Carson C. Jones, William Paul Batey M8860 expired July 31, 1990, Moses Flores, and election of officers

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: July 1, 1994, 2:04 p.m.

TRD-9443419



Texas Board of Private Investigators and Private Security Agencies

Wednesday, July 13, 1994, 8:30 a.m.

The Doubletree Hotel, 6505 North IH-35

Austin

According to the complete agenda, the Texas Board of Private Investigators and Private Security Agencies will discuss new business docket call, review of staff recommendation and board action on new licenses, suspension orders, reinstatement orders, revocations, denials, reprimands, requests for waivers, other proposals for decision, requests for rehearings, and related issues, old business approval of minutes of March 29, 1994, board meeting;

new business (continued): discussion and possible board action on manager testing requirements, discussion and board action on budget request for fiscal year 1996-1997; discussion and possible board action on proposed board rule change regarding fees; discussion and possible board action on proposed board rule regarding training requirements; discussion and possible board action on methods of payment; discussion and possible board action regarding new fingerprint cards; and public comment. It should be noted that a lunch break will be taken at an appropriate time.

Contact: Clema D Sanders, 313 East Anderson, Austin, Texas 78752, (512) 463-5545.

Filed: June 30, 1994, 11:45 a.m.

TRD-9443268



Public Utility Commission of Texas

Tuesday, July 12, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Public Utility Commission of Texas will hold a workshop on fuel price risks and mechanisms to manage such risks.

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: July 1, 1994, 11:01 a.m.

TRD-9443405



Railroad Commission of Texas

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, Railroad Commission of Texas will consider and act on the division director's report on budget, personnel and policy matters related to operation of the Alternative Fuels Research and Education Division.

Contact: Dan Kelly, P O Box 12967, Austin, Texas 78711-2967, (512) 463-7110

Filed: July 1, 1994, 10:50 a.m.

TRD-9443393

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider

and act on the Office of Information Services director's report on division administration, budget, procedures, and personnel matters

Contact: Brian W Schaible, P O Box 12967, Austin, Texas 78701, (512) 463-6710

Filed: July 1, 1994, 10 50 a m

TRD-9443394

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission will consider and act on the Automatic Data Processing Division Director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters. The commission will consider and act on the Information Resource manager's report on information resource planning documents

Contact: Bob Kmetz, P O Box 12967, Austin, Texas 78701, (512) 463-7251

Filed: July 1, 1994, 10 50 a m

TRD-9443395

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the director's report on division administration, budget, procedures, and personnel matters

Contact: Melvin B Hodgkiss, P O Box 12967, Austin, Texas 78711, (512) 463-6901

Filed: July 1, 1994, 10 50 a m

TRD-9443396

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures, and personnel matters

Contact: Roger Dillon, P O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257

Filed: July 1, 1994, 10 50 a m

TRD-9443397

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the agenda summary, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J Vogel, P O Box 12967, Austin, Texas 78711, (512) 463-6921

Filed: July 1, 1994, 10.51 a m

TRD-9443401

Monday, July 11, 1994, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

According to the complete agenda, the Railroad Commission of Texas will consider and act on the Personnel Division director's report on division administrations, budget, procedures, and personnel matters. The commission will meet in executive session to consider the appointment, employment, evaluation, reassignment, duties, discipline, and/or dismissal of personnel. The following matters will be taken up for consideration and/or decision by the commission; commission budget, fiscal, administrative, or procedural matters, strategic planning, personnel and staffing, including restructuring or transferring the Oil Field Theft Division

Contact: Mark Bogan, P O Box 12967, Austin, Texas 78711, (512) 463-6981

Filed: July 1, 1994, 11 00 a m

TRD-9443402

Tuesday, July 19, 1994, 9:30 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

According to the complete agenda, the Railroad Commission of Texas will meet to hear an oral argument in Oil and Gas Docket Number 02-0204116 the application of Samson Resources Company for revocation of the suspension of the allocation formula and cancellation of the accumulated overproduction, and the application of Forney Oil Corporation to suspend the allocation formula, for the Limes (Wilcox F-1) Field, Live Oak County, Texas

Contact: Dwight Martin, P.O Box 12967, Austin, Texas 78711, (512) 463-6924

Filed: July 1, 1994, 10 50 a m.

TRD-9443399

Friday, July 22, 1994, 9:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

Revised Agenda

Rescheduled from. Room 1-111, at 9:30 a.m.

According to the complete agenda, the Railroad Commission of Texas will meet to hear an oral argument on Oil and Gas Docket Number 8-98,524 request for a determination under Rule 34(i) as to the status of takes from Clajon Gas Company, L.P.

Contact: Jim McDougal, P.O. Box 12967, Austin, Texas 78711, (512) 463-6924.

Filed: July 1, 1994, 10:50 a.m.

TRD-9443398

Friday, July 29, 1994, 10:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

According to the complete agenda, the Railroad Commission of Texas will meet to hear an oral argument in Oil and Gas Docket Number 08-0204120, the application of Marathon Oil Company for designation of Marathon's reservoir management practices on the Yates Field Unit as a co-production, project, Yates Field, Pecos County, Texas

Contact: Doug O. Johnson, P O Box 12967, Austin, Texas 78711, (512) 463-6925.

Filed: July 1, 1994, 10.50 a m

TRD-9443400

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Texas Real Estate Commission

Monday, July 11, 1994, 9:30 a.m.

Conference Room 235, Second Floor, TREC Headquarters Office, 1101 Camino La Costa

Austin

According to the agenda summary, the Texas Real Estate Commission will consider and possibly act on staff reports, committee reports, report on development of Spanish language agency disclosure form, proposed new 22 TAC §539.101, concerning advertisements by residential service companies, and §539.121, concerning examinations of residential service com-

panies; proposed amendments concerning licensed inspectors; propose new 22 TAC §534.1, concerning charges for copies of public records, and §534.2, concerning processing fees for dishonored checks, amendment to §535.51, concerning general requirements for licensing; possible request to the Texas Real Estate Inspector Committee to develop consumer information about hazards; approval of MCE providers and MCE courses or other providers and courses, amendments to 22 TAC §§535.71-535.73, concerning mandatory continuing education or to 22 TAC §535.66, concerning proprietary schools; amendment to 22 TAC §535.164, concerning disclosure of agency, action to authorize administrator to contract for an internal audit study and to authorize Ellen L. Acevedo to act as a custodian of records; action to approve strategic plan, action to establish travel expense guidelines; executive session to discuss pending litigation pursuant to Texas Government Code, §551.071; authorization of payments from recovery funds or other action on matters discussed in executive sessions; consideration of complaint information; entry of orders in contested cases, motion for rehearing. Hearing Number 94-37-940362, Hearing Number 94-23-930992, Hearing Number A-9420, and Hearing Number A-9426

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting

Contact: Mark A Moseley, P O Box 12188, Austin, Texas 78711-2188, (512) 465-3900

Filed: July 1, 1994, Noon

TRD-9443407

Texas Senate

Monday, July 11, 1994, 2:00 p.m.

Capitol Extension Room E2 010

Austin

According to the complete agenda, the Select Committee on Rate and Policy Form Regulation will call to order and roll call, consideration of the draft study plan and matters related to the charge of the Select Committee; consideration of budget, staffing and matters related to committee administration, and adjournment

Contact: Clark Jobe, P O Box 2910, Austin, Texas 78768, (512) 322-2209 or (512) 463-1681

Filed: July 1, 1994, 3 30 p m

TRD-9443424

Boards for Lease of State-Owned Lands

Tuesday, July 12, 1994, 10:00 a.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

According to the complete agenda, the Board for Lease of Texas Department of Criminal Justice will discuss approval of previous board meeting minutes, consideration of nominations, terms, conditions, and procedures for the October 4, 1994 oil, gas, and other minerals lease sale.

Contact: Linda K Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: June 30, 1994, 6:05 p m

TRD-9443324

Stephen F. Austin State University

Wednesday, July 6, 1994, 11:00 a.m.

Stephen F Austin Campus, Room 307, Austin Building (Telephone Meeting)

Nacogdoches

According to the complete agenda, the Board of Regents discussed approval of bids for curb cuts

Contact: Dr Dan Angel, P O Box 6078, Stephen F Austin Station, Nacogdoches, Texas 75962, (409) 568-2201

Filed: July 1, 1994, 10 17 a m

TRD-9443378

Texas Sustainable Energy Development Council

Friday, July 8, 1994, 7:30 a.m.

1000 Red River, Teacher Retirement System Cafeteria

Austin

According to the complete agenda, the Texas Sustainable Energy Development Council will call to order, discuss strategic planning, discuss administrative matters, and adjourn

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745

Filed: June 30, 1994, 1 38 p m

TRD-9443274

Friday, July 15, 1994, 8:00 a.m.

3701 Lake Austin Boulevard, Lower Colorado River Authority, Hancock Building, Board of Directors Conference Room

Austin

According to the complete agenda, the Texas Sustainable Energy Development Council will call to order; discuss strategic planning; and adjourn.

Contact: Charlotte Banks, 1700 North Congress Avenue, Room 850, Austin, Texas 78701, (512) 463-1745.

Filed: June 30, 1994, 1:38 p.m

TRD-9443276

Texas Workers' Compensation Commission

Thursday, July 7, 1994, 9:00 a.m.

4000 South IH-35, Rooms 910-911, Southfield Building

Austin

According to the agenda summary, the Texas Workers' Compensation Commission (Public Meeting) called the meeting to order, approval of minutes, consideration on applications for certificate of authority to self-insure, consideration on request for renewal of certificate of authority to self-insure, consideration of rules for proposal: Chapter 160-Workers' Health and Safety-General Provisions, Chapter 163-General Accident Prevention Programs; Chapter 164-Extra-Hazardous Employer Program; Chapter 166-Workers' Health and Safety Accident Prevention Services, consideration on issues concerning the Extra-Hazardous Employer Program and the next Notification Cycle, consideration on rules for adoption: Chapter 110-Required Notice of Coverage General Provisions; Chapter 133-Benefits-Medical Benefits, commissioner subcommittee reports and possible discussion, decisions and action on related rules, consideration on removing doctors from the doctor list, consideration on TWCC's legislative appropriations request for fiscal year 1996-1997; general reports and actions on issues relating to commission activities, possible action on any issues regarding rules or policy; executive session; action on matters considered in executive session; confirmation on future public meetings, and adjournment

Contact: Todd K Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-7963

Filed: July 1, 1994, 3 30 p m

TRD-9443423

Texas Workers' Compensation Research Center

Wednesday, July 6, 1994, 10:00 a.m.

300 West 15th Street, Committee Room 1,
William P. Clements, Jr Building

Austin

Revised Agenda

According to the complete agenda, the Board of Directors discussed and acted on the following items call to order, approval of minutes of meeting of June 1, 1994, public participation, announcements, acceptance of report "A Study of Nonsubscription to the Texas Workers' Compensation System The Employee Perspective"; consideration of proposal and possible contract award on drugs in the workplace, recommendation from subcommittee on workplace health and safety, recommendation from subcommittee on medical costs, research progress report, fiscal year 1995-1997 operating budgets and request for legislative appropriations for fiscal year 1996 and 1997, confirmation of August 3, 1994 meeting, and adjournment

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 469-7811 at least two days prior to the meeting so that appropriate arrangements can be made

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811

Filed: July 1, 1994, 2 04 p m

TRD-9443418

Regional Meetings

Meetings Filed June 30, 1994

The Austin Transportation Study Executive Committee met in the Conference Room, Second Floor, 301 West Second Street, Second and Lavaca, Austin, July 6, 1994, at 10 30 a m Information may be obtained from Michael R Aulick, 301 West Second Street, P O Box 1088, Austin, Texas 78767, (512) 499-2275. TRD-9443317

The Central Appraisal District of Rockwall County Appraisal Review Board met at the Rockwall County Appraisal Office, 106 North San Jacinto, July 6, 1994, at 8 30 a.m Information may be obtained from Ray E Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034 TRD-9443278

The Coryell County Appraisal District Appraisal Review Board met at the Coryell County Appraisal District Office, 113 North Seventh Street, Gatesville, July 6, 1994, at 9 30 a m Information may be obtained

from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9443303.

The Creedmoor Maha Water Corporation Board met at the Creedmoor Maha Water Corporation Office, 1699 Laws Road, Mustang Ridge, July 6, 1994, at 7:30 p m Information may be obtained from Charles Laws, 1699 Laws Road, Buda, 78610, (512) 243-2113. TRD-9443279

The East Texas Council of Governments JTPA Board of Directors met at the Roy H. Laird Country Club, Kilgore, July 7, 1994, at 11 30 a m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9443277

The Erath County Appraisal District Board of Directors will meet in the Board Room, 1390 Harbin Drive, Stephenville, July 11, 1994, at 7:00 a m Information may be obtained from Jerry Lee, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9443267.

The Gillespie Central Appraisal District Board of Directors of met in the County Courtroom, Gillespie County Courthouse, Fredericksburg, July 7, 1994, at 9:00 a m Information may be obtained from Mary Lou Smith, P.O Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9443322

The Leon County Central Appraisal District Appraisal Review Board met at the Leon County Central Appraisal District Office, Gresham Building, corner of Highway 7 and 75, Centerville, July 5, 1994, at 9 30 a m. Information may be obtained from Donald G Gillum, P O Box 536, Centerville, Texas 75833, (903) 536-2252. TRD-9443304

The Tarrant Appraisal District Board of Directors met at 2301 Gravel Road, Fort Worth, July 7, 1994, at 9 00 a.m Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 595-6005 TRD-9443321.

Meetings Filed July 1, 1994

The Texas Association of Regional Councils Board of Directors will meet in the Hill Country Room, Austin North Hilton and Towers, Austin, July 8, 1994, at 9 00 a m Information may be obtained from Sheila Jennings, 508 West 12th, Austin, Texas 78701, (512) 478-4715 TRD-9443331.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Work Session) met at 1124-A Regal Row, Austin, July 6, 1994, at 5:30 p m Information may be obtained from Bill E Couch, 1124-A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax (512) 282-7016. TRD-9443474

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Called Meeting) met at 1124-A Regal Row, Austin, July 7, 1994, at 5:30 p.m Information may be obtained from Bill E. Couch, 1124-1 Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9443473.

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, July 7, 1994, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9443409.

The Capital Area Planning Council Executive Committee will meet at 2520 IH-35 South, Suite #100, Austin, July 13, 1994, at 1:30 p.m. Information may be obtained from Richard G Bean, 2520 IH-35 South, Suite #100, Austin, Texas 78704, (512) 443-7653. TRD-9443353

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, July 6, 1994, at 7:00 a.m Information may be obtained from Tom Anderson, P.O. B O x 797, Lamesa, Texas 79931, (806) 872-7060. TRD-9443351.

The 50th Judicial District Juvenile Board met in the District Courtroom, King County Courthouse, Guthrie, July 7, 1994, at 2:00 p.m Information may be obtained from David W. Hajek, P O Box 508, Seymour, Texas 76380, (817) 888-2852 TRD-9443377.

The Gonzales County Appraisal District Appraisal Review Board met at 928 St Paul Street, Gonzales, July 7, 1994, at 2:00 p m Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879 TRD-9443404.

The Hansford County Appraisal District Appraisal Review Board will meet at 709 West Seventh Street, Spearman, July 8, 1994, at 9:00 a.m Information may be obtained from Lovida Giblin, Box 519, Spearman, Texas 79081-0519, (806) 659-5575 TRD-9443406.

The Hickory Underground Water Conservation District Number 1 Board and Advisors met at 2005 South Bridge Street, Brady, July 7, 1994, at 7. 00 p m. Information may be obtained from Lorna Moore, P.O Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9443415.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Meeting) met at the Water District Office, 300 South Omohundro Street, White Deer, July 6, 1994, at 8:00 p.m Information may be obtained from C E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9443422

The Rusk County Appraisal District Appraisal Review Board met at the Adminis-

trative Offices, 107 North Van Buren, Henderson, July 6, 1994, at 9: 00 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-9697. TRD-9443425.

The Rusk County Appraisal District Appraisal Review Board met at the Administrative Offices, 107 North Van Buren, Henderson, July 7, 1994, at 9: 00 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-9697. TRD-9443426.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, July 8, 1994, at 8:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573 8549. TRD-9443450.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, July 8, 1994, at 8:30 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9443449.

The Shackelford Water Supply Corporation Board of Directors (Regular Monthly Meeting) met at the Fort Griffin Restaurant, Albany, July 6, 1994, at Noon. Information may be obtained from Gayneil Perkins, P.O. Box 1295, Albany, Texas 76430, (915) 762-2575. TRD-9443354.

The Stephens County Rural Water Supply Corporation Board (Regular Monthly Meeting) met at 301 West Elm Street, Breckenridge, July 7, 1994, at 7:30 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9443410.

The Tyler County Appraisal District (Revised Agenda.) Board of Directors met at 806 West Bluff, Woodville, July 7, 1994, at 5:30 p.m. Information may be obtained from Mollie M. Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9443355.

The Wise County Appraisal District Appraisal Review Board met at 206 South State Street, Decatur, July 7, 1994, at 9:00 a.m. Information may be obtained from

LaReesea North, 206 South State, Decatur, Texas 76234, (817) 627-3081. TRD-9443382.

The Wood County Appraisal District Appraisal Review Board will meet in the Conference Room, 217 North Main, Quitman, July 8, 1994, at 8:30 a. m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9443352.

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Meetings Filed July 5, 1994

The Appraisal District of Jones County Appraisal Review Board will meet at the District's Office, 1137 East Court Plaza, Anson, July 13, 1994, at 8:15 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9443482.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District Number One Board of Directors will meet at 226 Highway 132, Natalia, July 11, 1994, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 663-2132. TRD-9443480.

The Central Appraisal District of Nolan County (Emergency Meeting.) Board of Directors will meet at the Nolan County Courthouse, Third Floor, 100 East Third Street, Sweetwater, July 8, 1994, at 7:00 a.m. (Reason for emergency: This is the only day for a quorum.) Information may be obtained from Ansa Lee Lane, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9443486.

The Education Service Center-Region 17 Board of Directors (Called Meeting) will meet in the Board Room, 1111 West Loop 289, Lubbock, July 8, 1994, at 10:00 a.m. Information may be obtained from Virgil E. Flathouse, 1111 West Loop 289, Lubbock, Texas 79416, (806) 793-4854. TRD-9443483.

The Falls County Appraisal District Board of Directors will meet at the Falls County Courthouse, First Floor, Intersection of Highway 6 and 7, Marlin, July 11, 1994, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9443484.

The Falls County Appraisal District Appraisal Review Board will meet at the Falls County Courthouse, First Floor, Intersection of Highway 6 and 7, Marlin, July 12, 1994, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9443485.

The Garza County Appraisal District Board of Directors will meet at the Garza County Appraisal District Office, 124 East Main, Post, July 14, 1994, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9443477.

The Garza County Appraisal District Board of Directors will meet at the Appraisal District Office, 124 East Main, Post, July 14, 1994, at 9:45 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9443478.

The Hockley County Appraisal District (Emergency Agenda.) Appraisal Review Board met at 1103-C Houston, Levelland, July 7, 1994, at 7:00 a.m. (Reason for emergency: Necessary to certify appraisal role.) Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9443476.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto County Courthouse, Palo Pinto, July 13, 1994, at 3:00 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1208. TRD-9443481.

The Sulphur-Cypress Soil and Water Conservation District Number 419 will meet at 1809 West Ferguson, Suite B, Mount Pleasant, July 14, 1994, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite B, Mount Pleasant, Texas 75455-2921, (903) 572-5411. TRD-9443479.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, July 14, 1994, at 4:00 p.m. Information may be obtained from Mollie Parker, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9443492.

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IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Texas Department of Agriculture Organic Material List

The Texas Department of Agriculture (the department) under the authorization of the Texas Agriculture Code, Title 2, Chapter 12, §12.002 and the Texas Organic Standards and Certification, Title 4, Part I, Chapter 18, §18.12(b), is required to publish a listing of materials categorized as allowed, allowed with restrictions, and prohibited. The following list and applicable definitions is being published by the department to meet the requirement of §18.12 and shall be known as the Texas Department of Agriculture Organic Certification and Standards Materials List (TDA Materials List). TDA Materials List For The Production, Processing and Handling of Organic or Transitional Food and Fiber the following definitions apply.

Allowed-These materials may be used, without restrictions, for production, processing or handling by persons certified by TDA or an accredited certifying agent.

Allowed with Restrictions-These materials are allowed for production, processing or handling by persons certified by TDA or an accredited certifying agent, only with certain restrictions and only if no alternatives are feasible. The approved use of these materials is dependent on the justification of need. The users are required to submit a Material Use Report to the Coordinator for Organic Programs or the applicable organic certifying agent as a part of the farm records. Materials which are allowed with restrictions, may vary according to regional practices, specific processing, or handling needs.

Prohibited-These materials can not be used on land and crops certified by TDA or an accredited certifying agent. Three years must elapse before the land, to which prohibited substances are applied, is certified as organic.

ALLOWED ACETIC ACID, ADHESIVES (natural), AGAR (carageenan, kombu and nori), ALCOHOL (natural), ALFALFA MEAL, ALGINATES, ANTITRANSPIRANTS (natural), ASCORBIC ACID, ATTAPULGITE CLAY (Fuller's Earth), BACILLUS THURINGIENSIS (Bt), BALLOONS AND OTHER INFLATABLE TRAPS, BARRIERS OR REPELLENTS, BANANA OIL, BEAVERIA SPECIES, BLESWAX, BENEFICIAL ORGANISMS, BIODYNAMIC PREPARATIONS, BIOLOGICAL CONTROLS, BIRD TRAPS OR NETTING (mechanical), BLUE-GREEN ALGAE, BORAX (sodium borate), BORIC ACID, BORON PRODUCTS, CALCIUM CARBONATE (aragonite), CALCIUM PHOSPHATE (dibasic, monobasic and tribasic), CALCIUM SULFATE (anhydrite and gypsum), CARBON DIOXIDE GAS, CITRIC ACID, CITRUS OIL, COCONUT OIL, COMPOSTS, COMPOST TEA, COP-

PER, COPPER SULFATE, CORN STARCH, CYTOKININS, DETERGENTS, DIATOMACEOUS EARTH, DOLomite; DORMANT OILS, EARTHWORM CASTINGS; ENZYMES (natural, amylase, protease, lipase and cellulase); FEATHER MEAL, FELDSPAR (potassium aluminosilicate), FUNGI (entomopathic), GARLIC, GELATIN WAXES, GLYCERIN, GRANITE DUST, GRAPE AND OTHER POMACES, GREENSAND (glaucanite), GROWTH ENHANCERS, GUANO (bat or bird), GUMS (natural), GUNS, GYPSUM, HERBAL PREPARATIONS, HOOF AND HORN MEAL, HUMATES, HUMIC ACID DERIVATIVES, HYDROGEN PEROXIDE, INSECT EXTRACTS, INSECT FEEDING STIMULANTS, KELP EXTRACTS, KELP MEAL, KIESERITE (magnesium sulfate and epsomite), KILN DUST, LANGBEINTITE, LIGNITE, LIME, LIME (fluid limestone), MAGNESIUM CARBONATE (magnesite), MALIC ACID, MANURES (animal), MANURE TEA, MARL, MECHANICAL AND CULTURAL CONTROLS, MICROBIAL DISEASES, MICROBIAL PLANT, SOIL, COMPOST AND SEED INOCULANTS, MINED MINERALS, MINERAL SALTS, MULCHES, NEMATOCIDES (natural), NEMATODES, NEWSPAPER MULCH, NOSEMA SPECIES, NUCLEAR POLYHEDROSIS VIRUS (NPV), OYSTERSHELL LIME, PEANUT MEAL, PEAT MOSS, PECTIN, PERLITE, pH BUFFERS (natural), PHEROMONES (monitoring), PHOSPHATE ROCK (phosphorite), PINE (TALL) OIL, PLANT EXTRACTS, POTATO STARCH, PROPOLIS, PROTOZOA, RODENT TRAPS, RICE HULLS, SALT, SAND, SAW DUST, SEAWEED AND SEAWEED EXTRACTS, SEA ANIMAL, WASTES, SEEDS (untreated), SOAPS, SODIUM BICARBONATE (baking soda), SODIUM GLUCONATE, SODIUM HYPOCHLORITE, SOYBEAN MEAL, STICKY BARRIERS, STRAW, SULFATE OF POTASH, MAGNESIA, SUMMER OILS, SURFACTANTS (anionic, cationic and non-ionic), TALLOW WAX, TARTARIC ACID (cream of tartar), TRANSPLANTS (certified organically produced), TRAPS, TREE SEALS, VEGETABLE OIL ADJUVANTS (surfactants and carriers), VERMICULITE (magnesium mica), VIRUS SPRAYS, VITAMINS, WETTING AGENTS, (natural), WORM CASTINGS, YEAST

ALLOWED WITH RESTRICTIONS ALCOHOL (synthetic), AMMONIUM CARBONATE, AMMONIUM SOAPS, ANTIBIOTICS, ARSENIC (copper chromic arsenate), ASH (natural), BLEACH (sodium hypochlorite and calcium hypochlorite), BLOOD MEAL, BONE MEAL, BORDEAUX MIXES, BOTANICAL INSECTICIDES, CALCIUM CHLORIDE, CALCIUM LIGNOSULFATE (ligninosulfonate), CAUSTIC SODA, CHELATES, CHILEAN NITRATE (mined nitrate of soda and Chile saltpeter), COCOA BEAN HULLS (cocoa shell meal), COP-

PER HYDROXIDE, CORN CALCIUM, COTTON GIN TRASH; COTTONSEED MEAL; DEER AND RABBIT REPELLENTS; EPSOM SALTS (magnesium sulfate), FISH EMULSIONS, FISH MEAL, FRUIT WAXES (natural), FULVIC ACID, GIBBERELIC ACID (sugar carrier based); HYDRATED LIME (slaked lime); LIGNINOSULFONATE, LIME, HYDRATED (calcium hydroxide, hydrated lime, caustic lime and slaked lime); LIME SULFUR (calcium polysulfide); MAGNESIUM CHLORIDE; MICRONUTRIENT SPRAYS; MURIATE OF POTASH (potassium chloride), MUSHROOM COMPOST, NEMO EXTRACTS (powder and seeds); NEMATOCIDES (sea animal based), NITR, NITRATE OF SODA-POTASH, NITROGEN GAS, OLEIC ACID; ORTHO-PHOSPHORIC ACID, OXALIC ACID, PETROLEUM DISTILLATES (mineral oils and paraffinic oil), PETROLEUM OIL SPRAY ADJUVANTS (spreader-stickers and carriers), PHEROMONES (mating disruption); PIPERONYL BUTOXIDE (PBO), POLYVINYL ALCOHOL, POTASSIUM CHLORIDE; POTASSIUM SULFATE, PYRETHRUMS, QUASSIA, ROTENONE, RYANIA, SABADILLA, SEEDS (treated with synthetic materials), SODA ASH, SODIUM MOLYBDATE, SODIUM NITRATE, SODIUM SILICATE; STEARIC ACID, SUGAR BEET LIME, SULFATE OF POTASH, SULFATES OF ZINC OR IRON, SULFUR (brimstone or flowers of sulfur), TRANSPLANTS (non-certified organically grown), VITAMIN D3, WOOD ASH; ZEOLITE (natural).

PROHIBITED. ADHESIVES (synthetic), AMMONIUM NITRATE, AMMONIUM PRODUCTS, AMMONIUM SULFATE, ANHYDROUS AMMONIA; ANTI-COAGULANT RODENT BAIT; ANTITRANSPIRANTS (synthetic) BASIC SLAG; BIRD BAIT OR POISONS (synthetic); CALCIUM CARBONATE (synthetic); CALCIUM NITRATE, CALCIUM OXIDE (quicklime, burnt lime, unslaked lime and fluxing lime); CALCIUM SULFATE (synthetic); CARBAMATE FUNGICIDES, CARBAMATE HERBICIDES, CARBAMATE INSECTICIDES, CARROT OIL, CHILEAN NITRATE (synthetic), CHLORINATED HYDROCARBONS, CHLORINE; COCOA, BEAN TANKAGE (cocoa cake), COPPER SULFATE AMMONIATED (cupric ammonia sulfate), CREOSOTE, CRYOLITE, DI-METHYL SULFATE, DRIP IRRIGATION CLEANERS (synthetic), ETHYLENE GAS, FORMALDEHYDE, FORMALDEHYDE UREA RESINS, FORTIFIED HUMIC ACID DERIVATIVES, FUMIGANTS (synthetic), FUNGICIDES (synthetic), GROWTH REGULATORS (synthetic), GYPSUM BY-PRODUCT, HERBICIDES (synthetic), IONIZING RADIATION; LEATHER MEAL TANKAGE AND DUST; MAGNESIUM CARBONATE (magnesia alba), METHYL BROMIDE, METHYL SULFOXIDE; MOTH BALLS AND MOTH CRYSTALS, NEMATOCIDES (synthetic), NICOTINE, NICOTINE SULFATE; NITRATES, NITRITES, ORGANOPHOSPHATES, PERBORATE BLEACHES; PERACETIC ACID, PESTICIDES (non-botanical and non-biological); PETROLEUM SOLVENTS (aromatic), PHOSPHATE (ordinary and triple superphosphate), PHOSPHORIC ACID, POTASSIUM HYDROXIDE (lye), POTASSIUM NITRATE (saltpeter), PYRETHROIDS (synthetic), SEWAGE SLUDGE AND SLUDGE COMPOST, SILICONE, SODIUM CHLORIDE, SODIUM FLUOALUMINATE, SODIUM HYDROXIDE; SODIUM MONOPERSULFATE, SODIUM PERBORATE, SOIL FUMIGANTS (synthetic), SPRAY ADJUVANTS (synthetic), SULFITES; SULFUR DIOXIDE, SUPER PHOSPHATE, TRIPLE PHOSPHATE,

UREA, WEED OILS, WETTING AGENTS (synthetic); ZEOLITE (synthetic).

Issued in Austin, Texas, on June 29, 1994.

TRD-9443248

Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed June 30, 1994

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Office of the Attorney General
Notice of Amendment to Consulting
Services Contract

In accordance with the provisions of the Consulting Services Act, Government Code §2254.021, the Office of the Attorney General hereby gives notice that it has executed an amendment to an agreement executed pursuant to the Act for advice concerning the enhancement, design, development, and installation of a computerized system for the initiation, management, accounting, and enforcement of child support obligations. The contract so amended was executed by the Attorney General and Andersen Consulting, 701 Brazos Street, Suite 1020, Austin, Texas 78701. The consulting services rendered pursuant to the contract commenced on August 26, 1991, and shall end upon final and unconditional certification of the system developed with the advice of the consultant meets all of the requirements of the Social Security Act of 1935, as amended. The value of the amendment is reasonably foreseeable to be less than \$10,000.

The Attorney General expects to be reimbursed under federal law for 90% of the amounts expended pursuant to this agreement. The amendment of which notice is hereby given does not increase the maximum liability of the Attorney General to the consultant.

The principal result of the contract as amended shall be the design of an automated system for child support enforcement. This design will be evidenced by written documentation of the design as well as by actual electronic computer programming necessary to implement the design of the system. The written documentation of the design will be due prior to final and unconditional certification by the federal government that the system meets the requirements of the federal Social Security Act of 1935 as amended.

Issued in Austin, Texas, on June 30, 1994.

TRD-9443287

Jerry Benedict
Assistant Attorney General
Office of the Attorney General

Filed June 30, 1994

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Texas Department of Commerce
Request for Proposals

In accordance with the Job Training Partnership Act (JTPA), Public Law 97-300 as amended August 6, 1992, the Texas Department of Commerce (Commerce) announces a Request for Proposals (RFP) to operate Older Individuals Training and Employment Programs in Texas. The Older Individuals Training and Employment Program is authorized under Title II Part A of the JTPA. The programs will provide training services that assist economically disadvantaged individuals aged 55 years or older

with barrier(s) to employment in successfully competing in the labor market for unsubsidized jobs

A geographically equitable system was developed for the distribution of funds that divides the state into five regions, with each region receiving funds in ratio to their share of the eligible population in the state

Bidders have been selected and contracts developed for \$3,194,056 of the \$3,461,839 available statewide. However, the projects funded in Region One (Upper Rio Grande, Permian Basin, South Plains, and Panhandle) and Region Five (North East Texas, East Texas and Deep East Texas) do not exhaust all of the available funds in these regions. Therefore, the bidding process for soliciting, receiving, evaluating, and funding additional OIP program(s) in each of these two regions has been reopened in accordance with this announcement

The announcement makes available \$112,498 in Region One and \$155,285 in Region Five. No additional funds are available in Regions Two, Three, Four. Contractors do not need to serve the entire region to be considered for funding

Detailed information regarding the project format is set forth in the Request for Proposal Instructions, a document announcing the availability of additional funds, and a map of Regions One and Five which are available at the following location: The Department of Commerce, Work Force Development Division, Frost Bank Plaza, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711

The deadline for receipt of proposals in response to this request will be Friday, August 12, 1994, at 4:00 p.m. (CST). Responses received after this deadline will not be considered

Commerce reserves the right to accept or reject any or all proposals submitted. Commerce is under no legal requirement to execute a resulting contract on the basis of this advertisement and intends the material provided only as a means of identifying the various contractor alternatives. Commerce intends to use responses as a basis for further negotiation of specific project details with potential contractors. Commerce will base its choice on demonstrated competence, qualifications, and evidence of superior performance with criteria

This RFP does not commit Commerce to pay any costs incurred prior to execution of a contract. Issuance of this material in no way obligates Commerce to award a contract or to pay any costs incurred in the preparation of a response. Commerce specifically reserves the right to vary all provisions set forth any time prior to execution of a contract where Commerce deems it to be in the best interest of the State of Texas

For further information regarding this notice, or to obtain copies of the RFP Instructions, please contact David Dennis or Sarah Bailey, Texas Department of Commerce, Work Force Development Division, Frost Bank Plaza, 816 Congress Avenue, Suite 1300, P.O. Box 12728, Austin, Texas 78711, (512) 320-9824, TDD (512) 320-9698

Issued in Austin, Texas, on July 1, 1994

TRD-9443301 Deborah Kastin
Executive Director
Texas Department of Commerce

Filed June 30, 1994

Comptroller of Public Accounts Notices of Request for Proposals

Comptroller of Public Accounts Request for Proposals for Assistance to Comptroller of Public Accounts in Developing a Cost Model and Methodology for State Agency Data Center Insourcing, Outsourcing and Consolidation Opportunities

Notice of Request for Proposals Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (CPA) announces a consultant services' request for proposals (RFP). The Comptroller seeks to deliver a cost model and a methodology to identify opportunities for cost savings and increased service delivery in information technology usage within the State of Texas through consolidation, outsourcing or insourcing. The successful proposer will be expected to begin performance of the contract on or about August 9, 1994

Contact Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, July 8, 1994, after 4:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be made prior to 4:00 p.m. (CZT) on July 15, 1994

Closing Date Proposals must be received in the Senior Legal Counsel's Office no later than noon (CZT), on July 29, 1994. Proposals received after this time and date will not be considered

Award Procedure All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller has no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract

The anticipated schedule of events is as follows: Issuance of RFP July 8, 1994, 4:00 p.m. (CZT), Mandatory Letter of Intent to Bid and Written Questions on RFP July 15, 1994, 4:00 p.m. (CZT), Proposals Due July 29, 1994 by noon (CZT), and Contract Execution August 5, 1994 or as soon thereafter as possible

Issued in Austin, Texas, on July 1, 1994

TRD-9443368 Arthur F. Loton
Senior Legal Counsel
Comptroller of Public Accounts

Filed July 1, 1994

Notice of Request for Proposals Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts

troller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for hiring a consultant to review Texas public assistance programs and make recommendations for identifying ways to maximize the efficient use of existing funds and increase federal funds. The successful proposer will be expected to begin performance of the contract on or about August 15, 1994

Contact Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, July 8, 1994, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4:00 p.m. (CZT) on July 15, 1994.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Tuesday, August 2, 1994. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will then make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP—July 8, 1994, 4:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due—July 15, 1994, 4:00 p.m. (CZT); Proposals Due—August 2, 1994, 4:00 p.m. (CZT); and Contract Execution—August 9, 1994, or soon thereafter as possible.

Issued in Austin, Texas, on July 1, 1994
TRD 9443370 Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed July 1, 1994

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Notice of Request for Proposals Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for hiring a consultant to review Texas public assistance programs and make recommendations for improvements that relate to improving the efficiency of and to reduce error rate and fraud relative to

such programs. The successful proposer will be expected to begin performance of the contract on or about August 15, 1994.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above-referenced address on Friday, July 8, 1994, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and mandatory letters of intent to propose must be received at the above-referenced address prior to 4:00 p.m. (CZT) on July 15, 1994.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Tuesday, August 2, 1994. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP—July 8, 1994, 4:00 p.m. (CZT); Mandatory Letter of Intent and Questions Due—July 15, 1994, 4:00 p.m. (CZT); Proposals Due—August 2, 1994, 4:00 p.m. (CZT); and Contract Execution—August 10, 1994, or soon thereafter as possible.

Issued in Austin, Texas, on July 1, 1994
TRD-9443369 Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed July 1, 1994

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**Office of Consumer Credit
Commissioner
Notice of Rate Ceilings**

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Article 1.04, as amended (Texas Civil Statutes, Articles 5069-1.04)

Types of Rate Ceilings

Effective Period
(Dates are Inclusive)

Consumer (1)/Agricultural/
Commercial (2) thru \$250,000 Commercial(2)
over \$250,000

Indicated (Weekly) Rate - Art. 1.04(a)(1)	07/04/94-07/10/94	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	07/01/94-07/31/94	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on June 28, 1994.

TRD-9443219 Al Endsley
Consumer Credit Commissioner

Filed: June 30, 1994

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**Texas Department of Criminal Justice,
Pardons and Paroles Division**
Invitation to Bid

The Texas Department of Criminal Justice Pardons and Paroles Division invites bids for the Sex Offender Treatment Services Program which will be operated by State Parole Officials to provide assistance to those participants identified by the Texas Department of Criminal Justice Pardons and Paroles Division as sex offenders and who are supervised by the Texas Department of Criminal Justice Pardons and Paroles Division. These treatment services will be needed statewide. The program goals of the Texas Department of Criminal Justice Pardons and Paroles Division are to subsidize the treatment costs for group therapy and evaluations for those participants requiring financial assistance, in order to facilitate availability of treatment, prevent recidivism, and retain qualified treatment providers. Bids will be evaluated in accordance with Article 601B, Texas Civil Statutes; State Purchasing and General Services Commission adopted rules; and compliance with the Terms, Conditions, and Specifications of this Invitation for Bids. The Texas Department of Criminal Justice Pardons and Paroles Division will not be bound to act by any previous communication with Bidders, other than this Invitation for Bids, Commission Rules and State Law. The Texas Department of Criminal Justice Pardons and Paroles Division shall be the sole judge of "the interest of the PPD".

As provided by statute, awards will be based on the lowest and best bids most advantageous to the Texas Department of Criminal Justice Pardons and Paroles Division as determined by consideration of service rates offered, quality, general reputation, performance capabilities of the Bidders, services as related to past performance, terms and conditions of this Invitation for Bids. It is the Texas Department of Criminal Justice Pardons and Paroles Division's intent to enter into a contract about September 1, 1994, for one year with a two-year option to renew.

This is a Competitive Bid Contract.

The closing date for receipt of offers is August 8, 1994, 5:00 p.m. Bid opening date is August 9, 1994, 9:00 a.m. at 209 West 14th Street, Fifth Floor Conference Room, Price Daniel, Jr. Building, Austin, Texas 78711.

The contact person for requesting bid packets is Larry Nunn, Texas Department of Criminal Justice Pardons and

Paroles Division, Business Management Section, 209 West 14th Street, Price Daniel, Jr. Building, Austin, Texas 78711, (512) 463-7661. The bid packet and mailing instructions must be obtained from the Texas Department of Criminal Justice Pardons and Paroles Division and signed by the prospective provider.

The contact person for inquiries regarding treatment program requirements is Patti Dobbe, Texas Department of Criminal Justice Pardons and Paroles Division, Program Services, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 406-5302.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443357 Carl Reynolds
General Counsel
Texas Department of Criminal Justice

Filed July 1, 1994

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Texas Employment Commission
Public Announcement

The Texas Employment Commission (TEC), in partnership with the Texas Council on Workforce Economic Competitiveness (TCWEC) and the Texas Department of Commerce (TDOC), announces its intent to issue a Request for Information, Qualifications and Proposals (RFIQP). The purpose of this RFIQP is to select a slate of qualified educational specialists to initiate, plan and facilitate the Workplace Scholar program in selected businesses in several areas of Texas. Interested parties should contact TEC in writing to request a copy of the RFIQP at the following address: Texas Employment Commission, TEC Building, Austin, Texas 78778 0001, JSO Department Room 440T, Attention Don Snow RFIQP.

RFIQPs may be requested via Fax at (512) 463 9994. FAX requests should be addressed to the attention of Don Snow RFIQP. No telephone inquires or requests for the RFIQP will be accepted. A mandatory bidder's conference will be held on July 15, 1994 at the following address: Texas Employment Commission, 1117 Trinity, Austin, Texas 78701, Room 304T.

In order to be eligible for consideration, potential bidders must be in attendance at this bidder's conference. Potential bidders should take note that parking is limited and plan accordingly. Additional copies of this RFIQP will be available at this bidder's conference.

Issued in Austin, Texas, on June 29, 1994.

TRD-9443237 C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

Filed June 30, 1994

Request for Proposals

I. General Information. This packet is designed to assist eligible applicant organizations in applying to the Texas Employment Commission (TEC) for Dependent Care Development Grant (DCDG) funds.

A. Authorization of Funding. The funds are authorized by Public Law 98-558, the Human Services Reauthorization Act of 1984, as amended by Public Law 101-105, the Augustus F. Hawkins Human Services Reauthorization Act of 1990. The funds are administered by the U.S. Department of Health and Human Services (U.S. Dept. HHS).

B. Scope of Work. Proposals to be considered for funding under this request will be those that relate to providing technical assistance to local contract recipients of DCDG funds for planning, development, establishment, operation, expansion, or improvement of Dependent Care Information/Resource and Referral OR School-Age Child Care Services

1. A proposal addressing the dependent care information/resource and referral component shall describe a strategy to assess needs and to provide technical assistance for local DCDG Information/Resource and Referral Contractors at the state and/or regional level. The proposal shall identify possible areas of technical assistance and propose strategies for delivery of services. A proposal may include other activities related to education, information, and/or expansion of the information/resource and referral market. Note that "Dependent" is defined as an individual who has not attained the age of 17 years, an individual who has attained the age of 55 years, or a person with a developmental disability.

2. A proposal addressing the school-age child care services component shall describe a strategy to assess needs and to provide technical assistance for local DCDG School-Age Child Care Contractors at the state and/or regional level. The proposal shall identify possible areas of technical assistance and shall propose strategies for delivery of services. A proposal may include other activities related to education, information, and/or expansion of the school-age child care market. A school-age child is a child aged 5-13.

The proposal narrative must describe a strategy to obtain the following program information on a monthly basis: the number of contractors served, the types of questions, information, or services requested, and a description of the types of technical assistance provided.

Proposals must include a strategy for networking and collaborating with other school-age child care organizations or information/resource and referral organizations within the community, region, statewide, and/or nation. Proposals must also include a strategy for providing grant writing and fund raising technical assistance to local contractors, as part of their efforts to become financially able.

Proposals, after describing the provision of technical assistance to local contract recipients, may detail the use of residual funds for other activities not related to technical assistance. However, these activities must relate to the planning, development, establishment, operation, expansion, or improvement of dependent care information/resource and referral or school-age child care services. **NOTE:** The residual funds may not exceed 25% of the maximum funding request.

C. Length of Contract. The contract period is 12 months beginning October 1, 1994, or as soon thereafter as contracts can be executed. Applicants already receiving funding from the DCDG Program will be required to conclude their current contracts before beginning a new contract using these funds. All 1994-1995 DCDG contracts follow the federal fiscal year, and must end no later than September 30, 1995.

D. Selection, Notification, and Negotiation Process. The Texas Employment Commission anticipates completing the selection process by no later than Wednesday, August 31, 1994. Any negotiations deemed necessary by TEC will be conducted prior to the first day of the contract period. TEC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TEC deems such variances and/or amendments are in the best interest of the State of Texas.

E. Agency Contact. Any questions or clarification requests pertaining to the contents of the RFP packet are to be directed to Ernestine Sunderland at 512/502-3773 or David Roop at (512) 502-3779.

II. Application Information.

A. Due Date. The deadline for receipt and consideration of a DCDG proposal is the close of business (5:00 p.m.) Tuesday, August 15, 1994. Applications postmarked on or before Monday, August 14, 1994, and mailed through the United States Postal Service will be considered timely. In order to be eligible, mailed proposals must include a legible U.S. Postal Service postmark showing a date and time on or before the deadline. Metered mail is not acceptable unless it also includes an acceptable U.S. Postal Service postmark.

Applications delivered by any other type of mail services or hand-delivered must arrive at TEC's Work and Family Clearinghouse office by the specified date and time. Applications may be mailed or delivered in person or by special delivery to the following address: Texas Work and Family Clearinghouse, Texas Employment Commission, 3520 Executive Center Dr., Suite 209, Austin, Texas 78731-1637, ATTN: Grants Staff.

B. Eligible Applicants. Eligible applicant organizations submitting proposals for the DCDG Program include public agencies and private nonprofits.

C. Format for Submission. Proposals must be typed (double spaced) on standard 8-1/2" x 11" paper, and have consecutively numbered pages. The Title Page should be attached to the front of the proposal, followed by the Table of Contents. All pages should be numbered.

Proposals shall be limited to ten pages excluding the required title page, table of contents, performance statement, budget forms, certification of eligibility documents and assurances. Proposals which exceed the page limitations will be disqualified. Proposals should not be elaborately bound but should be clipped at the top with binder clips or staples.

An original and three complete copies of each application must be submitted. The proposal must be reproduced or printed on the front side of each sheet only. (See also Section TWO Proposal Application Packet for additional information on program narrative and proposal format.)

D. Budget Information. The total funding available for local contractors is approximately \$600,000. Proposals for providing technical assistance for information/resource and

referral OR school-age child care may request a maximum of \$50,000.

Each proposal must include a 25% matching share from the applicant organization. The minimum matching share shall not be less than 25% of the combined total of Federal and match funds. For example, a proposal requesting the maximum funding of \$50,000 will require minimum matching funds of \$16,666.66. NOTE: The DCDG maximum amount is considered 75% of the total funding.

TEC's prior written approval for purchase or lease of equipment with acquisition cost of \$5,000 or more per unit is required. Approval of a completed proposal or contract budget does not constitute prior approval. Title to items with an acquisition cost of \$1,000 or more shall be retained by TEC. DCDG funds may not be used for partial purchases of equipment. The purchase must be made entirely with DCDG funds to allow TEC to obtain clear title to items.

Examples of allowable and non-allowable costs are outlined as follows.

ALLOWABLE.

Meeting/conference room expenses; staff travel directly associated with grant purposes; salary/fringe benefits costs for assigned project staff; pro-rated telephone costs; printing/ reproduction costs; pro-rated rental/or purchase costs for visual aids or other office equipment; program advertising; auditing costs; indirect costs--if in accordance with currently approved indirect cost rate plan; and purchase of equipment, supplies or materials that facilitate the planning, development, establishment, expansion, or improvement of dependent care information/resource and referral services.

NON-ALLOWABLE.

Client/recipient payments; construction costs; renovation costs; matching for federal funds; lobbying costs; food/entertainment costs; or consultant costs for proposal development.

Federal funds made available under the Act will be used to supplement and increase the level of State, Local and other non-Federal funds that would, in the absence of such Federal funds, be made available for the programs and activities for which funds are provided and will in no event supplant such State, Local, and other non-Federal funds.

E. Assurances. Any eligible organization applying for and accepting Dependent Care Development Grant (DCDG) funds shall assure that funds allotted under Section 670B shall be used in accordance with the requirements of the Dependent Care Development Grant Act, P.L. 98-588, as amended by P.L. 101-501; assure that fiscal control and fund accounting exists as may be necessary to assure the proper disbursement of and accounting for federal funds received under the Act; assure that audits of this program shall be conducted in accordance with federal provisions of the 45 C.F.R. Part 74.62. Audits shall be conducted annually by independent auditors based on generally accepted government auditing standards. Results shall be submitted to the Texas Employment Commission; and assure compliance with reporting requirements as required by the U.S. Department HHS and TEC.

F. Review and Rating of Proposals. Information on planned performances in each proposal will be significant in proposal grading and ranking. The DCDG Program attempts to distribute funds equally across the state. Spe-

cial consideration may be given to a proposal for planning, developing, establishing, expanding or improving projects in a geographic area or region not adequately targeted or funded.

Proposals from organizations receiving DCDG funds two or more years consecutively from the TEC will be reviewed separately to determine previous contractual compliance; demonstrated efforts towards financial self-sufficiency; and the justification for continuing to fund the project. Significant in the rating process for continuing contractors are new or innovative approaches to a component already undertaken, or the expansion of a component into a larger or different geographical area or different target group.

No review of a proposal will be initiated unless all applicant information and documentation specified in this RFP is submitted. See Section TWO: Application Packet for more information on proposal components. Proposals accepted for review will be rated on the following criteria in order of importance: program Narrative and discussion of program background, significance or level of need, project aims, and plans for project continuation; strength of the program evaluation component in determining program and client service effectiveness, including the evaluation methodology, data collection and reporting procedures, the background and experience of the person responsible for the evaluation, a timeline for the evaluation process, and a description of how the data and analysis will be incorporated back into the program for continuous improvement, experience in interagency coordination and collaboration, and community support and participation in the project; budget preparation, program accountability, financial reporting capabilities, and demonstration of efforts towards or plans for financial self-sufficiency; program operations and staffing responsibilities, including qualifications and experience of the principal contractor, subcontractor(s), collaborator(s), consultant(s) and staff, particularly in the area of proposed activities; and organization, complete documentation, and content according to RFP packet instructions, (a Table of Contents is required).

G. Inquiries. In the interest of fairness and to ensure that all interested organizations have access to the same information, responses to inquiries related to missing pages, timeframes, and other logistical items related to this packet will be published in the *Texas Register*. All questions must be submitted in writing no later than Tuesday, July 19, 1994. Questions should be mailed to Grants Staff, Work and Family Clearinghouse, 3520 Executive Center Drive, Suite 209, Austin, Texas 78731-1637. Responses to appropriate questions will be published in the *Texas Register* on Tuesday, July 26, 1994.

Issued in Austin, Texas, on July 8, 1994.

TRD-9443300

C. Ed Davis
Deputy Administrator for Legal Affairs
Texas Employment Commission

Filed: June 30, 1994

Texas Department of Health Athletic Trainer Public Hearing

The Texas Department of Health will be holding a public hearing on the proposed athletic trainer rules as published in the June 14, 1994, issue of the *Texas Register* (19 TexReg 4618). The hearing will be at 2:00 p.m., on

Friday, July 16, 1994, at the Texas Department of Health, the Exchange Building, 8407 Wall Street, Room N-218.

For more information regarding the hearing or the proposed rules, contact Becky Berryhill at (512) 834-6601.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443367 John T. Richards
Assistant General Counsel, Office of
General Counsel
Texas Department of Health

Filed: July 1, 1994

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Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order and Notice of Violation issued January 8, 1993, to Herbert R. Melch, M.D., 7080 Camp Bowie Boulevard, Fort Worth, Texas 76116, holder of Certificate of Registration Number R11836.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 30, 1994.

TRD-9443295 Susan K. Steeg
General Counsel
Texas Department of Health
Filed June 30, 1994

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Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code, §289.112), has revoked the following certificates of registration: Memorial Medical Center, Corpus Christi, R00467, June 20, 1994; Fredrick D. Gibson, D.D.S., Fort Worth, R10916, June 20, 1994; E. V. Dimazana, M.D., Corpus Christi, R15539, June 20, 1994; Chaparral Imaging Corp., Midland, R17819, June 20, 1994; Bruce Scudday, D.P.M., Rowlett, R18473, June 20, 1994; Irving Medical Association, P.A., Irving, R19124, June 20, 1994; Heritage Chiropractic, Inc., Bedford, R19127, June 20, 1994; Test Equipment Distributors, Troy, Michigan, R19198, June 20, 1994; LaserTech Productions, Mundelein, Illinois, Z00803, June 20, 1994.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 30, 1994.

TRD-9443296 Susan K. Steeg
General Counsel
Texas Department of Health
Filed June 30, 1994

Notice of Revocation of Radioactive Material Licenses

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code, §289.112), has revoked the following radioactive material licenses: Ranger Scientific, Inc., Burleson, L02235, June 20, 1994; Baylor Medical Center at Gilmer, Gilmer, L03493, June 20, 1994; Corpus Christi Healthcare Group, Corpus Christi, L03827, June 20, 1994.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 30, 1994.

TRD-9443297 Susan K. Steeg
General Counsel
Texas Department of Health
Filed June 30, 1994

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**Texas Department of Human Services
Public Notice—Availability of Intended
Use Report**

The Texas Department of Human Services (DHS) has published a report outlining its proposed intended use of federal block grant funds during fiscal year 1995 for Title XX social services programs. Four public hearings were held across the state in October and November of 1993 and in March of 1994 to obtain testimony on the recommended use of Title XX funds.

To obtain free copies of the report, send written requests to Nancy Murphy, Section Manager, Media and Policy Services, Mail Code W-402, P.O. Box 149030, Austin, Texas 78714-9030. DHS is seeking written comments from representatives of both public and private sectors regarding the proposed use of Title XX block grant funds. Written comments will be accepted through August 8, 1994.

Issued in Austin, Texas, on June 30, 1994.

TRD-9443330 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: June 30, 1994

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**Texas Natural Resource Conservation
Commission
Public Notices**

The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) has issued a public notice of the proposal of a remedy for a State Superfund site which constitutes an imminent and substantial endangerment due to a release or threatened release of hazardous

substances into the environment. The notice was published in the *Ranger Times* on July 7, 1994.

In accordance with 30 TAC §335.49(a), concerning requirements for the remedial action, and the Texas Health and Safety Code, §361.187, Solid Waste Disposal Act, as amended by Senate Bill 43, Sixth Called Session, 1990, concerning the proposed remedial action, a public meeting regarding the proposed remedy for the Sonics International, Inc. site must be held no sooner than 45 days after publishing a notice in the *Texas Register* and a local newspaper. The public meeting will be held in the Auditorium of the Goleman Library at Ranger Junior College, College Circle, Ranger, Texas on August 25, 1994, at 7:00 p.m.

The site for which a remedy is being proposed is the Sonics International, Incorporated site which was originally proposed for listing on the State Superfund list on January 16, 1987 (12 TexReg 205). Sonics International, Incorporated is located approximately two miles west of Ranger in Eastland County. The Sonics International, Incorporated Site consisted of two hazardous waste disposal wells. A remedial investigation to determine the nature and extent of contamination was completed March 24, 1993. The results indicate that contamination of soils and shallow groundwater by primarily chlorinated solvents exists at the site at levels which may threaten human health and the environment. A baseline risk assessment concluded that further action was needed to eliminate any potential imminent and substantial endangerment to human health and the environment. Following approval of the baseline risk assessment, a feasibility study (FS) report was submitted and reviewed. The FS report screened and evaluated technologies that could be used to remediate the Sonics International, Incorporated site. The FS report developed six alternatives, with off-site disposal being the preferred alternative.

The public meeting will be legislative in nature and not a contested case hearing under the Administrative Procedure Act (Government Code, Chapter 2001). Persons desiring to make comments on the proposed remedial action may do so prior to or at the public meeting. All comments concerning the proposed remedial action and requests for information (copy of the Proposed Remedial Action) should be submitted to Scott T. Crouch, Superfund Investigation Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

The public records for this site are available for inspection and copying from 8:00 a.m. to 5:00 p.m., Monday-Friday. The records are located in the TNRCC Central Records Center, Building D, Room 190, 12118 North Interstate 35, Austin, Texas, 78753, (512) 239-2920. Copying of file information is subject to payment of a fee. The Remedial Investigation Report, Risk Assessment Report and Feasibility Study Report are available for review at the local repository. The repository is the Ranger Junior College Library, College Circle, Ranger, Texas 76470, (817) 647-3234.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443359 Mary Ruth Holder
Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: July 1, 1994

Notice of Effective Rate of Fee on the Sale of Automotive Oil Pursuant to Health and Safety Code, §371.062.

Notice is given by the Texas Natural Resource Conservation Commission and the Office of the Comptroller of the effective rate for assessment of fees on the sale of automotive oil. Senate Bill 1340, Acts of the 72nd Legislature, 1991, amended the Health and Safety Code by adding new Chapter 371 regarding used oil collection, management and recycling and imposing a fee on the sale of automotive oil to be collected by the comptroller. Senate Bill 2 Acts of the 72nd Legislature, First Called Session, 1991, transferred authority for the used oil collection, management and recycling program from the Texas Department of Health to be effective March 1, 1992. Under the provisions of Health and Safety Code, §371.062(g), the commission shall determine the effective fee rate for each fiscal year to meet the needs of the used oil program and issue notice jointly with the comptroller. Notice is given that the effective fee rate for fiscal year 1995 shall be \$.02 per quart or \$.08 per gallon for the period September 1, 1994-August 31, 1995.

Persons who wish to comment on this action should contact Kit Seay, Recycling and Waste Minimization Section, Office of Pollution Prevention and Recycling, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443358 Mary Ruth Holder
Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: July 1, 1994

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**Texas Guaranteed Student Loan
Corporation (TGSLC)
Request for Professional Auditing
Services**

The Texas Guaranteed Student Loan Corporation (TGSLC) is requesting proposals from qualified and interested accounting firms to provide auditing services for corporate financial statements, Federal Financial Assistance programs, and TGSLC Money Purchase Pension Plan and Trust. Audits must comply with generally accepted audited standards, and the standards for financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States, the Single Audit Act of 1984, and the provisions of OMB Circular A-133. Auditor may be required to provide secondary markets and credit enhancers associated with the sale of debt securities related to the federal student loan program with consent and citation of expertise as the auditor and any necessary comfort letters. Working papers and reports related to audits must be retained by auditor for a minimum of three years.

Submissions must be forwarded in compliance with TGSLC Request for Proposal for Professional Auditing Services, dated July 5, 1994. Copies of the RFP may be obtained by contacting Ernest T. Lee, MPA, C.P.M., TGSLC, Purchasing Manager, P.O. Box 201725, Austin, Texas 78720-1725, (512) 219-4515.

Request for additional information must be in writing, and may be obtained by contacting the previously referenced

party, or James Patterson, Vice President, Administration, (512) 219-4611. Contact with TGS LC personnel other than the above named parties may be grounds for elimination from the selection process.

Eight copies of the completed proposal, along with completion of Section Five, Proposed Identification and Information, contained in the RFP, must be received no later than 4:00 p.m. on July 25, 1994. The response to the RFP must be addressed to: Rens B. Gonzales, Chair, Audit Committee, TGS LC, P.O. Box 201725, Austin, Texas 78720-1725.

TGS LC has been determined to be a "government contractor," and as such must include equal opportunity and affirmative action clauses contained in §202 of the Equal Opportunity Executive Order 11246, as amended by Executive Order 11375, 41 CFR §60-250.4 (regulations supporting the Vietnam Veterans' Readjustment Assistance

Act of 1974, as amended (38 USC 2012); and 41 CFR, §60-741.4 (regulations supporting §503 of the Rehabilitation Act of 1973, as amended) in all its contracts. More information concerning this requirement is included in the proposal package.

TGS LC is a Texas non-profit 501C(3) corporation organized in the provisions of House Bill 38 of the 66th Texas Legislature to operate as a guarantee agency under the federal guaranteed student loan program. TGS LC encourages minority participation in its contractual solicitations.

Issued in Austin, Texas, on July 1, 1994.

TRD-9443356

Ernest T. Lee
Purchasing Manager
Texas Guaranteed Student Loan
Corporation

Filed: July 1, 1994



TAC Titles Affected

The following is a list of the administrative rules that were published in the June 1994 issues.

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Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. A asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
47 Friday, June 24	Monday, June 20	Tuesday, June 21
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49 Friday, July 1	Monday, June 27	Tuesday, June 28
50 Tuesday, July 5	Wednesday, June 29	Thursday, June 30
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53 Tuesday, July 19	Wednesday, July 13	Thursday, July 14
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54 Tuesday, July 26	Wednesday, July 20	Thursday, July 21
55 Friday, July 29	Monday, July 25	Tuesday, July 26
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58 Tuesday, August 9	Wednesday, August 3	Thursday, August 4
59 Friday, August 12	Monday, August 8	Tuesday, August 9
60 Tuesday, August 16	Wednesday, August 10	Thursday, August 11
61 Friday, August 19	Monday, August 15	Tuesday, August 16
62 Tuesday, August 23	Wednesday, August 17	Thursday, August 18
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64 Tuesday, August 30	Wednesday, August 24	Thursday, August 25
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68 Tuesday, September 13	Wednesday, September 7	Thursday, September 8
69 Friday, September 16	Monday, September 12	Tuesday, September 13
70 Tuesday, September 20	Wednesday, September 14	Thursday, September 15
71 Friday, September 23	Monday, September 19	Tuesday, September 20
72 Tuesday, September 27	Wednesday, September 21	Thursday, September 22
73 Friday, September 30	Monday, September 26	Tuesday, September 27
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