

# Texas Register

Volume 18, Number 51, July 2, 1993

Page 4253-4356

## In This Issue...

### **Office of the Attorney General**

#### **Letter Opinions**

LO93-31 (RQ-513) .....	4262
LO93-32 (ID-18190) .....	4262
LO93-34 (RQ-502) .....	4262
LO93-35 (RQ-324) .....	4262
LO93-36 (ID-19069) .....	4262
LO93-37 (ID-16363) .....	4262
LO93-38 (ID-19119) .....	4262
LO93-39 (ID-18191) .....	4262
LO93-40 (ID-16323) .....	4262
LO93-41 (ID-19089) .....	4263
LO93-42 (ID-20029) .....	4263
LO93-43 (ID-19317) .....	4263
LO93-44 (ID-16460) .....	4263
LO93-45 (ID-17260) .....	4263
LO93-46 (RQ-432) .....	4263

#### **Open Records Decision**

ORD-614 (RQ-430) .....	4263
------------------------	------

#### **Opinions**

DM-216 (RQ-497) .....	4263
DM-217 (RQ-514) .....	4263
DM-218 (RQ-466) .....	4263
DM-219 (RQ-492) .....	4264

DM-220 (RQ-325) .....	4264
DM-221 (RQ-511) .....	4264
DM-222 (RQ-478) .....	4264
DM-223 (RQ-362) .....	4264
DM-224 (RQ-463) .....	4264
DM-225 (RQ-420) .....	4264
DM-226 (RQ-498) .....	4264

#### **Requests for Opinions**

RQ-535 .....	4265
RQ-536 .....	4265
RQ-537 .....	4265
RQ-538 .....	4265
RQ-539 .....	4265
RQ-540 .....	4265
RQ-541 .....	4265
RQ-542 .....	4265
RQ-543 .....	4265
RQ-544 .....	4265
RQ-545 .....	4265
RQ-546 .....	4265
RQ-547 .....	4265
RQ-548 .....	4265
RQ-549 .....	4265
RQ-550 .....	4265
RQ-551 .....	4265

CONTENTS CONTINUED INSIDE



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## 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 Sections** - sections adopted by state agencies on an emergency basis.

**Proposed Sections** - sections proposed for adoption.

**Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.

**Adopted Sections** - 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

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
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 22, April 16, July 13, and October 12, 1993). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
*Part I. Texas Department of Human Services*  
40 TAC §3.704.....950, 1820

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.

## **Emergency Sections**

### **Texas Youth Commission**

#### **Discipline and Control**

37 TAC §91.65 .....	4267
37 TAC §91.67 .....	4268

## **Proposed Sections**

### **Texas Ethics Commission**

#### **Forms**

1 TAC §7.1 .....	4269
------------------	------

#### **Practice and Procedure**

1 TAC §§10.211, 10.213, 10.215, 10.217, 10.219...	4269
---	------

#### **Campaign Financing**

1 TAC §§20.2-20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, 20.23 .....	4270
--	------

#### **Personal Financial Statement**

1 TAC §30.51 .....	4270
--------------------	------

#### **Registration and Regulation of Lobbyists**

1 TAC §§40.17, 40.34, 40.35 .....	4271
-----------------------------------	------

### **Texas Department of Agriculture**

#### **Boll Weevil Eradication Program**

4 TAC §§3.20-3.24 .....	4271
-------------------------	------

### **Board of Vocational Nurse Examiners**

#### **Administration**

22 TAC §231.1 .....	4273
---------------------	------

#### **Education**

22 TAC §233.1 .....	4274
22 TAC §§233.15, 233.17, 233.22 .....	4274
22 TAC §233.42, §233.43 .....	4275
22 TAC §§233.51, 233.60, 233.67, 233.72 .....	4275

#### **Licensing**

22 TAC §§235.41, 235.44, 235.45, 235.47 .....	4275
---	------

#### **Continuing Education**

22 TAC §237.1 .....	4276
22 TAC §§237.14-237.16, 237.18, 237.19, 237.22...	4277

#### **Contested Case Procedure**

22 TAC §239.11 .....	4279
22 TAC §239.11, §239.17 .....	4280

22 TAC §239.33 .....	4281
22 TAC §239.53, §239.55 .....	4282

#### **Vocational Nurse Peer Review**

22 TAC §241.11 .....	4282
----------------------	------

#### **Vocational Nurse Reporting**

22 TAC §243.11 .....	4284
----------------------	------

### **Employees Retirement System of Texas**

#### **Creditable Service**

34 TAC §§71.14, 71.19, 71.21 .....	4286
------------------------------------	------

#### **Benefits**

34 TAC §73.33 .....	4287
---------------------	------

#### **Judicial Retirement**

34 TAC §77.15 .....	4287
---------------------	------

#### **Insurance**

34 TAC §§81.1, 81.3, 81.7, 81.11 .....	4288
--	------

### **Texas Youth Commission**

#### **Discipline and Control**

37 TAC §91.65 .....	4290
---------------------	------

### **Texas Department of Human Services**

#### **Special Nutrition Programs**

40 TAC §§12.3, 12.4, 12.7, 12.20, 12.26 .....	4291
---	------

### **Texas Commission on Alcohol and Drug Abuse**

#### **DWI Education Program Standards and Procedures**

40 TAC §§153.1, 153.4, 153.5 .....	4293
40 TAC §153.19 .....	4293
40 TAC §§153.35, 153.36, 153.38 .....	4294

### **Texas Department of Insurance**

Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L .....	4295
--	------

## **Withdrawn Sections**

### **Texas Water Commission**

#### **Municipal Solid Waste**

31 TAC §330.68 .....	4297
----------------------	------

## **Adopted Sections**

### **Texas Ethics Commission**

#### **Registration and Regulation of Lobbyists**

1 TAC §40.5 .....	4299
-------------------	------

## Texas Department of Health

### Radiation Control

25 TAC §289.111.....	4299
25 TAC §289.113.....	4300
25 TAC §289.115.....	4302
25 TAC §289.116, §289.122.....	4306
25 TAC §289.121, §289.128.....	4310
25 TAC §289.126.....	4314

### Texas Department of Mental Health and Mental Retardation

Client Assignment and Continuity of Services	
25 TAC §§402.281-402.301.....	4315
25 TAC §§402.281-402.298.....	4316

### Texas Department of Insurance

#### Life, Accident, and Health Insurance

28 TAC §3.9001, §3.9002.....	4321
------------------------------	------

#### Property and Casualty Insurance

28 TAC §5.501.....	4321
28 TAC §5.4001.....	4326

### Texas Commission on Jail Standards

#### Fees and Payments

37 TAC §300.24, §300.27.....	4327
37 TAC §300.28.....	4327

### Texas Commission on Fire Protection

#### Standards for Certification

37 TAC §421.1.....	4327
--------------------	------

#### Fire Suppression

37 TAC §423.1.....	4327
--------------------	------

#### Fire Protection Personnel Instructors

37 TAC §425.5, §425.7.....	4328
----------------------------	------

#### Minimum Standards for Fire Inspectors

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11, 429.13, 429.15, 429.17.....	4328
37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11... .....	4328

#### Minimum Standards for Fire and Arson Investi- gators

37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11 .....	4329
---	------

37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11, 431.13.....	4329
--	------

#### Fees

37 TAC §437.5.....	4329
--------------------	------

#### Continuing Education

37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9.....	4329
37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15.....	4330

#### Adoption by Reference

37 TAC §§443.1, 443.7, 443.9.....	4330
-----------------------------------	------

#### Voluntary Regulation of State Agencies and State Agency Employees

37 TAC §491.1.....	4330
--------------------	------

#### Voluntary Regulation of Federal Agencies and Federal Agency Employees

37 TAC §493.1.....	4331
--------------------	------

#### Texas Commission on Alcohol and Drug Abuse

#### Approved Drug Offender Education Program

40 TAC §§147.1-147.9.....	4331
40 TAC §§147.31-147.44.....	4332

### Open Meeting Sections

Texas State Board of Public Accountancy.....	4335
Texas Department on Aging.....	4335
Texas Department of Agriculture.....	4335
Texas Department of Criminal Justice.....	4335
Advisory Commission on State Emergency Communica- tions.....	4336
Texas State Board of Registration for Professional Engi- neers.....	4337
Fire Fighters' Pension Commission.....	4337
Texas Department of Health.....	4337
Texas Department of Insurance.....	4338
Judicial Districts Board.....	4338
Texas Department of Licensing and Regulation... ..	4338
Texas Board of Pardons and Paroles.....	4338
Texas Department of Public Safety.....	4339
Public Utility Commission of Texas.....	4339
School Land Board.....	4340
Interagency Council on Sex Offender Treatment... ..	4340
Texas Department of Transportation.....	4340
The Texas A&M University System, Board of Regents .....	4341



Texas Board of Veterinary Medical Examiners .....	4341
Texas Water Commission .....	4341
Texas Workers' Compensation Insurance Fund.....	4342
Texas Workers' Compensation Research Center.....	4342
Regional Meetings.....	4342

***In Addition Sections***

**Office of the Texas Attorney General**

Texas Solid Waste Disposal Act .....	4345
--------------------------------------	------

**State Banking Board**

Notice of Hearing .....	4345
Notice of Hearing Cancellation .....	4345

**Coastal Coordination Council**

Texas Coastal Management Program-Policy Development Document.....	4345
---	------

**Office of Consumer Credit Commissioner**

Notice of Rate Ceilings.....	4350
------------------------------	------

**Interagency Council on Early Childhood Intervention**

Notice of Retraction of a Request for Proposal.....	4350
---	------

**Texas Employment Commission**

Consultant Contract Awards .....	4350
----------------------------------	------

**Texas Environmental Awareness Network**

Notice of Monthly Meeting.....	4351
--------------------------------	------

**Texas Department of Health**

Emergency Medical Services (EMS) Local Projects Training for EMS Providers Application Packet.....	4351
--	------

**Texas Department of Human Services**

Public Notice .....	4352
---------------------	------

**Texas Parks and Wildlife Department**

Notice of Public Hearing.....	4352
-------------------------------	------

**Texas Public Finance Authority**

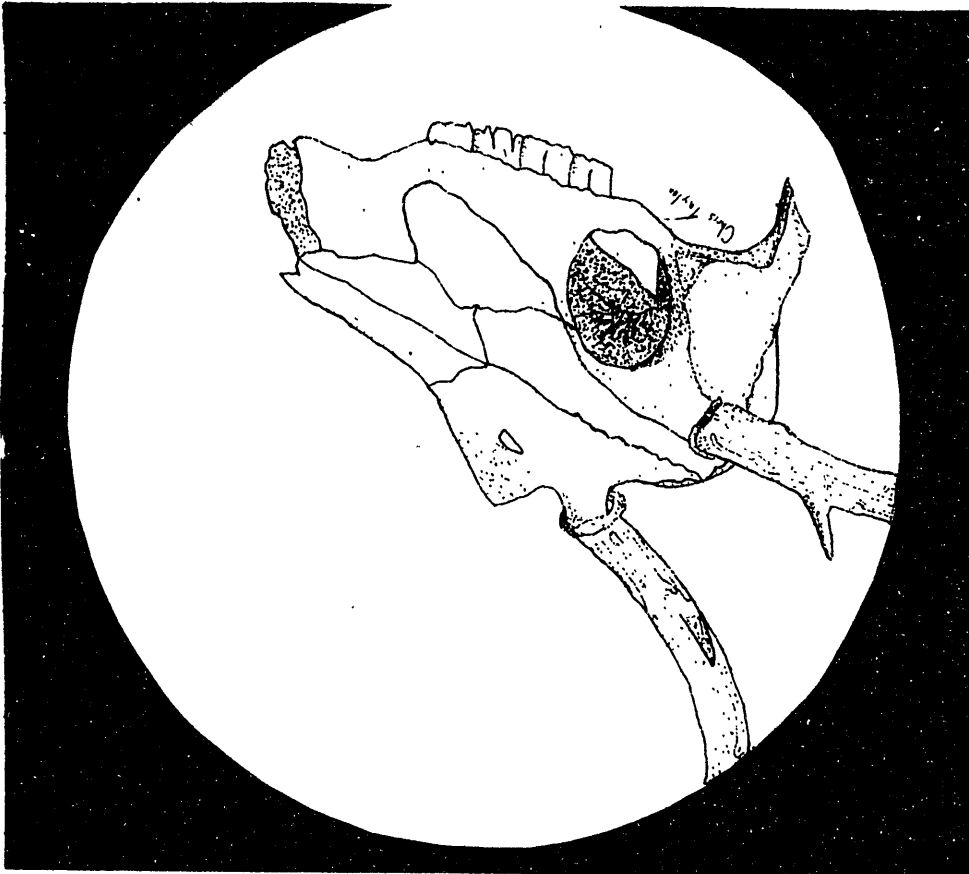
Request for Proposal for Accounting Services.....	4353
---	------

**Texas Department of Transportation**

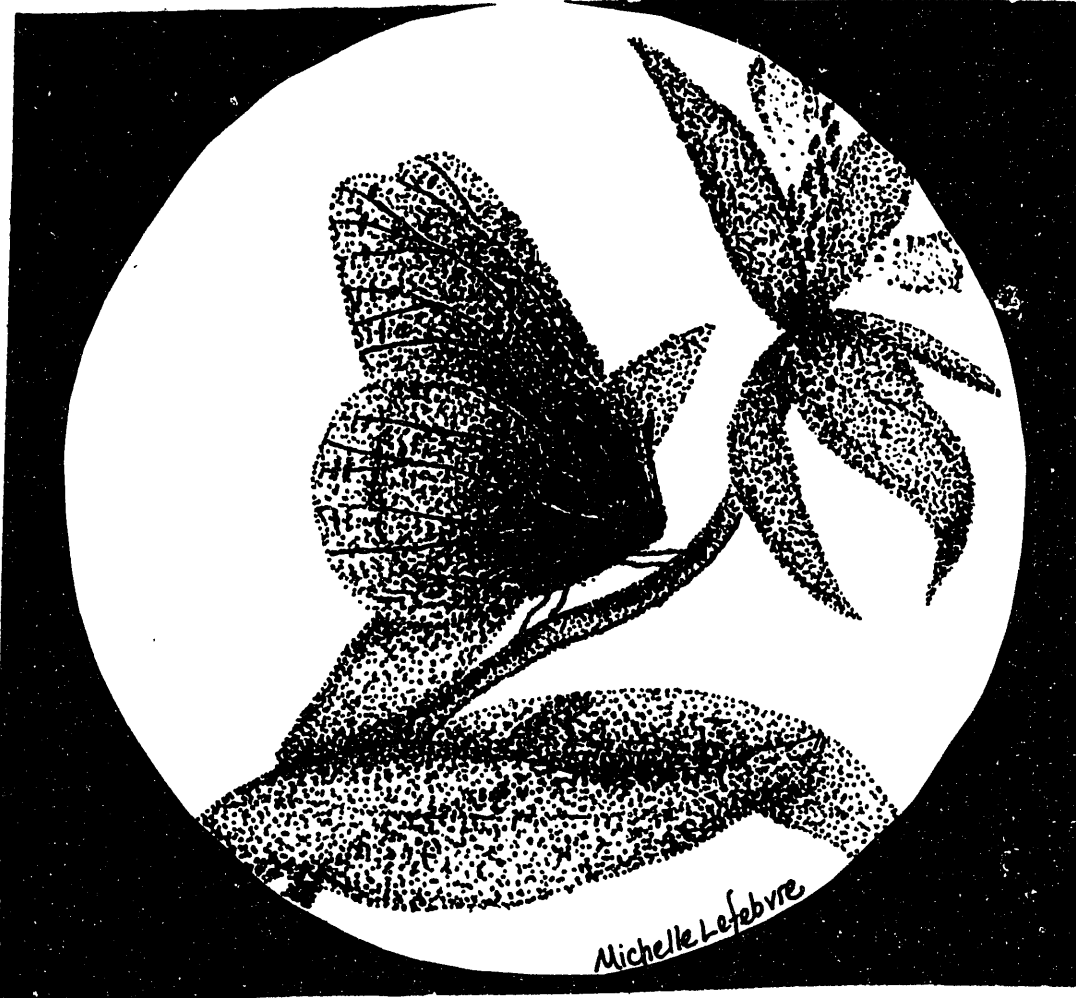
Consultant Notice .....	4353
Public Notice .....	4353

**Texas Water Commission**

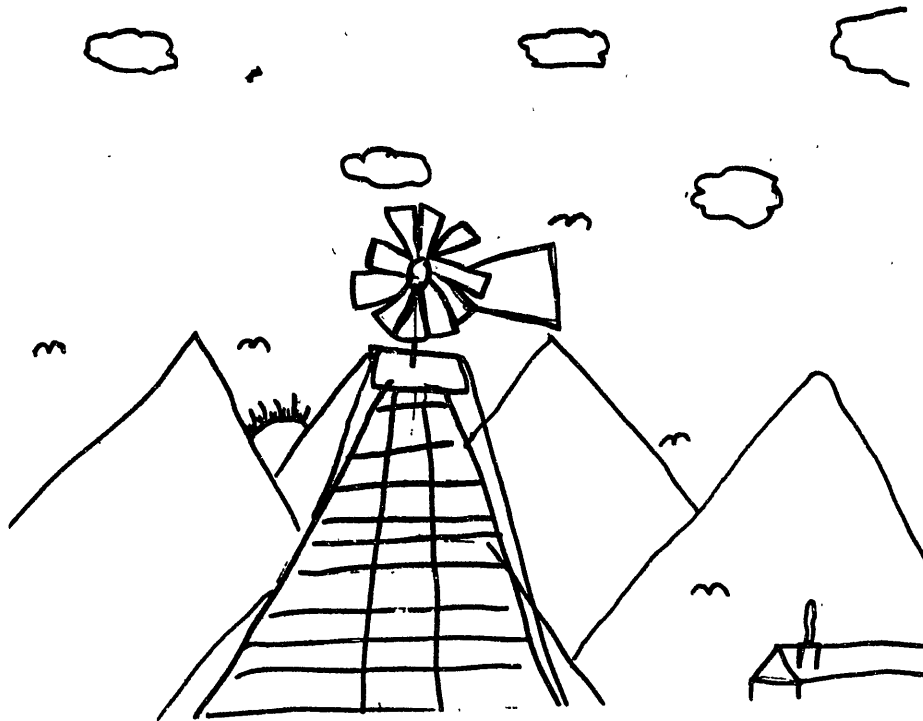
Public Hearing Notice .....	4354
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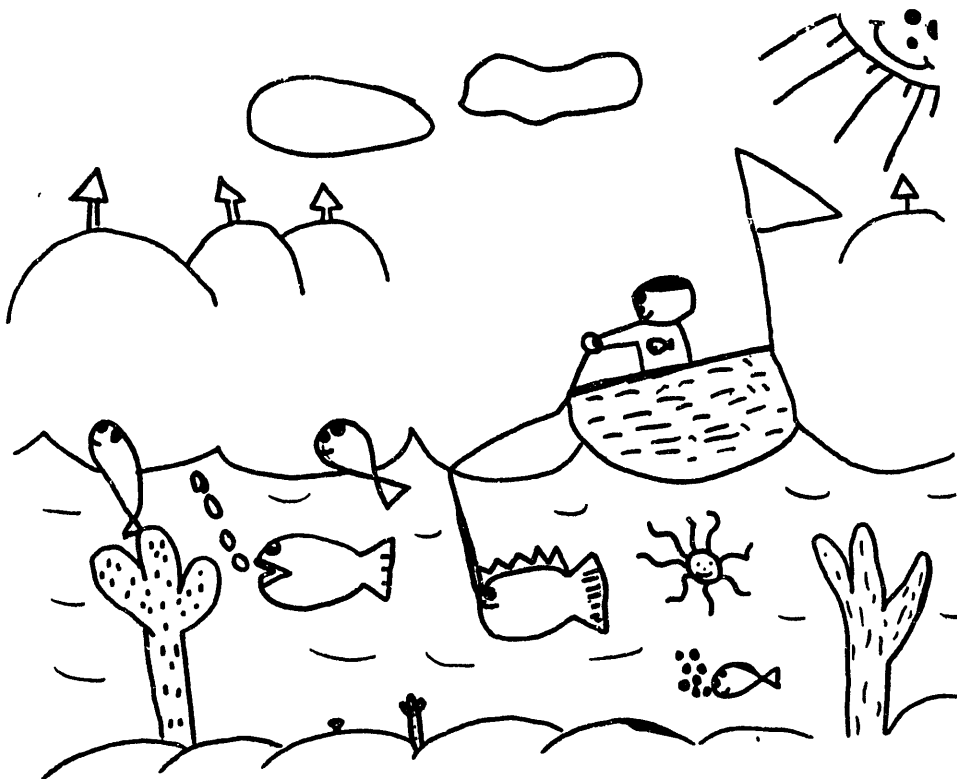
Name: Chris Taylor  
Grade: 7  
School: Hendrick Middle School, Plano ISD



Name: Michelle Lefebvre  
Grade: 8  
School: Hendrick Middle School, Plano ISD



Name: Nathan Holcomb  
Grade: 2  
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



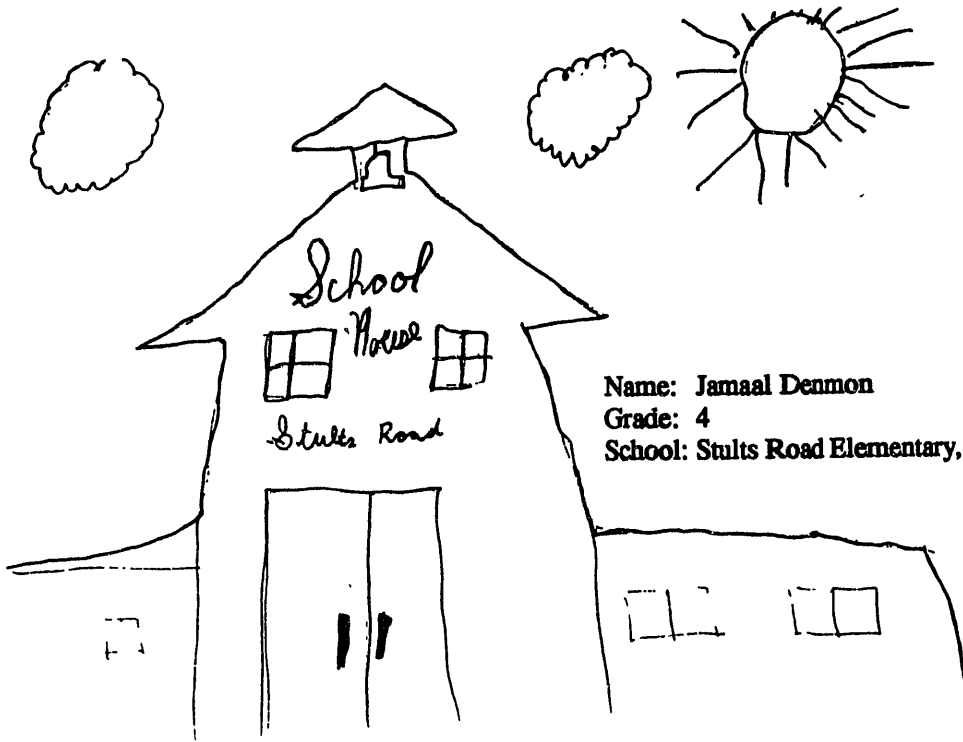
Name: Keisha Garcia  
Grade: 2  
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



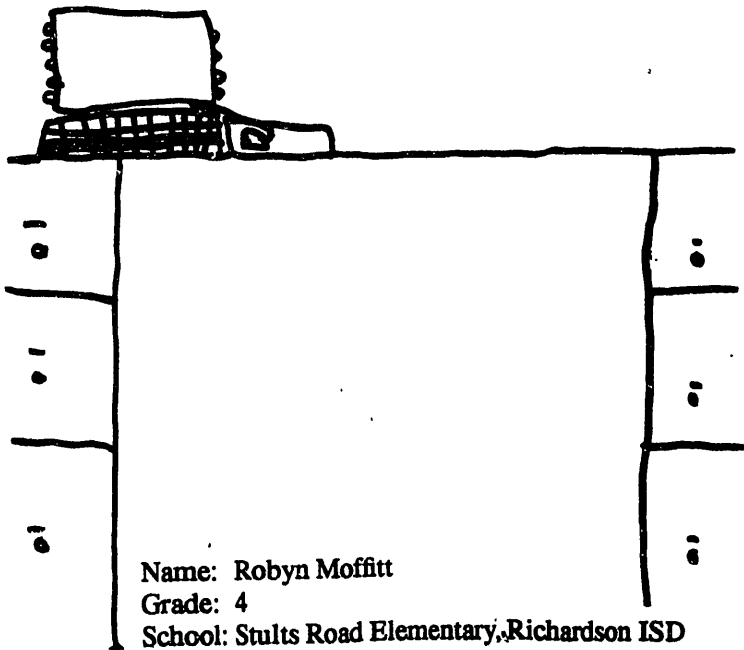
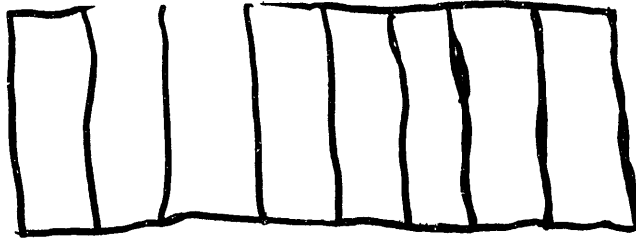
Name: Adriana Urbino  
Grade: 6  
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Blanca Zavala  
Grade: 6  
School: Montgomery Elementary, Carrollton-Farmers Branch ISD



Name: Jamaal Deamon  
Grade: 4  
School: Stults Road Elementary, Richardson ISD



Name: Robyn Moffitt  
Grade: 4  
School: Stults Road Elementary, Richardson ISD

# Attorney General

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

## Letter Opinions

**LO-93-31 (RQ-513).** Request from Libby Linebarger, Chairman, Committee on Public Education, Texas House of Representatives, Austin, concerning whether a legislator who serves as an independent contractor for an independent school district holds a "position of profit under this State".

**Summary of Opinion.** A legislator is not as a matter of law prohibited by the Texas Constitution, Article XVI, §40, from acting in the capacity of "independent contractor" for a school district on a part-time basis.

TRD-9324853

**LO-93-32 (RQ-18190).** Request from Betty Denton, Member, Texas House of Representatives, Austin, concerning whether the Department of Public Safety is authorized to require the presentation of an original Social Security card when a person applies for a new or a renewal driver's license.

**Summary of Opinion.** The Department of Public Safety is authorized to require that an applicant for a driver's license supply his social security number and some documentation of that number.

TRD-9324854

**LO-93-34 (RQ-502).** Request from Delwin Jones, Chairman, House Redistricting Committee, Texas House of Representatives, Austin, concerning whether the Lubbock County Hospital District may contribute funds for construction of an international cultural center at Texas Tech University.

**Summary of Opinion.** The Lubbock County Hospital District does not have authority to contribute its funds for the construction of the international cultural center at Texas Tech University.

TRD-9324855

**LO-93-35 (RQ-324).** Request from A. J. (Jack) Hartel, Liberty County Attorney, Liberty, concerning whether a navigational district may enter into a tax abatement agreement when a board member of the navigation district owns an interest in the property receiving the tax abatement.

**Summary of Opinion.** The Chamber-Liberty Counties Navigation District is subject to chapter 171 of the Local Government Code, which governs conflicts of interest for local government officials. A district board member who possesses a "substantial interest" in real property that would be affected by a proposed tax abatement must follow the recusal procedures set forth in the Local Government Code, §171.004(a). Whether a member of the district board who owns an interest in property receiving a proposed tax abatement from the district possesses a "substantial interest" depends upon the facts surrounding the transaction at issue.

TRD-9324856

**LO-93-36 (RQ-19069).** Request from Tom Craddick, Chairman, House Committee on Ways and Means, Austin, concerning eligibility for participation in a poster contest sponsored by the Texas Dietetic Association and Associated Milk Producers, Inc.

**Summary of Opinion.** No Texas statute or constitutional provision governs the regulation of a "nutrition poster contest" if the contest is based solely on skill.

TRD-9324857

**LO-93-37 (RQ-16363).** Request from Luis V. Saenz, Cameron County District Attorney, Brownsville, concerning whether a teacher at Texas State Technical College is prohibited from serving as a Harlingen city commissioner.

**Summary of Opinion.** The Texas Constitution, Article XVI, §40, bars a teacher employed by Texas State Technical College from serving as a city commissioner if he or she receives a salary from the city for doing so. Section 40 does not preclude such a state employee from serving as a city commissioner if he or she renounces the salary. A city commissioner who accepts a position of employment with the state does not automatically forfeit his or her position, and may continue in both positions, if he or she renounces the salary, and the monies the city commissioner receives as expenses do not exceed the actual expenses he or she incurs.

TRD-9324858

**LO-93-38 (RQ-19119).** Request from Bill Moore, Johnson County Attorney, First Floor Courthouse, Cleburne, concerning authority of a juvenile court to designate county space as a juvenile processing office, pursuant to the Family Code, §52.025.

**Summary of Opinion.** Title 3 of the Family Code does not preclude a juvenile court from designating more than one office or room as a juvenile processing office in each police facility and sheriff's office within the court's jurisdiction.

TRD-9324859

**LO-93-39 (RQ-18191).** Request from Betty Denton, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether the use of the "Denver boot" by a municipal police department constitutes an unconstitutional taking of property without due process.

**Summary of Opinion.** The use by cities of the Denver boot is not unconstitutional *per se*.

TRD-9324860

**LO-93-40 (RQ-16323).** Request from Robert Earley, Chairman, Committee on Energy, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether it is permissible for a gas or electric utility company to waive deposits for United States Navy personnel.

**Summary of Opinion.** Texas Civil Statutes, Article 1438, prohibits a gas or electric utility company from discriminating against any person "in the charge for such gas, electric current or power, or in the service rendered under similar and like circumstances." The determination whether a gas or electric utility company's practice of waiving a deposit for United States Navy personnel violates this provision involves questions of fact and is therefore not amenable to the opinion process. For example, if the Navy has agreed to guarantee the bills of its personnel, then one might conclude that naval personnel and civilian consumers do not receive service "under similar and like circumstances."

TRD-9324861

**LO-93-41 (RQ-19089).** Request from Kenny Marchant, Chairman, Committee on Investments and Banking, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether a retired individual who is receiving retirement benefits from the Teacher Retirement System may be compensated as an elected member of a municipal governing body.

**Summary of Opinion.** Nothing in Article XVI, §40 acts to bar a retired individual who is receiving retirement benefits from the Teacher Retirement System from simultaneously receiving compensation as an elected member of a city council.

TRD-9324862

**LO-93-42 (RQ-20029).** Request from Allen Place, Chairman, Committee on Criminal Jurisprudence, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether a home-rule city may reimburse its officials in a fixed amount for expenses incurred.

**Summary of Opinion.** Unless an individual otherwise receives all or part of his compensation from funds of the state, he is not prohibited from accepting a "fixed monthly expense allowance," without regard to expenses actually incurred, for service on a city commission.

TRD-9324863

**LO-93-43 (RQ-19317).** Request from S. E. Seely, El Paso County Auditor, 500 East San Antonio Street, Room 406, El Paso, concerning whether the County of El Paso may use the county law library fund to maintain statutes and reporters located in the chambers of district and county courts.

**Summary of Opinion.** Under the Local Government Code, Chapter 323, Subchapter B, it is permissible for a county to use the county law library fund to purchase statutes and reporters to be located in the chambers of district and county courts and thereafter maintain them, provided that the materials are convenient and readily accessible to litigants. If the materials were purchased with general funds of the county, the county law library fund cannot be used to maintain them unless the commissioners court transfers the materials to the county law library collection. It is for the commissioners court to decide in its discretion whether to use the county law library fund for this purpose.

TRD-9324864

**LO-93-44 (RQ-16460).** Request from David J. Freeman, Executive Secretary, Texas Racing Commission, P.O. Box 12080, Austin, concerning whether the Texas Racing Act, Article 7, Texas Civil Statutes, Article 179e, requires an individual investor in a licensed pari-mutuel racetrack to be licensed.

**Summary of Opinion.** The Texas Racing Act, §7.02, Texas Civil Statutes, Article 179e, requires an individual who invests in a racetrack with pari-mutuel wagering to receive a license from the Texas Racing Commission.

TRD-9324865

**LO-93-45 (RQ-17260).** Request from Dwight P. McDaniel, Sabine County Attorney, P.O. Box 1090, Hemphill, concerning effects of redistricting on incumbent justices of the peace in Sabine County.

**Summary of Opinion.** Pursuant to Article V, §18(c) of the Texas Constitution a justice of the peace in office on the effective date of a change of precinct boundaries does not lose his office but rather serves in the new precinct where the justice of the peace resides on the effective date of the change for the term to which the justice of the peace was elected or appointed.

After election or redistricting, a justice of the peace need not continue to reside in the precinct in which he serves in order to retain office in that precinct so long as he continues to reside in the county in which he serves.

TRD-9324866

**LO-93-46 (RQ-432).** Request from Gary Compton, Chairman of the Board, Texas Youth Commission, P.O. Box 4260, Austin, concerning whether Article VII, §9 of the Texas Constitution grants the Parrie Haynes Ranch, which was willed "to the State Orphan Home of Texas to help orphan children," to the asylum fund established by that constitutional provision.

**Summary of Opinion.** Article VII, §9 of the Texas Constitution does not require the Parrie Haynes Ranch, property willed to the State Orphan Home for the benefit of orphan children, to be placed in the asylum fund established by that provision.

TRD-9324867

## Open Records Decisions

**ORD-614 (RQ-430).** Request from Fred S. Brinkley, Jr., R.Ph., Executive Director/Secretary, Texas State Board of Pharmacy, 8505 Cross Park Drive, Suite 110, Austin, concerning application of the Texas Pharmacy Act, §27A, Texas Civil Statutes, Article 4542a-1, relating to program to aid impaired pharmacists and pharmacy students; availability of records under §27A.

**Summary of Opinion.** The Texas Pharmacy Act, §27A(d), Article 4542a-1, does not prohibit the release of information indicating the status of a complaint, irrespective of whether the release of this information reveals that disciplinary action was instituted under §27A. The terms of "impaired"

orders issued prior to June 18, 1983, are excepted from required public disclosure by the Open Records Act, §3(a)(1) in conjunction with the Texas Pharmacy Act, §27A(d).

TRD-9324868

## Opinions

**DM-216 (RQ-497).** Request from Ben Campbell, Chairman, Committee on County Affairs, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether a school district's purchases of gasoline for use by an independent contractor in the provision of transportation services for the school district are exempt from the gasoline tax.

**Summary of Opinion.** The school district exemption from the gasoline tax, Tax Code §153.104(7), applies to gasoline purchased directly by a school district and used by independent contractors solely for the provision of transportation services to the district.

TRD-9324842

**DM-217 (RQ-514).** Request from, Marvin J. Titzman, Executive Director, Texas Surplus Property Agency, P.O. Box 8120, San Antonio, concerning whether an entity or institution that owes service and handling charges and fees to the Texas Surplus Property Agency is "indebted to the state" for purposes of the Government Code, §403.055, and related questions.

**Summary of Opinion.** The Texas Surplus Property Agency, pursuant to the Government Code, §403.055 may request the comptroller to withhold warrants to an entity or institution that has failed to pay the agency accrued service and handling charges and fees. Thus, provided that the agency properly alleges to the comptroller the statutory basis of the debt, the comptroller is authorized to withhold such warrants. Whether the comptroller is authorized to withhold any warrant that is payable to an individual identified and certified as the principal officer or responsible employee of the entity or institution that is indebted to the agency is a question involving the resolution of facts; it is therefore outside the scope of the opinion process.

TRD-9324843

**DM-218 (RQ-466).** Request from Tom Craddick, Chairman, Committee on Public Health, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether an additional sales and use tax under the Tax Code, §321.101(b) may be used to finance a homestead exemption, whether an eligible city may simultaneously adopt sales and use taxes under Texas Civil Statutes, Article 5190.6, §4A and §4B and related questions.

**Summary of Opinion.** A city is not authorized to use an additional sales and use tax under the Tax Code, §321.101(b) to finance a homestead exemption.

A city that adopts a one-half cent sales and use tax under Texas Civil Statutes, Article 5190.6, §4B, may also adopt in the same election a combined one-half cent sales and use tax under §4A of that Article and the Tax Code, §321.101(b), assuming that the city is eligible to adopt a sales and use tax under these provisions and the overall sales and use tax rate would not exceed statutory limits. A city is not authorized to join a proposal to adopt a sales and use tax under §4B, and a combined sales and use tax under §4A and §321.101(b), on the ballot as a single ballot proposition. A city is not authorized to adopt a sales and use tax under §4B at a rate less than one-half of one percent.

The fact that a municipal advisory board member is defined as a city officer in a city code or charter does not necessarily make him or her an officer for purposes of state law in general or Article 5190.6 in particular. The determination whether members of a particular municipal advisory board are city officers must be made on a case-by-case basis.

TRD-9324844

**DM-219 (RQ-492).** Request from James E. "Pete" Laney, Speaker, Texas House of Representatives, P.O. Box 2910, Austin, concerning authority of the Board of Licensure for Nursing Home Administrators to charge and "collect a \$10 fee for each administrator-participant in all education courses approved by the [board] for continuing education units".

**Summary of Opinion.** The Board of Licensure for Nursing Home Administrators is not authorized to impose and collect a \$10 fee from administrators or participants in courses conducted by outside sources and approved by the board as continuing education unit.

TRD-9324845

**DM-220 (RQ-325).** Request from Ben W. Childers, Fort Bend County Attorney, 309 South Fourth Street Suite 621, Richmond, concerning whether the Fort Bend County Tax Assessor/Collector may collect additional taxes for change of use of agricultural land in light of the 1989 amendment to the Tax Code, §23.55(e).

**Summary of Opinion.** The 1989 amendment of the Tax Code, §23.55(e) shifted the authority to determine that a change of use of agricultural land has occurred and to notify the landowner of the determination from the Fort Bend County tax assessor/collector to the chief appraiser of the Fort Bend Central Appraisal District. The tax assessor/collector has the authority to col-

lect the additional taxes at issue pursuant to the pre-amendment version of §23.55(e) only if the tax assessor/collector sent the landowner a statement for additional taxes and interest prior to September 1, 1989, the effective date of the amendment.

TRD-9324846

**DM-221 (RQ-511).** Request from Benny M. Mathis, Jr., Executive Director, Structural Pest Control Board, 9101 Burnet Road, Suite 201, Austin, concerning whether provisions of the City of Greenville regulation of pesticides ordinance are preempted by the Structural Pest Control Act, Texas Civil Statutes, Article 135b-6.

**Summary of Opinion.** The City of Greenville regulation of pesticide ordinance provisions regarding notice are inconsistent with and therefore preempted by the Structural Pest Control Act, Texas Civil Statutes, Article 135b-6 (the Act). The ordinance provisions regarding the dissemination of educational materials and requiring professional pesticide applicators to submit certain reports are not inconsistent with the Act.

TRD-9324847

**DM-222 (RQ-478).** Request from Jeffery D. Herrington, Criminal District Attorney, Anderson County Courthouse, 500 North Church Street, Palestine, concerning whether a child support obligee may modify a child support order by filing with a district clerk a limited power of attorney authorizing a corporation to receive child support payments paid through the district clerk's office along with a request that the clerk send the child support payments to that corporation.

**Summary of Opinion.** Unless the Family Code, §14.08(h), applies, a district clerk must pay child support payments to the person designated in the existing child support order or in that portion of a divorce decree providing for child support. Thus, a district clerk must continue to pay the obligee designated in the court order even though the obligee has filed with the clerk a limited power of attorney authorizing a corporation to receive the child support payments to that corporation.

TRD-9324848

**DM-223 (RQ-362).** Request from Bryan M. Perot, Executive Officer, Polygraph Examiners Board, P.O. Box 4087, Austin, concerning whether Texas Civil Statutes, Article 6252-9b, §7A(a), prohibits a former member of the Polygraph Examiners Board from appearing before the board in connection with sponsoring a polygraph intern.

**Summary of Opinion.** Texas Civil Statutes, Article 6252-9b, §7A(a), prohibits a former member of the Polygraph Examiners Board from sponsoring a polygraph intern before the second anniversary of the date

the person ceased to be a member of the board.

TRD-9324849

**DM-224 (RQ-463).** Request from Mike Driscoll, Harris County Attorney, Houston, concerning whether the Harris County Bail Bond Board is authorized to issue more than one bail bond license to a corporate surety, and related question.

**Summary of Opinion.** Texas Civil Statutes, Article 2372p-3, authorizes the Harris County Bail Bond Board to issue multiple license to a corporate surety. In an election of the bail bondsmen's representative to the board, a corporate surety is entitled to cast only one vote.

TRD-9324850

**DM-225 (RQ-420).** Request from Clem R. Cannon, Karnes County Auditor, 200 East Calvert, Karnes City, concerning liability for costs of health care provided to indigent inmates of the Karnes County Jail.

**Summary of Opinion.** Subject to the given caveats, the Karnes County Hospital District is responsible for the costs of medical care provided to its indigent residents incarcerated in the Karnes County Jail. Other hospital districts or public hospitals are responsible for such costs with respect to their indigent residents incarcerated in the Karnes County Jail. The county of residence of an indigent inmate of the Karnes County Jail who does not reside in a hospital district or public hospital service area is responsible for the costs of his medical care.

TRD-9324851

**DM-226 (RQ-498).** Request from John W. Segrest, Criminal District Attorney, McLennan County, 219 North Sixth Street, Suite 200, Waco, concerning whether the Local Government Code, §381.004, creates an exemption to competitive bidding requirements and related questions.

**Summary of Opinion.** The determination whether a particular county policy is "legal" is beyond the purview of the opinion process. The Local Government Code §381.004, does not violate the equal protection clause of the fourteenth amendment of the United States Constitution. The determination whether a particular county program violates the fourteenth amendment's equal protection clause would require the resolution of factual matters, such as determinations regarding the county's reasons for adopting the program and the verity of those reasons, that are not amenable to the opinion process.

TRD-9324852





## Requests for Opinions

(RQ-535). Request from Honorable John F. Miller, Jr., Bowie County Criminal District Attorney, P.O. Box 3030, Bi-State Justice Center, Texarkana, concerning whether a commissioners court is authorized to regulate industrial landfill sites located outside the boundaries of a municipality.

(RQ-536). Request from Honorable Tom Craddick, Committee on Ways and Means, Texas House of Representatives, P.O. Box 2910, Austin, concerning whether a county commissioner may contract for the sale of goods and services to a community center established under Chapter 534, Subchapter A, Health and Safety Code.

(RQ-537). Request from Mr. Charles Karakashian, Jr., Assistant General Counsel, Texas Department of Public Safety, 5805 North Lamar Boulevard, Box 4087, Austin, concerning whether information regarding traffic tickets issued by various cities, including the name, address, age, gender, and race of the ticketed individuals, is subject to disclosure under the Texas Open Records Act, Article 6252-17a.

(RQ-538). Request from Honorable Bill Ratliff, Chair, Committee on Education, Texas State Senate, P.O. Box 12068, Austin, concerning whether a school district may establish and fund an education foundation, and related questions.

(RQ-539). Request from Honorable Bill Ratliff, Chair, Committee on Education, Texas State Senate, P.O. Box 12068, Austin, concerning the levy and collection of property taxes by a county education district, and related questions.

(RQ-540). Request from Honorable O. H. "Ike" Harris, Chair, Committee on State Affairs, Texas State Senate, P.O. Box 12068, Austin, concerning implementation of Texas Civil Statutes, Article 5221a-10

which provides for the regulation of "temporary worker employers" by the Texas Department of Licensing and Regulation.

(RQ-541). Request from Mr. John R. Hale, Commissioner, Credit Union Department, 914 East Anderson Lane, Austin, concerning authority of a credit union to engage in certain kinds of indirect lending, and related questions.

(RQ-542). Request from Mr. Jerry R. Hoodenpyle, Rohne, Hoodenpyle, Lobert, Myers and Scott, P.C., 1323 West Pioneer Parkway-Spur 303, Arlington, concerning whether the Arlington Chamber of Commerce and the Arlington Economic Development Foundation are subject to the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-543). Request from Mr. W. Dickinson Yale, Jr., Coats, Rose, Yale, Holm, Ryman and Lee, 800 First City Tower, 1001 Fannin, Houston, concerning whether handwritten notes taken by individual board members of a county authority during a meeting of the authority constitute information subject to the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-544). Request from Mr. Daniel S. Ouellette, Chairman, The Texas State University System, 333 Guadalupe, Box 3810, Austin, concerning whether non-resident scholarship students are eligible for resident tuition rates under certain circumstances.

(RQ-545). Request from Mr. Kenneth H. Ashworth, Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, concerning whether and how an independent school district may withdraw from participation in a junior college district.

(RQ-546). Request from Mr. G. Chadwick Weaver, Assistant City Attorney, City of Midland, 300 North Loraine, Room 320,

P.O. Box 1152, Midland concerning whether there is an "informer's privilege" under Texas Open Records Act, Texas Civil Statutes, Article 6252-17a.

(RQ-547). Request from Honorable John A. Sickel, Van Zandt County Criminal District Attorney, 202 North Capitol Street, Canton, concerning whether the Local Government Code, §140.003, requires a specialized local entity to deposit its funds in the county's bank account or permits the specialized local entity to deposit its funds in its own bank account in the county's depository bank, and related questions.

(RQ-548). Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning fees for issuing and serving a writ of income withholding.

(RQ-549). Request from Mr. Charles Karakashian, Jr., Assistant General Counsel, Texas Department of Public Safety, 5805 North Lamar Boulevard, Box 4087, Austin, concerning availability of unsolved murder investigation file under the Texas Open Records Act, §3(a)(8).

(RQ-550). Request from Ms. Gretchen Kuehn Bohnert, Assistant City Attorney of Houston, P.O. Box 1562, Houston, concerning availability under the Texas Open Records Act, §3(a)(6), of drafts of proposed legislation relating to certain local hotel facilities and related documents held by the city.

(RQ-551). Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, concerning whether copyrighted software documentation acquired by a hospital district pursuant to a licensing agreement is excepted from public disclosure by the Texas Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(4) and §3(a)(10).

TRD-9324841





SCOTT HIGGINBOTHAM  
GRADE 6 WOODCARVING  
RICHARDSON HEIGHTS ELEM.  
RICHARDSON, TEXAS



ERICA JOHNSON  
GRADE 6 WOODCARVING  
RICHARDSON HEIGHTS ELEM.  
RICHARDSON, TEXAS

# Emergency Sections

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, for no more than 120 days. The emergency action is renewable once for no more than 60 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 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 91. Discipline and Control

##### Control

##### • 37 TAC §91.65

Texas Youth Commission (TYC) adopts on an emergency basis an amendment to §91.65, concerning procedures in the security units in TYC institutions.

The section is published as an emergency amendment in order to prevent continuing injuries to staff working in TYC's institutional security units and to delinquent youth confined to those units. Youth are placed in individual rooms in security units when immediate behavior meets specific criteria including engaging in serious physical harm to him/herself or others. The amendment will allow staff to lock the doors of all individual security unit rooms to restrict violent behavior. During the first ten months of Fiscal Year 1993, 334 incidents involving student assaults on staff and student assaults on other students occurred in TYC institution security units. A most serious example occurred when two youths confined within an unlocked security unit room gained access to a third youth in an unlocked security unit room and severely beat the victim before staff could act. Had security unit room doors been locked, the assaultive youths would not have been able to effect the assault.

The amendment is adopted on an emergency basis under the Human Resources Code, §61.075, which provides the Texas Youth Commission authority to determine appropriate treatment including confinement.

##### §91.65. Security Unit.

(a) Policy. The Texas Youth Commission (TYC) refers to security as the institutional unit or building, which is designed and operated for the segregation of youth from the general population and which is controlled exclusively by staff. Placement in security is a serious and extreme measure which may be imposed only in specific [the limited] situations. Security shall not be used for retribution at any time. (Also see GOP.67.19, §91.69 of this title,

relating to Detention).

(b) Rules.

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

(3) Locked Doors in Security Unit Rooms.

(A) Doors of individual security rooms may be locked during the referral process prior to admission with the following restrictions.

(i) A youth may be placed in an individual room and the door locked when the youth is out of control and is a serious and immediate physical danger to himself or herself or others, and only after less restrictive methods of restraint have failed.

(ii) As soon as a youth is sufficiently under control so to no longer pose a serious and immediate danger to himself or others, he is released from the locked door.

(iii) Use of locked doors for this purpose shall be fully documented.

(B) Doors of individual security rooms are locked following a youth's admission to the security unit and placement in an individual room.

(4)[(3)] Extended Stay.

(A) A youth's stay in security may be extended beyond the 24 hours if there are reasonable grounds to believe that one of the admission criteria is occurring or will occur if the youth is released.

(B) Extended security confinement due process protections are provided to youth who remain in security longer than 24 hours.

(i) A hearing is afforded the youth before security confinement is extended past 24 hours.

(ii) The youth is informed of the reasons for the continued confinement.

(iii) A hearing administrator is appointed by the superintendent to

review the reasons for the confinement and make a decision on the facts presented.

(iv) The youth is present and participates in the review and has an opportunity to make his own statement.

(v) The youth is given assistance in presenting his position if the youth requests such assistance.

(vi) The administrator's decision is based solely on the evidence presented.

(vii) A written statement of the decision setting forth the reasons for the decision and the appeal procedure is provided to the youth.

(viii) The superintendent will decide the appeal outcome and the youth is notified of the outcome of the appeal.

(C) Following the extended stay hearing, the superintendent may approve an additional 24-hour extension, every 24 hours thereafter, until the end of the fifth day or 120 hours.

(D) Following 120 hours of extended security placement, the director of institutions may approve an additional 24-hour extension, every 24 hours thereafter, until the end of the seventh day or 168 hours.

(E) Following 168 hours of extended-stay security placement, the deputy executive director may approve an additional 24-hour extension every 24 hours thereafter until the youth is released.

(5)[(4)] Security Requirements.

(A) Youth placed in security who are on suicide alert are visually checked by staff no less frequently than every ten minutes. All other youth in security are visually checked by staff at least every 15 minutes.

(B) Youth in security are visited at least once each day by the superintendent or acting superintendent and by personnel from the psychology and medical departments.

(C) [During any period of time in which youth are locked in their room in security] During normal sleeping hours a supervisor visits the security area at least once each hour (unless exceptional and unusual duties prohibit such visits) and shall make an entry into the log recording each such visit.

(D) Youth in security receive appropriate psychological and medical services.

(E) Youth in security receive the same food including snacks prepared in the same manner as for other youth except as special diets may be prescribed on an individual basis by medical personnel.

(F) Youth in security receive educational services. Academic assignments are expected to be completed on all school days by youth enrolled in academic classes;

any youth not enrolled in an educational program or only involved in vocational shop activities may be given leisure reading or letter writing assignments in lieu of completing academic class assignments.

(G) Youth in security receive two periods of supervised large muscle activity daily.

(6)[(5)] Documentation. Permanent log(s) are maintained stating the name of the person who authorized confinement or security, the superintendent or acting superintendent's daily approval of the placement, the names and times of the persons who visited the youth while so confined, and the date and time of the youth's placement into security or isolation and release.

Issued in Austin, Texas, on June 23, 1993.

TRD-9324709 Ron Jackson  
Executive Director  
Texas Youth Commission

Effective date: June 23, 1993

Expiration date: September 2, 1993

For further information, please call: (512) 483-5244



• 37 TAC §91.67

The Texas Youth Commission (TYC) adopts on an emergency basis the repeal of §91.67, Isolation in Security. Section 91.67 is being repealed on an emergency basis in order to eliminate conflicts with standards set forth in §91.65, which is being adopted on an emergency basis.

The repeal is adopted on an emergency basis under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine appropriate treatment, including confinement.

§91.67. Isolation in Security.

Issued in Austin, Texas, on June 23, 1993.

TRD-9324708 Ron Jackson  
Executive Director  
Texas Youth Commission

Effective date: June 23, 1993

Expiration date: September 2, 1993

For further information, please call: (512) 483-5244



# Proposed Sections

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 any action may be 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 sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

## TITLE 1. ADMINISTRATION

### Part II. Texas Ethics Commission

#### Chapter 7. Forms

##### • 1 TAC §7.1

The Texas Ethics Commission proposes new §7.1, concerning adoption and revision of forms.

Jim Mathieson, assistant general counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Mathieson 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 to promote the on-time filing of reports with the commission thereby giving the public more timely disclosure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed rule. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The new section is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

##### §7.1. Adoption and Revision of Forms.

(a) The executive director shall produce and certify all forms used to disclose information to be reported under these rules

or by a law administered and enforced by the commission.

(b) A form prescribed by the executive director under subsection (a) of this section shall include all information required by these rules and by other applicable law.

(c) Each form prescribed under this section shall be made available by the executive director for use by those required to file a report.

(d) Twenty days before a form is adopted under this section, the executive director shall send a copy of each such form to each member of the commission.

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 24, 1993.

TRD-9324886

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 463-5800

## Chapter 10. Practice and Procedure

### Subchapter C. Forms

#### • 1 TAC §§10.211, 10.213, 10.215, 10.217, 10.219

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

The Texas Ethics Commission proposes the repeal of §§10.211, 10.213, 10.215, 10.217, and 10.219, concerning the forms used in the sworn complaint procedure before the commission. The sections are being repealed because proposed new §7.1 will replace them.

Jim Mathieson, assistant 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. Mathieson 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 not be applicable as the public is relatively unaffected by these particular rules. 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 proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§10.211. Sworn Complaint and Affidavit.

§10.213. Notice of Compliance.

§10.215. Notice of Noncompliance.

§10.217. Notice of Failure to Comply as to Form.

§10.219. Notice of Dismissal for Noncompliance and Failure to Resubmit.

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 24, 1993.

TRD-9324883

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 463-5800

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**Chapter 20. Campaign Financing**

**Subchapter B. Reporting Forms**

- 1 TAC §§20.2-20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, 20.23

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

The Texas Ethics Commission proposes the repeal of §§20.2-20.9, 20.11, 20.13, 20.15, 20.17, 20.19, 20.21, and 20.23, concerning the forms used in campaign finance disclosure. The sections are being repealed because proposed new §7.1 will replace them.

Jim Mathieson, assistant 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. Mathieson 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 not be applicable as the public is relatively unaffected by these particular rules. 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 proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed repeal of the rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

**§20.2. Appointment of State Chair Candidate's Campaign Treasurer.**

**§20.3. Appointment of General-Purpose Committee Campaign Treasurer.**

**§20.4. State Chair Candidate/Officeholder Sworn Report of Contributions and Expenditures.**

**§20.5. Appointment of Candidate's Campaign Treasurer.**

**§20.6. Designation of Final Report by State Chair Candidate.**

**§20.7. Appointment of Specific-Purpose Committee Campaign Treasurer.**

**§20.8. Political Party Sworn Report of Contributions and Expenditures.**

**§20.9. Designation of Final Report by Candidate.**

**§20.11. Designation of Final Report/Affidavit of Dissolution by Specific-Purpose Committee.**

**§20.13. Affidavit of Dissolution for General-Purpose Committee.**

**§20.15. General-Purpose Committee Monthly Sworn Report of Contributions and Expenditures.**

**§20.17. General-Purpose Committee Sworn Report of Contributions and Expenditures.**

**§20.19. Specific-Purpose Committee Sworn Report of Contributions and Expenditures.**

**§20.21. Candidate/Officeholder Sworn Report of Contributions and Expenditures.**

**§20.23. Personal Financial Disclosure.**

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 24, 1993.

TRD-9324884

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 463-5800

**Chapter 30. Personal Financial Statement**

**Subchapter B. Reporting Forms**  
**• 1 TAC §30.51**

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

The Texas Ethics Commission proposes the repeal of §30.51, concerning the Financial Statement used by state officers. The section is being repealed because proposed new §7.1 will replace it.

Jim Mathieson, assistant general counsel, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Mathieson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will not be applicable as the public is relatively unaffected by this particular rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposed from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed rule may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeal is proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

**§30.51. Financial Statement.**

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 24, 1993.

TRD-9324880

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 463-5800

## Chapter 40. Registration and Regulation of Lobbyists

### • 1 TAC §§40.17, 40.34, 40.35

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

The Texas Ethics Commission proposes the repeal of §§40.17, 40.34, and 40.35, concerning the forms used in the registration and regulation of lobbyists. The sections are being repealed because proposed new §7.1 will replace them.

Jim Mathieson, assistant 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. Mathieson 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 not be applicable as the public is relatively unaffected by these particular rules. 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 proposed repeal of the rules from any member of the public are solicited. A written comment should be mailed or delivered to Jim Mathieson, Texas Ethics Commission, P.O. Box 12070, Austin, Texas 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed repeal of the rules may do so at any commission meeting during the agenda item "Communication to the Commission from the Public" and during the public comment period at a commission meeting when the commission considers final adoption of the proposed repeal of the rules. Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

The repeals are proposed under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning those provisions of the law administered by the commission.

§40.17. Lobby Forms.

§40.34. Lobbyist Activity Report.

§40.35. Lobbyist Termination Notice.

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 24, 1993.

TRD-9324882

Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 463-5800

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

### Chapter 3. Boll Weevil Eradication Program

#### Subchapter B. Establishment of Foundation Rules, Proce- dures, and Methods of Treatment

##### • 4 TAC §§3.20-3.24

The Texas Department of Agriculture (the department) proposes new §§3.20-3.24, concerning establishment of rules, procedures, and methods of treatment by the Boll Weevil Eradication Foundation (the foundation). The foundation was established by the enactment by the 73rd Legislature of Senate Bill 30, which added to the Texas Agriculture Code (the Code), Chapter 74, Subchapter D, effective June 1, 1993, which provides for the establishment of a boll weevil eradication program for the state of Texas to be implemented by the foundation and the department. In accordance with the provisions of new Code §74.120, the department proposes directions and guidelines for use by the foundation to develop its rules and zone eradication plans.

The proposed sections provide a general statement of purpose and establish the role of the department as the state agency responsible for monitoring and enforcing the boll weevil eradication program, for establishing procedures for approving rules adopted by the foundation, for providing definitions to be used in Chapter 3, Subchapter B, for providing rules for protection of individuals, livestock, wildlife, and honeybee colonies in eradication zones, and for providing guidelines for the foundation to use in developing its rules, procedures for implementing the boll weevil eradication program, and methods of treatment for specific eradication zones.

Katie Dickie, assistant commissioner for producer relations, has determined that for the first five-year period the sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Ms. Dickie also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the conducting of the boll weevil eradication program in a

manner that poses the least possible risk to the public, property, and the environment. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. The foundation is charged with carrying out the provisions of these sections and costs are not determinable at this time.

Comments on the proposal may be submitted to Katie Dickie, Assistant Commissioner for Producer Relations, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of the publication of this proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §74.120, which requires the department to adopt rules to protect individuals, livestock, wildlife, and honeybee colonies on any premises being treated in an eradication zone and requires the department to adopt criteria for the foundation to follow in the development of its rules, procedures, and methods of treatment.

#### §3.20. Statement of Purpose and Role of the Department.

(a) It has been declared by the Texas Legislature in Senate Bill 30, 73rd Legislative Session, 1993, that the boll weevil presents a major economic threat to Texas' cotton crop and that it is necessary to create a Boll Weevil Eradication Foundation as a vehicle to provide for assessments of cotton producers, governing boards and to establish eradication zones in order to suppress and eradicate the boll weevil. It is also the intent of the Legislature that any program established for boll weevil eradication be carried out in a manner which incorporates the best available integrated pest management techniques, as well as other methods of eradication, and is implemented in a manner that poses the least possible risk to people, property and the environment.

(b) The Texas Department of Agriculture (the department), through the authority vested in the commissioner of agriculture (the commissioner), has been designated as the state agency responsible for general oversight of the implementation of Senate Bill 30 (enacted as Texas Agriculture Code, Chapter 74, Subchapter B), including certifying the organization which will create the foundation, adopting guidelines and other rules for implementation of the boll weevil eradication program, enforcing the provisions of Senate Bill 30, and any rules adopted thereunder, and approving disbursement of funds by the foundation.

(c) In accordance with the Texas Agriculture Code (the Code), Chapter 74, Subchapter D, §74.120, the commissioner is specifically charged with adopting rules to protect individuals, livestock, wildlife and honeybee colonies on any premises located

in an eradication zone on which cotton plants are being grown that have been or are being treated as part of the boll weevil eradication program. In addition, the commissioner is charged with adopting rules establishing criteria by which the Boll Weevil Eradication Foundation (the foundation) develops its own rules, procedures and methods of treatment. This subchapter is intended to meet the requirements of the Code, §74.120.

### §3.21. Rule Consistency and Approval.

(a) Rules adopted by the department, through the authority vested in the commissioner in accordance with the Texas Agriculture Code, §74.120(b), shall serve as guidelines for the foundation, and any rules adopted by the foundation for purposes of implementing the Code, Chapter 74, Subchapter D, shall be consistent with those rules and any other rules adopted by the department in this chapter.

(b) Prior to the adoption of any rule by the foundation under the Code, Chapter 74, Subchapter D, the foundation shall submit to the department a copy of such rules for review and approval. Upon written approval by the department, the foundation shall proceed to adopt a rule. The foundation may not adopt a rule which has not been approved in writing by the department.

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

*Commissioner*—The Texas Commissioner of Agriculture.

*Cultural controls*—Manipulation of routine crop production practices to make the environment less favorable to the biological success of pests. Cultural controls for purposes of this subchapter include, but are not limited to, use of prescribed cotton stalk destruction methods and deadlines and use of prescribed uniform planting dates.

*Department*—The Texas Department of Agriculture.

*Foundation*—The organization designated by the Commissioner of Agriculture as the official Boll Weevil Eradication Foundation, in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D.

*Key pests*—Serious, perennially occurring persistent species that dominate control practices and that, in the absence of human intervention, commonly attain population densities that cause significant economic losses.

*Long-term control plan*—A zone-specific plan that is to be implemented against boll weevils during and until eradication is complete.

*Occasional pests*—Pests that are generally under natural control but cause signif-

icant economic losses only sporadically or in localized areas.

*Secondary pests*—Pests that generally occur as a result to natural enemy destruction through the use of pesticides directed at other pests.

*Zone*—A geographic area in which cotton growers by referendum approve their participation in a boll weevil eradication program.

### §3.23. Protection of Individuals, Livestock, Wildlife, and Honeybee Colonies.

(a) Any applicator or applicators retained by the Boll Weevil Eradication Foundation (the foundation) to apply or cause to be applied pesticides for the purpose of eradication of the cotton boll weevil in an established zone will make such applications in accordance with the requirements of the Federal Insecticide Fungicide and Rodenticide Act (FIFRA), the Texas Pesticide Laws and Regulations, the pesticide label requirements of the product being used, the federal guidelines under the National Boll Weevil Cooperative Control Program (Environmental Impact Statement (EIS), Volumes 1 and 2,) and any other special provision provided for in this section.

(b) The foundation shall establish procedures for each zone that are consistent with specific parts of the Texas Pesticide Regulations relating to prior notification and reentry into sprayed fields and found at §§7.25-7.31 of this title (relating to Scope of Pesticide Application Standards, Notification Requirements, Worker Reentry Into Fields, Reentry Instructions, Forbidden Pesticide Practices, and Reentry Intervals) to ensure compliance with requirements regarding prior notification and reentry.

(c) The foundation shall establish any zone-specific rules needed in addition to the requirements of subsections (a) and (b) of this section, after analyzing each zone for special identified risk to humans, livestock, wildlife, honeybee colonies, or the environment. Such analysis will allow for specific rules to be written by the foundation for each zone with special concerns.

(d) Beekeepers must file the location of their hives and their address and phone number with the Chief Apiary Inspector, Apiary Inspection Service, Entomology Department, Texas A&M University, College Station, Texas 77843-2475, so that a list of beekeepers may be prepared for each county and furnished to the foundation. The foundation shall notify or cause to be notified beekeepers located adjacent to any fields being sprayed prior to the application to allow the beekeeper to restrict the bees leaving the hive until danger to the bees has diminished.

### §3.24. Guidelines for Establishment of Foundation Rules, Procedures and Methods of Treatment.

(a) The foundation shall establish procedures for determining when boll weevil population levels have reached economic significance. The foundation will estimate boll weevil populations using generally accepted entomological methods, including, but not limited to pheromone traps and/or estimate weevil damage by examining the fruiting forms of cotton; and establish thresholds to determine when treatments are necessary. This will be done for each eradication zone and will encompass both the eradication phase as well as post-eradication. The foundation shall establish criteria to declare when eradication is complete.

(b) The foundation shall establish a treatment regimen that seeks to provide the least possible risk to human health and the environment. The treatment regimen must consider all cultural controls; and, when the treatment regime must consider the use of pesticides, such pesticides must be considered on the basis of low toxicity and the least potential for environmental hazards. To achieve these objectives, the treatment regimen shall require, include or incorporate the following:

(1) provisions urging for maximum compliance with stalk destruction requirements and other appropriate cultural controls;

(2) development of emergency response plans to minimize the health and environmental threat posed by undesired or accidental pesticide contamination;

(3) selection of pesticides based on the severity of boll weevil infestation, location of eradication zones, climatic conditions, and other factors that may contribute to the efficacy of the treatment;

(4) specification of the duration, application rate and frequency, type of application, and total amount of the active ingredient used taking into consideration, cost per acre;

(5) evaluation and selection of pesticides considering their acute and chronic toxicity, reproductive and developmental effects, acute and delayed neurotoxicological potential, and carcinogenic and other possible toxicological endpoints;

(6) consideration of possible risks to workers, mixers, loaders, and applicators to ensure that occupational exposure (via all routes) to the pesticides does not cause unreasonable adverse health effects;

(7) assurance that adequate safety and protection are provided to workers consistent with state and federal worker



protection standards by adhering to the precautionary statements and the reentry intervals, personal protective equipment, and other requirements of law;

(8) methods for informing the public of possible health risks that could result from exposure to the pesticides used;

(9) working in cooperation with the Federal Fish and Wildlife agency, Texas Parks and Wildlife and the department, consideration of the impact of pesticides' use on endangered, threatened, and non-target organisms (plants, aquatic, and wildlife) and their habitats and assurance that precautionary and remedial measures are considered to mitigate the exposure; and

(10) cooperation with all agencies concerned including the Environmental Protection Agency, Texas Parks and Wildlife, the Texas Department of Agriculture, and Texas Air Control Board and the Texas Water Commission or their successor agency, to furnish collected data and assist in further study of the fate, mobility, and persistence of pesticides and their metabolites in soil, water, and air, and assistance in establishing the strategies for their safe use and disposal.

(c) The foundation shall develop a long-term control plan that will describe the methods to be used in each eradication zone for the purpose of eradicating the cotton boll weevil. The plan must specify the procedures that will be used to minimize the effect of the use of pesticides in long-term control plans. In developing the procedures to be used for minimizing the effects of the use of pesticides, the plan must consider the potential impact of each pesticide used in the boll weevil eradication program as conducted by the foundation on the following parameters:

- (1) human health and safety;
- (2) soils;
- (3) vegetation;
- (4) water quality of both surface and ground water;
- (5) air quality;
- (6) nontarget wildlife, domestic animals, aquatic and insect species; and
- (7) other methods of control to be employed or considered for employment.

(d) The foundation shall consider the acute and chronic toxicity of the particular pesticides used in the eradication program. In addition to the guidelines set forth in subsection (b) (5) of this section, the following parameters shall be considered by the foundation:

- (1) human exposure and risk analysis to:

(A) the public; and

(B) workers;

(2) nontarget species analysis of:

(A) terrestrial species; and

(B) aquatic species; and

(3) environmental fate.

(e) The foundation shall only treat or cause to be treated cotton fields which meet or exceed the approved treatment thresholds, and shall only treat with the appropriate amount of approved pesticides. In consideration of the analysis required by subsection (d)(1) of this section, and notification requirements provided for in §3.23 of this title (relating to Protection of Individuals, Livestock, Wildlife, and Honeybee Colonies), the foundation shall consider additional methods of notification, as appropriate for specific zones.

(f) The foundation shall establish trapping strategies for monitoring boll weevils, and will specify the type of trap(s) to be used, trapping density, concentration of the trap attractant, trap inspection interval, and trapping duration. In addition, the foundation will list the secondary pests that occur in each eradication zone and will establish procedures to monitor them. In establishing such procedures, the foundation may utilize information from persons and/or organizations using existing, established procedures to monitor secondary pests.

(g) The foundation shall establish methods for verifying pesticide use reduction resulting from the boll weevil eradication program as conducted by the foundation. The foundation shall maintain an annual record of total pounds of pesticides used in the eradication program in each eradication zone; shall conduct an evaluation at the end of each year of pesticide use in the boll weevil eradication program and maintain the most recent date, when available. For other insecticides used, the foundation shall develop methods to assess insecticide use for other cotton pests.

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, 1993.

TRD-9324898

Dolores Anarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: August 2, 1993

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

## TITLE 22. EXAMINING BOARDS

### Part XII. Board of Vocational Nurse Examiners

#### Chapter 231. Administration

##### General Provisions

###### • 22 TAC §231.1

The Board of Vocational Nurse Examiners proposes an amendment to §231.1, concerning rules and regulations. The amendment is proposed to offer definitions for Peer Review and Sponsorship as they will be used throughout the rules and regulations.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk 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 improved opportunities to monitor the performance of vocational nurses. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

**Licensed Vocational Nurse**—A person who is licensed under this Act by the Board of Vocational Nurse Examiners.

**Peer Review**—The process of evaluating the qualifications of the vocational nurse, evaluating the appropriateness and quality of vocational nursing services rendered within the scope of vocational nursing practice, merits of a complaint against the vocational nurse, and the efficacy of the complaint.

**Sponsorship**—To qualify for a temporary license as a licensed vocational nurse by endorsement, the applicant must submit to the Board notice of employment by the holder of a Texas professional license under whom the applicant will practice.

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 22, 1993.

TRD-9324746

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Chapter 233. Education

### General Provisions

#### • 22 TAC §233.1

The Board of Vocational Nurse Examiners proposes an amendment to §233.1, concerning Definitions. The amendment is to clarify the terminology and definition of Major or Required Clinical Areas and Total Patient Care Assignment.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk 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 a clarification of terminology and definition. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners Contested Case Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

**Entry-level Competencies—Describe** [Describes] the desirable behaviors exhibited by graduates of vocational nursing programs and are in accord with statutes governing nursing care and are loosely organized under the format of assessment, planning, implementation and evaluation.

**Major or Required Clinical Areas—Medical-surgical nursing, maternal-child health nursing, nursing of children** [obstetrics, perinatal, pediatrics,] and pharmacology.

**Objectives—Clear statements of expected behaviors that are attainable and measurable.**

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

**(C) Course Objectives—Identify** [identifies] desired behavioral changes in the learner upon successful completion of specific curriculum content and shall serve as the mechanism for student progression and can be further divided into enroute and terminal categories.

**Total Patient Care Assignment—Is a manner of assignment whereby the student meets all nursing needs of the patient within the scope of his or her education.**

**Traditional Curriculum—Curriculum content which includes broad content areas for courses as specified by the Board of Vocational Nurse Examiners [is presented in one year,] and meets the minimum hourly requirements for classroom and clinical instruction.**

**Transfer Credit—Is credit given for satisfactory completion of courses which are required in the vocational nurse curriculum.**

**Transfer Student—Is a student who is allowed credit for previous nursing courses.**

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 22, 1993.

TRD-9324749

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Operation of a Vocational Nursing Program

#### • 22 TAC §§233.15, 233.17, 233.22

The Board of Vocational Nurse Examiners proposes amendments to §§233.15, 233.17, and 233.22, concerning Operation of a Vocational Nursing Program. The rules are being amended to clarify language and to comply with revisions of the new Vocational Nurse Act effective September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk also has determined that for each year of the first five years the rules are in effect there will be no public benefit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as

proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4582c, §5(g), which provide Board of Vocational Nurse Examiners with the authority make such rules and regulations as may be necessary to carry in effect the purposes of the law.

**§233.15. Establishment of a New Program.** A new program may be after:

(1) new program application and fee are received;

(2)[(1)] preliminary survey visit by representative of the Board's Division of Education;

(3)[(2)] program proposal is approved by the Board;

(4)[(3)] approval by appropriate funding agency.

**§233.17. Transfer of Controlling Agency.** The authorities of the controlling agency shall notify the Board office of an intent to transfer the [of] controlling authority of the program. Application for approval and fee will be required for the new program.

**§233.22. Instructors.** Instructors shall be nurses licensed to practice in the State of Texas. Instructors shall have been actively employed in nursing for the past three years. If the instructor has not been actively employed in nursing for the past three years, the instructor's advanced preparation in nursing, education, and nursing administration, and prior relevant nursing employment may be taken into consideration by the Board staff in evaluating qualifications for the position. Instructors shall have had three years of varied nursing experiences since graduation. Instructor qualifications forms shall be submitted to the Board office for approval prior to hiring. Instructors shall have no other responsibilities but the program. Instructors shall be responsible for all initial nursing procedures in the clinical area and ascertain that the student is competent before allowing the student to perform an actual nursing procedure independently. Instructors shall be responsible for developing, implementing, and evaluating curriculum; participating in development of standards for admission, progression, probation, and dismissal of students, and participation in academic guidance and counseling. Adjunct faculty are exempt from meeting the instructor qualifications as long as the courses taught are not nursing theory or clinical courses. Adjunct faculty

shall not be included in the required clinical faculty/student ratio [for the program].

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

Issued in Austin, Texas, on June 22, 1993.

TRD-9324750 Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Approval of Programs

### • 22 TAC §§233.42, §233.43

The Board of Vocational Nurse Examiners proposes amendments to §§233.42 and §233.43, concerning Approval of Programs. The amendments are made to comply with changes in the Vocational Nurse Act effective September 1, 1993, and to make a grammatical correction.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be a fiscal impact on state and local government of \$75 for each program surveyed.

Mrs. Bronk 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 no public benefit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

§233.42. *Factors Jeopardizing School Approval.* Approval may be reduced to conditional status or withdrawn for the following reasons:

(1)-(11) (No change.)

(12) failure to submit required program survey fee in a timely manner.

§233.43. *Withdrawal of Approval.* A program which fails to correct deficiencies identified in §233.42 of this title (relating to Factors Jeopardizing School Approval) resulting in recommendations for, and changes in, approval status will be invited

to appear before the Board. A program [Programs] whose approval has been withdrawn will be removed from the list of state-approved vocational nursing programs.

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 22, 1993.

TRD-9324751 Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Vocational Nursing Education Standards

### • 22 TAC §§233.51, 233.60, 233.67, 233.72

The Board of Vocational Nurse Examiners proposes amendments to §§233.51, 233.60, 233.67, and 233.72, concerning vocational nursing education standards. The amendments are for clarification and to correct redundant language.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk 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 a clearer understanding of the language. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

§233.51. *Curriculum Organization.* The program shall contain a minimum of 1,398 clock hours; 558 hours for classroom instruction and 840 hours for clinical practice [be a minimum of 12 months, including the time allowed for holidays and or vocational]. A teaching schedule shall show placement of courses or course content for the entire length of the program [year]. The placement of subjects within the teaching schedule shall be according to the needs of the program.

### §233.60. *Teaching Facilities.*

(a) (No change.)

(b) *Nursing Skills Laboratory.* An appropriately equipped skills laboratory [facilities] shall be provided to accommodate maximum number of students allowed for the program. The laboratory [facility] shall be equipped with hot and cold running water. The laboratory [facility] shall have cabinets for storage of equipment.

(c) (No change.)

§233.67. *Schedule of Hours.* The total weekly schedule throughout the length of the [year's] program shall not exceed the 40 hours per week including both class and clinical practice hours. Class and clinical practice hours shall be continuous. Students shall be assigned two consecutive nonclass and clinical days off each week.

§233.72. *Transfer of Students, Vocational and Professional.* Acceptance of transfer students and evaluation of allowable credit remains at the discretion of the director of the school and controlling agency. All curriculum [and] requirements must be met. On completion the individual is to be considered a graduate of the school.

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 22, 1993.

TRD-9324752 Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Chapter 235. Licensing

### Issuance of Licenses

#### • 22 TAC §§235.41, 235.44, 235.45, 235.47

The Board of Vocational Nurse Examiners proposes amendments to §§235.41, 235.44, 235.45, and 235.47, concerning Issuance of Licenses. These rules are being amended to comply with revisions in the Vocational Nurse Act effective September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk 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 rules that are consistent with the revisions of the Vocational Nurse Act. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The amendment are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

**§235.41. Issuance of Certificate of Licensure** As soon as possible after the Board has received the examination score, a Certificate of Licensure will be issued, signed by the Executive Director [President] of the Board, bearing the Seal of the Board and also bearing the licensee's name, license number, and date license number was issued.

**§235.44. Expirations and Renewals.** The Certificate of Licensure is a license to practice vocational nursing under the provisions of the Act, and it must be renewed by the licensee biennially; otherwise, such license shall become invalid on the day following expiration date and remain invalid until the date the Board receives the licensee's renewal and penalty fee as established by the Act. Stipulations with reference to expirations and renewals of the license are set out in the Act, §8. [The annual renewal fee is set out in the Act, §9.]

**§235.45. Duplicate License or Temporary Permit.** A duplicate license or temporary permit to replace any license or temporary permit lost, destroyed, or mutilated, may be issued, subject to the rules of the Board [and] the Act, §9]. A licensee or applicant requesting a duplicate license or temporary permit under this rule will, if possible, surrender to the Board any remaining portions of the original license or temporary permit. The individual shall file with the request a sworn affidavit setting out the reasons for the request so that the Board will reflect the reason for the issuance of a duplicate license or temporary permit. Duplicate licenses will reflect the original license number of the licensee. Temporary permits will reflect the original expiration date.

**§235.47. Reactivation of a License.**

(a) A vocational nurse how has been on inactive status or whose license has been delinquent [, revoked or suspended] for not more than four [five] years, shall

meet the following criteria for licensure:

(1) (No change.)

(2) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four [five] years immediately prior to application; or

(3) submit evidence of successful completion of a refresher course or an agreement to supervised employment and a copy of the job description [or agreement to a refresher course.] with verification of such submitted to the Board office prior to the issuance of a license; and

(4) (No change.)

(b) A vocational nurse who has been on inactive status or whose license has been delinquent for more than four years, must rewrite and pass the national licensure examination unless subsection (a)(3) of this section has been met.

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

Issued in Austin, Texas, on June 22, 1993.

TRD-9324754

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Chapter 237. Continuing Education

### Definitions

#### • 22 TAC §237.1

The Board of Vocational Nurse Examiners proposes an amendment to §237.1, concerning Definitions. The rule is being amended to allow for additional definitions and for clarification.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk 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 a more concise explanation of continuing education definitions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Execu-

tive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

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

**Approver-Agency** or organization recognized by the board to approve programs and/or providers. May be referred to as credentialing agency.

**Auditing Academic Courses-Attending courses** in nursing or health care in a university or college program without receiving formal credit.

**Board-[Texas] Board of Vocational Nurse Examiners.**

**C.E.U.-Continuing education unit.** Unit of measure used to designate ten contact hours. One (1) CEU = ten (10) contact hours. [Ten (10) contact hours = one (1) C.E.U.]

**Inservice-Programs** sponsored by the employing agency to provide information about the work-setting, such as philosophy, policies and procedures, on-the-job training, orientation, and equipment demonstration. These do not meet criteria for [are not acceptable for] continuing education credit.

**Institutional-based Instruction-Planned programs** conducted by the employing agency for the development of its nursing staff's knowledge and improvement of skills. Institutional-based instruction which meets the board's criteria may be approved for Continuing Education credit. This shall not be inservice programs.

**Nursing Practice-Performance of services** for compensation appropriate for licensed vocational nurses employed in clinical settings [practice], administration, education, or research.

**Program Development-The development and presentation of a program** which is not part of the licensee's primary employment responsibilities may be considered for continuing education credit for the program presenter.

**Program Number-Unique number** assigned to a program by an approver of programs [upon approval] which shall identify it regardless of the number of times it is presented.

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 22, 1993.

Earliest possible date of adoption: August 2,  
1993

For further information, please call: (512)  
835-2071

## Continuing Education

- 22 TAC §§237.14, 237.15, 237.16,  
237.18, 237.19, 237.22

The Board of Vocational Nurse Examiners proposes amendments to §§237.14, 237.15, 237.16, 237.18, 237.19, and 237.22, concerning continuing education. These rules are amended for clarification and to comply with revisions of the Vocational Nurse Act effective September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk 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 a better understanding of the rules governing continuing education. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

**§237.14. Requirements.** Twenty contact hours of continuing education within the two years immediately preceding renewal of licensure [registration] are required.

**§237.15. Criteria for Acceptable Continuing Education Activity.** The following criteria have been established to guide the licensed vocational nurse in selecting appropriate programs and to guide the provider in planning and presenting continuing education programs. Activities which may meet these criteria include: classroom instruction, individualized instruction, academic courses, program development/home [self-directed] study, and institutional-based instruction.

(1) Length. The program shall be at least one contact hour (50 consecutive minutes) in length.

## (2) Learner objectives.

(A) Objectives shall be written and shall be the basis for determining content, learning experience, teaching methodologies, and evaluation.

(B) Objectives shall [be specific, attainable, measurable, and] describe expected outcomes of the learner.

(3) Target audience. The target audience for the program is identified for health care workers [and includes nurses].

(4) Planned program. The program shall show evidence of program planning based on needs of the potential target audience.

## (5) Content.

(A) The content shall be relevant to nursing practice and/or health care and provide for the professional growth of the licensee.

(B) Content is related to and consistent with program objectives.

## (6) Instructor qualifications.

(A) There shall be documentation of the instructor's expertise in the content area. The instructor should apply principles of adult learning.

(B) If the program includes a clinical nursing component, a licensed nurse with expertise in that specific component shall provide supervision [with a ratio of no more than 12 participants to one faculty].

(C) If the program includes a clinical component other than nursing, an instructor possessing the appropriate credentials of the discipline shall provide supervision.

## (7) Teaching methods.

(A) Learning experiences and teaching methods shall be appropriate to achieve the objectives of the program.

(B) Principles of adult education shall be used in the design of the program.

(C) Time allotted for each activity shall be sufficient for the learner to meet the objectives of the program.

(D) A schedule of the program shall be provided which describes content with corresponding time frames.

(E) Facilities and educational resources shall be adequate to implement the program.

## (8) Evaluation.

(A) Participants shall complete a written evaluation of the program. [:

[(i) teaching effectiveness of each instructor;

[(ii) learner's achievement of objectives;

[(iii) relevance of content to stated objectives;

[(iv) effectiveness of teaching methods, and;

[(v) appropriateness of physical facilities and educational resources.]

(B) If participation is in an academic course or other program in which grades are granted, participant shall be required to successfully complete the course with a passing grade [a grade equivalent to "C" or better shall be required, or "pass" on a pass/fail grading system].

## (9) Records.

(A) Records of programs shall be kept by the provider for a minimum period of four years from the date of completion.

(B) Records shall include target audience, program [planning materials,] content, objectives, [outline of] instructor qualifications, teaching methods and materials, evaluation tools and summary, and a list of participants.

(C) The provider shall furnish each participant a record of attendance specifying the provider; title, date, and location of program; number of contact hours; provider number, grades, and organization granting approval, if applicable or required. This record shall be kept by the nurse for a minimum period of four years from the date of completion.

**§237.16. Additional Criteria for Specific Continuing Education Programs.** In addition to criteria outlined in §237.15 of this title (relating to Criteria for Acceptable Continuing Education Activity), the following guidelines shall apply to the selection and/or planning and implementation of specific continuing education programs.

## (1) Academic Course.

(A) The course shall be within the framework of a curriculum that leads to an academic degree in nursing or any academic course relevant to nursing practice/health care. External nursing degree courses are acceptable as academic courses.

(B) Participants, upon audit, by the board, shall be able to present an official transcript indicating completion of the course with a passing grade [of "C" or better, or a "pass" on a pass/fail grading system].

(2) Individualized instruction (home study/programmed instruction/correspondence courses). These programs shall:

(A) be developed/approved by a professional group such as an educational institution, [corporation,] state or national nurse [professional] association or other recognized provider of continuing education;

(B) follow a logical sequence;

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

(D) contain a means to measure achievement of learning objectives of the program;

(E) provide a record of attendance which complies with §237.15(9)(C) of this title. [; and]

[(F) no more than five contact hours for one renewal period may be obtained through individualized instruction.]

(3) Program development [Self-directed study].

[(A) The development and presentation of a program which is not part of the licensee's primary employment responsibilities may be considered for continuing education credit.]

(A)[(B)] Credit shall be awarded only once regardless of the number of times the program/work was presented.

(B)[(C)] Licensee must submit, upon request, program objectives and outline [not to exceed one page].

(C)[(D)] Five hours of credit per renewal period may be obtained through program development [this means].

(4) Auditing of academic courses.

(A) Academic courses in nursing or health care may be audited.

(B) The licensee must submit a letter, upon request, from the course instructor indicating that the licensee attended the course.

(C) Two hours of credit per course may be obtained through course audit [this means].

(5) Certification.

(A) A licensee who obtains [completes the requirements for] certification in a nursing specialty by a national credentialing body may receive five hours of credit.

(B) Credit is awarded [This is a one-time approval] for initial certification only.

(C) A maximum credit of one contact hour per renewal period may be obtained for certification in basic cardiopulmonary resuscitation.

(6) Authorship. Authorship of manuscript may be developed for statewide or nationally distributed journals or books. Proof of acceptance from the editor or the published work documents achievement of this type of credit.

(A) Credit shall be awarded only once per topic per renewal period.

(B) Five contact hours of credit may be obtained through authorship [this means].

(7) Out-of-state programs. A continuing education program attended or undertaken outside of Texas may be accepted provided it meets all of the criteria in this section and §237.15 of this title. [and] Documentation [documentation] to substantiate the program and attendance must be [this is readily] available for presentation to the board by the licensee upon request.

§237.18. Responsibilities of The Individual Licensee.

(a) It shall be the responsibility of every individual licensee to select and participate in those continuing education activi-

ties that will meet the criteria for acceptable continuing education activities as specified in §237.15 and §237.16 of this title (relating to Criteria for Acceptable Continuing Education Activity; and Additional Criteria for Specific Continuing Education Programs).

(b) The licensee shall maintain a record of continuing education activities completed containing information specified in §237.15(9)(C) of this title.

(c) It shall also be every licensee's responsibility to maintain [this] records [record] of continuing education activities completed as well as all documented proof such as original certificates of attendance, contact hour certificates, academic transcripts, or gradeslips and to submit copies of these evidences when requested by the board upon audit.

(d) Records [These] shall be maintained for a minimum of two consecutive renewal periods or four years.

§237.19. Relicensure Process. In addition to meeting all other board requirements specified in Chapter 235 of this title (relating to Licensing), the following conditions for relicensure shall be met.

(1) -(3) (No charge.)

(4) Delinquent license.

(A) A license that has been delinquent for not more than four[less than five] years may be renewed by submitting evidence of successful completion of a refresher course or an agreement to supervised employment and a copy of the job description with verification of such submitted to the Board office prior to the issuance of a license [showing evidence of having completed 20 contact hours of acceptable continuing education within the two years immediately preceding the application for relicensure]. The licensee shall then be exempt from the continuing education requirements for the immediately succeeding renewal period following relicensure.

(B) A nurse who has been delinquent for more than four [five] years shall:

(i) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four [five] years immediately prior to application; or

[(ii) submit evidence of successful completion of a refresher course or an agreement to complete a refresher course or an agreement to supervised employment, with verification of such submitted to the board office prior to issuance of a

license.]

(ii) rewrite and Pass the national licensure examination;

(iii) be exempt from the continuing education requirements for the biennium in which the license is renewed and the immediately succeeding renewal period.

(5) Reactivation of a license.

(A) A nurse who has been on inactive [or emeritus] status for not more than four [less than five] years shall submit evidence of successful completion of a refresher course or an agreement to supervised employment and a copy of the job description with verification of such submitted to the Board office prior to the issuance of a license [verification of having completed at least 20 contact hours of continuing education within the past two years immediately prior to application for reactivation]. The licensee shall be exempt from the continuing education requirements for the immediately succeeding renewal period following reactivation.

(B) A nurse who has been on inactive status for more than four [five] years shall:

(i) submit verification of employment as a licensed vocational nurse in another state or employment as a registered nurse in this state or another state within the past four [five] years immediately prior to application; or

(ii) submit evidence of successful completion of a refresher course or an agreement to complete a refresher course or an agreement to supervised employment, with verification of such submitted to the board office prior to issuance of a license;]

(ii) rewrite and pass the national licensure examination;

(iii) be exempt from the continuing education requirements for the biennium in which the license is reactivated and the immediately succeeding renewal period.

(6) Reinstatement of a license.

(A) A license that has been revoked, suspended, or voluntarily surrendered may be reinstated if authorized by the board.

(B) The licensee shall be exempt from the continuing education requirements for the immediately succeeding renewal period following reinstatement.

### §237.22. Exemptions, Waivers, and Exclusions.

(a) A written request for exception to the mandatory continuing education requirement may be sent to the Executive Director by a licensee who falls into any one of the following categories:

(1) the licensee is requesting inactive status;

(2) the licensee is requesting emeritus status. Emeritus status may be granted upon request to a licensee who is in good standing, but does not intend to seek gainful employment as a licensed vocational nurse any longer, but would like to maintain licensure and continue paying the required fees. The emeritus license cannot be used for employment purposes;

[(3) the licensee is renewing an emeritus license;

[(4) the licensee has been delinquent and is applying for relicensure prior to July 1, 1993;

[(5) The licensee has been on inactive status for less than five years and is applying for reactivation prior to July 1, 1993.]

(3)[(6)] the licensee can show evidence, satisfactory to the Executive Director, of any of the following:

(A) overseas active military duty during the immediately preceding biennium. Short periods of active duty, such as summer or weekend drills, by a member of the Armed Forces Reserves and duty in the United States Public Health Services are not included in this exemption. A copy of the orders or discharge papers upon completing military service shall be required as evidence;

(B) spouse is a member of the Armed Forces and licensee was caused to be absent from the United States for more than six months during the biennium due to spouse's duties with the Armed Forces;

(C) overseas nursing employment for a period of one year or more, or overseas residence for a period of one year or more and current employment;

(D) a total physical or mental disability up to two years immediately before relicensure application and there is verification of readiness and ability to work if relicensed;

(E) missionary assignment overseas for a period of one year or more;

(F) sabbatical or educational leave overseas for a period of one year or more;

(G) total disability of an immediate family member for whom the nurse had total responsibility for one year or more, but not to exceed two years.

(b) Each request will be reviewed individually to determine if a true exclusion exists. If not, a decision to waive or defer the continuing education requirement to the immediately succeeding renewal period will be made.

(c) A licensee whose continuing education requirement has been deferred shall submit with the next renewal application, substantiation of participation in the required number of continuing education contact hours for that renewal period as well as the contact hours that were deferred from the previous renewal period.

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

Issued in Austin, Texas, on June 24, 1993.

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Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Chapter 239. Contested Case Procedure

### Enforcement

#### • 22 TAC §239.11

*(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 Board of Vocational Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Board of Vocational Nurse Examiners proposes the repeal of §239.11, concerning Contested Case Procedure. The repeal of this rule is proposed in order to adopt a new rule which will comply with the revisions of the Vocational Nurse effective September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mrs. Bronk, also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a new rule that



creates more stringent enforcement rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The repeal is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

#### §239.11. Unprofessional Conduct.

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 22, 1993.

TRD-9324757

Marjorie A. Bronk, R.N.,  
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Executive Director  
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Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

◆ ◆ ◆  
• 22 TAC §239.11, §239.17

The Board of Vocational Nurse Examiners proposes new §239.11 and §239.17 concerning Contested Case Procedure. These rules are proposed to comply with the revisions of the Vocational Nurse Act effective September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk 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 more stringent enforcement rules and a knowledge of how the board distinguishes between categories of complaints. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758 (512) 835-2071.

The new sections proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

#### §239.11. Unprofessional Conduct.

(a) Unprofessional or dishonorable conduct, likely to deceive, defraud, or injure the public may include the following described acts or omissions:

(1) misappropriating supplies, equipment, or medications or personal items of the patient/client, employer, or any other person or entity;

(2) administering medications and treatments in a negligent manner;

(3) failing to accurately or intelligibly report and/or document a patient's/client's status including signs, symptoms, or responses and the nursing care delivered;

(4) failing to make entries, destroying entries, and/or making false entries in records pertaining to care of patients/clients;

(5) passing or attempting to pass forged, altered, falsified, or unauthorized prescriptions(s) by electronic, telephonic, written communication, or any other means;

(6) obtaining or attempting to obtain or deliver medication(s) through means of misrepresentation, fraud, forgery, deception, and/or subterfuge;

(7) knowingly falsifying and/or forging a physician's order/prescription;

(8) providing information which was false, deceptive, or misleading in connection with the practice of vocational nursing or failing to answer specific questions that would have affected the decision to license, employ, certify, or otherwise utilize a vocational nurse;

(9) practicing vocational nursing in this state without a current Texas license;

(10) practicing as a vocational nurse while the individual's ability to practice is impaired by alcohol, drugs, or physical or mental disability;

(11) aiding and abetting the practice of vocational nursing by any person not licensed to practice vocational or practical nursing;

(12) impersonating a licensee, or permitting another person to use an individual's vocational nursing license for any purpose;

(13) failing to report to the board or to a board-approved peer assistance program, if applicable, within a reasonable time of the occurrence, any violation or attempted violation of the Vocational Nurse Act or duly promulgated rules, regulations, or orders;

(14) failing to report the unauthorized practice of vocational nursing;

(15) failing to cooperate with

the agency by:

(A) not furnishing any papers or documents requested; or

(B) not responding to subpoenas issued by the agency;

(16) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts before the agency or the board, or by the use of threats or harassment against any patient/client or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action;

(17) knowingly engaging in a profession involving contact with the public while suffering from an infectious and communicable disease which presents a serious risk to public health;

(18) knowingly performing an exposure-prone procedure while suffering from an infectious and communicable disease which presents a serious risk to public health, without counsel from a personal physician with knowledge of infectious disease, infection control, the epidemiology of the disease, and procedures performed by the licensed vocational nurse.

(19) knowingly failing to adhere to universal precautions for infection control as defined in §239.1 of this title (relating to Definitions).

(20) refusing to treat a patient/client, or other person who suffers from an infectious and communicable disease involving serious risk to public health;

(21) disclosing confidential information or knowledge concerning the patient/client except where required or allowed by law;

(22) knowingly causing or permitting physical or emotional injury to any person, or engaging in sexual contact with a patient/client;

(23) physically, emotionally, or financially exploiting the patient/client or the patient's/client's significant other(s);

(24) offering, giving, soliciting, or receiving or agreeing to receive, directly or indirectly, any fee or other consideration to or from a third party for the referral of a patient/client in connection with the performance of professional services;

(25) failing to repay a guaranteed student loan, as provided in the Texas Education Code;

(26) failing to comply with board rules regarding continuing education;

(27) failing to conform to the minimal standards of acceptable prevailing practice, regardless of whether or not actual



injury to any person was sustained, including but not limited to:

(A) failing to assess and evaluate a patient's/client's status or failing to institute nursing intervention which might be required to stabilize a patient's/client's condition or prevent complications;

(B) accepting an assignment when one's physical or emotional condition prevents the safe and effective delivery of care or accepting an assignment for which one lacks the educational preparation, experience, knowledge, or ability;

(C) failing to obtain instruction or supervision when implementing nursing procedures or practices for which one lacks the educational preparation, ability, knowledge, and/or experience;

(D) performing or attempting to perform nursing techniques or procedures or both in which the nurse is untrained by education or experience;

(E) delegating nursing care functions or responsibilities to an individual lacking the ability or knowledge to perform the function or responsibility in question;

(F) causing or permitting physical, emotional or verbal abuse, or injury to the patient/client or the public, or failing to report same to the employer, appropriate legal authority and/or licensing board;

(G) knowingly or consistently failing to follow the policy and procedure for the wastage of medication(s) in effect at the facility at which the nurse is employed or working;

(H) leaving a nursing assignment while being the only licensed professional on the premises, and/or without notifying one's immediate supervisor;

(I) engaging in unnecessary violence towards any person in connection with the practice of vocational nursing;

(J) failing to comply with a supervisor's valid directives;

(K) negligently or intentionally violating a physician's order addressing patient care;

(28) being convicted of a crime which relates to the practice of vocational nursing. Those crimes which the board con-

siders to be directly related to the duties and responsibilities of a licensed vocational nurse shall include, but are not limited to:

(A) any felony or misdemeanor which involves an act of fraud, dishonesty, or deceit;

(B) any criminal violation of the Vocational Nurse Act or other statutes regulating or pertaining to nursing or the medical profession;

(C) any crime involving moral turpitude;

(D) murder;

(E) assault;

(F) burglary;

(G) robbery;

(H) theft;

(I) rape or sexual abuse;

(J) patient/client abuse;

(K) injury to an elderly person;

(L) child molestation, abuse, endangerment, or neglect;

(M) driving while intoxicated, driving under the influence of alcohol or drugs, or driving while ability is impaired;

(N) sale, distribution, or illegal possession of narcotics, controlled substances, or dangerous drugs;

(O) tampering with a governmental record;

(P) offenses which include attempting or conspiring to commit any of the offenses in this subsection;

(29) violating state or federal laws relative to drugs, including controlled substances and dangerous drugs;

(b) In determining whether a crime not listed above relates to vocational nursing, the board will consider:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to practice vocational nursing;

(3) the extent to which a license might offer opportunities to engage in further criminal activity of the same type as that in which the person was previously engaged; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and to discharge the responsibilities of a vocational nurse.

*§239.17. Complaint Investigation and Disposition.*

(a) The board shall distinguish between categories of complaints as follows:

(1) violations of the Vocational Nurse Act or duly promulgated rules, regulations, or orders;

(2) applications by examination or endorsement; and

(3) reinstatement proceedings.

(b) An investigation is initiated in matters that fall within the board's jurisdiction. If an investigation substantiates that a respondent/applicant has violated the law, the case is adjudicated and if appropriate, disciplinary action rendered. A complaint is not dismissed without appropriate consideration. The board shall be advised of complaint dismissals.

(c) Persons who file a complaint have an opportunity to explain the allegations made in the complaint.

(d) Parties to a complaint are notified of the disposition of the complaint.

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 22, 1993.

TRD-8324758

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

◆ ◆ ◆  
**Hearings Process**

• 22 TAC §239.33

The Board of Vocational Nurse Examiners proposes an amendment to §239.33, concerning release of information. The amendment is proposed to include the information that the investigations division can release to the nurse being investigated and/or their attorney or the public.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk 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 knowing what information can be released regarding investigations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

#### §239.33. Release of Information.

(a) A complaint and investigation concerning a licensee/applicant and all information and materials compiled by the board in connection with a complaint and investigation are confidential and not subject to disclosure under Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Texas Civil Statutes, Article 6252-17a), and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than the board or its employees or agents involved in licensee discipline except that this information may be disclosed to:

- (1) the nurse being investigated and/or his or her attorney;
  - (2)[(1)] persons involved with the board in a disciplinary action against the nurse;
  - (3)[(2)] nurse licensing or disciplinary boards in other jurisdictions;
  - (4)[(3)] peer assistance programs approved by the board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Texas Civil Statutes, Article 5561c-3);
  - (5)[(4)] law enforcement agencies; and
  - (6)[(5)] persons engaged in bona fide research, if all individual identifying information has been deleted.
- (b)-(c) (No change.)

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

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Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

### Reinstatement Process

#### • 22 TAC §239.53, §239.55

The Board of Vocational Nurse Examiners proposes amendments to §239.53 and §239.55, concerning reinstatement process. The rules are amended to comply with revisions of the Vocational Nurse Act effective September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mrs. Bronk also has determined that for each year of the first five years the proposed rules are in effect the public benefit anticipated as a result of enforcing the rules will be a clarification of the reinstatement process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The amendments are proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

#### §239.53. Procedure Upon Request for Reinstatement.

(a) An applicant for reinstatement of a revoked or suspended license must personally appear at a prehearing conference or administrative hearing [before the board] at a scheduled date and time to show why the license should be reinstated.

(b) (No change.)

(c) Where the applicant's license has been revoked, suspended, or voluntarily surrendered based on a finding, admission or allegation that the applicant was unfit to practice vocational nursing by reason of immoderate use of alcohol or drugs, misappropriation of controlled substances, an adjudication of mental incompetence, [or] the existence of any mental disorder or conviction of a violent crime; the applicant must submit a written psychiatric or psychological evaluation and a written medical evaluation. Said evaluations shall be obtained

solely at the applicant's expense, and forwarded directly to the agency by the examiner. The psychiatric or psychological evaluation must be prepared by a licensed psychiatrist or psychologist and the medical evaluation must be prepared by a licensed physician. Said reports shall include such information as the agency may specifically require with notice to the applicant.

(d) Upon receipt of a written request for reinstatement as required by §239.51 of this title (relating to Application for Reinstatement of License) and all information required by subsection (c) of this section, the applicant will be notified of a date and time of their personal appearance at a prehearing conference or administrative hearing [an appearance before the board].

§239.55. Failure to Appear. An applicant for reinstatement of a revoked or suspended license who makes a commitment to personally appear at an administrative hearing [before the board], and fails to appear at said [a] hearing set with notice by the agency, shall not be authorized to appear for reinstatement [before the board] before the expiration of six months. For good cause shown, the executive director may authorize an exception to this rule.

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 22, 1993.

TRD-8324760

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

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For further information, please call: (512) 835-2071

### Chapter 241. Vocational Nurse Peer Review

#### Vocational Nurse Peer Review

##### • 22 TAC §241.11

The Board of Vocational Nurse Examiners proposes new §241.11, concerning Vocational Nurse Peer Review. This Chapter will define the peer review process that will be implemented for vocational nurses September 1, 1993.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of

enforcing the rule will be the increase in public awareness of the reporting procedure and the board's ability to more closely monitor vocational nursing practice. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H. P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The new section is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

#### *§241.11. Vocational Nurse Peer Review.*

(a) "Peer review" is the evaluation of vocational nursing services, the qualifications of vocational nurses, the quality of patient care rendered by vocational nurses, the merits of complaints concerning vocational nurses and vocational nursing care, and determinations or recommendations regarding complaints including:

(1) the accuracy of vocational nursing assessments and observations;

(2) the appropriateness and quality of care rendered by a vocational nurse within the scope of vocational nursing practice;

(3) the reports made to a vocational nursing peer review committee concerning activities under the committee's review authority;

(4) the reports by a vocational nursing peer review committee to other committees or to the Board as permitted or required by law; and

(5) the implementation of duties of a vocational nursing peer-review committee by its members, agents, or employees.

(b) "Peer review committee" is a committee composed of at least a majority of professional and vocational nurses established under the authority of a national, state, or local vocational nursing association, long-term care facility, home health agency, nursing service agency, or other health-care facility or established employer or state agency or political subdivision for the purpose of conducting peer review. A peer review committee includes the employees and agents of the facility/agency, and any other person or organization that is employed by or serves the committee in any capacity.

(c) The peer-review process may be conducted under the auspices of a professional peer-review committee that includes designated slots for vocational nurses. Peer-

review of vocational nurses does not require a committee with a majority of vocational nurses.

(d) Except as otherwise provided by this Chapter, all proceedings of a peer-review committee are confidential and all communications made to a peer-review committee are privileged. A member, agent, or employee of a peer-review committee or a participant in any proceeding before the committee may not disclose or be required to disclose a communication made to the committee or a record or proceeding of the committee.

(e) A person who attends a proceeding or a peer-review committee may not disclose or be required to disclose any information acquired in connection with or in the course of the proceeding or disclose any opinion, recommendation, or evaluation of the committee or any member of the committee.

(f) The members of a peer-review committee and the persons who provide information to the committee may not be questioned about their testimony before the committee or about opinions formed as a result of the committee proceedings.

(g) Except as otherwise permitted by this Chapter, all information made confidential by this Chapter is not subject to subpoena or discovery in any civil matter, is not admissible as evidence in any judicial or administrative proceeding, and may not be introduced into evidence in a liability suit arising out of the provisions of or failure to provide vocational nursing services within the scope of vocational nursing practices.

(h) A peer-review committee shall disclose upon written request, the written or oral communications made to the committee and the records and proceedings of the committee to:

(1) the state board of registration or licensure of any state; or

(2) a law enforcement authority investigating a criminal matter.

(i) A peer-review committee may disclose upon written request, the written or oral communications made to the committee and the records and proceedings of the committee to:

(1) the association, agency, facility, or other organization under whose authority the committee is established;

(2) another established and identified nursing peer-review committee;

(3) a peer-assistance program approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Texas Civil Statutes, Article 5561c-3);

(4) appropriate state or federal

agencies or accrediting organizations which accredit health-care facilities, or which survey facilities for quality of care; or

(5) persons engaged in bona fide research, if all individual-identifying information has been deleted.

(j) If a peer-review committee discloses information under this Chapter that could result in the reprimand, suspension, termination, or other disciplinary action of a vocational nurse, or itself recommends or takes such action, the committee shall provide the nurse with a detailed summary of information disclosed or the basis of its action or recommendation. The vocational nurse shall be permitted an opportunity to offer rebuttal information and to submit a rebuttal statement of reasonable length. The rebuttal statement shall be included in the information disclosed.

(k) If a peer-review committee discloses information to a vocational nurse under this Chapter, the committee has not, by that action, waived the privilege of non-disclosure of committee information and proceedings.

(l) The peer-review committee disclosing and the person receiving the information disclosed under this Chapter shall protect, to the extent possible, the identity of the patients.

(m) A member of a peer-review committee or a person participating in peer review under this Chapter, who is named as a defendant in a civil action or subject to other retaliatory action as a consequence of the person's participation in peer review, may use information that is confidential under this Chapter in defense of the civil action, or in a civil action based on an allegation of retaliation for the person's participation in peer review.

(n) If a person discloses information under this Chapter, the person has not, by that action, waived the privilege of non-disclosure of all other information privileged under this Chapter.

(o) A cause of action does not accrue against the members, agents, or employees of a peer-review committee or against a long-term care facility, home health agency, nursing service agency, or other health-care facility or established employer, the nursing staff of such facility, or other organization from any act, statement, determination or recommendation made, or act reported, in good faith, in the course of peer review as defined in this Chapter. A person who, in good faith, furnishes records, information, or assistance to a peer-review committee is not liable in a civil action based on the person's participation or assistance in peer-review, and may not be subjected to retaliatory action as a result of such act.

(p) A peer-review committee, a person participating in peer review, or an organization, named as a defendant in any civil action or subjected to other retaliatory action as a result of participation in peer review, may file a counterclaim in any pending action or may prove a cause of action in a subsequent suit to recover any defense costs, including court costs, reasonable attorney's fees and actual and punitive damages if the suit of retaliatory action is determined to be frivolous, unreasonable, without foundation, or taken in bad faith.

(q) A court may not enjoin the activities of a peer-review committee under this Chapter.

(r) The provisions of this Chapter may not be nullified by contract.

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 22, 1993.

TRD-9324761

Marjorie A. Bronk, R.N.,  
M.S.H.P.,  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## Chapter 243. Vocational Nurse Reporting

### Vocational Nurse Reporting

#### • 22 TAC §243.11

The Board of Vocational Nurse Examiners proposes new §243.11, concerning Vocational Nurse Reporting. The new rule will define the process for reporting nurses who are in violation of the Vocational Nurse Act.

Marjorie A. Bronk, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mrs. Bronk also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be the increase in public awareness of the reporting procedure and the board's ability to more closely monitor vocational nursing practice. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 9101 Burnet Road, Suite 105, Austin, Texas 78758, (512) 835-2071.

The new rule is proposed under Texas Civil Statutes, Article 4528c, §5(g), which provide

the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

#### §243.11. Vocational Nurse Reporting.

(a) Each vocational nurse having reasonable cause to suspect that another vocational nurse has exposed or is likely to expose a patient or other person unnecessarily to a risk of harm because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment, shall report to the Board in a signed written document the name of the vocational nurse committing the suspected violation and any other pertinent information within the vocational nurse's knowledge. A vocational nurse without personal knowledge of the suspected violation is not required to report under this Chapter if he or she has reasonable cause to believe the vocational nurse has already been reported.

(b) Each vocational nurse employer that terminates or suspends a vocational nurse because a patient or other person was exposed or is likely to be exposed unnecessarily to a risk of harm because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment, shall report to the Board in a signed, written document the name of the vocational nurse committing the suspected violation and any other pertinent information within the vocational nurse employer's knowledge.

(c) Each vocational nurse employer that regularly employs, hires or otherwise contracts for the services of 10 or more vocational nurses shall develop a written plan for identifying and reporting vocational nurses in its service who expose or are likely to expose patients or other persons unnecessarily to a risk of harm because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment. The plan must include an appropriate process for the review of any incident reportable under this Chapter by a vocational nursing peer-review committee established and operated under §241.11 of this title (relating to Vocational Nurse Peer Review), and for the affected vocational nurse to submit rebuttal information to that committee. (Said written plan required by this Chapter shall be in operation by September 1, 1995.)

(d) The requirement that a report to the Board be reviewed by a vocational nursing peer-review committee applies only to a required report, and review by the peer-review committee is only advisory. The re-

quirement may not be construed as subjecting an employer or other person's administrative decision to discipline a vocational nurse to the peer-review process or as preventing an employer or other person from taking disciplinary action before review by the peer-review committee is conducted. The review by the peer-review committee established under subsection (c) of this section must include a determination as to whether or not the vocational nurse undergoing review engaged in conduct that exposed or was likely to expose a patient or other person unnecessarily to a risk of harm because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment. The peer-review committee's findings shall be included in the report made to the Board under subsection (a) of this section.

(e) Each national or state association of vocational nurses that conducts a certification or accreditation program for vocational nurses that expels, decertifies, or takes any other substantive disciplinary action, as defined by the Board, against a vocational nurse as a result of the vocational nurse's failure to conform to the minimum standards of acceptable vocational nursing practice, shall report to the Board in writing the name of the vocational nurse committing the suspected violation and any other pertinent information within the association's knowledge.

(f) Each state agency that surveys health-care facilities or agencies with respect to the quality of vocational nursing care provided, unless otherwise expressly prohibited by state or federal law, shall report to the Board in writing any vocational nurse that it has reason to believe exposed or is likely to expose patients or other persons unnecessarily to a risk of harm because of unprofessional conduct, failure to adequately care for a patient, failure to conform to the minimum standards of acceptable vocational nursing practice, or impairment.

(g) If a vocational nurse required to be reported under this Chapter is impaired or suspected of being impaired by dependency on alcohol, chemicals, or by mental illness, that vocational nurse, in lieu of being reported to the Board or reviewed by a vocational nursing peer-review committee, may be reported to a peer-assistance program approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Texas Civil Statutes, Article 5561c-3).

(h) An individual, organization, agency, facility, or other person is not liable in any civil action for failure to file a report required by this Chapter, but the appropriate state licensing agency may take action

against a licensed practitioner, agency, or facility for not reporting as required.

(i) An individual, organization, agency, facility, or other person that in good faith makes a report required, permitted, or reasonably believed to be required or permitted under this Chapter, is immune from civil liability and may not be subjected to any other retaliatory action as a result of making that report.

(j) An individual, organization, agency, facility, or other person named as a defendant in any civil action or subjected to any other retaliatory action as a result of filing a report required, permitted, or reasonably believed to be required or permitted under this Chapter, may file a counter-claim in any pending action or may prove a cause of action in a subsequent suit to recover defence costs, including reasonable attorney's fees and actual and punitive damages if the suit or retaliatory action is determined to be frivolous, unreasonable, or taken in bad faith.

(k) No person shall suspend, terminate, or otherwise discipline or discriminate against a person reporting, in good faith, under this Chapter. A person has a cause of action against an individual, organization, agency, facility, or other person that suspends or terminates the employment of the person or otherwise disciplines or discriminates against the person for reporting under this Chapter. The person may recover:

(1) actual damages, including damages for mental anguish even though no other injury is shown, or \$1,000, whichever amount is greater;

(2) exemplary damages;

(3) costs of court; and

(4) reasonable attorney's fees.

(l) In addition to amounts recovered under subsection (k)(1) of this section, a person whose employment is suspended or terminated in violation of this subsection is entitled to:

(1) reinstatement in the employee's former position or severance pay in an amount equal to three months of the employee's most current salary; and

(2) compensation for wages lost during the period of suspension or termination.

(m) A person who sues under subsection (k) of this section has the burden of proof, however, if either the Board or court of competent jurisdiction determines that the report made the subject of the cause of action was authorized or required under this Chapter, and that it was made in good faith, it is a rebuttable presumption that a person's employment was suspended or terminated for reporting under this Chapter if the per-

son was suspended or terminated within 60 days after making the report.

(n) An action under this Chapter may be brought in the district court of the county:

(1) in which the plaintiff resides;

(2) in which the plaintiff was employed by the defendant; or

(3) in which the defendant conducts business.

(o) The Board shall notify each vocational nurse who is reported to the Board under this Chapter of the filing of the report, unless doing so would jeopardize an active investigation.

(p) The vocational nurse or the vocational nurse's authorized representative is entitled on request to review any report submitted to the Board under this Chapter unless doing so would jeopardize an active investigation.

(q) The vocational nurse or authorized representative may place into the record a statement rebutting any information existing in the report. The statement shall at all times accompany that part of the report being rebutted. The Board, in investigating the report, shall review the statement and evaluate any reasons asserted by the vocational nurse as justifying his or her conduct.

(r) If at any time the Board determines that a report submitted under this Chapter is without merit, the report shall be expunged from the vocational nurse's file one year after the date the investigation is closed.

(s) A report required or authorized under this Chapter and the identity of the person making the report are confidential and may not be disclosed, except as follows:

(1) to the nurse being investigated and his or her attorney;

(2) to persons involved with the Board in a disciplinary action against the nurse;

(3) to peer assistance programs approved by the Board under Chapter 701, Acts of the 69th Legislature, Regular Session, 1985 (Texas Civil Statutes, Article 5561c-3);

(4) law enforcement agencies;

(5) nurse licensing or disciplinary boards in other jurisdictions; and

(6) persons engaged in bona fide research, if all individual-identifying information has been deleted;

(7) with respect to any report made under this Chapter, the Board, on the request of any organization or other person

required to report under this Chapter, shall provide to the organization or person, information about the allegations contained in the report, the findings of the peer review committee, and the status of the Board's investigation; or

(8) the information may be disclosed in any civil suit in which a person is named as a defendant as a result of the person making the report, or in the prosecution of any cause of action based on a claim that the person making the report was subject to retaliatory action as a result of making the report.

(t) This Chapter does not prevent disclosure under Texas Civil Statutes, Article 4528c, of formal charges filed by the Board or a final disciplinary action taken by the Board, in whole or in part, of the submitting of a report under this Chapter. In no event may any report or information submitted as required, or authorized by this Chapter, be available for discovery or court subpoena or introduced into evidence in a vocational nursing liability suit.

(u) The filing of a report under this Chapter, an investigation by the Board, or any disposition by the Board, does not prevent an individual, agency, facility, or other person from taking disciplinary action against a vocational nurse.

(v) The reporting required under this Chapter does not constitute state action on behalf of the person or organization reporting.

(w) The Board shall inform, in the manner deemed appropriate, vocational nurses, facilities, agencies, and other persons of their duty to report under this Chapter.

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 22, 1993.

TRD-9324762

Marjorie A. Bronk, R.N.,  
M.S.H.P.  
Executive Director  
Board of Vocational Nurse  
Examiners

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 835-2071

## TITLE 34. PUBLIC FINANCE

### Part IV. Employees Retirement System of Texas

#### Chapter 71. Creditable Service

• 34 TAC §§71.14, 71.19, 71.21

The Employees Retirement System of Texas (ERS) proposes new §§71.14, 71.19, and 71.21, concerning Payments to Establish or Reestablish Service Credit, Transfer of Service Between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS), and Transfer of Certain State Employees from the TRS to the ERS. These new sections will implement legislation, pursuant to the 73rd Legislature, which allows members to establish service credit in yearly increments by lump-sum purchase and payroll deduction, permits the transfer of service credit between the TRS and the ERS, and the transfer of certain state employees from membership in the TRS to membership in the ERS.

William S. Nail, general counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Nail 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 that more members will be able to afford to purchase service credit and service credit transfers between the TRS and the ERS and membership transfers from TRS to ERS will be efficiently administered. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207.

The new sections are proposed under the Government Code, §815.102, which gives the Employees Retirement System of Texas the authority to adopt rules for the administration of the funds of the retirement system.

Statutes affected by these rules are Government Code, Chapters 805 and 811.

*§71.14. Payments to Establish or Reestablish Service Credit.*

(a) Notwithstanding §71.10 of this title (relating to Military Service Credit-Purchase), a member or contributing member may establish or reestablish service credit in the retirement system in accordance with the Government Code, §§813.104 and §813.105, respectively.

(b) Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established.

(c) An application to establish or reestablish service credit through payroll deduction or to withdraw authority for payroll deduction shall be filed with the Employees Retirement System of Texas (ERS) at least 60 days before the payroll deduction is to begin or cease, as the case may be.

(d) Payments to establish or rees-

tablish service credit of less than one year or to establish or reestablish service credit by a member who plans to retire in less than a year may be made by payroll deduction over a period to be specified in procedures developed by the ERS.

(e) A member who ceases to hold a position or who withdraws authority for payroll deduction while making payments through payroll deduction may contract with the ERS for an alternative method of continuing the payment in accordance with procedures developed by the ERS.

(f) The ERS shall develop procedures and forms to be used in connection with this section.

*§71.19. Transfer of Service Between the Teacher Retirement System of Texas (TRS) and the Employees Retirement System of Texas (ERS).*

(a) Purpose. These rules are intended to implement the provisions of the Government Code, Chapter 805, concerning the transfer of credit between the Teacher Retirement System of Texas and the Employees Retirement System of Texas.

(b) Forms.

(1) Applications for transfer will be made using forms prescribed by the ERS.

(2) The ERS will cooperate with the TRS in an effort to make such application forms for the ERS comparable to those used by the TRS.

(c) Notice.

(1) A person who elects to transfer service credit pursuant to these rules must file the appropriate form to make such transfer not more than 90 days prior to the person's retirement effective date, but not later than said effective date.

(2) The ERS will notify the TRS of the pending transfer not later than 30 days following said effective date.

(d) Manner of transfer.

(1) Service credit and assets will be transferred through electronic and hard copy documentation pursuant to these rules, and the ERS will maintain records of such transfers permanently.

(2) Any transfer of service credit to the ERS must reflect years of credit, average salary, periods of service, method of calculation and the manner used to calculate the time period involved, including any military credit purchased.

(3) Any transfer of service credit to the ERS must include specific data regarding the pre-tax and after-tax contributions by the person, penalty interest, earned interest and any other dollar amount which

will be part of the transfer.

(4) Assets to fund the portion of the annuity attributable to service with the TRS will be transferred to the ERS pursuant to agreement with the TRS.

(5) Service transferred from TRS will be established in an employee class account for the benefit of the member.

(e) Calculation of asset value. The value of assets transferred pursuant to these rules will be calculated on the basis of the 1983 Group Annuity Mortality Table and a discount rate equal to the yield for ten-year United States Treasury notes averaged during the August prior to the effective transfer date and rounded to the nearest 0.25%. The actuarial value of an annuity paid on the basis of these calculations will be determined as of the date the first payment is due.

(f) Purchase of refunded service.

(1) A contributing member of TRS who cancelled membership in the ERS by taking a refund of his individual account prior to September 1, 1993 may repurchase his service credit at any time prior to retirement. Such persons do not have to become a contributing member of ERS in order to purchase such cancelled service credit.

(2) A person who cancels membership in the ERS by taking a refund of his individual account after August 31, 1993, must meet the general requirements for reinstatement or purchase of service credit in the ERS.

(g) Military credit. Any transferred military service which would result in a member receiving service credit in excess of that permitted under ERS rules will not be accepted.

(h) Termination of membership. The transfer of ERS credit to TRS will terminate membership in ERS, and will cancel all rights to benefits from the ERS based on that service.

*§71.21. Transfer of Certain State Employees from the Teacher Retirement System of Texas (TRS) to the Employees Retirement System of Texas (ERS).*

(a) Purpose. These rules are intended to make clear that persons whose retirement system membership is transferred from the TRS to the ERS pursuant to Acts of the 73rd Legislature, 1993, will be members of the ERS for all purposes, including the retirement incentive, and will be subject to all applicable laws and ERS rules unless otherwise provided herein.

(b) Average compensation. Such persons who elect to retire from the ERS may use service under the TRS or under both the TRS and the ERS to determine



their average compensation for the highest 36 months of service.

(c) **Creditable service.** All creditable service for such persons under the TRS will also be creditable under the ERS with the exception of duplicative service.

(d) **Subsequent transfers.** Such persons who, after September 1, 1993, are again employed under the TRS will be governed by the transfer provisions of the Government Code, Chapter 805, and §71.19 of this title (relating to Transfer of Service Between the Teacher Retirement System of Texas and the Employees Retirement System of Texas).

(e) **Calculation of asset value.** The value of assets transferred pursuant to these rules will be calculated on the basis of the 1983 Group Annuity Mortality Table and a discount rate equal to the yield for ten-year United States Treasury notes averaged during the August prior to the effective transfer date and rounded to the nearest 0.25%. The actuarial value of an annuity paid on the basis of these calculations will be determined as of the date the first payment is due.

(f) **Manner of transfer.**

(1) Any transfer of service credit to the ERS must reflect years of credit, annual compensation, periods of service, method of calculation and the manner used to calculate the time period involved, including any military credit purchased.

(2) Any transfer of service credit to the ERS must include specific data regarding the pre-tax and after-tax contributions by the person, penalty interest, earned interest, and any other dollar amount which will be part of the transfer.

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 25, 1993.

TRD-9324817

William S. Nail  
General Counsel  
Employees Retirement  
System of Texas

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 867-3336

## Chapter 73. Benefits

### • 34 TAC §73.33

The Employees Retirement System of Texas (ERS) proposes new §73.33, concerning Retirement Incentive for Employees Class. This new section will implement legislation, pursuant to the 73rd Legislature, which allows certain members to receive additional service credit if they retire by a certain time during the

next biennium.

William S. Nail, general counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nail 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 that more members will be encouraged to retire early with cost savings to the employing agencies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207.

The new section is proposed under the Government Code, §815.102, which gives the Board of Trustees of the Employees Retirement System of Texas the authority to adopt rules for the administration of the funds of the retirement system.

One statute affected by this rule is Government Code, Chapter 811.

### §73.33. Retirement Incentive for Employee Class.

(a) When determining the earliest effective retirement date in connection with the retirement incentive offered pursuant to Acts of the 73rd Legislature, 1993, all service credit established or reestablished on or before the effective date or retirement will be considered, including but not limited to creditable military service not previously established, service credit previously cancelled and reestablished, and service credit transferred from the Employees Retirement System of Texas.

(b) In order to be eligible for the retirement incentive, the member must be a contributing employee class member of the Employees Retirement System of Texas (ERS) or any employee class member of the ERS who is a state employee in a leave without pay status during the month that the retirement is to be effective. For purposes of this section, leave without pay status means an individual who holds a budgeted position. The payroll officer shall be required to certify on a form prescribed by the ERS the salary the individual would have received had the leave without pay status not existed, and the position held by the individual.

(c) The application of a member who remains on a state payroll or who remains on a leave without pay status in the month following the month in which the retirement is to be effective shall be cancelled. In such a case, the member shall forfeit the right to the retirement incentive.

(d) The failure of an individual to comply with the conditions set forth in an

extension granted by the ERS by the extended due date shall not result in the individual forfeiting the incentive, but may result in a delay in the payment of benefits.

(e) Retirements under this section are also governed by provisions of Chapter 71 of this title (relating to Creditable Service).

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

Issued in Austin, Texas, on June 25, 1993.

TRD-9324818

William S. Nail  
General Counsel  
Employees Retirement  
System of Texas

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 867-3336

## Chapter 77. Judicial Retirement

### • 34 TAC §77.15

The Employees Retirement System of Texas (ERS) proposes new §77.15, concerning Payments to Establish or Reestablish Service Credit. This new section will implement legislation, pursuant to the 73rd Legislature, which allows Judicial Retirement System of Texas Plan One and Plan Two members to establish service credit in yearly increments by lump-sum purchase and payroll deduction.

William S. Nail, general counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nail 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 that more members will be able to afford to purchase service credit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207.

The new section is proposed under the Government Code, §835.002 and §840.002, which give the Board of Trustees of the Employees Retirement System of Texas the authority to adopt rules and provide for forms as it finds necessary for the administration of the retirement system.

Statutes affected by this rule are Government Code, Chapters 831 and 836.

### §77.15. Payments to Establish or Reestablish Service Credit.

(a) A member or contributing member of the Judicial Retirement System of Texas Plan One or Plan Two may establish

or reestablish service creditable in their respective retirement system in accordance with the Government Code, §§833.105, 833.106, 838.105, 838.106, respectively.

(b) Service credit that may be established or reestablished includes military service credit, service credit previously cancelled, and service credit not previously established.

(c) An application to establish or reestablish service credit through payroll deduction or to withdraw authority for payroll deduction shall be filed with the Employees Retirement System of Texas (ERS) at least 60 days before the payroll deduction is to begin or cease, as the case may be.

(d) Payments to establish or reestablish service credit of less than one year or to establish or reestablish service credit by a member who plans to retire in less than a year may be made by payroll deduction over a period to be specified in procedures developed by the ERS.

(e) A member who ceases to hold a position or who withdraws authority for payroll deduction while making payments through payroll deduction may contract with the ERS for an alternative method of continuing the payment in accordance with procedures developed by the ERS.

(f) The ERS shall develop procedures and forms to be used in connection with 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.

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TRD-9324816

William S. Nail  
General Counsel  
Employees Retirement  
System of Texas

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 867-3336

◆ ◆ ◆  
• 34 TAC §§81.1, 81.3, 81.7, 81.11

The Employees Retirement System of Texas proposes amendments to §§81.1, 81.3, 81.7, and 81.11, concerning Definitions, Administration, Enrollment and Participation, and Termination of Coverage. The proposed amendments also concern the implementation of changes to the composition of the Group Benefits Advisory Committee (GBAC) enacted by the 73rd Legislature in Senate Bill 1181; the coordination of Chapter 81, Insurance program rules with Chapter 85, Flexible Benefits program rules; and the coordination of coverage and leave rules with the recently enacted federal Family and Medical Leave Act of 1993.

William S. Nail, general counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

William S. Nail 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 improved representation of program members through an expanded reconstituted GBAC, coordination of existing procedures with the Family and Medical Leave Act of 1993, and requirements of the Flexible Benefits program. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under the Insurance Code, Article 3.50-2, §4, which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of the Texas Employees Group Insurance Benefits Act.

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

**Dependent**—The spouse of an employee or retiree and unmarried children under 25 years of age, including:

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

(E) a child who is in a parent-child relationship to the employee/retiree, provided the child's primary place of residence is the household of the employee/retiree, the employee/retiree provides the necessary care and support for the child, and if the natural parent of the child is 21 years of age or older and the natural parent does not reside in the same household; [and]

(F) a child who is considered a dependent of the employee/retiree for federal income tax purposes and who is a child of the employee/retiree's child;[.]

(G) a child, excluding a child of the spouse who does not reside with the employee/retiree, for whom the employee/retiree must provide medical support pursuant to a valid order from a court of competent jurisdiction; or

(H)[(G)] any such child, regardless of age, who lives with or whose care is provided by an employee or retiree

on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retiree for care or support, as the trustee shall determine. [.] Mentally [mentally] retarded or physically incapacitated means any medically determinable physical or mental condition which prevents the child from engaging in self-sustaining employment, provided that the condition commences prior to such child's attainment of age 25, the child was eligible and covered under the plan immediately prior to reaching age 25, and that satisfactory proof of such condition and dependency is submitted by the employee/retiree within 31 days following such child's attainment of age 25. As a condition to the continued coverage of a child as a mentally retarded or physically incapacitated dependent beyond the age of 25, the insurance carrier or health maintenance organization shall have the right to require periodic certification of the child's physical or mental condition but not more frequently than annually after the two-year period following the child's attainment of age 25.

**Employee**—Any appointive or elective state officer or employee in the service of the State of Texas, including an employee of an institution of higher education as defined in the Act, except persons performing personal services for the State of Texas or institutions of higher education as independent contractors:

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

(E) who is a member of the governing body of an institution of higher education;

(F) who is a member of the State Board of Education;

(G)[(E)] Who receives compensation for services rendered to an institution of higher education on a warrant or check issued pursuant to a payroll certified by an institution of higher education or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas; or.

(H)[(F)] Who receives compensation for services rendered to an institution of higher education but is not permitted to be a member of the Teacher Retirement System of Texas because the person is solely employed by an institution of higher education that, as a condition of employment, requires the person to be enrolled as a student in the institution of higher education in graduate-level courses and who is employed by the institution at least 20 hours a



determining optional term life and disability income limitations will be the employee's regular salary, including longevity shift differential and hazardous duty pay, received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials or members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

System-The Employees Retirement System of Texas.

### §81.3. Administration.

(a) [The] Group Benefits Advisory Committee (GBAC).

(1) The GBAC is established by the Act, §18, as amended. Its membership shall be composed as defined in the Act. The executive director of the Employees Retirement System of Texas shall establish procedures for the determination of the committee's membership, terms of office, and representation of the applicable state agencies and institutions of higher education, in accordance with the Act.

(1) The Group Benefits Advisory Committee, as established by the Act, §18, as amended, shall be comprised of 25 voting members as follows: The Office of the Attorney General, the Office of the State Treasurer, the Office of the Comptroller, the Railroad Commission of Texas, and the Department of Agriculture are entitled to be represented by one member each on the committee, who may be appointed by the governing body of the State agency or elected by and from the employees of the agency, as determined by rule by the governing body of those agency. One employee shall be elected from each of the remaining seven largest State agencies that are governed by appointed officers by and from the employees of those agencies. One nonvoting member shall be the Executive Director of the Employees Retirement System of Texas. Two members shall be experts on employee benefit issues from the private sector, one appointed by the Governor and one appointed by the Lieutenant Governor. One member shall be a retired State employee appointed by the Trustee. One member shall be an employee of a State agency other than one of the seven largest agencies, appointed by the Trustee. Two members shall be employees of institutions of higher education appointed by the Texas Higher Education Coordinating Board. Five members shall be employees of institutions of higher education elected by and from the institutions of higher education. The remaining members shall be elected by and from the employees of the other State agencies, excluding institutions of higher educa-

tion. These elections shall be conducted in a manner consonant with the election for membership to the Board of Trustees of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or institution of higher education. The members shall elect a presiding officer from their membership to serve a one-year term.

[(2) All members of the Group Benefits Advisory Committee shall be appointed or elected for three-year terms; however, the members who are newly appointed or elected as of November 1, 1992, the effective date of the Act, TM18 as amended, shall meet and determine by lot which eight members will serve one year, which eight will serve two years, and which nine will serve three years. Subsequent appointments or elections shall be for three-year terms.]

(2)[(3)] The GBAC [Group Benefits Advisory Committee] shall advise and consult with the trustee on matters concerning all insurance coverage provided under this Act and shall present recommendations to the trustee regarding other existing or proposed state employee benefits, other than retirement benefits. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Texas Employees Uniform Group Insurance Program among the various state agencies and institutions of higher education. The duties of each member of the GBAC [Group Benefits Advisory Committee] shall be to secure input from fellow employees and shall be considered additional duties required of the member's other state office or employment, and all expenses incurred by any such member in performing the member's duties as a member of the committee shall be paid from funds made available for those purposes to the agency or institution of higher education of which the member is an employee or officer.

(3)[(4)] During a term of appointment or election, a vacancy [state employee vacancies] shall be filled by an employee of the same agency or institution of higher education from which the vacancy occurred, being appointed by its governing body or designee [the trustees] for the balance of the vacated term. A vacancy on the GBAC [Group Benefits Advisory Committee] exists when any member of the GBAC [committee]:

(A) resigns from the GBAC [committee];

(B) transfers from a state agency or institution of higher education from which the member was appointed or elected to serve on the GBAC [committee];

or

(C) terminates employment from a state agency or institution of higher education.

(4) A vacancy in a position held by a member appointed by the trustee or the Texas Higher Education Coordinating Board shall be filled by such body for the balance of the term;

(5) (No change.)

(6) All GBAC [committee] meetings are to be open to the public.

(7) The executive director of the Employees Retirement System of Texas shall [may] file a notice of the GBAC's [committee's] meetings with the Secretary of State for publication in the *Texas Register*.

(8) The executive director shall be the custodian of the minutes of the GBAC's [committee's] meetings and will have those minutes available for public inspection at the offices of the Employees Retirement System of Texas during normal working hours.

(9) Before the end of each fiscal year, the executive director will propose to the trustee a schedule for election of elective Group Benefits Advisory Committee members.]

(b)-(d) (No change.)

### §81.7. Enrollment and Participation.

(a)-(e) (No change.)

(f) Changes in coverages beyond the first 31 days of eligibility.

(1) An employee or retiree who wishes to add or increase coverage, add eligible dependents to the basic [insured] plan, or change coverage from an HMO to the basic [insured] plan more than 30 days after the initial date of eligibility must make application for approval by providing evidence of insurability acceptable to the carrier. [apply to do so. The application shall consist of the completed insurance carrier's application. Upon review of the application, the carrier may require additional information or medical examination provided at the employee's or retiree's expense. Approval of the application is contingent upon the employee or retiree providing evidence of insurability acceptable to the carrier.] Unless not in compliance with Chapter 85 of this title, (relating to Flexible Benefits), coverage [Coverage] will become effective on the first day of the month following the date approval is received by the employee's agency benefits coordinator or by the Employees Retirement System, if the applicant is a retiree or an individual in a direct pay

status. If the applicant is an employee in a leave without pay status, it will become effective on the date the employee returns to active duty if the employee returns to active duty within 30 days of the approval letter. If the date the employee returns to active duty is more than 30 days after the date on the approval letter, the approval is null and void and a new application shall be required. An employee or retiree may withdraw the application at any time prior to the effective date of coverage by submitting a written notice of withdrawal.

(2) The evidence of insurability provision applies only to those employees, retirees, or eligible dependents who:

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

(C) enrolled in any coverage under the basic [insured] plan and later dropped or were canceled from such coverage, except as provided in subsection (h)(2) and (3) of this section.

(3) An employee or retiree who wishes to add eligible dependents to his or her HMO coverage may do so [only] during the annual enrollment period, when a spouse loses employment and/or health coverage for reasons other than voluntary cancellation, when a dependent moves into the service area of the employee's or retiree's HMO, and [except] as provided in paragraph 10 [(9)] of this subsection, unless not in compliance with Chapter 85 of this title.

(4)-(8) (No change.)

(9) Unless not in compliance with Chapter 85 of this title, an [An] employee or retiree who wishes to decrease or cancel coverage may do so at any time. Coverage will continue through the last day of the month following the date of application.

(10)-(11) (No change.)

(g) (No change.)

(h) Reinstatement in the program.

(1) Unless specifically prohibited by these sections or contractual provisions, an employee who terminates employment and returns to active duty within the same contract year may reinstate health coverage for himself and his dependents identical to, and optional coverages no greater than, those that were in effect when the employee terminated by submitting an application for the coverages. The application must be submitted on the first day the employee returns to active duty, and, unless the employee completes the application indicating coverages are to be effective on the first day of the month following the date the employee returns to active duty, the coverages will be effective on the day the em-

ployee returns to active duty. Dependents acquired during the break in employment may be added on the application. A returning employee who has selected coverages less than those for which the employee is eligible may reinstate any waived coverages by submitting the appropriate application during the 30 days following the date the employee returns to active duty. The change in coverage will become effective on the first day of the month following the date of application [except that an application completed on the first day of the month shall be effective on the first day of the month]. If the coverage of an employee returning to active duty within the same plan year is affected by Chapter 85 of this title, the employee must reinstate all coverages that were in effect on the termination date, and the effective date of reinstated coverage must be the date the employee returns to active duty.

(2) (No change.)

(i) Continuing coverage in special circumstances.

(1) (No change.)

(2) An employee in a leave without pay status may continue the types and amounts of health, life and dental coverages in effect on the date the employee entered that status for a maximum period of up to 12 months. The maximum period may be extended for up to 12 additional months for a total of 24 continuous months, provided the extension is certified by the department to be for educational purposes. During this period, the employee, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (P. L. 103-3), may not change coverage except that, employees in a leave without pay status may: add new dependents, including newborns; reduce or cancel coverage; and make such coverage changes as are permitted during the annual limited enrollment period as described in subsection (f)(7) of this section. Disability income coverage for an employee in a leave without pay status, other than an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 (P.L. 103-3), will be suspended beginning on the first day of the month in which the employee enters the leave without pay status and continuing for those months in which the employee remains in that status. Suspended disability income coverage for an employee returning to active duty from a leave without pay status will be reactivated effective on the first day the employee returns to active duty if the entire period of unpaid leave was certified by the agency as approved leave without pay. The coverages of an employee whose leave without pay status is a result of the Family and Medical Leave Act of 1993 may continue at

the same level of benefits and contributions that would have been in place if the employee had not taken the leave.

(3)-(11) (No change.)

#### §81.11. Termination of Coverage.

(a) Cancellation of coverage.

(1) Except as prohibited by Chapter 85 of this title (relating to Flexible Benefits), an [An] employee, retiree, or surviving spouse may cancel any coverage in effect [by submitting the appropriate cancellation notice in writing to the Employees Retirement System]. Coverage will continue through [Cancellations will be effective at midnight on] the last day of the month in which the coverage is cancelled [notice is signed]. Coverage canceled by a surviving spouse or dependent of a deceased retiree may never be reinstated.

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

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

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

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TRD-9324815

William S. Nail  
General Counsel  
Employees Retirement  
System of Texas

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For further information, please call: (512) 867-3336

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 91. Discipline and Control

##### Control

##### • 37 TAC §91.65

*(Editor's Note: The Texas Youth Commission proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)*

The Texas Youth Commission (TYC) proposes an amendment to §91.65, concerning procedures in the security units in TYC institutions. The amendment will allow staff to lock the doors of all individual security unit rooms to restrict violent behavior. Youth are currently placed in individual rooms in security units when immediate behavior meets specific criteria, including engaging in serious

physical harm to him/herself or others. During the first ten months of fiscal year 1993, 334 incidents involving student assaults on staff and student assaults on other students occurred in TYC institution security units. The amendment allowing locked doors on individual rooms will prevent continuing injuries to staff working in TYC's institutional security units and to delinquent youth confined to those units.

John Franks, director of fiscal affairs, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Frank 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 to prevent injury to staff and youth in the security unit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to determine appropriate treatment including confinement.

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 23, 1993.

TRD-9324707

Ron Jackson  
Executive Director  
Texas Youth Commission

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 483-5244

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 12. Special Nutrition Programs

##### Child and Adult Care Food Program

- 40 TAC §§12.3, 12.4, 12.7, 12.20, 12.26

The Texas Department of Human Services (DHS) proposes amendments to §§12.3, 12.4, 12.7, 12.20, and 12.26, concerning eligibility of contractors and facilities, day home facilities, budget, training/technical assistance, and appeals, in its Special Nutrition

Programs chapter. The purpose of the amendments is to establish fair and equitable standards for determining if an applicant can reasonably be expected to operate the Child and Adult Care Food Program.

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 governments 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 improved program efficiency and increased program integrity. 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 Keith N. Churchill at (512) 467-5837 in DHS's Special Nutrition Programs. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-155, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

#### §12.3. Eligibility of Contractors and Facilities.

(a) To be eligible to participate in the Child and Adult Care Food Program (CACFP), contractors must

(1) meet the definitions in 7 Code of Federal Regulations §226.2 and the appropriate requirements of 7 Code of Federal Regulations §226.6 and 226.15-226.19(a); [.]

(2) demonstrate that the governing authority is aware of the responsibilities and liabilities it accepts by agreeing to participate in the program;

(3) submit a comprehensive financial statement showing all expenditures and sources of income to the organization for the three years preceding the year for which application is made;

(4) designate the physical location at which they can be contacted. An appropriate representative of the contractor must be available at the designated location during normal business hours. Contractors must notify DHS in advance of their intent to change their physical location; and

(5) participate in program and program-related training deemed reasonable and necessary by the Texas

Department of Human Services (DHS).

(b) To be eligible to participate in the CACFP as a day care home sponsor, contractors must demonstrate that at least 50 day care homes can be expected to participate under their sponsorship. DHS may approve applications for fewer than 50 day care homes, if the contractor demonstrates that there is an unmet need for services.

(c)[(b)] Facilities must be licensed or otherwise approved by federal, state, or local authorities. Adult day care centers must be licensed by the Texas Department of Health (TDH), except that receipt of Title XIX funds (Medicaid) constitutes approval for program participation. Child care centers must be licensed or registered by DHS. General Exception: Facilities operated by federal and Indian tribal governments are not required to be licensed or otherwise approved by DHS or TDH.

(d)[(c)] DHS requires contractors to submit as proof of eligibility one or more of the following forms of documentation of tax-exempt status:

(1) letter from the IRS notifying the contractor that he has been granted tax-exempt status under the Internal Revenue Code of 1954;

(2) proof of participation in another federal program that requires non-profit status;

(3) letter from the IRS acknowledging acceptance of the contractor's application for tax-exempt status under the Internal Revenue Code of 1954; and/or

(4) letter certifying that at least 25% of the children enrolled in the institution making application received Title XX benefits in the month before the month in which the application is submitted.

(e)[(d)] DHS requires contractors to submit copies of a current licensure or registration to operate a day care facility when they:

(1) apply to participate in the CACFP, or

(2) receive a renewed or amended license or registration.

(f)[(e)] Contractors are ineligible for the CACFP if they have permitted a member of the governing body, an agent, a consultant, or an employee of the contractor to enter the facility when children are present and any of these persons have been convicted of:

(1) a felony or misdemeanor classified as an offense against the person or the family, or as public indecency; or

(2) a felony violation of any statute intended to control the possession or

distribution of a substance included in the Texas Controlled Substances Act.

(g)(f) Contractors are ineligible for the CACFP if they have permitted a member of the governing body, an agent, a consultant, or an employee of the contractor to engage in any activity related to the administration of the CACFP and any of these persons have been convicted of a fraudulent activity, including cases in which adjudication is deferred.

(h) Contractors are ineligible for the CACFP if they sponsor the participation of a day care home which, after being afforded due process by the contractor, has been terminated for cause, including but not limited to program abuse, deficient program operation, and fraudulent activities, unless DHS has granted prior approval.

(i)(g) DHS requires contractors to submit documentation of compliance with the requirements of the Single Audit Act. Contractors must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the contractor is not subject to the Single Audit Act.

#### §12.4. Day Home Facilities.

(a) Day home providers participating in the Child and Adult Care Food Program (CACFP) may not be actively engaged in the day-to-day operations of any sponsoring organizations, either full- or part-time. These day home providers may be board members of sponsoring organizations if they are not engaged in day-to-day operations of any sponsoring organization.

(b) Day home providers who have been found guilty of committing fraud in the CACFP, including cases in which adjudication is deferred, are ineligible to participate in the CACFP.

(c) To be eligible to participate in the CACFP, day care homes must participate in program and program-related training provided by sponsors, as deemed reasonable and necessary by the Texas Department of Human Services (DHS).

(d)(c) If a contractor applies and is approved for program participation as a

new sponsor of day homes, DHS places an initial cap on the number of day homes the contractor may sponsor. DHS approves sponsorship of additional homes only if the sponsoring organization provides an expansion plan and evidence of administrative and financial capability.

(e)(d) For sponsoring organizations of day home facilities already participating in the program, DHS may place a cap on the number of day homes an organization may sponsor. DHS takes this action if the staffing pattern and management plan indicate insufficient administrative capability to administer more homes. DHS approves additional homes commensurate with the organization's capabilities.

(f)(e) DHS must make in writing any adjustments to the cap it places on the number of day homes the organization may sponsor. DHS bases the adjustment on the organization's administrative and financial capability and DHS-approved expansion plan.

#### §12.7. Budget.

(a) (No change.)

(b) Day care home sponsors must submit a budget that demonstrates the organization's ability to maintain a balanced budget and demonstrates that all required program functions-including but not limited to training, monitoring, financial management, and recordkeeping/reporting-are funded using program funds, or are otherwise provided at no cost to the program. If required program functions are provided at no cost to the program, the contractor must identify the source and amount of funding or noncash resources allocated to perform the required program functions.

(c) Contractors must document how costs that are not an allowable use of program funds will be paid, including the source and amount of funds used to pay the unallowable costs.

(d)(b) DHS considers adjustments to the budget as amendments to the application. Amendments must be approved or denied by DHS. Sponsoring organizations must submit to DHS written justification for the original budget and for any amendments, before the planned effective date. Budget changes are not approved retroactively.

(e)(c) Contractors sponsoring day homes and operating at a deficit must submit an amended budget to DHS. If the budgeted administrative costs of a contractor that sponsors day care homes exceed the allowable amount calculated under 7 Code of Federal Regulations §226.12, day home sponsoring organization must submit to DHS one or more of the

following as required by DHS:

(1) documentation providing the source and amount of income to support the additional expenses.

(2) a revised administrative budget reflecting reduced costs.

(3) a statement explaining how the excess administrative costs will be handled.

(d) Day home sponsoring organizations must submit to DHS a budget that demonstrates the organization's ability to maintain a balanced budget. Contractors sponsoring day homes and operating at a deficit must submit an amended budget to DHS.]

(f)(e) Contractors must report donations at zero value on their budget.

(g)(f) DHS determines the limits of a reasonable day home sponsoring organization's budget and may establish upper limits for salaries, overhead, and other administrative costs, depending upon the size of the program, staff duties, and economic conditions of the locale.

(h)(g) Contractors that apply for start-up or expansion funds must submit a budget that demonstrates how the funds will be used. Start-up and expansion funds may be used only for start-up or expansion activities.

§12.20. *Training/Technical Assistance.* Contractors must provide training and technical assistance deemed reasonable and necessary by the Texas Department of Human Services to their facilities according to 7 Code of Federal Regulations §§226.6, 226.16, and 226.18.

#### §12.26. Appeals.

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

(c) Contractors that sponsor day care homes must develop appeal procedures and submit them to DHS for approval. The appeal procedures must be provided to each day care home when:

(1) the day care home enrolls in the CACFP; and

(2) the contractor takes an adverse action on the day care home provider. An adverse action is any action that denies or reduces program benefits to the day care home provider.

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, 1993.

TRD-9324907

Nancy Murphy  
Section Manager, Policy  
and Document Support

Proposed date of adoption: October 1, 1993

For further information, please call: (512)  
450-3844

◆ ◆ ◆  
**Part III. Texas**  
**Commission on Alcohol**  
**and Drug Abuse**

**Chapter 153. DWI Education**  
**Program Standards and**  
**Procedures**

**General Provisions**

• **40 TAC §§153.1, 153.4, 153.5**

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§153.1, 153.4, and 153.5, concerning DWI Education Program Standards and Procedures definitions, name change of department at the commission and adding application fee. Section 153.1 adds wording for clarification on definitions and changes the membership of the DWI Education Program Certification Committee. Section 153.4 adds initial application fee, reflects name change of department at the commission where applications are available and are to be submitted, and corrects zip code. Section 153.5 clarifies application process and renewal fee, and corrects zip code.

Denise Hudson, director, fiscal services, has determined that there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government for the first five-year period the rules will be in effect will be an estimated increase in revenue of \$34,000 in 1994; \$5,000 in 1995; \$34,000 in 1996; \$5,000 in 1997; and \$34,000 in 1998. The effect on local government for the first five-year period the rules will be in effect will be an estimated increase in revenue of \$34,000 in 1994; \$5,000 in 1995; \$34,000 in 1996; \$5,000 in 1997; and \$34,000 in 1998. The cost of compliance with the rules for small businesses will be for initial certification of a program a fee of \$250 will be charged, then a fee of \$125 will be charged for recertifying a program. A small business will take a longer period of time to recover the cost of these fees due to a smaller number of participants attending. The larger businesses will not have as long of a recovery period due to the large volume of participants.

Ms. Hudson also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules will be none. The possible economic cost to persons who are required to comply with the rules as proposed will vary depending upon the amount of increase each program chooses to assess each DWI Education Program participant in order to recoup the certification/recertification fees. Approximate cost to individuals will be an additional \$5.00-\$50.00 for fiscal years 1994-1998.

Comments on the proposal may be submitted

to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Code of Criminal Procedures, Article 42.12, §13(h), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for approved DWI Education Programs.

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

Act-Texas Code of Criminal Procedure, Article 42.12, §13(h) [as amended in Chapter 785 (1989)].

DWI Certification Committee—A standing committee comprised of at least one representative of each of the four approving agencies: the Texas Commission on Alcohol and Drug Abuse (TCADA); the Department of Public Safety (DPS); the Texas Department of Transportation (TxDOT); and the Texas Department of Criminal Justice, Community Justice Assistance Division (CJAD) [; and the Statewide DWI Education Program Director for the Texas Commission on Alcohol and Drug Abuse], whose purposes are to approve or disapprove applications for program certification/recertification and waiver requests promulgated by the Code of Criminal Procedure, Article 42.12, §13(h), and serve as a resource for recommendations on rule changes and appeals to the governing board of the Texas Commission on Alcohol and Drug Abuse.

*§153.4. Program Certification.* A program seeking certification must comply with the provisions of this Act and with the rules, regulations, and standard of the commission adopted under this Act. A certificate may be issued when the commission receives a prescribed application form accompanied by the initial application fee and the DWI Certification Committee grants approval of the application. The certificate will become effective on the first day of the following month after approval and will expire on August 31 of every even numbered year. A program shall be monitored by the commission or its designated representative during the initial certification and/or recertification period. Certified programs may be monitored without prior notice. Certified programs will be listed as potential referral schools in the Statewide DWI Education Program Directory. Noncertified programs are not eligible to receive referrals. Applications for certification are available from the commission's Offender Education Services Department [Statewide DWI Education Program Director], Texas Commission on Alcohol and Drug Abuse, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576

[78701-2506].

*§153.5. Certification Renewal.* The commission shall issue a recertification notice 30 days prior to the expiration date of the certificate. Upon receiving a completed application form prescribe by the commission and the application renewal fee, the application will be reviewed for approval by the certification committee. When it is approved, a renewal certificate will be issued prior to the expiration date of the certificate [A renewal certificate may be issued upon receiving and approving a completed application form prescribed by the commission prior to the expiration date of the certificate]. Any application received after the renewal date shall be treated as a new application for certification and shall be submitted as a new application to the commission's Offender Education Services Department [Statewide DWI Education Program Director], Texas Commission on Alcohol and Drug Abuse, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576 [78701-2506].

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, 1993.

TRD-9324875

Bob Dickson  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512)  
867-8720

◆ ◆ ◆  
• **40 TAC §153.19**

The Texas Commission on Alcohol and Drug Abuse proposes new §153.19, concerning DWI Education Program and Standards and Procedures. The new section establishes the fee schedule for new programs, payment of fees, recertification of program, instructor recertification, and fee for duplication of certificates.

Denise Hudson, director, fiscal services, has determined that there will not be fiscal implications as a result of enforcing or administering the rules. The effect on state government for the first five-year period the rules will be in effect will be estimated increase in revenue of \$34,000 in 1994; \$5,000 in 1995; \$34,000 in 1996; \$5,000 in 1997; and \$34,000 in 1998. The effect on local government for the first five-year period the rules will be in effect is unknown because there is no known basis for calculating cost due to the programs being operated by various entities. The cost of compliance with the rules for small business will be for initial certification of a program fee of \$250 will be charged, then a fee of \$125 will be charged for recertifying a program. A small business will take a longer period of time to

recover the cost of these fees due to a smaller number of participants attending. The larger businesses will not have as long of a recovery period due to the large volume of participants.

Ms. Hudson 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 as proposed will be none. The possible economic cost to persons who are required to comply with the rules as proposed will vary depending upon the amount of increase each program chooses to assess each DWI Education Program participant in order to recoup the certification/recertification fees. Approximate cost to individuals will be an additional \$5.00-\$50.00 for fiscal years 1994-1998.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576.

The new section is proposed under the Texas Code of Criminal Procedures, Article 42.12, §13(h), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to publish rules and regulations for approved DWI Education Programs.

#### §153.19. Fees.

(a) In order to partially defray the costs of administering this chapter, fees will be assessed by the commission in accordance with the fee schedule set forth in subsection (b) of this section.

(b) The schedule of fees shall be as follows:

- (1) initial application fee—\$250;
- (2) application renewal fee—\$125;
- (3) instructor recertification fee—\$15;
- (4) program approval certification duplication or replacement fee—\$5.00;
- (5) instructor recertification certificate duplication or replacement fee—\$5.00.

(c) Fees paid to the commission by applicants are not refundable.

(d) Remittances submitted to the commission in payment of fees may be in the form of cashier's check, or money order.

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, 1993.

TRD-9324878

Bob Dickson  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 867-8720

## DWI Education Program Standards

### • 40 TAC §§153.35, 153.36, 153.38

The Texas Commission on Alcohol and Drug Abuse proposes amendments to §§153.35, 153.36, and 153.38, concerning DWI Education Program Standards and Procedures. Section 153.35 revises text wording and clarification or reference to the Code of Federal Regulations citation. In §153.36, program requirements are added regarding increasing number of courses conducted, adherence to the American with Disabilities Act and programs to display certificates, and corrects punctuation. Section 153.38 proposes requirements for the instructor's recertification process and fee is added.

Denise Hudson, director, fiscal services, has determined that there will be fiscal implications as a result of enforcing or administering the rules. The effect on state government for the first five-year period the rules will be in effect will be an estimated increase of \$3,750 in 1994; \$3,750 in 1995; \$3,750 in 1996; \$3,750 in 1997; and \$3,750 in 1998.

Ms. Hudson also has determined that for each year of the first five years the rules as proposed is in effect the public benefit anticipated as a result of enforcing the rules as proposed will be maintenance of qualified DWI Education Program instructors throughout the State. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rules as proposed will be to individual DWI education program instructors who apply for recertification and are charged a fee of \$15.00 every two years.

Comments on the proposal may be submitted to Denise F. Mosel, Division Assistant, Texas Commission on Alcohol and Drug Abuse, 720 Brazos Street, Suite 403, Austin, Texas 78701-2576.

The amendments are proposed under the Texas Code of Criminal Procedures, Article 42.12, §13(h), which provides the Texas Commission on Alcohol and Drug Abuse with the authority to published rules and regulations for approved DWI education programs.

**§153.35. Confidentiality.** Certified DWI Education Programs [programs] shall abide by all applicable federal and state laws requiring [relating to] confidentiality of patient/client records including, without limitation, 42 United States Code, §290dd-3 and §290ee-3; [.] Title 42 Code of Federal Regulations Part 2; [.] and, the Texas Health and Safety Code, Chapter 611 [(Ver-non 1992)].

**§153.36. Program Operation Require-**

**ments.** All certified programs designed to rehabilitate persons who have been placed on probation for driving while intoxicated under the provisions of this Act shall:

(1) (No change.)

(2) conduct the program a minimum of two [one] times [time] during each reporting period;

(3)-(1s) (No change.) Education Program Standards and Procedures

(14) maintain attendance records and class rosters. Class rosters must contain the following information: date of enrollment in class; date of completion of class; individual pre and post-test scores; pre and post-test class averages; percent of knowledge increase; screening test scores; the participant's attendance record and evaluation recommendations. Each participant shall be required to attend all classes in their proper order; [and]

(15) insure that notice of completion of the program, for all participants, is given to the appropriate adult probation department or other referral resource(s) within ten working days after completion of the course for forwarding same to the convicting court clerk for reporting to the Department of Public Safety; [.]

(16) provided appropriate facilities for class instruction which are in compliance with the Americans with Disabilities Act-1990; and

(17) prominently display the certificate of program certification at the principal location where services are provided.

**§153.38. Program Staff.** Program staff should be selected using the following criteria.

(1) Instructors.

(A)-(J) (No change.)

(K) Application for instructor recertification shall be made by the person recertified in such a manner as directed by the commission upon forms prescribed by the commission.

(L) Each application for instructor recertification shall be accompanied shall be applicable fee.

(M) Instructors found to be eligible for recertification under this chapter shall be approved in writing by the commission on such form as deemed appropriate.

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, 1993.

TRD-9324877

Bob Dickson  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Earliest possible date of adoption: August 2, 1993

For further information, please call: (512) 867-8720

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### Texas Department of Insurance Exempt Filing

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#### Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

*(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.*

*The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)*

The State Board of Insurance, at a Board meeting scheduled for 9:00 a.m. August 4, 1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a proposal filed on behalf of the Texas Workers' Compensation Insurance Facility (the "Facility"). The Facility is proposing an amendment to reduce the Facility Tabular Surcharge Plan, to eliminate the mandatory differential factor of 15% for risks with an experience modifier and to reduce the differential factor not to exceed 28.5% for risks with no experience modifier. The amendments were proposed in a petition (Reference W-0693-12), filed by the Facility on June 2, 1993.

According to the Facility's petition, these proposed amendments were approved by the Facility's Governing Committee. If approved by the Board, these amendments will be effective only for policies written by the Facility on and after the effective date of the Board's action, excluding policies for risks who cancel their existing Facility policies to obtain coverage at rates calculated under the proposed amendments.

A copy of the petition containing the full text of the proposed amendments is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Angie Arizpe at (512) 322-4147, (refer to Reference Number W-0693-12).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

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

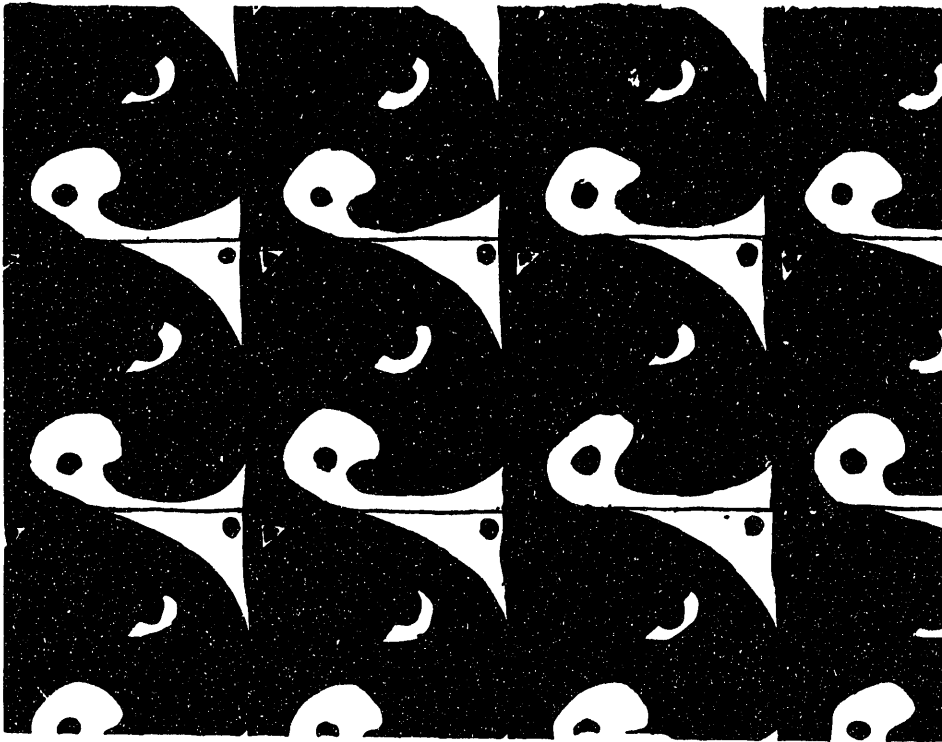
Issued in Austin, Texas, on June 25, 1993.

TRD-9324871

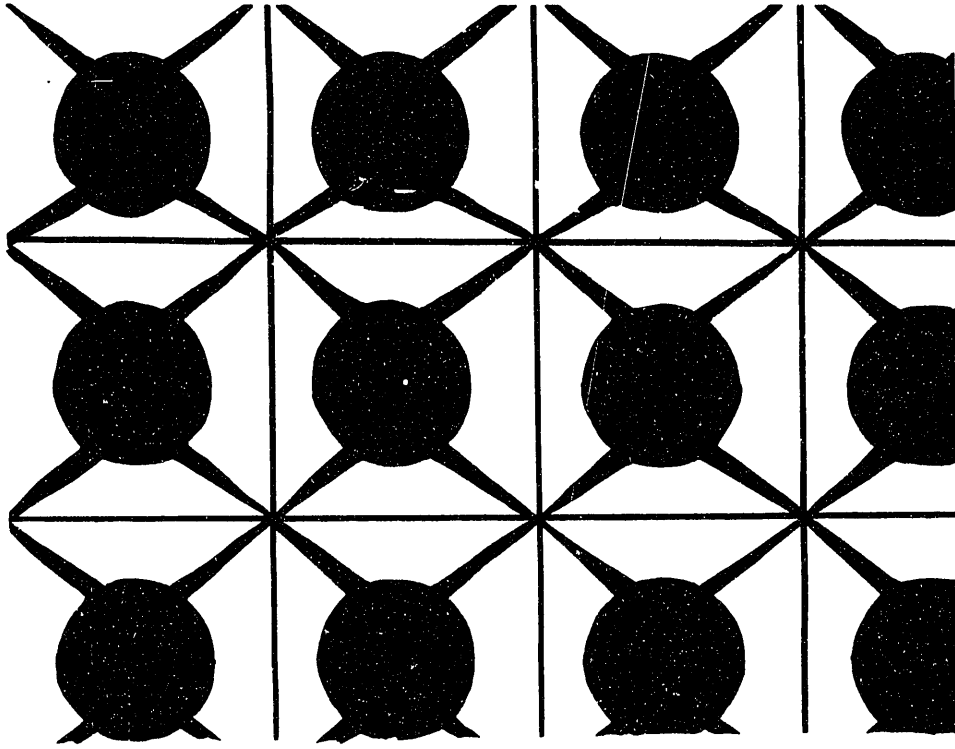
Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

For further information, please call: (512) 463-6328





Name: Valerie Wittkop  
Grade: 8  
School: Hendrick Middle School, Plano ISD



Name: Travis Groff  
Grade: 7  
School: Hendrick Middle School, Plano ISD



# Withdrawn Sections

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An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after 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*.

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## TITLE 31. NATURAL RE- SOURCES AND CON- SERVATION

### Part IX. Texas Water Commission.

#### Chapter 330. Municipal Solid Waste

#### Subchapter E. Permit Proce- dures and Design Criteria

#### Permit by Rule Registration for Transfer Stations

#### • 31 TAC §330.68

The Texas Water Commission has withdrawn from consideration for permanent adoption a proposed new §330.68 which appeared in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2544). The effective date of this withdrawal is June 28, 1993.

Issued in Austin, Texas, on June 28, 1993.

TRD-9324881      Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Effective date: June 28, 1993

For further information, please call: (512)  
463-6069





LAYTON HAYES  
GRADE 6 WOODCARVING  
RICHARDSON HEIGHTS ELEM  
RICHARDSON, TEXAS



JORDAN NEILL  
GRADE 6 WOODCARVING  
RICHARDSON HEIGHTS ELEM.  
RICHARDSON, TEXAS

# Adopted Sections

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 II. Texas Ethics Commission

#### Chapter 40. Registration and Regulation of Lobbyists

##### • 1 TAC §40.5

The Texas Ethics Commission adopts an amendment to §40.5, concerning exclusions from administrative action lobbying, without changes to the proposed text as published in the April 9, 1993, issue of *Texas Register* (18 TexReg 2345).

The rule clarifies what actions are excluded from the term administrative action in for purposes of the compensation threshold of the Government Code, §305.003(a)(2). The rule clarifies any ambiguities as to the application of the expenditure threshold.

The rule will help provide the public with the necessary information for determining whether their direct communication with an administrative agency requires them to register under Chapter 305 of the Government Code.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6252-9d.1, which provide the Texas Ethics Commission with the authority to promulgate and adopt rules concerning the filing of reports mandated by Chapter 305 of the Government Code.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 24, 1993.

TRD-9324885 Jim Mathieson  
Assistant General Counsel  
Texas Ethics Commission

Effective date: July 19, 1993

Proposal publication date: April 9, 1993

For further information, please call: (512) 463-5800

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 289. Radiation Control Texas Regulations for Control of Radiation

##### • 25 TAC §289.111

The Texas Department of Health (department) adopts §289.111, with changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1241) and with changes to the material the section adopts by reference.

The section adopts by reference Part 11 of the Texas Regulations for Control of Radiation (TRCR) titled, "General Provisions." The amendment includes additional and revised definitions that reflect changes currently being made to TRCR Parts 21, 32, 40, 41, and 42. The majority of the definitions apply to the revision in entirety of TRCR Part 21 and are items of compatibility under the agreement between Texas and the United States Nuclear Regulatory Commission (NRC).

Several wording changes were made to Part 11 to further clarify the intent of the section and to provide consistency with other sections of the TRCR. The word "research" was added to §11.1 to more accurately reflect the scope of the section. The word "public" was deleted from the title of the department throughout the rule because there is legislation pending in the Texas Legislature that will retain the department's name as "Texas Department of Health." In §11.2, the definition of "calendar quarter" was deleted and the definition of "quarter" that is in the proposed TRCR Part 21 was substituted for consistency with the compatibility items in TRCR Part 21. The definition of "distribution" was modified to add "...and any intermediate persons involved in that conveyance" to more accurately reflect the intent of the definition. A definition of "regulation" was added for clarification of the terms "regulation" and "rule." The definition of "Type A quantity" was corrected by deleting the reference to Appendix A and substituting the reference to Appendix 11-E. After §11.2, the term "United States Nuclear Regulatory Commission" was shortened to "Commission" to reflect the definition in §11.2 and for consistency throughout the TRCR.

Section 11.5(c)(1) was modified to clarify that registrants having multiple use authorizations will be inspected at the most frequent interval

specified for the uses authorized. Section 11.10 was amended to add "...and Part 13 of these rules" to include the specific requirements for impounding sources of radiation found in TRCR Part 13. In Appendix 11-C, the industrial facility category of "Assembler" was changed to "Assembler/Consultants" to more accurately reflect the intent of the section. In Appendix 11-C, the other facility category of "Laser Light Show" was changed to "Laser Light Show (Temporary Site)" and another category of "Laser Light Show (Permanent Installation)" was added to more accurately reflect the types of laser light shows inspected. The category of "Laser Light Show (Permanent Installation)" has a one-year inspection interval. Ion implantation devices and cathodoluminescence devices were added to the list of minimal threat radiation machines in Appendix 11-D to reflect the regulation of these devices. A footnote was added to Appendix 11-E to clarify the A2 values for americium and plutonium contained in americium/beryllium or plutonium/beryllium neutron sources or in nuclear-powered pacemakers.

The department will enforce these amendments effective January 1, 1994.

The following comments were received concerning the proposed amendment.

Comment. One commenter expressed general support of the numerous changes in the proposed section.

Response. The department acknowledged the commenter's support.

Comment. Concerning §11.2, one commenter stated that in the definition of Type A quantities, "Appendix A" is referenced twice and that the definition should more accurately reference "Appendix 11-E."

Response. The department agrees and has changed the definition to reflect the correct reference.

Comment. Concerning §11.2, one commenter noted that the definitions of "High Radiation Area" and "Radiation Area" in the proposed section are not consistent with the same definitions in TRCR Part 31 and asked for clarification.

Response. The department's response is that the definitions in TRCR Part 11 are items of strict compatibility with the NRC. As an Agreement State, Texas must adopt rules of the NRC that have been designated items of strict compatibility. Therefore, the definitions in TRCR Part 31, which is also currently proposed, were changed to reflect the definitions in TRCR Part 11.

**Comment.** One commenter noted that transport groupings of radionuclides are still presented in TRCR Part 11 with a comment that they are "for the purpose of Part 44.5 only." Transport groups were dropped many years ago by the Department of Transportation and replaced with A1/A2 limits. The commenter questioned why the TRCR is continuing to carry transport groups and if for some reason it is determined that they are necessary to be used in conjunction with TRCR Part 44, why not move them to TRCR Part 44. (See Appendix 11-A)

**Response.** The department's response is that transport groups are referenced in the requirements of TRCR Part 44 and therefore must be maintained in the section. TRCR Part 44 is not currently proposed at this time, so it cannot be amended concurrently with TRCR Part 11. If the sections are not amended concurrently, a gap in regulatory coverage will exist, therefore the department made no change to the section as a result of the comment.

**Comment.** One commenter stated that Appendix 11-C is confusing because it provides for a two-year interval between inspections for an Educational/Academic (Other Than Medical) facility. However, a three-year interval for Chiropractic, Podiatric, and Veterinary facilities is specified. The commenter asked what the inspection interval is if the facility is an academic institution that is a veterinary school or a chiropractic college. (See Appendix 11-C)

**Response.** The department's response is that the inspection interval for an academic institution, whether it is a veterinary school or a chiropractic college, is two years. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that the footnotes to Appendix 11-E refer to Appendix A, paragraph II 3 and that the reference should be Appendix 11-E, paragraph II.C. The commenter noted that the footnotes appear to be taken from 49 Code of Federal Regulations §173.435, but a crucial footnote also contained in that regulation has been omitted. The omitted footnote concerns the A2 value for americium and plutonium contained in americium/beryllium or plutonium/beryllium neutron sources or in nuclear-powered pacemakers. The commenter recommended that the omitted footnote be included in the section. (See Appendix 11-E)

**Response.** The department agrees and has changed the footnote to reflect the correct references and has added the omitted footnote to Appendix 11-E.

Representatives from Davenport X-Ray Company, Inc. in Dallas, Texas A & M University in College Station, TN Technologies, Inc. in Round Rock, and Technical Welding Laboratory, Inc. in Pasadena presented comments concerning the proposed rules. The commenters were in favor of the amendments, however, they presented comments, questions, and suggestions for changes to the proposed amendment as discussed in the summary of comments.

The amendment is adopted under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

#### §289.111. General Provisions.

(a) The Texas Department of Health adopts by reference Part 11, "General Provisions" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754, and is available for public inspection during regular working hours.

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 23, 1993.

TRD-9324740

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: January 1, 1994

Proposal publication date: February 26, 1993

For further information, please call: (512) 834-6688

#### ♦ 25 TAC §289.113

The Texas Department of Health (department) adopts §289.113, with changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1242) and with changes to the material the section adopts by reference.

The section adopts by reference Part 21 of the Texas Regulations for Control of Radiation (TRCR) titled, "Standards for Protection Against Radiation."

The United States Nuclear Regulatory Commission (NRC) revised its standards for protection against ionizing radiation found in 10 Code of Federal Regulations (CFR) Part 20. This revision incorporated updated scientific information and reflected changes in the basic philosophy of radiation protection advisory groups for internal doses. This revision of 10 CFR Part 20 conforms the NRC's regulations to the Presidential Radiation Protection Guidance to Federal Agencies for Occupational Exposure and the recommendations of national and international radiation protection advisory groups.

The amendment to the section is a revision in entirety and reflects the changes in federal requirements. The revision of federal requirements has been designated as an item of

strict compatibility. As an Agreement State, Texas must implement the changes and Texas licensees and registrants must implement the changes as of January 1, 1994.

Several wording changes were made to Part 21 to further clarify the intent of the section and to provide consistency with other sections of the TRCR. Throughout Part 21, the term "effective date of these rules" was deleted and replaced with "January 1, 1994." Section 21.102 was changed to 21.101 to reflect the proper numbering. In §21.208(d), the dose "0.5 rem (0.05 millisievert)" was changed to "0.05 rem (0.5 millisievert)" to more accurately reflect the intent of the section. In §21.602(a), the words "at this level" were added to the end of the first sentence for clarification. Section 21.903 (d) was deleted because posting of such rooms or areas is necessary and is consistent with keeping exposures as low as is reasonably achievable (ALARA). Section 21.904(c) was modified to add the wording in the current 21.203(g) concerning where the label is to be affixed because it clarifies the intent of the section. The reference in §21.906(d)(1)(i) was corrected to read §21.906(d)(1)(ii). In §21.906(d)(2), "mR/hr" was changed to "millirems/hr" to reflect the correct units. In §21.906(d)(2)(ii), the reference to §11.15(i) was changed to §21.906(d)(2)(i) to reflect the correct reference. A footnote was added to §21.1101 to clarify that disintegrations per minute (dpm) may be indicated on records of surveys performed to determine compliance with Appendix 21-G. Section 21.1102(c) was added to clarify the retention period for records at additional authorized sites. The words "Except for the requirements in Part 46 of these rules and..." were added to §21.1302(c) to reflect the differing standards for naturally-occurring radioactive material. In §21.1304(a)(2), iodine-125 was included to more accurately reflect the intent of the section. Appendix 21-D, III.A. was modified to require that the waste generator submit a copy of the manifest to the department at the time of transfer or shipment to more accurately reflect the intent of the section.

The following comments were received concerning the proposed amendment.

**Comment.** One commenter stated that Part 21 is onerous, complex, and many parts are not applicable to the majority of licensees. However, the commenter realized that this is not the fault of the department since the regulations were propagated by the NRC and as an Agreement State, Texas must be compatible. The commenter commended the department on two changes that will be very positive for Texas licensees.

The commenter questioned if there is some way to divide the section into parts which would specifically apply to certain categories of licensees or conversely, if that would be too arduous a task, could there be a statement at the front of this section setting out which portions apply to industrial licensees, medical licensees, etc. The commenter stated that the majority of licensees sincerely want to comply with the regulations. However, many have neither the background, experience, or stamina to evaluate all the new concepts and requirements and make edu-

cated decisions about what applies to their licensed activities.

**Response.** The future amendments the department intends to divide the TRCR into three sections, one containing the general parts applicable to all licensees and registrants (Parts 11, 12, 13, 21, and 22), one containing parts applicable to licensees (Parts 31, 33, 36, 40, 41, 43, 44, 45, and 46), and one containing parts applicable to registrants only (Parts 31, 32, 34, 35, 36, and 42). The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that although proposed §21.102(a) requires a radiation protection program, it does not supply enough detail as to what content should be included in the radiation protection program. The commenter stated that if §21.102(a) is open to interpretation, then there will be no standard program content. The commenter also noted that §21.1102, concerning records or radiation protection programs, does not provide adequate detail, either.

**Response.** The department's response is that the section states that the radiation protection program should be sufficient to ensure compliance with the provisions of TRCR Part 21. Therefore, the program should, at a minimum, address how the licensee or registrant will achieve compliance with TRCR Part 21 and the additional measures the licensee or registrant will take to ensure that occupational and public doses are ALARA. Because of the wide variety of uses of sources of radiation in Texas, the department cannot effectively describe specific items to be contained in a program that will adequately address each licensee and registrant. The department made no change to the section as a result of the comment; however, proposed §21.102 was renumbered to §21.101 to accurately reflect proper numbering.

**Comment.** One commenter stated that at their facility, extensive fluoroscopic examinations are performed in vascular interventional, gastroenterology, and cardiac catheterization laboratories. The radiation exposure levels to operators' collar badges are quite elevated compared to those received by their whole-body dosimeters. The proposed section would require basing radiation protection activities only on the collar badge reading while ignoring the body reading. In fact, both the collar reading and the body reading must be considered when evaluating the whole-body radiation dose of the operator.

The commenter noted that there are few trained physicians who can provide these services and that to meet the proposed dose limits, the facility would be forced to limit the number of cases which these physicians perform. This is unacceptable as it limits the services the facility can provide to patients. Physicians must be allowed to practice freely as long as they can do so safely. Some rational method of calculating their personal radiation risk needs to be developed to assure safe practice methods without compromising these important services.

The commenter recommended that the exposure to the head and body be monitored separately for these procedures. The two

measurements can be factored into a calculated whole-body dose-equivalent value to assess radiation risk and proposed weighting factors of 0.04 and 1.5 to be applied for the head and whole-body exposures respectively.

As an example, suppose an operator wears two dosimeters (one at the collar and one under the apron), a thyroid shield, and an apron. Exposures of 1300 mRem to the collar and 50 mRem under the apron in one calendar quarter are received. This individual's actual whole-body dose equivalent would be  $(0.04 \times 1300) + (1.5 \times 50) = 127$  mRem. Under the current section, this individual would be over the 1.25 rem limit for a calendar quarter. In actuality, the risk due to radiation exposure would be the same as if the individual were exposed to only one-tenth of the NCRP 91 recommended maximum for radiation workers. The commenter suggested that the risk to these workers is over-estimated by their collar badge readings alone. The commenter expressed concern that without some reasonable way to assess the risk from exposures, activities will be seriously curtailed. The commenter stated that denial of critical services to patients should not be based on inflated estimates of personal risk such as unmodified collar badge readings. (See §21.201)

**Response.** The department acknowledged the commenter's remarks. However, this rule is a item of strict compatibility with the NRC and as an Agreement State, Texas must adopt the section. A committee of the Conference of Radiation Control Program Directors, Inc. is working on model state regulations that incorporate these compatibility items. The committee is developing recommended changes which will address medical fluoroscopy and the situation referred to by the commenter. When the recommended changes and accompanying rationale are fully developed, the department will consider amending TRCR Part 21 to address the situation. The second footnote to the definition of weighting factor allows the use of other weighting factors for external exposure when approved by the department. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that in order to demonstrate compliance pursuant to §21.302(b), one of two options must be selected. For licensees and registrants like Texas A & M University who cannot credibly identify "the individual likely to receive the highest dose from the licensed or registered operation," §21.302(b)(2) represents two significant problems. First, any survey and sampling program capable of satisfying these requirements will necessarily be very manpower and equipment intensive. Second, §21.302(b)(2) (ii) is worded such that even if no radioactive materials are released to the environment, a limit of 0.05 rem in a year still applies. In this way, it supersedes the limit of 0.1 rem in a year specified in §21.301.

The commenter recommended adding exemptions to the section based upon radioisotope activity levels at each location. Regardless, regulatory guidance should be issued by the department which assists the licensee or registrant in satisfying these requirements.

**Response.** The department's response is that this section is an item of strict compatibility with the NRC and as an Agreement State, Texas must adopt the section. Numerous regulatory guides which are intended to accompany TRCR Part 21 are being developed and will be available after the section is adopted. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that the changes in §21.502 will eliminate the previous requirement in the TRCR which automatically required personnel monitoring unless an exemption was requested. The current section has been a major burden on licensees and a major point of violation during inspection. By becoming compatible with NRC regulations and only requiring personnel monitoring under certain criteria, the department has provided a much needed service to Texas licensees.

**Response.** The department acknowledged the commenter's remarks and made no change to the section as a result of the comment.

**Comment.** Concerning §21.602, one commenter recommended that "self-shielded irradiators" and "non-self-shielded irradiators" should be defined in TRCR Part 21.3.

**Response.** The department's response is that the intent of the term "self-shielded irradiator" is specified in §21.603. Therefore a "non-self-shielded irradiator" is one that does meet those specifications. The department made no change to the section as a result of the comment.

**Comment.** Concerning §21.802, two commenters expressed strong support of the department's decision to require licensees and registrants to "control or maintain constant surveillance..."

**Response.** The department acknowledged the commenter's remarks.

**Comment.** One commenter noted that the specific criteria used in §21.906 (b)(2), "less than or equal to the Type A quantity," is undefined since a "Type A quantity" is only defined relative to an upper limit.

The commenter noted that §21.906(d)(1)(i) refers to a non-existent section. The reference to §21.904(d)(1)(ii) should be changed to §21.906(d) (1)(ii).

The commenter also stated that §21.906(f) should exempt moisture gauge users from the requirement to survey source position for gauges containing only americium-241/beryllium sealed sources with activities less than 110 millicuries.

**Response.** The department's response is that the specific criteria in §21.906(b)(2) can be applied using only the upper limit as defined in TRCR Part 11. The department made no change to the section as a result of the comment.

The department agreed with the commenter's second remark and changed the section to reflect the correct reference.

Surveying source position is a good radiation safety practice and is a procedure that complies with the concept of maintaining radi-

ation exposures ALARA. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that units such as cpm, dpm, cps, and dps are not allowed under §21.1101(a) for records required by this section. Since §21.1103 contains requirements for all records generated pursuant to §21.501, and since many portable survey instruments now in use are equipped with meter faces which read out in units of cpm, this section could be seen as requiring all meter faces to be retrofitted with scales marked in becquerels. The commenter recommended allowing the results of contamination surveys using portable survey instruments to be recorded in units such as cpm, dpm, cps, and dps.

**Response.** The department's response is to add a footnote to §21.1101 to clarify that disintegrations per minute (dpm) may be indicated on records of surveys performed to determine compliance with Appendix 21-G.

**Comment.** One commenter noted that §21.1301 details the procedure for notification if a business is vacating the premises but questioned what the procedure is for notification if a business is transferring/selling non-exempt sources of radiation to another business and/or location.

**Response.** The department's response is that the requirements for transfer of sources of radiation are specified in TRCR Part 41 for radioactive material and in TRCR Part 42 for radiation machines. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that the requirements of §21.1302(c) differ from those in TRCR Part 46 and suggested that §21.1302(c) be changed to reflect the requirements of TRCR Part 46.

**Response.** The department's response is that the words "Except for the requirements in Part 46 of these rules and..." were added to §21.1302(c) to reflect the differing standards for naturally-occurring radioactive material.

**Comment.** Two commenters noted that §21.1304(a)(2) excludes the exemption of iodine-125 which is currently in §21.307(a). One of the commenters stated that, while the concentrations allowed in the current rule and in the proposed are larger, not all licensees are licensed to dispose of waste in a Type I Sanitary Landfill and that it seems pointless to remove this exemption especially during a time in which radioactive waste disposal is difficult and costly.

**Response.** The department's response is to add iodine-125 to the exemption in §21.1304(a)(2).

Representatives from Davenport X-Ray Company, Inc. in Dallas, Texas A & M University in College Station, TN Technologies, Inc. in Round Rock, The University of Texas Medical Branch at Galveston in Galveston, Baylor University Medical Center in Dallas, and Halliburton Energy Services in Duncan, Oklahoma were in favor of the amendments; however, they presented comments, questions, and suggestions for changes to the proposed

amendment as discussed in the summary of comments.

The amendment is adopted under Chapter 401 of the Health and Safety Code, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

#### §289.113. Standards for Protection Against Radiation.

(a) The Texas Department of Health adopts by reference Part 21, "Standards for Protection Against Radiation" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754 and is available for public inspection during regular working hours.

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 23, 1993.

TRD-9324739

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: January 1, 1994

Proposal publication date: February 26, 1993

For further information, please call: (512) 834-6688

#### ◆ ◆ ◆ • 25 TAC §289.115

The Texas Department of Health (department) adopts §289.115, with changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1242) and with changes to the material the section adopts by reference.

The section adopts by reference Part 31 of the Texas Regulations for Control of Radiation (TRCR) titled, "Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography."

Part 31 is amended to require industrial radiographers to complete all training and testing requirements before receiving an identification card allowing them to work in Texas. The amendment has expanded the requirements for industrial radiation safety officers (RSO) by requiring at least 40 hours of active participation in industrial radiographic operations. The policy on reciprocity has been changed to allow recognition of certification of radiographers by other states or jurisdictions. The United States Nuclear Regulatory Commission (NRC) has added com-

patibility items requiring the use of alarming ratemeters for each radiographer and equipment standards for radiographic equipment manufactured after January 1992 and in use after January 1996. The requirements that are items of NRC compatibility must be included in the state rules.

The numbering of the requirements in Part 31 was changed to provide consistency with other parts of the TRCR. Throughout the section, the term "Nuclear Regulatory Commission" was shortened to "Commission" to reflect the definition in TRCR Part 11 and for consistency throughout the TRCR. The word "safety" was added to the phrase "operating and emergency procedures" to more accurately reflect the intent of the section and to provide consistency throughout the TRCR. The words "or the individual" were added to §31.20(a) and §31.21(a) to allow individuals and not only employers to submit documentation of training. The word "before" was inserted after the word "and" in the second sentence of §31.20(b) to clarify the intent of the section concerning submission of TRC Form 31-1E. Section 31.20(c) was added to allow provision for a lost trainee status card. A footnote was added to §31.21(a) to clarify that there is reciprocal recognition of certification programs similar to Texas. The wording in the footnote in §31.21(a)(2) was changed to clarify the intent of the section. The words "or use of a cabinet x-ray unit" were added to the end of the last sentence in §31.21(a)(2) to clarify that this is unacceptable as on-the-job training as a radiographer. The words "the licensee or registrant has documented to the Agency that such individual..." were added in front of "has demonstrated..." in §31.21(b) to clarify the intent of the section. Section 31.21(e) was added to clarify that once an individual has completed the requirements of §31.21(d), the licensee or registrant is not required to submit the documentation referenced in §31.21(a) and (b). Section 31.24(b) was changed to allow for the use of the trainee status card or radiographer identification card to meet the documentation requirements. The words "as a minimum" were added at the end of §31.23(b) to clarify the intent of the section. In §31.23(c)(11), the references to §31.43(a) and §31.54(a) were moved to §31.23(c)(12) to more accurately reflect the intent of the section. The definitions of "radiation area" and "high radiation area" were changed in §31.32(a) and (b) to be consistent with TRCR Part 11. The word "restricted" was added in front of "area" in §31.32(e) to clarify the intent of the section. In §31.33(b), the retention requirement for records required in §31.33 was changed to two years. Section 31.34(f) was deleted as it pertained to alarming ratemeter calibration performed once a year and was not pertinent to records required at temporary job sites. In §31.44(c), the word "calculated" was replaced with the word "estimated" as it is not possible to calculate dose rates before beginning operations with radiation machines. In §31.46(b)(4) and §31.59(b)(4), wording was changed and the 90-day criteria used to describe a "permanent use or storage site" was eliminated to clarify the intent of the section. In §31.51(a), the words "or an individual specifically authorized by the Agency" was added at the end of the sentence to further clarify

who may provide direct visual surveillance. In §31.53(b), the words "and associated equipment" were added after "exposure devices" to be compatible with the NRC. In §31.52(b)(2), the word "or source changer" was added at the end of the sentence to be compatible with NRC. Section 31.55(c)(2) was changed by deleting "the exposure device...is changed" and inserting "re-establishment of the restricted area is required" for clarification of the intent of the section. The references in §31.55(e) and (f) were changed to be consistent with one another. Section 31.59(b)(6) was reworded for clarification of the intent of the rule. In Appendix 31-C, the requirement for "Alarming Rateometer Functions" was deleted as these are not required to be documented. In Appendix 31-D, an additional item was added to clarify that methods of testing and training need to be included as part of operating, safety, and emergency procedures.

The department will enforce these amendments effective September 1, 1993

The following comments were received concerning the proposed amendment.

**Comment.** One commenter stated that state regulations are designed to protect the members of the public. The commenter indicated that the department's regulations are becoming so restrictive that an RSO has very little flexibility in performing his assigned duties and if the RSOs are so incompetent, should that not be the area of concern? The commenter stated that the RSO should have authority to make decisions concerning safety on the job site but should be held accountable for his actions.

**Response.** The department's response is that the section changes reflect the basic minimum responsibilities of an RSO and do not limit flexibility. The department made no change to the section as a result of the comment.

**Comment.** One commenter recommended changing the word "instrument" to "device" in the definition "radiographic exposure device." (See §31.2)

**Response.** The department's response is that substituting the word "device" for "instrument" does not add to the clarity of the definition. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that frequently a radiography crew will not know at the time they initially log out the source that they may be required to go to another temporary job site. The commenter stated the crew will communicate with the main office after completing the first job and may be sent elsewhere. The commenter indicated that there is no way the crew could realistically indicate the second location on the log and suggested changing the section to require only the first location where the source is used. (See §31.7)

**Response.** The department's response is that the section does not require the radiography crew to fill out the authorization log. Since the main office is assigning jobs, the RSO or his/her designee could indicate additional sites on the log. The department made no

change to the section as a result of the comment.

**Comment.** One commenter indicated that the section requires each licensee to submit a TRC 31-1E on a trainee, regardless of the fact this may have already been submitted by another licensee. The commenter stated this is duplication of work. (See §31.20(a))

**Response.** The department's response is that the section requires submission of TRC Form 31-1E the initial time an individual wants to be classified as a trainee. After review and approval by the department, the trainee is issued a "trainee status card" and until he/she wishes to change status, i.e., to radiographer, there is no need to submit additional documentation. The "trainee status card" is an indication that this individual has completed trainee requirements. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the section should have a provision allowing the trainee to use the completed TRC Form 31-1E in the event his/her card is lost and until the card can be replaced by the department. The commenter indicated the section as written only permits the 31-1E to be used in lieu of the status card for 30 days after the date of completion of the course. The commenter stated that it is not unusual for an individual seeking employment to complete the training course prior to obtaining employment which may not be within the 30 day restraint. The commenter recommended adding the wording, "...30 days after the completed TRC Form 31-1E is submitted to the department. (See §31.20(b))

**Response.** The department agrees and changed the section to include the recommendations.

**Comment.** One commenter indicated that this section references TRC Form 31-1E, but there is no form attached to the section. The commenter indicated that there is a problem in that the section does not address teaching or training situations (students learning radiography). The commenter stated that their course is designed with the first five to six weeks on radiation safety and the last portion as "hands on" industrial radiography. The commenter indicated that currently, after students complete the 40 hours of safety training, a letter is sent to the Agency saying the course is completed. The commenter stated that according to the proposed section, they cannot continue unless they have a card in hand (trainee status card), which would impose a time delay on their schedules. The commenter recommended including a section on students. (See §31.20(b))

**Response.** The department's response is that TRC Form 31-1E is available from the department but will not be a part of the section. This college is in a unique situation in that technically they are not performing industrial radiography as a business. Individuals taking the college's industrial radiography course are classified as students and not "trainees." The section does not preclude students from beginning the "hands on" portion of their course. While it is impossible to address every situation by rule, the department considers these

on an individual basis and currently handles this by individual license or certificate of registration condition. The trainee status card is not necessary for these students to begin the next phase of their training. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that one year of on-the-job training is the same as that for a radiographer trainer and this would penalize someone coming from out-of-state by re-classifying them as a trainee. The commenter recommended changing the footnote to allow documented experience as a fully qualified radiographer as authorized by an Agreement State or the NRC to be substituted. (See §31.21(a) and §31.21(a)(2))

**Response.** The department's response is that the intent of the section is to recognize some portion of the training from states that do not have certification programs similar to Texas. The section includes a reciprocity section that allows recognition of similar training and certification by another state or jurisdiction. Language was added to the footnote and a footnote to §31.21(a) was included to clarify the intent of the section.

**Comment.** One commenter indicated that it is not always possible to obtain "hard copy" documentation of an individual's completion of an Appendix 31-A course. The commenter further indicated that this is particularly true for individuals who received their training several years ago or thru a previous employer who refuses to provide the employee with documentation. The commenter stated that if the department has previously reviewed and approved the required TRC training form submitted by another licensee, that the licensee could make reference to this and not have to resubmit. (See §31.21(a)(1))

**Response.** The department's response is that changes were made in TRC Forms 31-1E and 31-1R that address these comments. The department added clarifying language to allow the use of copies of the trainee status card and the radiographer identification card to meet the documentation requirements of §31.24(b).

**Comment.** One commenter recommended that a licensee be allowed to designate more than one individual as RSO or name an individual as an Assistant RSO on the license. The Assistant RSO should be expected to meet the same qualifications of §31.23(b) with the exception of having the two years of documented experience specified in §31.23(b)(3). The commenter indicates that allowing the licensee to utilize more than one individual in the administration of its safety program helps to ensure that one individual does not become so overwhelmed that the critical areas of the program become deficient. (See §31.23(a))

**Response.** The department's response is that the section does not preclude a licensee or registrant from naming an individual(s) as assistant RSO and delegating administrative responsibilities. An assistant RSO may not communicate with the Agency on matters concerning the license or certificate of registration nor may he/she certify the training of a radiographer. The department does not list



assistant RSOs on the license or certificate of registration. The department made no change to the section as a result of the comment.

**Comment.** One commenter recommended adding a provision allowing the "possession of a college diploma" to supersede the high school diploma requirement. (See §31.23(a))

**Response.** The department agrees and added language to clarify the intent of the section.

**Comment.** One commenter questioned how 40 hours of active participation in industrial radiographic operations is to be documented and suggested that the section should indicate this. The commenter also stated that if this requirement is going to be retroactive for RSOs, particularly when requalifying for their license renewal application, it should be so stated in the section. The commenter indicated that if this is not going to be a retroactive requirement, there should be a footnote indicating an exemption for RSOs. (See §31.23(b)(3))

**Response.** The department's response is that the 40 hours of active participation may be verified in writing by an official of the company or a copy of the utilization log. Based on the department's experience, most RSOs have at least 40 hours of active participation. This requirement is easily attainable should an RSO need to fulfill this prior to renewal. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that proof of completion of a course as outlined in Appendix 31-A is required on TRC Forms 31-1E and 31-1R. The commenter recommended adding provisions in the section to eliminate continual redocumentation of requirements. The commenter also recommended requiring proof of training as outlined in Appendix 31-A be submitted with the application. (See §31.24(b))

**Response.** The department's response is that the section does not preclude individuals from submitting training documentation with the application for the examination. The changes in the section will ensure that once a radiographer identification card is issued, this is evidence that a radiographer has completed all the necessary requirements. The section has been changed in §31.24(b) to allow the use of trainee status cards and radiographer identification cards as documentation. TRC Forms 31-1E and 31-1R also require proof of company indoctrination that will change from company to company, so the submission of these are necessary. The department made no change to the section as a result of the comment.

**Comment.** One commenter recommended changing the section to require that an individual submit documentation of on-the-job training rather than being dependent on the licensee or registrant. (See §31.21(a)(2))

**Response.** The department agrees and changed the section to include the recommendation.

**Comment.** One commenter indicated that recharging of dosimeters is specified in §31.30(b)(3) and recommended deleting

§31.30(b)(4) from the section. (See §31.30(b)(3) and (4))

**Response.** The department's response is that §31.30(b)(4) clarifies §31.30(b)(3). The department made no change to the section as a result of the comment.

**Comment.** One commenter expressed concern with meeting the requirement of the 14-day calendar period and indicates that often this is not enough time if the badge holder is out of the country. (See §31.30(b)(8))

**Response.** The department's response is that the section contains a provision that indicates in circumstances that make it impossible to return each film badge or TLD, the licensee or registrant can document the circumstances for review by the department. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the section requires, regardless of cause, the monitoring badge to be processed immediately if the dosimeter goes "off-scale." The commenter recommended that there should be allowance in the section for discharging beyond the scale due to "leakage" or being dropped. The commenter recommended permitting the individual to continue to work and to let the RSO make the determination and document whether the "off-scale" reading was caused by radiation or other means. The commenter further recommended a two-day limit for this determination. The commenter indicated that otherwise, a radiographer would not be paid for his/her time if they were required to stop work and there would be a financial incentive not to report this. (See §31.30(b)(9))

**Response.** The department's response is that it is the RSO or his designee's responsibility to monitor dosimeters for leakage and remove them from service if this is occurring. The RSO cannot determine if a dosimeter was dropped or if there was an overexposure until the TLD or film badge is processed. A film badge or TLD could be sent by Federal Express or overnight mail and the results faxed to the company the next day. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the section implies that in accordance with TRCR §21.902(c), "Very High Radiation Areas" must be posted. If that is the case, the posting criteria specific to "Very High Radiation Areas" should be addressed within this section. The commenter stated that the definitions for "Radiation Area" and "High Radiation Area" should be consistent with TRCR 11.2. The commenter further stated that if §31.32(e) means that both the "High Radiation Area" and "Radiation Area" signs can be posted at the "Restricted Area" barricade rope, then this method of posting should be plainly stated. (See §31.32(a),(b), and (e))

**Response.** The department agrees and has changed the section to include the recommendations.

**Comment.** Several commenters stated that the implementation of requiring copies of records at additional authorized use/storage sites is duplication of effort and an attempt to

cause the issuance of violations. One commenter recommended that the department should allow the licensee to designate a single location where the department can inspect all records for all sites. (See §31.33)

**Response.** The department's response is that the current section does not address documents required at additional use/storage sites. It is not uncommon for a company to have a main site and several other sites throughout the state. These are often in different regions and would involve different inspectors. It is the intent of the section for records of all the sites be maintained at the main site and records and documents "specific to that site" i.e., a specific authorized use/storage site, be maintained at that site. The department made no change to the section as a result of the comments.

**Comment.** One commenter made similar statements for §31.33(a)(4)-(8), (10) - (12),(17), and §31.33(c). The commenter stated that these requirements are redundant and that all records should be maintained at the main site. The commenter also indicated that companies move their work forces around from site to site and it would be difficult to maintain records. The commenter recommended that these portions of the section be reconsidered. (See §31.33)

**Response.** The department's response is that the intent of the section is to address additional authorized use/storage sites and not temporary job sites. The intent is to require all records be maintained at the main site and records "specific to that site" at each additional site. The section does not require that all records be maintained at the main site and all additional sites. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the section should be specific to the "function test" referenced in proposed §31.30(f)(1). As written, the individual will be required to have the calibration certificate of the alarming rate-meter he/she is using. (See §31.34(f))

**Response.** The department agrees and deleted this requirement from the section.

**Comment.** One commenter indicated that this section is incomplete as written. (See §31.35(e))

**Response.** The department agrees and has made the necessary correction.

**Comment.** One commenter stated that if radiographic operations are performed in accordance with the requirements of Part 21 and 31, and the requirements of §31.44(c) are met, then the registrant should not be prohibited from performing radiography at storage sites. The commenter stated that storage sites should be treated the same as a temporary job site. (See §31.43(c))

**Response.** The department's response is that the intent of the section is to prohibit radiographic operations at a storage site unless specifically authorized by the certificate of registration. The department made no change to the section as a result of the comment.

**Comment.** Several commenters questioned how one figures dose rates for an x-ray machine? (See §31.44(c))



**Response.** The department agrees and changed the wording to clarify the intent of the section.

**Comment.** Several commenters stated that the section references sources stored more than 90 days but fails to indicate if the 90 days are "consecutive" or "within a calendar year." The commenters indicated that if §31.46(b)(4) remains as proposed, almost all job sites where radiography is performed a couple of days a week will qualify as a "use site." According to this criteria, a registrant performing radiography on a "call out" basis would have to meet the records requirements of §31.33, i.e., keeping records at a place where an office does not exist. The commenters recommended clarifying this section or rescinding it. (See §31.46(b)(4))

**Response.** The department agrees and has made wording changes to clarify the intent of the section.

**Comment.** One commenter recommended that the section contain the criteria for radiation levels specified in ANSI N432-1980. The commenter further recommended that an option would be to include the permissible levels by adding an Appendix 31-E, which would be a reprint of levels specified in ANSI N432-1980. (See §31.50(b))

**Response.** The department's response is that the TRCR has multiple references to various ANSI standards. Reprinting these would add multiple pages to the section. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that there are occasions when you must use a specifically designed tip for the source tube and occasionally on jet engines, a long J-tube. Since these are frequently constructed to meet the individual situation, the commenter is concerned that these may not meet ANSI standards. (See §31.53(b)(8))

**Response.** The department's response is that the section addresses guide tube exposure head connections, not the exposure head or tip. The department made no change to the section as a result of the comment.

**Comment.** One commenter questioned if the quarterly audit requirement is an NRC compatibility item, as it causes difficulties for companies. (See §31.54(a))

**Response.** The department's response is that the quarterly audit is an item of compatibility with the NRC. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that if radiographic operations are performed in accordance with the requirements of Part 21 and 31, and the requirements of proposed §31.55(c) are met, then the licensee should not be prohibited from performing radiography at storage sites. The commenter stated that storage sites should be treated the same as temporary job sites. (See §31.54(e))

**Response.** The department's response is that the intent of the section is to prohibit radiographic operations at a storage site unless specifically authorized by the license. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that while this section requires that the entire circumference of the radiographic exposure device be surveyed, it does not specify the permissible radiation levels nor does it make any reference to any section criteria. The commenter recommends that to avoid any assumptions made by the licensee, the section should be clarified to specifically indicate the permissible radiation levels. (See §31.55(b))

**Response.** The department's response is that the intent of the section is to ensure that the source is fully returned to the shielded position. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that a majority of radiography performed requires multiple exposures per weld and the exposed portion of the source is changed several times. To be in complete compliance with this section, not only will the radiographer have to recalculate dose rates for posted areas and perform the required survey referenced in §31.55(c)(1), he/she will also, according to §31.55(h), have to record the results of such surveys which could result in a documentation every time the source is exposed. A typical day for a radiographer is 30 welds with three exposures per weld, which would result in 60 surveys, etc. Knowing that multiple exposures will be required within the same area, the radiographer could post the radiation area based on maximum dose rate calculations and post an area large enough to be in compliance regardless which weld is being radiographed, etc. As written, this section would still require the survey requirements be re-verified and recorded for each exposure. The commenter recommended changing the wording to: "Each time the source is relocated to a new radiography area requiring the re-establishment of an additional radiation area, the requirements of §31.55(c)(1) shall be met." (See §31.55(c)(2))

**Response.** The department agrees and changed the section accordingly.

**Comment.** One commenter stated that while this section requires that the entire circumference of the radiographic exposure device be surveyed, it does not specify the permissible radiation levels nor does it make a reference to any section criteria. The commenter recommended that to avoid any assumptions made by the licensee, the section should be worded to specify the permissible radiation levels. (See §31.55(d))

**Response.** The department's response is that the intent of the section is to ensure that the source is fully returned to the shielded position. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that the criteria for storing radioactive materials should be the same regardless of the type of storage container or its location. The section addresses the same issue, but quotes different qualifying requirements, §21.301(a) and (b), regarding permissible radiation levels. The commenter recommended that these requirements should be clarified and consistent with one another. (See §31.55(e) and (f))

**Response.** The department's response is that the intent of the section is to address a vehicle used for storage, i.e., parked overnight at a motel, and storage containers. The department agrees and changed the section to include the recommendations.

**Comment.** One commenter indicated that radiography requirements on offshore platforms are often the same as they are on dry land which means that occasionally it is physically impossible to use a collimator. The commenter recommended that the department reconsider §31.57(b)(2) and make the section compatible with §31.54(c). (See §31.57(b))

**Response.** The department's response is that based on past experience it is rare that a collimator could not be used. Should this occasion arise, a request for license authorization may be submitted to the department. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that anyone attempting a retrieval of a disconnected source should have appropriate training. Several commenters questioned how an individual or RSO becomes qualified to do source retrieval and whether a licensee could contact an outside company to retrieve the source and the procedure needed. (See §31.58)

**Response.** The department's response is that an individual, RSO, or outside company must submit their operating, safety, and emergency procedures for retrieving sources to the department for review. Upon approval, the department will authorize source retrieval on a license. The department made no change to the section as a result of the comment.

**Comment.** One commenter suggested that any required license condition that authorizes source retrieval should be specific to the procedures submitted for approval and not specific to a person authorized to perform the retrieval. If appropriate procedures are in place, then an individual meeting the criteria specified in §31.21 and §31.24(a) should be allowed to perform the retrieval with the RSO's approval. (See §31.58)

**Response.** The department's response is that there is review of specific retrieval procedures submitted by the licensee. The section does not preclude the RSO from submitting names of individuals he/she feels are qualified to perform these procedures. The department made no change to the section as a result of the comment.

**Comment.** Several commenters stated that the section references sources stored more than 90 days but fails to indicate if the 90 days are "consecutive" or "within a calendar year." The commenters indicated that if §31.59(b)(4) remains as proposed, almost all job sites where radiography is performed a couple of days a week will qualify as a "use site." According to this criteria, a licensee performing radiography on a "call out" basis would have to meet the records requirements of §31.33, i.e., keeping records at a place where an office does not exist. The commenters recommended clarifying this section or rescinding it. (See §31.59(b)(4))

Response. The department agrees and has made wording changes to clarify the intent of the section.

Representatives from American Airlines in Tulsa, Oklahoma, Technical Welding in Pasadena, MGS Inspection in Pasadena, San Jacinto College in Pasadena, CBI Na-Con in Houston, and Frank Malek and Associates in Montgomery submitted comments regarding the proposal. The commenters were in favor of the amendments, however, they offered comments, questions, and suggestions for change. Several representatives expressed opposition to several sections of the proposed section.

The amendment is adopted under Chapter 401 of the Health and Safety Code, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

*§289.115. Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography.*

(a) The Texas Department of Health adopts by reference Part 31, "Radiation Safety Requirements and Licensing and Registration Procedures for Industrial Radiography" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754 and is available for public inspection during regular working hours.

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 23, 1993.

TRD-9324738

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: September 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 834-6698

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• 25 TAC §289.116, §289.122

The Texas Department of Health (department) adopts §289.116 and §289.122, with changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1243) and with changes to the material the section adopts by reference.

Section 289.116 adopts by reference Part 32 of the Texas Regulations for Control of Radi-

ation (TRCR) titled, "Use of Radiation Machines in the Healing Arts and Veterinary Medicine."

Section 289.122 adopts by reference Part 42 of the Texas Regulations for Control of Radiation (TRCR) titled, "Registration of Radiation Machine Use and Services."

Part 32 was amended to add mammography regulations with provisions for equipment standards, provisions for quality assurance programs, training requirements for equipment operators and physicians, provisions for utilizing licensed medical physicists for quality assurance testing, and continuing education for equipment operators.

A footnote was added to 32.17 to indicate that the requirements of 32.17 are effective March 1, 1994. The wording in the third sentence of 32.17(a)(3) was changed for clarification from "When deviations occur on items 32.17(a)(3)(i) and (iv), no" to "When deviations from the requirements specified in 32.17(a)(3)(i) and (iv) occur, no." In the fourth sentence of 32.17(a)(3), the word "specified" was added after "all other items" for clarification. In the last sentence of 32.17(a)(3), the words "a minimum of" were added for consistency throughout the TRCR. In 32.17(a)(3)(i)(a), the deviation in the Optical Density (OD) was changed to +/- 0.15 to follow the American College of Radiology (ACR) guidelines. In 32.17(a)(3)(iv) the word "checked" was changed to "evaluated" to more accurately reflect the intent of the section. In 32.17(b)(2)(i), wording was added to allow technologists performing mammography to waive the formal training requirement. For clarification, 32.17(b)(3) was modified to read, "The person must also be registered with the Agency unless exempted by 42.2(f), 32.44(a)(4), which is a U.S. Food and Drug Administration (FDA) requirement, is not always attainable and the ACR guidelines do not contain this requirement. Therefore, 32.44(a)(4) was deleted. The remainder of 32.44(a) was renumbered to correspond with this change, and 32.17(a)(3)(xvi) and 32.17(c)(3)(b) that referenced the section were deleted. In 32.44(a)(4)(ii), the wording was changed to "The collimated light field edges shall not exceed the edges of the x-ray beam by more than +/- two percent of the SID" to clarify the intent of the section. 32.44(a)(6) was changed to reflect concurrence with the ACR guidelines. In 32.44(a)(11)(i), the second sentence was deleted and the following added: "For systems with automatic compression, the maximum force applied without manual assistance shall not exceed 40 pounds. The change was made to ensure that automatic compression did not exceed the 40-pound limit. In 32.44(b)(2), the dose limit of 100 millirads for film/screen systems without grids was added for concurrence with ACR guidelines. The footnote that accompanies 32.44(b) was deleted because the appendix ii references does not relate to the methodology for determination of mean glandular dose. In 32.100, the definition of "mammographic screening" was amended to replace "carcinoma" with "diseases" and "self-referral of asymptomatic persons" to "self-referral by asymptomatic persons."

The department will enforce these amendments effective September 1, 1993.

The following comments were received concerning the proposed amendment to TRCR Part 32.

Comment. One commenter stated that this requirement should apply to all radiographic film processors and not just those for mammography (see §32.10).

Response. The department agreed that these requirements are needed for all film processors. However, at this time, the department only formally amended the section to include requirements for mammography. A revision of all of Part 32 is planned for the future. The department made no change to the section as a result of the comment.

Comment. One commenter indicated that the +/- 0.10 OD standard, as required by the ACR, was intended to be an attention limit, not an action limit. Only if test results indicate deviations of more than +/- 0.15 OD after repeating the test should operations be terminated pending correction of the condition. The commenter recommended changing this section to read "deviations of +/- 0.15 or more in OD." Otherwise, the term "corrective action" should be more clearly defined. The commenter also asked whether the ACR term "close monitoring" is considered an acceptable corrective action and what constitutes "close monitoring" (see 32.17(a)(3)(i)(a))?

Response. The department's response is to change the section to correspond with ACR OD recommendations.

Comment. One commenter indicated that the ACR recommends +/- 1.25 OD (see 32.17(a)(3)(i)(a)).

Response. The department's response is that the current ACR guidelines recommend +/- 0.15 and the department changed the section to reflect ACR recommendations.

Comment. One commenter questioned why auto loaders were not included in these sections (see 32.17(a)(3)(i)(b), (ii), and (iii)).

Response. The department acknowledged that these sections can apply to auto loaders. There are a number of items that could be included in darkroom and screen cleaning requirements and because auto loaders are not as common with mammographic systems, detailed instructions will be addressed in a regulatory guide. The department made no change to the section as a result of the comment.

Comment. One commenter stated that a phantom image is not necessary to verify proper functioning of a mobile mammographic system on a daily basis. Providing that a post-reading mAs meter is available, proper equipment function can be confirmed by documenting the stability of the mAs obtained when a phantom is exposed with a loaded cassette in the bucky. The commenter recommended changing the section to read as follows: (iv)(a) Image quality shall be checked (using an appropriate mammographic imaging phantom) to comply with 32.44(a)(14) at intervals not to exceed one month; (iv)(b) For mobile mammography operations, in addition to the image quality

requirements in part 32.17(a)(3)(iv)(a), image quality shall be checked as in 32.17(a)(3)(iv)(a) prior to performing mammography at each new location. Alternately, proper performance of x-ray systems equipped with post-reading mAs meters may be verified prior to performing mammography at each new location by exposing a phantom under phototimed conditions with a uniquely identified clinical image receptor in place and verifying the constancy of the mAs required for the exposure. Deviations in the resulting mAs of more than +/- 20 percent from the established norm shall be cause for cancellation of mammographic operations pending acquisition of a suitable phantom image as in 32.17(a)(3)(iv)(a) (see 32.17(a)(3)(iv)(a)).

Response. The department's response is that the evaluations required by the section are reasonable and provide a consistency in assuring image quality. The department made no change to the section as a result of the comment.

Comment. One commenter recommended inserting the words "slices of partly" in front of "spherical masses" in the footnote that accompanies 32.17(a)(iv).

Response. The department's response is that the additional wording is not necessary to clarify the section and the department made no change to the section as a result of the comment.

Comment. One commenter noted that there are other options for masking out light than placing cut-outs on viewboxes. Also, testing these devices every six months will do little to improve quality of care and only adds to the technologist's burden only serves to increase cost of delivering medical services. The commenter recommended eliminating the phrase "on the view boxes" from this section and the phrase "and mask integrity" from the second sentence (see 32.17(a)(4)(ii)).

Response. The department's response is that the use of masks to block extraneous light and the subsequent semi-annual check of these items is an important part of a mammographic quality control program. The department made no change to the section as a result of the comment.

Comment. One commenter is a chiropractic radiologist, and while his training did not specifically involve mammography, he indicated there are some who do have extensive training in this area. The commenter requested that any restrictions placed on someone reading mammograms be based on qualifications to read these studies rather than on which doctorate degree the individual physician has. The commenter recommended that anyone who interprets mammograms, whether they be medical doctors, chiropractors or osteopaths, demonstrate training and certification of some type to be determined by the state (see 32.17(b)(1)).

Response. The department's response is that after review of the legislation that recently passed and this section revision, Part 32 may need to be amended in the future and inclusion of chiropractic radiologists will be considered at that time. The department made no change to the section as a result of the comment.

Comment. One commenter stated that the department is being biased against the ARCRT. The commenter recommended that the department use both registries names, ARRT and ARCRT, or in the paragraph, state that operators of mammographic x-ray machines who hold both a current and valid Texas certification under the Medical Radiologic Technologist Act, Article 4512m, V. T.C.S. and an Advanced Certification in Mammography are exempt from the section (see 32.17(b)(2)(iii)).

Response. The department's response is that the ARCRT technologists are included under the Medical Radiologic Technologist Certification Act, Article 4512m, and could perform mammography if they have 20 hours of formal training, which is the same for an ARRT technologist. The formal training is waived only if a technologist has five years of experience in mammography or has received an ARRT Certificate of Advanced Qualification in Mammography. The executive director of the ARCRT confirmed that to date there is no advanced certification in mammography available under the ARCRT and there are currently no plans to develop one. The department made no change to the section as a result of the comment.

Comment. One commenter stated that it is not necessary for the physicist to personally perform all the tests outlined in this section and some allowance for trained assistants should be made. The commenter suggested amending the section by adding, "Medical Physicists's responsibilities include: assuring the proper performance of, and evaluating of the results of, the following tests" (see 32.17(b)(3)).

Response. The department's response is that the Medical Physics Practice Act, Article 4512n, does not allow assistants to perform tests for medical physicists. The department made no change to the section as a result of the comment.

Comment. One commenter expressed concern that if only medical physicists are allowed to perform the evaluation of a mammography system, facilities will have difficulty because of the small number of qualified physicists. The commenter stated that many existing x-ray service vendors have the capabilities and qualifications to perform these services and recommended that the department certify service companies to perform mammography service (see 32.17(b)(3)).

Response. The department's response is that a federal bill signed into law in October, 1992, The Mammography Quality Standards Act, requires a survey and review by a "medical physicist licensed or approved by a State." There is also a state bill recently signed into law that will require these tests be performed by a licensed medical physicist. Additionally, any facility that has ACR accreditation must use a medical physicist for these tests. Both of these bills closely follow ACR guidelines. The section does not preclude service companies from performing service (maintenance) on mammographic machines. The section establishes requirements for quality control tests that must be done by a physicist. The department made no change to the section as a result of the comment.

Comment. One commenter stated that these tests can and are being competently performed by existing service vendors and feels that the section will cause extensive waiting periods for routine service on mammography systems (see 32.17(c)(3)).

Response. The department's response is that a federal bill signed into law in October, 1992, The Mammography Quality Standards Act, requires a survey and reviewed by a "medical physicist licensed or approved by a State." There is also a state bill recently signed into law that will require these tests be performed by a licensed medical physicist. Additionally, any facility that has ACR accreditation must use a medical physicist for these tests. Both of these bills closely follow ACR guidelines. The section does not preclude service companies from performing service (maintenance) on mammographic machines. The section establishes requirements for quality control tests that must be done by a physicist. The department made no change to the section as a result of the comment.

Comment. Concerning 32.17(c)(3)(f), one commenter questioned why this is included in the medical physicists' responsibilities when it is already included in the operators' responsibilities.

Response. The department's response is that the quality control tests follow the guidelines of the ACR. The screen-film contact test performed by the technologist is to assure optimum contact is maintained between the screen(s) and film in each cassette. The test by the medical physicist is to assess the uniformity of the radiographic speed of the image receptors routinely used for mammographic imaging. The department made no change to the section as a result of the comment.

Comment. One commenter recommended that the department define "appropriate" image receptor (see 32.44(a)(2)).

Response. The department's response is that the word "appropriate" was removed from the phrase and it now reads: "The image receptor systems and their individual components shall be specifically designed for mammography."

Comment. One commenter stated that 25.8 nC/kg (0.1 milliroentgen) is too low for transmission of the beam through the image receptor (see 32.44(a)(4)).

Response. The department's response is that this is a requirement of the FDA. However, there have been tests done in attempts to meet this and even under optimal clinical conditions, the 0.1 milliroentgen requirement was generally not attainable. Therefore, the department deleted this section from the section.

Comment. One commenter stated that it made no sense to require collimator confinement to the image receptor at the anterior edge (the edge opposite the chest wall) of the x-ray beam because there is no patient or operator out there (see 32.44(a)(4)(i)).

Response. The department's response is that collimator confinement to the image receptor size is important in order to reduce scatter

radiation. The department made no change to the section as a result of the comment.

**Comment.** One commenter questioned the importance of limiting the minimum size of the light field to the beam size and stated that in performing mammography, one should avoid cutting off portions of the breast. Thus, if the light field is slightly smaller than the x-ray beam, cut-off is more easily avoided. The commenter also stated that the light field should not be larger than the x-ray field because the light field may indicate that adequate coverage has been achieved when it hasn't. A retake would then be required. The commenter recommended changing the section to read: "The collimated light field edges shall be equal to or smaller than the x-ray beam but shall not differ from the edges of the x-ray beam by more than 2.0% of the SID" (see 32.44(a)(4)(ii)).

**Response.** The department's response is to make wording changes to clarify the intent of the section.

**Comment.** One commenter noted that the footnote to 32.44 indicates there may be a period of years from the date of approval of the section. The commenter cannot support any delay in the effective date beyond six months.

**Response.** The department's response is that the intent is to give registrants a year to come into compliance with the equipment portion of the section. The department inserted the actual effective date, September 1, 1994.

**Comment.** One commenter noted that the section conflicts with the Health Care Finance Administration (HCFA) and the ACR regarding the permissible variability of the kV. ACR allows a 5.0% variance of the measured kV and this section would allow an 8.0% difference (2 kV at 25 kV settings). The commenter recommended changing the section to be compatible with the ACR (see 32.44(a)(6)).

**Response.** The department's response is to change the section accordingly.

**Comment.** One commenter indicated that some old units have the backup timer restricted to less than that required for 6 centimeters acrylic (see 32.44(a)(7)).

**Response.** The department's response is that the section allows for acrylic thicknesses of 2 centimeters to 6 centimeters. The department made no change to the section as the result of the comment.

**Comment.** One commenter stated that a more realistic requirement for radiation output would be 258 C/kg/sec (1 R/s) (see 32.44(a)(8)).

**Response.** The department's response is that the requirement is taken from the American Association of Physicists in Medicine (AAPM) report #29 on mammography systems. The commenter gave no justification for the recommended change. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that the Senograph 600t operates at 200 mA for less than 3 seconds (see 32.44(a)(8)).

**Response.** The department's response is that while it would be ideal to be able to cover all variances in machines in the section, some situations may have to be evaluated on a case-by-case basis. The department made no change to the section as a result of the comment.

**Comment.** Concerning 32.44(a)(9)(ii), one commenter indicated that this is the only reference to xeroradiography in the whole section and there is no mention of dusting (the xerographic plates) and processor maintenance.

**Response.** The department's response is that the proposed section largely follow the recommendations of the ACR. The section cannot address all variances which exist, and some situations may have to be evaluated on a case-by-case basis. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that many women have breasts that cannot be imaged on the standard 18 x 24 cm image receptors because of size, thus requiring multiple exposures of the same view which results in a large amount of overlap between the several views and increased patient exposure. The commenter recommended adding the following: "(iv) utilizing large format image receptors (minimum 24 x 30 cm) which meet the requirements of 32.44(a)(10)(i)" (see 32.44(a)(10)).

**Response.** The department's response is that the section does not preclude registrants from utilizing large format image receptors (24 x 30 centimeters) if their machine is equipped with this option. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that grids are not used for the magnification mode which may be associated with a larger cassette size (see 32.44(a)(10)(b)).

**Response.** The department's response is that the section states that mammographic x-ray systems have the capability of using anti-scatter grids and that they be available for all image receptor sizes of the system. The section does not state that grids must be used for all filming. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that all mammography units currently available are easily upgradable to post-reading mAs meters, Automatic Exposure Control (AEC), and large format buckies. Future designs should include all of these capabilities. There should be no exemptions from these requirements (see 32.44(a)(7), and (a)(10)(ii) and (iii)).

**Response.** The department's response is that having these features on all mammographic machines would be an ideal situation. However, the department cannot adequately justify requiring all machines to be upgraded to include these options. The department made no change to the section as a result of the comment. **Comment.** One commenter stated that many systems do not have automatic compression. Under these conditions, it would not be unusual or unreasonable to find systems capable of more than 40 pounds of force. Some systems equipped with auto-

matic compression have the capability of being operated in a combined mode where the system automatically compresses to one (minimum) level and the operator then increases the compression as required. All of these systems, when properly adjusted, are capable of adequate breast imaging. The commenter recommended changing the last sentence to read, "For systems with automatic compression, the maximum force applied without manual assistance shall not exceed 40 pounds (see 32.44(a)(11)(i))."

**Response.** The department's response is to change the section accordingly.

**Comment.** One commenter questioned whether manual compression is acceptable and is the operator part of the x-ray system (see 32.44(a)(11)(i), page 10).

**Response.** The department's response is that the section does not prohibit manual compression and the operator is not considered part of the x-ray system. The department made no change to the section as a result of the comment.

**Comment.** One commenter requested a definition of "40 mesh test" (see 32.44(a)(12)).

**Response.** The department's response is that the specifications of a "40 mesh test" will be addressed in a regulatory guide that will be developed to accompany the section. The department made no change to the section as a result of the comment.

**Comment.** One commenter requested that the department change its regulatory guide for mammographic screening, as it currently indicates 400 mR for two views (see 32.44(b)).

**Response.** The department's response is that revised regulatory guides are currently being developed to correspond with the changes in the section.

**Comment.** One commenter recommended that the footnote that accompanies 32.44(b) be eliminated. Appendix 32-B does not relate to the methodology for determination of mean glandular dose. The instructions in Appendix 32-B may produce an entrance skin exposure if properly executed but there is inadequate information and instruction in the appendix for determination of mean glandular dose.

**Response.** The department's response is to delete the footnote.

**Comment.** One commenter recommended changing the definition of "Density Difference" by adding "but not less than" after "closest to." The commenter also recommended amending the definition of "Mammographic Screening" by changing "carcinoma" to "diseases" and "self-referral of" to "self-referral by" (see 32.100).

**Response.** The department's response is to make clarifying changes to the definitions. Part 42 was amended to expand definitions of the types of radiation services that must be registered, provide for additional registration requirements, and establish minimum requirements for radiation safety officers and equipment service personnel. The numbering of the requirements in TRCR Part 42 was changed to provide consistency with other

parts of the TRCR. 42.60 was deleted and the definition of "provider of equipment" was moved to 42.1(c)(10) to make the section more concise. In 42.2(d), the word "activated" was changed to "energized" and the sentence restructured for clarification. In 42.21(d) and (f), the word "safety" was inserted in the term "operating and emergency procedures" for clarification and consistency with other sections of the TRCR. The last sentence in 42.22(f) was deleted and language added to clarify the intent of the section. Language was added to 42.27 and 42.28 to require the signature of the applicant and RSO on registration applications and to require that persons be registered with the department before providing services. 42.32(a)(1) was modified to provide for the acceptance of the assembler's notification of installation in lieu of the registrant filing a report of installation with the department to reflect current practice. The requirement for reciprocity for radiation services was deleted from 42.40, as other states may not have requirements similar to Texas for these services. Persons wishing to offer these services in the state on a temporary basis will be required to register with the department. In Appendix 42-A, II.A.(n)(i), evidence of licensure in medical nuclear physics was added to allow these individuals to serve as RSOs. An exemption from the requirements of Appendix 42-A was added for persons identified on a certificate of registration prior to September 1, 1993. The word "safety" was included in the term "operating and emergency procedures" in Appendix 42-B, G. for clarification and consistency with other parts of the TRCR. In Appendix 42-C, an exemption from the requirements of Appendix 42-C was added for persons holding a certificate of registration with individuals hired to perform services before September 1, 1993. Appendix 42-C; II.A. was modified to require one year of formal training and the footnote was modified to delete "Agency-accepted training course" and use the language "courses in radiation machine assembly, maintenance, and repair techniques" for clarification of the intent of the section. The following comments were received concerning the proposed amendment to TRCR Part 42.

**Comment.** One commenter concurs with the proposed revisions.

**Response.** The department acknowledged their concurrence.

**Comment.** One commenter recommended dividing this section into four groups: (1) Services not requiring approval from other state agencies; (2) Services which require accreditation by the National Voluntary Laboratory Accreditation Program of the National Institute of Standards and Technology; (3) Services which may require approval of the Texas Education Agency; (4) Services which require licensure by the Texas Board of Licensure for Professional Medical Physicists (see 42.1, page 42-1).

**Response.** The department's response is that the section adequately addresses the requirements for services. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that in the listing of radiation services, there is no exemption in the registration from mammography service (see 42.1).

**Response.** The department's response is there is no exclusion in the section that prevents x-ray service companies from performing maintenance on mammography machines. If the commenter is referring to mammography requirements in Part 32.17 that state that "quality assurance tests" must be performed by a licensed medical physicist, these quality assurance tests do not include maintenance and service by service companies registered with the department. The department made no change to the section as a result of the comment.

**Comment.** One commenter recommended that financial institutions coordinate the use of x-ray machines with an x-ray service company or a medical physicist (see 42.2(e)).

**Response.** The department's response is that the intent of the section is to keep financial institutions from having to register in order to sell, lease, or transfer machines. Financial institutions are not privy to department rules and the department would have difficulty determining compliance. The person acquiring the radiation machines from the financial institution would be required to register them. The department made no change to the section as a result of the comment.

**Comment.** One commenter expressed concern with the section requiring that the application for licensed hospitals be signed by the administrator, president, or chief executive officer. Their registration contains over 100 machines that are in various schools or branches, i.e., medical, veterinary, research, etc. One executive of one branch will not take the responsibility to sign for all the other branches. Likewise, to get signatures of all involved each time an amendment is submitted would consume large amounts of time (see 42.21(e) and (f)).

**Response.** The department's response is that while multiple signatures may be required on the initial application, subsequent amendments can be signed by the radiation safety officer of large institutions such as that of the commenter. The department made no change to the section as a result of the comment.

**Comment.** One commenter recommended changing this section to only include registration of persons providing radiation machine assembly, maintenance, repair, performance of preventive maintenance tests, and health physics surveys for industrial or veterinary users and exclude these services for human use (see 42.22).

**Response.** The department's response is that this recommendation would require dual registrations for persons providing these services for radiation machines for non-human and human use. Additionally, it would require separate and additional fees for these persons. The department made no change to the section as a result of the comment.

**Comment.** One commenter asked if the criteria (in Appendix 42-C) applies to the renewal of existing registrations, or only to the initial registration (see 42.22(c))?

**Response.** The department's response is that the criteria applies to individuals hired to perform services after the effective date of the section (September 1, 1993). The department made no change to the section as a result of the comment.

**Comment.** Concerning 42.24, which is reserved, one commenter recommended that this section be titled, "Application for Registration of Services Which Require Licensure by the Texas Board of Licensure of Professional Medical Physicists." The commenter recommended that this section include requirements for application that are the same as those in 42.26, but to add that the department will require written documentation of licensure by the Texas Board of Licensure for Professional Medical Physicists and that this documentation must be retained for inspection by the department (see 42.24 (Reserved)).

**Response.** The department's response is that registration of persons performing calibration and surveys is addressed in 42.26. It is the responsibility of the Texas Board of Licensure for Professional Medical Physicists to ensure that medical physicists are licensed. The department made no change as a result of the comment.

**Comment.** Concerning 42.27, one commenter recommended adding sections, as in 42.22(a) and (b), which require the applicant to receive a certificate of registration from the department before providing services and require the signature of the registrant, or a person duly authorized to act on his behalf and the signature of the RSO on the application.

**Response.** The department's response is to change the section to include the recommendations.

**Comment.** One commenter recommended dividing calibration of survey and measurement instruments into two categories, those for industrial and veterinary use and those for human use. The commenter further recommended that the applicant be required to submit to the department written documentation of a license to practice medical physics issued by the Texas Board of Licensure for Professional Medical Physicists for calibration of survey and measurement instruments for human use (see 42.27).

**Response.** The department's response is there is no difference in the process of submitting registration applications for calibration of survey and measurement instruments, whether for industrial and veterinary use or for human use. It is the responsibility of the Texas Board of Licensure for Professional Medical Physicists to ensure that medical physicists are licensed. The department made no change to the section as a result of the comment.

**Comment.** Concerning 42.28, one commenter recommended adding sections, as in 42.22(a), requiring the applicant to receive a certificate of registration from the department prior to offering services. The commenter also suggested adding a section that requires a signature by the applicant or person duly authorized to act for and on the applicant's behalf to this section.



**Response.** The department's response is to change the section to include the recommendations.

**Comment.** One commenter recommended that the applicants be required to submit documentation to the department of any licenses issued by other agencies which relate to education and/or licenses, (e.g. licenses from the Texas Board of Licensure for Professional Medical Physicists, the Texas Education Agency or the Nuclear Regulatory Commission (NRC)). The commenter also recommended that the applicant be required to submit evidence of licensure or exemption from regulation by the Texas Education Agency (see 42. 28).

**Response.** The department's response is that it is the responsibility of the individual boards or agencies to ensure that the appropriate persons are licensed or certified. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that there is no provision to recognize the training and experience of persons who have served as Radiation Safety Officer (RSO) in years preceding this regulation. Example: A person who has several years of health physics experience and has served on a Registration Certificate for several years will not be allowed to continue to serve in an RSO capacity if the person cannot meet the new Part 42 requirements. The commenter recommended that a "grandfather provision" be added to recognize those currently serving as RSOs. The commenter also indicated that a person licensed as a Medical Physicist should possess the training, experience, and knowledge necessary to serve as an RSO, even if the licensure is in medical nuclear physics. The commenter feels that these individuals should not be excluded from serving as an RSO (see Appendix 42-A).

**Response.** The department's response is to change the section to include the recommendations.

**Comment.** One commenter questioned what constitutes "experience or education providing familiarity with the type(s) of equipment to be serviced to include radiation safety" (see Appendix 42-C, I.A.).

**Response.** The department's response is that the intent of the section is to exclude persons who have had no training whatsoever. The department made no change to the section as a result of the comment.

**Comment.** One commenter indicated that there are no standards specified to define the extent of "knowledge of protective measures to reduce potentially hazardous conditions." The commenter questioned how much knowledge is expected, what hazardous conditions are included, and whether electrical and mechanical hazards are also to be considered (see Appendix 42-C, I.B.).

**Response.** The department has the authority to regulate sources of radiation only, and therefore is concerned with radiation hazards. The intent of the section is to exclude persons who have had no training whatsoever, not specified level of knowledge. The department made no change to the section as a result of the comment.

**Comment.** One commenter questioned who is to supervise this training (another registrant, a physicist, or the factory engineers) and what the qualifications are for the individual supervising the aspiring service person (see Appendix 42-C, I.C.).

**Response.** The department's response is that the intent of the section is to exclude persons who have had no training whatsoever, not to require or assess a specified level of knowledge. Therefore, supervising individuals should have at least a greater knowledge and more experience than the individual being supervised. The department made no change to the section as a result of the comment.

**Comment.** One commenter questioned what minimum training is acceptable and stated that there is a wide difference between the military technical training and a two day experience at the x-ray machine factory. The commenter recommended delineating the number of hours and the subjects that are to be covered. The commenter also recommended that the x-ray service person be able to read and understand electrical schematics, and that the department give a simple examination in radiation safety and x-ray machine design before a service person is registered (see Appendix 42-C, II.).

**Response.** The department's response is that there are a variety of factory training schools, schools offering degrees in biomedical equipment repair, and schools with bachelor's degrees in electrical engineering with specialized training in radiation producing devices. The department does not have the resources to adequately develop an objective examination that would cover all types of radiation machines currently available and in use. The intent of the section is to exclude persons who have had no training whatsoever, not to require or assess a specified level of knowledge. The department made no change to the section as a result of the comment.

**Comment.** One commenter requested clarification of what combination of training and experience equals II.A. and recommended that more specific criteria be applied so that x-ray service is provided by the most competent companies available (see Appendix 42-C).

**Response.** The department's response is that an example of acceptable training and experience would be a combination of a factory school, courses in radiation machine assembly, maintenance and repair, and experience in maintenance of radiation machines. Because of the wide variety of schools, training courses, and experience, it would be difficult to develop a comprehensive listing of acceptable combinations. The department made no change to the section as a result of the comment.

Representatives from Texas Chiropractic College Clinic in Pasadena, Terry Everett, R.T., ARCRT in Carthage, Baylor University Medical Center in Dallas, EG & G Astrophysics Research Corporation in Long Beach, California, Mallinckrodt Nuclear Medicine in Dallas, Richmond Imaging Associates in Houston, Robert R. Perry, Ph.D. in Dickinson, Davenport X-ray Co. Inc., in Dallas, and The University of Texas Medical Branch in Galveston

were in favor of the amendments, however, they presented comments, questions, and suggestions for changes to the proposed amendment as discussed in the summary of comments.

The amendments are adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

**§289.116. Use of Radiation Machines in the Healing Arts and Veterinary Medicine.**

(a) The Texas Department of Health adopts by reference Part 32, "Radiation Machines in the Healing Arts and Veterinary Medicine" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754 and is available for public inspection during regular working hours.

**§289.122. Registration of Radiation Machine Use and Services.**

(a) The Texas Department of Health adopts by reference Part 42, "Registration of Radiation Machine Use and Services" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754 and is available for public inspection during regular working hours.

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 24, 1993.

TRD-9324781 Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: September 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 834-6688

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• 25 TAC §289.121, §289.128

The Texas Department of Health (department) adopts §289.121 and §289.128 concerning Texas regulations for control of radia-

tion, with changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1244) and with changes to the material the section adopts by reference.

Section 289.128 adopts by reference Part 40 of the Texas Regulations for Control of Radiation (TRCR) titled, "Exemptions, General Licenses, and General License Acknowledgements."

Section 289.121 adopts by reference Part 41 of the Texas Regulations for Control of Radiation (TRCR) titled, "Licensing of Radioactive Material."

Part 40 is a new section that incorporates the sections deleted from Part 41, exemptions and general license requirements, and addresses the requirements for the new concept of general license acknowledgements.

Wording changes were made to Part 40 to further clarify the intent of the section and to provide consistency with other sections of the TRCR. A reference to TRCR Part 46 was added to §41.1 to more accurately reflect the intent of the section. The words "Except as otherwise authorized" were added to §41.1 to clarify the intent of the section. Section §40.3(c)(6) was modified to clarify shipping container requirements. The wording in §40.4(b)(5) was amended to clarify that exempt quantities in Appendix 40-B do not apply to the decay of generally licensed or specifically licensed quantities. The word "industrial" in §40.51(e) was deleted because the requirements apply to depleted uranium in any product or device. Section 40.51(e)(1) was modified to add the words "including beam shaping and collimation" to more accurately reflect the intent of the section. Section 40.52(a) was modified to add the provisions listed under §40.61(a)(4)(i)-(iv) and (viii)-(xi) for devices designed and manufactured for the purpose of producing light or an ionized atmosphere that are also required to comply with these requirements. In §40.52(a), a reference to §40.61 was added and a reference to §40.70 was deleted to clarify the intent of the section. Section 40.80 was modified to add the reference to §21.401(d) and (e) to more accurately reflect the intent of the section. The wording in §40.61(a)(4)(iv) was modified to add the same words as in §40.61(a)(4)(x) to more accurately reflect the intent of the section. The wording in §40.62(b)(1) was changed from "property" to "the environment" to more accurately reflect the responsibilities of the department. The word "all" in section 40.63(a) was changed to "applicable" to clarify the intent of the section. Section 40.90 was deleted because the section does not apply to either general licenses or holders of general license acknowledgements.

In addition, throughout the section the term "U.S. Nuclear Regulatory Commission" was shortened to "Commission" to reflect the definition in TRCR Part 11 and for consistency throughout the TRCR.

The following comments were received concerning the proposed amendment to TRCR Part 40.

**Comment.** One commenter questioned the term "licensing state". The commenter stated that since the department does not have a broad-based circulation for these sections, there is no reason to continue the facade of this pseudo regulating department.

**Response.** The department's response is that "Licensing State" is defined in TRCR Part 11 and the term is used throughout the sections. The department made no change to the section as a result of the comment.

**Comment.** One commenter objected that the general license portions of the regulations continue to allude to information being required or contained in a license acknowledgement. The commenter stated that most general licensees do not have a complete copy of the regulations, nor will they know where to access the information required for the forms. The commenter suggested that if the department wants to do away with generally licensed devices, then they should do so.

**Response.** The department's response is that the general license acknowledgement is not a specific license. The general license acknowledgement provides a means of tracking certain generally licensed devices and ensuring that the intended levels of control are followed by persons receiving the generally licensed devices. Certain generally licensed devices have been involved in numerous incidents such as the loss, damage, or improper disposal of sources. These types of incidents can cause excessive exposures to workers and the general public. The United States Nuclear Regulatory Commission (NRC) is also considering requiring a similar tracking and reporting system. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that while most departments spend money trying to minimize documentation, to clearly state what is required, and communicate effectively and efficiently with their constituents, these regulations appear to be working in a totally opposite direction, as they are clearly onerous to both licensees and distributors.

**Response.** The department's response is that the intent of the general license acknowledgement concept is to require general licensees to maintain proper records and accountability of any type of device that contains radioactive material and that without the proper handling, may be a hazard to the health and safety of the general public. As with any new section or regulatory concept, there will be a period of familiarization and adjustment. The department made no change to the section as a result of the comment.

**Comment.** One commenter questioned the purpose of the expenditure for having depleted uranium as part of any shipping container be conspicuously and legibly impressed with "CAUTION, RADIOACTIVE SHIELDING-URANIUM" and then further encased in mild steel. (See §40.3(c)(6).)

**Response.** The department agrees that the requirement is not clearly stated and changed the wording to clarify the intent of the section.

**Comment.** One commenter stated that the department and the NRC has authorized dis-

tribution of special nuclear material, primarily plutonium 238, even though the section clearly states that special nuclear material is excluded from been acquired, possessed, used, or transferred in accordance with the provisions of §40.61(a)(2),(3), and (4) by a general licensee. The commenter suggested that the department take the opportunity to clean up the regulations to be consistent with regulatory practice. (See section §40.61(a)(1).)

**Response.** The department's response is that this section is not a new requirement and license authorizations for generally licensed distribution of devices containing special nuclear material are being researched by the department. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the 30 day filing requirement in §40.61(a)(3)(i) is redundant and restrictive. The distributor is currently required to provide a quarterly report to the department, detailing distribution of generally licensed devices. The commenter recommends that the department be required to provide the acknowledgement report to the licensee, based upon information contained in the quarterly distribution report. The commenter also requested that TRC Form 12-2 be included with the mailing because this should not be the responsibility of the distributor.

**Response.** The department's response is that the general license acknowledgement provides a means of tracking certain generally licensed devices and ensuring that the intended levels of control are followed by persons receiving the generally licensed devices. Certain generally licensed devices have been involved in numerous incidents such as lost, damaged, or improperly disposed of sources. These types of incidents can cause excessive exposures to workers and the general public. The NRC is also considering requiring a similar tracking and reporting system. The department made no change to the section as a result of the comment.

**Comment.** One commenter objects to having to submit documentation on taxes owed by the licensee. The commenter does not believe that state law intended for the department to be a tax tracking agency and that it is an onerous reporting burden, having absolutely nothing to do with public health and safety. (See §40.61(a)(3)(ii).)

**Response.** The department acknowledges the commenter's objections but the law requires the department to verify tax status before a license or registration may be issued. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that the wording in §40.61(a)(4)(viii) is extremely broad to a point of being unworkable and that "...any indication of possible failure or damage to..." is too ill-defined. The commenter suggested that if there is a failure, then perhaps a report is in order, although the commenter can't see what possible benefit it serves.

**Response.** The department's response is that the intent of the section is for the licensee to report conditions of the device which could be an indication that failure or damage is forthcoming and thus provides for a type of "preventive maintenance." The department made no change to the section as a result of the comment.

**Comment.** One commenter objected to the requirement for licensees to furnish the serial number(s) of the sealed source(s) when reporting to the department the identification of the device(s). (See §40.61(a)(4)(x) and (xi).)

**Response.** The department's response is that the intent of the section is for the general licensee to maintain records of devices containing radioactive material, including source serial number, as a means of tracking and controlling the sources. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that §40.61(b)(1) lists a number of in-vitro testing kits which may be obtained as generally licensed units. However, §40.61(b)(2) states, "...no person...receive, acquire, possess..." until that person has filed an application for an acknowledgment on a form, and has received from the agency an acknowledgment." The commenter noted that this creates a situation in which physicians, veterinarians, clinical laboratories or hospitals with the ability to receive these kits must wait until they file a form and receive an acknowledgment before actually receiving the kits. What if an emergency arises? The commenter stated that this appears very restrictive.

**Response.** The department's response is that this is not a new requirement for this section and based on the department experience, this requirement has never presented a burden to licensees and no emergency involving the receipt of an acknowledgment from the department has occurred. Therefore, the department made no change to the section as a result of the comment.

**Comment.** One commenter questioned if the information submitted, as requested in §40.62(a), is deemed inadequate, must a licensee rid himself of the radioactive material already on site? The commenter stated that this section appears to enable the department to make very broad based interpretations of the guidelines and regulations.

**Response.** The department's response is that if the information submitted is not adequate, the department will clarify what must be submitted to correct the inadequacy and request that information. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the incorporation of "...danger to public health and safety or property" in §40.62(b)(1) is too restrictive. The commenter feels that if a device by its nature or use presents a "... danger to public health and safety or property," it should not be authorized for general license distribution. The commenter suggested that all the requirements following §40.62(b)(1) are in absolute conflict with the concept of general license and should be deleted.

**Response.** The department's response is that it is the lawful responsibility and the goal of the department to protect the public health and safety and the environment, and therefore, the department retains by rule the authority to do so. The department did change the word "property" to "environment" to more accurately reflect its responsibilities.

**Comment.** One commenter stated that it is not clear or consistent throughout this section which requirements apply to general licensees. Some requirements address exemptions from certain parts. However, §40.63(a) says each general license acknowledgement shall be subject to all the provisions of the act now in effect...and to all sections and orders of the department. The commenter questioned how a licensee determines which parts are applicable and which are not. (See §40.62(a).)

**Response.** The department agrees with the comment and changed the word "all" to "applicable" to clarify the intent of the section.

**Comment.** One commenter stated that this section is much too restrictive in requiring amendments of the general license acknowledgement each time a licensee makes a change in his inventory or information previously submitted and that the department is implementing portions of specific license requirements into the general license category. (See §40.66)

**Response.** The department's response is that it is the intent of the section that the licensee file for an amendment to their General License Acknowledgement each time they receive a new device in order to properly track and control the devices. The department made no change of the section as a result of the comment.

**Comment.** One commenter stated that the reciprocity requirements for generally licensed devices are onerous and a burden for the licensee. If a device has been authorized for general license distribution, it presents no inherent danger to public health and safety, and therefore should not be regulated as would a specifically licensed device. (See §40.90)

**Response.** The department deleted this section because it does not apply to holders of general licenses or general license acknowledgements. Part 41 contains sections that address the requirements for a specific license; qualifications and specific duties for radiation safety officers (RSO) for the activities for which the license application is submitted; radiation safety information for evaluation of sealed sources and devices; requirements for emergency plans, financial assurance and record keeping for decommissioning, and criteria for determining acceptable financial security; and specific subjects to be included in training courses. Several wording changes were made to Part 41 to clarify further the intent of the section and to provide consistency with other parts of the TRCR. A reference to TRCR Part 46 was added to §41.1 and §41.26(f)(3) to more accurately reflect the intent of the section. The words "Unless otherwise exempted" were added to §41.1 for further clarification of the intent of the section. The wording in §41.25(a) and (b), §41.30(b), and §41.90(c)

was changed from "property" to "the environment" to more accurately reflect the responsibilities of the department. Section 41.25 was amended to add the word "safety" to more correctly indicate what should be addressed in the procedures, and to delete the reference to Appendix 41-A. The items listed in Appendix 41-A did not represent a minimum list of procedural items that could be applicable to all users of radioactive material licensed under Part 41. The wording in §41.26(c)(2) was amended to clarify that an appropriate survey instrument shall be used to perform survey of the patient immediately after removing temporary implants, including retraction of a source(s) from a remote control brachytherapy device at the conclusion of treatment. Section 41.26(f) was modified to delete the requirement for a separate license for conducting tracer studies involving direct release of radioactive material to the environment because it was not the department's intent to require such limitation. The word "quarterly" in §41.27(c)(11) was deleted because the performance of inventories is a duty of the RSO and should be conducted in accordance with the specific section under which the activities are licensed. Sections 41.28(d)(1), (d)(4)(ii), and (iii), (iv)(b) and (v), and 41.90(b) were modified to reference section 40.51(a)(3) to more accurately reflect the intent of the section. Section 41.28(d)(3) wording was added to clarify the authorizations for a general license. The wording in §41.28(g) and (k) and Appendix 41-B was expanded to allow a "product license application (PLA)," approved by the United States Food and Drug Administration, to be submitted instead of a new drug application (NDA). Section 41.28(f) was amended to delete the word "industrial" since the requirements apply to depleted uranium in any product or device for mass-volume applications. In addition, throughout the section the term "U. S. Nuclear Regulatory Commission" was shortened to "Commission" to reflect the definition in TRCR Part 11 and for consistency throughout the TRCR. Appendix 41-E was modified to add wording to I.B., II.B., III.B., V.B., and VI.B. to specify that classroom and laboratory training can also be obtained in a medical teaching institution. Appendix 41-E, III.A.2.(b) was modified to state that supervised clinical experience must include experience for the therapy authorization requested from III. A.2.(b)(i)-(v). This change resulted in the deletion of IV. and V., concerning treatment of hyperthyroidism and thyroid carcinoma. In Appendix 41-E, III. B., the word "diagnostic" was changed to "therapeutic" to reflect correctly the intent of the section. In Appendix 41-E, VI.A.1.(d), "nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or," was added to reflect the intent of the section. In Appendix 41-E, V.B., the reference to the full scope of diagnostic nuclear medicine procedures was deleted and the term "use of sealed source therapy" was added to clarify the intent of the section. In Appendix 41-E, IX.B. was added to address continuing education and experience in association with board certifications. Also, a requirement to include source serial number in the specified report was added to §41.28(d)(4)(ii) and (v)(c) and §41.90(1). In order to track and maintain properly records



of devices containing radioactive material, the source serial number should be included in all information submitted to the department when these devices are transferred from licensee to licensee. The following comments were received concerning the proposed amendment to TRCR Part 41.

**Comment.** One commenter expressed objection to the requirement that licensees be required to submit documentation regarding taxes owed. The commenter does not believe that state law intended for the department to be a tax tracking agency and that it is an onerous reporting burden having absolutely nothing to do with public health and safety. (See §41.24(g).)

**Response.** The department's response is that the law does require the department to verify tax status before a license or registration may be issued. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the requirements for licensees wanting to do research and development using multiple isotopes are unrealistic. For example, the requirement for a full time RSO and the requirement that a licensee establish a radiation safety committee which approves projects prior to purchase of radioisotopes are unworkable for the majority of licensees. The commenter stated that regulation should not dictate who approves projects. (See section 41.26(f)(1).)

**Response.** The department's response is that because of the variability in Radiation Safety Committees (RSC) from licensee to licensee, it is necessary to specify general requirements that shall be fulfilled by each RSC regardless of the entity they represent and the activities involved. In addition, a full time RSO is necessary to oversee broad scope operations involving multiple research projects and users. The department made no change to the section as a result of the comment.

**Comment.** Two commenters expressed objection to the requirement for a separate license for field experiments involving tracers. (See §41.26(f)(2).)

**Response.** The department did not intend to limit research and development entities from performing field experiments. The department agrees with the commenters and clarified the requirement for a separate license for such studies.

**Comment.** One commenter noted that an educational requirement of a high school degree or equivalency through GED is the only specific requirement addressed in the RSO qualifications. The requirements for completion of training and testing, and training and supervisory skills are ambiguous and open to interpretation. The commenter also noted that an employee who has acquired a GED will usually not be promoted high enough in an organization to have acquired any supervisory experience, training, or advanced skills. The commenter stated that the educational requirements for an RSO are inadequate and that an individual at this educational level could not successfully execute the duties the department has set out as responsibilities for an RSO. (See §41.27(b).)

**Response.** The department's response is that the section establishes minimum requirements. Part 41 covers a wide variety of uses of radioactive material and thus a wide variety of experience and training is necessary. Because of this variety, more specific qualification requirements that would be applicable to all licensees in Part 41, are not appropriate. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that regulations should not contain job descriptions for the RSO and if the department wants to control the licensees' activities, it should be done through license requirements. The commenter also noted that this part would require quarterly inventory of sources when semi-annual or annual inventory is certainly sufficient and consistent with current requirements. (See §41.27(c).)

**Response.** The department's response is that in order to clarify the expectations concerning the RSO's duties, it is appropriate to specify in rule a minimum number of these duties. In 41.27(c)(11), the department deleted the word "quarterly" to provide consistency.

**Comment.** One commenter noted that 41.28(d)(1)(ii)(a) states that devices can be safely operated by persons who have no training in radiological protection. The commenter stated that this statement is in total conflict with earlier statements requiring training, procedures and documentation equivalent to specific license requirements.

**Response.** The department's response is that the section states that the manufacturer shall submit information regarding the device which provides reasonable assurance that the device can be safely operated by persons not having training in radiological protection. Part 40 creates a system for tracking and controlling certain generally licensed devices and the section does not require extensive training for the possessor of those generally licensed devices. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that for the distribution of generally licensed devices, the manufacturer is required to furnish only a specific amount of information, which will not help the licensee complete the acknowledgment form required in TRCR Part 40. (See §41.28(d)(4).)

**Response.** The department's response is that the section does not prohibit the manufacturer from providing information beyond that required by the section. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that the special requirements for a specific license to manufacture, assemble, repair, or commercially distribute commodities, products, or devices that contain radioactive material are unrealistic. For example, if a licensee is required to provide details on a shipping container, i.e., a source head, then it will be necessary to resubmit information and request approval every time any aspect of that container changes, such as the size, material of construction, etc. (See §41.28(n).)

**Response.** The department's response is that it intends for the licensee to describe the requirements addressed in this section and does want to be informed of any changes in any procedures that involve radiation safety. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that if a licensee provides the detailed information required for submission to result in the issuance of a sealed source and device sheet, the department should be required to issue same. The phrase "may issue" should be revised. (See §41.29(e).)

**Response.** The department's response is that an applicant can submit all the information required by §41.29, but that information may be inadequate for the department to review. The department should not issue a licensing document based upon submission of inadequate information and should not be required to do so in the section. The department made no change to the section as a result of the comment.

**Comment.** One commenter noted that the financial assurance and recordkeeping for decommissioning, and emergency plan requirements reference appendices which do not contain entries that correspond to license authorizations such as atomic numbers less than 84, and atomic number 84 or greater. (See §41.200 and §41.300)

**Response.** The department's response is that these are items of strict compatibility with the NRC and as an Agreement State, Texas must adopt them. The department recommends that licensees review current license authorizations and request amendments to licensees to more accurately reflect the radioactive material possessed. The department made no change to the section as a result of the comment.

**Comment.** One commenter stated that training requirements as specified have no regard for an individual licensee's site, operation, or personnel considerations and that some of the requirements are not applicable in all situations. (See Appendix 41-B.)

**Response.** The department's response is that the section does not prohibit the inclusion of additional items specific to the licensee's operation. The section includes the basic elements of training courses designed for users of radioactive material. The department made no change to the section as a result of the comment.

**Comment.** One commenter objected to the financial assurance requirements when dealing with specific isotopes and noted that there is a major inconsistency associated with financial requirements for possessing loose radioactive material as opposed to radioactive material in a sealed source. (See Appendix 41-G.)

**Response.** The department's response is that this is an item of strict compatibility with the NRC and as an Agreement State, Texas must adopt the section. The likelihood for contamination involved with the use of loose radioactive material is greater than that with sealed sources. Therefore, larger potential decommissioning costs are predicted. The

department made no change to the rule as a result of the comment.

Representatives from TN Technologies, Inc. in Round Rock was opposed to portions of the rule; and Texas A & M University in College Station presented comments, questions, and suggestions for changes to the proposed amendment as discussed in the summary of comments.

The amendment is adopted under Chapter 401 of the Health and Safety Code, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

#### §289.121. *Licensing of Radioactive Material.*

(a) The Texas Department of Health adopts by reference Part 41, "Licensing of Radioactive Material" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754, and is available for public inspection during regular working hours.

#### §289.128. *Exemptions, General Licenses, and General License Acknowledgements.*

(a) The Texas Department of Health adopts by reference Part 40, "Exemptions, General Licenses, and General License Acknowledgements" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754, and is available for public inspection during regular working hours.

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 24, 1993.

TRD-9324783

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: September 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 834-6688

#### • 25 TAC §289.126

The Texas Department of Health (department) adopts an amendment to §289.126, with changes to the proposed text as published in the February 26, 1993, issue of the *Texas Register* (18 TexReg 1244) and with changes to the material the section adopts by reference.

The section adopts by reference Part 12 of the Texas Regulations for Control of Radiation (TRCR) titled, "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services."

The section reflects increases in fee amounts to more accurately represent the costs of regulating radiation activities in Texas. Considering the current budget status of the state, it is now necessary to recover 100% of the costs of regulating sources of radiation in Texas and equally distribute those costs not previously assessed specific categories of licensees and registrants among those categories.

In addition, the authority to regulate the disposal of radioactive substances was transferred from the department to the Texas Water Commission (TWC) on March 1, 1992. The rule revision deletes fees for those regulatory activities which are now under the jurisdiction of the TWC.

Several wording changes were made to the section to further clarify the intent of the section. The fee category "Agency-Approved Training Courses" was changed to "Agency-Accepted Training Courses (Involving Possession of Radioactive Material)" to clarify that the category applies to training course licensees who possess radioactive material that is used as part of the training course presentation. The registrant reciprocity fee category "Calibration (Survey Instrument and X-Ray Equipment)" was deleted because those services are not granted reciprocal recognition in TRCR Part 42.

The department will enforce these amendment effective September 1, 1993.

The following comments were received concerning the proposed amendment.

Comment. Two commentors expressed opposition to the fee increases at this time. One of the commentors stated that fees should be based on the type of radiation activities a clinic or user may employ and that small veterinary practices with one portable machine used infrequently are already paying proportionally more for the smaller regulatory burden that they present. That commentor stated that the department should focus on the larger problem of radioactive waste disposal rather than the trained professional user of diagnostic x-ray radiation, because the commentor cannot imagine a greater need for the department than that of protecting the public health in the area of radioactive waste management. The commentor further stated that the small veterinary practice is unduly burdened by regulatory and license fees of all kinds and asked that the department consider the plight of the small, single-machine professional diagnostic x-ray user

before ratifying fee increases of the kind proposed. The commentor believes that the department has done little to enlighten the diagnostic x-ray user except to spawn a burdensome, malignant, and awkward set of regulations to update annually and that the department is quickly becoming an ogre to the small veterinary practitioner and should focus its energies elsewhere.

The second commentor in opposition to the revisions noted that in 1986, \$40 per year total was paid for registration and that it went up to \$74 per year in 1987. This increased again to \$95 per year in 1990. The commentor stated that if the proposed increase goes into effect, it will increase the registration fee more than three times or 225% of what it was in 1986 and the commentor feels that this increase is too much at this time, especially in the poor economic climate we are still lingering in. The second commentor also noted that the state veterinary license fee has risen from \$100 per year to \$300 per year. The commentor stated that DEA and Congress just passed a controlled substances registration fee increase which will raise veterinarians' fees from \$20 per year to \$70 per year, which amounts to a 250% increase and that this fee increase was passed through Congress without much publicity before, apparently, most veterinarians knew about it in order to voice objections. The commentor asked the department not to compound increasing costs by raising x-ray registration fees. Veterinarians are finding it more difficult to pass these increased fees onto clients' shoulders who are also struggling to make ends meet. (See §12.31.)

Response. The department acknowledged the concerns expressed by the commentor. However, considering the current budget status of the state, it is now necessary to recover 100% of the costs of regulating sources of radiation in Texas and equally distribute those costs not previously assessed specific categories of licensees and registrants among those categories. The proposed section reflects increases in fee amounts to more accurately represent the costs of regulating radiation activities in Texas. The fees have always been calculated based upon the actual costs of time spent by the department regulating a specific category of licensee or registrant. The base fee for veterinarians is calculated using the costs for time spent reviewing and processing applications and amendment requests, preparing and reviewing inspection reports, escalated enforcement, and incident/complaint investigations. The machine fee is calculated based upon the costs for time spent preparing for and conducting inspections and travel, since inspection frequencies vary and the time spent on inspection varies according to the type and number of radiation machines being inspected.

It is the department's mission and goal to protect the public health and safety and the environment. As such, all users of all types of sources of radiation are regulated and no one single category of user is focused upon more than another when radiation safety is a concern. The use of diagnostic x-ray machines presents a greater potential for exposure because of the vast number of machines being

used. The department made no change to the section as a result of the comment.

**Comment.** A commenter expressed understanding of the rationale for the increase in fees but felt the amount of cost being spent to regulate the uranium industry warrants discussion. The commenter noted that the scope of the Uranium Program (and the associated department resources) was conceived in the very early 1980's, when there were many companies operating numerous uranium mines. At that time, the current size of the department was probably well calculated and justified.

The commenter stated that since the early 1980's, the size of the uranium industry has experienced extraordinary contraction, to the point that there are only two operating companies remaining, URI and one other. At the same time, there has not been a restructuring of the department, which corresponded to the downsizing of the regulated industry. In fact, over the years, there has been an escalation of fees on a "per project" basis which presumably is the result of less projects shouldering the burden of a regulatory department who's size remained status quo. If the downsizing of the uranium industry continues, the commenter questioned if the remaining company (project) will burden the entire department's cost.

The commenter also noted that in 1980, the department's regulatory services consisted of approximately two one-day inspections per year, and a limited amount of environmental monitoring per facility, as is presently the case in 1993. However, under the proposed fee schedule, the two inspections and monitoring would cost \$27,650 and the commenter feels this is excessive.

The commenter feels that at this time, an increase in fees is unnecessary and stated that a more appropriate action would be to review the current and foreseeable future department resource requirements and cut costs down to meet budgetary constraints. The commenter further stated that the current contemplated consolidation of the department functions at the TWC may provide the opportune time to revisit the costs associated with the regulatory program. The commenter, as the affected industry, offered to provide detailed input as to where streamlining could be accomplished and costs reduced. (See §12.22.)

**Response.** The department acknowledged the concerns expressed by the commenter. The staff resources working in the area of uranium recovery regulation have decreased since 1981. However, staff are still needed through the restoration phase of the license as well. Regulatory costs are based on time actually spent or estimated to be spent in specific license and registration categories. Across-the-board costs such as rulemaking, training, and administration have been prorated to the fee categories.

**Comment.** One commenter stated that the fees in many categories are growing to such magnitude that they are going to put many small Texas licensees out of business, or significantly impact their business. The commenter recommends that you consider

following the precedent set by the NRC and implement a maximum upper limit for licensees falling within a small business definition.

**Response.** The department's response is that the majority of the proposed fees for the categories of radioactive material licenses are still less than the NRC's maximum limit for those entities that qualify as a small business under NRC's size standards. The department made no change to the section as a result of the comment.

**Comment.** One commenter questioned the rationale for an across-the-board fee for "agency-approved training courses" and noted that the only two categories of licensees required to get approval of their training courses are those for radiographers and well loggers. The commenter also stated that the phrase "agency-approved training course" is simply a misnomer for other categories, since there are no agency-approved training courses and one does not even have to be licensed to offer training courses. The only time a license is required is if one wants to use radioactive material as a part of the training course presentation. The commenter recommended that the category read "agency-approved training courses for radiographers and well loggers." (See §12.21.)

**Response.** The department's response is that the category titled, "Agency-Approved Training Courses" is intended for those entities that possess and use radioactive material during the course presentation. The department changed the title of the category to "Agency-Accepted Training Courses (Involving Possession of Radioactive Material)."

**Comment.** One commenter noted that §12.21(b) states that the fee for the evaluation of a sealed source or device is a one time assessment for initial evaluation. The commenter stated that it is necessary from time to time to request amendments to these evaluation sheets and that the rule can be interpreted to mean that there is no fee for these amendments. The commenter recommended clarifying this section because it is not clear whether there is no fee for amendments to an evaluation or if each amendment would be considered another initial evaluation with an additional fee assessment. (See §12.21(b).)

**Response.** The department's response is that §12.21(b) states that a fee must be submitted with a request for an initial evaluation. Therefore, there is no fee associated with requests for modifications to the initial evaluation. The department made no change to the rule as a result of the comment.

Representatives from Town West Veterinary Clinic, P.C. in Tyler, and Rufe Snow Animal Clinic in Fort Worth, were against the proposed amendments; URI, Inc. in Dallas, and TN Technologies, Inc. in Round Rock presented comments, questions, and suggestions for changes to the proposed amendment as discussed in the summary of comments.

The amendment is adopted under Chapter 401 of the Health and Safety Code, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which

authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

*§289.126. Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services.*

(a) The Texas Department of Health adopts by reference Part 12, "Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services" of the Department's document titled Texas Regulations for Control of Radiation, as amended in July 1993.

(b) The document adopted by reference in this section is indexed and filed in the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas 78754, and is available for public inspection during regular working hours.

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 24, 1993.

TRD-9324782

Robert A. MacLean, M.D.  
Deputy Commissioner  
Texas Department of  
Health

Effective date: September 1, 1993

Proposal publication date: February 26, 1993

For further information, please call: (512) 834-6688

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

**Chapter 402. Client Assignment and Continuity of Services**

**Subchapter H. Placement Appeals Procedures—Mental Retardation Services**

• 25 TAC §§402.281-402.301

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts the repeal of §§402.281-402.301 concerning placement appeals procedures—mental retardation services, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register*. The sections are repealed contemporaneously with the adoption in this issue of the *Texas Register* of new §§402.281-402.296 governing placement appeals procedures—mental retardation services.

The purpose of the repeal is to allow the adoption of new sections describing simplified, streamlined procedures related to the department's placement appeals process.

No comments were received regarding adoption of the repeal sections.

The repeals are adopted under the Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

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 14, 1993.

TRD-9324791

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: September 1, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 465-4670

◆ ◆ ◆  
• 25 TAC §§402.281-402.298

The Texas Department of Mental Health and Mental Retardation (TXMHMR) adopts new §§402.281-402.298, concerning placement appeals procedures—mental retardation services. Sections 402.281, 402.283, 402.285-402.289, 402.292, and 402.294-402.296 are adopted with changes to the text as proposed in the January 29, 1993 issue of *Texas Register* (18 TexReg 549). Sections 402.282, 402.284, 402.290-402.291, 402.293, 402.297, and 402.298 are adopted without changes and will not be republished. The repeal of existing §§402.281-402.301 is simultaneously adopted.

The purpose of the new sections is to implement provisions of the settlement agreement in *Lelsz vs. Kavanagh*, which require the department to simplify and streamline the placement appeals process and to describe that process in a simply worded and easily understood format. The most notable examples of simplification and streamlining in the sections are: the burden of proof falls on facility staff to prove a contemplated placement would be of significant benefit to the individual receiving mental retardation services and meets the statutory requirement of being the least restrictive environment; the interdisciplinary teams and placement review teams must arrive at consensus decisions; and all reviews and appeals are automatic and require no complicated written request to be submitted by the individual or parent. In addition, the new subchapter adopts by reference as Exhibit A an Operating Instruction which restates the policies in the sections and provides additional and crucial procedural detail in a format which is user-friendly. Also adopted by reference as Exhibit B is a simply written, one-page outline of the various stages included in the review and appeal process; the outline must be included with

each written notice required in the subchapter to be sent to the individual or parent.

Revisions to §402.281 clarify that the subchapter does not apply to facility residents admitted under respite or emergency status, nor to the movement of residents from one unit to another within the facility. In §402.285(f), the word "significant" is deleted as being unnecessary and redundant.

Typographic errors have been corrected in the definition of "mental retardation authority" in §402.283 and in subsection a of §402.287. Also in §402.287(a), language has been added which requires the placement review team to arrive at a consensus recommendation. In §402.287(b), clarifying language has been added which specifies that the placement review team may choose to conduct interviews in addition to reviewing the written summary of the IDT meeting and the individual's record.

In §§402.286-402.289, clarifying language has been added regarding timeframes. Of special note is the change in §402.287(a) which requires a placement review team to meet within 21 days rather than 14 days of the IDT meeting at which a consensus recommendation could not be reached. The change was made because the designated IDT member is allowed 14 days in which to produce a summary of the proceedings which would be used by the placement review team during its deliberations.

Language in §402.288(c) has been revised to clarify that the setting being considered by the IDT need "an appropriate placement" instead of "the most appropriate placement."

The title of §402.289 has been changed to reflect that the section contains provisions which deal with preparing for an administrative hearing, as well as initiating the hearing process.

Language has been revised throughout Exhibit A (the operating instruction) to correspond with changes in the text of the subchapter. The title of Exhibit B has been changed to "Outline of Placement Appeals Process" rather than "Summary of Placement Appeals Process" to avoid confusion with the summary which is required to be prepared in §402.286(c).

A public hearing was held on March 4, 1993, but no testimony was offered. Written comments were received from six parents of individuals receiving residential mental retardation services at TXMHMR facilities; two community mental health and mental retardation centers; Advocacy, Inc.; Association for Retarded Citizens, Texas; and from the plaintiffs' attorney in *Lelsz vs. Kavanagh*.

Several commenters commended the department on the proposal. One commenter described the proposal as "extremely well-done" and having "achieved its goal of developing an instruction that is more understandable." The Association for Retarded Citizens, Texas declared itself to be "pleased to support the promulgation of these rules as presented," adding that the proposal represents "a substantial improvement over current rule."

The plaintiffs' attorney in *Lelsz vs. Kavanagh* offered no comments other than to concur with the comments of Advocacy, Inc., especially those relating to the need for a designated advocacy in specific situations. The department responds that a provision in the definition of "parent" provides for either an advocate for the individual who may or may not be a family member; the provision calls for facility staff to assist any individual to obtain an advocate. The department adds that due to inadequate resources it is not possible to provide an advocate for every individual receiving mental retardation services. In addition, the department believes that the consensus-building process required in this subchapter has the potential for handling any conflicts between a parent and the facility staff serving on the IDT.

One commenter called for reinstatement of a provision from an early draft of the proposal which allowed the parent to veto an IDT recommendation for placement in a specific community setting. Another commenter provided alternative language for the process described in §§402.285-402.288 that effectively give the parent veto power. The department responds that the Health and Safety Code, Title 7, §592.013, guarantees the right of an individual with mental retardation to live in the least restrictive environment appropriate to the individual's needs and abilities, and that §594.011 requires the department to transfer, furlough, or discharge a resident for whom the facility no longer represents the least restrictive environment. This statute allows parents or minors and legal guardians the right to have an administrative hearing.

Another commenter requested that parents have the "right to appeal any decision which leaves them out of the decision-making process" and any other decisions that "don't seem right to them." The department responds that both the current subchapter and the proposed subchapter provide for the involvement of both the individual and family in decisions regarding placement as is required by the Health and Safety Code, Title 7, the Subtitle D, Persons with Mental Retardation Act. The sections provide that the parent of the incompetent individual is included as a full member of the interdisciplinary team (§402.183, definition of IDT); the parent of the competent individual is included unless the individual chooses to exclude (§402.285(d)).

One commenter commended the department on requiring "consensus" as opposed to majority rule with respect to IDT decisions, and on shifting the burden of proof from the individual and/or parent to the department during review and appeal procedures regarding the appropriateness of a placement recommendation. The department appreciates the commendation and notes that in §402.295, training on consensus-building is required of all facility staff who serve on IDTs or placement review teams. It is also noted that Exhibit C to the subchapter is a "job aide" developed by the department's Human Resource Development division in Central Office; it is recommended for use in providing "informal guidance" at the beginning of IDT meetings to enable all participants to feel comfortable with the consensus process.

A commenter stated that the revisions are not easier to understand and user-friendly, citing as a primary example the use of the phrase "rules of privilege recognized by law" in the section of the operating instruction which discusses the role and responsibilities of the administrative hearing officer. The department responds that the phrase has a precise meaning to an attorney who serves as a hearing officer. It refers to documents and conversations, such as those relating to doctor/patient or attorney/client relationships, which are by law confidential and may not be required to be disclosed; those documents and conversations are, therefore, "privileged."

A commenter observed that the definitions of "competent" and "incompetent" in §402.283 imply that the terms are defined in the Health and Safety Code when they are not. The department acknowledges the discrepancy and has rewritten the definitions to more accurately reflect their derivation from the Health and Safety Code, Title 7, §591.006, which deals with consent. In addition, a definition for "legally adequate consent" has been added which incorporates relevant provisions of the proposed definitions for "competent" and "incompetent."

Another commenter offered alternative definitions of "guardian," "interdisciplinary team," and "parent." The department responds that the definitions have been modified although the language offered by the commenter was not always used. "Guardian" has been revised to include a reference to limited guardianships. The definition of "interdisciplinary team (IDT)" has been modified to include the more general description of IDT membership from the Health and Safety Code as requested; the detailed language of the proposed definition regarding the professions and disciplines which are to be represented on the team has been retained. The shorter and generalized language offered by the commenter as a definition of "parent" was not accepted; instead, the definition now includes reference to "an unrelated" advocate who may act in behalf of the individual instead of a family member. The department suggests that this latter language meets the commenter's additional request for a definition of "non-family advocate."

A commenter noted that the purpose of the IDT is to make recommendations only and urged that the parent be regarded as a "valued member of the team as opposed to an invited guest." The department responds that the sections state clearly that the IDT "shall make a recommendation" regarding placement, and that nothing in the sections is intended to imply that the parent is anything other than a valued member of the IDT. Another commenter commended the department specifying that a member of the facility's public responsibility committee may serve on the IDT if requested by the individual or parent.

A commenter requested the addition of the following terms to §402.283: annual planning conference, family advocate, and managing conservator. The department responds that it is not necessary to define annual planning conference since the purpose of the meeting is self-evident from the text; nor is a definition

of family advocate necessary since the term is incorporated into the definition of "parent." The department has added a definition of "managing conservator."

The commenter recommended that the term "placement review team" and the process which calls for the team be stricken from the subchapter because "a team made up of facility employees, appointed by the head of the facility would be biased in favor of upholding the previous recommendation of the IDT and the facility head." The department responds that the sections provide that the team is to be activated only when there is no IDT recommendation due to lack of consensus. In addition, the process described in the sections never calls for the head of the facility to make a recommendation regarding placement issues.

A commenter questioned whether the mental retardation professional who is to serve on the placement review team could be a representative of the MRA. The department responds that with the exception of a representative from the facility's Public Responsibility Committee, all members of the team are employees of the facility. Clarifying language has been added to the definition in §402.283.

A commenter requested that the provisions of Exhibit A, commonly referred to as the Operating Instructions (OI), be incorporated into the text of the subchapter to ensure that those provisions have the same force as the rule. The department responds that because Exhibit A is adopted by reference in §402.284, the provisions of the OI have the same force as those of the subchapter; also, the exhibit is intended to provide a simpler-to-follow-and-understand format than the more complex, but mandatory format of the subchapter.

A commenter requested the inclusion of language in §402.285(a) that would permit the parent to determine whether or not the incompetent individual may attend IDT meetings. Another commenter contended that the parent must always be included in IDT meetings. The department responds that the Health and Safety Code, Title 7, §592.035, guarantees that the individual, whether competent or incompetent, has the right to participate in all aspects of service planning, including issues regarding placement. That same section specifies that the parent may take part if the individual is a minor or the parent has been named the guardian of the person of an individual.

One commenter requested written notice of IDT meetings should be sent 14 days in advance. Another commenter stated that the complete subchapter and Exhibit A, the operating instruction (A) should be enclosed with all notifications instead of just the one-page outline of the appeals process (Exhibit B). The department responds that the 14 day timeframe for advance notice of IDT meetings is spelled out in the OI. Also, the department explains that while the one-page outline was developed specifically for enclosure with such notices, the individual and/or parent may request a copy of the complete subchapter and exhibits.

Another commenter expressed concern with the requirement that notices be sent by certified mail, return receipt requested and suggested that people are intimidated when they receive certified mail and may not pick up the letter or respond. The commenter suggested followup by staff to ensure the notice is collected by the parent. The department responds that while the intent of the provision was to ensure parents were notified of meetings, it is recognized that this requirement can cause a hardship, especially when the intended recipient must take time away from a job to pick up the letter at the post office. Therefore, the provisions has been modified to require delivery of notices to parents by regular mail, with followup by facility staff to ensure receipt.

One commenter questioned whether an administrative hearing could be held when the placement review team's recommendation is for alternate placement and the individual or parent objects, just as it is when the recommendation is for continuation of the current placement. The department responds that language has been added to §402.287(c) clarifying that a hearing is held only if the recommendation is for continuing the current placement; when the recommendation is for alternate placement, facility staff are to initiate the search for an appropriate placement. In addition, the new language specifies that the placement review team is to notify the head of the facility within one working day if a hearing must be held.

Another commenter questioned how an objection to continued placement of an incompetent individual with no parent could be lodged, and suggested that the facility's Human Rights Officer could fill that role or that the department should designate an advocate. The department responds that resources are not available for the implementation of either suggestion.

Three commenters requested that the entire IDT be required in §402.288(b) to visit a setting proposed for alternate placement of an individual. The department responds while this would be the optimal situation, facilities lack sufficient monetary, time, and staff resources to do so.

Another commenter stated that it is impractical to wait as required in §402.288(d) until a specific setting has been located and the IDT has failed to reach a consensus recommendation regarding placement of the individual in that setting for an administrative hearing. The commenter added that most providers cannot justify holding a community-based setting open for the months that appeals might take. The department responds that the hearing must be held within 31 calendar days of the IDT meeting (see §402.289(c)) so there will be no delays of several months.

Three commenters stated that the hearing officer should never be a department employee as is permitted in §402.289(b). One of the commenters recommended that the hearing officer be an attorney from another state agency or from the private sector. Another of the commenters objected to language requiring the hearing officer to be selected "in the manner most economical to the department." A fourth commenter suggested that when a

non-department attorney is not available to conduct a hearing that the facility contract with the state's Office of Administrative Hearings. The department responds that for some years hearings have been conducted only by attorneys with whom the department contracts for just that purpose. It is the intent of the department to continue that practice. Regarding the suggestion of turning to the Office of Administrative Hearings, the department notes that in the past the number of hearings has been so low that resorting to this option has not been necessary; in addition, the department believes it is preferable to utilize attorneys who are familiar with the relevant portions of the Health and Safety Code and agency rules.

A commenter requested that parents be given 14 days' notice of the date for a public hearing rather than the seven days specified in §402.189(e). The department responds that the short notice period is necessary because the Health and Safety Code, Title 7, §594.015(a), requires that administrative hearings be held no later than 30 days following the date of the request for the hearing. The same commenter stated that employees of the department should not be permitted to assist the hearing officer as is allowed in §402.289(h). The department responds that the hearing officer must have the option of calling on the expertise and knowledge of departmental employees, as well as non-employees, if necessary to render a fair judgement.

Two commenters suggested that if the hearing officer should have to be replaced before judgment is rendered, as is permitted in §402.289(i), a new hearing must be held with the new officer. The department responds that a provision has been added in §402.292 which requires that all hearings be audiotaped; this will permit a new hearing officer to review the proceedings to date and continue the hearing with no time or placements lost.

The same two commenters stated that a prehearing conference must not be held unless all participants to the hearing agree and are in attendance. The department responds that the proposed language in §402.291(a) provides for the involvement of all participants in a prehearing conference.

The amendments and new sections are adopted under the Health and Safety Code, Title 7, §532.015, which provides the Texas Mental Health and Mental Retardation Board with rulemaking authority.

**§402.281. Purpose.** The purpose of this subchapter is to describe the policies and procedures concerning the review and appeal of placement recommendations involving individuals receiving residential services in mental retardation facilities. These policies and procedures are not applicable in situations involving individuals admitted to the facility under respite or emergency status, nor to the movement of an individual from one unit to another within the facility.

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

**Competent**—A term used to designate the ability of an individual with mental retardation to give legally adequate consent, as determined by the interdisciplinary team.

**Commissioner**—The commissioner of the Texas Department of Mental Health and Mental Retardation.

**Consensus**—A negotiated agreement that all team members can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

**Department**—The Texas Department of Mental Health and Mental Retardation.

**Deputy commissioner**—The deputy commissioner for Mental Retardation Services.

**Facility**—Any state school or state center of the department which provides residential mental retardation services.

**Guardian**—

(A) A plenary guardian of the person of an individual with mental retardation; or

(B) A limited guardian of the individual with mental retardation who is authorized to provide consent regarding placement issues under Texas Probate Code §130A-O.

**Head of the facility**—The superintendent or director of a facility.

**Hearing officer**—Any person designated or appointed by the deputy commissioner to conduct hearings pursuant to this subchapter.

**Incompetent**—A term used to designate the inability of an individual with mental retardation to give legally adequate consent, as determined by the interdisciplinary team.

**Individual**—A person receiving residential mental retardation services provided by a facility. This does not include a person in the community receiving services provided through a facility's community-based services program.

**Interdisciplinary team (IDT)**—A group of mental retardation professionals and paraprofessionals plus other concerned persons who assess the individual's treatment, training, and habilitation needs and make recommendations for services. These group members function as a team and include:

(A) the individual and the parent, unless the competent individual has requested that the parent be excluded;

(B) as specified by the facility, persons who are professionally qualified, certified, or both, in various

professions with special training and experience in the diagnosis, management, needs, and treatment of individuals with mental retardation;

(C) persons who are directly involved in the delivery of mental retardation services to the individual;

(D) representative(s) of the appropriate mental retardation authority; and

(E) member(s) of the facility's public responsibility committee (PRC), if requested by the PRC, the competent individual, or parent of the incompetent individual.

**Legally adequate consent**—A term consistent with provisions of the Health and Safety Code, Title 7, §591.006 (formerly Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300, §3) concerning consent obtained from an individual with mental retardation which is legally adequate when each of the following conditions has been met:

(A) legal capacity: The individual giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage personal affairs by an appropriate court of law;

(B) comprehension of information: The individual giving the consent has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of, and alternatives to the procedure, and the fact that withholding or withdrawal of consent shall not prejudice the future provision of care and services to the individual with mental retardation; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence.

**Managing conservator**—A suitable and competent adult, a parent, or an authorized agency appointed by a court to represent the interests of a minor child.

**Mental retardation authority (MRA)**—The entity designated by the commissioner to direct, operate, facilitate, and/or coordinate services to individuals with mental retardation in a particular service area of the state as are required to be performed at the local level by state law and the department.

**Parent**—

(A) the natural or adoptive mother or father of the individual, but not a mother or father whose parent-child relationship has been legally terminated;



(B) a family member or an unrelated advocate who acts in behalf of the individual instead of the natural or adoptive mother or father and is listed as the primary correspondent for the individual. An individual may choose to have an advocate in addition to a family member; facility staff shall assist the individual in obtaining an advocate;

(C) a legally appointed guardian of the individual; or

(D) a legally appointed managing conservator of the individual.

Placement review team—A group of persons appointed by the head of the facility to review placement options for an individual when the individual's IDT is unable to arrive at a consensus recommendation regarding placement. None of the persons shall have served on the IDT. Included on the committee will be:

(A) representatives of the professional disciplines (psychology, social work, and medical or nursing) who are employees of the facility;

(B) a mental retardation professional who is an employee of the facility and who has knowledge of community programs; and

(C) a member of the facility human rights committee and/or the public responsibility committee.

Pleadings—Written statements filed by participants concerning their respective positions, claims, and rights in administrative hearings.

Preponderance of the evidence—The body of evidence which, when fairly considered, produces the stronger impression. The superiority of weight of testimony is determined by the opportunity for knowledge, the information possessed, and the manner of testifying, rather than by the greater number of witnesses.

Public Responsibility Committee (PRC)—An independent, impartial third-party mechanism, the functions, duties, and responsibilities of which are described in Chapter 410, Subchapter A, relating to Public Responsibility Committees. Each facility must have a PRC.

#### §402.285. General Provisions.

(a) The individual, whether competent or incompetent, always has the right to be present and to participate in IDT meetings and administrative hearings. The desires and aspirations of the individual, whether competent or incompetent, shall be

given careful consideration when recommendations are made concerning placement.

(b) Communication devices and techniques (including the use of sign language) shall be utilized, as appropriate, to facilitate the individual's involvement in the placement process and to ensure that the individual is able to make those desires and aspirations known.

(c) Recommendations shall be based on the determination of the least restrictive environment as outlined in Chapter 402, Subchapter G of this title (relating to Determination of the Least Restrictive Environment—Mental Retardation Services.)

(d) The competent individual has the right to exclude the parent from participation in:

(1) meetings of the interdisciplinary team (IDT) at which placement is to be discussed; and

(2) all review and appeal procedures.

(e) If the competent individual wishes to include the parent, facility staff shall encourage attendance and participation by the parent. Every reasonable attempt shall be made to schedule meetings at a time that is convenient for the parent who is involved in the process.

(f) The burden of proof in an administrative hearing lies with facility staff on the IDT to prove by the preponderance of the evidence that a potentially appropriate setting is of benefit to the individual and meets the right of the individual to live in the least-restrictive environment as guaranteed in the Health and Safety Code, Title 7, Subtitle D, §592.013 and §592.032.

(g) Recommendations by the IDT and the placement review team, as well as the final decision by the hearing officer in an administrative hearing, shall be documented in the record of the individual.

(h) If a placement recommendation is under review or appeal as of the effective date of this subchapter, that stage of the process shall be completed under the provisions of the old subchapter.

(i) Notices to either the competent individual or the parent of the incompetent individual shall be:

(1) in that person's primary language;

(2) accompanied by a copy of Outline of Placement Appeals Process, which is herein adopted by reference as Exhibit B; and

(3) delivered either in person or by regular mail, as appropriate. Facility staff shall contact the person to whom a notice is mailed to ensure its receipt.

#### §402.286. Placement Recommendation by Interdisciplinary Team.

(a) During the annual planning meeting or during a special planning meeting held to consider the placement of an individual residing in a facility, the IDT shall determine by consensus whether the current placement constitutes the least restrictive environment.

(b) The IDT shall make a recommendation for:

(1) continuation of the current placement;

(2) alternate placement in another facility; or

(3) alternate placement in a community setting.

(c) A summary of the discussion is prepared by a designated facility employee serving on the IDT which includes a fair and accurate recounting of all viewpoints expressed during the meeting. The summary is provided to the competent individual or parent of the incompetent individual within 14 calendar days of the meeting.

(d) If there is no consensus, the IDT shall notify the head of the facility within one working day. The head of the facility shall name a placement review team.

#### §402.287. Appeal to the Placement Review Team.

(a) The placement review team shall meet within 21 calendar days of the IDT meeting and review the summary prepared by the designated IDT member and the record of the individual. The team must arrive at a consensus recommendation for:

(1) continuation of the current placement;

(2) alternate placement in another facility; or

(3) alternate placement in a community setting.

(b) In arriving at its recommendation, the placement review team may choose to interview the:

(1) individual;

(2) parent of the individual, unless the competent individual has excluded the parent from participation in the placement process;

(3) other members of the IDT; and/or

(4) other facility staff.

(c) If the placement review team's recommendation is for continuation of the current placement and the competent indi-

vidual or parent of the incompetent individual objects, the team shall notify the head of the facility, within one working day, of the need for an administrative hearing. If the placement review team's recommendation is for alternate placement in either another facility or a community setting, facility staff shall initiate the process to find an appropriate setting.

*§402.288. Specific Alternate Placement Recommendation by IDT.*

(a) The IDT shall be convened when a potentially appropriate setting becomes available for an individual recommended for alternate placement in the community or in another facility.

(b) A facility employee serving on the IDT who personally knows the individual shall visit the proposed setting prior to the meeting. The individual and parent-if the competent individual wants the parent to be involved-shall be encouraged to visit the proposed setting prior to the meeting.

(c) The IDT shall determine by consensus whether the setting is an appropriate placement for the individual and shall make a recommendation for:

(1) continuation of the current placement, or

(2) the alternate placement.

(d) If there is no consensus, the IDT shall notify the head of the facility within one working day, of the need for an administrative hearing.

*§402.289. Initiating and Preparing for the Administrative Hearing Process.*

(a) The head of the facility shall inform the deputy commissioner of the need for an administrative hearing within one working day of being notified by either the placement review team as described in §402.287(c) of this title (relating to Appeal to the Placement Review Team) or the IDT as described in §402.289(d) of this title (relating to Specific Alternate Placement Recommendation by IDT.) Within five working days of being notified by the head of the facility, the deputy commissioner shall appoint a hearing officer.

(b) When feasible, the hearing officer shall be an attorney who is not an employee of the department. If this is not feasible, the person appointed shall:

(1) not be permanently employed at the facility where the individual who is to be the subject of the hearing is a resident;

(2) not have participated in any aspect of the care and treatment of the individual who is to be the subject of the hearing; and

(3) be selected in the manner most economical to the department.

(c) The hearing shall be held not less than 14 calendar days but not more than 30 calendar days from the date the deputy commissioner received the request for the hearing.

(d) The hearing officer may set a time outside regular business hours and a place away from the facility where the individual resides if a timely request is made by the competent individual or parent of the incompetent individual and the hearing officer determines good cause exists for such a determination. The location selected must be accessible to persons with handicaps.

(e) No less than seven working days in advance of the hearing date, notice of the hearing shall be served on all participants, including the individual, the parent of the incompetent individual, and the head of the facility, as well as their legal counsel or lay representative(s) as described in §402.290(a) of this title (relating to Representation of Parties During an Administrative Hearing).

(f) The hearing officer shall ensure that written notice of the hearing is served personally or by certified mail, return receipt requested.

(g) The hearing officer may postpone or continue the hearing until a later date if, in the officer's sound judgment and discretion, there is good cause to do so. Good cause includes, but is not limited to, a finding that a later date would:

(1) result in a more just determination of the issues; and

(2) not endanger the welfare of the individual.

(h) The hearing officer may designate one or more employees of the department or other knowledgeable persons to assist in the evaluation of evidence presented at the hearing.

(i) At any time before final judgment is rendered, another hearing officer shall be appointed by the deputy commissioner to perform any remaining functions without having to repeat the previous proceedings in the case if the first hearing officer should die, become disabled, withdraw or be removed from employment, or withdraw or be removed from the proceeding.

*§402.292. Conducting an Administrative Hearing.*

(a) The burden of proof in an administrative hearing lies with facility staff on the IDT to prove by the preponderance of the evidence that a potentially appropriate setting will benefit the individual and

meets the right of the individual to live in the least restrictive environment as guaranteed in the Health and Safety Code, Title 7, Subtitle D, §592.013 and §592.032 (formerly the Persons with Mental Retardation Act, Vernon's Civil Statutes, Article 5547-300).

(b) The administrative hearing shall be closed to the public unless the competent individual or the parent of the incompetent individual requests a hearing open to the public.

(c) The facility shall provide language interpreters and/or an interpreter for the hearing-impaired upon timely request made by a competent individual or the parent of the incompetent individual, legal counsel or lay representative, or upon order of the hearing officer.

(d) The proceedings shall be tape recorded. Any part of the tapes shall be transcribed on the written request of any participant and copies shall be distributed as described OI 401-1 governing Inspection of Department Records, and Chapter 403, Subchapter K, relating to Client-Identifying Information.

*§402.294. Briefing of Staff on Policy.* A briefing on the purpose of and major issues addressed in the subchapter and operating instruction shall be provided within 60 calendar days of the effective date of this subchapter to all facility staff who serve or may serve on an IDT or a placement review team, and/or are involved in community placement activities.

*§402.295. Training.*

(a) Training on consensus-building shall be provided for all facility staff who serve on IDTs or placement review teams. The topic is covered in two chapters of the IDT curriculum developed by Human Resource Development in Central Office.

(b) Informal guidance concerning the principles of consensus-building is recommended as the first order of business for each IDT meeting. A job aide on Principles of Consensus-Building, which is attached as Exhibit C to the subchapter, can be helpful in this regard.

*§402.296. Exhibits.*

(a) Exhibit A-Operating Instruction (OI) 402-H, governing Placement Appeals Procedures;

(b) Exhibit B-Outline of Placement Appeals Process; and

(c) Exhibit C-Principles of Consensus Building.

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 14, 1993.

TRD-9324780

Ann Utley  
Chairman  
Texas Board of Mental  
Health and Mental  
Retardation

Effective date: September 1, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512)  
485-4670

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 3. Life, Accident, and Health Insurance

##### Subchapter II. Insurance Sold in Connection with Prepaid Funeral Contracts

###### • 28 TAC §3.9001, §3.9002

The State Board of Insurance of the Texas Department of Insurance adopts new §3.9001 and §3.9002, concerning Insurance Sold in Connection with Prepaid Funeral Contracts, without changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2518).

The new sections are necessary to promulgate as a rule the Joint Memorandum of Understanding between the Texas Funeral Service Commission, the Texas Department of Insurance and the Texas Department of Banking. This Joint Memorandum of Understanding is required by Texas Civil Statutes, Article 4582b.

The new sections provide a description of the statutory responsibilities of the three agencies and the procedures by which the agencies will coordinate their regulatory activities in the area of prepaid funeral services and transactions.

One comment was received on the sections. The commenter expressed support for the new sections because they would bring the three agencies together to work toward consistent regulation of the pre-arranged funeral industry. The commenter expressed concern that a penalty being levied against a company might be duplicated or tripled as a result of penalties being levied by other agencies. The commenter requested language in the Joint Memorandum or the regulations promulgated pursuant to the Memorandum, which would limit penalties levied to only one agency; the agency with direct regulatory responsibility.

One insurance company, The Midland Mutual Life Insurance Company, commented on the rules, and was generally in favor of them.

The agency agrees with the comment that the new sections will bring the three agencies together to provide more consistent regulation of the industry. The agency disagrees with the request that only the agency with direct regulatory responsibility levy penalties. If a company violates one of the agency's regulations, that agency has direct regulatory responsibility for that violation. If the company also violates regulations of another agency, that agency has the same direct regulatory responsibility for the violation of its regulations. The amount of penalties is a matter which can be addressed through the administrative law process before each agency.

The new sections are adopted under Texas Civil Statutes, Article 4582b, Insurance Code, Article 1.04, and Texas Civil Statutes, Article 6252-13a, §4 and §5. Texas Civil Statutes, Article 4582b, §4(f), mandate the Texas Department of Insurance, the Texas Funeral Service Commission and the Texas Department of Banking to enter into a Joint Memorandum of Understanding and mandates that each agency promulgate the Joint Memorandum of Understanding as a rule. Insurance Code, Article 1.04(b), provides the board with authority to determine rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency.

**CROSS REFERENCE TO STATUTE** The following statutes are affected by this rule: §3.9001-§3.9002 The Insurance Code Article 1.04.

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, 1993.

TRD-9324906

Linda K. von Quintus-Dorn  
Chief Clerk  
Texas Department of  
Insurance

Effective date: July 19, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512)  
463-6328

## Chapter 5. Property and Casualty Insurance

### Subchapter A. Automobile In- surance

#### Motor Vehicle Damage Claims, Coverage, Settle- ment, and Disclosure Prac- tices

##### • 28 TAC §5.501

The State Board of Insurance of the Texas Department of Insurance adopts new §5.501, concerning motor vehicle damage claims, coverage, settlement, and disclosure with changes to the proposed text as published in the March 30, 1993 issue of the *Texas Register* (18 TexReg 2124). During the period for public comment for the proposed new section, a public hearing was requested and convened June 10, 1993, as Docket Number R-1997. As a result of the many comments received during the comment period and the hearing pursuant to Docket Number R-1997, the adoption includes changes to the new section, including revisions to subsections (a)-(e), as well as the addition of a new subsection (f) and the resequencing of proposed subsection (f) as subsection (g) in the adoption.

The section is necessary to assure full and adequate disclosure of claim settlement rights for insurance consumers and to identify certain prohibited practices in the settlement of motor vehicle damage claims. The new section will assure orderly implementation of the Insurance Code, Article 5.07-1, and the effective disclosure of beneficiaries' rights pursuant to auto insurance policies. The adoption contains a number of changes to the section as proposed and published. There are three changes to subsection (a). The first change to subsection (a) replaces the word "policies" with the words "an auto insurance policy" to clarify the types of insurance policies to which the section applies. The second change to subsection (a) makes it clear that the provisions of the section are not intended to preclude any company filing of endorsements and rate rules for consideration of approval by the board which would be available under the Insurance Code, Article 5.07-1(b). The third change to subsection (a) further clarifies that any such rate rules or endorsements so adopted and any policies that are issued with such endorsements are not subject to the provisions of the subsection. The change to subsection (b) clarifies the definition of "reasonable rate of reimbursement" by deleting the adjectives "particular" and "physical" with respect to "repairs" and "damage to a motor vehicle", respectively. The change to subsection (c) makes it clear that the activity prohibited in paragraph (2) is the establishing or maintaining of reimbursement rates for repair that fail to reasonably reflect the costs of obtaining those repairs as indicated in written procedures that are developed and utilized by an insurer in compliance with subsection (d). Subsection (d) is changed in four respects. The first change to subsection (d) clarifies that insurers are to develop written proce-

dures and follow those procedures in determining reasonable reimbursement rates for repairs for damage to motor vehicles. The second change to subsection (d) requires that written information specifying how a rate of reimbursement is determined for any given repair is to be provided upon the request of a beneficiary when a claim is submitted. The third change to subsection (d) is the addition of paragraph (3), which requires an insurer to furnish the beneficiary a copy of the recommended repair facility's original invoice itemizing charges for, and quality and cost of, replacement parts in instances where a repair facility has been recommended by the insurer. The fourth change to subsection (d) is the addition of a new paragraph (6) to include information about how much the insurer will pay for a covered repair performed by a repair facility of the beneficiary's choice if the beneficiary so requests when filing a claim. Subsection (e) is changed in four respects. The change to subsection (e)(2), makes it clear that the disclosure may be provided as the first, second, or third page of the policy or certificate, in lieu of being provided in writing on the face of the policy. The change to subsection (e)(3), clarifies the manner in which and circumstances under which the disclosure is to be provided. The changes to subparagraphs (A) and (B) of paragraph (3) in turn clarify circumstances under which and time frames within which provision of the oral and written disclosures are to be made. The change to subsection (e)(4), makes the specific provisions of the notice more clear. The addition of new subsection (f) creates a provision excepting application of the section's provisions to self-propelled motor vehicles that have built-in facilities for cooking, sleeping and personal sanitation and hygiene.

Adopted §5.501(a) sets out the purpose of the section. It also clarifies that adopted §5.501 applies to an auto insurance policy promulgated by the board, and is not intended to preclude any company filing of endorsements and rate rules for consideration by the board which would provide for limitations anticipated in the Insurance Code, Article 5.07-1 and subject to Article 5.07-1(b). Adopted §5.501(b) contains definitions of essential terms. Adopted §5.501(c) identifies specific insurer activities which are prohibited in the settlement of motor vehicle damage claims and declares such activities to be unfair trade practices or deceptive trade practices under the Insurance Code, Article 21.21. Adopted §5.501(d) sets out minimum requirements for determination of a reasonable rate of reimbursement for motor vehicle repairs. Adopted §5.501(e) contains specific requirements for consumer disclosure under the section and sets out language and format for such disclosure. Adopted §5.501(f) creates a provision excepting application of the section's provisions to self-propelled motor vehicles that have built-in facilities for cooking, sleeping and personal sanitation and hygiene. Adopted §5.501(g) contains provisions for severability.

A total of 31 written submissions were received in connection with publication of proposed new §5.501. Some of those commenting transmitted the same comments both by facsimile and by mail. Of those com-

menting, ten were in favor of the proposed section, 15 were against the proposed section, and the remaining six commented on the proposed section, rather than clearly in favor or clearly against the proposal. Those commenting on the section generally had specific recommendations, such as alternate placement of the notice, alternate language for the notice, or made specific requests such as exemption from application of the section or request for public hearing. Those submitting written comments in favor of the proposed section included the Automotive Service Association, Bay Tex Glass Association, Texas Automobile Dealers Association, Texas Collision Association, Texas Glass Association, and five individual consumers. Those who submitted written comments against the section as published included Allstate Insurance Companies, Art's Auto Paint and Body Shop, Autocomp Replacement Systems, Farmer's Insurance Group, Gem Agencies, John Nanninga Insurance Agency, Nationwide Insurance, Safelite Glass Corp, Service King Paint and Body Shop, Southern Farm Bureau Casualty Company, Texas Farm Bureau Insurance Company, Texas Farm Bureau Underwriters, USAA, and two individual consumers. Those who submitted written comments on the section as published included Employers General Insurance Group, Inc., Foremost County Mutual Insurance Company, National Association of Independent Insurers, Novus Systems, Progressive Insurance Company, State Farm Insurance Companies, and the Texas Automobile Dealers Association.

Comments of those favoring adoption of the section were as follows:

1. The proposed section provides for greater assurance of freedom of choice and protection of a consumer's right to choose the repair shop the consumer wants.
2. The prohibited activities identified in the proposed section help to clarify the Insurance Code, Article 5.07-1, and to assist in effective implementation of that article.
3. Setting out the specific prohibited activities in the proposed section is necessary to ensure that consumers are aware of the rights they have in connection with insurance claims.
4. The reasonable rate of reimbursement is addressed rationally in the proposed section; it makes sense to have an insurance company establish written procedures for determining the rate of reimbursement for claims.
5. The disclosure required by the proposed section makes good common sense. The wording is accurate and necessary to the purpose of the notice. Comments and responses on or against the section are as follows:

1. The section as proposed and published exceeds the rulemaking authority of the Board. The Department responds that the statement of statutory authority in the preamble to the section as proposed and published at (18 TexReg 2124) on March 30, 1993, contains an accurate and sufficient basis upon which the section can be proposed and adopted. The Board has determined that the new section is essential to the uniform, or-

derly and effective administration of Article 5.07-1, consistent with the legislative intent apparent from the specific provisions of that statute.

2. The section as proposed and published, and with changes recommended by the staff at hearing, prohibits insurers' sponsored cost savings programs that benefit policy holders by providing quality services. The Department does not believe that the section as proposed and published, or with changes recommended by the staff at hearing, prohibits insurers from sponsoring voluntary cost savings programs to benefit policyholders by providing quality services. The Department does not believe that any provision in the section as proposed results in such a prohibition. What the section is designed to prevent is the use of such programs to preclude freedom of choice by beneficiaries with claims. The adopted section as prohibits insurers from not disclosing to the beneficiary the right to choose a repair facility of the beneficiary's choice. The section also details the manner in which that disclosure is to be made. The section also prohibits certain practices that directly or indirectly limit coverage under the policy in contravention of Article 5.07-1.

3. One comment urged that the section as proposed and published exceeds the board's jurisdiction under Article 21.21, §13. An alternative comment urged that the board has clear authority under Article 21.21, §1 and §13, to adopt the section. The Department disagrees with the first comment and agrees with the second comment. The Board has repeatedly pointed to specific provisions in Article 21.21 which grant it clear authority to consider and adopt the section as proposed.

4. The section as proposed and published is overbroad because it attempts to completely foreclose legitimate special programs by insurers designed to reduce repair costs and because it labels as unfair and deceptive acts and practices which are neither unfair nor deceptive. The Department disagrees with this comment. The primary purposes of the section are to ensure effective disclosure to beneficiaries of certain rights they have in connection settlement of particular types of claims, and to prohibit practices by insurers that would preclude the exercise of freedom of selection by such beneficiaries. Subject to those provisions, the section does not prohibit the existence of legitimate programs by insurers designed for the benefit of its insurers and consumers generally to provide quality repairs at reduced costs.

5. The section as proposed and published violates public policy which would adequately compensate claimants for damages they suffer, while at the same time keeping rates as low as possible, by prohibiting the promotion of lower cost programs that arguably provide repairs of sufficient quality to adequately compensate claimants. Alternatively, the section as proposed and published is excessive in requirement and not in the public interest. The Department believes the section as proposed embraces and supports good public policy, which not only strives for adequate compensation of claimants for damages suffered, but also emphasizes recognition and disclosure of the consuming public's right to make certain decisions in an informed and

unrestrained manner. However, since the section represents a means of clarifying Article 5.07-1, it is in no sense intended to be inconsistent with that article or any insurance law which has as its purpose the achievement of premium rates for consumers that are as low as possible. The adoption does, however, add language to subsection (a) to clarify that this section does not preclude the filing or approval of endorsements providing the types of limitations contemplated in Article 5.07-1(b).

6. The language in subsection (a) as published does not clearly provide which insurance policies are subject to the section, and even with the additional language referred to in Comment Number 5, previous, the subsection does not adequately except from the provisions of this section the possible endorsements, policies and rules envisioned in the Insurance Code, Article 5.07-1(b). Thus, the section fails to meet the terms of Article 5.07-1. The Department disagrees with this comment because the section represents a means of clarifying Article 5.07-1, but the Department also makes a further change to subsection (a) resulting from this comment. First, the provisions of the section are in no sense intended to be inconsistent with or contrary to the terms of Article 5.07-1 or any insurance law which has as its purpose ensuring that coverage for damage to a motor vehicle is neither directly nor indirectly limited. The Department again points out that the adoption further revises subsection (a) to clarify that the section applies to an auto insurance policy, but not to rules, endorsements or policies issued with such endorsements which are considered and adopted by the Board pursuant to Article 5.07-1(b).

7. The section as proposed and published is impractical because it fails to recognize the manner in which claims are processed. Since many of the claims processing matters are conducted over the telephone, the oral disclosure, choice by the insured, and the repair work itself may all have been completed before the written notice required by the section has been received by the beneficiary. The Department disagrees that provisions of the section result in impracticality of the section. The provisions of the section are set out to provide disclosure and to prohibit certain practices. They are not intended to interfere with the timely and efficient processing of claims. While the Department believes that in some instances the operation of the section might have the unintended result that a beneficiary will receive the written confirmation of the beneficiary's right to choose a repair facility after that choice has in fact already been made, the Department does not believe this renders the section impractical or impracticable.

8. Incentives such as guarantees for repairs to be done satisfactorily should be permitted if a particular repair facility is chosen. The Department agrees with the concept of this comment, but is not certain about its context, since it was propounded in opposition to the section as proposed. The section as proposed does not prohibit incentives similar to the one used as an example in this comment, depending on what entity is providing the guarantee. It does, however, prohibit the use

of such incentives as inducements or means by which to preclude freedom of choice by a beneficiary of any repair facility.

9. The section as proposed and published would prohibit efficient delivery of high quality auto repairs through large providers and would benefit only the providers of less efficient and more costly service. The Department disagrees with this comment. The purpose and provisions of the section as proposed is to ensure disclosure of certain matters to beneficiaries and to prohibit practices that would interfere with a beneficiary's legitimate right to choose under law where repairs are to be performed. It does not prohibit delivery of auto repairs through large providers or through small providers. It does not prohibit insurers from making recommendations, so long as such recommendations are not structured in a manner that would preclude beneficiaries from exercising their right to choose.

10. Insurers should be allowed to advise their insureds of the availability of products and services of an accessible, experienced, cost-effective repair facility, if they are aware of such a facility. The Department does not believe that the section as proposed prohibits insurers from advising insureds about the availability of particular products and services, so long as insureds are also aware that the final decision about whether to take advantage of such availability is theirs alone. Both this comment and the prior one seem to assume that referral plans are prohibited by the section. Referrals themselves are not prohibited, provided that certain events occur in connection with the referral. The activity prohibited is the insurer itself providing the incentive or the inducement (e.g., waiver of deductible, rebate, insurer warranty).

11. Subsection (c)(2) is insufficient as proposed and published, and should contain a specific statement that written insurer guidelines, on file and subject to inspection, are presumed to reflect the reasonable cost of obtaining repairs. The Department responds that it is inappropriate to specifically provide by regulation that the existence of written guidelines subject to inspection creates the presumption of reasonableness. For this reason, no change to subsection (c)(2) is made as a result of this comment.

12. Subsection (c)(3) appears to be unnecessarily vague, since financial incentives, other incentives and inducements are not defined in the rule. The provision appears to restrain an insurer from describing any benefits of using a recommended shop. The activity prohibited by the section is activity on the part of the insurer in providing an inducement which would preclude the beneficiary from exercising freedom of choice. This comment appears to address concerns similar to those raised in Comments 9 and 10. The Department reemphasizes its response to those two prior comments.

13. The section as proposed and published will drive up the cost of physical damage claims because it suppresses fair competition on repair prices. The Department does not believe that the section as adopted will either drive up or drive down the cost of damage claims. The Department position is that the section neither suppresses nor enhances fair

competition on repair prices, since its purposes are to prohibit certain practices that would limit the freedom of choice by beneficiaries about where they have repairs performed, to provide certain disclosure, and to declare that certain practices are unfair trade practices. The section is not intended to prohibit voluntary cost-savings program availability.

14. Cost of compliance is materially understated. The Department responds that the cost estimate in the proposed preamble represents anticipated costs only. The actual cost of compliance will depend in part on business decisions already made or to be made by insurers. The cost estimate anticipates that prudent business practice and passage during the 1991 regular legislative session of Article 5.07-1 has resulted in procedures already in place which would be required if the section were to be adopted. The actual cost of compliance could also be lower than what the commenter anticipates. In addition, the adoption includes changes to the section as proposed, some of which ought to result in lower compliance costs.

15. The section as proposed and published cannot reasonably be applied to motor home insurance, even though motor homes come under the personal auto insurance policy provisions. The Department agrees with this comment. Such vehicles appear to be relatively few in number, and unique in repair requirements. For this reason, the adoption adds new subsection (f) to create an exception for self-propelled motor vehicles, otherwise subject to an auto insurance policy, that have built in facilities for cooking, sleeping, and personal sanitation and hygiene.

16. If adopted, the section should require a repair facility to be in substantial compliance with state and federal law and regulations for such facilities. The Department does not believe the adopted section should contain such a provision. The statute pursuant to which the section is proposed is concerned with direct or indirect limitations of coverage and consumer choice, and disclosure of consumer choice. The purpose of the section as proposed is to ensure disclosure to beneficiaries and to prohibit certain practices by insurers. The Department believes that the proposal of this comment would take the section beyond its stated purpose. The recommendation under this comment was withdrawn at the hearing.

17. Subsection (b) should not include the words "particular" or "physical" in the definition of "reasonable rate of reimbursement", as those adjectives are more confusing than they are clarifying. The Department agrees that removal of such adjectives will not result in a change to the meaning of the definition. For that reason, the adopted section removes the words "particular" and "physical" from the references to "repairs" and "damage," respectively, in the definition of "reasonable rate of reimbursement".

18. A single violation under subsection (c) should not constitute an unfair trade practice, especially if the violation is an unintentional violation. Subsection (c) should be amended to provide a standard that relies on a pattern of practice. The single act standard is unfair

and unnecessary. The Department believes that insurance consumers are injured by specific instances of conduct committed in connection with practices of insurers, and that to require a pattern of conduct before classifying a particular behavior as an unfair trade practice will result in preclusion of redress for consumers even in instances where such behavior was intentional although isolated. For these reasons, the recommended change is not adopted.

19. Uncertainty exists about what the phrase "to be covered under the policy" in subsection (c)(4) means. The commenter thought the term to be ambiguous in context. The Department does not believe this term is ambiguous inherently or in its context. It means "to be a covered repair."

20. The phrase "any other document distributed to a beneficiary" in subsection (c)(6) could be read to refer to distribution of documents by entities not under the control of the insurer. The Department disagrees because it believes subsection (c) makes it clear that the practices prohibited in paragraphs within that subsection are practices of an insurer, not of some party other than the insurer and over whom the insurer has no control.

21. The board lacks the authority to establish a reasonable rate of reimbursement as envisioned in subsection (d). The Department emphasizes that the section does not seek to establish by rule a reasonable rate of reimbursement. It requires establishment of written procedures by insurers for determining reasonable reimbursement rates for repairs to motor vehicles. To address concerns raised, the final adoption includes clarifying changes to subsection (d) which are designed to address and resolve the concern expressed in this comment.

22. The reasonable rate of reimbursement standard of subsection (d) will require frequent updates because reasonableness is not defined with respect to reimbursement rates. Thus the section as proposed is ambiguous in this material respect. The Department believes this comment centers on the same concern as the prior comment, and its response is the same.

23. The requirement relating to unreasonable distance in subsection (d)(2) is vague and works hardship on insurers to know how to comply with it. The Department points out that some of the matters addressed in the rule involve questions of fact which ultimately might have to be resolved by a trier of fact. The required written procedures will have to be set so that there are not indirect limitations on coverage. The methodology selected by particular insurers will ultimately establish reasonable rates of reimbursement for those insurers. Certainly one alternative to the more flexible standard of "reasonable distance" envisioned by the section would be to designate an exact distance; however such a standard would significantly limit insurers in the development of procedures.

24. If adopted, the section should require in subsection (d) that written procedures be filed with the Department and reviewed annually to ensure compliance with the section. The Department responds that it will act on com-

plaints alleging violations of law or of the section, if adopted. It will utilize resources as efficiently as possible to resolve any matters arising under the section as adopted. Unfortunately, the Department has insufficient resources to review on a periodic basis the written procedures of each insurer that will be subject to the provisions of the section.

25. If adopted, the section should, with respect to subsection (d), provide a means for contesting and resolving and insurer's determination of "reasonable reimbursement" and set up procedures for compliance. The Department believes that the current departmental processes will accommodate and provide for the redress addressed in this comment. For this reason, the recommendation made in this comment is not adopted.

26. If adopted, the section should state explicitly that an insurer may not specify the brand, type, kind, age or condition of parts or products that may be used to repair a vehicle. The Department believes that the provision in subsection (d)(1), in its reference to Article 5.07-1, is sufficient, since the statutory requirement is quite specific regarding this prohibition on insurers.

27. The requirement in subsection (d)(3) needs to be revised, since there is no legal requirement for an admitted non-domiciled insurer to have a principal office location in Texas. The Department agrees and changes subsection (d)(3) upon adoption to require the procedures be on file at the principal office location of the insurer in its domiciliary state.

28. If adopted, the section should contain a new paragraph in subsection (d) requiring a copy of the original itemized invoice to be provided to a beneficiary in instances where a repair facility is recommended, so that the beneficiary will know what has been done, and at what cost, so that the beneficiary can make an informed decision about where to have repairs made and what possible changes to make to his/her coverage under the insurance policy. The Department agrees. Because the Department believes it is important that each insurance consumer have an adequate basis upon which to make decisions about repair facilities, and about future changes to coverage under his or her auto policy, new paragraph (3) is added to the adopted section to provide essentially as recommended by the commenter.

29. It is recommended subsection (e) be re-drafted for purposes of clarification. The Department agrees. For this reason, the adopted section contains a number of changes to subsection (e) to make the subsection better organized and more clear with respect to disclosure requirements.

30. The disclosure required by subsection (e) is unnecessary. The Department disagrees with this comment. Beneficiaries need such disclosure in order to make the best informed decision about repair facilities in connection with motor vehicle damage claims.

31. The requirement for written disclosure in all instances fails to recognize the facts of modern claim settlements, more specifically telephone settlement procedures and processes; it is recommended that subsection (e)(3) (A) be changed to require oral disclo-

sure where no written claim processing documentation is required and it is determined that repair costs will be paid from benefits under the insured's auto policy. The Department believes it is very important to have the documentation afforded by a written record of disclosure about the rights of beneficiaries in connection with submission of a claim. For this reason the adopted section retains the requirement for written disclosure to be provided at least once in connection with the filing of a claim.

32. The disclosure requirement of subsection (e) should be changed to require written notice of the beneficiary's rights at the time of policy issuance, without the followup requirement of disclosure at the time of claim processing. In the alternative, if it is preferred that insureds be informed of their rights regarding damage claims at the point of reporting a claim, then remove the requirement that written notice be provided in connection with issuance and delivery of the policy and instead require it be provided at the time of claim submission and processing. The Department disagrees. Because these two events might be separated by a significant interval of time, the Department believes it is very important for beneficiaries to have information relating to their right to choose a repair facility provided both at the time of the delivery of the policy and at the time that a claim arises. For this reason, the Department is not making a change with respect to this comment.

33. In subsection (e)(2), remove the reference to the face of the policy and permit the notice to accompany the policy when delivered. This recommendation is based on the length of the required disclosure and the insufficient amount of remaining available space on the face of the promulgated policy for the notice. The Department agrees that because the content of the notice is important and because it would be difficult to dramatically streamline the notice, the insurer should have the option of accompanying delivery of the notice with the policy. For this reason, the adoption revises subsection (e)(2) to permit the notice to accompany the policy or certificate as the first, second or third page of such policy or certificate at the time the policy is delivered.

34. Paragraph (3) of subsection (e) can be clarified by removing the "and/or" language. The Department agrees that the language of subsection (e), paragraph (3), can be made more clear. For this reason, the adoption makes a change to that paragraph which provides for specific reference to circumstance-and-timing provisions within the paragraph relating to notice and disclosure.

35. It is recommended that subsection (e)(3)(B)(ii) be changed to require that special written notice be mailed to a beneficiary not later than one business day (rather than 24 hours) following initial telephone contact by the beneficiary regarding the claim in instances where no written claim is required to be filed. The Department agrees that a one-business-day standard is more practical than a 24-hour standard. For this reason, adopted subsection (e)(3)(B)(ii) includes, among other changes, the provision of special written notice mailed or provided by facsimile transmis-

sion to the beneficiary within one business day of initial telephone contact.

38. The disclosure required in subsection (e) is too long, too wordy, and needs to be in plain language. The Department agrees. For this reason, the adopted disclosure is in language that is more plain.

The New section is adopted pursuant to the Insurance Code, Articles 5.07-1, §§5.10, 21.21 and 1.04, and Texas Civil Statutes, Article 6252-13a. The Insurance Code, Article 5.07-1, provides for disclosure of consumer information and requires that any rules promulgated by the board for auto insurance policies which provide for any limitation relating to repair and replacement services resulting from automobile damage mandate particular consumer disclosures. Article 5.10 provides that the board is empowered to make and enforce rules and regulations necessary to the administration of Subchapter A, Chapter 5, Insurance Code. Article 21.21, §13, authorizes the Board to promulgate and enforce reasonable rules necessary to accomplish the purposes of deterring or otherwise curbing practices in the business of insurance which facilitate or result in unfair competition, unfair trade practices and/or deceptive trade practices. Article 1.04 provides the Board with the authority to determine policy and rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures, and prescribe the procedures for adoption of rules by a state administrative agency. The adopted section, primarily affects regulation pursuant to Subchapter A of Chapter 5 of the Insurance Code, relating to motor vehicle insurance, most specifically Article 5.07-1; and Subchapter B of Chapter 21 of the Insurance Code, including Article 21.21, relating to unfair competition, unfair trade practices and deceptive trade practices.

**CROSS REFERENCE TO STATUTE.** The following statutes are affected by this rule: The Insurance Code, Articles 5.07-1 and 21.21, §5.501.

**§5.501. Motor Vehicle Insurance Damage Claim Coverage, Settlement, and Disclosure.**

(a) Purpose. The purpose of this section is to prohibit certain practices in the settlement of motor vehicle damage claims under an auto insurance policy delivered, issued for delivery or renewed in this state; to provide for definitions relating to such activities and practices; and to declare that certain practices constitute unfair trade practices in the business of insurance in this state. The provisions of this section are not intended to preclude any company filing of endorsements and rate rules for consideration for approval by the board which would provide for limitations anticipated in the Insurance Code, Article 5.07-1 and subject to Article 5.07-1(b). Any rate rules or endorsements so adopted and policies is-

sued with such endorsements are not subject to the provisions of this section.

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

(1) Reasonable rate of reimbursement—The rate of reimbursement for repairs resulting from damage to a motor vehicle, established pursuant to written procedures developed and utilized by an insurer as required in subsection (d) of this section.

(2) Repair facility—Any motor vehicle repair shop, any other physical facility, or any business establishment or location which has as its primary business activity the repair of damage to motor vehicles and/or the replacement of particular motor vehicle parts necessitated by physical damage to such motor vehicles.

(c) Prohibited Insurer Activities. Each of the activities by an insurer identified and described in paragraphs (1)–(6) of this subsection constitutes a direct or indirect limitation of coverage, and each is expressly prohibited as an unfair trade practice and/or as a deceptive trade practice under the Insurance Code, Article 21.21, in the settlement of motor vehicle insurance damage claims:

(1) failing to disclose, as required in subsection (e) of this section, the right of a beneficiary under the policy to choose the repair facility of the beneficiary's choice in the settlement of a motor vehicle insurance damage claim;

(2) establishing or maintaining reimbursement rates for repairs which fail to reasonably reflect costs of obtaining such repairs as indicated in the written procedures developed and utilized by an insurer in compliance with subsection (d) of this section;

(3) providing financial or other incentives or inducements for beneficiaries to have repairs completed at a particular repair facility;

(4) stating or otherwise intimidating, coercing or threatening any beneficiary into believing that a particular repair facility must be utilized by the beneficiary in order for the damage repair or parts replacement to be covered under the policy;

(5) otherwise requiring that repair or replacement work resulting from physical damage to motor vehicles must be performed by a particular repair facility; or

(6) displaying the name and/or telephone number of a repair facility on a price verification sheet, quote sheet, or any other document distributed to a beneficiary or to a motor vehicle repair facility prior to

the beneficiary's advising the insurer about the shop which has been chosen, except in instances where the beneficiary specifically requests the insurer to recommend a repair facility.

(d) Reasonable rate of reimbursement for motor vehicle repairs. All insurers subject to the provisions of this section shall establish written procedures and shall follow those procedures in determining reimbursement rates for repairs for damage to motor vehicles. Written information which specifies how the rate of reimbursement is determined for any given repair or replacement item shall be provided upon request of a beneficiary at the time a claim is submitted. At a minimum, such procedures:

(1) shall be designed to assure full compliance with the terms of the insurance contract and with the Insurance Code, Article 5.07-1(a);

(2) shall be designed to assure that beneficiaries are not restricted in their choice of a repair facility by having to travel an unreasonable distance to receive full reimbursement for the covered repairs;

(3) shall include, in instances where a particular repair facility has been recommended, furnishing the beneficiary with a copy of the recommended repair facility's original invoice itemizing repair charges and the quality and cost of particular replacement parts used;

(4) shall be on file in the insurer's principal office location in its domiciliary state;

(5) shall be provided to the department upon request; and

(6) shall include, at the request of a beneficiary filing a claim, information about how much the insurer will pay for a covered repair performed by a repair facility the beneficiary chooses.

(e) Required disclosure. All insurers subject to the provisions of this section shall provide the disclosure required by paragraphs (1)–(4) of this subsection.

(1) Insurers shall provide full disclosure concerning the rights of beneficiaries with respect to claims for damage repair and replacement under automobile insurance policies delivered, issued for delivery, or renewed in this state.

(2) Such disclosure shall be provided in writing on the face of the policy, or certificate in lieu of a policy, if applicable, or shall accompany the policy or certificate as the first, second or third page of such policy or certificate at the time the policy is delivered.

(3) Such disclosure shall also be provided as required in subparagraphs (A) and (B) of this paragraph.



(A) If an insurer provides any information, oral or written, about a repair facility or network of repair facilities in connection with a claim, the insurer shall provide full disclosure about the right of beneficiaries to choose the repair facility of their choice as provided in this subparagraph.

(i) If an insurer provides information about a repair facility orally, the insurer shall provide oral disclosure of the right of a beneficiary to select any repair facility. The insurer also shall mail or transmit by facsimile to a beneficiary, no later than one business day following the oral disclosure, a written disclosure of the right of a beneficiary to choose any repair facility.

(ii) If an insurer provides written information about a repair facility, in accordance with subsection (c) (6) of this section, the insurer shall provide a written disclosure of the right of a beneficiary to choose any repair facility. The written disclosure shall be provided at the same time as disclosure of any information about a repair facility.

(B) An insurer must provide the written disclosure at least once for each claim submitted as provided in this subparagraph regardless of whether it provides any information about a repair facility or network of repair facilities.

(i) If written forms or documentation are provided to a beneficiary in order to process a claim, such disclosure may accompany such written forms or documentation sent by the insurer to the beneficiary.

(ii) Where no written claim is filed, the insurer shall provide such disclosure as a special written notice mailed or transmitted by facsimile to the beneficiary within one business day of initial telephone contact by the beneficiary regarding the claim.

(4) Such disclosure, in its oral form, shall be provided in substantially identical language as the following, and in its written form shall be provided in substantially identical language and format (including capitalization, punctuation and text in at least 10-point type) as the following: **NOTICE BY LAW, YOU HAVE THE RIGHT TO SELECT WHERE YOUR MOTOR VEHICLE IS REPAIRED. HOWEVER, (NAME OF COMPANY) IS NOT REQUIRED TO PAY MORE THAN A REASONABLE CHARGE FOR THE REPAIRS PERFORMED. IN OTHER WORDS, (NAME OF COMPANY) IS NOT REQUIRED TO PAY THE COST FOR COVERED REPAIRS THAT IS GREATER THAN THE REASONABLE**

**CHARGE. YOU MAY BE REQUIRED TO PAY THE DIFFERENCE. AT YOUR REQUEST WE WILL EXPLAIN TO YOU IN WRITING HOW WE DECIDE A REASONABLE CHARGE FOR THIS REPAIR. IF YOU FILE A CLAIM AND SO REQUEST, WE ALSO WILL TELL YOU HOW MUCH WE WILL PAY FOR A COVERED REPAIR PERFORMED BY A REPAIR SHOP YOU CHOOSE.**

(f) Exception. The provisions of this section do not apply to self-propelled motor vehicles that have built-in facilities for cooking, sleeping, and personal sanitation and hygiene which are otherwise subject to a promulgated auto insurance policy.

(g) Severability. If any provision of this section or the application thereof to any person or circumstance is held invalid for any reason, the invalidity shall not affect the other provisions or any other application of said provisions which can be given effect without the invalid provision or application. To this end all provisions of this section are declared to be severable.

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 23, 1993.

TRD-9324717

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Effective date: July 14, 1993

Proposal publication date: March 30, 1993

For further information, please call: (512) 463-6328

### Subchapter E. Texas Catastrophe Property Insurance Association

#### • 28 TAC §5.4001

The State Board of Insurance of the Texas Department of Insurance adopts amendments to §5.4001, concerning a change in the plan of operation of the Texas Catastrophe Property Insurance Association (TCPIA) to provide a new formula and procedure for determining member participation in the TCPIA with respect to TCPIA policies with inception dates on and after January 1, 1993 without changes to the proposed text as published in the April 27, 1993, issue of the *Texas Register* (18 TexReg 2786). The amendments also eliminate as unnecessary language any reference in the TCPIA plan of operation to the board's duly appointed statistical gathering organization. These amendments are adopted.

The State Board of Insurance of the Texas Department of Insurance adopts this amendment because recent changes in ratemaking required by House Bill 2 as enacted by the 72nd Texas Legislature, preclude the use of

the current procedures outlined in the TCPIA plan of operation (28 TAC §5.4001) for determining member participation in the TCPIA on and after January 1, 1993. The implementation of the file and use rating system for commercial property policies and the flex rating system for other property policies makes it impossible to properly establish direct written premiums at manual rates, as previously required under the TCPIA plan of operation. Language referencing the reporting of statistical information to the board's duly appointed statistical gathering organization is eliminated as unnecessary since the TCPIA is required to report statistical information to the board in accordance with the property statistical plan promulgated by the board for property insurance.

The amend section provides a new formula and procedure for determining member participation in the TCPIA on and after January 1, 1993. This new formula and procedure will be based on actual direct written premiums for extended coverage and other allied lines for property insurance rather than on direct written premiums restored to current manual rates. The amendment also eliminates unnecessary language in the TCPIA plan of operation regarding the reporting of statistical information to the board's duly appointed statistical gathering organization.

No comments were received regarding adoption of the amendments.

The amendment is adopted pursuant to the Insurance Code, Articles 21.49, §5(c) and §1.04(b), and Texas Civil Statutes, Article 6252-13a, §4 and §5. Article 21.49, §5(c), requires the State Board of Insurance to adopt the plan of operation of the Texas Catastrophe Property Insurance Association or any amendment thereto. Article 1.04(b) authorizes the State Board of Insurance to adopt rules in accordance with the laws of this state. Texas Civil Statutes, Article 6252-13a, §4 and §5, authorize and require each state agency to adopt rules of practice setting forth the nature and requirement of available procedures and to prescribe the procedures for adoption of rules by a state administrative agency.

The following statutes are affected by this rule: §5.4001 The Insurance Code, Articles 21.49§5(c) and 1.04(b)

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, 1993.

TRD-9324905

Linda K. von Quintus-Dom  
Chief Clerk  
Texas Department of  
Insurance

Effective date: July 19, 1993

Proposal publication date: April 27, 1993

For further information, please call: (512) 463-6328

# TITLE 37. PUBLIC SAFETY AND CORRECTIONS

## Part IX. Texas Commission on Jail Standards

### Chapter 300. Fees and Payments

#### Emergency Overcrowding Relief

##### • 37 TAC §300.24, §300.27

The Texas Commission on Jail Standards adopts amendments to §300.24 and §300.27 concerning Fees and Payments. Section 300.27 is adopted with changes to the proposed text as published in the May 25, 1993, issue of the *Texas Register* (18 TexReg 3352). Section 300.24 is adopted without changes and will not be republished.

The amendments revise reporting requirements to reflect actual current procedures of the commission.

The amendments revise reporting requirements to coordinate the mandated statewide use of the state identification number.

No comments were received.

The amendments are adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

**§300.27. Records.** Each sheriff shall maintain complete records of the information required under §300.24 of this title (relating to Reports) and make the records available to commission staff upon request for review. The sheriff shall retain completed copies of each inmate's TDCJ-ID Document Checklist and copies of issued white warrants for a period of one year from the date of transfer or release of the inmate from the jail.

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 25, 1993.

TRD-9324795 Jack E. Crump  
Executive Director  
Texas Commission on Jail Standards

Effective date: July 16, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512) 463-5505

##### • 37 TAC §300.28

The Texas Commission on Jail Standards adopts new §300.28, concerning Fees and Payments, without changes to the proposed text as published in the May 25, 1993, issue of the *Texas Register* (18 TexReg 3352).

The new section allows adjustments to be made to inaccurate submitted reports required by §300.24. The new section allows counties to request payment adjustments for previously submitted reports which understate felony backlog.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

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 25, 1993.

TRD-9324796 Jack E. Crump  
Executive Director  
Texas Commission on Jail Standards

Effective date: July 16, 1993

Proposal publication date: May 25, 1993

For further information, please call: (512) 463-5505

## Part XIII. Texas Commission on Fire Protection

### Chapter 421. Standards for Certification

##### • 37 TAC §421.1

The Texas Commission on Fire Protection adopts an amendment to §421.1 (formerly §233.1), concerning minimum standards for basic structural fire protection personnel, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1859).

The justification for the amendment is the clarification of procedures for meetings of the Fire Protection Personnel Advisory Committee.

The amendment changes the word "commission" to the "Fire Protection Personnel Advisory Committee." The amendment provides the method by which the meetings may be called, the number of members on the committee, and the responsibility of the committee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides

the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.023, which provides the commission with authority to establish a fire protection personnel advisory committee.

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 19, 1993.

TRD-9324701 Jack Woods  
General Counsel  
Texas Commission on Fire Protection

Effective date: July 14, 1993

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

## Chapter 423. Fire Suppression

### Subchapter A. Minimum Standards For Structure Fire Protection Personnel Certification

##### • 37 TAC §423.1

The Texas Commission on Fire Protection adopts an amendment to §423.1 (formerly 233.9), concerning minimum standards for basic structural fire protection personnel, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1659).

The amendment will result in a clearer understanding of the requirements for certification as structure fire protection personnel, particularly regarding volunteer fire fighters, out of state, or military personnel seeking to establish certifiability as fire protection personnel.

The amendments add the completion of the approved Basic Volunteer Fire Fighter Curriculum as specified in Chapter 1 of the commission's document titled "Commission Volunteer Certification Curriculum Manual" as an option for being certified as structure fire protection personnel. The amendment also provides criteria for approval of basic fire suppression programs from other jurisdictions, including out-of-state and military programs, to determine equivalency.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel; §419.032(d), which provides the commission with authority to certify persons that are qualified as fire protection personnel; §419.075, which provides the commission with authority to certify volunteers under Subchapter B.



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 19, 1993.

TRD-9324700

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: July 14, 1993

Proposal publication date: March 12, 1993

For further information, please call: (512)  
873-1700

## Chapter 425. Fire Protection Personnel Instructors

### Subchapter A. Fire Service In- structor Certification

#### • 37 TAC §425.5, §425.7

The Texas Commission on Fire Protection adopts amendments to §425.5 (formerly §233.85) and §425.7 (§233.87), concerning fire protection instructors, including advanced and master level instructor certifications, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1660).

It is anticipated that the sections as amended will allow more fire fighters to obtain advanced levels of instructor certification without being full-time instructors. The change to the requirements for a master instructor certificate will also encourage persons holding master certificates in other disciplines to become instructors.

The amendment to §425.5 deletes the language requiring an advanced instructor to be working full-time as an instructor or training officer. The amendment to §425.7 changes the prerequisites required to obtain a master fire protection instructor certification to require master certification in another discipline.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.028(b)(3), which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes.

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 19, 1993.

TRD-9324699

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: March 12, 1993

For further information, please call: (512)  
873-1700

## Chapter 429. Minimum Standards For Fire Inspectors

#### • 37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11, 429.13, 429.15, 429.17

The Texas Commission on Fire Protection adopts the repeal of §§429.1 (formerly 233.93), 429.3 (233.95), 429.5 (233.97), 429.7 (233.99), 429.9 (233.101), 429.11 (233.103), 429.13 (233.105), 429.15 (233.107), and 429.17 (233.109), concerning minimum standards for fire inspectors, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1661). The repealed rules will be replaced with new rules concerning the same subject matter with an effective date of January 1, 1994.

The repeal of these rules will allow for replacement of obsolete language by new sections intended to increase the competency of person assigned fire inspection duties particularly in smaller cities that often face the same hazards as larger cities, as well as more effective fire prevention services for the public. In addition, the repeal eliminates the on-year experience requirement that permits fire inspectors to be recognized as expert witnesses upon completion of training.

The sections adopted for repeal will be replaced by new sections relating to the same subject matter published in this issue of the *Texas Register* as adopted new rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324697

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1994

Proposal publication date: March 12, 1993

For further information, please call: (512)  
873-1700

#### • 37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11

The Texas Commission on Fire Protection adopts new §§429.1, 429.3, 429.5, 429.7, 429.9, and 429.11, concerning minimum standards for fire inspection personnel, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1661). The new sections replace repeated sections pertaining to the same subject matter and have a proposed effective date of January 1, 1994.

The new sections will result in increased competency of persons assigned to fire inspection duties, particularly in small cities that often face the same hazards as larger cities, as well as more effective fire prevention services for the public. In addition, the elimination of the one-year experience requirement permits fire inspectors to be recognized as expert witnesses upon completion of training.

New §429.1 requires fire inspector certification of all full-time, fully paid local government employees who are assigned fire code enforcement duties. New §429.3, concerning standards for Basic Fire Inspector Certification, replaces current language where the number of training hours depends on city population, with a single basic curriculum requirement consisting of either a 226-hour course or possession of an associate degree, including 21 semester hours in specified fire protection and prevention courses. The new sections pertaining to intermediate, advanced, and master certification provide requirements consistent with higher levels of structure certification.

One commenter opposed the new sections concerning the prohibition against certification as a full-time fire fighter and as a full-time fire inspector and related requirements for supervision of persons certified as Fire Fighter/Instructor Limited by a full-time certified Fire Inspector. These provisions were viewed by the commenter as an unwarranted intrusion into the internal organization of a municipality's fire service. One commenter opposed the provisions in new §429.1 that requires that all full-time employees of a local governmental entity who are assigned fire code enforcement activities to be certified by the commission as fire inspectors. The commenter claimed this requirement would discourage inspections by fire company officers who are not certified fire inspectors.

Comments against the proposed new sections were received from representatives of the City of Addison and the city of Hurst.

The commission disagrees with the comments concerning the requirement of certification for fire code enforcement activities. The commission is of the opinion that persons engaged in such activities, as defined in the newly adopted rules, should have the training required for certification as fire inspections. The rules do not prohibit company inspectors by suppression personnel, but would require fire inspector certification where the individuals are engaged in the enforcement of duly adopted fire codes, ordinances, or statutes through administrative, civil, or criminal proceedings. The commission did not agree with the commenter con-

cerning the supervision required for certification of inspector limited personnel because the new section did not involve a change in policy from the previous rules. The commission was of the opinion that such policy should not be changed without further study and asked the Fire Protection Personnel Advisory Committee to consider at its next meeting the issue concerning supervision of fire inspector limited personnel.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324698 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1994

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

## Chapter 431. Minimum Standards for Fire and Arson Investigators

- 37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11

The Texas Commission on Fire Protection adopts the repeal of §§431.1, (formerly 233.113), 431.3 (233.115), 431.5 (233.117), 431.7 (233.119), 431.9 (233.121), 431.11 (233.123), concerning minimum standards for fire and arson investigator, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1664). The repealed sections are replaced by new sections concerning the same subject matter with a proposed effective date of January 1, 1994.

The repeal of these rules will allow for replacement of obsolete language by new sections which will result in more consistent training, more effective arson investigators, possible prevention and deterrence of arson, and reduction of fire losses.

The sections adopted for repeal will be replaced by new sections relating to the same subject matter published in this issue of the *Texas Register* as adopted new rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection

with authority to adopt rules for the administration of its powers and duties; and §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324695 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1994

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

- 37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11, 421.13

The Texas Commission on Fire Protection adopts new §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11, and 431.13, concerning minimum standards for fire and arson investigators, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1664). The new sections replace repealed sections concerning the same subject matter and have a proposed effective date of January 1, 1994.

The new sections will result in more consistent training, more effective arson investigators, possible prevention and deterrence of arson, and reduction of fire losses. The new sections on advanced certification will result in additional education focused on knowledge and skills which will increase effectiveness.

The new sections increased the training requirements for Basic Fire and Arson Investigator Certification by requiring completion of a 122 class-hour curriculum (currently 90 class-hours) or possession of an associate degree, including 15 semester hours in fire investigation and fire protection courses (currently six semester hours and no degree required). The new sections provide requirements for higher levels of fire investigator certification which track the requirements for higher levels in other disciplines.

No comments were received regarding adoption of new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324698 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: January 1, 1994

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

## Chapter 437. Fees

- 37 TAC §437.5

The Texas Commission on Fire Protection adopts an amendment to §437.5 (formally §239.5), concerning fees, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1667).

The result of enforcing the section as adopted will be the deletion of obsolete language and a clearer understanding in the fire service of rules applicable to the certification period.

The amendment deletes redundant language and clarifies the certification period to be from November 1 through October 31.

No comments were received regarding adoption of amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.026, which authorizes the commission to set and collect fees for each certificate that the commission issues or renews.

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 19, 1993.

TRD-9324694 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: July 14, 1994

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

## Chapter 441. Continuing Education

- 37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9

The Texas Commission on Fire Protection adopts the repeals of §§441.1 (formerly 247.1), 441.3 (247.3), 441.5 (247.5), 441.7 (247.7), and 441.9, concerning continuing education, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1668).

The result of enforcing the repeals will be the replacement of obsolete language by new sections intended to give a clearer understanding in the fire service of rules applicable to continuing education.

The sections when repealed will be replaced by new sections relating to the same subject matter published in this issue of the *Texas Register* as adopted new rules.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.032(b), which authorizes the commission to establish qualifications relating to continuing education or training programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324705 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: November 1, 1993

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

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- 37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15

The Texas Commission on Fire Protection adopts new §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, and 441.15, concerning continuing education. Section 441.5 is adopted with changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1668). The change occurs in §441.5(i) and changes the word administration to administrative in the first line. Sections 441.1, 441.3, 441.7, 441.9, 441.11, 441.13, and 441.15 are adopted without changes and will not be republished.

The result of enforcing these sections as adopted will be the deletion of obsolete language and a clearer understanding in the fire service of rules applicable to continuing education and that the competency of all certified fire protection personnel will be maintained or enhanced.

The new sections replace repealed sections relating to the same subject matter for continuing education and establish continuing education requirements for all disciplines of fire protection personnel. The new sections more clearly define the types of continuing education known as "Track -A" and "Track-B," and apply restrictions on subject matter to both "Tracks." In addition, the new sections further limit the repetition of topics from the same subject (or section of the curriculum) in consecutive years. The new rules eliminate the provisions for a 60-day "extension period"

and proficiency test requirement for correcting a deficiency and replace those provisions with a prohibition of assignment to or performance of duties authorized by the certificate until the deficiency is corrected and documented. Finally, the new sections impose a continuing education requirement for marine fire protection personnel, fire inspection personnel, and fire and arson investigation personnel for certification periods commencing after October 31, 1993.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.032(b), which authorizes the commission to establish qualifications relating to continuing education or training programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324706 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: November 1, 1993

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

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### Chapter 443. Adoption By Reference

- 37 TAC §§443.1, 443.7, 443.9

The Texas Commission on Fire Protection adopts an amendment to §443.1 (formerly 247.1), concerning the adoption by reference of the basic fire suppression curriculum and new §443.7, and §443.9, concerning adoption by reference of the basic fire inspection personnel curriculum and the basic fire and arson investigation curriculum respectively, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1670).

The result of enforcing the sections as proposed will be easier identification of source material for meeting curriculum competencies and objectives and more effective fire inspection and arson investigation.

The amendment to §443.1 adopts a revised version of the basic fire suppression curriculum that adds new references to §119 and §129. The new sections concerning the fire inspection curriculum and arson investigation curriculum replace repealed sections concerning the same subject matter and have a proposed effective date of January 1, 1994. The new basic fire inspection curriculum includes 20 subject areas organized with competencies and objectives in the same manner as the basic fire suppression curriculum with total hours of training amounting to 226

hours. Persons holding basic structure certification are not required to repeat 52 hours in subjects already covered in the basic fire suppression curriculum. The new basic fire and arson investigator curriculum has 23 subject areas organized in the same manner with competencies and objectives totaling 122 class hours.

No comments were received regarding adoption of the sections.

The amendment and new sections are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.022(a)(5), which provides the commission with authorization to establish qualifications for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 19, 1993.

TRD-9324704 Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: July 14, 1994

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

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### Chapter 491. Voluntary Regulation of State Agencies and State Agency Employees

- 37 TAC §491.1

The Texas Commission on Fire Protection adopts an amendment to §491.1, concerning election of components for voluntary regulation, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1670).

The result of enforcing the section as proposed will be the deletion of obsolete language and a clearer understanding in the fire service of rules applicable to the voluntary regulation of state agencies and state agency employees.

The amendment clarifies the provisions for election of components and promotes consistency with terminology used in other chapters pertaining to fire protection personnel.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.083, which provides for voluntary regulation of certain state agencies and state

agency employees under one or more discrete components of the commission's regulatory authority under the Texas Government Code, Chapter 419, Subsection B, as defined by commission rule.

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 19, 1993.

TRD-9324703

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

Effective date: July 14, 1993

Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

### Chapter 493. Voluntary Regulation of Federal Agencies and Federal Agency Employees

#### • 37 TAC §493.1

The Texas Commission on Fire Protection adopts an amendment to §493.1, concerning election of components for voluntary regulation of certain federal agencies and federal employees, without changes to the proposed text as published in the March 12, 1993, issue of the *Texas Register* (18 TexReg 1671).

The result of enforcing the section as adopted will be the deletion of obsolete language and a clearer understanding in the fire service of rules applicable to the voluntary regulation of federal agencies and federal agency employees.

The amendment clarifies the provisions for election of components and promotes consistency with terminology used in other chapters pertaining to fire protection personnel.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and §419.084, which provides for voluntary regulation of certain federal agencies and federal agency employees under one or more discrete components of the commission's regulatory authority under the Texas Government Code, Chapter 419, Subsection B, as defined by commission rule.

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 19, 1993.

TRD-9324702

Jack Woods  
General Counsel  
Texas Commission on Fire  
Protection

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Proposal publication date: March 12, 1993

For further information, please call: (512) 873-1700

## TITLE 40. SOCIAL SER- VICES AND ASSIS- TANCE

### Part III. Texas Commission on Alcohol and Drug Abuse

#### Chapter 147. Approved Drug Offender Education Program

##### General Provisions

##### • 40 TAC §§147.1-149.9

The Texas Commission on Alcohol and Drug Abuse adopts new §§147.1-147.9, concerning Approved Drug Offender Education Programs. Sections 147.1, 147.2 and 147.4-147.6 are adopted with changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2546) and §§147.3 and 147.7-147.9 are adopted without changes and will not be republished.

These rules are adopted to define common terms used and to establish minimum standards and criteria for the operation of approved drug offender education programs for persons convicted of certain drug offenses and who are required to complete a drug offender education program approved by the Texas Commission on Alcohol and Drug Abuse in order to have their driver's license reinstated. In §147.1, in the definition of drug offender, the number "3" was added to §321 et seq in order to correct the legal citation. In §147.1, the purpose of the screening instrument was changed to more appropriately reflect the function of the instruments. In §147.2, the word "provide" was made plural and changed to "provides". In §147.4, the purpose for charging application fees was changed for clarity. In §147.5(a), the word "Texas" was deleted from the title of the education program and the word "Approved" was added to the title. In §147.6(a), the word "a" before Drug Offender Education Program was deleted and replaced with the words "an Approved". In §147.6(c), the word "Texas" was deleted from the title of the education program.

The new sections are adopted to define what programs must do to become a drug offender education program approved by the Texas Commission on Alcohol and Drug Abuse.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 6687b, §24B, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of approved drug offender education programs for per-

sons who are convicted of certain drug offenses and must complete an approved drug offender education program in order to have their driver's license reinstated.

**§147.1. Definitions.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly states otherwise:

**Act-Texas Civil Statutes, Article 6687b, §24B.**

**Approved drug offender education program**-An educational program for convicted drug offenders approved by the Texas Commission on Alcohol and Drug Abuse pursuant to this chapter, and authorized under Texas Civil Statutes, Article 6687b, §24B.

**Approval period**-That period of time beginning with the date the approval was granted and is valid for two years from the date of issuance.

**Certificates of course completion**-Uniform certificates of completion issued by the Texas Commission on Alcohol and Drug Abuse which are serially numbered and provided to approved programs for dissemination to program participants.

**Class records**-Personal data forms, pre- and post-tests, screening instrument(s) and any other written material required or utilized in the class instruction.

**Class roster**-A form which shall include information on those participants officially enrolled and in attendance at the first class session and is used to collect data on those participants throughout the course.

**Class size**-The number of participants officially enrolled and in attendance at each class session.

**Commission**-The Texas Commission on Alcohol and Drug Abuse.

**Continuing education**-The variety of forms of learning experiences, including, but not limited to, lectures, conferences, academic studies, in-service education, institutes, seminars and workshops undertaken by instructors for certification renewal.

**Continuing education hour**-At least 50 minutes of participation in an organized, systematic learning experience which deals with and is designed for the acquisition of knowledge, skills, and information on drug-related topics.

**Department**-The Texas Department of Public Safety, which with the Texas Commission on Alcohol and Drug Abuse will jointly adopt rules for the qualification and approval of providers of educational programs under this chapter.

**Drug offender**-A person convicted of a felony offense under the Controlled Substances Act (21 United States Code, §321 et seq.), felony offense as assigned by 23 United States Code, §104, as amended by Public Law Number 101-516, §333, or a felony under the Texas Health and Safety Code, Chapter 481.

Reporting period—That period of time beginning with the date the approval of the drug offender education program was granted by the commission and ending August 31 of each year.

Texas Drug Offender Education Program—An educational course for drug offenders which consists of prescribed registration and screening procedures, administrative records, classroom instruction, written coursework and post-course record keeping.

Screening instrument—A written device approved by the commission and administered to each program participant for the purpose of:

(A) identifying indicators of a potential drug abuse problem; and

(B) making recommendations for further evaluation, where indicated.

§147.2. *Objective.* The intent of the commission by adoption of this chapter and in cooperation with the Department of Public Safety is to promulgate written rules, regulations, and standards reflecting minimum standards for the uniform operation of programs designed to educate persons on the dangers of drug abuse. Adoption of these rules is authorized by Texas Civil Statutes, Article 6687b, §24B, which provides that persons convicted of felony drug offenses must attend and successfully complete an educational program approved by the commission designed to educate persons on the dangers of drug abuse prior to having their driver's licenses reinstated.

§147.4. *Fees.*

(a) In order to partially defray the costs of administering this chapter, fees will be assessed by the commission in accordance with the fee schedule set forth in subsection (b) of this section.

(b) The schedules of fees shall be as follows:

- (1) initial application fee—\$250;
- (2) application renewal fee—\$125;
- (3) instructor recertification fee—\$15;
- (4) participant certificates of completion—\$200/batch (in batches of 100 at \$2.00 per certificate);
- (5) program approval certificate duplication or replacement fee—\$5.00;
- (6) instructor recertification certificate duplication or replacement fee—\$5.00;

(c) Fees paid to the commission by applicants are not refundable.

(d) Remittances submitted to the commission in payment of fees may be in the form of cashier's check or money order.

§147.5. *Program Approval: Application and Issuance of Certificate of Approval.*

(a) Applications for initial program approval must be made by the entity or person who will administer and supervise the actual Approved Drug Offender Education Program.

(b) Application for program approval shall be made on a form prescribed and furnished by the commission.

(c) Each application for initial program approval shall be accompanied by the application fee.

(d) upon successful completion of all requirements to obtain a certificate of approval under this chapter, the commission will issue a certificate.

(e) A certificate of approval will become effective on the first day of the following month after approval and will expire on August 31 of every odd-numbered year.

§147.6. *Program Approval Expiration: Renewal.*

(a) Prior to the expiration of approval which is set forth on the certificate of approval, an Approved Drug Offender Education Program seeking renewal of approval by the commission shall be required to make application to the commission on a prescribed application form.

(b) Each application for program renewal of approval must be accompanied by the application renewal fee.

(c) Application for renewal of program approval must be made by the entity or person who has administered and supervised the actual Drug Offender Education Program originally approved.

(d) Applicants for renewal must demonstrate to the commission that the applicant continues to meet the program and instructor requirements set forth in §147.35 and §147.40 of this title (relating to Program Operation Requirements and Instructor Recertification).

(e) Upon successful completion of all requirements to obtain a certificate indicating program approval renewal under this chapter, the commission will issue a certificate of approval. Certificates issued under this chapter shall be valid for two years from the date of issuance. The expiration date shall be set forth on the certificate.

(f) Approved Drug Offender Education Programs which fail to obtain renewal of approval prior to their expiration

date shall be required to make application to the commission pursuant to §147.5 of this title (relating to Program Approval, Application, and Issuance of Certificate of Approval).

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 24, 1993.

TRD-9324743

Bob Dickson  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Effective date: July 15, 1993

Proposal publication date: April 20, 1993

For further information, please call: (512) 867-8720

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Drug Offender Education Program Standards

• 40 TAC §§147.31-147.44

The Texas Commission on Alcohol and Drug Abuse adopts new §§147.31-147.44, concerning Approved Drug Offender Education Programs. Sections 147.33-147.35; and 147.42 are adopted with changes to the proposed text as published in the April 20, 1993, issue of the *Texas Register* (18 TexReg 2548) and Sections 147.31, 147.32, 147.36-147.41, 147.43, and 147.44 are adopted without changes and will not be published.

The new sections establish minimum standards and criteria for the operation of approved drug offender education programs for persons convicted of certain drug offenses and who are required to complete an approved drug offender education program in order to have their drivers license reinstated. This section is adopted to define what programs must do to become a drug offender education program approved by the Texas Commission on Alcohol and Drug Abuse. In §147.33(1), the correct legal citation was added to 23 United States Code, §104, as amended by Public Law Number 101-516, §333. In §147.34, the legal citation for the confidentiality statute was corrected. In §147.35(13) (H), the word "code(s)" was added. In §147.35(13)(J) the apostrophe indicating possession was omitted from the word "participant's." In §147.35(15), the purpose of the use of a screening instrument was changed to more appropriately reflect the function of the instruments. In §147.35(19), a dash was entered in the course-evaluation and should be omitted. In §147.35(24), the apostrophe indicating possession was omitted from the word "program's". In §147.42(b)(2), the word "program" was deleted and "course" was substituted. In §147.42(b)(6), the reporting requirement was changed to clarify what information from the screening instruments administered must be submitted. In §147.42(b)(7), the word "and" was deleted at the end of the sentence. In §142.42(b)(7), an apostrophe indicating pos-

session was added to the word "instructor's". In §147.42(b)(8), the word "and" was added at the end of the sentence. Section 147.42(b)(9) was added to require programs to submit a copy of each certificate of course completion issued with their annual report.

The section will establish information, standardization, and quality programming in drug offender education programs approved by the Texas Commission on Alcohol and Drug Abuse.

No comments were received regarding the adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 6887b, §24B, which provide the Texas Commission on Alcohol and Drug Abuse with the authority to promulgate written rules and regulations setting forth minimum standards for the operation of approved drug offender education programs for persons who are convicted of certain drug offenses and must complete an approved drug offender education program in order to have their driver's license reinstated.

**§147.33. Program Admission.** The following persons are eligible for admission to an Approved Drug Offender Education Program:

(1) any person convicted of a felony drug offense under the Controlled Substances Act (21 United States Code, §321 et seq); a felony drug offense as assigned by 23 United States Code, §104, as amended by Public Law Number 101-516, §333; or a felony under the Texas Health and Safety Code, Chapter 481; and

(2) any other person the program administrator allows to attend.

**§147.34. Confidentiality.** Approved Drug Offender Education Programs shall abide by all applicable federal and state laws requiring confidentiality of patient/client records including, without limitation, 42 United States Code §290dd-3 and §290ee-3; Title 42 Code of Federal Regulations, Part 2; and the Texas Health and Safety Code, Chapter 611.

**§147.35. Program Operation Requirements.** All Approved Drug Offender Education Programs shall be required to:

(1) utilize in the instruction the state-approved curriculum entitled the "Texas Drug Offender Education Program" and present the curriculum in the manner and sequence prescribed therein;

(2) insure that all program instructors have attended and successfully completed the Administrator/Instructor Texas Drug Offender Education Training Program approved by the commission;

(3) insure that all classes are conducted by certified instructors;

(4) provide a minimum of 15 hours of instruction per course;

(5) insure that instruction does not exceed three hours per class session;

(6) conduct no more than one class session per day;

(7) conduct the program a minimum of two times during each reporting period;

(8) conduct classes no larger than 30 participants;

(9) insure that participants attend the class sessions in the sequence prescribed in the Texas Drug Offender Education Program;

(10) make provisions for persons unable to read and/or speak English;

(11) complete all registration, data collection, and screening procedures as outlined in the Texas Drug Offender Education Program prior to the first class;

(12) maintain attendance records, class rosters, and other administrative records as outlined in the Texas Drug Offender Education Program;

(13) insure that class rosters contain the following information for each participant:

(A) date of enrollment in course;

(B) date of completion of course;

(C) participant's name;

(D) participant's drivers license number (or if participant does not possess a drivers license, the date of birth and social security number);

(E) individual pre- and post-test scores;

(F) pre- and post-test class averages;

(G) percent of knowledge increase;

(H) screening instrument indicator code(s);

(I) screening instrument utilized;

(J) participant's attendance record; and

(K) certificate of completion number for each participant;

(14) administer and evaluate pre- and post-test instruments;

(15) administer and evaluate a screening instrument which has been approved by the commission for the purpose of identifying indicators of a potential drug abuse problem, which screening shall be performed by program administrators and instructors, or if performed by support staff, under the direct supervision of program personnel. The purpose of the testing is to make recommendations for further evaluation where indicated;

(16) utilize all required videos, transparencies, participant workbooks, booklets, and any other resources or written materials required in the Texas Drug Offender Education Program;

(17) display transparencies and videos in a manner which:

(A) produces a clear image when projected on a surface;

(B) utilizes a television monitor which should be at least 25 inches in diameter;

(C) utilizes high quality videotapes; and

(D) allows all participants to have an unobstructed view;

(18) insure that any supplemental videotapes used in the program have received prior approval from the commission according to the following criteria:

(A) the program uses the required videotapes in the appropriate modules; and

(B) the program exceeds the minimum of 15 hours of instruction; and

(C) the videotapes relate directly to the objectives of the curriculum module in which it is used;

(19) administer a participant course evaluation at the end of each course;

(20) conduct an exit interview with participants as outlined in the Texas Drug Offender Education Program;

(21) insure that a commission issued certificate of completion is provided to all participants successfully completing the course for use by the participant to document to the convicting court clerk successful completion;

(22) provide appropriate facilities for class instruction which are in compliance with the Americans with Disabilities Act-1990;

(23) set definite and reasonable course fees;

(24) course fees should be utilized to maintain and enhance the program's operations; and

(25) prominently display the certificate of program approval at the principal location where services are provided.

**§147.42. Record Keeping and Reporting.**

**(a) Data Collection.**

(1) The program administrator shall be responsible for collecting and maintaining data on each class participant as required in §147.35 of this title (relating to Program Operation Requirements).

(2) Class rosters and copies of the issued certificates of completion shall be retained by the program administrator for at least three years from the date of course completion. All other records shall be re-

tained for a period of one year from the date of course completion.

(b) The following items shall be submitted to the commission by September 15 of each year:

(1) total number of participants entering the course;

(2) total number of participants successfully completing the course;

(3) total number of courses held annually;

(4) drivers license numbers of all participants, or, in the absence of a driver's license number, the social security number and date of birth of each participant completing the course;

(5) average percent of knowledge increase from pre-test to post-test for all courses conducted during the reporting period;

(6) percent of total participants indicating potential drug abuse problem as defined in the required screening procedure;

(7) names of all certified instructors employed by the program and number of courses each conducted during

each year of the instructors certification period;

(8) completed critiques on instructors observed during the reporting period; and

(9) a copy of each certificate of course completion issued.

(c) The program administrator shall notify the commission within 30 days of any change in address, telephone number, or change of program administrator or instructors.

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 24, 1993.

TRD-9324744

Bob Dickson  
Executive Director  
Texas Commission on  
Alcohol and Drug  
Abuse

Effective date: July 15, 1993

Proposal publication date: August 20, 1993

For further information, please call: (512) 867-8720

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# 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 prior to 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 named 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. Emergency meeting notices filed by all governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain 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 State Board of Public Accountancy

**Thursday, July 8, 1993, 9:00 a.m.** The Full Board of the Texas State Board of Public Accountancy will meet at 333 Guadalupe, Tower III, Suite 900, Austin. According to the agenda summary, the board will meet in executive session to discuss pending litigation; consider proposed rules or amendments to §§505.10 (Board Committees), 511.121 (Application for Approval of Experience), 511.122 (Acceptable Experience), 511.123 (Reporting Work Experience), 511.124 (Acceptable Supervision), 527.4 (Quality Review Program), and 527.6 (Reporting to the Board); consider adoption of proposed rules §§501.2 (Definitions), 511.161 (Qualifications for Issuance of a Certificate), and 511.122 (Acceptable Experience); hear committee reports from the Technical Standards Review Committee, Behavioral Enforcement Committee, Qualifications Committee, Licensing Committee, Continuing Professional Education Committee, Quality Review Committee, and ad hoc Consulting Services and Expert Witness Committee; and consider proposed board orders, agreed consent orders, and proposals for decision.

**Contact:** Letty Callaway, 333 Guadalupe, Suite 900, Austin, Texas 78701, (512) 550-5501.

**Filed:** June 25, 1993, 2:59 p.m.

TRD-9324839

## Texas Department on Aging

**Wednesday, July 7, 1993, 1:30 p.m.** The Finance/Internal Audit Committee of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Small Con-

ference Room, Austin. According to the complete agenda, the committee will consider and possibly act on: calling the meeting to order; discuss approval of the minutes of March 11, 1993 meeting of Finance Committee; approval of the minutes of March 26, 1993 meeting of Finance Committee and Texas Association of Regional Councils' Cost Effectiveness Committee; approval of the minutes of January 11, 1993 meeting of Internal Audit Subcommittee; prior internal audit updates-Russell Gregorczyk; internal audit of field operations division-Russell Gregorczyk; Fiscal Year 1994 internal audit proposal-Russell Gregorczyk; officers' and directors' liability insurance; operating budget amendment; proposed policy on TDoA board travel; and adjourn.

**Contact:** Mary Sapp, P.O. Box 12786, Austin, Texas 78701, (512) 444-2727.

**Filed:** June 28, 1993, 2:16 p.m.

TRD-9324916

## Texas Department of Agriculture

**Monday, July 5, 1993, 10:30 a.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924A, Austin. According to the complete agenda, the department will take public comment on the following proposed rules: Sweet Potato Weevil Quarantine \$5.63 as published in *Texas Register* on June 15, 1993.

**Contact:** David Davis, P.O. Box 12847, Austin, Texas 78711, (512) 463-0709.

**Filed:** June 25, 1993, 2:34 p.m.

TRD-9324834

**Monday, July 5, 1993, 1:30 p.m.** The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924A, Austin. According to the complete agenda, the department will take public comment on the following proposed rules: Imported Fire Ant Quarantine \$5.1 as published in *Texas Register* on June 11, 1993.

**Contact:** David Davis, P.O. Box 12847, Austin, Texas 78711, (512) 463-0709.

**Filed:** June 25, 1993, 2:34 p.m.

TRD-9324833

## Texas Department of Criminal Justice

**Friday, July 2, 1993, 10:00 a.m.** The Board of Criminal Justice, Subcommittee on Community Justice Assistance Division of the Texas Department of Criminal Justice will meet at the TDCJ-CJAD, 8100 Cameron Road, Austin. According to the agenda summary, the board will open meeting; discuss CJAD organizational structure; divisional reports; Role of Judicial Advisory Council v. Legal Briefing-Legislative Update; Fiscal Year 1994-1995 State Aid Funding; issues; other business; and adjourn.

**Contact:** Susan Power-McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

**Filed:** June 24, 1993, 3:47 p.m.

TRD-9324786

**Thursday, July 8, 1993, 1:00 p.m.** The Grant Review Subcommittee to the Judicial Advisory Council of the Texas Department of Criminal Justice will meet at 8100

Cameron Road, Suite 600, Building B, Austin. According to the complete agenda, the subcommittee will review and discuss recommendations of Fiscal Year 1994 Program proposals/budgets.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78754-3897, (512) 475-3250.

Filed: June 25, 1993, 11:24 a.m.

TRD-9324806

Friday, July 9, 1993, 9:00 a.m. The Judicial Advisory Council of the Texas Department of Criminal Justice will meet at 8100 Cameron Road, Suite 600, Building B, Austin. According to the agenda summary, the council will call the meeting to order; make introductions of guests; discuss approval of the minutes; tribute to Judge Clarence N. Stevenson; hear division reports; legal update; Fiscal Year 1994 Program proposals/budgets; review and discuss recommendations; CJAD update; other administrative business; probation advisory committee reports; date and site selection of next meeting; and adjourn.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78754-3897, (512) 475-3250.

Filed: June 24, 1993, 3:39 p.m.

TRD-9324785

Friday, July 9, 1993, 9:00 a.m. The Judicial Advisory Council of the Texas Department of Criminal Justice will meet at 8100 Cameron Road, Suite 600, Building B, Austin. According to the agenda summary, the council will call the meeting to order; make introductions of guests; discuss approval of the minutes; tribute to Judge Clarence N. Stevenson; hear division reports; legal update; Fiscal Year 1994 Program proposals/budgets; review and discuss recommendations; CJAD update; other administrative business; probation advisory committee reports; date and site selection of next meeting; and adjourn.

Contact: Virginia Grote, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78754-3897, (512) 475-3250.

Filed: June 25, 1993, 11:24 a.m.

TRD-9324807

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**Advisory Commission on  
State Emergency Commu-  
nications**

Tuesday-Wednesday, July 6-7, 1993, 10:00 a.m. and 9:00 a.m. respectively. The Strategic Plan Work Session of the Advisory Commission on State Emergency Communications will meet at the Omni Hotel, Lonestar Room, 700 San Jacinto, Austin. According to the complete agenda, the commission will call the meeting to

order; commission member will brief and discuss strategic plan and forecast reports as submitted by councils of Governments and Emergency Communication districts; discuss the procedures and process to use in implementing future actions of the strategic plans, with ALI by 1997; recess until 9:00 a.m. next morning; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 25, 1993, 11:32 a.m.

TRD-9324813

Wednesday, July 7, 1993, 1:30 p.m. The COG Administrative Budget Ad Hoc Committee of the Advisory Commission on State Emergency Communications will meet at the Omni Hotel, Lonestar Room, 700 San Jacinto, Austin. According to the agenda summary, the committee will call the meeting to order; recognize guests; hear public comment; review and consider recommending for approval proposed councils of governments' administrative budgets for fiscal year 1994; report on proposed councils of governments' administrative budgets for fiscal year 1994 approved at staff level; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 25, 1993, 11:32 a.m.

TRD-9324811

Wednesday, July 7, 1993, 3:00 p.m. The Administrative Committee of the Advisory Commission on State Emergency Communications will meet at the Omni Hotel, Lonestar Room, 700 San Jacinto, Austin. According to the agenda summary, the committee will call the meeting to order; recognize guests; hear public comment; discuss commission activities; staff reports; Interagency Emergency Communications Instructor Training Program, legislative activities: House Bill 1544-(PBX ALI), House Bill 1674, House Bill 1885, Senate Bill 384, and other legislative items, 9-1-1 day in Texas activities, and financial report for May and June 1993; consider Interim funding for Staffing Poison Control Program; discuss and consider proposed ACSEC Public Education Program and budget for fiscal year 1994; discuss and consider proposed ACSEC administrative budget for fiscal year 1994; request by the Emergency Communication District of Ector County to hold 1995 9-1-1 Day Celebration in Odessa; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 25, 1993, 11:31 a.m.

TRD-9324809

Tuesday, July 13, 1993, 1:30 p.m. The Addressing Committee of the Advisory

Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway South, B-100, Austin. According to the agenda summary, the committee will call the meeting to order; recognize guests; hear public comment; discuss commission activities; review comments and consider adoption of proposed rule §251.3, State Addressing Funds Distribution; review and discuss other restricted funds for addressing; review and consider approval of proposed addressing plan amendments for various counties within the councils of governments and communications districts; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 25, 1993, 11:32 a.m.

TRD-9324812

Tuesday, July 13, 1993, 3:00 p.m. The Planning and Implementation Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway South, B-100, Austin. According to the agenda summary, the committee will call the meeting to order; recognize guests; hear public comment; discuss commission activities; review and consider ACSEC procedures for approving continuing equipment maintenance costs and related matters; TDD equipment placement at PSAPs; discuss service fee rates; review and consider approval of proposed regional plan amendments; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 25, 1993, 11:32 a.m.

TRD-9324810

Wednesday, July 14, 1993, 9:00 a.m. The Commission of the Advisory Commission on State Emergency Communications will meet at the John Reagan Building, Room 101, 15th Street and North Congress Avenue, Austin. According to the agenda summary, the commission will call the meeting to order; recognize guests; hear public comment; report on commission action on strategic plan and forecast submission from COGs and districts; hear committee reports' and consider action items for approval; hear call box task force report; review May meeting minutes; and adjourn.

Contact: Jim Goerke, 1101 Capital of Texas Highway South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: June 25, 1993, 12:03 p.m.

TRD-9324814  
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## Texas State Board of Registration for Professional Engineers

Tuesday, July 6, 1993, 9:00 a.m. The Ad Hoc Committee on Professional Development of the Texas State Board of Registration for Professional Engineers will meet at the Dallas Love Field, Conference Room C, Dallas. According to the complete agenda, the committee will convene the meeting by chairman, Gloyna; take roll call; recognize and welcome visitors; discuss the Professional Development Program for Fiscal Years 1994 and 1995; and adjourn.

Contact: Charles E. Nemir, 1917 IH-35 South, Austin, Texas 78741, (512) 440-7723.

Filed: June 25, 1993, 1:55 p.m.

TRD-9324831

## Fire Fighters' Pension Commission

Wednesday, July 7, 1993, 9:00 a.m. The Administrative Division of the Fire Fighters' Pension Commission will meet at the Royce Hotel, Gemini Room, Woodward at IH-35 South, Austin. According to the complete agenda, the Senate Bill 411 Statewide Volunteer Fire Fighters' Retirement Fund Board of Trustees will meet, as prescribed by Texas Civil Statutes, Article 6243.e3, to discuss and finalize the 1992 Actuarial Valuation presented by the firm of KPMG Peat Marwick.

Contact: Helen L. Campbell, 3910 South IH-35, Suite 235, Austin, Texas 78704, (512) 462-0222.

Filed: June 28, 1993, 2:29 p.m.

TRD-9324924

## Texas Department of Health

Thursday, July 8, 1993, 8:30 a.m. The Maternal and Child Health Advisory Committee of the Texas Department of Health will meet in Room T-607, Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the committee will hear public comment; discuss approval of the minutes of April 8, 1993 meeting; discuss and possibly act on: subcommittee reports concerning integrated eligibility, case management, and legislative report; report on Texas Department of Health, Maternal and Child Health activities including new legislation, review of budget status of Maternal Child Health and Chronically III and Disabled Children, transition activities, case management rules and Early Periodic Screening for Diagnosis Treatment medical home; report on Texas Department

of Human Services, Maternal and Child Health activities; and discuss old business. The committee will discuss new business to be brought to the next meeting.

Contact: Madelin Walls, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 28, 1993, 9:53 a.m.

TRD-9324904

Friday, July 9, 1993, 8:00 a.m. The Texas State Board of Examiners of Marriage and Family Therapists Continuing Education Committee of the Texas Department of Health will meet in Room S-402, Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: review of continuing education forms; and proposed rule changes.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 28, 1993, 9:52 a.m.

TRD-9324900

Friday, July 9, 1993, 8:30 a.m. The Texas State Board of Examiners of Marriage and Family Therapists Supervision Committee of the Texas Department of Health will meet in Room S-402, Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: review of supervision forms; and discuss proposed rule changes.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 28, 1993, 9:52 a.m.

TRD-9324901

Friday, July 9, 1993, 9:00 a.m. The Texas State Board of Examiners of Marriage and Family Therapists Application Review Committee of the Texas Department of Health will meet in Room S-402, Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: review of applications (waiver requests of Karen Bird, Nelda Choate, Marilyn Sue Eustler, and May Cho Lu, and inactive status request of Leslie Rowe); and proposed rule changes (new forms with application and time limits for renewal).

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 28, 1993, 9:52 a.m.

TRD-9324902

Friday, July 9, 1993, 9:30 a.m. The Texas State Board of Examiners of Marriage and Family Therapists Complaints Committee of the Texas Department of Health will meet in Room S-402, Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: review/update of current complaints (one open case and six closed/resolved cases); review of five new complaints; and proposed rules changes (schedule of investigation and disposition and categories of complaints).

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 28, 1993, 9:53 a.m.

TRD-9324903

Friday, July 9, 1993, 9:30 a.m. The Kidney Health Care Advisory Committee of the Texas Department of Health will meet in Room M-117, Texas Department of Health, 1100 West 49th Street, Austin. According to the complete agenda, the committee will discuss and possibly act on: complete travel claims; introductory remarks; orientation for new members; program update; status of kidney health care budget; nominations for upcoming vacancies; and new business to be discussed at the next meeting.

Contact: Manuel Zapata, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7796. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 29, 1993, 8:52 a.m.

TRD-9324949

Friday, July 9, 1993, 10:00 a.m. The Texas State Board of Examiners of Marriage and Family Therapists of the Texas Department of Health will meet in Room S-402, Exchange Building, 8407 Wall Street, Austin. According to the complete agenda, the board will discuss approval of the minutes of May 3, 1993 board meeting; discuss and possibly act on: executive director's report (summary of final legislative action; explanation of amendments to Vernon's Texas Civil Statutes (VTCS), Article 4512c-1; proposed rule changes as prescribed by the amendments to VTCS, Arti-

cle 4512c-1, marriage and family therapists role delineation survey, and legal opinion regarding implication of the title of licensed marriage and family therapist; committee reports (application committee, complaints committee, continuing education committee, and supervision committee); board order (denial of license/hearings-Richard G. Arno, Ph.D.), waiver (Karen Bird, Nelda Choate, Marilyn Sue Bustler, and May Cho Lu), and inactive status (Lesia Rowe); and other issues concerning licensed marriage and family therapists.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6657. For ADA assistance, call Richard Butler (512) 458-7488 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 28, 1993, 9:52 a.m.

TRD-9324899

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**Texas Department of Insurance**

**Thursday, July 8, 1993, 9:00 a.m.** The State Board of Insurance of the Texas Department of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; litigation; commissioner's orders; solvency; staff reports; legislative update; consider five form filings by Texas Department of Agriculture; proposed repeal of the following: 28 TAC §5.1001 and §5.1002, approval of general liability (a) rate/individual risk filings; 28 TAC §5.3102, rate deviation regulation for fire, extended coverage, homeowners, and farm and ranch owners insurance; 28 TAC §5.3103, rate deviation for commercial multi-peril insurance; 28 TAC §5.8002, notice requirements for advisory organizations; proposed amendments: 28 TAC §15.17, surplus lines insurance; 28 TAC §7.27, accounting or reinsurance agreements by life, accident and health, and annuity insurers; 28 TAC §7.4, disposal of not admitted assets; and 28 TAC §7.306, securities lending by insurers to securities dealers; petition filed by Texas Catastrophe Property Insurance Association; meeting or hearing concerning withdrawal of Texas Fire Record System and amendment of Texas General Basis Schedules and Personal Lines Manual.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 28, 1993, 2:35 p.m.

TRD-9324933

**Monday, July 12, 1993, 1:30 p.m.** The State Board of Insurance of the Texas De-

partment of Insurance will meet in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete agenda, the board will consider administrative law judge proposal for decision in the matter of Docket Number 1897 concerning a request for hearing by Louis and Maria Arrisola from the decision of the Texas Catastrophe Property Insurance Association.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 28, 1993, 2:36 p.m.

TRD-9324934

**Wednesday, July 28, 1993, 11:00 a.m.** The State Board of Insurance of the Texas Department of Insurance met in Room 100, William P. Hobby Building, 333 Guadalupe Street, Austin. According to the complete revised agenda, the board considered Administrative Law Judge Proposal for Decision in the matter of Docket Number 1963 concerning a petition of Toddler House, Inc. for a hearing on a decision of the Texas Workers' Compensation Insurance Facility.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: June 24, 1993, 5:03 p.m.

TRD-9324789

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**Judicial Districts Board**

**Tuesday, July 6, 1993, 10:00 a.m.** The Judicial Districts Board will meet in Room 104, Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, pursuant to the Texas Constitution, Article 5, §7a(e), the board will meet to continue work on a statewide reapportionment of the judicial districts of the state. The board will discuss recent federal court cases and legislative proposals regarding judicial redistricting considered by the Texas Legislature during the 73rd Regular Session, and other matters pertaining to the duties of the board and matters relating to redistricting criteria.

Contact: C. Raymond Judice, 205 West 14th Street, Sixth Floor, Austin, Texas 78701, (512) 463-1625.

Filed: June 25, 1993, 9:26 a.m.

TRD-9324792

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**Texas Department of Licensing and Regulation**

**Wednesday, July 7, 1993, 1:00 p.m.** The Auctioneer Education Advisory Board of the Texas Department of Licensing and

Regulation will meet at 920 Colorado, Austin. According to the agenda summary, the board will discuss continuing education survey; results of education questionnaire; methods of evaluation of educational programs, seminars, and training projects; and hear presentations by providers of educational programs.

Contact: Jimmy G. Martin, P.O. Box 12157, Austin, Texas 78711, (512) 463-7348.

Filed: June 24, 1993, 2:21 p.m.

TRD-9324774

**Monday, July 19, 1993, 9:00 a.m.** The Inspections and Investigations: Air Conditioning of the Texas Department of Licensing and Regulation will meet at 920 Colorado, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Chuck Morse doing business as Compliance Air Systems for violation of Texas Revised Civil Statutes Annotated, Article 8861, 16 TAC §75.1(b) and §75.90(f), Article 6252-13a, and Article 9100.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: June 28, 1993, 11:42 a.m.

TRD-9324910

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**Texas Board of Pardons and Paroles**

**Monday-Tuesday, July 5-6, 1993, 9:30 a.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 3915 Market Street, Tyler. According to the complete agenda, the panel(s) composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:20 a.m.

TRD-9324801

**Tuesday-Wednesday, July 6-7, 1993, 9:00 a.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 202 Airport Plaza, Midland. According to the complete agenda, the panel(s)

composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:21 a.m.

TRD-9324802

**Tuesday-Wednesday, July 6-7, 1993, 1:30 p.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the complete agenda, the panel(s) composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:20 a.m.

TRD-9324800

**Monday-Friday, July 5-9, 1993, 1:30 p.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 2503 Lake Road, Suite 2, Huntsville. According to the complete agenda, the panel(s) composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:21 a.m.

TRD-9324804

**Thursday, July 8, 1993, 9:00 a.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1212 North Velasco, Suite 201, Angleton. According to the complete agenda, the panel(s) composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:21 a.m.

TRD-9324805

**Thursday-Friday, July 8-9, 1993, 9:00 a.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at 1550 East Palestine, Suite 100, Palestine. According to the complete agenda, the panel(s) composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:20 a.m.

TRD-9324799

**Friday, July 9, 1993, at 9:00 a.m.** The Parole Board Panel(s) of the Texas Board of Pardons and Paroles will meet at Route 5, Box 258-A, Gatesville. According to the complete agenda, the panel(s) composed of three board member(s) 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 imposition of special conditions of parole and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: June 25, 1993, 10:21 a.m.

TRD-9324803

## Texas Department of Public Safety

**Wednesday, July 7, 1993, 11:00 a.m.** The Public Safety Commission of the Texas Department of Public Safety will meet at the DPS Headquarters (Commission Room), 5805 North Lamar Boulevard, Austin. According to the complete agenda, the com-

mission will discuss approval of the minutes; budget matters; internal audit report; automated fingerprint identification system (AFIS) user agreement; approval for director sign contract for post-audits and electronic approvals in conjunction with uniform statewide accounting system (USAS); personnel matters; pending and contemplated litigation; real estate matters; miscellaneous and other unfinished business; presentation requested by Attorney Matt Trevena relative to Michael D. Scott's attempts at promotion.

Contact: James R. Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, Ext. 3700.

Filed: June 28, 1993, 4:35 p.m.

TRD-9324944

## Public Utility Commission of Texas

**Wednesday, July 7, 1993, 10:00 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11964: application of Southwestern Bell Telephone Company to provide network subscriber information service pursuant to Public Utility Commission Substantive Rule 23.26.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1993, 3:21 p.m.

TRD-9324938

**Monday, July 12, 1993, 10:00 a.m.** The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11336-general counsel's inquiry into the reasonableness of the rates, terms, and conditions of Southwestern Bell Telephone Company's central office-based PBX-type services for which flexible pricing is permitted.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 24, 1993, 3:10 p.m.

TRD-9324779

**Friday, August 6, 1993, 10:00 a.m.** (Rescheduled from Thursday, July 1, 1993.). The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11975-

application of Southwestern Bell Telephone Company for approval of pricing flexibility for Megalink III Service in the Dallas-Fort Worth and Houston market areas pursuant to Public Utility Commission Substantive Rule 23.27.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1993, 3:20 p.m.

TRD-9324936

Monday, August 9, 1993, 9:00 a.m. (Rescheduled from Monday, July 26, 1993, at 9:00 a.m.). The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 11999-application of Houston Lighting and Power Company for approval of tariff for Economic Improvement Service-Rate Schedule EIS.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 28, 1993, 3:21 p.m.

TRD-9324937

## School Land Board

Tuesday, July 6, 1993, 10:00 a.m. The School Land Board will meet at the General Land Office, Stephen F. Austin Building, Room 831, 1700 North Congress Avenue, Austin. According to the complete agenda, the board will discuss approval of previous board meeting; pooling applications, Tumbleweed Northwest Field, Dickens County; Giddings (Austin Chalk-3), Burleson County; Clay, Northeast (Austin Chalk, 11350) Field, Burleson County; Giddings (Austin Chalk Gas), Brazos and Burleson Counties; Northeast Clay (Austin Chalk, 11350) Brazos and Burleson Counties; Giddings (Austin Chalk-3) Fayette County; Potrero Farias Field, South-Kenedy County; Giddings (Austin Chalk Gas), Fayette County; Huff (2,920' Sand) Field, Refugio County; applications to lease highway rights of way for oil and gas, Washington County and Henderson County; direct land sales, Van Zandt County and Erath County; coastal public lands-commercial lease renewals, Galveston Bay, Harris County and Dickinson Bay, Galveston County; lease applications, Padre Island, Nueces County and Laguna Madre, Kleberg County; easement applications, Aransas Bay, Aransas County; Corpus Christi Bay, Nueces County; and Carancahua Bay, Calhoun County; structure permit amendment, Baffin Bay, Kleberg County; structure permit termination, Baffin Bay, Kleberg County; structure permit request, Baffin Bay, Kleberg County; struc-

ture permit renewal, Baffin Bay, Kleberg County; and meet in executive session to discuss pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: June 28, 1993, 4:22 p.m.

TRD-9324943

## Interagency Council on Sex Offender Treatment

Wednesday, July 7, 1993, 2:00 p.m. The Executive Committee of the Interagency Council on Sex Offender Treatment will meet at the Wyndam Hotel at Southpark, IH-35 at Ben White, Presidential Suite, Room 1404, Austin. According to the complete agenda, the committee will convene the meeting; Collier M. Cole, Ph.D., Chair; review council directions and needs; discuss other business; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711-2546, (512) 454-1314.

Filed: June 28, 1993, 1:56 p.m.

TRD-9324912

Thursday, July 8, 1993, 12:15 p.m. The Continuing Education Committee of the Interagency Council on Sex Offender Treatment will meet at the Wyndam Hotel at Southpark, IH-35 at Ben White, Presidential Suite, Room 1404, Austin. According to the complete agenda, the committee will convene the meeting; Norma W. Reed, CSW-ACP, Chair; review proposals for October 10-12, 1993, conference in Huntsville; discuss other business; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711-2546, (512) 454-1314.

Filed: June 28, 1993, 1:56 p.m.

TRD-9324913

Thursday, July 8, 1993, 6:30 p.m. The Board of the Interagency Council on Sex Offender Treatment will meet at IH-35 at Ben White, Room 102, Austin. According to the complete agenda, the committee will convene the meeting; Collier M. Cole, Ph.D., Chairman; discuss adoption of the minutes; executive director's report; committee reports; executive committee: Chairman Cole; Treatment and Evaluation committee: Linda Reyes, Ph.D., Chair; Continuing Education Committee: Norma W. Reed, CSW-ACP, Chair; Public Relations Committee: Laurie Shanblum; briefing and implementation of Senate Bill 1130; 1993 registry update; hear public comments; and adjourn.

Contact: Eliza May, P.O. Box 12546, Austin, Texas 78711-2546, (512) 454-1314.

Filed: June 28, 1993, 1:56 p.m.

TRD-9324914

## Texas Department of Transportation

Tuesday, June 29, 1993, 9:30 a.m. The Texas Transportation Commission of the Texas Department of Transportation met at the Dewitt C. Greer Building, 125 East 11th Street, Austin. According to the emergency revised agenda summary, the commission added a supplement to Page 5 which reads as follows: 16. Environmental Projects. a. Cameron County-PR 100-1992-1993 Landscape Cost Sharing Program-Authorize project with City of South Padre Island (MO). The emergency status was necessary due to avoid adverse economic impact and hardship on the City of South Padre Island and its taxpayer citizens.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: June 24, 1993, 4:15 p.m.

TRD-9324787

Wednesday, July 14, 1993, 9:00 a.m. The Environmental Advisory Committee of the Texas Department of Transportation will meet at 200 East Riverside Drive, Building 200, Room 101, Austin. According to the agenda summary, the committee will discuss approval of the minutes; preliminary review of proposed rulemaking concerning verification of vehicle emissions inspection; and rulemaking concerning advisory committees; final review of proposed rulemaking concerning a comprehensive environmental policy; briefing on current status of rules previously reviewed by committee; and hear staff presentations of TxDOT concerning air quality non-attainment and noise abatement and mitigation.

Contact: Roland Gamble, 125 East 11th Street, Austin, Texas 78701, (512) 475-0701.

Filed: June 29, 1993, 8:51 a.m.

TRD-9324947

Thursday, July 22, 1993, 9:00 a.m. The Environmental Advisory Committee of the Texas Department of Transportation will meet at 200 East Riverside Drive, Building 200, Room 102, Austin. According to the agenda summary, the committee will discuss final review of proposed rulemaking concerning verification of vehicle emissions inspection; and rulemaking concerning advisory committees.

Contact: Roland Gamble, 125 East 11th Street, Austin, Texas 78701, (512) 475-0701.

Filed: June 29, 1993, 8:51 a.m.

TRD-9324948



## The Texas A&M University System, Board of Regents

Monday, June 28, 1993, 8:30 a.m. and on each business day thereafter through July 30, 1993. The Pricing Committee (Telephonic Meeting) of the Texas A&M University System, Board of Regents will meet in the Board of Regents Meeting Room, College Station. According to the agenda summary, the board will consider and act upon any lawful subject which may come before it, including, among others, to consider a "Resolution Authorizing the Issuance, Sale and Delivery of Board of Regents of the Texas A&M University System Permanent University Fund Bonds, Series 1993, in the Maximum Aggregate Principal Amount of \$50 million and Approving and Authorizing Instruments and Procedures Relating Thereto"; and authorizing purchase contracts and other actions necessary in connection with the sale and delivery of the bonds. The meeting or meetings will be held at such time on one or more of such days upon finalization of the terms of sale of the bonds by the underwriters. Financial market conditions make it impossible to know the exact date the bonds may be sold on the most advantageous terms to the system.

Contact: Vickie Running, Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: June 24, 1993, 2:04 p.m.

TRD-9324764

## Texas Board of Veterinary Medical Examiners

Monday, July 5, 1993, 9:00 a.m. The Screening Committee of the Texas Board of Veterinary Medical Examiners will meet at 1946 South IH-35, Suite 306, Austin. According to the complete agenda, the committee will convene in open session and then go into executive session to screen applicants for the executive director position. The executive session is held in accordance with Article 6252-17.

Contact: Judy C. Smith, 1946 South IH-35, #306, Austin, Texas 78701, (512) 447-1183.

Filed: June 24, 1993, 2:04 p.m.

TRD-9324763

## Texas Water Commission

Wednesday, June 30, 1993, 9:00 a.m. The Texas Water Commission met at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the emergency revised agenda

summary, the executive director requested the commission to issue an emergency order appointing a temporary manager and operator for the Spring Valley Water Company and requested for authorization to refer Spring Valley Water Company to the Attorney General for receivership. The emergency status was necessary due to this item needed to be considered on an emergency basis in order to prevent the possible endangerment of the public health and safety.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: June 28, 1993, 2:35 p.m.

TRD-9324932

Friday, July 23, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold a hearing on Charles M. Flory doing business as Danny Boy Mobile Home Park Water System's, petition to cease operations and discontinue providing retail water utility service in El Paso County. The retail water utility service is being provided for only one customer on Danny Boy Lane in Vinton. Docket Number 9892-Q.

Contact: Elizabeth Bourbon, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 25, 1993, 1:54 p.m.

TRD-9324828

Friday, July 23, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a notice of public hearing on assessment of administrative penalties and required certain actions of the City of Corpus Christi.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1993, 2:29 p.m.

TRD-9324925

Friday, July 23, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of the City of West Tawakoni.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1993, 2:29 p.m.

TRD-9324926

Friday, July 23, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Plantation Foods, Inc.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1993, 2:29 p.m.

TRD-9324927

Friday, July 23, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Surrey, Inc.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1993, 2:29 p.m.

TRD-9324928

Friday, July 23, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of the City of College Station.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1993, 2:30 p.m.

TRD-9324929

Friday, July 23, 1993, 10:00 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet at the Stephen F. Austin Building, Room 1149B, 1700 North Congress Avenue, Austin. According to the agenda summary, the examiners will hold a notice of public hearing on assessment of administrative penalties and requiring certain actions of Miller-Bowie County Farmers Association.

Contact: Kerry Sullivan, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: June 28, 1993, 2:30 p.m.

TRD-9324930

Wednesday, August 18, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Office Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an agenda hearing on S and S Farms, A Joint Venture applica-



tion number 5459 for a permit to divert and use 1,556 acre-feet of water per annum from West Bernard Creek, Brazos-Colorado Coastal Basin. The water will be used to irrigate 1,080 acres out of a total of 1492.05 acres of mixed use land (approximately 300 acres of rice, 330 acres of cotton and 450 acres of milo in any year) located approximately 12 miles north of Wharton, Wharton County.

Contact: Lann Bookout, P.O. Box 13087, Austin, Texas 78711, (512) 463-8195.

Filed: June 25, 1993, 1:54 p.m.

TRD-9324830

Wednesday, September 15, 1993, 9:00 a.m. The Texas Water Commission will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will hold an agenda hearing on Billie Zuber, et al's application number 18-2449-A to amend Certification of Adjudication Number 18-2449 to change the point of diversion and place of use of 17 acre-feet of water per annum from the Guadalupe River, Guadalupe River Basin. The certificate owner is authorized two diversion points on the Guadalupe River with a maximum combined diversion rate of 1.78 cfs (800 gpm). Applicants seek to change to only one diversion point and to change the place of use to the Guadalupe River R.V. Resort, Inc. at 2605 Junction Highway 27, located approximately four miles northwest of Kerrville, Kerr County.

Contact: Mark Evans, P.O. Box 13087, Austin, Texas 78711, (512) 475-4584.

Filed: June 25, 1993, 1:54 p.m.

TRD-9324829

### Texas Workers' Compensation Insurance Fund

Tuesday-Wednesday, June 29-30, 1993, 4:00 p.m. and 8:30 a.m. respectively. The Board of Director of the Texas Workers' Compensation Insurance Fund met at the Texas Workers' Compensation Insurance Fund, 100 Congress Avenue, Fifth Floor, Austin. According to the revised agenda summary, on Tuesday, the board discussed informal briefing session concerning the Small Business Injury Protection Plan and the Special Committee on Residual Market Transition; and briefing on 1995 Sunset issues. On Wednesday, the board called the meeting to order; took roll call; reviewed and discussed approval of the minutes of June 4, 1993 board meeting; discussed public participation; fund activity reports; heard reports of the finance committee; audit committee; discussed final review of policy for Agent of Record letters; discussed agent commissions for the Small Business Injury

Protection Program; heard reports on strategic plan and budgeting; discussed report on board member appointments and confirmation; made announcements; and adjourned.

Contact: Jodie Bowen, 100 Congress Avenue, Suite 300, Austin, Texas 78701, (512) 322-3851.

Filed: June 24, 1993, 3:18 p.m.

TRD-9324780

### Texas Workers' Compensation Research Center

Friday, July 9, 1993, 9:00 a.m. The Board of Directors of the Texas Workers' Compensation Research Center will meet in Committee Room 5, Fifth Floor, One Capitol Square, 300 West 15th Street, Austin. According to the agenda summary, on Tuesday, the board will discuss and act on the following items: call the meeting to order; discuss approval of the minutes of May 21, 1993 meeting; make announcements; hear research progress report; consideration and approval of A&M contract amendment; report by subcommittee on vocational rehabilitation-UT contract; preliminary discussion of Fiscal Year 1994 research agenda; preliminary discussion of Fiscal Year 1994 budget; and discussion and approval of possible Fiscal Year 1993 budget revisions; discussion of called meeting in August; and adjourn.

Contact: Lavon Guerrero, 3636 Executive Center Drive, Suite G-22, Austin, Texas 78731, (512) 356-6197.

Filed: June 28, 1993, 12:59 p.m.

TRD-9324911

### Regional Meetings

#### Meetings Filed June 24, 1993

The Alamo Area Council of Governments Planning and Program Development Committee met at the Menger Hotel, 204 Alamo Plaza, Ballrooms B and C, San Antonio, June 29, 1993, at 1:00 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9324788.

The Alamo Area Council of Governments Area Judges met at the Menger Hotel, San Antonio, June 29, 1993, at 2:00 p.m. Information may be obtained from Al J. Notzon, III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (512) 225-5201. TRD-9324784.

The Andrews Center Board of Trustees met at 2323 West Front Street, Board Room, Tyler, July 1, 1993, at 4:00 p.m. Information may be obtained from Richard

J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351. TRD-9324742.

The Central Appraisal District of Johnson County Board of Directors will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 7, 1993, at 4:30 p.m. Information may be obtained from Priscilla A. Bunch, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324766.

The Central Appraisal District of Nolan County Appraisal Review Board met at the Nolan County Courthouse, Third Floor, Sweetwater, June 29, 1993, at 9:00 a.m. Information may be obtained from Steven G. Beck, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9324773.

The Deep East Texas Regional Mental Health Mental Retardation Services Board of Trustees met at the Peavy Switch Recovery Center-Family Center, FM Road 2497, Lufkin, June 29, 1993, at Noon. Information may be obtained from Sandra J. Vann, 4101 South Medford, Lufkin, Texas 75901, (409) 639-1141. TRD-9324772.

The Fisher County Appraisal Review Board will meet at the Fisher County Commissioner's Court-Room, Fisher County Courthouse, Roby, July 9, 1993, at 9:00 a.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9324769.

The Fisher County Appraisal District Board of Directors will meet at the Fisher County Appraisal/Tax Office, Roby, July 12, 1993, at 7:30 p.m. Information may be obtained from Betty Mize, P.O. Box 516, Roby, Texas 79543, (915) 776-2733. TRD-9324770.

The Garza County Appraisal District Appraisal Review Board will meet at the Garza County Appraisal Office, 124 East Main, Post, July 2, 1993, at 2:00 p.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9324767.

The Golden Crescent Regional Planning Commission Board of Directors met in the GCRPC Board Room, Regional Airport, Building 102, Victoria, June 30, 1993, at 5:00 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9324771.

The Heart of Texas Region Mental Health Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, June 29, 1993, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9324745.

The Lubbock Regional Mental Health Mental Retardation Center Board of Trustees met at 3801 Avenue J, Board

Room, June 28, 1993, at Noon. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79401, (806) 766-0202. TRD-9324776.

The Martin County Appraisal District Appraisal Review Board met at the Appraisal Office, 308 North Saint Peter, Stanton, June 29, 1993, at 5:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823. TRD-9324775.

The Pecan Valley Mental Health Mental Retardation Region Board of Trustees met at the Pecan Valley MHMR Region Clinical Office, 104 Charles Street, Granbury, June 30, 1993, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9324741.

The Region VII Education Service Center Board of Directors will meet at the Golden Corral Restaurant, Highway 79 South, Henderson, July 8, 1993, at 7:00 p.m. Information may be obtained from Don J. Peters, 818 East Main, Kilgore, Texas 75662, (903) 984-3071. TRD-9324737.

The Texas Municipal Power Agency (TMPA) Board of Directors met at the Texas Commerce Tower, 2200 Ross Avenue, 28th Floor, Main Conference Room, Dallas, June 28, 1993, at 5:30 p.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9324778.

The Texas Municipal Power Agency (TMPA) Board of Directors met at the Texas Commerce Tower, 2200 Ross Avenue, 28th Floor, Main Conference Room, Dallas, June 29, 1993, at 10:30 a.m. Information may be obtained from Carl J. Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-2013. TRD-9324777.

The West Central Texas Council of Governments Executive Committee met at 1025 EN Tenth Street, Abilene, June 30, 1993, at 12:45 p.m. Information may be obtained from Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544. TRD-9324736.

The Wood County Appraisal District Appraisal Review Board met at 217 North Main, Conference Room, Wood County Appraisal District, Quitman, June 29, 1993, at 9:00 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-9324768.

#### Meetings Filed June 25, 1993

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room

202, Cleburne, July 6 and 9, 1993, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324822.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 13-15, 1993, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324823.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 19-23, 1993, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324824.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 26, 1993, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324826.

The Central Appraisal District of Johnson County Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, August 17, 1993, at 9:00 a.m. Information may be obtained from Jim Hudspeth, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9324827.

The Comal Appraisal District Board of Directors will meet at 430 West Mill Street, New Braunfels, July 26, 1993, at 5:30 p.m. Information may be obtained from Lynn Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9324793.

The East Texas Council of Governments JTPA Board of Directors met at the Kilgore Community Inn, Kilgore, July 1, 1993, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9324870.

The East Texas Council of Governments Executive Committee met at the ETCOG Offices, Kilgore, July 1, 1993, at 2:00 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9324869.

The Education Service Center, Region XIII Board of Directors met at the ESC, Region XIII, ESC Board Room #205, 5701 Springdale Road, Austin, July 1, 1993, at 10:00 a.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300. TRD-9324794.

The Erath County Appraisal District Appraisal Review Board held an emergency meeting in the Board Room, 1390 Harbin Drive, Stephenville, June 28-30, 1993, at 9:00 a.m. The emergency meeting was necessary due to the meeting being close to the deadline, and they needed to finish the meeting for certifications. Information may be obtained from Mitzi Meekins, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434. TRD-9324872.

The Gray County Appraisal District Appraisal Review Board met at 815 North Sumner, Pampa, July 1, 1993, at 9:00 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9324873.

The Gray County Appraisal District Appraisal Review Board will meet at 815 North Sumner, Pampa, July 2, 1993, at 9:00 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9324874.

The Heart of Texas Region Mental Health Mental Retardation Center Board of Trustees met at 110 South 12th Street, Waco, June 29, 1993, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9324825.

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, July 6, 1993, at 5:00 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9324838.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, July 7, 1993, at 9:00 a.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9324836.

The Tyler County Appraisal District Appraisal Review Board will meet at 806 West Bluff, Woodville, July 8, 1993, at 9:00 a.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9324837.

#### Meetings Filed June 28, 1993

The Appraisal District of Jones County Appraisal Review Board will meet at the District's Office, 1137 East Court Plaza, Anson, July 8, 1993, at 9:00 a.m. Information may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9324893.

The Appraisal District of Jones County Appraisal Review Board will meet at the District's Office, 1137 East Court Plaza, Anson, July 8, 1993, at 9:20 a.m. Informa-

tion may be obtained from Susan Holloway, 1137 East Court Plaza, Anson, Texas 79501, (915) 823-2422. TRD-9324892.

**The Bastrop Central Appraisal District Appraisal Review Board** met at 1200 Cedar Street, Bastrop, July 1, 1993, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9324922.

**The Cass County Appraisal District Appraisal Review Board** will meet at the Cass County Appraisal District Office, 502 North Main Street, Linden, July 2, 1993, at 9:00 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9324908.

**The Gregg Appraisal District Appraisal Review Board** will meet at 2010 Gilmer Road, Longview, July 7, 1993, at 9:00 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75604, (214) 759-0015. TRD-9324895.

**The Gregg Appraisal District Appraisal Review Board** will meet at 2010 Gilmer Road, Longview, July 8, 1993, at 9:00 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75604, (214) 759-0015. TRD-9324894.

**The Hale County Appraisal District Appraisal Review Board** will meet at 302 West Eighth Street, Plainview, July 6, 1993, at 9:00 a.m. Information may be obtained from Linda Jaynes, P.O. Box 329, Plainview, Texas 79072, (806) 293-4226. TRD-9324888.

**The Hockley County Appraisal District Appraisal Review Board** met at 1103-C Houston, Levelland, July 1, 1993, at 8:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654. TRD-9324879.

**The Jack County Appraisal District Appraisal Review Board** will meet at 210 North Church Street, Jacksboro, July 2, 1993, at 8:00 a.m. Information may be obtained from Gary L. Zeitler or Vicky L.

Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 576-6301. TRD-9324942.

**The Kendall County Appraisal District Appraisal Review Board** met at 121 South Main Street, Conference Room, Boerne, June 30, 1993, at 9:00 a.m. Information may be obtained from Joe P. Davis, Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9324891.

**The Kendall County Appraisal District Appraisal Review Board** will meet at 121 South Main Street, Conference Room, Boerne, July 14, 1993, at 9:00 a.m. Information may be obtained from Joe P. Davis, Box 788, Boerne, Texas 78006, (210) 249-8012. TRD-9324890.

**The Lamar County Appraisal District Appraisal Review Board** held an emergency meeting at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, June 30, 1993, at 9:30 a.m. The emergency meeting was necessary due to tax payers hearing was postponed to the 30th of June so they could be there. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9324921.

**The Lavaca County Central Appraisal District Board of Directors** will meet at 113 North Main Street, Hallettsville, July 12, 1993, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9324920.

**The Lee County Appraisal District Appraisal Review Board** will meet at 218 East Richmond Street, Giddings, July 7, 1993, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9324941.

**The Middle Rio Grande Development Council Board of Directors** will meet at the Del Rio Civic Center, 1915 Avenue F, Del Rio, July 7, 1993, at 1:00 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9324917.

**The Middle Rio Grande Development Council Council** will meet at the Del Rio

Civic Center, 1915 Avenue F, Del Rio, July 7, 1993, at 3:30 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9324918.

**The Millersview-Doole Water Supply Corporation Board of Directors** will meet at the Corporation's Business Office, One Block West of FM 765 and FM 2134, Millersview, July 6, 1993, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9324940.

**The Region IV Education Service Center Board of Directors** will meet at the Region IV Education Service Center, Board Room, 7145 West Tidwell, Houston, July 6, 1993, at 6:00 p.m. Information may be obtained from W. L. McKinney, 7145 West Tidwell, Houston, Texas 77092, (713) 744-6534. TRD-9324919.

**The San Jacinto River Authority (Rescheduled from Wednesday, June 30, 1993.) Board of Directors** will meet in the Heritage Room, Ninth Floor, Houston Club Building, 811 Rusk, Houston, July 7, 1993, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9324889.

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**Meetings Filed June 29, 1993**

**The Hays County Appraisal District Appraisal Review Board** will meet at 632 A East Hopkins, Municipal Building, San Marcos, July 8, 1993, at 8:30 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9324945.

**The Hays County Appraisal District Appraisal Review Board** will meet at 632 A East Hopkins, Municipal Building, San Marcos, July 13, 1993, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins, San Marcos, Texas 78666, (512) 754-7400. TRD-9324946.

# 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.

## Office of the Texas Attorney General Texas Solid Waste Disposal Act

Notice is given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Solid Waste Disposal Act. A Memorandum of Understanding effective July 14, 1987, between the Texas Attorney General's Office and the Texas Water Commission incorporated by reference in 31 Texas Administrative Code, §335.28(1), provides that before the State may settle a judicial enforcement action under the Solid Waste Disposal Act, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Solid Waste Disposal Act.

**Case Title and Court.** State of Texas v. Formosa Plastics Corporation, Texas, Cause Number 92-4-12526 in the 135th District Court of Calhoun County.

**Nature of Defendant's Operations.** Formosa Plastics Corporation, Texas owns and operates a polyvinyl chloride manufacturing facility located in Calhoun County, which, from April 26, 1991, until present, was in alleged violation of the Texas Solid Waste Disposal Act.

**Proposed Agreed Judgment.** The proposed Agreed Final Judgment contains provisions for civil penalties.

**Civil Penalties and Attorney's Fees.** The judgment requires the Defendant to pay \$365,000 in civil penalties, \$25,000 in attorney's fees plus court costs to the State of Texas.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the judgment, should be directed to Brian Berwick, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012. Written comments must be received by August 2, 1993, at 5:00 p.m. Written comments may be sent by facsimile machine to Brian Berwick at (512) 320-0052.

Issued in Austin, Texas, on June 25, 1993.

TRD-9324840      Jerry Benedict  
Assistant Attorney General  
Office of the Texas Attorney General

Filed: June 25, 1993

## State Banking Board

### Notice of Hearing Cancellation

As no opposition has been noted in the application for the Farmers and Merchants National Bank, Mart, to convert to a state charter under the name of Farmers and Merchants Bank, the hearing previously scheduled for Wednesday, June 30, 1993, has been CANCELLED.

Issued in Austin, Texas, on June 23, 1993.

TRD-9324765      William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: June 24, 1993

## Texas Department of Banking Notice of Hearing

The Hearings Officer of the State Banking Board will conduct a hearing on August 5, 1993, at 9:00 p.m., at 2601 North Lamar Boulevard, Austin, Texas, on the change of domicile application for Founders Trust Company, Dallas, Texas.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Issued in Austin, Texas, on June 22, 1993.

TRD-9324734      William F. Aldridge  
Director of Corporate Activities  
Texas Department of Banking

Filed: June 24, 1993

## Coastal Coordination Council

### Texas Coastal Management Program- Policy Development Document

Pursuant to Texas Natural Resources Code, §33.052(b) and 33.204(a) and (d), and at the request of the Coastal Coordination Council, the General Land Office is publishing the Texas Coastal Management Program (CMP) Policy Development Document in the *Texas Register* for informational purposes only. This working document was prepared by a CMP interagency work group and the CMP State Agency Task Force.

The working document is not a proposed rule; it is published here to present draft goals and policies of the CMP for review by state agencies and political subdivisions and to guide the state agencies and political subdivisions in determining whether existing state and local natural resource policies are sufficient to implement the draft CMP

goals and policies. Because the CMP will be based on the collective authority of various state agencies and political subdivisions, it is essential that these entities evaluate their separate authority and identify any gaps in their authority to manage activities in the coastal area. State agencies and political subdivisions will also evaluate the draft goals and policies to determine their suitability as the foundation of the CMP.

After the state agencies and political subdivisions have completed their initial evaluation of the draft CMP goals and policies and of existing state and local law and policies, a revised version of the CMP goals and policies will be published in the *Texas Register* as proposed Coastal Coordination Council rules. At that time, public comment will be solicited by the Coastal Coordination Council. After the public comment period, the Coastal Coordination Council will adopt final rules on CMP goals and policies. The state agencies and subdivisions will then implement the goals and policies.

Agencies and subdivisions will evaluate their existing policies and the draft CMP goals and policies after June 3, 1993. A status report on the evaluation process will be presented to the Coastal Coordination Council at its August, 1993 meeting. On September 15, 1993, all evaluations will be complete and available for public and interagency review and comment. The Coastal Coordination Council will propose rules containing the final CMP Goals and Policies at its November, 1993 meeting. The Coastal Coordination Council will adopt these rules at its February, 1994 meeting.

The working document contains four sections. Section One identifies the proposed designated coastal natural resource areas (CNRAs). These are the areas to be protected by the CMP. Because designation of CNRAs is central to the CMP, it is essential at this stage in the development of the program to clearly define CNRAs, to identify the problems and issues associated with these areas, and to develop management policies to resolve the problems and issues. Section Two presents CMP draft goals for CNRAs, and Section Three contains the CMP general policies. Section Four provides guidance for state agencies and subdivisions to follow in examining and evaluating their existing policies in light of the General Policies listed in §2 of this document, entitled "Draft Goals and Policies." Section Five identifies the draft CMP management issues identified by the program's State Agency Task Force. The issues have been divided into three tiers according to the level of priority for policy development, with those in the first tier being of highest priority.

The draft CMP goals in this document are a revision and refinement of the CMP goals that the Coastal Coordination Council issued September 17, 1992, for publication in the *Texas Register*. Some of the previous goals were so specific that they are more appropriately considered as policies. These are now incorporated in the General Policies of the draft CMP goals and policies. §1. Proposed CNRAs.

(a) Management of CNRAs. The Texas Natural Resources Code, §33.201 et seq., (Coastal Coordination Act) provides for more effective and efficient management of CNRAs. The Coastal Coordination Act, §33.205, states: "All actions taken or authorized by state agencies and subdivisions that may adversely affect CNRAs...must comply with the goals and policies of the coastal management plan."

(b) Definition of CNRAs. The Coastal Coordination Act, §33.203(1), defines CNRAs as coastal land and water features requiring special management, such as submerged lands, public beaches, sand dunes, parks, historic areas, wildlife refuges "and other such natural management areas located within the coastal area and designated in the coastal management plan."

(c) CNRA Designation Criteria. CNRAs are areas that have significant biological, geological, physical, historical, cultural, or recreational characteristics which are important to the ecological health, public safety and enjoyment, and economic viability of the coastal area. CNRAs are located only in counties with tidewater shoreline (i.e., "first-tier" counties).

(d) Proposed Designation of CNRAs. The following list identifies the proposed CNRAs, some of which are specifically required by the Coastal Coordination Act.

(1) Coastal Waters.

(A) Open Gulf of Mexico—Waters seaward of the bays and estuaries extending to the state boundary.

(B) Waters Under Tidal Influence—Waters within lakes, bays, estuaries, rivers, inlets, bayous, canals, or ditches that exhibit an elevation change resulting from tidal exchange.

(2) Coastal Waters/Lands.

(A) Submerged Lands—Lands underlying waters under tidal influence and the open Gulf of Mexico, as well as the emergent portions of natural and man-made state-owned islands in coastal waters.

(B) Wetlands—"Jurisdictional wetlands," as defined by federal law and delineated by the United States Army Corps of Engineers.

(C) Submerged Aquatic Vegetation—Vegetation growing in relatively shallow subtidal areas.

(D) Oyster Reefs—Natural or artificial formations in intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oysters in marshes and mudflats and from wave-formed windrows.

(E) Tidal Sand/Mud Flats—Silt, clay, or sand substrates that usually occur in the intertidal zone and are regularly or intermittently exposed and flooded by tides.

(3) Coastal Lands.

(A) Shore Areas—Upland areas adjacent to coastal waters.

(B) Coastal Barriers—Islands, peninsulas, headlands, and chenier plains that are subject to wave, tidal, and wind energies and protect landward CNRAs from direct wave attack.

(C) Public Beaches—Any beach that extends inland from the line of mean low tide to the natural line of vegetation bordering on the open Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue of continuous right in the public since time immemorial as recognized by law or custom, except any beach that is not accessible by public road or ferry.

(D) Critical Dune Areas—Those portions of the beach/dune system as designated by the General Land Office that are located within 1,000 feet of mean high tide of the open Gulf of Mexico that contain dunes and dune complexes

essential to the protection of public beaches, submerged land, and state-owned land, such as public roads and coastal public lands, from nuisance, erosion, storm surge, and high wind and waves.

(E) Designated Coastal Hazard Areas—Natural hazard areas vulnerable to hurricanes, storms, and flooding, that have been designated by an authorized government agency or subdivision, such as washover areas, "V-zones," floodways, and 100-year floodplains.

(F) Designated Historic Areas—Sites or landmarks of historical significance for their archaeological, scientific, educational, or other value that have been designated by an authorized government agency or subdivision.

(G) Designated Parks—Land owned and maintained for park purposes.

(H) Designated Wildlife Refuges—Land owned and maintained for wildlife conservation purposes.

(4) Combinations of the Above. Designated Special Management Areas—Areas designated by an authorized government agency or subdivision as an area for which there is or will be developed a site-specific management plan because the area requires detailed attention beyond the general management system.

(e) Critical Areas. Wetlands, submerged aquatic vegetation, oyster reefs, and tidal sand and mud flats are proposed CNRAs which are also considered critical areas. Critical areas are aquatic sites for which specific policies will be developed and applied.

## §2. Draft CMP Goals.

(a) The Coastal Coordination Act requires actions that may adversely affect CNRAs to comply with the goals and policies of the CMP. The Act requires the goals and policies to be adopted as rules by the Coastal Coordination Council. Once adopted, they will be the foundation of the CMP.

(b) The following list identifies the proposed CMP goals.

(1) Protection and Use of CNRAs: To sustain coastal ecosystems for succeeding generations by managing the use and development of CNRAs to protect, preserve, restore, and enhance their diversity, quality, quantity, functions, and values.

(2) Recognize and allow for multiple economic uses of coastal resources.

(3) Consistency and Predictability: To make government decision-making affecting coastal natural resources consistent and predictable by establishing clear and objective policies.

(4) Coordination, Responsiveness, and Efficiency: To make government decision-making processes simpler and fair to all involved by establishing and maintaining intergovernmental coordination, accountability and responsiveness to the public, and streamlined and efficient operations.

(5) Effectiveness: To make government administration of coastal natural resource policy more effective by basing decision-making on comprehensive, accurate, and precise information and by employing innovative approaches to solving problems affecting coastal natural resources.

## §3. Draft CMP Policies.

(a) General policies.

(1) Consistency and predictability.

(A) Policy One. Agency and subdivision policies will identify what factors are relevant to agency decision-making. Agency and subdivision policies will generally state how those factors are balanced and identify which, if any, of those factors will take priority or preference over others in decisions, including whether that priority or preference derives from ordinance, rule, statute, or the constitution. Factors to identify include conservation, economics, aesthetics, general environmental concerns, wetlands, sites of historic or cultural significance, fish and wildlife values, flood hazards, floodplain values, compatibility with existing and future land use, equitable distribution of environmental hazards, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, consideration of property ownership, relative public and private benefits, and the general needs and welfare of the people of Texas and the nation.

(B) Policy Two. Agency and subdivision policies will set clear and objective performance standards or criteria to guide decisions to authorize or disallow a proposed activity; and to determine compliance with any conditions or requirements once an activity is authorized. Where feasible, the standards or criteria will quantify levels of adverse effects on CNRAs that will normally be prohibited.

(C) Policy Three. Agency and subdivision policies will clearly identify any areas where the agency or subdivision can grant variances from performance standards or criteria; or a statute, ordinance, or rule allows the agency or subdivision to base a decision on exercise of policy judgement or discretion rather than on predetermined, quantitative standards or criteria. For both types of decisions, agency or subdivision policies will provide guidance that is as specific as possible.

(D) Policy Four. Agencies and subdivisions will adopt rules, orders, or ordinances that resolve significant conflicts and ambiguities concerning statutory and regulatory requirements; and codify significant informal agency or subdivision policies and practices.

(2) Coordination, responsiveness, and efficiency.

(A) Policy Five. Agencies or subdivisions with shared or overlapping responsibilities for managing certain activities or CNRAs will adopt consistent performance standards and assessment/review methodologies that apply to those activities and CNRAs; delineate jurisdictional boundaries among themselves so that the division of responsibilities is clear to the public, the regulated community, and other agencies and subdivisions; and institutionalize mechanisms to ensure ongoing interagency and intergovernmental coordination.

(B) Policy Six. Agencies and subdivisions will institutionalize mechanisms that ensure the timely flow of policy and decision-making information to the public; and allow the public to respond to that information and participate in decision-making processes effectively.

(C) Policy Seven. Agencies and subdivisions will institutionalize means of ensuring efficient use of public and private resources in decision-making processes; and that decision-making processes produce timely results.

(3) Effectiveness.

(A) Policy Eight. Agency and subdivision policies will recognize that certain areas of the coast are more suitable

for certain uses and activities than others. Where appropriate, agencies and subdivisions will prioritize any activities that take priority or precedence over others in certain areas; and adopt policies tailored for those areas, such as standards of protection for ecologically valuable areas that are higher than those for highly developed or industrial areas.

(B) Policy Nine. Agencies and subdivisions will set standards to determine what amount and type of information is necessary to make decisions affecting CNRAs. Agencies and subdivisions will require applicants to provide adequate information and will withhold approval of a proposed activity if information is inadequate to produce a sound decision.

(C) Policy Ten. Agencies and subdivisions will set standards for monitoring activities affecting CNRAs and will require thorough monitoring and reporting of effects during all stages of an activity.

(D) Policy Eleven. Agencies and subdivisions will ensure that decisions and policies are effectively implemented by establishing or clarifying and then adhering to an enforcement policy.

(E) Policy Twelve. Agencies and subdivisions will adopt compliance incentives, pollution prevention measures, and other innovations where appropriate to supplement traditional regulatory or resource management approaches.

(F) Policy Thirteen. When deciding to authorize or engage in an activity that may adversely affect CNRAs, agencies and subdivisions will consider causes or sources of effects from all components of the activity rather than from a single segment of the activity. If an agency's or subdivision's ability to consider all components of the activity is limited (e.g., by legal restrictions or by lack of technical expertise), the agency or subdivision will coordinate with any other agency or subdivision with management responsibility for that component to ensure that their actions do not infringe on or limit one another's ability to manage the activity.

(G) Policy Fourteen. When deciding to authorize or engage in an activity that may adversely affect CNRAs, agencies and subdivisions will consider all of the activity's reasonably foreseeable effects on CNRAs, including those that may occur later in time or at a distance from the activity (i.e., secondary effects). Agencies and subdivisions will consider the activity's effects in light of all other past, present, and reasonably foreseeable effects on those areas, regardless of the source (i.e., cumulative effects).

(H) Policy Fifteen. When considering the nature of the effects from a proposed activity, agencies and subdivisions will consider how the activity affects a CNRA's ability to function in a manner beneficial to the public, such as by providing fish or wildlife habitat, helping to control floods, or providing recreational opportunities. Agencies and subdivisions will also consider the persistence and permanence of the effects. When considering economic effects, agencies and subdivisions will consider the economic value of CNRAs and the services they provide.

(4) Policy Sixteen. Protection and use of CNRAs.

(A) Activities may adversely affect CNRAs if they foreseeably may result in the physical destruction or detrimental alteration of any CNRA. An alteration is detrimental if it impairs the ability of the CNRA to function in a manner beneficial to the public. All activities will be planned, sited, designed, constructed, operated, and main-

tained to avoid, minimize, and compensate for those adverse effects.

(B) When deciding to authorize or engage in an activity that may adversely affect CNRAs, agencies and subdivisions will consider alternatives to the activity. Agencies and subdivisions will avoid adverse effects on CNRAs to the greatest extent practicable, including cumulative and secondary effects. If adverse effects cannot be avoided, agencies and subdivisions will minimize them. Agencies and subdivisions will require that all adverse effects that cannot be avoided or minimized be compensated for by restoring or replacing the affected resources. Agencies and subdivisions will authorize only the least environmentally damaging alternative that is available and capable of being done taking into consideration costs, existing technology, and logistics in light of the overall purpose of the activity and the objective of allowing multiple economic uses of coastal resources.

(C) Adverse effects to be avoided, minimized, and compensated for include:

(i) detrimental alterations of those coastal lands and waters that serve as productive fish or wildlife habitat, including designated habitat for endangered/threatened species, important wildlife or fishery breeding or nursery areas, wildlife management areas, preserves, or sanctuaries;

(ii) alterations of coastal lands or waters that would disrupt wildlife corridors or fish or bird migratory routes;

(iii) discharges of detrimental levels of pathogens, radioactive materials, dissolved minerals or solids, or toxic substances to coastal land or water;

(iv) discharges to coastal waters of detrimental levels of suspended solids, including turbidity resulting from dredging;

(v) detrimental alterations of salinity regimes in coastal waters;

(vi) detrimental alterations of the supply of nutrients to coastal waters;

(vii) detrimental alterations of the natural concentration of oxygen in coastal waters;

(viii) detrimental alterations of the natural temperature regime in coastal waters;

(ix) alterations of coastal lands or waters that would cause detrimental hydrologic modifications, including alterations in water flow, circulation patterns, water level, and surface drainage;

(x) alterations of coastal lands or waters that would cause detrimental modifications in littoral and sediment transport processes, would reduce the supply of sediments available to those processes, or would otherwise exacerbate erosion;

(xi) increases in losses of shore areas and other coastal natural resource areas from a rise in sea level with respect to the surface of the land, whether caused by actual sea-level rise or land surface subsidence;

(xii) increases in threats to human safety or the potential for damage to property or coastal natural resource areas from floods, hurricanes, or other storms, including those resulting from development in designated coastal hazard areas;

(xiii) alterations of coastal lands and waters that would interfere with public access to and use and enjoyment of public beaches, parks, and other coastal natural resource



areas that are suitable for public use;

(xiv) damage or destruction of cultural resources, such as historic and archaeological sites, and historic shipwrecks;

(xv) alterations of coastal lands or waters with detrimental aesthetic, social, or cultural effects; and

(xvi) emission of air pollutants at levels detrimental to the quality of coastal waters and other CNRAs.

#### §4. Agency Response

(a) Overview of Agency/Subdivision Management of Activities Affecting CNRAs. Each agency or subdivision is to write its evaluation using the following format.

(1) Generally describe the agency's or subdivision's role in managing activities affecting any of the CNRAs listed in Part I of this document, entitled "Proposed CNRAs."

(2) Identify the specific CNRAs affected by activities the agency or subdivision manages.

(3) Of the activities listed in Part IV of this document, entitled "Draft CMP Management Issues," identify those that the agency or subdivision regulates, oversees, funds, engages in, or otherwise manages.

(4) Describe the mechanisms the agency or subdivision employs to manage the activities identified under paragraph (3) of this subsection; for example, issuance of individual permits, issuance of general permits or permits-by-rule, establishment of regulatory requirements by rule or ordinance, establishment of best management practices, establishment of minimum requirements or conditions for receipt of funding or financing, establishment of project design and construction requirements, establishment of contractual requirements, licensing, registration of facilities, notification of certain activities, and public education.

(5) Cite the constitutional provisions, statutes, rules, ordinances, orders, or other legal authority pursuant to which the agency or subdivision manages the activities identified under paragraph (3) of this subsection.

(6) Identify any memoranda of understanding/agreement, written mission statements, written goals or objectives, or written policies or procedures relevant to the agency's or subdivision's management of the activities identified under paragraph (3) of this subsection.

(7) Identify any assessments, reports, or recommendations by advisory groups, associations, task forces, or other bodies that address any of the agency's or subdivision's policies for managing the activities identified under paragraph (3) of this subsection.

(8) Describe any significant unwritten policies or practices of the agency or subdivision that are relevant to the agency's or subdivision's management of the activities identified under paragraph (3) of this subsection and that are not contained in the responses to paragraphs (5)-(7) of this subsection.

(9) Of the general policies listed in Part II of this document, entitled "Draft Goals and Policies," identify those that are relevant to management of the activities listed under paragraph (3) of this subsection.

(b) Implementation of Relevant General Policies.

(1) Of the General Policies identified under subsection (a)(9) of this section, specify those that the agency or subdivision currently adheres to, implements, or applies to the activities the agency or subdivision manages.

(2) For each General Policy specified under paragraph (1) of this subsection, cite the rule, ordinance, memorandum of understanding/agreement, order, or other written document within which it is contained. If the agency's or subdivision's policy containing the General Policy is unwritten, it should be described under subsection (a)(8) of this section and referenced here.

(3) For each specific agency or subdivision policy cited under paragraph (2) of this subsection, discuss details of how the agency or subdivision employs it to apply relevant General Policies to the activities the agency or subdivision manages. Discuss any conditions or circumstances that significantly limit or impede application of the relevant General Policies to the activities the agency or subdivision manages.

(4) Of the General Policies identified under paragraph (1) of this subsection, specify those that the agency currently does not adhere to, implement, or apply to the activities the agency or subdivision manages. For each General Policy specified, discuss why the agency does not currently adhere to or implement the General Policy; for example, state whether it is not adhered to or implemented only because it is *not currently contained in or addressed by* current agency policy, or rather because it *conflicts with* current statutory requirements, agency rules, or other current agency policy.

(c) Developing New or Revised Agency/Subdivision Policies. For each General Policy identified under subsection (b)(3) of this section as being limited in application by the agency or subdivision or specified under subsection (b)(4) of this section as not currently being implemented by the agency or subdivision, discuss alternatives for fully applying or implementing the General Policy; for example, development and adoption into agency rules of specific policies applying the General Policy to activities the agency or subdivision manages, enactment of statutory amendments, execution of memoranda of agreement/understanding, etc. Describe any restrictions or problems that would prevent or hinder the agency from implementing the General Policy.

#### §5. Draft CMP Management Issues

(a) First tier. The first tier of draft CMP management issues includes: channel dredging (deep navigation channels); canal dredging (for residential and commercial access); dredged material disposal; Gulf Intracoastal Waterway (issue of national significance to be considered comprehensively [dredging, disposal, future development, etc.]); shipping (includes sewage and solid waste disposal issues, traffic issues); coastal development including residential development, commercial development (e.g., hotels, small businesses, warehouses, and wharves), industrial development based on the standard industrial classification (e.g., manufacturing, such as petrochemical plants, oil refining), piers, docks, boat ramps, moorages, marinas; erosion-response projects (e.g., bulkheads, seawalls, groins); oil and gas exploration and production (issue of national significance); industrial wastewater treatment and disposal; municipal wastewater treatment and disposal (includes package plants and composting plants); hazardous waste facilities; superfund sites; spills (includes oil, hazardous waste, plastic pellets, etc.); reservoirs and associated dams; surface water rights (direct diversions from stream without construction); nonpoint sources of pollution (urban, suburban, agricultural) including stormwater management (urban/suburban), sediment erosion management (agriculture/construction), septic sys-

tems, pesticide and fertilizer applications, (agricultural, residential, and commercial use), crop management, animal waste management, and range/pasture management.

(b) Second tier. The second tier of draft CMP management issues includes: pipelines; dams (e.g., low-water dams, levees, saltwater barriers, and small hydropower facilities); groundwater management; nonhazardous waste facilities (e.g., lagoons, recycling facilities); landfills; highways/roads (including construction and maintenance); agricultural land conversions; sedimentary mineral mining (e.g., sand and gravel mining); electric generating facilities; bridges; surface water projects (activities that require major construction to divert and use surface water which modifies the hydrologic cycle and flow patterns, such as irrigation, inter-basin transfers, and flood control projects); transmission lines; boating; artificial reefs; public recreational facilities and maintenance (e.g., beach cleaning, restroom facilities, and nature centers); beach access roads and parking lots; commercial fishing; recreational fishing; aquaculture; and mariculture.

(c) Third tier. The third tier of draft CMP management issues includes: mineral mining; railroads; airports; water treatment (for consumptive use); hurricanes/northers

(building code issues, evacuation and safety issues); public buildings and facilities (e.g., hospitals, schools, and government buildings); horseback riding; water contact recreation (e.g., swimming, surfing, and wading); camping; driving vehicles; hunting; and bird-watching.

Issued in Austin, Texas, on June 23, 1993.

TRD-9324832 Garry Mauro  
Chairman  
Coastal Coordination Council

Filed: June 25, 1993

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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, Articles 1.04 and 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04 and 1.05).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	06/28/93-07/04/93	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	07/01/93-07/31/93	10.00%	10.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on June 21, 1993.

TRD-9324692 Al Endsley  
Consumer Credit Commissioner

Filed: June 23, 1993

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**Interagency Council on Early  
Childhood Intervention**  
**Notice of Retraction of a Request for  
Proposal**

Based on notification received by the Region One Education Service Center of their formal intent to continue services in Cameron, Hidalgo, Willacy, and Starr counties, the Interagency Council on Early Childhood Intervention (ECI) announces the retraction of the posting making available funding for new providers in the above referenced service areas which was published in the *Texas Register*. The notice was published in the June 11, 1993, issue of the *Texas Register* (18 TexReg 3712).

Anyone having questions regarding this matter should contact the ECI office at (512) 458-7673.

Issued in Austin, Texas, on June 25, 1993.

TRD-9324808 Tammy Tiner, Ph.D.  
Chairperson  
Interagency Council on Early Childhood  
Intervention

Filed: June 25, 1993

**Texas Employment Commission  
Consultant Contract Awards**

In accordance with Texas Civil Statutes, Article 5221g-1, the Texas Employment Commission (TEC) furnishes this notice of a consultant contract award.

The consultant proposal request was published in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1968).

Research primarily consisting of personal interviews will be conducted regarding the issue of eldercare and the conflicts in roles experienced by working women caregivers.

The consultant selected is Texas Tech University, Department of Sociology, Anthropology, and Social Work, Box 419012, Lubbock, Texas 79409-1-12.

The amount of the contract is \$35,000.

The contract period spans May 17, 1993-August 31, 1993. Deliverables are due by August 31, 1993.

Issued in Austin, Texas, on June 24, 1993.

TRD-9324787 C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: June 25, 1993

In accordance with Texas Civil Statutes, Article 5221g-1, the Texas Employment Commission (TEC) furnishes this notice of a consultant contract award.

The consultant proposal request was published in the March 26, 1993, issue of the *Texas Register* (18 TexReg 1966).

The consultant will prepare two newsletters discussing a variety of work and family issues and plan a statewide conference for employers covering selected topics within the field of work and family.

The consultant selected is Grissom, Webb & Webb, 5900 Balcones, Suite 240, Austin, Texas 78731.

The amount of the contract is \$24,597.

The contract period spans May 1, 1993-September 30, 1993. Deliverables are due by September 30, 1993.

Issued in Austin, Texas, on June 24, 1993.

TRD-9324798      C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: June 25, 1993

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## Texas Environmental Awareness Network

### Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, July 7, 1993, at 9:00 a.m. at the Texas Air Control Board, Annex Building (Room 201A-Conference Room), 12124 Park 35 Circle, Austin.

More information is available from John Williams, TEAN Secretary, at (512) 473-3227.

Issued in Austin, Texas, on June 24, 1993.

TRD-9324821      John Williams  
Secretary  
Texas Environmental Awareness Network

Filed: June 25, 1993

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## Texas Department of Health

### Emergency Medical Services (EMS) Local Projects Training for EMS Providers Application Packet

#### 1. General Information.

The Texas Department of Health (TDH) is attempting to improve the quality of emergency pre-hospital medical care to reduce death and disability. The goal of the department is to provide the opportunity for approximately 500 students to attend training specific to the emergency pre-hospital health care field by September 30, 1993. Approximately \$150,000 has been allocated to meet this goal.

One step in improving the quality of emergency pre-hospital medical care involves specialized training of emergency medical services personnel in the access, packaging and/or treatment of patients. Examples of specialized training include Farm Machinery Extrication, School Bus Extrication, Wilderness Rescue, Emergency Medical

Dispatch Instructor/Provider, Trauma Training, Confined Space Rescue, Haz-Mat Provider, Street Survival, and Advanced Cardiac Life Support. Additionally, there are some areas of the state which would benefit from an Emergency Medical Technician Completion Course. A number of nationally recognized and standardized programs that provide training specific to trauma and or pediatric patients are available, including, pre-hospital Trauma Life Support (PHTLS), Basic Trauma Life Support (BTLS), Pediatric pre-hospital Provider Course (PPPC), and Pediatric Advanced Life Support (PALS).

The TDH is accepting applications from public or private non-profit entities to provide any one of, or combination of, the courses listed above. All courses must be approved through the appropriate credentialing agency and must be offered tuition free to the students attending the course. Funding can be requested for a basic, advanced or instructor level course. Each of the TDH funded classes may be monitored by a TDH staff member.

The applicant shall provide in the project application submitted to TDH a budget based upon a minimum enrollment of 20 students per course. All courses must be completed by September 30, 1993.

Potential contractors must provide assurances that they have the capability and all required special resources readily available to satisfactorily perform the services identified in their proposal. All contractors must provide documentation of ability to have the course(s) approved by the appropriate credentialing agency.

#### II. Project Funding.

The funding period will end on September 30, 1993. The applicant(s) whose proposal(s) is(are) approved for funding will be notified no later than July 30, 1993. If the total budget of the approved applicant(s) exceeds available monies, the TDH will negotiate with the contractor(s) regarding the cost of the project. After the award has been granted, a contract will be negotiated between TDH and the selected provider(s). The dates for notification and start may vary slightly as circumstances and conditions dictate. Funding for this training is contingent upon availability of funding to the TDH. The TDH will reimburse the contractor on a per-student basis for students completing the course.

#### III. Proposal Content.

The applicant shall provide in the project proposal submitted to TDH a budget based on a minimum enrollment of 20 students. All costs (including books, etc.) should be listed in the proposal as there can be no charge to the students for this course. Food and refreshments are not an allowable expense under this funding. Equipment (non-disposable items with a unit cost of greater than \$500 including shipping costs) is not an allowable expense. The applicant shall identify the amount of financial support needed to conduct the required course.

The purpose of this proposal is to develop a summary description of the training to be provided and a general plan of operation. The summary description should provide a clear description of the proposed project so that the uninformed reader could clearly understand the project's benefits.

The work plan should describe the course(s) that is to be provided, including timelines and responsible persons. This section should also outline the recruitment of target student populations. At least 50% of the students must be

from rural areas of the state per the federal definition of rural counties.

The proposal should include a project schedule. If circumstances beyond the control of the contractor result in the contractor not meeting project performance requirements, it is the responsibility and obligation of the contractor to make the details known immediately to TDH. The contractor will be reimbursed only for the portions of the project that are completed.

In an organization description potential contractors must provide assurances that they have the capability and all required resources readily available to satisfactorily perform the services identified in their proposal. Applicants shall provide the following information: description of the organization; documentation of the ability to perform the specified project; and names and qualifications of the project director and staff persons to be responsible for the project.

Potential contractors should describe the methods of self-evaluation and monitoring necessary for measuring course quality management.

#### IV. Review Process.

Application materials can be obtained by contacting Rhonda Blackmore, EMS Local Projects Coordinator, Texas Department of Health, Bureau of Emergency Management, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6740. Completed proposals from eligible providers must be received in the offices of the Bureau of Emergency Management, Texas Department of Health, no later than the close of business on July 23, 1993. Completed proposals should be mailed to Gene Weatherall, Chief Bureau of Emergency Management, EMS Providers Training Grant Application, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. If hand delivered, the proposals should be delivered to 8407 Wall Street, Suite S-220, Austin. TDH reserves the right to accept or reject any or all proposals submitted. The Department is under no legal requirement to execute a resulting contract on the basis of this advertisement. Each application will be evaluated independently on the following criteria: experience of the applicant; demonstrated ability to perform the obligations of the proposal; quality of the work plan; and budget. Review of the proposals will be completed by staff at the TDH with final approval given by the Commissioner of Health. Priority for funding will be given to projects directed towards rural EMS providers in areas which are distant from EMS training sites or which have no training facilities and rural areas that have no hospital or where hospitals have closed.

Should conditions prevent final execution of a contract between TDH and a selected provider, TDH may revert to other applicants, or may elect not to fund the training. Also, the award will not necessarily be made to the applicant offering the lowest price, but to the applicant with the best proposal for the lowest price, considering the results of TDH's evaluation (e. g., Applicant B's ability to train a greater number of students at a lower cost per student than Applicant A, whose application requests less money).

Issued in Austin, Texas, on June 28, 1993.

TRD-9324909

Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: June 28, 1993

## Texas Department of Human Services Public Notice

The Texas Department of Human Services (DHS) has published a report outlining its proposed intended use of federal block grant funds during Fiscal Year 1993 for Title XX social services programs. To obtain free copies of the report, send written requests to Nancy Murphy, Section Manager, Policy and Document Support, Mail Code E-503, Texas Department of Human Services, 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 3, 1992.

Please mail comments to the address listed previously.

Issued in Austin, Texas, June 25, 1993.

TRD-9324835

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

Filed: June 25, 1993

## Texas Parks and Wildlife Department Notice of Public Hearing

Notice is hereby given that the City of Uvalde, whose address is P.O. Box 799, Uvalde, Texas 78802-0799, on June 9, 1993, filed an administratively complete renewal application with the Texas Parks and Wildlife Department for a permit: to remove 80 cubic yards of gravel per month from the Nueces River approximately ten miles west of Uvalde, Texas, starting south of the existing old one-way bridge and extending 440 feet, adjacent to the properties of Vanco Trusts, Charles Thomas Lambright, Cora Carter Felts, Joe M. Everett, and Joseph G. Smyth, III.

This permit is requested under the authority granted to the Texas Parks and Wildlife Commission in Chapter 86 of the Parks and Wildlife Code and will not authorize the crossing of any private property.

The hearing to receive public comment on this application will be conducted: August 5, 1993, 10:00 a.m., Room A-100, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Travis County, at which time all interested persons may appear and be heard. Comments may be mailed to the Department at the address listed below, or presented orally or in writing at the hearing.

In addition, any person who can demonstrate a justiciable interest may request a formal contested case hearing pursuant to the Administrative Procedure and Texas Register Act, Article 6252.13a, §18(a). Any person wishing to request such a hearing should submit a written request to Catherine Livingston at the address listed below. Such a request should include a short statement of the nature of any objections to the requested permit and a description of the potential adverse impact that may be suffered by the requestor. Requests for formal contested case hearings must be received by the Department no later than 30 days after the date of issuance of this notice as listed below.

Further information concerning any aspect of the application or hearing may be obtained by contacting Catherine Livingston, Environmental Counsel, Legal Services Division.

Issued in Austin, Texas, on June 23, 1993.

TRD-9324897 Paul M. Shinkawa  
General Counsel  
Texas Parks and Wildlife Department

Filed: June 28, 1993

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**Texas Public Finance Authority**  
**Request for Proposal for Accounting**  
**Services**

The Texas Public Finance Authority is requesting a proposal for Accounting Services. The deadline for proposal submission is noon Wednesday, July 21, 1993. Selection will be based on the qualifications and experience of the firms in utilizing MIP Software, USAS and experience with State agencies, as well as the reasonableness of the hourly rate, provided that all criteria and specifications are met or exceeded.

Copies of the Request for Proposal may be obtained by calling or writing Michell Frazier or Evelyn Casper, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

Issued in Austin, Texas, on June 28, 1993.

TRD-9324898 John Hernandez  
Chief Accountant  
Texas Public Finance Authority

Filed: June 28, 1993

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**Texas Department of Transportation**  
**Consultant Notice**

The Texas Department of Transportation (TxDOT) will contract with John T. Doolittle and Associates, Inc., for private consulting services for purposes of developing processes to assist the Texas Department of Transportation in successfully accomplishing its future mission. The Texas Department of Transportation has asked and received an emergency waiver by the Office of the Governor, pursuant to Texas Civil Statutes, Article 6252-11c, §10, from the requirements of the Act, §§4, 5, 11, and 16.

The department, currently directed by a new Transportation Commission, is actualizing legislatively mandated reorganization and changes in traditional roles and missions, engaging in a change of executive directors, preparing initial statewide multi-modal planning required by state and federal laws, and expecting unusually high numbers of retirements resulting from the passage of Senate Bill 81, 73rd Legislature, Regular Session, 1993, which place a strain on the department's in-house resources.

The department has an immediate and urgent need to secure the best possible study, advice, and counsel for the appropriate strategic process, content development process, issue identification process, and process to professionally support the Transportation Commission to meet the challenge before them. This urgent need was the basis for requesting and securing the Governor's waiver of the foregoing cited statutory requirements.

The extent and nature of the services and the study, advice, and counsel sought are beyond the ability of our already overextended staff resources, and it is not believed any other agency to be in a position to fulfill these needs within the absolutes of available time. We have identified and propose to enter a negotiated contract with John T. Doolittle and Associates, Inc., to provide these consulting services over the anticipated seven months life of the contract. Within ten days of execution of the contract, the department will publish a notice of award in the *Texas Register*.

Issued in Austin, Texas, on June 23, 1993.

TRD-9324881 Diane L. Northam  
Legal Administrative Assistant  
Texas Department of Transportation

Filed: June 23, 1993

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**Public Notice**

**Introduction.** The Texas Department of Transportation (TxDOT) will conduct a briefing concerning its draft request for proposals for the future development of a business information and systems plan that will incorporate a top down, high level assessment of department information needs for all business areas of the department, an assessment of the department's existing information systems as well as relevant architectures and infrastructures, and implementation/migration strategies to ensure that all future systems development or enhancement efforts support the department's information needs. The effort to develop the business information and systems plan will result in the preparation of the plan itself and the implementation of an on-going business information and systems planning process at the department which will provide guidance for the logical and orderly development, re-development, enhancement and selection of various computer software to support all identified business areas.

**Purpose.** The purpose of the briefing is to ensure the best possible response to the upcoming request for proposals by informing interested firms of the department's direction and tentative schedule for formal publication of the request for proposals.

**Briefing.** The draft request for proposals will be made available by the department after July 5, 1993. Interested firms may pick up a draft copy at the following address: Texas Department of Transportation, Information Resources Management Office, Worthen Bank Building, 919 Congress Avenue, Suite 430 (Tenth and Congress, southeast corner), Austin. Interested firms may also request that a copy be mailed to them by contacting the Information Resources Management Office at (512) 475-0712.

The briefing on the draft request for proposals will be held at 1:30 p.m. on July 12, 1993, at the Texas Department of Transportation, Riverside Annex, 118-200 East Riverside Drive, Building 150, Room 309C.

Interested firms may request clarifications of information contained in the draft request for proposal in person at the briefing or by written request for clarification. Any request for clarification received at the briefing will be noted. The department will then determine whether the request for proposal should be clarified prior to formal publication based on requests received at the briefing and by mail.

Written requests for clarification must be received by the department no later than 5:00 p.m. on July 12, 1993, and

are to be sent to the following address: Texas Department of Transportation, Information Resources Management Office, Attention: Rebecca Murdock, 125 East 11th Street, Austin, Texas 78701-2483.

**Disclaimer.** Firms responding to this public notice will not be compensated in any way for their participation in this briefing. Neither TxDOT nor the responding firms are obligated or expected to receive any benefit resulting from this briefing.

The final published version of the upcoming request for proposals will define the department's requirements concerning the business information and systems plan effort. The purpose of the briefing described in this notice is to inform interested vendors of upcoming events and to identify needed clarifications only. The briefing will in no way serve the purpose of gathering information which might influence the department concerning content or direction of the upcoming request for proposals.

**Agency Contact** For additional information, contact Rebecca Murdock at the Texas Department of Transportation, Information Resources Office (512) 475-0714.

Issued in Austin, Texas, on June 28, 1993.

TRD-9324878

Diane L. Northam  
Legal Administrative Assistant  
Texas Department of Transportation

Filed: June 28, 1993

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## Texas Water Commission Public Hearing Notice

The Texas Water Commission will conduct a public hearing beginning at 1:30 p.m., August 5, 1993, Stephen F. Austin Building, 1700 North Congress Avenue, Room 1149A, Austin.

The hearing will consider proposed fiscal year 1992 revisions to the State of Texas Water Quality Management

Plan. These revisions, pertaining to entities on the following fact sheet, will provide a more current assessment of municipal wastewater facility needs, population projections, and management agency designation. This report utilizes more recent facility-specific information than that available in previous water quality management plans. The proposed revisions to the Water Quality Management Plan have been prepared subject to the requirements of the Continuing Planning Process that are identified in Title 40, Code of Federal Regulations, Part 35, Subpart G. These plan are developed and revised pursuant to Chapter 26 of the Texas Water Code and the Federal Clean Water Act, §208 and §205(j). The hearing is being conducted pursuant to the Texas Water Code, §§5.102, 5.112, and 26.012.

Interested persons are encouraged to attend the hearing and to present relevant and material comments concerning the proposed FY 92 revisions to the State of Texas Water Quality Management Plan. Written testimony which is submitted prior to or during the scheduled public hearing will be included in the record. The Commission would appreciate receiving a copy of all written testimony at least five days before the scheduled hearing. Copies of written testimony or questions concerning the public hearing should be addressed to Linda Brookins, Texas Water Commission, Environmental Assessment Division, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8452.

Copies of the draft FY 1992 revisions to the Water Quality Management Plan are available for public inspection in Room B20 (Library) of the Stephen F. Austin Building at 1700 North Congress Avenue, Austin. Requests for copies of the draft should be address to Linda Brookins, Texas Water Commission, Environmental Assessment Division, P.O. Box 13087, Austin, Texas 78711-3087, or call (512) 463-8452. When requesting a copy or sending a query by mail, please include your complete return address and telephone number. Copies of the draft revisions have been provided to all entities shown as follows.

A. WASTEWATER FACILITY UPDATES

Entity (County)

Allen (Collin)

Breckenridge (Stephens)

Clear Lake City Water Authority (Harris)

Coldspring (San Jacinto)

Deer Park (Harris)

East Cedar Creek FWSD (Henderson)

Harris County WCID No. 84 (Harris)

Hull (Liberty)

Jefferson County WCID No. 10 (Jefferson)

Lake Jackson (Brazoria)



Lubbock County WCID No. 1 (Lubbock)

Lumberton MUD (Hardin)

Midlothian (Ellis)

Odessa (Ector)

Pharr (Hidalgo)

San Benito (Cameron)

Stephenville (Erath)

Whitesboro (Grayson)

B. Waste Load Evaluation Updates

Entity (County)

Fallbrook Utility District (Harris)

Houston WCID No. 111 (Harris)

El Paso - Northwest (El Paso)

Issued in Austin, Texas, on June 28, 1993.

TRD-9324887

Mary Ruth Holder  
Director, Legal Division  
Texas Water Commission

Filed: June 28, 1993

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## 1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material 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 preceding publication. No issues will be published on July 30, November 5, November 30, and December 28. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19

65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 Friday, September 10	Friday, September 3	Tuesday, September 7
70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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