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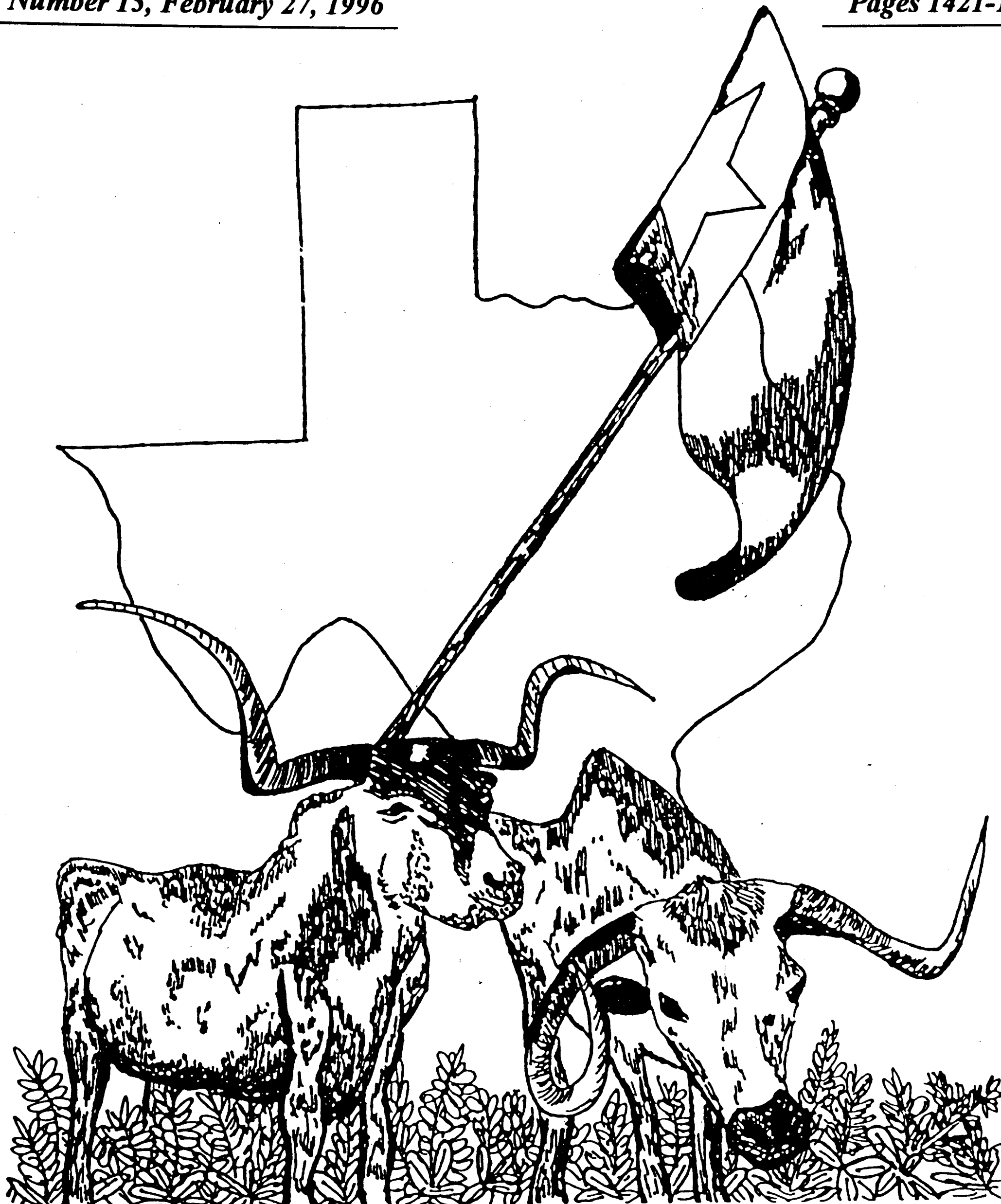
Part I



This month's front cover artwork:

***Artist:** Lakeisha R. Hines*

11th grade

Sulphur Springs High School, Sulphur Springs ISD

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The artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

For more information about the student art project, please call (800) 226-7199.

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Name: Michael Reyna
Grade: 11
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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 1. General Procedures

Subchapter D. Miscellaneous Provisions

4 TAC §1.85

The Texas Department of Agriculture (the department) proposes new §1.85, concerning agency motor vehicles exempt from the requirement of displaying identification or inscription. The new section provides for the department's exemption of certain agency vehicles from the requirement of having the word "Texas" and the department's name printed on each side of the motor vehicles. The new section is proposed to designate exempt vehicles, describe the department's purpose for not printing the inscription on the vehicles and state the primary use of the exempt motor vehicles.

Jim Pollard, Assistant Commissioner, Regulatory Programs, 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. Pollard 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 enhancement of accuracy in weights and measure inspections through exposure of intentional manipulation of electronic devices used in fuel purchases. There will be no effect on small or large businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Jim Pollard, Assistant Commissioner, Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed rule in the *Texas Register.*

The new section is proposed under the Texas Transportation Code, §721.002, which requires inscription on state-owned motor vehicles and §721.003, which allows exemption from the inscription requirement.

The proposed rule does not affect other statutes, articles, or codes.

§1.85. Designated Motor Vehicles Exempt from Identification or Inscription.

(a) Purpose of the exempt vehicles. The department will utilize designated motor vehicles without the inscription of "Texas" or the department's name on the side of the vehicle in enforcement of its weights and measures laws, Texas Agriculture Code, Chapter 13.

(b) Primary use of the motor vehicles. The exempt vehicles will be used to assure accuracy of retail motor fuel devices and to detect intentional electronic device manipulation.

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 February 15, 1996.

TRD-9602180
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-7583

♦ ♦ ♦

Part II. Texas Animal Health Commission

Chapter 43. Tuberculosis

Subchapter A. Cattle

4 TAC §43.1

The Texas Animal Health Commission proposes an amendment to §43.1, Tuberculosis, by adding language to subsection (n) concerning the handling of tuberculosis reactors.

The proposed amendment is necessary to amend §43.1(n) to require branding on the left hip rather than the jaw. This change reflects federal requirements. The proposed amendment is also necessary to eliminate outdated language stating the testing veterinarian will brand reactors, and other language regarding the handling of reactors that duplicates §43.1(k) and §43.1(l).

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to bring uniformity to identification of reactor cattle in line with federal requirements. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with the authority to adopt rules and sets forth the duties of this commission to control disease. The amendment implements the Agriculture Code, §161.041.

No other code or article is affected by these amendments.

§43.1. Cattle (All Dairy and Beef Animals, and Bison).

(a)- (m) (No change.)

(n) Disposal of reactors. All animals classified as tuberculin reactors must have a red reactor tag placed in the left ear and a fire brand "T" ***at least two by two inches in size, high on the left hip near the tailhead*** [not less than three inches high on the left jaw. This procedure is to be carried out by the testing veterinarian before he leaves the premise. He also is to advise the owner that a representative of the Texas Animal Health Commission will contact him within a few days and that no animals are to be moved in the meantime. Test charts must be completed at the time reactors are disclosed and forwarded to the Texas Animal Health Commission.] A representative of the Texas Animal Health Commission will:

(1) (No change.)

(2) Complete indemnity claims (VS Form 1-23). If more than seven animals are involved, make all individual entries on continuation sheets (VS Form 1-23A). If more than 10 animals are involved, a professional appraiser ***may*** [shall] be used;

(3)-(9) (No change.)

(o)-(t). (No change.)

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

Issued in Austin, Texas, on February 15, 1996.

9602249
Terry L. Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: March 29, 1996
For further information, please call (512) 719-0714

♦ ♦ ♦

Subchapter C. Eradication of Tuberculosis in Cervidae

4 TAC §43.21

The Texas Animal Health Commission proposes an amendment to §43.21, Tuberculosis, by adding language to subsection (n) concerning the handling of cervid tuberculosis reactors.

The proposed amendment is necessary to amend §43.21(e) to require branding on the left hip rather than the jaw. This change reflects federal requirements.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that for each year of the first five years the section is in effect the public benefit anticipated is to bring uniformity to identification of reactor cattle in line with federal requirements.

Comments on the proposal may be submitted to Melissa Nitsche, Assistant to the Executive Director, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with the authority to adopt rules and sets forth the duties of this commission to control disease. The amendment implements the Agriculture Code, §161.041.

No other code or article is affected by this amendment.

§ 43.21. General Requirements.

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

(e) Identification of Reactors. Reactor cervids shall be identified by branding with the letter "T" ***at least two by two inches in size, high on the left hip near the tailhead*** [on the left jaw, not less than two inches nor more than three inches high], and by tagging with an official eartag bearing a serial number and inscription "U.S. Reactor" attached to the left ear of each reactor animal.

(f)-(i) (No change.)

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

Issued in Austin, Texas, on February 15, 1996.

9602250
Terry L. Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: March 29, 1996
For further information, please call (512) 719-0714

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TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

16 TAC §3.21

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

The Railroad Commission of Texas proposes to repeal §3.21, concerning fire prevention and swabbing, and concurrently to propose new §3.21 to address the risk of fires and fluid spills associated with modern drilling and production practices. Because most of the requirements of §3.21 are obsolete due to changing oil field methods, the commission believes that repeal of §3.21 and adoption of a new §3.21 would be less complicated than amending the current §3.21. The proposed new §3.21 specifies certain precautionary practices that the commission believes will reduce the risk of harm due to fires or spills during lease operations.

The commission believes that the prohibition against swabbing contained in the current §3.21(k) should be deleted. Due to the lower pressure conditions found in most oil fields today, the safety and fire hazard associated with swabbing operations is generally minimal. Moreover, in low pressure oil reservoirs, swabbing can be a cost effective way to extract the last remaining reserves in an oil well.

The commission has also determined that the release of fluids due to storage tank failures may, in some cases, present a risk to public health, safety and the environment. The risk, however, can be readily and cost-effectively addressed through the installation of secondary containment. In certain situations described in the proposed section, secondary containment is necessary to prevent the escape of oil, condensate or produced water from the immediate vicinity of tanks containing such fluids. In those situations where secondary containment is required, operators will be required to build containment systems capable of holding 100% of the volume of the largest tank within the containment area. The containment volume specification is equivalent to that found in the federal Spill Prevention Countermeasures and Containment (SPCC) requirements to keep the regulatory burden at a minimum.

Rita E. Percival, systems analyst for the Oil and Gas Division, has determined that for each year of the first five-year period the proposed rule will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering it. The requirements set forth in the new rule are very similar to currently accepted oil field practices. Therefore, there will be no cost of compliance with the proposed rule for small businesses as a result of enforcing or administering it.

Mr. Jeffrey T. Pender, hearings examiner, Office of General Counsel, has determined that for each year of the first five years the new rule is in effect, there will be no economic costs to individuals who are required to comply with the rule as proposed. In addition, for each year of the first five years the new rule is in effect, the public will benefit from the increased production from swabbing and the reduced likelihood that operations subject to commission regulation will cause or be likely to cause a fire hazard or spill affecting adjacent property.

Comments may be submitted to Jeffrey T. Pender, hearings examiner, Office of General Counsel - Oil & Gas Section, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*. For further information, please call Jeffrey T. Pender at (512) 463-6802.

The commission proposes to repeal existing §3.21 and to adopt new §3.21 pursuant to Texas Natural Resources Code, §81.051 and 81.052, which provide the commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission. Further, §85.202(a)(4) provides the commission with the authority to promulgate rules requiring wells to be drilled and operated in a manner that will prevent injury to adjoining property and, under §85.042(b), prevent operations in the field dangerous to life or property. The commission is also authorized under §91.101(4) to promulgate rules relating to the storage of oil, condensate and oil and gas wastes.

The proposed repeal and adoption affect the following provisions of the Natural Resources Code. §3.21 - Texas Natural Resources Code, §;81.051, 81.052, 85.202(a)(4), 85.042(b) and 91.101(4).

§3.21.

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 February 15, 1996.

TRD-9602247
Mary Ross McDonald
Assistant Director, Gas Services Section, Office of the General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-7008

16 TAC §3.21

The new section is proposed pursuant to Texas Natural Resources Code, §;81.051 and 81.052, which provide the commission with jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission. Further, §85.202(a)(4) provides the commission with the

authority to promulgate rules requiring wells to be drilled and operated in a manner that will prevent injury to adjoining property and, under §85.042(b), prevent operations in the field dangerous to life or property. The commission is also authorized under §91.101(4) to promulgate rules relating to the storage of oil, condensate and oil and gas wastes.

The proposed repeal and adoption affect the following provisions of the Natural Resources Code. Texas Natural Resources Code, §;81.051, 81.052, 85.202(a)(4), 85.042(b) and 91.101(4).

§3.21. Fire Prevention and Secondary Containment.

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

(1) Drainage system - controls appropriate to manage the flow of liquids so as to divert the liquids toward impoundment areas.

(2) Secondary containment - a structure such as a dike, berm, fire wall, impoundment area or drainage system designed to prevent the escape of oil, condensate or produced water from the immediate vicinity of a tank in the event of tank failure.

(3) Tank - Any permanent or temporary storage vessel used for activities such as drilling, swabbing, periodic well tests, or workover/completion operations, that is maintained at or near atmospheric pressure and which contains crude oil, condensate, or produced water, but not including storage tanks used for less than 60 days, heater treaters or separators.

(4) Waters of the State - any lake, bay, pond, impounding reservoir, playa lake, spring, river, stream, creek, wet land, estuary, marsh, inlet, canal, the Gulf of Mexico inside the territorial limits of the state, or any other body of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of any watercourse or body of surface water that is wholly or partially inside or bordering the state or inside the jurisdiction of the state. The term does not include pits authorized or permitted under §3.8 of this title (Water Protection).

(b) Secondary containment shall be constructed and maintained to confine at least 100% of the maximum volume of the largest tank within the containment area for tanks located:

(1) Within the corporate limits of any city, town, or village;

(2) Within 500 feet of any highway or habitable building;

(3) Within 1,000 feet of any school or church;

(4) Where it could be reasonably expected that upon failure, the tank or tanks would discharge crude oil, condensate or produced water into or upon waters of the state;

(5) In any state, federal, county or municipal park or wildlife refuge to the extent it is not precluded by the park or refuge requirements;

(6) In any other area where the commission, through its employees, determines that secondary containment is otherwise reasonable and necessary to protect public health, safety or the environment.

(c) No secondary containment is required for a single tank with a volume less than 660 gallons or where the total capacity of all storage tanks at a facility is less than 1,320 gallons.

(d) No permanent tank shall be located less than 150 feet from any habitable building unless the building was erected subsequent to the installation of the tank.

(e) All tanks that present a potential gas escape hazard shall be equipped with proper gas vents.

(f) Any accumulation of rubbish or debris that might constitute a fire hazard shall be removed from the vicinity of any well, tank, pump, compressor, or other spark or flame emitting apparatus. Rubbish and debris shall not be placed or allowed to accumulate within a secondary containment area.

(g) For good cause shown, the commission or its delegate may administratively grant exceptions to subsections (b) and (d)-(f) of this section. If the commission or its delegate declines to administratively grant or extend an exception, the operator may request a hearing.

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

Issued in Austin, Texas, on February 15, 1996.

TRD-9602248

Mary Ross McDonald

Assistant Director, Gas Services Section, Office of the General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: March 29, 1996

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

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Applicability and Requirements

16 TAC §9.3

The Railroad Commission of Texas proposes amendments to §9.3, relating to LP-gas report forms, and §9.160, relating to manufacturer's nameplate and markings on ASME containers, and new §9.161, relating to commission identification nameplates. Section 9.3 lists the numbers and titles of various forms required to be filed with the commission; proposed changes include the addition of new LPG Form 502, request for commission identification nameplate, the addition of LPG Form 506, concerning the polyethylene pipe/tubing heat-fusion certification (which is discussed in §9.956, relating to joining methods, but was mistakenly omitted from §9.3), and correction of the reference to the former LP-Gas Division. Section 9.160 describes the nameplate that identifies ASME containers and lists the information to be included on the nameplate. Proposed changes include some nameplate definitions added to subsection (a), and new subsections (f), (g), (h), and (j); proposed subsection (f) requires the working pressure for a container to be painted on the container if the original ASME nameplate begins to become unreadable. Proposed subsection (g) describes procedures for replacement nameplates. Proposed subsection (h) allows nameplates on motor or mobile fuel containers to be at-

tached with a method other than continuous fusion welding and to be raised of the surface of the container; while this is not directly a safety issue, it will allow persons in Texas to have a wider selection of ASME containers approved for use in Texas. Proposed subsection (j) states that the commission may remove any container from service if the nameplate, in any form defined in subsection (a), appears to be tampered with or defective in some manner. Other proposed nonsubstantive amendments in §9.160 include some changes in organization, wording, or punctuation to provide clearer language or sequence.

Proposed new §9.161 describes requirements for issuance of commission identification nameplates which will be available only for stationary containers with water capacities of 4,001 gallons or more. Subsections (a) through (e) specify the requirements for owners or operators of stationary containers to request a commission identification nameplate if the original ASME nameplate is becoming loose, unreadable, or detached, and a replacement nameplate cannot be issued because the original tank manufacturer is no longer in existence, or in another similar situation. The commission's identification nameplate shall serve only to identify the container as an ASME container and will in no way indicate the condition of the container. The commission will issue identification nameplates only for containers with water capacities of 4,001 gallons or more installed in Texas before September 1, 1984, the effective date of the nameplate requirement in §9.160. The minimum size of 4,001 gallons will enable the LP-Gas Section to issue identification nameplates for larger, more expensive containers, while maintaining its primary responsibilities of safety and inspections. In addition, the commission must be able to verify the continuous LP-gas service of the container in Texas prior to September 1, 1984. The reason for providing this service only for containers continuously used in Texas is to prevent an excessive influx of older containers into Texas. In order to further ensure that the section's ability to perform its primary responsibilities will not be jeopardized, certain fees associated with the identification nameplates will have to be paid in advance to cover the commission's preparatory work, with all fees being due before the nameplate will be attached; in other words, to prevent the section from doing nothing but issuing identification nameplates, the entire financial burden for the commission identification nameplate will rest on the owner or operator of the container.

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

Mr. Petru has also determined that the public benefit anticipated as a result of enforcing the section will be a decrease in the financial burden of those persons required to comply because containers which would otherwise have to be removed from service but which qualify for a commission identification nameplate may remain in use. There should also be a decrease in the use of unauthorized nameplates. In addition, allowing an alternative method of attaching nameplates on motor or mobile fuel tanks, as proposed in §9.160(h), will give potential customers in Texas more container manufacturing companies from which to choose.

There is an anticipated economic cost to small businesses and to individuals who elect to obtain a commission identification nameplate as a result of the proposed amendments. The exact cost cannot be determined due to variables such as number of containers affected and the travel expenses required for the assigned commission employee. The costs will include commission costs involved in issuing the identification nameplate, such as travel expenses for the commission employee who performs the actual work, as well as the actual cost of the nameplate, estimated to be $10 to $20, and adhesive and other materials needed to affix the nameplate, estimated to be about $5. Travel expenses will be based on the per diem and mileage amounts currently adopted for state employees by the legislature, and will be charged for all necessary trips, including at least one trip for inspection of the container and attachment of the nameplate. While these costs may be several hundred dollars for some persons, they will still be considerably less than the cost of replacing a container costing thousands of dollars.

Comments on the proposal may be submitted to Kellie Martinec, Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register* and should refer to LP-Gas Docket Number 1474.

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

The following is the statute, article, or code affected by the proposed new section and amendments: §9.3, 9.160, and 9.161, Texas Natural Resources Code, §113.051.

§9.3. LP-Gas Report Forms.

Under the provision of the Texas Natural Resources Code, Chapter 113, the Railroad Commission of Texas has adopted by reference the following forms for use by the ***LP-Gas Section of the Gas Services Division*** [LP-Gas Division].

(1)-(24) (No change.)

(25) LPG Form 502. Request for Commission Identification Nameplate.

(26)[(25)] LPG Form 503. Application to Install an LP-Gas System on School Bus, Mass Transit, or Special Transit Vehicle(s).

(27)[(26)] LPG Form 504. Notice of Subsequent Installation or Conversion.

(28)[(27)] LPG Form 505. Testing Procedures Certification.

(29) LPG Form 506. Polyethylene Pipe/Tubing Heat- Fusion Certification.

(30)[(28)] LPG Form 995. Certification of Political Subdivision of Self-Insurance for General Liability, Workers' Compensation, and/or Motor Vehicle Liability Insurance.

(31)[(29)] LPG Form 996A. Certificate of Insurance, Workers' Compensation and Employer's Liability or Alternative Accident/ Health Insurance.

(32)[(30)] LPG Form 996B. Statement in Lieu of Insurance Filing Certifying Workers' Compensation Coverage, including Employer's Liability Insurance or Alternative Accident/Health Insurance.

(33)[(31)] LPG Form 997A. Certificate of Insurance, Motor Vehicle Bodily Injury, and Property Damage Liability.

(34)[(32)] LPG Form 997B. Statement in Lieu of Motor Vehicle Bodily Injury, and Property Damage Liability Insurance.

(35)[(33)] LPG 998A. Certificate of Insurance, General Liability.

(36)[(34)] LPG 998B. Statement in Lieu of General Liability Insurance and/or Completed Operations or Products Liability Insurance.

(37)[(35)] LPG Form 999. Notice of Insurance Cancellation.

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 February 15, 1996.

TRD-9602242

Mary Ross McDonald

Assistant Director, Gas Services Section, Office of the General Counsel

Railroad Commission of Texas

Earliest possible date of adoption: March 29, 1996

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

Subchapter B. Basic Rules

16 TAC §9.160,§9.161

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

The following is the statute, article, or code affected by the proposed new section and amendments: §; 9.3, 9.160, and 9.161, Texas Natural Resources Code, §113.051.

§9.160. Manufacturer's Nameplate and Markings on ASME Containers.

(a) LP-gas shall not be introduced into an ASME container ***unless the container is*** [which is not] equipped with ***at least one of the nameplates defined in this subsection*** [a manufacturer's original nameplate or a manufacturer's replacement nameplate] permanently attached to the container. [The following minimum information must be readable on the manufacturer's nameplate for containers built prior to September 1, 1984: name of container manufacturer, manufacturer's serial number, working pressure, and water capacity. No American Society of Mechanical Engineers (ASME) container manufactured on or after September 1, 1984, and embodied in Divisions II, III, IV, V, VI, IX, X, XI, and XIV, shall be used in the State of Texas unless such container has a stainless steel nameplate permanently attached to the container by continuous fusion welding around the perimeter of the nameplate.]

(1) Commission identification nameplate - A nameplate issued under the procedures specified in §9.161 of this title (relating to commission identification nameplates) and attached by an authorized representative of the Railroad Commission for the purpose of identifying an ASME stationary container when the original nameplate is lost or illegible.

(2) Duplicate nameplate - An additional ASME container nameplate issued by the original manufacturer with duplicate information as the original nameplate and clearly marked as a duplicate nameplate, but installed in a remote location.

(3) Modification (or alteration) nameplate - A nameplate issued and affixed by an ASME Code facility including only partial information applicable to a modification or alteration performed on that container.

(4) Replacement nameplate - A nameplate including the identical information as the original nameplate and identified as a replacement nameplate, but issued and affixed by the original manufacturer or its successor company or companies when the original nameplate is lost or illegible.

(b) Nameplate thickness ***for stainless steel nameplates issued on or after September 1, 1984,*** shall be sufficient to resist distortion due to the application of markings and fusion welding.

[(c) Container nameplates shall be stamped or etched with the following information in characters not less than 5/32 inch high:

[(1) the mark or symbol approved by the ASME indicating compliance with the provisions of the ASME Pressure Vessel Code;

[(2) the name and address of the manufacturer and container serial number;

[(3) the capacity of the container in water gallons;

[(4) the maximum allowable working pressure of the container in pounds per square inch (PSI);

[(5) the wording "This container shall not contain a product having a vapor pressure in excess of _____________ pounds per square inch at a temperature of 100 degrees Fahrenheit";

[(6) the thickness of the material used in both shell and heads;

[(7) the overall length of the container, the outside diameter of the container, and the dish radius of the heads;

[(8) the serial number of the container;

[(9) the date of manufacture; and

[(10) service for which the container is designed (i.e., underground or aboveground).]

(c)[(d)] Nameplates shall be attached ***in a location that will*** [to containers so as to] remain visible after installation of the containers.

(d) Nameplates on containers built prior to September 1, 1984, shall include at least the following information:

(1) the name of container manufacturer;

(2) the manufacturer's serial number;

(3) the container's working pressure; and

(4) the container's water capacity.

(e) Nameplates on containers built on or after September 1, 1984, shall be stainless steel and permanently attached to the container by continuous fusion welding around the perimeter of the nameplate, and shall be stamped or etched with the following information in characters at least 5/32 inch high:

(1) the ASME mark or symbol indicating the container complies with the ASME Pressure Vessel Code;

(2) the name and address of the manufacturer;

(3) the serial number of the container;

(4) the date of manufacture;

(5) the capacity of the container in water gallons;

(6) the maximum allowable working pressure of the container in PSI;

(7) the wording, "This container shall not contain a product having a vapor pressure in excess of _______ pounds per square inch at a temperature of 100 degrees Fahrenheit," with the appropriate number included;

(8) the thickness of the material used in both shell and heads;

(9) the overall length of the container, the outside diameter of the container, and the dish radius of the heads; and

(10) type of service for which the container is designed, such as underground, aboveground, or both.

(f) If the working pressure information begins to become unreadable, the owner or operator of the container shall paint the working pressure on the container itself, adjacent to the original nameplate, as specified in Table 1 of §9.183(c) of this title (relating to uniform protection standards).

(g) Any replacement nameplate issued by an original container manufacturer for containers constructed prior to September 1, 1984, shall be stainless steel and shall be affixed in accordance with ASME Code. The owner or operator of the container shall ensure that a copy of LPG Form 8 is filed with the LP-Gas Section when a replacement nameplate is obtained.

(h) Nameplates on LP-gas motor or mobile fuel tanks shall be permanently attached in a manner which will minimize corrosion of the nameplate or its fastening means and not contribute to corrosion of the container. If the nameplate is not continuously welded to the container, then it shall be raised at least 1/4 inch but no more than 1/2 inch from the container's surface.

(i)[(e)] In addition to a container nameplate, underground containers shall have a system nameplate permanently attached to the system in *a location that will* [such position as to] be readily accessible for inspection when the *containers are* [system is] buried.

(j) The commission may remove a container from service or require ASME acceptance of a container at any time if the commission determines that the nameplate, in any form defined in subsection (a)(1) through (4) of this section, is loose, unreadable, or detached, or if it appears to be tampered with or damaged in any way.

§9.161. Commission Identification Nameplates.

(a) Prior to an original ASME nameplate or any manufacturer-issued nameplate becoming unreadable or detached from a stationary container with a water capacity of 4,001 gallons or more, the owner or operator of the container may request an identification nameplate from the commission. Commission identification nameplates may be issued only for containers which can be documented as being in continuous LP-gas service in Texas from a date prior to September 1, 1984. The container's serial number and manufacturer on the original or manufacturer-issued nameplate shall be clearly readable at the time the commission identification nameplate is attached.

(1) The owner or operator of the container shall submit LPG Form 502, including a sketch of the container showing dimensions, nozzle openings, and size, as well as photographs, at least three inches by five inches, of the container. Photographs shall depict the nameplate and the reason for the request for an identification nameplate, that the original nameplate is becoming either detached or unreadable. If a photograph cannot clearly depict the lettering on the nameplate, a pencil rubbing of the nameplate shall be submitted.

(2) The LP-Gas Section ("section") shall review LPG Form 502 and the supporting documentation. The section shall have the manufacturer's data report on file for the container or the licensee shall provide a copy to the section. The commission identification nameplate shall not be issued unless the manufacturer's data report is reviewed. Upon review of submitted documents and confirmation of the manufacturer's data report, the section shall mail a letter to the owner or operator of the container stating the estimated costs, which will be based on the following:

(A) actual cost of the nameplate itself, including adhesive and other materials necessary to attach the nameplate;

(B) projected travel costs for the commission employee performing the inspection and/or attachment of the nameplate, including mileage and per diem rates set by the legislature based on one round trip to and from the site; and

(C) hourly research fees calculated according to 16 TAC §20.105, as applicable.

(3) The owner or operator of the container shall pay the total estimated costs to the section before the section will proceed. Within 21 calendar days of receipt of all required documents and fees, the section shall:

(A) verify that it has continuous documentation for the container, showing the container in LP-gas service in Texas prior to September 1, 1984;

(B) inspect the container to ensure that the container is not dented, pitted, or otherwise damaged, and complies with other applicable safety rules; and

(C) advise the owner or operator that the container shall be tested if it appears to be pitted or otherwise damaged.

(i) If the owner or operator refuses to test the container, it shall be removed from service within 10 days of the date of inspection.

(ii) If the container passes the test, the section shall proceed with the attachment of the nameplate.

(4) Within the 21-day period, the section shall notify the applicant of the outcome of the section's review.

(5) Following the section's review of any required tests and payment of all other amounts due in addition to the previously-paid estimated costs, and when all requirements have been met, the section shall issue an identification nameplate for the container.

(6) The commission identification nameplate shall be stainless steel, stamped or etched with the commission's mark or symbol, and attached by a commission employee using an adhesive

material. Nameplates shall include the wording and information shown in Figure 1 of this section. Figure 1: 16 TAC 9.160

(7) Commission identification nameplates shall be affixed only by a commission employee or its designee and shall be affixed at the commission's convenience.

(b) Commission identification nameplates shall serve only to identify the container as being an ASME container and shall in no way indicate the condition of the container or whether it is safe for LP-gas service.

(c) Commission identification nameplates shall not be valid until the section has received the final paperwork from the commission employee who attached the nameplate. The section shall mail a letter to the owner or operator of the container stating the date on which the nameplate is valid.

(d) If at any time during the commission identification nameplate request or approval process, the original ASME nameplate becomes completely unreadable or detached, the owner or operator of the container shall immediately remove the container from service and no commission identification nameplate shall be issued or attached. In addition, the commission may remove such a container from service as specified in §9.160(j) of this title (relating to manufacturer's nameplate and markings on ASME containers).

(e) If the commission inspector finds upon inspection of a container prior to the attachment of the commission identification nameplate that the container does not pass inspection, for whatever reason, the inspector shall not attach the nameplate, but shall return the nameplate and all paperwork to the LP-gas section's Austin office.

(f) Fees charged for the commission identification nameplate are nonrefundable except as described in this section. The cost of the nameplate is refundable only if the commission employee finds upon actual inspection of the container that the original nameplate has become totally detached or unreadable, or that the container is pitted, dented, or otherwise damaged, therefore prohibiting attachment of the nameplate. The fees charged relating to the commission's travel and research costs will be refunded only if the section's research shows that the nameplate cannot be issued. Otherwise, these fees will be nonrefundable if these activities have taken place before the commission employee inspects a container and finds that a nameplate cannot be issued.

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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Mary Ross McDonald

Assistant Director, Gas Services Section, Office of the General Counsel

Railroad Commission of Texas

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

TITLE 16. ECONOMIC REGULATION

Part Public Utility Commission of Texas

Chapter Substantive Rules

Subchapter

Customer Service and Protection

16 TAC §23.57

The Public Utility Commission of Texas proposes an amendment to §23.57, relating to Telecommunications Privacy. The amendment is necessary to comply with the provisions of the Public Utility Regulatory Act of 1995 (PURA), §3.501, relating to Customer Proprietary Network Information (CPNI).

Jackie Follis, Senior Policy Analyst for the Legal Division of the Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's definitions relating to specific CPNI will be consistent with the PURA, and that the commission's rules regarding a telecommunications utility's use of specific CPNI will be restricted only as provided for by the PURA and insofar as they are not inconsistent with the rules of the Federal Communications Commission. There will be no effect on small businesses as result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Follis has also determined that for each year of the first five years the proposed section is in effect there will be no impact on employment in the geographical area affected by implementing the requirements of the section.

Comments on the proposed amendment (16 copies) may be submitted to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. All comments should refer to Project Number 14507. The commission staff will conduct a public hearing on this rulemaking under Texas Government Code, §2001.029 at the commission offices on February 21, 1996 at 10:00 a.m.

This amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, S.B. 319, 74th Leg., R.S. 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure; and §3.501, which sets out requirements relating to a telecommunication's utility's use of specific CPNI and requires the Commission to adopt rules on this matter.

Cross Index to Statutes: PURA §§1.101, 3.501

§ §23.57 Telecommunications Privacy.

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

(1) (No changes.)

(2) *Non-Proprietary Aggregate Customer Proprietary Network Information (CPNI)* [Aggregate CPNI] — a configuration

of ***information about a telecommunications utility customer*** [CPNI] that has been collected by a telecommunications utility and organized such that none of the information will identify ***a specific customer*** [an individual customer].

[(3) Customer Proprietary Network Information (CPNI), Customer-specific — any information compiled on a customer by a telecommunications utility in the normal course of providing telephone service that identifies any individual customer by matching such information with the customer's name, address, or calling or originating billing telephone number. This information includes, but is not limited to, line type(s), technical characteristics (e.g., rotary service), class of service, current telephone charges, long distance billing record, local service billing record, directory assistance charges, usage data, and calling patterns.]

(3)[(4)] Privacy Issue — an issue that arises when a telecommunications provider proposes to offer a new telecommunications service or feature that would result in a change in the outflow of information about a customer. The term privacy issue is to be construed broadly. It includes, but is not limited to, changes in the following:

(A) the type of information about a customer that is released;

(B) the customers about whom information is released;

(C) the entity or entities to whom the information about a customer is released;

(D) the technology used to convey the information;

(E) the time at which the information is conveyed; and

(F) any other change in the collection, use, storage, or release of information.

(4) Specific CPNI -

(A) information that relates to the quantity, technical configuration, type, destination, or amount of use of voice or data telecommunications services subscribed to by any customer of a telecommunications utility, but excluding wireless telecommunications providers, and is made available to the utility by the customer solely by virtue of the utility- customer relationship;

(B) information contained in the bills relating to telecommunications services received by a customer of a telecommunications utility; and

(C) any other information concerning the customer as is available to the telecommunications utility by virtue of the customer's use of the telecommunications utility service. The term does not include subscriber list information.

(5) Subscriber List Information - Any information that:

(A) identifies the listed names of subscribers of a telecommunications utility or those subscribers' telephone numbers, addresses, or primary advertising classifications, or any combination of those listed names, numbers, addresses, or classifications; and

(B) the telecommunications utility or an affiliate has published or accepted for future publication. [Supplemental Services — telecommunications features or services offered by a dominant certificated telecommunications utility for which analogous services or product may be available to the customer from a source other than a dominant certificated telecommunications utility. Supplemental services shall not be construed to include optional extended area calling plans that a dominant certificated telecommunications utility may offer pursuant to §23.49 of this title (relating to Telephone Extended Area Service), or pursuant to a final order of the commission in a proceeding pursuant to Section 3.210, 3.211, or 3.213 of the Public Utility Regulatory Act of 1995.]

(b)-(d) No change.

(e) ***Specific CPNI. Except as preempted by the Federal Communications Commission, a*** [Customer Proprietary Network Information (Customer- specific). Except as provided in paragraph (3) of this subsection,] telecommunications utility ***may not use specific CPNI for commercial purposes other than the sale, provision, or billing and collection of its telecommunications*** [personnel may not use customer-specific CPNI to market supplemental] services to a residential customer if ***a*** restriction is requested by such residential customer. ***Each telecommunications utility shall notify each residential customer of his or her specific CPNI rights.***

(1) ***Distribution and timing of distribution of the notification*** [Annually, each telecommunications utility shall notify each residential customer of his or her customer-specific CPNI rights].

(A) ***Each telecommunications utility shall print such notification in the white pages of its telephone directories.*** [Distribution and timing of distribution of the notification.

[(i) Each telecommunications utility shall print such notification in the white pages of its telephone directories.

[(ii) Each telecommunications utility shall send such notification as a billing insert to each of its residential customers annually.]

(B) ***Each telecommunications utility shall send such notification as a billing insert to each of its residential customers annually***[Contents of the notification.]

(2) Contents of the notification.

(A)[(i)] The notification shall provide the customer with an explanation of [customer-]specific CPNI.

(B)[(ii)] The notification shall describe ***under what circumstances the telecommunications utility may use specific*** [the customer's right to restrict the telecommunications utility's use of his or her customer-specific] ***CPNI for commercial purposes other than for the sale, provision, or billing and collection of telecommunications services if the customer does not request that his or her specific CPNI be restricted.***

(C) The notification shall describe the customer's right to [state with specificity the manner in which the customer may] restrict the telecommunications utility's use of his or her ***specific***[customer-specific] CPNI for the purposes described by subparagraph (B) of this paragraph.

(D) The notification shall state [explain] that restricting the telecommunications utility's use of ***his or her specific*** [customer-specific] CPNI ***does*** [may] not ***prohibit the utility from providing such information to an affiliate*** [eliminate all marketing contacts from the] telecommunications ***utility***[provider].

(E)[(iii)] The notification shall state ***with specificity the manner in which*** [that there will be no charge to] the customer ***may*** [for electing to] restrict the ***telecommunications utility's*** use of his or her ***specific*** [customer-specific] CPNI.

(F)[(iv)] The notification ***shall explain that restricting the***[must state the limited circumstances described in paragraph (3)of this subsection, under which the] telecommunications ***utility's*** [utility personnel may] use ***specific*** [customer-specific] CPNI ***will not eliminate all marketing*** contacts from the telecommunications utility or its telecommunications affiliate [to market supplemental services even if the customer requests restriction of the use of the customer-specific CPNI].

(G) [v]The notification shall state that there will be no charge to the customer for electing to restrict the use of his or her . ***specific*** [customer-specific] CPNI.

(3)[(C)] Staff review of the notification. The notification shall be reviewed by the staff of the Regulatory Division before it is distributed. The staff of the Regulatory Division shall notify the telecommunications utility within ten days of submission whether the proposed notification may be distributed or must be modified and distributed.

[(2) The telecommunications utility may not charge the customer for electing to restrict the use of his or her customer-specific CPNI.

[(3) Even if a residential customer requests restriction of the use of his or her customer-specific CPNI, telecommunications utility personnel may use customer-specific CPNI to market supplemental services to that customer if such customer contacts the telecommunications utility to inquire about supplemental services offered by the telecommunications utility.]

(f) Aggregate CPNI. If a telecommunications utility ***makes non-proprietary aggregate CPNI available to its affiliates*** [compiles and uses aggregate CPNI for marketing purposes or provides aggregate CPNI to any business associated with the telecommunications utility for marketing purposes], it must also provide aggregate CPNI to any third party upon request. A telecommunications utility must offer to provide ***non-proprietary*** aggregate CPNI under the same terms and conditions and at the same price as it is made available to all businesses affiliated with the telecommunications utility [and to telecommunications utility personnel marketing supplemental services], provided that the third party must specify the type and scope of the ***non-proprietary*** aggregate CPNI requested. A telecommunications utility must, upon request, provide such ***non-proprietary*** aggregate CPNI to a third party under any other alternative terms, conditions, or prices that are just and reasonable under the circumstances and that are not unreasonably preferential, prejudicial or discriminatory.

(g)-(h) No change.

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

Issued in Austin, Texas, on February 16, 1996.

9602360
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 458-0100

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 5. Program Development

Subchapter M. Approval and Operation of Community/Junior College Branch Campuses

19 TAC §§5.263-5.267

The Texas Higher Education Coordinating Board proposes amendments to §§5.263-5.267 concerning Approval and Operation of Community/Junior College Branch Campuse. The proposed rules would allow for some flexibility in the kinds of economic support required of Texas public community colleges offering programs in areas where no public community college is located. These amendments would continue to maintain the requirement that an appropriate financial base be in place for those out-of-district units which reach an enrollment of 1,000 full-time equivalent students (FTE) in order to ensure that programs of high quality and adequate range meet the needs of the area. The application of the proposed rule would function in allowing Texas public community colleges to offer out-of-district programs without the need for a property tax if other economic support can be demonstrated, adequate to support high quality programs.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five years the rule is in effect the public benefit will be that in areas where no public community college is located, adjacent districts may be able to offer quality programs with support services that might not otherwise be offered since options for economic support of these programs have been expanded and are not limited to a property tax. There will be no effect on small businesse. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The amendments to the rules are proposed under Texas Education Code, §130.086 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards (Admission).

There were no other sections affected by this rule.

§5.263. Definition of "Out-of-District Unit".

Out-of-district units of community/junior colleges are of two types:

(1) centers of extension facilities, which are subject to Subchapter H of this title (relating to ***Approval of Distance Learning for Public Colleges and Universities*** [Approval of Off-Campus and Out-of-District Instruction for Public Colleges and Universities]); and

(2) branch campuses, which are subject to the provisions of this subchapter. Branch campuses of community/junior colleges operate as out-of-district units of existing community/junior college districts for the purpose of providing the programs outlined by the role and scope statements ***in §5.265(1) of this title (relating to Application and Approval Procedures*** [below] on an on-going and permanent basis [in an area that satisfies or exceeds statutory and board requirements for the establishment of a community/junior college but does not include such college].

§5.264. Conversion [and Establishment] Provisions.

[(a)] Consistent with the statutory purposes of a public community/junior college as set out under §5.265(1) of this title (relating to ***Application and Approval*** Procedures) and in accordance with Coordinating Board guidelines that no community/junior colleges be established without sufficient local support, whenever any ***out-of-district*** center or extension facility reaches an enrollment of 1,000 full-time equivalent students in state-supported credit courses, [or whenever the district acquires title to land or buildings in which to operate a center or extension facility,] one of the options in paragraphs (1)-(3) of this subsection must be exercised.

(1) The out-of-district area may establish its own community/junior college district, ***or*** [.]

(2) The out-of-district area may merge with the parent district by annexation***or*** [.]

(3) A center or extension facility may be converted to a branch campus if a local tax is levied ***or other local economic support is sufficient to:***

(A) offer an array of programs of quality and breadth, and

(B) ***to*** maintain and operate the ***branch campus*** [district owned] facilities and ***equipment*** [property].

[(b) The Coordinating Board, after appropriate review, may grant a waiver of the enrollment cap rule for a community/junior college operating an approved out-of-district center or extension unit in a community where a public senior college is located if the two schools have in place partnerships or other cooperative agreements that provide for the sharing of facilities, services, or other resources in such a way as to enhance educational opportunities for students, effect reductions in the costs of educational programs, protect the integrity and mission of both institutions, and ensure quality programs.]

*§5.265. **Application and Approval** Procedures.*

In accordance with a format established by the Coordinating Board staff, each institution ***operating an out-of-district center that will exceed 1,000 full-time equivalent students must apply for designation as a branch campus, must complete an application and be reviewed by a Coordinating Board-appointed team for the purposes of documenting that it meets the standards and criteria for quality instruction and support services as outlined below and as specified in Subchapter H, §5.153 of this title (relating to Approval of Distance Learning for Public Colleges and Universities) and as required by the Commission on Colleges of the Southern Association of Colleges and Schools.*** [wishing to create a branch campus must complete an application documenting that it meets the following criteria:]

(1) Role and scope. In its program aspects, a branch campus of a public community/junior college is equivalent to an independent community college; therefore, in accordance with Texas Education Code 130.003(e), it must provide:

(A)-(E) (No changes.)

(F) a continuing program of counseling and guidance designed to assist students in achieving their individual student goals; [and]

(G) work force development programs designed to meet local and statewide needs;

(H) adult literacy and other basic skills programs for adults; and

(I)[(G)] such other purposes as may be prescribed by the ***Texas Higher Education*** Coordinating Board[, Texas College and University System], or local governing boards, in the best interest of post-secondary education in Texas.

(2) Minimum size. The minimum headcount enrollment necessary to establish a branch campus is 1,000 ***full-time equivalent*** students in state-supported credit courses in the most recent fall semester. In calculating the enrollment necessary for branch campus establishment or conversion, junior college out-of-district credit enrollment figures will be determined by including the credit students enrolled within the area served by the proposed branch campus. Such areas are defined by school district or county boundaries or both. ***Exceptions for approval by the Coordinating Board of out-of-district branch campuses of less than 1,000 full-time equivalent students will be considered only if there is a local tax to support the proposed branch campus and, as a result of an appropriate review, the Coordinating Board has determined that the economic support is sufficient to offer an array of programs of quality and breadth.***

(3)-(4) (No change.)

(5) Funding.

(A) (No change.)

(B) Local support must be furnished at a level sufficient to provide ***an array of programs of quality and breadth and*** all facilities ***and equipment*** needed [to offer high quality programs] at the proposed branch campus location. "Facilities" includes the operation and maintenance of the physical plant plus any rehabilitation and repairs. "Local support" may be "in kind[," provided neither the parent district nor the branch campus is made subject to any "quid pro quo]." Local support may not be made up entirely of student tuition and fees ***, but out-of-district student tuition and fees should be set at an amount adequate to cover at least the direct and indirect costs of instruction and support services.***

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

(6) Regional higher education council review and certification. The regional higher education council within which the branch campus is proposed must review the branch campus application. [Should an institution other than the one nearest to the proposed location apply, the council (or councils if the proposed location is between institutions in two or more councils) must recommend to the commissioner of higher education the appropriate institution.] Council minutes must reflect discussions of the proposal with all public and ***independent*** [private] colleges and universities within the council(s) affected.

§5.266. Continuing Coordinating Board Supervision.

[(a)] Program ***and course*** offerings must continue to meet the requirements provided by 5.265(1) of this title (relating to Application and Approval Procedures) ***as well as the standards and criteria for quality instruction and support services in distance learning as specified in Subchapter H, §5.153 of this title (relating to Approval of Distance Learning for Public Colleges and Universities)*** [; exceptions must be approved by the Coordinating Board.]

[(b) The branch campus must continue to meet the requirements provided by 5.265(5) and (6) of this title (relating to Procedures); exceptions must be approved by the Coordinating Board.]

§5.267. Reclassification.

(a) (No change).

(b) The Coordinating Board may withdraw approval for a branch campus whenever the board determines that conditions warrant such action. Such conditions include:

(1) (No change.);

[(2) decline in enrollment below that required to establish a branch campus; or]

(2)[(3)] failure to maintain the required level of local support, ***or***[.]

(3) failure to maintain the standards and criteria provided in Coordinating Board Rules and Regulations.

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

Issued in Austin, Texas on February 15, 1996.

9602315
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
For further information, please call: (512) 483-6160

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19 TAC §5.268

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §5.268 concerning Approval and Operation of Community/Junior College Branch Campuses (Exclusion and Restrictions). The repeal of the rule would allow for some flexibility in the kinds of economic support required of Texas public community colleges offering programs in areas where no public community college is located. This repeal of the rule would continue to maintain the requirement that an appropriate financial base be in place for those out-of-district units which reach an enrollment of 1,000 full-time equivalent students (FTE) in order to ensure that programs of high quality and adequate range meet the needs of the area. The application of the proposed rule would function in allowing Texas public community colleges to offer out-of-district programs without the need for a property tax if other economic support can be demonstrated, adequate to support high quality programs.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five years the rule is in effect the public benefit will be that in areas where no public community college is located, adjacent districts may be able to offer quality programs with support services that might not otherwise be offered since options for economic support of these programs have been expanded and are not limited to a property tax. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The repeal of the rule is proposed under Texas Education Code, §130.086 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards (Admission).

There were no other sections affected by this rule.

§5.268. Exclusion and Restrictions.

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

Issued in Austin, Texas on February 15, 1996.

9601316
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6160

Chapter 9. Public Junior Colleges

Subchapter D. Basic Standards

19 TAC §9.63

The Texas Higher Education Coordinating Board proposes an amendment to §9.63 concerning Basic Standards (Admission). The State Auditor's Office has asked the Coordinating Board to clarify the required documentation for verifying the eligibility of students admitted to Texas public community and technical colleges. This is necessary in order to account for the appropriate admission of students in determining contact hour appropriations. In general, Texas public community and technical colleges maintain appropriate records and documentation on the admission of students. However, this rule amendment functions to ensure that the State Auditor's Office can audit for the necessary documentation against a specific requirement of Coordinating Board policy.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five years the rule is in effect the public benefit will be that the funds appropriated to Texas public community and technical colleges for student

contact hour enrollment would be more effectively monitored, ensuring the proper accountability of public tax dollars. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The amendment is proposed under Texas Education Code, §61.062 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards (Admission).

There were no other sections affected by this rule.

§9.63. Admission.

A student may be admitted to a public community college according to any one of the following conditions:

(1) For admission to ***a standard academic or general curriculum*** [the academic curricula], a public community college shall require that the applicant be a graduate of an accredited high school, ***or meet the institutional requirements for transfer from another institution of higher education***.

(2) An applicant who has not been graduated from high school ***and has no transferable credit from any institution of higher education***:

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

(3) An applicant who has not been graduated from high school, ***has no transferable credit from any institution of higher education and is*** under the age of 18 and who attended a non-accredited public or private high school, or who was schooled in a non-traditional setting;

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

(4) A person who is 18 years of age or over ***and has no transferable credit from any institution of higher education*** may be exempt from the admission requirements of this section and admitted on "individual approval", provided the admitting officer is convinced that the applicant's record indicates ***the student would be competent to benefit from a program of the institution as demonstrated by the completion of a state-required or local assessment test***[ability to carry the college work assigned]. Students admitted on this condition shall be subject to the same policies and regulations as all other students.

(5) Students enrolling in the terminal curriculum including technical education courses, shall have the same entrance requirements as those listed in this section. A student not meeting the requirements for admission to a standard academic or general curriculum may be admitted to a terminal program on individual approval if he/***she*** is at least 18 years of age.

(6) A student who has completed his/her junior year of high school may be permitted to enroll in a community college upon the recommendation of the high school principal. The class load of such student shall not exceed two college credit courses per semester. However, under special circumstances that indicate a student who has not completed the junior year is capable of college-level work, based on such factors as grade-point average, ACT or SAT scores, and other assessment indicators, the chief academic officer of a higher education institution may grant exceptions to the rule.

(7) To comply with the admission requirements for students listed above, a public community college must have on file for each student admitted to the college and for which the college will claim contact hour funding at least one of the following:

(A) transcript verifying student graduation from high school;

(B) record of student completion of the general educational development (GED) test;

(C) record of local test reflecting student completion of high school equivalency work;

(D) principal's recommendation for early admission high school students;

(E) record of student completion of state-required or local assessment test and appropriate course placement; and/or

(F) official transcripts of credits earned from all other institutions of higher education previously attended.

(8) For admission to any program offered by a public community college, a student who has earned transferable credit from any institution of higher education, as determined by the public community college, must meet the admission requirements established and published by the institution. Official transcripts of credits earned from any institution of higher education must be on file at the public community college prior to the end of the first academic term in which the student is enrolled.

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

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9602313
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6160

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Subchapter E. Operational Provisions

19 TAC §9.103

The Texas Higher Education Coordinating Board proposes an amendment to §9.103 concerning Operational Provisions (Reporting for State Reimbursement). There exists some inconsistency in the Coordinating Board rules for the reporting of two different kinds of course enrollments for state reimbursement: semester length versus other than semester length class enrollments. The proposed reporting requirements would link both kinds of courses to "enrollment" as of the official census date and would eliminate the use of "attendance" as a factor in determining which students could be reported for state reimbursement. The application of the proposed rule would ensure consistency between student enrollment reporting for semester length and other than semester length courses.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five years the rule

is in effect the public benefit will be that the manner in which reporting student enrollments at Texas public community and technical colleges for state reimbursement would be more consistently applied, which would ensure the proper allocation of public tax dollars. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The amendment is proposed under Texas Education Code, §130.003 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Operational Provisions (Reporting for State Reimbursement).

There were no other sections affected by this rule.

§9.103. Reporting for State Reimbursement.

[(a)] Class enrollments shall be reported on the CBM-004 for all students enrolled at the reporting institution in Coordinating Board approved semester-length courses (for which semester credit hours are awarded). ***Class enrollments shall be reported on the CBM-00C for all students enrolled in courses approved for other than semester length reporting.*** Enrollment ***for all classes***shall be reported as of the official census date prescribed in the current edition of the educational data reporting system for public community and technical colleges. On or before the official census date, each student eligible for inclusion shall have paid in full the amount set as tuition by the respective governing board (or, where applicable, have a valid accounts receivable on record).

[(b) Class enrollments shall be reported on the CBM-00C for all students enrolled in courses approved for other than semester length reporting. Enrollments shall be reported as of the official census date prescribed in the current edition of the Educational Data Reporting Manual for Public Community and Technical Colleges. Students enrolled in classes with less than three scheduled meetings may be reported if in attendance at one scheduled meeting.]

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

Issued in Austin, Texas on February 15, 1996.

9602314
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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For further information, please call: (512) 483-6160

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Subchapter I. Contractual Agreements

19 TAC §9.192

The Texas Higher Education Coordinating Board proposes an amendment to §9.192 concerning Contractual Agreements (Contractual Agreements for Instruction with Non-Regionally Accredited Organizations). The State Auditor's Office has asked that the Coordinating Board develop explicit criteria by which the Legislature will fund courses provided through contractual agreements with non-regionally accredited organizations. The proposed amendment to the rules address the issues related to contractual agreements in the areas of institutional control, allowable costs for state reimbursement, and institutional assurance of quality for those courses and programs contracted out to these organizations. The proposed amendment, which incorporates guidelines issued by the Southern Association of Colleges and Schools, the regional accrediting body recognized by the Coordinating Board, will ensure that the State Auditor's Office can audit contracted programs and services against a specific requirement of Coordinating Board policy.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five years the rule is in effect the public benefit will be that the assurance of quality of programs contracted out to non-regionally accredited organizations by Texas public community and technical colleges will ensure that the tax dollars appropriated for students enrolled in these programs are done so with the assurance that quality of instruction is maintained. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The amendment is proposed under Texas Education Code, §135.54 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Contractual Agreements (Contractual Agreements for Instruction with Non-Regionally Accredited Organizations).

There were no other sections affected by this rule.

§9.192. Contractual Agreements for Instruction with Non-Regionally Accredited Organizations.

(a) General Policy Guidelines.

(1) Contractual agreements for instruction ***by public community and technical colleges with non-regionally accredited organizations must comply with all current guidelines of the Commission on Colleges of the Southern Association of Colleges and Schools*** [have education as their primary purpose].

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

(b) Regulations.

(1) Coordinating Board approval is required.

(A) (No change.)

(B) Courses offered must remain under the sole and direct control of the sponsoring accredited institution which exercises ultimate and continuing responsibility for the performance of the functions reflected in the contract. ***Instructors of courses must be at least part-time employees of the accredited institution. The accredited institution should employ at least one full-time faculty member per degree program and specify in the contract the institutional procedures by which the contracted courses or programs meet*** Provisions must be made to ensure that conduct of the courses meets] the standards of regular programs as disclosed fully in the publications of the institution, specifically including the following:

(i)-(ii) (No changes.)

(iii) ***development and evaluation of the*** curriculum;

(iv)-(vii) (No changes.)

(viii) appointment, ***supervision, and evaluation*** of faculty; and

(ix) (No changes.)

(2) (No change.)

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9602322
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
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Chapter 12. Proprietary Schools

Subchapter B. Basic Standards

19 TAC §§12.41-12.57

(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 Higher Education Coordinating Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Higher Education Coordinating Board proposes the repeal of §§12.41-12.51 concerning Basic Standards. The purpose of the proposed amendments is to further ensure the quality and integrity of applied associate degree programs at proprietary institutions, facilitate the establishment and implementation of the institutional effectiveness review program for proprietary institutions, achieve consistency with revisions in the Texas Education Code, and to achieve greater uniformity in the administration and delivery of applied associate degrees programs at Texas proprietary institutions. The proposed amendments will enhance the quality of proprietary degree programs and will help protect students enrolled in those programs if the institution closes.

Bob Lahti, Assistant Commissioner for Community & Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be by providing a greater level of standardization among proprietary degree programs, help assure that degree programs at proprietary institutions meet the same quality standards as programs offered at public technical community colleges, provide for regular Coordinating Board evaluation of proprietary degree programs, and will help protect students in the event that a degree-granting proprietary institution closes. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The repeal of the rules is proposed under Texas Education Code, §132.063 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Basic Standards.

There were no other sections affected by this rule.

§12.41. Minimum Standards.

§12.42. Demonstration of Program Need.

§12.43. Administrator Qualifications.

§12.44. Faculty Qualifications.

§12.45. Full-Time Faculty.

§12.46. Curriculum Requirements.

§12.47. General Education Requirements.

§12.48. Length of Programs.

§12.49. Facilities and Equipment.

§12.50. Library/Learning Resources.

§12.51. Student Services.

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 February 15, 1996.

TRD-9602319
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
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19 TAC §§12.41-12.52, 12.55-12.57

The Texas Higher Education Coordinating Board proposes new §§12.41-12.52, 12.55,-12.57 concerning Basic Standards. The purpose of the proposed amendments is to further ensure the quality and integrity of applied associate degree programs at proprietary institutions, facilitate the establishment and implementation of the institutional effectiveness review program for proprietary institutions, achieve consistency with revisions in the Texas Education Code, and to achieve greater uniformity in the administration and delivery of applied associate degrees programs at Texas proprietary institutions. The proposed amendments will enhance the quality of proprietary degree programs and will help protect students enrolled in those programs if the institution closes.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the sections are in effect the public benefit will be by providing a greater level of standardization among proprietary degree programs, help assure that degree programs at proprietary institutions meet the same quality standards as programs offered at public technical community colleges, provide for regular Coordinating Board evaluation of proprietary degree programs, and will help protect students in the event that a degree-granting proprietary institution closes. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

The new sections to the rules are proposed under Texas Education Code, §132.063 which provides the Texas Higher

Education Coordinating Board with the authority to adopt rules concerning Basic Standards.

No other code or article is affected by these new sections.

§12.41. Minimum Standards.

The program standards for applied associate degrees approved by the Coordinating Board reflect the criteria contained in Section IV. ("Educational Program") and Section V. ("Educational Support Services") of the Criteria for Accreditation of the Commission on Colleges, Southern Association of Colleges and Schools.

§12.42. Demonstration of Program Need.

(a) It is the responsibility of the institution to identify its local, regional, statewide, and/or national target markets(s) for employment of graduates of applied associate degree programs. The institution must provide written evidence of a research and planning process and demonstrate the need for a program.

(b) Need for a program must be supported by evidence of current and future employment opportunities for program graduates within the institution's target market area. Employment opportunities for program graduates within the institution's target market area must equal or exceed the projected program enrollment.

(c) Approval of applied associate degree programs shall not be denied on the basis of similar programs being offered by other institutions in the same or nearby communities.

§12.43. Administrator Qualifications.

The specification of qualifications for administrators of technical and vocational education is the responsibility of the institution in keeping with its defined mission and administrative organization. Administrators of technical and vocational education must possess credentials, experience, and demonstrated competence appropriate to their areas of responsibility.

§12.44. Faculty Qualifications.

(a) General Education Faculty-All full-time and part-time faculty members teaching general education courses must have completed 18 graduate semester hours in their teaching field and hold a master's degree. Exceptions to academic preparation must be justified by the institution on an individual basis and are subject to review by the Coordinating Board. It is the institution's responsibility to keep documentation of faculty qualifications on file.

(b) Technical/Speciality Faculty-All full-time and part-time faculty in technical/specialty courses must have both academic and work experience. The minimum academic preparation for faculty teaching in professional and technical fields must be at the degree level at which the faculty member is teaching. Faculty who teach technical specialty courses must have three years of direct or closely related work experience, exclusive of teaching. Exceptions to academic preparation or work experience must be justified by the institution on an individual basis and are subject to review by the Coordinating Board. It is the institution's responsibility to keep documentation of faculty qualifications on file.

(c) It shall be the responsibility of the institution to maintain an in-service continuing education program to encourage professional growth and development of faculty members.

(d) All institutions shall demonstrate promotion of teaching excellence by developing a written plan for faculty professional development. The plan must address full and part-time faculty preparation and professional development.

§12.45. Full-Time Faculty.

In each curricular area in which the institution offers an applied associate degree, there must be at least one full-time faculty member.

§12.46. Career Development Personnel.

(a) Guidance, counseling, and career development services must be delivered by professionally trained counselors. A minimum of a master's degree in guidance, counseling, or closely-related field is required. Closely-related fields include, but are not limited to, student personnel (with counseling emphasis), student development in higher education (with counseling emphasis), and mental health counseling. Professional credentials such as professional counselor licensure (L.P.C.), or certification by the National Board for Certified Counselors (N.B.C.C) are preferred.

(b) Career development personnel must have the equivalent of three years of work experience other than counseling or teaching.

§12.47. Curriculum Requirements.

(a) All applied associate degree programs must be designed to teach specific occupational competencies.

(b) All applied associate degree curricula must contain the following basic elements:

(1) a defined number of hours required for graduation, measured by both credit hours and contact hours;

(2) a defined core of general education courses; and

(3) a defined core of courses in the technical/vocational major.

(c) Applied associate degree curricula may contain related studies courses, appropriate directed electives, and remedial courses. Remedial courses may offered on a credit or non-credit basis. Credit earned in remedial courses is not applicable toward the applied associate degree.

(d) All applied associate degree curricula must be structured to reflect a logical progression of knowledge and skills, with course prerequisites established as appropriate. Prerequisite courses must be clearly identified in the institution's catalog.

(e) If the applied associate degree is required as the minimum education level for licensure or certification by an external agency for entry into an occupation, the applied associate degree curriculum must be designed to enable students to meet the minimum requirements for licensure or certification.

(f) Applied associate degree programs must have a program advisory committee which is responsible for advising the institution on program requirements, course content, equipment, employment trends, and other relevant areas which will help ensure program quality.

(1) Advisory committees must be composed of members from the public and/or private sectors who broadly represent the occupational field and skills used in the occupations for which training is being provided. The majority of advisory committee members must practice the occupation for which the program offers training.

(2) Committee membership should represent the population in the service area with regard to race, color, national origin, gender, and handicap.

(3) Full-time and part-time employees of the institution may serve as ex-officio members only.

(4) New program applications must include minutes of all advisory committee meetings conducted for the planning of new programs and a roster containing names, addresses, occupations, and business affiliations of the advisory committee members.

§12.48. General Education Requirements.

(a) An applied associate degree program must include a general education core curriculum containing a minimum of 15 semester hours or 23 quarter hours.

(b) With the core, or in addition to it, there must be courses designed to develop skills in oral and written communication and computation.

(c) Basic computer instruction must be included in the curriculum.

(d) General education core courses must not be narrowly focused on those skills, techniques, and procedures which are peculiar to a particular occupation or profession and should be drawn from each of the following areas as specified by the Southern Association of Colleges and Schools:

(1) humanities or fine arts;

(2) social or behavioral sciences; and

(3) natural sciences or mathematics.

§12.49. Length of Programs.

An applied associate degree may be awarded to students who successfully complete a Coordinating Board-approved occupational curriculum consisting of at least 90 quarter-hours or 60 semester-hours but not less than 1100 clock-hours of instruction. Associate of applied arts, associate of applied science, and associate of occupational studies degrees shall not contain more than 72 semester credit hours or 108 quarter credit hours.

§12.50. Facilities and Equipment.

Equipment, facilities, classrooms, and laboratory space must be adequate and appropriate to serve the anticipated number of students enrolled in the program. Laboratory and computer equipment must meet the same quality and technology standards as equipment used in publicly-funded community and technical colleges.

§12.51. Library/Learning Resources.

(a) The library or learning resource center shall provide sufficient resources to ensure effectiveness in the instructional programs consistent with the institutional purpose.

(b) The institution must have a written plan for continual improvement of the library or learning resource center.

§12.52. Student Services.

(a) Admissions and testing/assessment requirements-Basic skills, specific or additional admissions requirements, and/or testing/assessment requirements must be clearly stated and prominently published in the institution's catalog and promotional material.

(b) Graduation requirements-Specific graduation requirements for applied associate degree programs must be clearly stated and prominently published in the institution's catalog and promotional material.

(c) Counseling requirements-Students enrolled in applied associate degree programs must receive appropriate counseling services including academic advisement, career development counseling, and job placement services. Students must have access to mental health counseling. These services must be part of an organized counseling program with an adequate organizational structure and supported by adequate resources.

(d) Student attendance requirements-Student attendance requirements in applied associate degree programs must be consistent with program goals.

§12.53. Reserved.

§12.54. Reserved.

§12.55. Transfer of Credit.

Each institution authorized to grant the applied associate degree shall publish in a prominent place in the institution's catalog clearly stated, complete information regarding the transferability of credit to other postsecondary institutions including community and technical colleges and four year colleges and universities.

§12.56. Graduation and Job Placement Rates.

Each institution shall provide to each prospective student, newly-enrolled student, and returning student, complete, clearly presented information indicating the institution's current graduation rate by program and current job placement rate by program.

§12.57. Representation of the A.O.S. Degree.

(a) An institution authorized to grant the A.O.S. degree shall not represent said degree by using the terms "associate" or "associate's" without including the words "occupational studies."

(b) An institution authorized to grant the A.O.S. degree shall not represent said degree as being the educational equivalent of the A.A.S. or A.A.A. degrees.

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

Issued in Austin, Texas, on February 15, 1996.

9602318
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
For further information, please call: (512) 483-6160

Subchapter C. Operational Provisions

19 TAC §§12.72-12.76

The Texas Higher Education Coordinating Board proposes amendments to §§12.72-12.76 concerning Operational Provisions. The purpose of the proposed amendments is to further ensure the quality and integrity of applied associate degree programs at proprietary institutions, facilitate the establishment and implementation of the institutional effectiveness review program for proprietary institutions, achieve consistency with revisions in the Texas Education Code, and to achieve greater uniformity in the administration and delivery of applied associate degrees programs at Texas proprietary institutions. The proposed amendments will enhance the quality of proprietary degree programs and will help protect students enrolled in those programs if the institution closes.

Bob Lahti, Assistant Commissioner for Community & Technical Colleges has determined that for the first five-year period the rule is in effect there will be no fiscal implications.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be by providing a greater level of standardization among proprietary degree programs, help assure that degree programs at proprietary institutions meet the same quality standards as programs offered at public technical community colleges, provide for regular Coordinating Board evaluation of proprietary degree programs, and will help protect students in the event that a degree-granting proprietary institution closes. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

The amendments to the rules are proposed under Texas Education Code, §132.063 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Operational Provisions.

There were no other sections affected by this rule.

§12.72. Program Revision, Deactivation, and Closure.

(a) Each ***proprietary school***[Proprietery School] requesting a program revision must submit a completed Application for Program Revision and comply with the Coordinating Board's ***Workforce Education*** [Technical and Vocational] Program Guidelines.

(b) A ***proprietary school*** [Proprietary School]may deactivate a program by suspending new student enrollment and submitting ***the appropriate*** form [a Notification of Deactivation Form] to the Coordinating Board.

(c) A ***proprietary school*** [Proprietary School] may close a program voluntarily in accordance with evaluation procedures provided in the ***Workforce Education Program Guidelines*** [guidelines].

§12.73. Contract Instruction.

Proprietary schools [Schools] may contract for specific instruction. This arrangement must have education as its primary purpose.

(1) No Change.

(2) Courses offered under a contractual arrangement must remain the responsibility of the sponsoring proprietary school ***and must be of the same quality as other Board-approved courses.***

*§12.74. **Institutional** [Program] Evaluation.*

(a) The institution must establish adequate procedures for planning and evaluation, define ***in measurable terms*** its expected educational results, and describe how ***those results will be achieved*** [the achievement of those results will be ascertained].

(b) The evaluation ***must*** [criteria should] include the following: mission, labor market need, ***admissions***, curriculum, enrollment, graduates, student placement, follow-up results, ability to finance ***programs*** [program], facilities and equipment, instructional practices, student services, public and private linkages, [and] qualifications of personnel , ***and default rate reduction.***

§12.75. Evaluation of Program Effectiveness.

(a) Every program in which an applied associate degree is ***offered*** [conferred] will be evaluated periodically according to procedures established by the Coordinating Board.

(b) (No change.)

(c) The Coordinating Board staff will use the results of the program evaluation to identify [any] applied associate degree programs ***that should be continued, or*** that should be considered for closure. ***Programs considered for closure*** [A second but more extensive evaluation] will be ***subject to a second evaluation.*** The institution may provide additional information related to ***programs being considered for closure*** [the program].

(d) The Coordinating Board staff will approve the program for continuation or will place the program under review for closure status based on the results of the second evaluation. ***If a program is considered for closure, the [The] staff will identify specific program deficiencies which must be corrected.***

(e) Institutional representatives must develop a plan to correct the program deficiencies for any program placed under review for closure status. Time limits will be determined by the Coordinating Board staff; however, institutions will be allowed no more than ***one year*** [two years] for the correction of the deficiencies. The Coordinating Board staff will reevaluate the program at the end of the established time period. If the identified deficiencies have not been corrected in the judgment of the Coordinating Board staff, program closure will be initiated. No new students will be enrolled, and following the completion of the program by all currently enrolled students, the program will be closed.

§12.76. Appeals Procedure.

(a) Contested decisions regarding program approval, revision, ***or*** [and] closure should be reviewed with the appropriate Coordinating Board program director.

(b) In instances where agreement is not achieved, the institution may request a review by the Assistant Commissioner. The Assistant Commissioner shall notify the institution of ***his or her*** [any] decision on appeal within 30 working days of the review.

(c) The institution may [further] appeal ***the Assistant Commissioner's*** decision to the Commissioner and ***to*** the Coordinating Board in accordance with the provisions of Chapter 1, Subchapter B, this title (relating to Hearings and Appeals).

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

Issued in Austin, Texas on February 15, 1996.

9602320
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed dage of adoption: April 19, 1996
For further information, please call: (512) 483-6160

19 TAC §§12.77-12.79

The Texas Higher Education Coordinating Board proposes new §§12.77-12.79, concerning Operational Provisions. The purpose of the proposed new sections is to further ensure the quality and integrity of applied associate degree programs at proprietary institutions, facilitate the establishment and implementation of the institutional effectiveness review program for proprietary institutions, achieve consistency with revisions in the Texas Education Code, and to achieve greater uniformity in the administration and delivery of applied associate degrees programs at Texas proprietary institutions. The new sections will enhance the quality of proprietary degree programs and will

help protect students enrolled in those programs if the institution closes.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the sections are in effect the public benefit will be by providing a greater level of standardization among proprietary degree programs, help assure that degree programs at proprietary institutions meet the same quality standards as programs offered at public technical community colleges, provide for regular Coordinating Board evaluation of proprietary degree programs, and will help protect students in the event that a degree-granting proprietary institution closes. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

The new sections are proposed under Texas Education Code, §132.063 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Operational Provisions.

No other code or artilce is affected by these new sections.

§12.77. Accreditor Reports.

(a) Institutions which are authorized to grant the applied associate degree must make available to the Coordinating Board all accrediting agency reports, findings, and institutional responses to said reports and findings.

(b) If cited by an accreditor, an institution which is authorized to grant the applied associated degree shall, within 30 days of being cited, notify the Coordinating Board in writing and forward complete information pertaining to the citation including copies of all correspondence between the institution and the accrediting agency.

§12.78. School Closure.

(a) The board of directors, owner, or the chief executive officer of an institution which plans to cease operation shall provide written notification to the Coordinating Board at least 90 days prior to the planned closing date.

(b) Authorization to grant the applied associate degree is automatically withdrawn upon receipt of written notification of school closure.

(c) If a proprietary school closes or intends to close before all currently enrolled students have completed all requirements for graduation, that school shall assure the continuity of students' education by entering into a teach-out agreement with another proprietary school that is authorized by the Coordinating Board to grant the applied associate degree or with a public community and technical college. The agreement should be in writing and shall contain provisions for student transfer and specify the conditions for completion of degree requirements at the teach-out institution. The agreement shall also contain provisions for awarding degrees.

§12.79. Change of Ownership.

(a) In the event of a change in ownership of a school, authorization to grant degrees is automatically withdrawn.

(b) The institution's authorization to grant degrees may be reinstated by the Commissioner of Higher Education.

(c) Reinstatement may be granted upon the satisfactory completion of the following conditions:

(1) presentation to the Coordinating Board of acceptable evidence that the new owner has complied with all Texas Workforce Commission (formerly, the Texas Employment Commission) requirements regarding the purchase or transfer of ownership of a proprietary school;

(2) presentation to the Coordinating Board of a written statement of assurance that the new owner understands and will comply with all relevant Board rules and the requirements contained in the Coordinating Boards' Workforce Education Program Guidelines;

(3) submission to the Coordinating Board of written documentation of financial ability to adequately support and conduct all Board-approved programs. Documentation must include independently audited financial statements including all auditors reports;

(4) written documentation demonstrating compliance with Board rules and the ability to adequately administer and conduct all Board-approved programs; and

(5) payment of a reinstatement fee.

(d) Any change in a Board-approved applied associate degree program constitutes a program revision. Requests for approval of program revisions must conform to the procedures and requirements contained in the Workforce Education Program Guidelines. Reinstatement of authorization to grant degrees will not be granted until all revisions have been approved.

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

Issued in Austin, Texas on February 15, 1996.

9602321
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
For further information, please call: (512) 483-6160

Chapter 21. Student Services

Subchapter GG. Fifth-Year Accounting Student Scholarship Program

19 TAC §21.1039

The Texas Higher Education Coordinating Board proposes the repeal of §21.1039 concerning Fifth Year Accounting Student Scholarship Program (Certification and Disbursement Procedures). The repeal of the rule will add residency requirement; change grade point requirement from the average of 2.0 to the average required by the institution for graduation; add procedures for allocation and disbursement of funds; and establish a central pool to insure minority participation. The requirements and procedures to be used for the program will be clarified.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the repeal is in

effect that the fiscal implications will be that there is additional administrative cost for operating the program and for the cost of the scholarship awarded. Five Hundred and Fifty Thousand dollars for FY 1996. Funds are provided by fee assessed to CPA's.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the repeal is in effect the public benefit will be to help students reduce the cost of the new requirement for fifth year of college in order to be eligible to take the Certified/Public Accounting Exam.

The repeal is proposed under Texas Education Code, Chapter 61, Subchapter N. which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program.

There were no other sections affected by this rule.

§21.1039. Certification and Disbursement Procedures.

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

Issued in Austin, Texas on February 15, 1996.

9602325
James McWhorter
Assisant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
For further information, please call: (512) 483-6160

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Subchapter GG. Fifth-Year Accounting Student Scholarship Program

19 TAC §§21.1033, 21.1035, 21.1036, 21.1042

The Texas Higher Education Coordinating Board proposes amendments to §§21.1033, 21.1035, 21.1036, 21.1040, and 21.1042 concerning Fifth Year Accounting Student Scholarship Program. The changes to rules will add residency requirement; change grade point requirement from the average of 2.0 to the average required by the institution for graduation; add procedures for allocation and disbursement of funds; and establish a central pool to insure minority participation. The requirements and procedures to be used for the program will be clarified.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect that the fiscal implications will be that there is additional administrative cost for operating the program and for the cost of the scholarship awarded. Five Hundred and Fifty Thousand dollars or FY 1996. Funds are provided by fee assessed to CPA's.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rule is in effect the public benefit will be to help students reduce the cost of the new requirement for fifth year of college in order to be eligible to take the Certified/Public Accounting Exam.

The amendments to the rules are proposed under Texas Education Code, Chapter 61, Subchapter N. which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program.

There were no other sections affected by this rule.

§21.1033. Definitions.

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

Fifth-year accounting student-a student who has completed at least 120 semester credit hours or their quarter hour equivalent as defined by the institution in which the student is enrolled ***and who signs a written statement confirming his/her intent to take the written examination conducted by the Texas State Board of Public Accountancy for the purpose of granting a certificate of "certified public accountant".***

Resident-A bona fide Texas resident. Nonresident students eligible to pay resident tuition rates are not considered residents for this program.

Scholastic ability and performance-Academic credentials of the student, measured by ***the student's cumulative*** college grade point average as determined by the institution in which the student is enrolled.

§21.1035. Advisory Committee

The board shall appoint an advisory committee to advise the board concerning assistance provided under this subchapter to fifth-year accounting students.

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

(3) The duties of the advisory committee shall be to advise the board on:

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

(C) [set any] priorities among the factors identified by §21.1036(b) of these rules.

§21.1036. Eligible Students.

(a) To receive funds through the Fifth-Year Accounting Student Scholarship Program, a student must be ***a resident*** enrolled as ***a*** fifth-year accounting student on at least a half-time basis in an eligible institution, and must sign a written statement confirming his/her intent to take the written examination conducted by the Texas State Board of Public Accountancy for the purpose of granting a certificate of "certified public accountant". The student's ***cumulative*** grade point average, as determined by the institution, must be ***equal to or greater than the grade point average required by the institution for graduation***[equivalent to at least a 2.00 on a 4.00 scale].

(b) In ***selecting recipients***[determining student eligibility] the ***program officer*** [board] shall ***rank each applicant following a ranking protocol developed by the board. The ranking protocol shall equally*** consider the following factors relating to each applicant:

(1) financial need;

(2) ethnic or racial minority status; [and]

(3) scholastic ability and performance; ***and***

(4) Texas residency.

§21.1040. Affirmation Forms.

Each disbursement of scholarship funds ***for a student enrolled in an independent institution or a public community college*** must be documented. An affirmation form, indicating the amount of scholarship being disbursed to a particular student and confirming the student's eligibility must be signed by the receiving student. One copy of the signed affirmation form must be forwarded to the board.

§21.1042. Reporting Requirements.

(a) Each year, participating public universities and technical colleges will report to the board on the numbers of students, broken down by ethnic category, receiving awards and the dollar amounts received.

(b)[(a)] Before January 15 of each odd-numbered year, the board shall report to the legislature concerning the scholarship program. The report must include:

(1) the number and amount of scholarships awarded in the two calendar years preceding the year in which the report is due;

(2) the number of minority students, by racial or ethnic background, who have been awarded scholarships during that two-year period.

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

Issued in Austin, Texas on February 15, 1996.

9602323
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
For further information, please call: (512) 483-6160.

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19 TAC §21.1039

The Texas Higher Education Coordinating Board proposes new §21.1039, concerning Fifth Year Accounting Student Scholarship Program (Certification and Disbursement Procedures). The changes to rules will add residency requirement; change grade point requirement from the average of 2.0 to the average required by the institution for graduation; add procedures for allocation and disbursement of funds; and establish a central pool to insure minority participation. The requirements and procedures to be used for the program will be clarified.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the section is in effect the fiscal implications will be that there is additional administrative cost for operating the program and for the cost of the scholarship awarded. Five Hundred and Fifty Thousand dollars for FY1996. Funds are provided by fee assessed to CPA's.

Ms. Cobb also has determined that for the first five years the section is in effect the public benefit will be to help students reduce the cost of the new requirement for fifth year of college in order to be eligible to take the Certified/Public Accounting Exam.

The new section is proposed under Texas Education Code, Chapter 61, Subchapter N. which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program.

No other code or article is affected by this new section.

§21.1039. Certification and Disbursement Procedures.

(a) Allocation of Funds. The board will survey eligible institutions on an annual basis regarding the number of persons graduating in accounting and will use that information as a basis of allocating funds among institutions.

(b) Award Procedures. Public Universities and Technical Colleges. Funds allocated to each institution will be transferred to a cost center at the State Comptroller's Office, to be drawn down by the institution as needed to cover local awards. Funds not drawn down by deadlines established by the board will be available for reallocation to other institutions needing additional funds.

(c) Award Procedures. Independent Institutions and Public Community Colleges. Funds allocated to each institution will be accessed through the board. Program Officers will submit applications for eligible students to the board, which will issue state checks to the students in accordance with disbursement schedules on the applications. Funds not encumbered by deadlines established by the board will be available for reallocation to other institutions needing additional funds.

(d) Disbursements. A minimum of one disbursement per semester will be required for all awards.

(e) Maximum Awards. No individual may receive an aggregate total of more than $3,000 through the program. The maximum annual award for a student through this program is the lesser of:

(1) an amount equal to the student's financial need; or

(2) the program maximum of $3,000 less any amount received in the past.

(f) Interim procedure to insure minority participation. For spring, 1996, a fund equal to 5% of the total funds allocated to institutions for spring 1996 will be set aside for central administration by the board. Minority students (as defined in §21.1033 of this title (relating to Definitions)) from minority institutions will be eligible to compete for awards of up to $1,500 through the central fund. Applications for the fund will be submitted by the financial aid officers of minority institutions (institutions with greater than 50% non-Caucasian enrollments), and will be selected for awards by the board staff in keeping with the selection criteria outlined in §21.1036 of this title (relating to Eligible Students). Care will be taken to insure equal distribution of the minority awards among the institutions submitting applications for the central fund. This interim procedure will be eliminated after spring 1996, unless continued by the Advisory Committee.

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

Issued in Austin, Texas, on February 15, 1996.

9602324
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996

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19 TAC §21.1039

The Texas Higher Education Coordinating Board proposes the repeal of §21.1039 concerning Fifth Year Accounting Student Scholarship Program (Certification and Disbursement Procedures). The repeal of the rule will add residency requirement; change grade point requirement from the average of 2.0 to the average required by the institution for graduation; add procedures for allocation and disbursement of funds; and establish a central pool to insure minority participation. The requirements and procedures to be used for the program will be clarified.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five-year period the repeal is in effect that the fiscal implications will be that there is additional administrative cost for operating the program and for the cost of the scholarship awarded. Five Hundred and Fifty Thousand dollars for FY 1996. Funds are provided by fee assessed to CPA's.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the repeal is in effect the public benefit will be to help students reduce the cost of the new requirement for fifth year of college in order to be eligible to take the Certified/Public Accounting Exam.

The repeal is proposed under Texas Education Code, Chapter 61, Subchapter N. which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Fifth-Year Accounting Student Scholarship Program.

There were no other sections affected by this rule.

§21.1039. Certification and Disbursement Procedures.

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

Issued in Austin, Texas on February 15, 1996.

9602325
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 1996
For further information, please call: (512) 483-6160

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Part II. Texas Education Agency

Chapter 89. Adaptations for Special Populations

Subchapter AA. Special Education Services

General Provisions

19 TAC §89.1001

The Texas Education Agency (TEA) proposes new §§89.1001, 89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1070, 89.1075, 89.1080, 89.1085, 89.1090, 89.1095, 89.1100, 89.1105, 89.1110, 89.1121, 89.1125, 89.1131, 89.1141, 89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, and 89.1190, concerning special education services. The new sections clarify federal regulations and state statutes pertaining to delivering special education services to students with disabilities. In addition, the sections establish definitions, requirements, and procedures related to: interagency agreements, distribution and expenditure of state funds, personnel issues, regional education service center (ESC) special education programs and services, and hearings under the Individuals with Disabilities Education Act. The new sections are proposed as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

J.R. Cummings, associate commissioner for special populations, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of enforcing or administering the sections. There will be no effect on state government. The effect on local government (school districts) cannot be accurately determined at this time. However, a reduction in costs to school districts is anticipated, as the new sections establish less prescriptive requirements for delivering special education services than previous State Board of Education (SBOE) rules. There will be no effect on small businesses.

Mr. Cummings and Criss Cloudt, associate commissioner for policy planning and research, have 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 compliance with federal regulations and state statutes pertaining to special education services, combined with increased school district flexibility with regard to providing the services. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register.*

The new section is proposed under the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new section implements the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012.

§89.1001. Scope and Applicability.

(a) Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA).

(b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be

monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) A school district having a residential care and treatment facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility if the facility does not have an education 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 February 14, 1996.

TRD-9602108
Criss Cloudt
Assistant Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-9701

19 TAC §§89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1070, 89.1075, 89.1080, 89.1085, 89.1090, 89.1095, 89.1100, 89.1105, 89.1110

The new sections are proposed under the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new sections implement the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012.

§89.1011. Referral for Comprehensive Assessment.

Referral of students for possible special education services shall be a part of the district's overall, regular education referral or screening system. Prior to referral, students experiencing difficulty in the regular classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. This referral for assessment may be initiated in writing by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

§89.1015. Time Line for All Notices.

"Reasonable time" required for the written notice to parents under 34 Code of Federal Regulations (CFR), §300.504, is defined as at least five school days, unless the parents agree otherwise.

§89.1020. Written Notice to Parent Before Assessment.

In accordance with the requirements of 34 Code of Federal Regulations (CFR), §300.504 and §300.505, a district shall give written notice, which includes a full explanation of all procedural safeguards, to the parents and adult student a reasonable time before the district conducts an assessment.

§89.1025. Consent for Assessment.

A district shall obtain consent in writing in accordance with the requirements of 34 Code of Federal Regulations (CFR), §300.500 and §300.504(b), before the district conducts an initial assessment.

§89.1030. Comprehensive Individual Assessment.

The comprehensive individual assessment, including a written report, shall be completed in accordance with 34 Code of Federal Regulations (CFR), §§300.6, 300.7, 300.15, 300.16, 300.18, 300.530-300.532, and 300.534; the Texas Education Code (TEC), §29.004; and §89.1040 of this title (relating to Eligibility Criteria).

§89.1035. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students who, on September 1 of the current scholastic year, are at least three, but younger than 22, years of age.

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free, appropriate, public education shall be available from birth to students with visual or auditory impairments.

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education services, a student must have been determined to have one or more of the disabilities listed in 34 Code of Federal Regulations (CFR), §300.7, or the Texas Education Code (TEC), §29.003, or both. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law. A student between the ages of three and five who is evaluated as having mental retardation, emotional disturbance, a specific learning disability, or autism may be described as noncategorical early childhood.

(b) Autism. A student with autism is one who evidences the criteria for autism as stated in 34 CFR, §300.7(b)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation shall include specific recommendations for behavior management.

(c) Deaf-blind. A student with deaf-blindness is one who has a combination of severe hearing and visual losses after best correction and is determined to be eligible as auditorially impaired and as visually impaired according to the specific eligibility criteria for each of these disabilities. If an eligible student with a visual impairment has a suspected hearing loss that cannot be demonstrated conclusively, and if a speech/language evaluation performed by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected, the student may be eligible for services as deaf-blind.

(d) Auditory impairment. A student with an auditory impairment is one who has been determined to have a serious hearing loss even after corrective medical treatment or use of amplification. This determination shall have been made by an otological examination performed by an otologist or, with documentation that an otologist is not reasonably available, by a licensed medical doctor. An audiological evaluation by a certified audiologist shall also be conducted. This evaluation shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(e) Mental retardation. A student with mental retardation is one who has been determined to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.

(f) Multiple disabilities.

(1) A student with multiple disabilities is one who has a combination of disabilities included in this section and who meets all of the following conditions:

(A) the student's disability is expected to continue indefinitely;

(B) the disabilities severely impair performance in two or more of the following areas:

(i) psychomotor skills;

(ii) self-care skills;

(iii) communication;

(iv) social and emotional development; or

(v) cognition.

(2) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in paragraph (1) of this subsection shall not be classified or reported as having multiple disabilities.

(g) Physical disability. A student with a physical disability is one who meets one of the following criteria:

(1) orthopedic impairment - a student who has been determined by a licensed physician to have a severe orthopedic impairment;

(2) other health impairment - a student who has been determined by a licensed physician to have limited strength, vitality, or alertness, due to chronic or acute health problems.

(h) Emotionally disturbed. A student with an emotional disturbance is one who has been determined to meet the criteria as defined in 34 CFR, §300.7(b)(9). The team's written report of evaluation shall include specific recommendations for behavior management.

(i) Learning disability.

(1) A student with a learning disability is one who has been determined by a multidisciplinary assessment team to meet the criteria as defined in 34 CFR, §300.7(b)(10), and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in 34 CFR, §§300.540-300.543.

(2) A severe discrepancy exists when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas specified in 34 CFR, §300.541, is more than one standard deviation below the student's intellectual ability.

(3) If the multidisciplinary assessment team cannot establish the existence of a severe discrepancy in accordance with paragraph (2) of this subsection because of the lack of appropriate assessment instruments, or if the student does not meet the criteria in paragraph (2) of this subsection but the team believes a severe discrepancy exists, the team must document in its written report the areas identified under paragraph (2) of this subsection and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.

(j) Speech impairment. A student with a speech impairment is one who has been determined by a certified speech and hearing therapist, certified speech and language therapist, or licensed speech language pathologist to meet the criteria as defined in 34 CFR, §300.7(b)(11).

(k) Traumatic brain injury. A student with traumatic brain injury is one who has been determined by a licensed physician to have an injury to the brain caused by an external physical force resulting in total or partial functional disability and/or psychosocial impairment. Assessment to determine educational need is performed by district personnel qualified to assess those areas identified in 34 CFR, §300.7(b)(12), that are suspected to adversely affect the student's educational performance.

(l) Visual impairment.

(1) A student who has a visual impairment is one who:

(A) has been determined by a licensed ophthalmologist or optometrist to have no vision or to have a serious visual loss after correction. The visual loss should be stated in exact measures of visual field and corrected visual acuity at distance and near in each eye. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and give best estimates; and

(B) has been determined by the following assessments to have a need for special services:

(i) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(ii) a learning media assessment by a professional certified in the education of students with visual impairments. The assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing assessment in this area.

(2) A student who has a visual impairment is functionally blind if, based on the preceding assessments, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

§89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.

(a) A district shall invite the parents and adult student to participate as members of the admission, review, and dismissal (ARD) committee by providing written notice in accordance with 34 Code of Federal Regulations (CFR), §§300.345, 300.504, and 300.505, and Part 300, Appendix C.

(b) A parent may request an ARD committee meeting at any mutually agreeable time to address specific concerns about his or her child's special education services. The school district must respond to the parent's request either by holding the requested meeting or by requesting assistance through the Texas Education Agency's mediation process. The district should inform parents of the functions

of the ARD committee and the circumstances or types of problems for which requesting an ARD committee meeting would be appropriate.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(a) Time line. The admission, review, and dismissal (ARD) committee shall make its decisions regarding students referred for the first time within 30 calendar days from the date of the completion of the written assessment report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning placement and the individual educational plan (IEP), unless the assessment indicates the student will need extended year services during that summer.

(b) Each school district shall establish at least one ARD committee that shall make decisions concerning eligibility determinations, development of the IEP, consideration of assistive technology, development of the behavior management plans, and placement of a student referred for consideration for special education services in accordance with 34 Code of Federal Regulations (CFR), §§300.308, 300.342-300.349, 300.533, and 300.550-300.554, and Part 300, Appendix C; state statute; State Board of Education (SBOE) rules; and this subchapter. For a child between birth and two years of age with visual and/or auditory impairments, an individual family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§303.340-303.346 and the agreement memorandum between the Texas Education Agency (TEA) and Texas Interagency Council on Childhood Intervention.

(c) At least one member of the ARD committee shall be certified and/or knowledgeable in the child's suspected areas of disability.

(d) The written report of the ARD committee shall document the findings required by subsection (b) of this section. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.344, 300.345, 300.348, and 300.349. The report shall also indicate each member's agreement or disagreement with the committee's decisions. A district shall obtain written consent in accordance with the requirements of 34 CFR, §300.500 and §300.504(b), before initial placement occurs.

(e) For a student who is new to a school district, the ARD committee may meet when the student registers and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. Special education services are temporary, contingent upon either receipt of valid assessment data from the previous school district or the collection of new assessment data. A second ARD committee meeting shall be held within 30 school days from the first ARD committee meeting to finalize or develop a new IEP based on the assessment data.

(f) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP).

(2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons to enable the ARD committee to reach mutual agreement.

(3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.

(4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for this student.

(5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.504 and §300.505.

(7) Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

§89.1055. Content of the Individual Educational Plan (IEP).

(a) The individual educational plan (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall include the following information in addition to the requirements of 34 Code of Federal Regulations (CFR), §300.346, and Part 300, Appendix C:

(1) information to allow for determining the student's eligibility for participation in extracurricular activities;

(2) a statement addressing nonexemption, modification/accommodation, or exemption from some or all of the basic skills assessment instruments, as appropriate. Modifications/accommodation of regular classroom procedures which are provided for students by the local district as specified in the student's IEP shall be provided during the testing process in accordance with §101.3 of this title (relating to Testing Accommodations and Exemptions); and

(3) goals and objectives shall be specified if extended year services are included in the IEP.

(b) For students with visual impairments, from birth through 21 years of age, the IEP and individual family services plan (IFSP) shall also meet the requirements of Texas Education Code (TEC), §30.002(e).

(c) For students with autism, information about the following shall be considered and, when appropriate, addressed in the IEP:

(1) extended educational programming;

(2) daily schedules reflecting minimal unstructured time;

(3) in-home training or viable alternatives;

(4) prioritized behavioral objectives;

(5) prevocational and vocational needs of students 12 years of age or older;

(6) parent training; and

(7) suitable staff-to-students ratio.

§89.1060. Definitions of Certain Related Services.

(a) Orientation and mobility training. Orientation and mobility training includes those aids, methods, services, and skills which enable students with visual impairments to move from one place to another with confidence, safety, and purpose. The term "mobility" in this context is the act of moving, while the term "orientation" is that awareness of pertinent factors in the environment which enables a person with partial or total visual impairment to react, move, and travel in an appropriate, safe, and purposeful manner. Orientation and mobility instruction shall be provided by a professional who holds at least a bachelor's degree with a major in the field of orientation and mobility instruction and who is certified by the Association for Education and Rehabilitation of the Blind and Visually Impaired.

(b) Interpreting services for students who are deaf. Interpreting services include interpreting/transliterating receptively and expressively for persons who are deaf or hard of hearing. Interpreting services for students who are deaf shall be provided by an interpreter who is certified by the Registry of Interpreters for the Deaf or the Texas Commission for the Deaf and Hard of Hearing or who has a waiver from the commissioner of education for not more than three consecutive years.

§89.1065. Extended Year Services (EYS).

Extended year services (EYS) are defined as individualized instructional programs beyond the regular school year for students who are enrolled in a school district's special education program.

(1) The need for EYS must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee.

(2) The need for EYS must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individual educational plan (IEP) objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable time period. Severe or substantial regression shall mean that the student has been, or will be, unable to maintain one or more acquired critical skills because of the absence of EYS.

(3) The reasonable time period for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, EYS may be justified without consideration of the time period for recoupment of such skills. In any case, the time period for recoupment shall not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following unplanned occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(C) loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(D) loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) If the district does not propose EYS for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss EYS pursuant to 34 Code of Federal Regulations (CFR), §300.504 and §300.505.

(6) If a student for whom EYS was considered and rejected loses critical skills because of the decision not to provide EYS, and if those skills are not regained after the reasonable time period for recoupment, the ARD committee shall reconsider the current IEP if the student's loss of critical skills interferes with implementation of the IEP.

(7) For students enrolling in a district during the school year, information from the prior school district as well as information collected during the current year may be used to determine the need for EYS.

(8) The provision of EYS is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied EYS because that student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for EYS provided to students for reasons other than those set forth in this section.

§89.1070. Graduation Requirements.

The secondary program of a student receiving special education services shall terminate either with graduation or when the student no longer meets the age requirement for eligibility in the Texas Education Code (TEC), §29.001 and §29.003. A student receiving special education services who is younger than 22 years of age on September 1 of a scholastic year shall be eligible for services through the end of that scholastic year or until graduation, whichever comes first.

(1) Graduation constitutes a release from services and is a change in placement. A student may be graduated according to the provisions specified in either paragraph (2), (3), or (6) of this subsection.

(2) A student receiving special education services may graduate upon satisfactorily completing the minimum academic credit requirements for graduation applicable to students in regular education, including satisfactory performance on the exit level assessment instrument.

(3) A student receiving special education services may also graduate upon the admission, review, and dismissal (ARD)

committee determining that the student has completed requirements specified in the individual educational plan (IEP), including minimum credit requirements, which have resulted in one of the following:

(A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

(B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or

(C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program.

(4) When considering graduation under paragraph (3) of this subsection, the ARD committee shall, when appropriate, seek in writing and consider written recommendations from appropriate adult service agencies and the views of the parent and, when appropriate, the student.

(5) Employability and self-help skills referenced under paragraph (3) of this subsection are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(6) A student receiving special education services may also graduate upon the ARD committee determining that the student no longer meets age eligibility requirements and has completed the requirements specified in the IEP.

(7) For students who graduate according to paragraph (3) of this subsection, the ARD committee shall determine whether educational services will be resumed upon the request of the student or parent, as appropriate, so long as the student meets the age eligibility requirement.

(8) Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.

§89.1075. General Program Requirements and Local District Procedures.

(a) Each school district shall maintain an eligibility folder on each student receiving special education services, in addition to the student cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; assessment reports and supporting data; admission, review, and dismissal (ARD) committee deliberations; and the individual educational plan (IEP).

(b) For school districts providing special education services to students with visual impairments, there shall be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).

(c) Each school district shall provide parents of students receiving special education services written reports of the students' progress on the same timely basis as the reports provided to students in regular education.

(d) Each school district shall have procedures to ensure that each teacher involved in a student's instruction has the opportunity to provide input and request assistance regarding the implementation of the student's IEP. These procedures must include a method for a student's regular or special education teachers to submit requests for further consideration of the student's IEP or its implementation. In response to this request, the district's procedures shall include a method for the district to determine whether further consideration is necessary and whether this consideration will be informal or will require an ARD committee meeting. If the district determines that an ARD committee meeting is necessary, the student's current regular and special education teachers shall have an opportunity to provide input. The school district shall also ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP, such as goals and objectives, modifications/accommodations, and adaptations.

(e) Students with disabilities shall have available an instructional day commensurate with that of students without disabilities. The ARD committee shall determine the appropriate instructional setting and length of day for each student, and these shall be specified in the student's IEP. §89.1080. Regional Day School Program for the Deaf. In accordance with the Texas Education Code (TEC), §§30.081-30.087,* local school districts shall have access to regional day school programs for the deaf operated by school districts at sites previously established by the State Board of Education (SBOE). Any student who has a hearing impairment which severely impairs processing linguistic information through hearing, even with recommended amplification, and which adversely affects educational performance shall be eligible for consideration for the Regional Day School Program for the Deaf, subject to the admission, review, and dismissal (ARD) committee recommendations.

§89.1085. Referral for Texas School for the Blind and Visually Impaired and Texas School for the Deaf Services.

(a) Local school district admission, review, and dismissal (ARD) committees may refer students for placement at the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300; the Texas Education Code (TEC) §§30.021, 30.051, and 30.057; and the applicable rules of this subchapter.

(b) Local school districts that request the provision of services through the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf shall comply with the following requirements.

(1) For each student, the district shall list those services in the student's individual educational plan (IEP) which the district cannot appropriately provide in a local program and which the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf can appropriately provide.

(2) The district may make an on-site visit to verify that the Texas School for the Blind and Visually Impaired or the Texas School for the Deaf can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) For each student, the local district shall establish in writing criteria and estimated time lines for returning the student to the local school district.

(c) Students enrolled in the Texas School for the Deaf under this section who are not referred by local ARD committees shall not be counted by local districts for funding purposes. Upon enrollment

of children not referred by local ARD committees, the Texas School for the Deaf shall be responsible for free, appropriate, education and related services.

§89.1090. Transportation of Students Placed in a Residential Setting, Including Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

For students placed in a residential setting based upon local school district admission, review, and dismissal (ARD) committee recommendations, including those students placed in the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf, the school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. School districts are not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess charges can be justified and documented. Transportation shall be arranged using the most cost efficient means. Where it is necessary for the safety of the child, as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§89.1095. Provision of Services for Students Placed by Their Parents in Private Schools.

(a) When a student with disabilities who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer to the student a free, appropriate, public education. If the district determines that it can, the district is not responsible for providing educational or related services to the student until such time as the parents choose to enroll the child in the public school full-time or request services under the dual enrollment rule in subsection (f) of this section.

(b) All state requirements concerning referral, assessment, and determination of eligibility are applicable to students placed by their parents in private schools once the students have been referred to the local school district. All state requirements concerning special education services are applicable to students admitted under the dual enrollment rule in subsection (f) of this section.

(c) School districts shall use their established procedures and forms for the referral of students from private schools.

(d) To the maximum extent possible, the district shall use referral and assessment information from the private schools' records in order to avoid unnecessary duplication of effort or services.

(e) The district shall provide to private school personnel the opportunity to participate in, and provide information for, the district's ARD committee deliberations when the educational needs of private school students are being considered.

(f) If the ARD committee determines that a private school student is eligible for, and in need of, special education instruction or related services or both, the parent may choose to enroll the student full-time in the public school. If the parent does not choose to do this, the school district shall make the special education services available only on the basis of dual enrollment. Based on the services and amount of time needed to provide those services, as set forth in each student's individual educational plan (IEP), when parents choose to enroll a child under the dual enrollment provision, the school district shall use one of the following arrangements for dual enrollment:

(1) enroll the student for at least four consecutive hours per day and count the student eligible for full state average daily attendance (ADA), for contact hours based on the instructional arrangement in which the student is served, and for full federal funding;

(2) enroll the student for at least two consecutive hours per day and count the student eligible for one-half state ADA, for contact hours based on the instructional arrangement in which the student is served, and for full federal funding; or

(3) enroll the student for any amount of time needed less than two hours per day and count the student eligible for full federal funding, but not for state ADA and for contact hours.

(g) The location and procedures for delivery of the instructional or related services or both specified in the IEP shall be determined based on the requirements concerning placement in the least restrictive environment and the policies and procedures of the local district.

(h) For students served under the provisions of this section, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be equivalent to those provided for students enrolled only in the public school and shall remain the property of the school district.

(i) Students placed in a private school by parent choice shall not be eligible for state funded transportation services. The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the instruction or related service set forth in the IEP.

§89.1100. Memorandum of Understanding on Coordination of Services to Disabled Persons.

Clarification of financial and service responsibilities of the Texas Department of Human Services, the Texas Department of Health, the Texas Department of Mental Health and Mental Retardation, the Texas Rehabilitation Commission, the Texas Commission for the Blind, the Texas Commission for the Deaf, Texas Department of Protective and Regulatory Services, Texas Interagency Council on Early Childhood Intervention, and the Texas Education Agency related to disabled persons are contained in the Memorandum of Understanding on Coordination of Services to Disabled Persons, which is adopted by reference as a rule of the Texas Education Agency. The complete text of the memorandum of understanding may be found in the rules of the Texas Department of Human Services, 40 Texas Administrative Code (TAC) Chapter 72. A copy of the memorandum of understanding is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

§89.1105. Memorandum of Understanding Relating to School-Age Residents of Intermediate Care Facilities for the Mentally Retarded.

(a) Purpose.

(1) The Texas Department of Human Services (department) and the Texas Education Agency (agency) are required by the Texas Education Code, §21.511, as adopted by the 71st Texas Legislature, to develop and, each by rule, to adopt a memorandum of understanding relating to certain respective responsibilities of school districts and intermediate care facilities for the mentally retarded (ICF-MR). School-age individuals residing in an ICF-MR are, for purposes of education, residents of the school district in which the ICF-MR is located.

(2) The purpose of this memorandum is to clarify responsibilities for the provision of educational space, educationally related services, and noneducational treatment services for school-age individuals who reside in those facilities. The department and the agency assure that the responsibilities contained herein are consistent with state and federal law and rules and regulations relating to the state medical assistance program and the education of all students with disabilities.

(b) Provision of educational space.

(1) Each school district in which an ICF-MR is located shall ensure that all school-age residents of the ICF-MR are provided free, appropriate, public education in the least restrictive environment pursuant to 34 Code of Federal Regulations (CFR), §§300.500-300.554, inclusive. The decision as to the least restrictive educational arrangement for such a resident must be based on the individual's needs and cannot be based on other issues, such as the most convenient arrangement for the ICF-MR and/or the school district.

(2) If the school district's admission, review, and dismissal committee determines in accordance with these applicable federal regulations that the ICF-MR is the least restrictive instructional arrangement for an ICF-MR resident and the committee documents, in the resident's individual educational plan, that such an educational arrangement is consistent with the resident's medical and active treatment needs, the following provisions shall apply:

(A) the ICF-MR is responsible for providing adequate educational space;

(B) the costs of providing this educational space, including the costs related directly to the operation and maintenance of the educational space itself, are an allowable Medicaid expense and may be reported as such on the ICF-MR's Medicaid cost report; and

(C) the ICF-MR shall not charge the school district for any of the costs set forth in this section. Any such charge would constitute an illegal supplementation of the Medicaid vendor rate.

(c) Provision of educationally related services and noneducational treatment services.

(1) School-age individuals placed in an ICF-MR by any party other than a school district are deemed to be placed primarily for care and treatment purposes. The ICF-MR shall determine the individual's care and treatment needs prior to the determination of the individual's educational needs by the school district.

(2) Pursuant to 34 CFR, §300.601 and §483.440:

(A) an ICF-MR shall not reduce or fail to provide treatment services solely because such services are, or may be included in, a school-age resident's individual educational plan; and

(B) a school district shall not reduce or fail to provide educationally related services solely because such services are, or may be included in, a school-age resident's individual program plan.

(3) Upon notice of a student's initial admission to the ICF-MR, the school district shall act pursuant to §89.1050 of this title (relating to The Admission, Review, and Dismissal (ARD) Committee).

(4) The ICF-MR shall act pursuant to 42 CFR, §483.440, and provide a copy of each school-age resident's current assessment report(s) and individual program plan to the school district.

(5) Upon receipt of the ICF-MR's assessment reports and individual program plan, and with any additional data the district has collected, the district's admission, review, and dismissal committee shall review and update the student's individual educational plan as appropriate.

(d) Coordination of services.

(1) To ensure the provision of appropriate services and to eliminate or minimize duplication of services, the ICF-MR and the school district shall share all appropriate client/student records pursuant to the rules and regulations of the department and the agency relating to the protection of confidential information.

(2) The ICF-MR and school district shall each ensure that respective representatives are allowed to attend and participate as resource persons in all individual program plan meetings and admission, review, and dismissal committee meetings.

(3) In accordance with their respective responsibilities as addressed in this memorandum of understanding, the ICF-MR and the school district shall enter into a written agreement concerning ongoing functions and services. The agreement must contain procedures for resolving problems in a timely manner and must contain the names of the respective contact persons to which problems should be addressed. Such agreements shall be consistent with state and federal laws, rules, and regulations relating to the state medical assistance program and the education of all students with disabilities program and shall be binding upon both parties.

(e) Resolution of problems.

(1) In the event that a problem cannot be resolved at the local level to the mutual satisfaction of either party, a written request for technical assistance may be submitted to the appropriate state agency.

(A) The ICF-MR should send the request to: Institutional Policy Unit, W-519, Long-term Care Department, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030.

(B) The school district should send the request to: Texas Education Agency, Division of Special Education Programs, 1701 North Congress Avenue, Austin, Texas 78701-1494.

(2) Upon receipt of a request for technical assistance, the department and the agency will jointly review the problem(s) indicated in the request. Following this review, a recommended resolution, coordinated between the department and the agency, will be provided to the requestor.

(3) Concerns by either the ICF-MR or the school district concerning the appropriateness of care, treatment, or education

services are subject to the procedural safeguards (client/student rights) as established for school-age individuals served by an ICF-MR and a school district respectively. Procedural safeguards relating to an ICF-MR are contained in state regulations found at 40 TAC §27.507(b), concerning level of care determination, and §27.717, concerning abuse and neglect reporting requirements. Procedural safeguards relating to a school district are contained in the publication, Special Education: Parent and Student Rights, Publication No. GEO 312.02.

(f) Terms of the memorandum of understanding.

(1) This memorandum of understanding shall be adopted by rule by the department and the agency and shall be effective upon adoption.

(2) The memorandum may be considered for expansion, modification, or amendment at any time upon the mutual agreement of the executive officers of the department and the agency.

(3) In the event that federal and/or state laws or regulations should be amended, federally interpreted, or judicially interpreted so as to render continued fulfillment of this agreement unreasonable or impossible, the department and the agency agree to amend or terminate this agreement.

(4) The memorandum shall be reviewed jointly and, if necessary, updated prior to the close of each fiscal year.

§89.1110. Memorandum of Understanding on Transition Planning for Students Receiving Special Education Services.

(a) Purpose.

(1) Under the Texas Education Code, §29.011, Transition Planning, the purpose of this memorandum of understanding (MOU) is to establish "the respective responsibility of each agency for the provision of the services necessary to prepare students enrolled in special education programs for a successful transition to life outside the public school system." The MOU is established among the following state agencies:

(A) Texas Commission for the Blind;

(B) Texas Department of Human Services;

(C) Texas Department of Mental Health and Mental Retardation;

(D) Texas Education Agency;

(E) Texas Employment Commission;

(F) Texas Rehabilitation Commission; and

(G) Texas Department of Protective and Regulatory Services.

(2) This MOU also describes implementation of the transition requirements contained in the Individuals with Disabilities Education Act (IDEA), Public Law 101-476, as amended, and the Rehabilitation Act of 1973, as amended through the 1992 amendments, Public Law 102-569.

(3) This MOU assures compliance by the Texas Education Agency in its role and responsibility for assuring the provision of transition services to all students with disabilities beginning no later than age 16, and younger when appropriate. The other signatory agencies assure compliance with the law within the limits of existing resources and services. All agencies acknowledge that current resources and funding levels are not adequate to meet the needs of students receiving special education services who are moving from school to adult life in Texas. To realize the direction of this MOU, agencies and concerned citizens must actively pursue federal, state, and local resources.

(b) Preamble.

(1) This MOU is intended to result in the development of a human services system in Texas that, in a comprehensive array of coordinated services, offers all citizens with disabilities choices and opportunities to achieve maximum independence and integration in the community. This goal is based on the following beliefs.

(A) All people shall have opportunities to choose where to live, work, and play.

(B) All people shall have opportunities to make informed choices and control their lives.

(C) All people have values, preferences, abilities, responsibilities, and limitations.

(D) All people shall have opportunities to access and participate in their communities.

(E) People will continue to be influenced by change.

(2) Students and parents shall be equipped with the knowledge and skills needed to empower them to plan for their futures and to make effective use of personal and public resources in achieving independence.

(3) The MOU is recognized at the local, regional, and state level as:

(A) documentation of the agencies' commitment to effecting long-term systemic change that will require extensive interagency collaboration and sharing of resources;

(B) a document that authorizes and promotes maximum collaborative participation by local agencies in providing effective transition services for students receiving special education services; and

(C) an acknowledgment of the need for parents, consumers, and advocates to support implementation of the MOU and support the agencies in acquiring the resources needed to assist students in becoming successful adults.

(c) Individual transition planning with individual students.

(1) The individual transition planning process shall be collaborative and based on long-range goals. It shall focus on the student's vision for his or her future to include empowerment and inclusion in the community.

(2) Individual transition planning shall be based on current information regarding the student's knowledge, skills, capabilities, interests, and preferences.

(3) The individual transition plan shall be a separate document from the individual education plan and focus on considerations that will have the greatest impact on successful independence and integration in the community. Individual transition planning components shall include:

(A) identifying the student's expectations after exiting public school, including post-secondary education, integrated employment, vocational training, continuing and adult education, adult

services, independent living, community participation, recreation and leisure, as well as other important life considerations;

(B) identifying a network of support, such as family, friends, coworkers, agencies, and community resources available to the public, that are needed to achieve the student's desired goals;

(C) identifying when and how support services shall be provided;

(D) identifying needed transition services that are a coordinated set of activities, including instruction, community experiences, the development of employment and other post-school adult living objectives, and if appropriate, acquisition of daily living skills and functional vocational evaluation;

(E) identifying time lines, with projected beginning and ending dates, for all activities leading toward attaining goals; and

(F) identifying the needed transition services to facilitate the transition to the home community and to the receiving school district for students who are incarcerated, in addition to the other required components.

(4) Individual transition planning shall begin no later than age 16 for each student receiving special education services. Younger students, particularly those who have severe disabilities, are at risk of dropping out of school, or whose needs require early collaboration, shall also receive individual transition planning if recommended by the admission, review, and dismissal (ARD) committee. A signatory agency may request an ARD committee meeting to consider transition planning for a student younger than age 16.

(5) A student's progress shall be reviewed and necessary revisions or additions shall be made on each individual transition plan at least annually.

(6) Transition planning shall be initiated by the school district.

(7) Transition planning and annual reviews of the individual transition plan shall include the following participants: the student; parent/guardian or surrogate; at least one representative from special education; and one additional representative from general education, special education, or vocational education. Other participants may include representatives from community resources that are available to the public and agencies that can assist the student to achieve identified goals. All participants may invite other interested individuals to the meeting.

(8) The participants in an individual transition planning meeting shall be determined annually, based on the individual student's needs and plans for the future, and not solely on disability.

(9) If an agency that was invited to send a representative to a meeting does not do so, the school district shall take other steps to obtain the participation of the agency in the planning of any transition services outlined in subsection (d) of this section.

(10) The relationship of the individual transition plan to the ARD committee process and the individual education plan shall be as follows.

(A) The individual transition plan shall be developed apart from and before the individual education plan. To minimize scheduling conflicts, the school district may schedule the development and annual review of the individual transition plan immediately before the ARD committee's development and review of the individual education plan.

(B) The transition services identified in the student's individual transition plan that are the responsibility of the school district shall be noted in the student's individual education plan. Beginning no later than age 16, and younger when appropriate, the student's individual education plan shall include a statement of needed transition services that identifies annual goals, short-term objectives, and services and includes instruction, community experiences, the development of employment, and other post-school adult living objectives. If appropriate, the statement also shall address acquisition of daily living skills and functional vocational evaluation. In addition, if appropriate, the individual education plan shall include a statement of each agency's responsibilities before the student leaves the school setting.

(C) If the ARD committee determines that services are not needed in one or more of the areas specified in subparagraph (B) of this paragraph, the individual education plan must include a statement indicating this and the basis on which the determination was made.

(D) If the individual education plan requires revision due to the development of the individual transition plan, a new ARD committee meeting must be convened as soon as possible to revise the individual education plan.

(E) If a school district or agency does not provide transition services agreed on and contained in the individual education plan, the school district shall convene an individual transition planning meeting as soon as possible to identify alternative strategies to meet the transition objectives. An ARD committee meeting shall be convened as soon as possible to adjust the individual education plan to reflect changes in the individual transition plan.

(d) Participation.

(1) Local collaborative planning meetings.

(A) Local collaborative planning groups should develop common goals, productive working relationships, and a written process for implementing and maintaining effective transition planning. These groups should include persons with disabilities, their parents or other family members, educators, agencies and/or their contracted providers, community organizations that provide services to the public, representatives from consumer and/or advocacy organizations, and business and community leaders.

(B) Local representatives of agencies and/or their contracted providers should meet with school district staff to develop and implement a plan for agency involvement in transition planning. Part of the process shall involve a review of students' profiles to allow agencies access, before the individual transition plan meeting, to information needed to determine appropriate involvement.

(C) Local coordinated planning, adequate notice, and cooperative scheduling is necessary to promote the availability of personnel to attend individual transition planning meetings.

(D) Successful individual transition planning is not predicated on participation of all agencies at all meetings.

(2) Individual transition planning meetings. The following shall occur for each individual transition plan.

(A) The school district shall provide a 30-day advance notice of the transition planning meeting to those invited. If the meeting date is rescheduled, the 30-day notice requirement may be waived if all parties, including the student and the parent, agree. In addition to the requirements of §89.1045 of this title (relating to Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings), notice for the purpose of developing an individual transition plan or for including the statement of needed transition services in the individual education plan must indicate this purpose, indicate that the student shall be invited, and identify any other agency that shall be invited to send a representative.

(B) At a minimum, agency information or written material shall be available for all invited. The written information shall include:

(i) identification of services;

(ii) eligibility criteria for services;

(iii) availability of services;

(iv) cost of services, as applicable;

(v) how the service may be accessed;

(vi) contact person;

(vii) phone number;

(viii) address; and

(ix) complaint procedure.

(C) The following shall occur for a student who is currently receiving services from agencies.

(i) Representatives from agencies shall attend individual transition planning and review meetings for the student.

(ii) The elements of the student's individual transition plan to be accomplished by an agency shall be included in the agency's individualized plan of service for the student.

(D) Agencies are encouraged, based on local collaborative planning and availability of personnel, to attend individual transition planning and review meetings for any student who is not currently receiving, but may be in need of, services.

(E) The individual transition plan may include identification of and referral for potential services, but may not include commitment of services for agencies not attending the meeting.

(F) Decisions at the individual transition planning meeting shall reflect the intent of a collaborative planning process.

(G) A copy of the individual transition plan shall be given to the student and his or her parent, guardian, or surrogate. A copy shall be provided to other participants on request.

(3) Attendance of students and parents, guardians, or surrogates.

(A) A student and his or her parents are responsible for planning for and attending individual transition planning meetings. They should be prepared to discuss their ideas and visions for the student's adulthood. They are encouraged to bring relevant information and resources.

(B) Elements of the individual transition plan that are the responsibility of the student and family shall be identified at the individual transition planning meeting.

(4) Texas Commission for the Blind.

(A) The Texas Commission for the Blind (TCB) acknowledges its role in providing transition services for students who are blind or visually impaired and receiving special education services.

(B) A representative of TCB shall provide periodic training for students who are blind or visually impaired, their parents, and teachers in planning for successful transition. Summer work programs in selected areas for eligible students who are blind or visually impaired shall be offered.

(C) Students attending the Texas School for the Blind and Visually Impaired who are eligible for services shall be served by the TCB representative.

(D) A student who has not been referred to TCB may be referred before or during his or her individual transition planning meeting.

(E) A representative shall provide follow-up services for eligible students after they exit from the public schools to complete vocational rehabilitation services.

(5) Texas Department of Human Services.

(A) The Texas Department of Human Services (TDHS) acknowledges its role in providing transition services for students receiving special education services.

(B) A TDHS representative shall be designated as the contact for the ongoing implementation of this MOU. The representative shall provide information about the range of services available to students with disabilities who meet TDHS program eligibility requirements or to their families. The representative also shall act as departmental liaison to other state agencies and local cooperative planning groups.

(C) The TDHS shall send a representative to the individual transition planning or review meetings for students on long-term care caseloads.

(6) Texas Department of Mental Health and Mental Retardation.

(A) The Texas Department of Mental Health and Mental Retardation (TDMHMR) acknowledges its role in providing transition services for students receiving special education services.

(B) Mental Health Authorities (MHA) or Mental Retardation Authorities (MRA) shall send a representative to the individual transition planning or review meetings for students for whom individual program plans, individual treatment plans, or individual habilitation plans have been developed that indicate a comprehensive level of involvement. This does not include students with service plans for information and referral or written plans for in-home and family support.

(C) For a student not receiving services, his or her eligibility determination for mental retardation services under the Mentally Retarded Persons Act of 1977, as amended in 1993, may be determined in the following ways.

(i) Referrals for determining mental retardation may be made to MRA.

(ii) The psychologist or associate psychologist may base the determination on assessment performed by a school district or a public or private agency. Eligibility determination may be expedited by providing MRA a psychological assessment conducted by a physician or psychologist licensed to practice in Texas that includes the following:

(I) name of individual assessed;

(II) date of birth of individual assessed;

(III) address of individual assessed;

(IV) dates of assessment;

(V) results of previous assessment, listing dates, tests, scores, and examiner names for all previous intellectual and adaptive behavior assessments;

(VI) results of current intellectual assessment, listing the names and scores of all intelligence tests administered, including individual scale scores if available;

(VII) results of current adaptive behavior assessment, listing the scale names and scores of all standardized adaptive behavior measures administered, including individual scale scores, if available, as well as an overall adaptive behavior level;

(VIII) estimated age at which mental retardation was identified, including source of information;

(IX) findings, consisting of a narrative description of test results in the areas listed in subclauses (I)-(VII) of this clause. Relative strengths and weaknesses shall be described. Also, considerations of the impact of the person's cultural background, language, communication style, physical or sensory impairments, motivation, emotional factors, and testing conditions on the results shall be included;

(X) conclusions, diagnosis (e.g., Diagnostic Statistical Manual IV (DSM)), and recommendations; and

(XI) name, signature, title, and licensure or certification number of examiner.

(D) Mental health services under the Texas Children's Mental Health Plan are targeted toward children and adolescents ages 0-17 with severe emotional, behavioral, or mental disorders (excluding a single diagnosis of substance abuse, autism, pervasive developmental disorder, or mental retardation), and at least one of the following:

(i) a severe functional impairment;

(ii) identification as being at risk of removal from the home or preferred living situation; or

(iii) identification as emotionally disturbed in special education.

(E) Students meeting the criteria in subparagraph (D) of this paragraph may be referred to MHA for assessment and services.

(7) Public education.

(A) The Texas Education Agency (TEA) acknowledges its role in assuring that transition services are provided for students receiving special education services.

(B) The following services and activities supporting transition shall be provided on an individual basis when determined appropriate by the school district:

(i) training for and counseling with students and parents about identifying their expectations and transition service needs; and

(ii) training for parents in reinforcing transition skills at home.

(C) The following services and activities supporting transition shall be provided on an individual basis by the school district:

(i) educational programming and related services, including the following:

(I) instruction;

(II) community experiences;

(III) the development of employment;

(IV) other post-school adult living objectives; and

(V) if appropriate, acquisition of daily living skills and a functional vocational evaluation, based on the services of the individual transition plan that have been identified as the responsibility of the school district and included in the individual education plan;

(ii) development of community-based instructional alternatives focusing on independent living and employment;

(iii) development of instructional environments for students age 18-21 receiving special education services, including age-appropriate adult settings;

(iv) referral of students and parents to other agencies for service consideration; and

(v) provision of information about transition planning annually to each student receiving special education services and his or her family, beginning by age 14 or earlier as requested by the student or parents, until the student's first individual transition plan is developed.

(8) Texas Employment Commission.

(A) The Texas Employment Commission (TEC) acknowledges its role in providing transition services for students receiving special education services. The TEC helps job-ready applicants secure employment. The same array of services shall be extended to job-ready students with disabilities in their pursuit of vocational opportunities.

(B) Texas Employment Commission personnel may be involved in the individual transition planning meetings as local office staffing allows.

(C) Primarily, the TEC shall receive referrals from other agencies.

(9) Texas Rehabilitation Commission.

(A) The Texas Rehabilitation Commission (TRC) acknowledges its role in providing transition services for students receiving special education services.

(B) Students currently receiving TRC services are defined as those who have applied and been determined eligible for services.

(C) Students attending the Texas School for the Deaf who have been determined eligible for services shall be served by TRC.

(D) Students may be referred to TRC at any time.

(E) A TRC representative shall provide follow-up services for eligible students after they exit from the public school to complete vocational rehabilitation services.

(10) Texas Department of Protective and Regulatory Services.

(A) The Texas Department of Protective and Regulatory Services (PRS) acknowledges its role in providing transition services for students receiving special education services who are in the managing conservatorship of PRS or for whom Adult Protective Services has an active case.

(B) For any student who is receiving special education services and is in the managing conservatorship of PRS, a Child Protective Services worker or his or her representative, shall be involved in developing and reviewing the student's individual transition plan.

(C) For any student aged 18-21 who is receiving special education services and has an active case with Child Protective Services or Adult Protective Services, a Child Protective Services worker or an Adult Protective Services worker or his or her representative shall participate in developing and reviewing the student's individual transition plan.

(e) Information sharing.

(1) Local.

(A) Each spring, each special education program shall provide an aggregate of the following information to TEA and local service agencies: age, gender, ethnicity, disabilities, and functional level of students with individual transition plans.

(B) The agencies, within the boundaries of existing law, shall coordinate and share diagnostics with other agencies to enhance transition planning, avoid duplication of effort, and prevent barriers to services.

(C) On request, school district, regional education service center (ESC), and local agency staff shall be available to present information about services to educational or administrative staff, parents, students, or one another.

(2) State.

(A) The TEA shall provide all signatory agencies an aggregate of the data received, as identified in paragraph (1)(A) of this subsection.

(B) The aggregate of data gathered for local planning shall be used for budget development and strategic planning at the state level.

(C) Each signatory agency shall provide training for teachers, administrators, counselors, local service agency representatives, and other professionals vested in transition to ensure full participation in the transition planning process.

(f) Problem resolution.

(1) Efforts shall be made to resolve problems that arise among agency staff at the local level. The local agencies may cooperatively develop and agree on formal procedures for resolving problems.

(2) Student or parent complaints concerning the actions of a school district or other service agencies shall be addressed according to that agency's established procedures.

(g) Terms of the MOU. This MOU shall be effective when it is adopted by each signatory agency. The MOU may be reviewed and considered for expansion, modification, or amendment at any time the executive officers of the named agencies agree or at least every two years. The MOU remains in effect until TEA adopts proposed changes by rule and all other signatory agencies adopt the changes by reference. The undersigned agree to collaboratively pursue additional resources to fulfill the provisions of this MOU.

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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Criss Cloudt

Assistant Commissioner, Policy Planning and Research

Texas Education Agency

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For further information, please call: (512) 463-9701

19 TAC §89.1121, §89.1125

The new sections are proposed under the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new sections implement the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012.

§89.1121. Distribution of State Funds.

(a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings shall be developed by the commissioner of education and included in the daily register for pupil attendance accounting.

(b) State special education funds shall be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).

(c) The special education attendance shall be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code (TEC),

§42.151(a). Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week shall be divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated shall be deducted from the school district's ADA for purposes of the regular education allotment.

(d) The receipt of special education funds shall be contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not tied to the instructional arrangement in which they were generated. The district must maintain separate accountability for the total state special education program fund within the general fund.

(e) A special education fund balance may be carried over to the next fiscal year and must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(g) Students from birth through age two with a visual or auditory impairment or both who are provided services by the district according to an individual family services plan (IFSP) shall be enrolled on the district home campus and shall be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement shall be based on the average daily attendance of the students in the arrangement multiplied by the adjusted basic allotment/adjusted allotment (ABA/AA) and the 1.1 weight. The attendance shall not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

§89.1125. Allowable Expenditures of State Special Education Funds.

(a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.

(b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.

(c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.

(d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individual educational plans (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

(e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.

(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.

(g) State special education funds may be used to pay special education staff travel to perform services. Funds may also be used to pay travel of staff to attend staff development meetings for the purpose of improving performance in assigned positions. The purpose for attending shall not include time spent in performing functions relating to the operation of professional organizations.

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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Criss Cloudt
Assistant Commissioner, Policy Planning and Research
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19 TAC §89.1131

The new section is proposed under the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new section implements the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.15 and §300.153; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special

education instructional program serving students 3-22 years of age, in accordance with the limitation of their certification.

(c) Paraprofessional personnel may be assigned to work with eligible students, special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.

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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19 TAC §89.1141

The new section is proposed under the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new section implements the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012.

§89.1141. Regional Education Service Center Special Education Programs Component.

(a) Each regional education service center (ESC) shall have a special education program component.

(b) Each ESC shall provide activities and services related to special education based on an annual region-wide needs assessment that includes, but is not limited to, the following priority areas:

(1) implementation of, and compliance with, state and federal law and regulations;

(2) follow-up technical assistance to local education agencies being monitored;

(3) program planning, including personnel development and long-range planning;

(4) support to school districts in instructional program and curriculum development;

(5) development of alternatives to private residential placements;

(6) technical assistance and training for school district staff in the selection and use of instructional materials and adaptive assistive technology;

(7) technical assistance and inservice training in support of local district direct service providers, such as assessment and related service personnel;

(8) direct and/or supportive services to programs for students with visual impairments; and

(9) direct and/or supportive services to preschool programs for children with disabilities.

(c) Each ESC shall maintain a child find/serve program including:

(1) referral and tracking of previously unserved students between birth and 21 years of age;

(2) follow-through of students referred;

(3) resource identification; and

(4) interagency coordination.

(d) Regional ESCs may serve as fiscal agents for those school districts which choose to receive such services through the ESCs.

(e) A minimum of one staff member certified in the education of students with visual impairments shall be employed by each ESC.

(f) The ESC shall not charge school districts for those services for which the ESC has been funded.

(g) Each ESC shall provide school districts with technical assistance and, based on identified needs, a comprehensive system of personnel development.

(h) For the purposes of this subchapter, ESCs shall be considered to be intermediate educational units as defined in federal regulations.

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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19 TAC §§89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, 89.1190

The new sections are proposed under the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new sections implement the Texas Education Code, §§29.001, 29.003, 29.005, 29.011, and 29.012.

§89.1151. Purpose.

The provisions of this subchapter shall govern the proceedings in all hearings requested under the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 et seq.; and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq. The Administrative Procedure Act (APA), Texas Government Code, §§2001.051 et seq., insofar as it does not conflict with the IDEA or these rules, is hereby incorporated into these rules. The Texas Rules of Civil Evidence and Civil Procedure as modified by the APA shall apply to proceedings under this subchapter. A one-tier system of statewide hearing officers under the IDEA is hereby adopted.

§89.1155. Definitions.

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

Eligible student - Any student who is 18 years of age or older and has not been adjudged incompetent by a court of proper jurisdiction, or any minor student whose disabilities of minority are removed by order of a court or by operation of law.

Parent - A parent or person acting in the place of a parent, such as a grandparent or stepparent, with whom a student with disabilities lives. The term includes a surrogate parent who has been appointed in accordance with law, but does not include the state if the student is in the conservatorship of the state.

Personally identifiable information - Information that includes:

(A) the name of the student, the student's parent, or other family member;

(B) the address of the student;

(C) a personal identifier, such as the student's social security number or student number; or

(D) a list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty.

Public education agency - The local school district, special education cooperatives, and any other agency or political subdivision of the state responsible for providing education to students with disabilities.

Students with disabilities - Students suspected of, or evaluated as possessing, one or more disabilities as defined by the Individuals with Disabilities Education Act (IDEA) and implemented by federal regulations, state law, and Texas Administrative Code (TAC) regulations. In this subchapter, the term "student" means a student with disabilities, unless the context clearly indicates otherwise.

§89.1160. Applicability.

The provisions of this subchapter shall apply in any hearing brought under the Individuals with Disabilities Education Act (IDEA) involving the identification, evaluation, or educational placement of a student with disabilities or the provision of a free, appropriate, public education to the student.

§89.1165. Request for Hearing.

(a) A parent, eligible student, or public education agency may initiate a hearing on any matter described in §89.1160 of this title (relating to Applicability).

(b) The request for hearing shall be in writing and filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for hearing shall be deemed filed only when actually received by the Texas Education Agency (TEA).

(c) If the request for hearing does not specify the issues to be heard and the relief requested, the TEA division responsible for hearings shall docket the request, and the hearing officer may, upon request, order the complaining party to supplement the request.

§89.1170. Impartial Hearing Officer.

(a) Hearings shall be conducted by an independent, impartial hearing officer appointed by the commissioner of education. The hearing officer selected by the commissioner shall not be a person who:

(1) is an employee of a public agency that is involved in the education or care of the student; or

(2) has a personal or professional interest that would conflict with his or her objectivity in the hearing.

(b) The hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires.

(c) If the hearing officer is removed, dies, becomes disabled, or withdraws from an appeal before the completion of duties, the commissioner of education may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

§89.1175. Hearing Rights.

(a) Any party to a hearing shall have a right to:

(1) be accompanied and advised by counsel and/or individuals with special knowledge or training related to the problems of students with disabilities;

(2) present evidence and confront, cross-examine, and compel the attendance of witnesses under the Administrative Procedure Act (APA), Texas Government Code, §§2001.051 et seq.;

(3) prohibit the introduction of any evidence at the hearing that has not been disclosed to the opposing party at least five days before the hearing;

(4) obtain a written, verbatim record of the hearing; and

(5) obtain written findings of fact, conclusions of law, and decisions.

(b) Parents involved in hearings shall have the right to:

(1) have the student who is the subject of the hearing present; and

(2) open the hearing to the public.

§89.1180. Prehearing Procedures.

(a) The hearing officer shall set and hold a prehearing conference unless the interests of justice require otherwise. The prehearing conference shall be held by telephone unless circumstances require an in person conference. Action taken at the conference shall be recorded in the manner directed by the hearing officer. The purpose of the prehearing conference shall be to consider any of the following:

(1) formulating or simplifying issues;

(2) admitting certain assertions of fact or stipulations;

(3) the procedure at the hearing on the merits;

(4) any limitation of the number of witnesses and the time for presenting each party's case; and/or

(5) other matters as may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(b) No pleadings, other than the request for hearing, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for hearings shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.

(c) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA) and may be further limited by order of the hearing officer.

(d) Upon a party's request to the hearing officer, the officer may issue subpoenas and commissions to take depositions under the APA, Texas Government Code, §2001.089. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency (TEA).

(e) Parties shall comply with the requirement in §89.1175(a)(3) of this title (relating to Hearing Rights) regarding disclosure of evidence five days before hearing. The hearing officer may specify the date and time that constitute compliance with this rule. Disclosure means providing copies of documentary evidence and an index of the documents, unless otherwise agreed by the parties, and providing the names, addresses, and professions of witnesses. In addition, copies of evidence disclosed under this subsection shall be filed with the hearing officer at least five days before hearing.

§89.1185. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Before the offer, documents offered into evidence shall be numbered, have pages within each exhibit numbered, and have personally identifiable information deleted.

(e) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(f) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(g) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(h) Hearings conducted under this subchapter shall be closed to the public, unless the parent or eligible student requests that the hearing be open.

(i) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to the parties. The hearing officer shall instruct the reporter and the parties to delete all personally identifiable information from the transcription and from all evidence submitted.

(j) Filing of post-trial briefs shall be permitted only upon order of the hearing officer and shall be limited to issues specified by the hearing officer.

(k) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is filed. A final decision must be in writing and shall include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence and on matters officially noticed under the Administrative Procedure Act (APA), Texas Government Code, §2001.141(c). The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(l) A hearing officer may grant extensions of time for good cause beyond the period specified in subsection (k) of this section at the request of either party. The extensions shall be granted to a specific date and shall be stated in writing by the hearing officer to the parties.

(m) The decision made under subsection (k) of this section is final, unless a party brings a civil action under 20 United States Code (USC), §1415(e), in state or federal court. A school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within 90 days after the date the decision was rendered. If a decision directing action on the part of a school district is not appealed or implemented within 90 days after the date of the decision, the Texas Education Agency (TEA) shall refer the matter for enforcement under the APA, Texas Government Code, §2001.051 et seq.

(n) Under provisions of the Individuals with Disabilities Education Act (IDEA) concerning prompt rendering of final decisions, decisions issued under this subchapter shall be final. No motion for rehearing shall be required for a decision to be appealable to court under the APA, Texas Government Code, §2001.145. The decision shall recite the fact that the public welfare requires immediate effect of the final decision.

(o) Under the Texas Rules of Civil Procedure, Rule 298, a party may request specified additional or amended findings or conclusions within ten days after the date of the decision. The hearing officer shall issue any additional or amended findings or conclusions that are appropriate, within the discretion of the hearing officer, within ten days after the request is filed.

(p) Final decisions containing findings of fact and conclusions of law shall be made available to the public after any personally identifiable information has been deleted.

§89.1190. Student's Status During Proceedings.

(a) Except as provided under this section, during the pendency of any proceedings conducted under this subchapter, unless the parties otherwise agree, the child shall remain in the educational placement of the child that is current at that time; or, if applying for initial admission to a public school, the child shall, with the consent of the parents or guardian, be placed in the public school program until all such proceedings are completed.

(b) If the proceedings conducted under this subchapter involve a child with a disability who is determined to have brought a

weapon to school, the child may be placed by an admission, review, and dismissal (ARD) committee in an interim, alternative educational setting in accordance with state law and shall remain in the alternative educational setting during the pendency of the hearing, unless the parties agree otherwise.

(c) The interim, alternative educational setting described in subsection (b) of this subsection shall be determined by the ARD committee.

(d) For the purposes of this section, the term "weapon" means a firearm as defined in 18 United States Code (USC), §921.

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 February 14, 1996.

TRD-9602113
Criss Cloudt
Assistant Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-9701

Subchapter BB. Commissioner's Rules Concerning State Plan for Educating Limited English Proficient Students

19 TAC §§89.1201, 89.1205, 89.1210, 89.1215, 89.1220, 89.1225, 89.1230, 89.1235, 89.1240, 89.1245, 89.1250, 89.1255, 89.1260, 89.1265

The Texas Education Agency (TEA) proposes new §§89.1201, 89.1205, 89.1210, 89.1215, 89.1220, 89.1225, 89.1230, 89.1235, 89.1240, 89.1245, 89.1250, 89.1255, 89.1260, and 89.1265, concerning the state plan for educating limited English proficient students. The new sections establish definitions, requirements, and procedures related to: bilingual education and special language programs; program content and design; a home language survey; language proficiency assessment committees; testing and classification of students; eligible students with handicaps; participation of English proficient students; facilities; parental authority and responsibility; staffing and staff development; required summer school programs; local plans; monitoring for compliance with statute and TEA rules; and evaluation. The sections are adopted as part of the sunset review process mandated by Senate Bill 1, 74th Texas Legislature, 1995.

Geoffrey Fletcher, associate commissioner for curriculum and assessment, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Mr. Fletcher and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that students of limited English proficiency will have access to the foundation and enrichment curricula and the requirements for high school graduation. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new sections are proposed under the Texas Education Code, §§29.051-29.064, which authorizes the commissioner of education to adopt rules related to educating limited English proficient students.

The new sections implement the Texas Education Code, §§29.051-29.064.

§89.1201. Policy.

(a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as limited English proficient shall be provided a full opportunity to participate in a bilingual education or English as a second language program, as required in the Texas Education Code, Chapter 29, Subchapter 8. To ensure equal educational opportunity, as required in the Texas Education Code, §1.002(a), each school district shall:

(1) identify limited English proficient students based on criteria established by the state;

(2) provide bilingual education and English as a second language programs, as integral parts of the regular program as described in the Texas Education Code, §4.002;

(3) seek certified teaching personnel to ensure that limited English proficient students are afforded full opportunity to master the essential skills and knowledge required by the state; and

(4) assess achievement for essential skills and knowledge in accordance with the Texas Education Code, Chapter 39, to ensure accountability for limited English proficient students.

(b) The goal of bilingual education programs shall be to enable limited English proficient students to become competent in the comprehension, speaking, reading, and composition of the English language through the integrated use of the primary language and English. Such programs shall emphasize the mastery of English language skills, as well as mathematics, science and social studies, as integral parts of the academic goals for all students to enable limited English proficient students to participate equitably in school.

(c) The goal of English as a second language programs shall be to enable limited English proficient students to become competent in the comprehension, speaking, reading, and composition of the English language through the integrated use of second language methods. The English as a second language program shall emphasize the mastery of English language skills, as well as mathematics, science and social studies, as integral parts of the academic goals for all students to enable limited English proficient students to participate equitably in school.

(d) Bilingual education and English as a second language programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the

special needs of limited English proficient students. The basic curriculum content of the programs shall be based on the essential skills and knowledge required by the state.

§89.1205. Required Bilingual Education and English as a Second Language Programs.

(a) Each school district which has an enrollment of 20 or more limited English proficient students in any language classification in the same grade level district-wide shall offer a bilingual education program as described in subsection (b) of this section for the limited English proficient students in prekindergarten through the elementary grades who speak that language. "Elementary grades" shall include at least prekindergarten through Grade 5; sixth grade shall be included when clustered with elementary grades.

(b) A district shall provide a bilingual education program by offering:

(1) a dual language program in prekindergarten through the elementary grades, as described in §89.1210 of this title (relating to Program Content and Design); or

(2) an approved dual language program which addresses the affective, linguistic, and cognitive needs of the limited English proficient students, and which meets the requirements of the Texas Education Code, §29.055(a), as described in §89.1260 of this title (relating to Local Plan).

(c) Districts are authorized to establish a bilingual education program at grade levels in which the bilingual education program is not required under subsection (a) of this section.

(d) All limited English proficient students for whom a district is not required to offer a bilingual education program shall be provided an English as a second language program as described in subsection (e) of this section, regardless of the students' grade levels and home language, and regardless of the number of such students.

(e) A district shall provide an English as a second language program by offering:

(1) an English as a second language program as described in §89.1210 of this title (relating to Program Content and Design); or

(2) an approved English as a second language program which addresses the affective, linguistic, and cognitive needs of the limited English proficient students and meets the requirements of §89.1260 of this title (relating to Local Plan).

(f) Districts may join with other districts to provide bilingual education or English as a second language programs.

(g) Districts which are unable to provide a bilingual education program as required by subsection (a) of this section shall request from the commissioner of education an exception to the bilingual education program and approval to offer an alternative program. Approval of exceptions to the bilingual education program shall be negotiated on an individual basis and shall be valid for only the school year for which it was negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:

(1) a statement of the reasons the district is unable to offer the bilingual education program with supporting documentation;

(2) a description of the proposed alternative modified bilingual education or intensive English as a second language programs to meet the affective, linguistic, and cognitive needs of the limited English proficient students, including the manner in which the students will be given opportunity to master the essential knowledge and skills required by Chapter 75 of this title (relating to Curriculum);

(3) an assurance that certified personnel available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the limited English proficient students with lower levels of English proficiency are served on a priority basis;

(4) a description of the training program which the district will provide to improve the skills of the staff which is assigned to implement the proposed alternative program, and an assurance that at least 10% of the bilingual education allotment shall be used to carry out this training program; and

(5) a description of the actions the district will take to ensure that the program required under subsection (a) of this section will be provided the subsequent year, including its plans for recruiting and training an adequate number of teachers to eliminate the need for subsequent exceptions.

(h) Districts which are unable to provide an English as a second language program as required by subsection (d) of this section shall request from the commissioner of education a waiver of the certification requirements for the teachers who will provide the instruction in English as a second language for the limited English proficient students. Approval of waivers of certification requirements shall be negotiated on an individual basis and shall be valid for only the school year for which they were negotiated. This request will be submitted by a date determined by the commissioner of education and shall include:

(1) a statement of the reasons the district is unable to offer the English as a second language program with supporting documentation;

(2) a description of the manner in which the English as a second language program will meet the affective, linguistic, and cognitive needs of the limited English proficient student, including the manner by which the students will be given opportunity to master the essential knowledge and skills required by Chapter 75 of this title (relating to Curriculum);

(3) an assurance that certified personnel available in the district will be assigned to grade levels beginning at prekindergarten followed successively by subsequent grade levels to ensure that the linguistic and academic needs of the limited English proficient students with the lower levels of English proficiency are served on a priority basis;

(4) a description of the training program which the district will provide to improve the skills of the staff which is assigned to implement the proposed English as a second language program, and an assurance that at least 10% of the special language allotment shall be used to carry out this training;

(5) a description of the actions the district will take to ensure that the program required under subsection (d) of this section will be provided the subsequent year, including its plans for recruiting and training an adequate number of teachers to eliminate the need for subsequent waivers; and

(6) the names of the teachers assigned to implement the English as a second language program and estimated date for the

completion of the English as a second language endorsement for each teacher under a waiver.

§89.1210. Program Content and Design.

(a) Each school district required to offer a bilingual education or English as a second language program shall provide each limited English proficient student the opportunity to be enrolled in the required program at his or her grade level. Each student's level of proficiency shall be designated by the language proficiency assessment committee in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee). The district shall modify the instruction, pacing, and materials to ensure that limited English proficient students have a full opportunity to master the essential knowledge and skills of the required curriculum. Students participating in the bilingual education program may demonstrate their mastery of the essential knowledge and skills in either their home language or in English.

(b) The bilingual education program shall be a full-time program of instruction in which both the students' home language and English shall be used for instruction. The amount of instruction in each language shall be commensurate with the students' level of proficiency in both languages and their level of academic achievement. The students' level of language proficiency and academic achievement shall be designated by the language proficiency assessment committee. Within a year after the adoption of these rules, the Texas Education Agency (TEA) shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in each language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.

(c) The bilingual education program shall be an integral part of the regular educational program required under Chapter 75 of this title (relating to Curriculum). In bilingual education programs using Spanish and English as languages of instruction, districts shall use state-adopted English and Spanish texts and supplementary materials as curriculum tools to enhance the learning process; in addition, districts may use other curriculum adaptations which have been developed. The bilingual education program shall address the affective, linguistic, and cognitive needs of limited English proficient students as follows.

(1) Affective. Limited English proficient students shall be provided instruction in their home language to introduce basic concepts of the school environment, and instruction both in their home language and in English which instills confidence, self-assurance, and a positive identity with their cultural heritages. The program shall address the history and cultural heritage associated with both the students' home language and the United States.

(2) Linguistic. Limited English proficient students shall be provided instruction in the skills of comprehension, speaking, reading, and composition both in their home language and in English. The instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher order thinking skills in all subjects.

(3) Cognitive Limited English proficient students shall be provided instruction in mathematics, science, health, and social studies both in their home language and in English. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher order thinking skills in all subjects.

(d) English as a second language programs shall be intensive programs of instruction designed to develop proficiency in the comprehension, speaking, reading, and composition in the English language. The amount of instruction provided in English as a second language shall be commensurate with the student's level of English proficiency and his or her level of academic achievement. The students' level of English proficiency and academic achievement shall be designated by the language proficiency assessment committee. In prekindergarten through the elementary grades, instruction in English as a second language may vary from the amount of time accorded to instruction in English language arts in the regular program for nonlimited English proficient students to total immersion in second language approaches. In Grade 6 or Grades 7-12, instruction in English as a second language may vary from one-third of the instructional day to total immersion in second language approaches. The language proficiency assessment committee, however, may recommend only one period a day based on the individual needs of the student. Within a year after the adoption of these rules, TEA shall develop program guidelines to ensure that the programs are developmentally appropriate, that the instruction in English as a second language is appropriate, and that the students are challenged to perform at a level commensurate with their linguistic proficiency and academic potential.

(e) Except in the courses specified in subsection (f) of this section, English as a second language strategies, which may involve the use of the students' home language, may be provided in any of the courses or electives required for promotion or graduation to assist the limited English proficient students to master the essential knowledge and skills for the required subject(s). The use of English as a second language strategies shall not impede the awarding of credit toward meeting promotion or graduation requirements.

(f) In subjects such as art, music, and physical education, the limited English proficient students shall participate with their English-speaking peers in regular classes provided in the subjects. The district shall ensure that students enrolled in bilingual education and English as a second language programs have a meaningful opportunity to participate with other students in all extracurricular activities.

(g) The required bilingual education or English as a second language programs shall be provided to every limited English proficient student with parental approval until such time that the student meets exit criteria as described in §89.1225(h) of this title (relating to Testing and Classification of Students) or graduates from high school.

§89.1215. Home Language Survey.

(a) Districts shall conduct only one home language survey of each student. The home language survey shall be administered to each student new to the district, and to students previously enrolled who were not surveyed in the past. Districts shall require that the survey be signed by the student's parent or guardian for students in grades prekindergarten through Grade 8, or by the student in Grades 9-12. The original copy of the survey shall be kept in the student's permanent record.

(b) The home language survey shall be administered in English and Spanish; for students of other language groups, the home language survey shall be translated into the home language whenever possible. The home language survey shall contain the following questions.

(1) "What language is spoken in your home most of the time?"

(2) "What language does your child (do you) speak most of the time?"

(c) Additional information may be collected by the district and recorded on the home language survey.

(d) The home language survey shall be used to establish the student's language classification for determining whether the district is required to provide a bilingual education or English as a second language program. If the response on the home language survey indicates that a language other than English is used, the student shall be tested in accordance with §89.1225 of this title (relating to Testing and Classification of Students).

§89.1220. Language Proficiency Assessment Committee.

(a) Districts shall by local board policy establish and operate a language proficiency assessment committee. The district shall have on file policy and procedures for the selection, appointment, and training of members of the language proficiency assessment committee(s).

(b) In districts required to provide a bilingual education program, the language proficiency assessment committee shall be composed of the membership described in the Texas Education Code, §29.063. If the district does not have an individual in one or more of the school job classifications required, the district shall designate another professional staff member to serve on the language proficiency assessment committee. The district may add other members to the committee in any of the required categories.

(c) In districts and grade levels not required to provide a bilingual education program, the language proficiency assessment committee shall be composed of one or more professional personnel and a parent of a limited English proficient student designated by the district.

(d) No parent serving on the language proficiency assessment committee shall be an employee of the school district.

(e) A district shall establish and operate a sufficient number of language proficiency assessment committees to enable them to discharge their duties within four weeks of the enrollment of limited English proficient students.

(f) All members of the language proficiency assessment committee, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The district shall be responsible for the orientation and training of all members, including the parents, of the language proficiency assessment committee.

(g) Upon their initial enrollment and at the end of each school year, the language proficiency assessment committee shall review all pertinent information on all limited English proficient students identified in accordance with §89.1225(f) of this title (relating to Testing and Classification of Students), and shall:

(1) designate the language proficiency level of each limited English proficient student in accordance with the guidelines issued pursuant to §89.1210(b) and (d) of this title (relating to Program Content and Design);

(2) designate the level of academic achievement of each limited English proficient student;

(3) designate, subject to parental approval, the initial instructional placement of each limited English proficient student in the required program;

(4) facilitate the participation of limited English proficient students in other special programs for which they are eligible provided by the district with either state or federal funds; and

(5) classify students as English proficient in accordance with the criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), and recommend their exit from the bilingual education or English as a second language program.

(h) No earlier than 90 days before the administration of the state criterion-referenced test each year, the language proficiency assessment committee shall determine the eligibility of limited English proficient students in Grades 3-8 for one of the following options in accordance with §101.3 of this title (relating to Testing Accommodations and Exceptions):

(1) exemption from the criterion-referenced test;

(2) administration of the Spanish version criterion-referenced test; or

(3) administration of the English version criterion-referenced test.

(i) In making this determination, the LPAC shall consider the following criteria for each student:

(1) literacy in English and/or Spanish;

(2) oral language proficiency in English and/or Spanish;

(3) academic program participation (bilingual education or English as a second language);

(4) previous testing history; and

(5) level of academic achievement.

(j) For each limited English proficient student determined eligible for the option listed in subsection (h)(1)of this section, the LPAC shall determine the appropriate alternative assessment which shall be administered using the criteria under subsection (i) of this section.

(k) The language proficiency assessment committee shall give written notice to the student's parent advising that the student has been classified as limited English proficient and requesting approval to place the student in the required bilingual education or English as a second language program. The notice shall include information about the benefits of the bilingual education or English as a second language program for which the student has been recommended and that it is an integral part of the school program.

(l) Pending parent approval of a limited English proficient student's entry into the bilingual education or English as a second language program recommended by the language proficiency assessment committee, the district shall place the student in the recommended program, but may count only limited English proficient students with parental approval for bilingual education or special language allotment.

(m) The language proficiency assessment committee shall monitor the academic progress of each student who has exited from a bilingual or English as a second language program within the past two years to determine whether the student is academically successful

as defined in §89.1225(k) of this title (relating to Testing and Classification of Students). Those students who are not academically successful shall be classified as limited English proficient, and shall be recommended for participation in a bilingual education, English as a second language, compensatory and accelerated instruction, or other special language program which addresses their needs.

(n) The student's permanent record shall contain documentation of all actions impacting the limited English proficient student. This documentation shall include:

(1) the identification of the student as limited English proficient;

(2) the designation of the student's level of language proficiency;

(3) the recommendation of program placement;

(4) parental approval of entry or placement into the program;

(5) the dates of entry into, and placement within, the program;

(6) the dates of exemptions from the criterion-referenced test, criteria used for this determination, type of alternative assessment, and results in accordance with §101.3 of this title (relating to Testing Accommodations and Exceptions);

(7) the date of exit from the program and parent notification; and

(8) the results of monitoring for academic success, including students formerly classified as limited English proficient, as required under the Texas Education Code, §29.063(c)(4).

§89.1225. Testing and Classification of Students.

(a) For identifying limited English proficient students, districts shall administer to each student who has a language other than English as identified on the home language survey:

(1) in prekindergarten through Grade 1, an oral language proficiency test approved by the Texas Education Agency (TEA); and

(2) in Grades 2-12, an TEA-approved oral language proficiency test and an TEA-approved English reading and writing proficiency test, or the English reading and English language arts sections from an TEA-approved norm-referenced measure.

(b) Districts which provide a bilingual education program shall administer an oral language proficiency test in the home language of the students who are eligible for being served in the bilingual education program. If the home language of the students is Spanish, the district shall administer the Spanish version of the TEA-approved oral language proficiency test which was administered in English. If the home language of the students is other than Spanish, the district shall determine the students' level of proficiency using informal oral language assessment measures.

(c) All the oral language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in language proficiency testing.

(d) The grade levels and the scores on each test which shall identify a student as limited English proficient shall be established by TEA. The commissioner of education shall review the approved list of tests, grade levels, and scores at least every two years and shall recommend any needed changes to the board.

(e) Students with a language other than English shall be administered the required oral language proficiency test within four weeks of their enrollment. Reading and writing proficiency tests shall be administered within the first eight weeks of enrollment. Norm-referenced assessment instruments, however, may be administered within the established norming period.

(f) For entry into, or placement within, a bilingual education or English as a second language program, a student shall be identified as limited English proficient using the following criteria.

(1) At prekindergarten through Grade 1, the score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section.

(2) At Grades 2-12:

(A) the student's score on the English oral language proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section;

(B) the student's ability in English is so limited that the administration, at his or her grade level, of a reading and writing proficiency test or other test approved by the State Board of Education (SBOE) is not valid; or

(C) the student's score on the reading and writing proficiency test is below the level designated for indicating limited English proficiency under subsection (d) of this section or below the 40th percentile on the reading and language arts sections of the TEA-approved norm-referenced measure at his or her grade level.

(3) In the absence of data required in paragraph (2)(C) of this subsection, evidence that the student is not academically successful as defined in subsection (k) of this section is required.

(g) Within the four weeks of their initial enrollment in the district, students shall be identified as limited English proficient and entered into the required bilingual education or English as a second language program.

(h) For exit from a bilingual education or English as a second language program, a student:

(1) may be classified as English proficient at the end of the school year in which a student would be able to participate equally in a regular, all-English, instructional program as determined by:

(A) meeting state performance standards for the English language criterion-referenced assessment instrument for reading required in the Texas Education Code, §39.023, at grade level; and

(B) tests administered at the end of each school year to determine the extent to which the student has developed oral and written language proficiency and specific language skills in both the student's primary language and English; or

(2) may be classified as English proficient when he or she scores at or above the 40th percentile on both the English reading and the English language arts sections of an TEA-approved norm-referenced assessment instrument; or

(3) may be classified as English proficient as determined by criteria which meet the requirements outlined in the Texas

Education Code, §29.055, and §89.1260 of this title (relating to Local Plan).

(i) In making the determination described in subsection (h) of this section, districts shall also consider other indications of a student's overall progress, including criterion-referenced test scores, subjective teacher evaluation, and parental evaluation.

(j) A student may not be exited from the bilingual education or English as a second language program in prekindergarten through Grade 1.

(k) For determining whether a student who has been exited from a bilingual education or English as a second language program is academically successful, the following criteria shall be used at the end of the school year.

(1) The student meets state performance standards in English of the criterion-referenced assessment instrument required in the Texas Education Code, §39.023, for the grade level as applicable.

(2) The student has passing grades in all subjects and courses taken.

§89.1230. Eligible Students with Handicaps.

(a) Districts shall implement assessment procedures which differentiate between language proficiency and handicapping conditions in accordance with Subchapter AA of this chapter (relating to Special Education Services), and shall establish placement procedures which ensure that placement in a bilingual education program is not refused solely because the student has a handicapping condition.

(b) A professional member of the language proficiency assessment committee shall serve on the admission, review, and dismissal (ARD) committee of each limited English proficient student who qualifies for services in the special education program. Districts may enroll students who are not limited English proficient in the bilingual education program in accordance with the Texas Education Code, §29.058.

§89.1235. Facilities.

Bilingual education and English as a second language programs shall be located in the regular public schools of the district rather than in separate facilities. In order to provide the required bilingual education or English as a second language programs, districts may concentrate the programs at a limited number of schools within the district provided that the enrollment in those schools shall not exceed 60% limited English proficient students.

§89.1240. Parental Authority and Responsibility.

(a) The parents shall be notified that their child has been classified as limited English proficient and recommended for placement in the required bilingual education or English as a second language program. They shall be provided information describing the bilingual education or English as a second language program recommended, its benefits to the student, and its being an integral part of the school program to ensure that the parents understand the purposes and content of the program. The entry or placement of a student in the bilingual education or English as a second language program must be approved in writing by the student's parent. The parent's approval shall be considered valid for the student's continued participation in the required bilingual education or English as a second language program until the student meets the exit criteria described in §89.1225(h) of this title (relating to Testing and Classification of Students), graduates from high school, or the parent requests a change in program placement.

(b) The district shall notify the student's parent of the student's reclassification as English proficient and his or her exit from the bilingual education or English as a second language program and acquire approval as required under Texas Education Code, §29.056(a).

(c) The parent of a student enrolled in a district which is required to offer bilingual education or English as a second language programs may appeal to the commissioner of education if the district fails to comply with the law or the rules of the State Board of Education (SBOE). Appeals shall be filed in accordance with Chapter 157 of this title (relating to Hearings and Appeals).

§89.1245. Staffing and Staff Development.

(a) School districts shall take all reasonable affirmative steps to assign appropriately certified teachers to the required bilingual education and English as a second language programs in accordance with the Texas Education Code, §29.061, concerning bilingual education and special language program teachers. Districts which are unable to secure a sufficient number of certified bilingual education and English as a second language teachers to provide the required programs, shall request emergency teaching permits or special assignment permits, as appropriate, in accordance with Chapter 137, Subchapter Q, of this title (relating to Permits).

(b) School districts which are unable to employ a sufficient number of teachers, including part-time teachers, who meet the requirements of subsection (a) of this section for the bilingual education and English as a second language programs shall apply on or before October 1 for an exception to the bilingual education program as provided in §89.1205(g) of this title (relating to Required Bilingual Education and English as a Second Language Programs) or a waiver of the certification requirements in the English as a second language program as provided in §89.1205(h) of this title (relating to Required Bilingual Education and English as a Second Language Programs) as needed.

(c) Teachers assigned to the bilingual education program and/or English as a second language program may receive salary supplements as authorized by the Texas Education Code, §42.153.

(d) Districts may compensate teachers and aides assigned to bilingual education and English as a second language programs for participation in continuing education programs designed to increase their skills or lead to bilingual education or English as a second language certification.

(e) Districts which are unable to staff their bilingual education and English as a second language programs with fully certified teachers shall use at least 10% of their bilingual education allotment for preservice and inservice training to improve the skills of the teachers who provide the instruction in the alternative bilingual education program, who provide instruction in English as a second language, and/or who provide content area instruction in special classes for limited English proficient students.

(f) The commissioner of education shall encourage districts to cooperate with colleges and universities to provide training for teachers assigned to the bilingual education and/or English as a second language programs.

(g) The Texas Education Agency (TEA) shall develop, in collaboration with Education Service Centers (ESCs), bilingual education training guides for implementing bilingual education and English as a second language training programs. The materials shall provide a framework for:

(1) developmentally appropriate bilingual education programs for early childhood through the elementary grades;

(2) affectively appropriate instruction in bilingual education and English as a second language programs in accordance with §89.1210(c)(1) of this title (relating to Program Content and Design);

(3) linguistically appropriate bilingual education and English as a second language programs in accordance with §89.1210(c)(2) of this title (relating to Program Content and Design);

(4) cognitively appropriate programs for limited English proficient students in accordance with §89.1210(c)(3) of this title (relating to Program Content and Design); and

(5) developmentally appropriate programs for gifted and talented limited English proficient students and limited English proficient students with handicaps.

§89.1250. Required Summer School Programs.

Summer school programs that are provided under the Texas Education Code, §29.060, for children of limited English proficiency who will be eligible for admission to kindergarten or first grade at the beginning of the next school year shall be implemented in accordance with this section.

(1) Purpose of summer school programs.

(A) Limited English proficient students shall have an opportunity to receive special instruction designed to prepare them to be successful in kindergarten and first grade.

(B) Instruction shall focus on language development essential knowledge and skills appropriate to the level of the student. Such instruction shall be bilingual or English as a second language.

(2) Establishment of, and eligibility for, the program.

(A) Each district required to offer a bilingual or special language program in accordance with the Texas Education Code, §29.053, shall offer the summer program. Programs under this subsection for students who will be in bilingual education kindergarten and first grade programs shall be bilingual education.

(B) To be eligible for enrollment, a student must be eligible for admission to kindergarten or to the first grade at the beginning of the next school year and must be limited English proficient.

(C) Limited English proficiency shall be determined by screening students using informal oral language inventories, oral proficiency instruments approved by the commissioner of education, or other appropriate instruments.

(3) Operation of the program.

(A) Enrollment in the program is optional with the parents of the student.

(B) The program shall be operated on a one-half day basis, a minimum of three hours each day, for the eight weeks. The eight weeks shall be consecutive and may end no more than one week prior to the first duty day for teaching personnel.

(C) The student/teacher ratio for the program districtwide shall not exceed 18 to one.

(D) A district is not required to provide transportation for the summer program.

(E) Teachers shall possess certification or endorsement as required in §89.1250 (relating to Staffing and Staff Development).

(F) Reporting of student progress during the eight-week term shall be determined by the board of trustees. A summary of student progress shall be provided to parents at the conclusion of the program. This summary shall be provided to the student's teacher at the beginning of the next regular school term.

(G) A district may join with other districts in cooperative efforts to plan and implement programs.

(H) The summer school program shall not substitute for any other program required to be provided during the regular school term.

(4) Funding and records for programs.

(A) A district shall use state and local funds for program purposes. The Improving Americas Schools Act, Title VII bilingual, Title I migrant, or Title I regular or other available federal funds may be used to supplement the program.

(i) Available funds appropriated by the legislature from the Foundation School Program for the support of summer school programs provided under the Texas Education Code, §29.060, shall be allocated to school districts in accordance with this subsection.

(ii) Funding for the summer school program shall be on a unit basis in such an allocation system to ensure a pupil/teacher ratio of not more than 18 to one. The numbers of students required to earn units shall be established by the commissioner of education. The allotment per unit shall be determined by the commissioner based on funds available.

(iii) Any district required to offer the program under paragraph (2)(A) of this subsection that has less than ten students district-wide desiring to participate is not required to operate the program. However, those districts must demonstrate that they have aggressively attempted to encourage student participation.

(iv) Payment to districts for summer school programs shall be based on units employed and shall be made through the regular foundation program payment.

(v) Districts shall apply to the commissioner of education for funding of summer school programs operated under this subsection. Applications for funding shall contain the number of students who will participate in the program and other information necessary to assure the commissioner that programs will be operated in accordance with this subsection.

(B) A district shall maintain records of eligibility, attendance, and progress of students.

§89.1255. Local Plan.

(a) The commissioner of education shall be authorized to approve locally developed plans to meet the needs of limited English proficient students.

(b) A local plan submitted by a district shall demonstrate:

(1) that the local program submitted under §89.1205(b)(2) of this title (relating to Required Bilingual Education and English as a Second Language Programs) is a dual language program which meets the affective, linguistic, and cognitive needs of the limited English proficient students;

(2) that the local program submitted under §89.1205(e)(2) of this title (relating to Required Bilingual Education and English as a Second Language Programs) is an intensive program of English language development and provides appropriate instruction in all subjects or courses to be taken by the limited English proficient students;

(3) that the program submitted demonstrates innovative approaches for the provision of educational programs for limited English proficient students, such as coordination of fiscal and instructional resources, alternative exit criteria, implementation of effective schools research, site-based management, performance and outcome-based education, continuing education, and bilingual education technology;

(4) that the program submitted provides for intensive staff development to ensure that the staff is prepared to implement the program as designed;

(5) that the program submitted is based on valid research and includes a comprehensive evaluation plan to determine that the program meets the affective, linguistic, and cognitive needs of the limited English proficient students; and

(6) that the program submitted provides regular, systematic, and ongoing parental involvement and training.

(c) Districts which intend to implement a local program shall submit a description of the proposed district-wide program to the commissioner of education on or before the first day of June preceding its proposed implementation the following school year. The description shall address all of the requirements of subsection (b) of this section which are applicable to the program being proposed. Approval shall be negotiated based on the quality and comprehensiveness of the proposed program.

(d) Local plans may be approved for one to three years. The Texas Education Agency (TEA)shall monitor the local program prior to the expiration of its approval. Districts which do not implement the approved local program shall be required to implement the required program described in this subchapter. Approval may also be withdrawn if the evaluation of the program does not demonstrate that the affective, linguistic, and cognitive needs of the limited English proficient students participating in the local program are met; in this case, the district shall implement the required program described in this subchapter.

(e) The commissioner of education shall report to the State Board of Education (SBOE) in September of each year the number and location of the local programs and effectiveness achieved in the prior year as appropriate.

§89.1260. Monitoring of Programs and Enforcing Law and State Board of Education Rules.

(a) Texas Education Agency (TEA) staff who are trained in assessing bilingual education and English as a second language programs shall monitor each school district in the state and enforce this subchapter in accordance with the Texas Education Code, §29.062.

(b) To ensure a comprehensive monitoring and assessment effort of each district at least every three years, data reported by the district in the Public Education Information Management System (PEIMS), data required by the commissioner of education, and data gathered through on-site monitoring will be used.

§89.1265. Evaluation.

(a) All districts required to conduct a bilingual education or English as a second language program shall conduct periodic assessment and continuous diagnosis in the languages of instruction to determine program impact and student outcomes in all subject areas.

(b) Annual reports of educational performance shall reflect the academic progress in either language of the limited English proficient students, the extent to which they are becoming proficient in English, the number of students who have been exited from the bilingual education and English as a second language programs, and the number of teachers and aides trained and the frequency, scope, and results of the training. These reports shall be retained at the district level to be made available to monitoring teams according to §89.1265 of this title (relating to Monitoring of Programs and Enforcing Law and State Board of Education Rules).

(c) Districts shall report to parents the progress of their child as a result of participation in the program offered to limited English proficient students in English and the home language at least annually.

(d) Local programs approved under §89.1260 of this title (relating to Local Plan) shall develop a comprehensive evaluation design which utilizes formative and summative evaluative processes and specifically details performance measures for the limited English proficient students proposed to be served each year.

(e) Each school year, the principal of each school campus, with the assistance of the campus level committee, shall develop, review, and revise the campus improvement plan described in the Texas Education Code, §11.253, for the purpose of improving student performance for limited English proficient students.

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 February 14, 1996.

TRD-9602114
Criss Cloudt
Assistant Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

Part XII. Board of Vocational Nurse Examiners

Chapter 235. Licensing

Subchapter

Issuance of Licenses

22 TAC §235.49

The Board of Vocational Nurse Examiners proposes an amendment to §235.49 relative to Emeritus Licenses. The rule is amended to reflect new active and current Texas licensure requirements.

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

Mrs. Bronk has also determined that for each of the first five years the rule is in effect, the public benefit anticipated will be consistency and rules that clarify current requirements. Comments on the proposed amendment may be submitted to Marjorie A. Bronk, R.N., M.S.H.P., Executive Director, Board of Vocational Nurse Examiners, 333 Guadalupe Street, Suite 3-400, Austin, Texas 78701 (512) 305-8100.

The amendment is proposed under Texas Civil Statutes, Article 4528c, §5(h), 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.

No other statute, article or code will be affected by this proposal

§235.49. Emeritus License.

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

(c) In the event that a request is made to reactivate from an emeritus status, the licensee must follow the requirements for the delinquent or inactive renewal, according to §235.48 of this title (relating to Reactivation of a License).

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 February 13, 1996.

9602115
Marjorie A. Bronk, R.N., M.S.H.P.
Executive Director
Board of Vocational Nurse Examiners
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-8100

Part XVI. Texas Board of Physical Therapy Examiners

Chapter 323. Applications Review Committee

22 TAC §323.4

The Texas Board of Physical Therapy Examiners proposes an amendment to §323.4, concerning Applications Review Committee. This amended section identifies the board-approved credentialing review agencies.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect to state or local government as a result of enforcing the rule.

Mr. Maline 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 qualified credential reviews for foreign-trained applicants seeking licensure in Texas. There will be no effect to small business. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this new section.

§323.4. Applications Review Committee.

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

(f) The board approved credentialing review agencies are International Credentialing Associates (ICA) and International Consultants of Delaware (ICD).

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 February 16, 1996.

TRD-9602278
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-6900

Chapter 325. Organization of the Board

22 TAC §325.7

The Texas Board of Physical Therapy Examiners proposes new§ 325.7, concerning the board member terms. The new section determines when a professional board member's term expires, and brings the expiration dates into compliance with Section 2 of the Texas Physical Therapy Practice Act.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline 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 consistent availability of board members who are knowledgeable of board rules and policies.

Comments on the proposed rule may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The new section is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this new section.

§325.7. Board Member Terms.

To comply with the intent of Section 2. of the Texas Physical Therapy Practice Act, one professional member whose term expires January 31, 1997 will extend to January 31, 1999. Two professional members whose terms expire January 31, 1999 will extend to January 31, 2001.

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 February 16, 1996.

TRD-9602272
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-6900

Chapter 329. Licensing Procedure

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amending § 329.1, concerning Licensing Procedures. This amended section requires applicants to complete atleast 60 hours in non-physical therapy course work and an examination on rules published by the board.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline 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 licensed physical therapists and physical therapist assistants who are qualified to practice physical therapy in Texas.

Comments on the proposed rule may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amended section.

§329.1. General Licensing Procedure.

(a) Applications.

(1) The board office will receive completed applications from persons seeking licensure under the Act. Applications shall be examined by the executive director for conformity with rules and regulations governing applications for licensure as established by the board. Applications shall include:

(A) official transcripts from colleges and/or universities. ***For physical therapists the transcripts must include evidence that the applicant has completed 60 semester hours credit or the equivalent in general education from an accredited institution of higher learning.***

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

(E) a completed board prepared jurisprudence examination covering the Texas Physical Therapy Practice Act and Texas Board of Physical Therapy Examiners Rules. The test will be scored and returned to the licensee with their license.

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

(b)-(f) (No change.)

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

Issued in Austin, Texas, on February 16, 1996.

TRD-9602273
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-6900

Chapter 337. Display of License

22 TAC §337.2

The Texas Board of Physical Therapy Examiners proposes an amendment § 337.2, concerning the Consumer Information Sign. This amended section informs consumers of the board's new address and requires that a consumer information sign be displayed in all locations where physical therapy is administered.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline 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 availability of the board's telephone number and address when there is a need to file a complaint or obtain information about the practice of physical therapy.

Comments on the proposed rule may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amended section.

§337.2. Consumer Information Sign.

(a) There shall at all times be prominently displayed in the place of business of each licensee a sign containing the name, mailing address, and telephone number of the board and a statement informing consumers that complaints against licensees can be directed to the board.

(b) The consumer information sign shall read: Complaints regarding non-compliance with the Texas Physical Therapy Practice Act can be directed to Texas Board of Physical Therapy Examiners, ***333 Guadalupe Suite 2-510, Austin, TX 78701 800-821-3205 (tollfree, for complaints only) or 512-305-6900*** [3001 S. Lamar Blvd., Suite 101, Austin, Texas 78704]. The minimum size of the sign shall be five inches by seven inches.

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 February 16, 1996.

TRD-9602275

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: March 29, 1996

For further information, please call: (512) 305-6900

Chapter 341. License Renewal

22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes an amendment to § 341.1, concerning License Renewal. This amended section requires licensees to complete and return to the board office an examination on rules published by the board.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline 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 licensed physical therapists and physical therapist assistants who are knowledgeable of board rules.

Comments on the proposed rule may be submitted to Gerard Swain, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amended section.

§341.1. Requirements for Renewal.

(a) Biennial renewal. Licensees are required to renew their licenses biennially by the end of the month in which they were originally licensed. Continuing Education Units (CEUs) are required to be submitted with renewal applications. ***Licensees are also required to complete and return to the board office with the renewal application a board-prepared jurisprudence examination covering the Texas Physical Therapy Practice Act and Texas Board of Physical Therapy Examiners Rules. The test will be scored and returned to the licensee with the renewal certificate.***

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

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

[(d) CEU requirements must be completed in the biennium preceding the licensee's biennial renewal month.]

(d)[(e)] The original program completion document must be retained by the licensee. This document must be signed and certified by the authorized person as per the course application. It shall include the:

(1) licensee's name as printed on the renewal certificate;

(2) license number of the licensee;

(3) program date(s); and

(4) CEU credits awarded.

(e)[(f)] Copies of the original program completion document must be submitted to prove compliance with the required CEUs for the previous biennium. These documents must be submitted with the biennial license renewal.

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 February 16, 1996.

TRD-9602274

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: March 29, 1996

For further information, please call: (512) 305-6900

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.11, concerning Continuing Education. The amendment is being proposed in order to simplify the wording of the rule, to clarify the categories of programs, to broaden the listing of recognized organizations providing continuing education, to state the number of continuing education hours that will be given for authoring a published book, editing a book or writing a book chapter and to include the necessity for a Continuing Education Declaration Form to be submitted with annual renewal forms from all certificands/licensees.

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

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit

anticipated as a result of enforcing the section will be to ensure that all certificands/licensees are aware of the exact number of continuing education hours awarded in specific areas, to ensure that the information submitted by certificands/licensees to comply with the continuing education requirement is uniform, and to make the rule easier to understand by all certificands/ licensees and the general public. 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 Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§461.11. Continuing Education.

(a) Requirements. All certificands/licensees of the Board ***must*** [are obligated to] continue their professional education ***by completing*** [beyond the years of formal degree related training. Each certificand/licensee is required to obtain] 12 hours of continuing education ***for each*** [credits per] year***that they hold a certificate and/ or license from the Board. Of these*** [These] 12 hours ***, four*** must be***acquired through a formal continuing education program as defined*** [received from programs as detailed] in***paragraph*** [paragraphs] (1) [and (2)] of this subsection . ***The remaining eight hours may be from either formal programs*** [with a minimum of four hours of continuing education received from a formal continuing education program] as defined in paragraph (1) of this subsection***or from other continuing education experiences as defined in paragraph (2) of this subsection.***

(1) Formal Continuing Education***Programs (Category I)*** [Program].***This category may be fulfilled by completing or presenting*** [Attendance and completion of relevant formally organized accredited workshops or courses or presentation of such] a workshop or course ***from a recognized organization*** [for a one-time credit only].***To count under this category, the course or workshop must have*** [There must be] a pre-assigned number of continuing education [credit] hours [under the auspices of:]. ***Examples of recognized organizations include:***

(A) regionally accredited ***institutions*** [institution] of higher education;

(B) ***the*** American Psychological Association;

(C) National Psychological Associations;

(D)[(C)] Regional Psychological***Associations*** [Association];

(E)[(D)] State Psychological***Associations*** [Association];

(F)[(E)] Local Psychological Associations;

(G)[(F)] ***the*** American Medical Association; ***or***

(H)[(G)] other recognized professional bodies or groups.

(2) Other Continuing Education Experiences ***(Category II). This category may be fulfilled by acquiring*** [The Board will accept a maximum of eight hours of] continuing education ***hours*** [received] from the ***four*** [five] categories***as described in subparagraphs (A)-(D) of this paragraph*** [of continuing education experiences found in this paragraph. The categories of continuing education experiences and the number of hours of continuing education for each category are as follows]:

(A) Meetings. ***Attendance or presentation at*** [Registered attendance at relevant] professional meetings ***relating to psychology*** [(international, national, regional, state, local)]. Three hours per day***for attendance; actual number of hours spent, with a maximum of three, per presentation.***

(B) Workshops, seminars and courses. ***Attendance or presentation*** [Registered attendance] at [relevant non- accredited] workshops, seminars or academic courses ***relevant to psychology not included in paragraph (1) of this subsection.*** Number of actual [attendance] hours ***for attendance; actual number of hours spent, with a maximum of three, per presentation.***

(C) Publications. ***Articles***[Books, articles] published by applicant in relevant professional books, journals, or periodicals-***four hours.*** [Three hours in a non-refereed journal; six hours in a refereed journal.] ***Books authored or co-authored and published by a publishing company - nine hours. Editing a book or writing a book chapter - six hours.***

[(D) Presentations. Presentations by applicant at relevant professional meetings (international, national, regional, state, or local). Number of clock hours for a maximum of three hours per presentation.]

(D)[(E)] Individual Study. Self- study of professional materials including relevant books, journals, periodicals, tapes, and other materials, and preparation of relevant lectures and talks to public groups. Preparation credit may not be claimed under this category for presentation credited under paragraph (1) of this subsection. Four hours maximum.

(3) No change.

(b) Banking. Continuing education hours received from formal continuing education programs (See subsection (a)(1) of this section) ***in excess of 12 hours during any one year period*** may be [stored or] banked ***for no longer than three years*** [over a three year period]. For example, if a formal continuing education program offering 30 hours is taken in one year, up to 12 hours may be submitted for that year and the remaining hours saved for distribution over the next two years.

(c) Documentation. The Board will accept as documentation of continuing education:

(1) No change.

(2) for hours received from other continuing education experiences (see subsection (a)(2) [(1)(2)] of this section) ***documentation*** [a registration receipt] from the workshop, seminar, course and/or meeting will be required; the table of contents or the article [in its entirety] will be required for ***publications*** [publications/presentations].

(d) ***Declaration Form*** [Audit]. Licensees/certificands will sign ***and submit a completed Continuing Education Declaration***

Form with the annual [a declaration on their] renewal form ***specifying the continuing education they received for that period. This does not alter the responsibility of licensees/certificands to reply truthfully to any question concerning continuing education on the renewal form itself*** [stating that they have met the continuing education requirements, and they will maintain continuing education records for five years. The Board will audit 10% of licensees/ certificands each year for compliance with the continuing education requirements. Upon receipt of an audit notification, the requested compliance documentation will be mailed to the Board's office along with the annual renewal notice and renewal fees in order to renew and avoid non- compliance penalties].

(e) Record Maintenance. Licensees/certificands shall maintain continuing education records for five years.

(f) Audit. The Board will audit 10% of licensees/certificands each year for compliance with the continuing education requirements. The Board will notify a licensee or certificand by mail that they have been selected for an audit. Upon receipt of an audit notification, the licensee or certificand must mail the requested proof of his/her compliance with annual continuing education requirements back to the Board along with his/her annual renewal notice and renewal fees in order to renew and avoid non-compliance penalties. All licensees/ certificands shall comply with any Board requests for documentation and information concerning compliance with continuing education and/or Board audits.

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

Issued in Austin, Texas, on February 15, 1996.

9602283
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-7700

♦ ♦ ♦

Chapter 463. Applications

22 TAC §463.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.5, concerning Application File Requirements. The amendment is being proposed in order to clarify the wording of the rule and to add the requirements for the Licensed Specialist in School Psychology, as well as the requirements for a temporary license/certificate.

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

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be make the rule easier to understand and follow by all licensees/certificands and the general public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§463.5. Application File Requirements.

An application file must be complete and contain whatever information or examination results the Board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If certification or licensure is sought again, a new application and filing fee must be submitted. ***No applicant can have more than one application as described in paragraphs (2), (3) and/or (5) of this section*** [An applicant cannot have two types of applications for certification or licensure] pending before the Board ***at one time. For any applicant against whom a complaint is filed with this Board, any final decision on the application will be held in abeyance until the Board has made a final determination on the complaint filed. The applicant will be permitted to take all required exams as scheduled but will not be certified or licensed until approved by the Board.***

(1) All Applications. Unless specifically stated otherwise by Board rule, all applications for licensure and certification by the Board must contain:

(A) An application and required fee(s);

(B) Two current passport pictures of the applicant;

(C) Official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;

(D) Documentation that applicant has complied with Board Rule 463.10 of this title (relating to Written Examinations Required);

(E) Three acceptable reference letters from three different psychologists, two of whom are licensed;

(F) Supportive documentation and other materials the Board may deem necessary, including the name of all jurisdictions where the applicant currently holds a certificate or license to practice psychology; and

(G) A written explanation and/or meeting with the Board, prior to final approval, if the application file contains any negative reference letters. *(2)*[(1)] *Licensed Psychological Associate.* A completed application for licensure as a psychological associate includes, ***in addition to the requirements set forth in paragraph one of this section, documentation of four hundred and fifty clock hours of practicum internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist.***[:]

[(A) An application and required fee(s).]

[(B) Two current passport pictures of the applicant.]

[(C) Official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed.]

[(D) Three acceptable reference letters from three different psychologists, two of whom are licensed. An applicant whose file contains any negative reference letters will be asked to provide a written explanation and/or meet with the Board prior to final approval of the application file.]

[(E) Supportive documentation and other materials the Board may deem necessary, including the name of all jurisdictions where the applicant currently holds a certificate or license to practice psychology.]

[(F) Documentation of four hundred and fifty clock hours of practicum internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist.] *(3)*[(2)] ***Certified Psychologist.*** A completed application for certification as a psychologist includes, ***in addition to the requirements set forth in paragraph one of this section, an official transcript which indicates that the applicant has received a doctoral degree in psychology and meets the requirements of either ˇ11(b) or (c) of the Psychologists' Certification and Licensing Act, for the State of Texas.***[:]

[(A) An application and required fee(s).]

[(B) Two current passport pictures of the applicant.]

[(C) Official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed.]

[(D) Three acceptable reference letters from three different psychologists, two of whom are licensed. An applicant whose file contains any negative reference letters will be asked to provide a written explanation and/or meet with the Board prior to final approval of the application file.]

[(E) Supportive documentation and other materials the Board may deem necessary, including the names of all jurisdictions where the applicant currently holds a certificate or license to practice psychology.] *(4)*[(3)] ***Oral Exam.*** A completed application for the Oral Exam includes an application, current passport picture of the applicant and required fee. *(5)*[(4)] ***Licensed Psychologist.*** A completed application for licensure as a psychologist includes , ***in addition to the requirements set forth in paragraph one of this section*** :

(A) ***An official transcript which indicates that the applicant has received a doctoral degree in psychology and meets the requirements of either ˇ11(b) or (c) of the Psychologists' Certification and Licensing Act, for the State of Texas.*** [An application and required fee.]

(B) Documentation indicating passage of the [Examination for the Professional Practice of Psychology, the Board's Jurisprudence Examination, and the] Board's Oral Exam.

(C) Documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board.

[(D) A written explanation and/or meeting with the Board, prior to final approval, if the application file contains any negative reference letters.]

[(E) Supportive documentation and other materials the Board may deem necessary.]

(6) Licensed Specialist in School Psychology. A completed application for licensure as a specialist in school psychology includes, in addition to the requirements set forth in paragraph one of this section:

(A) ***One of the following:***

(i) Documentation from the National School Psychologists' Certification Board sent directly to the Board indicating the applicant holds current valid certification as a National Certified School Psychologist; or

(ii) The transcripts submitted must verify that the applicant has met the requirements set forth in ˇ463.32 of this title (relating to Licensed Specialist in School Psychology); and,

(B) ***If the applicant did not graduate from either a training program accredited by the National Association of School Psychologists or a training program in school psychology accredited by the American Psychological Association, proof of the internship required by Board Rule 463.32 of this title (relating to Licensed Specialist in School Psychology).***

(C) ***Documentation sent directly from the Education Testing Service of the score that the applicant has received on the School Psychology Examination.*** *(7)*[(5)] ***License/Certificate by Reciprocity.*** A completed application for certification ***or*** [and] licensure by reciprocity [as a psychologist] ***with this Board must include*** [includes], ***in addition to the requirements in paragraph one of this section***:

[(A) An application, required fee and two current passport size pictures of the applicant;]

[(B) Official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;]

(A)[(C)] If ***the applicant is*** providing psychological services in Texas before receiving ***licensure or certification by the Board*** [license], ***proof that the applicant is*** [must be] employed in an exempt agency, or ***holds*** [must have] a ***temporary*** [provisional] license ***or certificate***, or ***is being*** [must be] supervised by a licensed psychologist in an acceptable setting which is appropriate for the education/experience background of the applicant;

(B)[(D)] Documentation that ***the*** applicant is currently licensed and has been in good standing in one jurisdiction for the five years immediately preceding filing application in Texas;

(C)[(E)] Proof that ***the*** applicant is the identical person to whom the original license was issued;

(D)[(F)] Documentation that there is no pending action against the applicant's license in any jurisdiction;

(E)[(G)] A sworn statement ***by the applicant*** that ***the*** applicant has never ***held*** [had] any professional license ***that was*** suspended, revoked, cancelled, or ***in any way*** otherwise restricted;

(F)[(H)] Three professional reference letters from three separate psychologists, two of whom are licensed, each of whom must attest without reservation to the applicant's professional competence, ethics, and current fitness to practice. An applicant whose file contains any negative reference letters will be asked to provide a written

explanation and/or to meet with the Board prior to final approval of the application file;

(G)[(I)] If licensed in a foreign country, proof that the requirements of Board Rule 463.17 of this title (relating to Foreign Graduates) have been satisfied.

(8) Temporary License/Certificate.

(A) An application file must be complete and contain whatever information or examination results the Board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If a temporary license or certificate is sought again, a new application and filing fee must be submitted. An application for permanent licensure must be on file with the Board.

(B) A completed application for a temporary license or certificate must include, in addition to the requirements stated in paragraph one of this section for all applicants:

(i) a statement which has a notary seal or a state seal from the appropriate psychology licensing agency in another jurisdiction confirming that the applicant has an active license/certificate and is in good standing with that jurisdiction;

(ii) an official notification directly from the appropriate professional examination service that the applicant has passed the required appropriate examination with a score that meets or exceeds the cut-off score in Texas at the time the application is filed with the Board; and

(iii) proof that the requirements for licensure/certification in the other jurisdiction are substantially equal to those prescribed by the Psychologists' Certification and Licensing Act for the State of Texas.

(C) In addition to the requirements listed in subparagraph (B) of this paragraph, all applications must include the following:

(i) For temporary licensure as a psychological associate, official transcripts sent directly to the Board's office from all colleges/ universities where post-baccalaureate course work was completed as found in Board Rule 463.8 of this title (relating to Education Requirements for the Licensed Psychological Associate); or

(ii) For temporary certification or licensure as a psychologist, an official transcript which indicates that an applicant has received a doctoral degree in psychology and meets the requirements of either 11(b) or (c) of the Psychologists' Certification and Licensing Act, for the State of Texas.

(iii) For temporary licensure as a Licensed Specialist in School Psychology, proof that the individual has been certified as a National Certified School Psychologist, or official transcripts sent directly to the Board from all colleges/universities where applicant completed post- baccalaureate course work verifying the requirements set forth in Board Rule 463.32 of this title (relating to Licensed Specialist in School Psychology); and, if the applicant did not graduate from either a training program accredited by the National Association of School Psychologists or a training program in school psychology accredited by the American Psychological Association, proof of the internship required by Board Rule 463.32 of this title (relating to Licensed Specialist in School Psychology).

[(6) For any applicant who has a complaint filed against the applicant, any final decision on the application will be held in abeyance until the Board has made a final determination on the complaint filed. The applicant will be permitted to take all required exams as scheduled but will not be certified or licensed until approved by the Board.]

(9) Applications for grandparenting as a licensed specialist in school psychology must include the information required in Board Rule 463.32 of this title (relating to Licensed Specialist in School Psychology).

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

Issued in Austin, Texas, on February 15, 1996.

9602284
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-7700

♦ ♦ ♦

22 TAC §463.8

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.8, concerning Educational Requirements for the Licensed Psychological Associate. The amendment is being proposed in order to clarify that the rule applies to the education requirements of psychological associates only and not to any other subdoctoral license issued by the Board.

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

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to better inform the public of the Board's licensing requirements for licensed psychological associates. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§463.8. ***Educational*** *[Subdoctoral Licensure Education] Requirements* ***for the Licensed Psychological Associate.*** The Board requires a master's degree which is primarily psychological in nature of at least 42 semester credit hours for subdoctoral licensure. Of these forty-two hours, at least 27 graduate level semester credit hours (exclusive of practicum) must have been in psychology. Six semester credit hours of thesis credit in a department of psychol-

ogy may be counted toward these 27 semester credit hours. Four hundred and fifty clock hours of practicum, internship, or experience in psychology, in not more than two placements, supervised by a licensed psychologist, must be completed before the written exam may be taken. No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered for psychological associate licensure. Applicants who have a master's degree in psychology conferred from a psychology program in a regionally accredited educational institution, and who have not satisfied the Board's requirements, will be given an opportunity to satisfy the current requirements of the Board. Requirements include:

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

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

Issued in Austin, Texas, on February 15, 1996.

9602285
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §463.10

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.10, concerning Required Written Examinations Administered by the Board. The amendment is being proposed in order to consolidate rules regarding the written examinations required for applicants for licensure/certification.

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

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to make the rules easier to understand and follow and to better inform the public of the Board's licensing requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§463.10. ***Required*** *Written Examinations* ***Administered by the Board*** *[Required].*

(a) ***Jurisprudence Examination. All applicants for permanent certification or licensure by the Board are required to pass the Jurisprudence Examination prior to certification or licensure. Applications for certification or licensure by reciprocity may take the Jurisprudence Examination at times mutually agreed upon between them and the Board's office. All other applicants must take the examination at the times regularly scheduled by the Board.***

(b) All applicants for certification as a psychologist or licensure as a psychological associate are required to pass the Examination for the Professional Practice ***in*** [of] Psychology ***in addition to*** [and] the Board's Jurisprudence Examination prior to the Board granting certificates/licenses.

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

Issued in Austin, Texas, on February 15, 1996.

9602286
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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22 TAC §463.30

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

The Texas State Board of Examiners of Psychologists proposes the repeal of §463.30, concerning Jurisprudence Examination for Applications for Certification and Licensure by Reciprocity or Application for Provisional License/Certificate. The repeal is being proposed because the Board is consolidating the rules dealing with written examinations.

Rebecca E. Forkner, 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.

Ms. Forkner 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 to make the rules easier for licensees/certificands and the general public to follow and understand. 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 Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The repeal is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed repeal does not affect other statutes, articles, or codes.

§463.30. Jurisprudence Examination for Applications for Certification and Licensure by Reciprocity or Application for Provisional License/Certificate.

[Applicants for certification and licensure by reciprocity or applicants for provisional license/certificate may take the Jurisprudence Examination at times mutually agreed upon between them and the Board's office. All applicants for certification and licensure as a psychologist by reciprocity are required to pass the Jurisprudence Examination prior to the Board granting certification and licensure by reciprocity.]

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

Issued in Austin, Texas, on February 15, 1996.

9602287
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-7700

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22 TAC §463.31

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

The Texas State Board of Examiners of Psychologists proposes the repeal of §463.31, concerning Provisional License/Certificate Application File Requirements. The repeal is being proposed because the Board is consolidating the rules dealing with application requirements.

Rebecca E. Forkner, executive eirector, 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.

Ms. Forkner 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 to make the rules easier for licensees/certificands and the general public to follow and understand. 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 Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The repeal is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed repeal does not affect other statutes, articles, or codes.

§463.31. Provisional License/Certificate Application File Requirements.

[An application file must be complete and contain whatever information or examination results the Board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If a provisional license or certificate is sought again, a new application and filing fee must be submitted. An application for licensure as a psychological associate, certification as a psychologist, or licensure as a psychologist must be on file with the Board.

(1) A completed application for a provisional license as a psychological associate includes:

(A) an application and required fee(s) for provisional license as a psychological associate;

(B) two current passport pictures of the applicant;

(C) official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed as found in Board Rule 463.8 of this title (relating to Subdoctoral Certification Education Requirements);

(D) a statement which has a notary seal or a state seal from the appropriate psychology licensing agency in another jurisdiction confirming that the applicant has an active license/certificate [as a psychological associate], and is in good standing with that jurisdiction;

(E) an official notification directly from the Professional Examination Service that the applicant has passed the Examination for the Professional Practice of Psychology with a score that meets or exceeds the cut-off score in Texas at the time the application is filed with the Board;

(F) a notarized statement from a psychologist licensed in the State of Texas confirming that the psychologist sponsors the applicant;

(G) a notarized statement from a psychologist, licensed in the State of Texas, confirming that the applicant will practice with the psychologist until receiving a permanent license from the Board; and

(H) proof that the requirements for licensure/certification as a psychological associate in the other jurisdiction are substantially equal to those prescribed by the Psychologists' Certification and Licensing Act for the State of Texas.

(2) A completed application for provisional certification as a psychologist includes:

(A) an application and required fee(s) for provisional certification as a psychologist;

(B) two current passport pictures of the applicant;

(C) an official transcript from the regionally accredited educational institution which indicates that an applicant has received a doctoral degree in psychology and meets the requirements of the Psychologists' Certification and Licensing Act, ˇ11(b) or (c) for the State of Texas;

(D) a statement which has a notary seal or a state seal from the appropriate psychology licensing agency in another jurisdiction confirming that the applicant has an active license/certificate as a psychologist, is in good standing with that jurisdiction;

(E) an official notification directly from the Professional Examination Service that the applicant has passed the Examination for the Professional Practice of Psychology with a score that meets or exceeds the cut-off score in Texas at the time the application is filed with the Board;

(F) a notarized statement from a psychologist licensed in the State of Texas confirming that the psychologist sponsors the applicant;

(G) a notarized statement from a psychologist, licensed in the State of Texas, confirming that the applicant will practice under the supervision of the/a psychologist; and

(H) proof that the requirements for licensure/certification as a psychologist in the other jurisdiction are substantially equal to those prescribed by the Psychologists' Certification and Licensing Act for the State of Texas.

(3) A completed application for provisional license as a psychologist includes:

(A) an application and required fee(s) for provisional licensure as a psychologist;

(B) two current passport pictures of the applicant;

(C) an official transcript from the regionally- accredited educational institution which indicates that an applicant has received a doctoral degree in psychology and meets the requirements of the Psychologists' Certification and Licensing Act, ˇ11(b) or (c) for the State of Texas;

(D) a statement which has a notary seal or a state seal from the appropriate psychology licensing agency in another jurisdiction confirming that the applicant has an active license to practice psychology and is in good standing with that jurisdiction;

(E) an official notification directly from the Professional Examination Service that the applicant has passed the Examination for the Professional Practice of Psychology with a score that meets or exceeds the cut-off score in Texas at the time the application is filed with the Board;

(F) a notarized statement from a psychologist licensed by the Board confirming that the psychologist sponsors the applicant;

(G) a notarized statement from a psychologist, licensed in the State of Texas, that the applicant will practice with the psychologist until receiving a permanent license as a psychologist from the Board; and

(H) proof that the requirements for licensure/certification as a psychologist in the other jurisdiction are substantially equal to those prescribed by the Psychologists' Certification and Licensing Act for the State of Texas.

(4) In addition to the requirements stated in paragraphs (1) - (3) of this subsection, applicants for provisional license as a psychological associate or provisional certification as a psychologist must have taken and passed the Jurisprudence Examination as administered by the Texas State Board of Examiners of Psychologists prior to their receiving a provisional license/certificate; applicants for provisional license as a psychologist must have taken and passed the Jurisprudence Examination as well as the Oral Examination as administered by the Texas State Board of Examiners of Psychologists prior to their receiving a provisional license as a psychologist.]

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

Issued in Austin, Texas, on February 15, 1996.

9602288
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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Chapter 469. Specialty Certification

Subchapter

22 TAC §469.2

The Texas State Board of Examiners of Psychologists proposes an amendment to §469.2, concerning Criteria for Health Service Provider in Psychology. The amendment is being proposed in order to allow expand the deadline for qualified individuals to obtain status as Health Service Providers.

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

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to enable more qualified professionals to obtain credentialing as Health Service Providers in psychology. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§469.2. Criteria for Health Service Provider in Psychology.

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

(c) For all individuals who hold a doctoral degree ***in psychlogy or the substantial equivalent thereof as defined in §463.16 of this title (relating to Degree Requirements for Certification of Psychologists)*** [from other than a department of psychology] and were enrolled in ***that*** a doctoral degree program prior to ***September 1, 1983*** [January 1, 1978], the following are the Board's requirements at the time of application for specialty certification as a Health Service Provider in Psychology:

(1) the psychologist must be currently licensed by the Texas State Board of Examiners of Psychologists ***and have five years,***

***full-time, licensed experience as a psychologist in providing health services to the public with no violations of licensure*;

(2) the psychologist must have completed not less than two years ***(3,000 hours)*** [1,500 hours each year] of supervised ***psychological*** experience in health ***services*** [service], of which at least one year ***(1,500 hours) was in an organized health service training program or internship*** [is post-doctoral] and one year ***(1,500 hours) was at the post-doctoral level at a site where health services were provided*** [(may be post-doctoral) is in an organized health service training program]; and

(3) two supportive letters of recommendation from ***licensed*** Health Service Providers in Psychology who are familiar with the applicant's work ***or from health care organizations for whom the applicant has provided health services as a psychologist*** are required.

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

Issued in Austin, Texas, on February 15, 1996.

9602289
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-7700

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Chapter 473. Fees

Subchapter

22 TAC §473.1

The Texas State Board of Examiners of Psychologists proposes an amendment to §473.1, concerning Application Fees. The amendment is being proposed in order to reflect changes made in the Psychologists' Certification and Licensing Act by the 74th Legislature.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Forkner also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the fee for temporary licensure or certification by the Board and the fee for the new category of licensed specialist in school psychology. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be in direct proportion to the type of license or certificate for which the person is applying.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, (512) 305-7700.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

The proposed amendment does not affect other statutes, articles, or codes.

§473.1. Application Fees. (Not refundable)

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

(e) ***Temporary*** [Provisional] License/Certificate-$260

(f) (No change.)

(g) Licensed Specialist in School Psychology (including grandparenting)-$180

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

Issued in Austin, Texas, on February 15, 1996.

9602290
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
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For further information, please call: (512) 305-7700

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Part XXV. Structural Pest Control Board

Chapter 591. General Provisions

22 TAC §591.21

The Texas Structural Pest Control Board proposes an amendment to §591.21, concerning definition of terms. The proposed amendment makes the definitions of apprentice and technicians consistent with other sections of the Regulations.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule. There is no effect on state government for the first five-year period the rule will be in effect. There is no effect on local government for the first five-year period the rule will be in effect.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be greater understanding and consistency in licensing of non-certified persons. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758

The amendment is proposed under Texas Civil Statutes, Article 135b-6, which provide the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following is the articles that are affected by the rule: 591.21 Article 135b-6 593.21 Article 135b-6 595.2 Article 135b-6 595.3 Article 135b-6.

§591.21. Definition of Terms.

In addition to the definitions set out in the Structural Pest Control Act, Section 2, the following words, names, and terms shall have the following meanings, unless the context clearly indicates otherwise.

[Applicant- Any person making application for license or credentials from the Board].

Apprentice- A sales or service employee who has been registered with the Structural Pest Control Board, but has not yet passed a technician examination. An apprentice license is valid for a maximum of 12 months.

[Technician-Apprentice- A person in training to become a technician who has completed classroom and on-the-job training but has not yet passed the technician examinations. A technician-apprentice license is a temporary license good for only twelve months in any eighteen month 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 February 12, 1996.

TRD-9602079

Benny M. Mathis, Jr.

Executive Director

Structural Pest Control Board

Earliest possible date of adoption: March 29, 1996

For further information, please call: (512) 835-4066

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter L. General Administration

25 TAC §29.1129

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits proposed new §29.1129, concerning the coverage and reimbursement of mammography services. The new section defines the conditions for participation in the Texas Medical Assistance Program by mammography providers and physicians interpreting mammograms. Providers and physicians seeking reimbursement from the Texas Medical Assistance Program for mammography screening and diagnostic services must meet the registration and accreditation standards of the department's Bureau of Radiation Control and Compliance, the Food and Drug Administration's recognized accrediting body for the state of Texas, in accordance with the Mammography Quality Standards Act of 1992 (21 CFR 900 Subpart B-Quality Standards and Certification, ˇ900.12), Public Law 102-539.

Mr. Joe Moritz, health care financing budget director, has determined that for the first five-year period the proposed new section will be in effect there will be no net fiscal impact to state or local governments as a result of enforcing or administering the section because the scope of Medicaid benefits will not be expanded.

Mr. Moritz also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result for enforcing the section as proposed will be greater a higher level of accountability for medically necessary diagnostic services. There is no anticipated economic cost to small businesses or individuals who are required to comply with the proposed section. There is no anticipated effect on local employment.

Comments on the proposal may be sent to Everett Daniel, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 794-5140. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register.*

This new section is proposed under the Human Resources Code, §32.021 and Texas Civil Statues, Article 4413 (502), §16; provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and is submitted to the Texas Department of Health under is agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §17, Acts of the 72nd Legislature, First Called Session (1991).

The new section affects Chapter 32 of the Human Resources Code.

§29.1129. Provider Compliance with the Mammography Standards Act of 1992.

Providers seeking reimbursement from the Texas Medical Assistance Program for covered mammography screening and diagnostic services, must meet the registration and accreditation requirements of the department's Bureau of Radiation Control and Compliance, the recognized accrediting body for the state under the provisions of the Mammography Quality Standards Act of 1992, Public Law 102-539.

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 February 13, 1996.

TRD-9602089

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: March 29, 1996

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

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 7. Prepaid Higher Education Tuition Program

Subchapter I. Refunds, Termination

34 TAC §7.82

The Comptroller of Public Accounts proposes an amendment to §7.82, concerning termination of prepaid tuition contract. The amendment will revise the rule to provide that in instances

where the Beneficiary is at least 18 years of age, or has graduated high school or attained high school equivalency certification, only the Beneficiary may terminate the Contract.

The change is made in an attempt to ensure that purchasers of prepaid tuition contracts do not suffer adverse federal tax consequences in connection with the purchase of those contracts. The staff of the Prepaid Tuition Board has been advised that the ability to terminate the contract and receive a refund in an amount exceeding the total of all payments into the Fund for the terminated contract could be viewed by the Internal Revenue Service as creating the potential for adverse federal tax consequences to the purchaser. This potential is eliminated if only the beneficiary is authorized to terminate the contract in this situation.

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

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in clarifying and implementing current law to ensure that purchasers of prepaid tuition contracts do not suffer adverse federal tax consequences in connection with the purchase of prepaid tuition contracts. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Wardaleen Belvin, Director, Prepaid Higher Education Tuition Program, P.O. Box 13528, Austin, Texas 78711-3528.

This amendment is proposed under the Education Code, Chapter 54, Subchapter F, §54.618, which authorizes the board to adopt rules for the necessary for the implementation of Prepaid Higher Education Tuition Program.

The amendment implements the Education Code, Chapter 54, Subchapter F.

§7.82. Termination of Prepaid Tuition Contract.

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

(c) If the beneficiary is at least 18 years of age, or has graduated from high school or attained high school equivalency certification, [either the purchaser or] the beneficiary may terminate the prepaid tuition contract.

(d) (No change.)

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

Issued in Austin, Texas, on February 15, 1996.

9602204
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-4028

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 29. General Rules of Practice and Procedure

Rules of Practice and Procedure for Administrative Penalty Proceedings under Texas Civil Statutes, Article 6675d

22 TAC §§29.101-29.157

The Texas Department of Public Safety proposes new §;29.101-29.157, concerning contested case procedure. The new sections are necessary to implement the provisions of Article 6675d as adopted by Senate Bill 3 of the 74th Legislative Session, and establish procedures of contested case practice before the State Office of Administrative Hearings (SOAH).

New §29.101 Definitions: provides the definitions for the terms used in the contested case proceedings. New §29.102 Scope: describes the scope of the rules. New §29.103 Institution of Penalty Proceeding: describes the procedures for instituting a penalty proceeding. New §29.104 Filing of Documents: explains the requirements for filing documents with SOAH. New §29.105 Computation of Time: explains the method for computing time under the new sections. New §29.106 Agreements to be in Writing: explains the requirement that agreements in proceedings be in writing. New §29.107 Service of Notice of Hearing: explains the service requirements for serving a person who has been recommended for a penalty. New §29.108 Service of Pleadings and Motions: explains the requirements for serving pleadings and motions. New §29.109 Conduct and Decorum: explains the conduct requirements for hearings before SOAH. New §29.110 Classification of Parties: identifies the party designations in proceedings. New §29.111 Parties-in-Interest: identifies the parties at interest in a proceeding. New §29.112 Appearances Personally or by Representative: identifies who may appear in a proceeding. New §29.113 Classification of Pleadings: explains the classification of pleadings. New §29.114 Form and Content of Pleadings: explains the formal requirements for pleadings. New §29.115 Examination by the Judge: explains that the administrative law judge may examine pleadings to determine sufficiency. New §29.116 Motions: explains the requirements for motions. New §29.117 Amendments: explains the requirements to amend a pleading. New §29.118 Incorporation by Reference to Department Records: explains that the department records may be incorporated by reference into pleadings and motions. New §29.119 Consolidation: explains the procedure to consolidate proceedings. New §29.120 Informal Disposition: explains the methods and procedures available for informal resolution. New §29.121 Prehearing Conference: explains the procedure for holding a prehearing conference. New §29.122 Motions for Postponement, Continuance, Withdrawal, Dismissal, or Other Matters, explains the procedure for postponing a scheduled hearing. New §29.123 Venue: explains that the venue of proceedings shall be Austin, Texas. New §29.124 Presiding Officer: explains the powers and duties of the presiding officer. New §29.125 Order of Procedure:

explains the procedure for conducting a hearing. New §29.126 Reporters and Transcription: explains the procedure for reporting and transcription of proceedings. New §29.127 Formal Exceptions: explains that formal exceptions are not required in a proceeding. New §29.128 Dismissal Without Hearing: identifies the situations where the judge may dismiss a case without a hearing. New §29.129 Rules of Evidence: explains that the rules of evidence as provided in a nonjury trial shall apply in penalty proceedings. New §29.130 Documentary Evidence and Official Notice: explains the procedural requirements for documentary evidence and official notice of official documents. New §29.131 Prepared Testimony: explains the procedure for submitting prepared testimony. New §29.132 Limitations on Number of Witnesses: explains that the judge may limit the number of witnesses. New §29.133 Exhibits: explains the requirements for exhibits in proceedings. New §29.134 Offer of Proof: provides that a party may make an offer-of-proof to preserve a point of review. New §29.135 Discovery - General: explains the general requirements for discovery. New §29.136 Depositions: explains the requirements for depositions. New §29.137 Admissions of Facts and Genuineness of Documents: sets out the procedural requirements for requests for admissions submitted in penalty cases. New §29.138 Interrogatories: explains the procedural requirements for interrogatories in penalty cases. New §29.139 Discovery and Production for Inspection: explains the procedural requirements to submit a request to inspect documents held by another party. New §29.140 Discovery Motions and Sanctions: explains the requirements to compel discovery and obtain sanctions. New §29.141 Subpoena: explains the formal requirements for a subpoena. New §29.142 Failure to Attend Hearing; Default Judgment: explains the procedural requirements for taking a default judgment if a respondent fails to appear at hearing. New §29.143 Entry of Appearance, Continuance: provides the procedure by which a hearing may be postponed if a petitioner does not file an answer in a penalty proceeding. New §29.144 Proposal for Decision: explains the requirements for a proposal for decision. New §29.145 Proof of Attorney's Fees, Costs, and Expenses of the State: explains the procedure for the petitioner to obtain attorney fees, costs, and expenses of the state. New §29.146 Filing of Exceptions, Briefs, and Replies: provides the procedural requirements to file exceptions and replies to exceptions to a proposal for decision. New §29.147 Form and Content of Briefs, Exceptions, and Replies: explains the formal requirements for briefs, exceptions and replies to exceptions. New §29.148 Final Decisions and Orders: explains the procedure and contents of a final decision. New §29.149 Administrative Finality: explains the prerequisites for appeal of a decision. New §29.150 Motions for Rehearing: explains the time periods for filing a motion for rehearing. New §29.151 Rendering of Final Decision or Order: explains that a party will be notified by mail of a final decision and shall be presumed to have been notified on the date the notice is mailed. New §29.152 Judicial Review: explains the procedural requirements for a party to seek judicial review. New §29.153 The Record: identifies the contents of the record in a contested case. New §29.154 Certified Record: explains the procedure and cost assessment for obtaining a certified record. New §29.155 Ex Parte Consultations: explains that unless required for the disposition of ex parte matters authorized by law, members and employees of the department or SOAH may not communicate in connection with any issue of fact or law with a party, except on notice and opportunity to comment. New §29.156 Conflicts: explains the method for resolving conflicts between the contested case rules, the SOAH rules, and controlling law. New §29.157 Effective Date: identifies the effective date for the contested case rules.

Tom Haas, Chief of Finance, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Haas also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be to keep unsafe vehicles and motor carriers from operating on the Texas highways. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 424-2890.

The new sections are proposed under the authority of Texas Civil Statutes, Article 6675d, §3 and §12, which provide that the director shall, after notice and a public hearing, adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles, that the department may adopt rules to administer the article, and Texas Government Code, Chapter 2001, the Administrative Procedures Act, which provides a minimum standard of uniform practice and procedure for state agencies.

The new sections affect Texas Civil Statutes, Article 6675d.

§29.101. Definitions.

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

APA - refers to The Administrative Procedures Act, Texas Government Code §2001.001, et seq.

Authorized representative - refers to an individual who represents a party in a contested case.

Department - refers to the Department of Public Safety.

Director - refers to the director of the Department of Public Safety or the designee of the director.

Intervenor - refers to any party not otherwise defined.

Judge - refers to the administrative law judge assigned to hear a contested case proceeding and prepare a proposal for decision for the director or the director's designee.

Office - refers to the State Office of Administrative Hearings.

Party - refers to each person or agency named or admitted as a party to a penalty proceeding.

Person - refers to any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

Petitioner - refers to the party classification of the department after it has instituted a penalty proceeding before the office.

Pleading - refers to written allegations filed by parties concerning their respective claims.

Respondent - refers to a party against whom a penalty proceeding has been instituted.

§29.102. Scope.

These rules shall govern the procedure for the institution, conduct and determination of all administrative penalty proceedings under Texas Civil Statutes, Article 6675d. They shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers or authority of the department, or the substantive rights of any person.

§29.103. Institution of Penalty Proceeding.

(a) A penalty proceeding shall be instituted by the department after a person has declined to accept a recommended penalty or failed to timely respond to a recommended penalty issued under the authority of Texas Civil Statutes, Article 6675d.

(b) A case shall be commenced by the department by filing a request for setting or assignment with the office and a notice of hearing, if available. The office shall issue notice of date, time, and place for hearing upon receipt of a request for setting or assign a judge if a request for assignment has been submitted by the department.

(c) Upon receipt of a setting or assignment from the office, the department shall serve a notice of hearing upon the respondent together with the notice of date, time, and place for hearing if a setting has been obtained.

(d) A notice of hearing shall include the following:

(1) a statement of the nature of the hearing;

(2) a statement of the time and place of the hearing, if available;

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

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

(5) a short, plain statement of the matters asserted, including the recommended penalty;

(6) the following language in capital letters in 12-point boldface type: FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THIS NOTICE BEING ADMITTED AS TRUE, REGARDLESS OF WHETHER ADDITIONAL PROOF IS SUBMITTED BY YOU"; and

(7) the language provided under §29.143(e) of this title (relating to Entry of Appearance; Continuance.)

(e) After a hearing has been set or a judge assigned, any party may move for appropriate relief, including, but not limited to, prehearing conferences, discovery, evidentiary rulings, continuances, and settings.

(f) A notice of hearing shall be served in accordance with the procedure set out in §29.107 of this title (relating to Service of Notice of Hearing). An amended notice of hearing may be served in accordance with §29.108 of this title (relating to Service of Pleadings and Motions).

§29.104. Filing of Documents.

All notices, pleadings, motions, answers, affidavits, and all other filings in a proceeding shall be filed with the office at the time the office acquires jurisdiction or at the time the instrument is issued and delivered if that time is later than the time the office acquires jurisdiction. All filings shall be deemed filed only when actually received by the office.

§29.105. Computation of Time.

(a) Computing time. In computing any period of time, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless specifically provided otherwise by statute or this title, the time for filing any pleading may be extended by order of the judge upon written motion duly filed prior to the expiration of the applicable period of time for the filing, and upon showing that there is good cause for such extension of time and that the need therefore is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

§29.106. Agreements to be in Writing.

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

§29.107. Service of Notice of Hearing.

(a) Registered motor carriers. A notice of hearing shall be served on a respondent who is a motor carrier that is registered with the Texas Department of Transportation by certified mail, return receipt requested, or by personal delivery, and addressed to at least one of the following:

(1) the person identified as the owner of the motor carrier as registered with the Texas Department of Transportation, at the last known address of the respondent as registered with the Texas Department of Transportation;

(2) the legal agent for service of process for the motor carrier at the address registered with the Texas Department of Transportation;

(3) an alternate address specified in writing to the department by the respondent or the respondent's authorized representative after receipt of a notice of claim issued under §3.62 of this title (relating to Regulations Governing Transportation Safety); or

(4) the last known address as reflected in the records or investigation of the department.

(b) Unregistered motor carriers and other persons. A notice of hearing shall be served on a person who is an unregistered motor carrier or other person subject to administrative penalties under Texas Civil Statutes, Article 6675d, by certified mail, return receipt requested, or by personal delivery, and addressed to the last known

address of the motor carrier or other person as reflected in the records of investigation of the department.

(c) Commercial driver's license. A notice of hearing shall be served on a person who holds a commercial driver's license and is subject to administrative penalties under Texas Civil Statutes, Article 6675d, by serving the notice on the last known address provided to the department or other governmental authority that issued the license by certified mail, return receipt requested, or personal delivery.

(d) Service. A notice of hearing shall be served by the department after the office has issued a setting or assignment of a judge. Service by mail shall be complete upon deposit of the paper enclosed in a post-paid and properly addressed wrapper in a post office or official depository under the care and custody of the United States Postal Service. Service by personal delivery shall be complete at the time of delivery.

(e) Certification. A certification filed by an authorized representative of the department certifying that the notice was served in accordance with this section shall be filed with the office and constitute prima facie evidence of service in compliance with this rule.

§20.108. Service of Pleadings and Motions.

(a) General. Unless otherwise specified, where notice is permitted or prescribed by this title or by statute, it shall be served personally or be made as set out in Texas Rules of Civil Procedure, Rules 21, 21a, and 21b. All pleadings, pleas, or motions shall be served by certified mail, return receipt requested, telecopier, personal delivery, or overnight courier. Service by telecopier after 5:30 p.m. local time of the recipient shall be deemed served on the following day.

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

(c) Certificate of service. A certificate by the party, attorney, or representative, who files a pleading stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient: I hereby certify that I have this _____ day of __________, 19___, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service). Signature.

(d) Service on the department. After the institution of proceedings, all pleadings, pleas, motions, discovery requests and any other documents that are filed or served by respondents and/or intervenors on the petitioner, the department, or any employee of the department, shall be served on the department's named attorney of record at the address identified in the notice of hearing or complaint.

§29.109. Conduct and Decorum.

Every party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the department, the judge, the office and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

§29.110. Classification of Parties.

Parties to proceedings under this title before the office are petitioners, respondents, and intervenors. The department shall be designated as petitioner in all penalty proceedings and the person contesting the penalty shall be designated as respondent. Any other party-in-interest who participates in the proceeding shall be designated as an intervenor.

§29.111. Parties-in-Interest.

Any party-in-interest may appear in any contested penalty proceeding before the office. All appearances shall be subject to a motion to strike upon a showing that the party has no justifiable or administratively cognizable interest in the proceeding. An appearance under this section shall be filed at least 15 days in advance of the hearing date and shall include a statement that identifies the parties' cognizable interest in the proceeding.

§29.112. Appearances Personally or by Representative.

(a) Any party may appear and be represented by an attorney at law authorized to practice law. Any person may appear on his own behalf, or by a bona fide representative. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

(b) A party's representative shall enter his or her appearance with the office.

(c) A party's attorney of record remains the attorney of record in the absence of a formal withdrawal and an order approving such withdrawal is issued by the judge.

§29.113. Classification of Pleadings.

Pleadings filed with the office shall include notices of hearing, answers, replies, motions for rehearing, and other motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

§29.114. Form and Content of Pleadings.

(a) Typewritten or printed. Pleadings shall be typewritten or printed upon paper 8 1/2 inches wide and 11 inches long with an inside margin at least one inch wide and exhibits annexed thereto shall be folded to the same size. Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Content. All pleadings shall contain:

(1) the name of the party seeking to bring about or prevent action by the department;

(2) the names of all other known parties in interest;

(3) their object;

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

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

(6) any other matter required by statute;

(7) signature in ink of the party filing the paper, or his authorized representative, and shall contain the address of the

party filing the document or the name, telephone number, telecopier number, and business address of the representative; and

(8) a certificate of service, as required by §29.108(c) of this title (relating to Service of Pleadings and Motions).

§29.115. Examination by the Judge.

Upon the filing of any pleading with the judge, he or she shall examine the same and determine its sufficiency under these rules. If the judge finds that the pleading does not comply in all material respects with these rules, the judge shall return it to the person who filed it, along with a statement of the reasons for rejecting the same. The person who filed such pleading shall thereafter have the right to file a corrected pleading; provided that the filing of such corrected pleading shall not be permitted to delay any hearing unless the judge shall determine that such delay is necessary in order to prevent injustice or to protect the public interest and welfare.

§29.116. Motions.

Any motion relating to a pending proceeding shall, unless made during a hearing, be written, and shall set forth the relief sought and the specific reasons and grounds for the relief. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be filed with the judge, who shall act upon the motion at the earliest practicable time.

§29.117. Amendments.

Any pleading may be amended at any time upon motion. If filed less than seven days before the hearing, the motion to amend shall be denied if the amendment operates as an unfair surprise to the opposing party. However, the pleading upon which notice has been issued shall not be amended so as to broaden the scope of the notice.

§29.118. Incorporation by Reference to Department Records.

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

§ 29.119. Consolidation.

A motion for consolidation of two or more proceedings shall be in writing, signed by the movant or the movant's attorney or representative, and filed with the judge prior to the date set for hearing. No two or more proceedings may be consolidated or heard jointly without the affirmative consent of the parties, unless the judge finds that the proceedings involve common questions of law and fact, and that separate hearings would result in unwarranted expense or delay or substantial injustice.

§29.120. Informal Disposition.

(a) Disposition of all or part of a contested penalty proceeding may be made by stipulation, agreed settlement, consent order, or by default.

(b) If the parties reach an agreed settlement which resolves the facts or issues in controversy, further proceedings shall be abated upon motion of the parties. A settlement agreement shall be filed directly with the director or the director's designee for approval. The judge shall abate further proceedings pending approval. If the director or the director's designee does not approve the agreed settlement, the abatement shall be lifted and the matter shall proceed as a contested case under this title.

(c) A settlement agreement may contain a consent order.

(d) An executed settlement agreement is binding on the respondent and the department according to its terms. The respondent's consent to a settlement that has not been executed by the director or the director's designee may not be withdrawn for a period of 30 days after it is executed by the director or the director's designee.

§29.121. Prehearing Conference.

(a) The judge on his or her own motion, or on the motion of a party, may direct the parties or their attorneys or representatives, to appear before the judge at a specified time and place for a conference prior to the hearing for the purpose of formulating issues and considering:

(1) the simplification of issues;

(2) the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, to the end of avoiding the unnecessary introduction of proof;

(3) the procedure at a hearing;

(4) the limitation, where possible, of the number of witnesses; and

(5) such other matters as may aid in the simplification of the proceedings, and the disposition of the matters in controversy, including settlement of such issues as in dispute.

(b) The judge may order:

(1) that the parties discuss the prospects of settlement or stipulations and be prepared to report thereon at the prehearing conference;

(2) that the parties file and be prepared to argue preliminary motions at the prehearing conference;

(3) that the parties be prepared to specify the controlling factual and legal issues in the case at the prehearing conference; and

(4) that the parties make a plain and concise statement of undisputed facts and issues at the prehearing conference.

(c) At the discretion of the judge, action taken at the conference shall be either transcribed or recorded in an appropriate order by the judge.

§29.122. Motions for Postponement, Continuance, Withdrawal, Dismissal, or Other Matters.

(a) Motions for postponement, continuance, or withdrawal from or dismissal of contested case proceedings which have been duly set for hearing, shall be in writing, shall be filed with the judge and distributed to all parties-in-interest under a certificate of service, not less than five days prior to the designated date that the matter is to be heard. Such motion shall set forth, under oath, the specific grounds upon which the moving party seeks such action, shall make reference to all prior motions of the same nature filed in the same proceeding, and shall state whether the opposing parties have been contacted and have agreed to the motion. Failure to comply with the above, except for good cause shown, may be construed as lack of diligence on the part of the moving party and may constitute grounds to deny the motion. Once a contested penalty case has actually proceeded to a hearing, pursuant to the notice issued thereon, no postponement or continuance shall be granted by the judge without the consent of all parties involved.

(b) Cancellation costs. A person who causes the cancellation of a proceeding or hearing in which a transcript has been requested or required, is responsible for paying, upon demand, the full reporting fee due under the court reporting services agreement unless the cancellation occurs more than 24 hours prior to the scheduled beginning of the proceeding or hearing.

§29.123. Venue.

All contested penalty proceedings shall be open to the public. All hearings shall be held in Austin, Texas.

§29.124. Presiding Officer.

(a) Hearings will be conducted by the judge assigned by the office. The judge shall have authority to:

(1) administer oaths;

(2) take testimony;

(3) rule on questions of evidence;

(4) rule on discovery issues;

(5) issue orders relating to hearing and prehearing matters;

(6) admit or deny party status;

(7) limit irrelevant, immaterial, and unduly repetitious testimony and reasonably limit the time for presentations;

(8) grant continuances;

(9) request parties to submit legal memoranda, proposed findings of fact and conclusions of law; and

(10) issue proposals for decision concerning the occurrence of a violation or violations, the amount of a proposed penalty, and the costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state in bringing the proceeding.

(b) The judge shall have the authority to issue subpoenas for testimony, examine witnesses, rule upon the admissibility of evidence and amendments to pleadings and shall have the authority to recess any hearing from day to day.

§29.125. Order of Procedure.

(a) In all proceedings the petitioner shall be entitled to open and close. The judge in all cases shall determine at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, the judge may call upon any party or the staff of the department for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record.

(b) The judge shall direct all parties to enter their appearances on the record. If exceptions to the form or sufficiency of a pleading have been filed in writing at least three days prior to the date of hearing, they shall be heard; otherwise not. If exceptions are sustained, the judge shall allow a reasonable time for amendment, subject to the provisions of §29.115 of this title (relating to Examination by the Judge) and §29.117 of this title (relating to Amendments).

§29.126. Reporters and Transcription.

(a) Transcripts. Penalty proceedings shall be transcribed. If a penalty is recommended by the judge in the proposal for decision, the cost of the transcript shall be assessed against the respondent and included in the decision. The director or the director's designee may adopt the finding and make it a part of the final order entered in the proceeding.

(b) Suggested corrections. Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the judge shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the judge. If suggested corrections are not objected to, the judge will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the judge, who shall then determine the manner in which the record shall be changed, if at all.

§29.127. Formal Exceptions.

Formal exceptions to rulings of the judge during a hearing shall be unnecessary. It shall be sufficient that the party, at the time any ruling is made or sought, shall have made known to the judge the action which he desires.

§29.128. Dismissal without Hearing.

The judge may entertain motions for dismissal without a hearing for the following reasons:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res adjudicata;

(3) withdrawal;

(4) moot questions; or

(5) lack of jurisdiction.

§29.129. Rules of Evidence.

In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.

§29.130. Documentary Evidence and Official Notice.

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

(b) Official notice may be taken of all facts judicially cognizable. In addition, notice may be taken of generally recognized facts within the area of the department's specialized knowledge.

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

§29.131. Prepared Testimony.

The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

§29.132. Limitations on Number of Witnesses.

The judge shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

§29.133. Exhibits.

(a) Form. Exhibits of documentary character shall be of such size, as set forth in §29.114 of this title (relating to Form and Content of Pleadings), as not unduly to encumber the files and records of the office or the department. Exhibits shall be limited to facts, material, and relevant to the issues involved in a particular proceeding.

(b) Tender and service. The original of each exhibit offered shall be tendered to the reporter for identification; one copy shall be furnished to the judge, and one copy to each other party of record or his attorney or representative.

(c) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the judge shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the judge with his ruling, and shall be included in the record for the purpose only of preserving the exceptions.

(d) After hearing. Unless specifically directed by the judge, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing. In the event the judge allows an exhibit to be filed after the conclusion of the hearing, copies of the late-filed exhibit shall be served on all parties of record.

§29.134. Offer of Proof.

When testimony is excluded by ruling of the judge, the party offering such evidence shall be permitted to make an offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The judge may ask such questions of the witness as he or she deems necessary to determine that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

§29.135. Discovery-General.

Except for the exemptions from discovery provided in Texas Rules of Civil Procedure, Rule 166b(3), unless further limited by order of the assigned judge, the scope of discovery is as follows: parties may obtain discovery regarding any non-confidential matter relevant to the subject matter in the pending action consistent with Texas Rules of Civil Procedure, Rule 166b. The privileges, objections, protective orders, and duty to supplement shall be the same as in the Texas Rules of Civil Procedure.

§29.136. Depositions.

(a) The taking and use of depositions in any proceeding shall be governed by the Texas Government Code, Administrative Procedures Act, §;2001.094 - 2001.103. Requests for issuance of a commission to take a deposition shall be filed with the judge only if the parties disagree on the scheduling, scope, or payment of amounts estimated to accrue for the deposition.

(b) Absent agreement, a deposition may not be scheduled without providing notice of at least 15 days to all parties.

§29.137. Admissions of Facts and Genuineness of Documents.

(a) Any time after the office acquires jurisdiction, a party may deliver or have delivered to any other party a written request for admissions of facts and genuineness of documents. The provisions of Texas Rules of Civil Procedure, Rule 169(1) and (2) apply except that the time limit to respond to request for admissions that are served with the initial notice of hearing shall be 30 days from the date of service of the initial notice. Requests for admission shall be filed with the office at the time they are mailed or personally delivered to the receiving party.

(b) Each matter for which an admission is requested shall be deemed admitted unless, within the time provided, the party to whom the request is directed serves upon the party requesting admissions, a sufficient written answer or objection in compliance with the requirements of Texas Rules of Civil Procedure, Rule 169, addressed to each matter of which an admission is requested. An evasive or incomplete answer may be treated as a failure to answer.

(c) The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the judge determines that an objection is justified, he or she shall order that an answer be served. If the judge determines that an answer does not comply with the requirements of Texas Rules of Civil Procedure, Rule 169, he or she may order either that the matter is admitted or that an amended answer be served.

(d) Any matter admitted is conclusively established unless the judge permits withdrawal or amendment. Withdrawal or amendment may not be permitted unless the judge finds that the parties relying on the responses and deemed admissions will not be unduly prejudiced. Any admission is for the purpose of the pending action only and may not be used in any other proceeding.

(e) In accordance with Texas Rules of Civil Procedure, Rule 215(4)(c), and subject to the exceptions stated therein, if a respondent refuses to admit a matter or the authenticity of a document which is later proved, the petitioner may include its costs incurred in making the proof under §29.145 of this title (relating to Proof of Attorney's Fees, Costs, and Expenses of the State).

§29.138. Interrogatories.

A party may serve interrogatories upon any other party. The provisions of Texas Rules of Civil Procedure, Rule 168, apply subject to the following exceptions: the time limit to serve answers to interrogatories if the interrogatories were served with the initial notice of hearing shall be 30 days from the date of service of the initial notice.

§29.139. Discovery and Production for Inspection.

Any party may serve on any other party a request for production in accordance with Texas Rules of Civil Procedure, Rule 167, subject to limitations of the kind provided for discovery under the Texas Rules of Civil Procedure. However, the following exceptions from Texas Rules of Civil Procedure, Rule 167 apply:

(1) the time period to respond to a request shall be 30 days if the request is served at the same time as the notice of hearing; or

(2) copies of discovery requests and documents filed in response thereto shall be filed with all parties, but should not be filed with the office unless directed by the judge or when in support of a motion to compel, motion for protective order, or motion to quash.

§29.140. Discovery Motions and Sanctions.

(a) Certificate for disputes. All discovery motions concerning a discovery dispute shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of intervention have been attempted and failed.

(b) Compelling discovery. Upon reasonable notice to all party representatives and affected persons, a party may apply to the judge for an order compelling discovery. A party may not request sanctions without first obtaining an order compelling discovery.

(c) Sanctions. If a party fails to comply with proper discovery requests or to obey an order compelling discovery, the judge may, after opportunity for hearing, make orders in response to the failure, including:

(1) disallow any further discovery of any kind or a particular kind for the noncompliant party;

(2) rule that particular facts shall be regarded as established for purposes of the proceeding; or

(3) disallow presentation by the non-compliant party of evidence on issues that were the subject of the discovery request.

(d) Costs. Costs as a discovery sanction may not be imposed except as specifically provided under §29.137(e) of this title (relating to Admissions of Fact and Genuineness of Documents) and §29.145 of this title (relating to Proof of Attorney's Fees, Costs, and Expenses of the State).

§29.141. Subpoena.

(a) Issuance. The issuance of subpoenas for witnesses and production of books, records, paper and objects that may be necessary in a proceeding shall be governed by Administrative Procedures Act, §2001.089 and §2001.103 as amended. The judge shall issue a subpoena upon the written application of any party showing good cause and the deposit of the sums estimated to accrue as provided under the Administrative Procedures Act with the office. A party requesting a subpoena shall serve a copy of the application on all other parties. An application for subpoena shall be received by the office at least ten days prior to the scheduled hearing.

(b) Form. The style of the subpoena shall be "The State of Texas." It shall state the style of the hearing, that the hearing is pending before the State Office of Administrative Hearings, the time and place at which the witness is required to appear, and the party at whose insistence the witness is summoned. It shall be signed by the judge, need not be under the seal, and the date of issuance shall be noted thereon. It may be returnable forthwith, or on any date for which hearing of the proceeding may be set. It shall be addressed to any sheriff or constable of the state or other person authorized to serve subpoenas as provided by Texas Rules of Civil Procedure, Rule 178.

§29.142. Failure to Attend Hearing; Default Judgment.

(a) If a respondent fails to appear in person or by authorized representative on the day and time set for hearing in the penalty proceeding, regardless of whether an appearance has been entered, the judge, upon motion of the petitioner, shall enter a default judgment in the matter adverse to the respondent who failed to attend the hearing.

(b) For purposes of this section, default judgment means the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent in the notice of hearing are deemed admitted as true, without any requirement for additional proof to be submitted by the petitioner.

(c) Any default judgment granted under this section will be entered on the basis of the factual allegations contained in the notice of hearing, and upon the proof of proper notice to the defaulting party opponent. For purposes of this section, proper notice means notice sufficient to meet the provisions of the Texas Government Code, §2001.051, §2001.052, and this title.

(d) After the granting of a motion for default judgment, a motion by the respondent to reopen the record may be granted if the respondent establishes that the failure to attend the hearing was neither intentional nor the result of conscious indifference, and that the failure was due to a mistake or accident.

(1) A motion to reopen the record shall be filed prior to the time that the order of the director or the director's designee becomes final.

(2) A motion to reopen the record is not a motion for rehearing and is not to be considered a motion for rehearing. The filing of a motion to reopen has no effect on either the statutory time periods for the filing of a motion for rehearing or on the time period for ruling on a motion for rehearing.

§29.143. Entry of Appearance; Continuance.

(a) The respondent shall enter an appearance within 30 days of the date on which the notice of hearing is provided to the respondent.

(b) For purposes of this section, an entry of appearance means the filing of a written answer or other responsive pleading with the office.

(c) For purposes of this section, notice of hearing is provided to a respondent on the date of deposit in the United States mail of a registered or certified letter, return receipt requested, containing the notice of hearing, or if provided by personal service, the date of personal delivery of the notice of hearing.

(d) The failure of a party to timely enter an appearance as provided in this section shall entitle the petitioner to a continuance, if desired by the petitioner, at the time of the hearing on the penalty for such a reasonable period of time as is necessary.

(e) The notice of hearing provided to a respondent for a notice of hearing shall include the following language in capital letters in 12-point boldface type: "FAILURE TO ENTER AN APPEARANCE BY FILING A WRITTEN ANSWER OR RESPONSE TO THE ALLEGATIONS CONTAINED IN THIS NOTICE WITHIN 30 DAYS OF THE DATE THIS NOTICE WAS MAILED OR PERSONALLY DELIVERED TO YOU SHALL ENTITLE THE DE-

PARTMENT TO RESCHEDULE THE HEARING OF THIS CASE UNTIL A LATER DATE AS SET BY THE ADMINISTRATIVE LAW JUDGE. ANY COSTS INCURRED IN RESCHEDULING THE HEARING MAY BE ASSESSED AGAINST YOU IF THE PENALTY IS AFFIRMED."

§29.144. Proposal for Decision.

(a) In a contested case, the decision may not be made until a proposal for decision is served on the parties, and an opportunity is afforded to each party to file exceptions. The proposal for decision must contain a statement of the reasons for the proposed decision and each finding of fact and conclusion of law necessary to support the proposed decision, and be prepared by the person who conducted the hearing or by one who has read the record. The parties by written stipulation may waive compliance with this section.

(b) The judge may direct a party to draft and submit a proposal for decision which shall include proposed findings of fact and a concise and explicit statement of the underlying facts supporting such proposed findings developed from the record.

(c) When a proposal for decision is prepared, a copy of the proposal shall be served on each party.

(d) If the judge finds that a violation occurred, the proposal for decision shall include a finding setting out costs, fees, and reasonable and necessary attorney's fees incurred by the state.

§29.145. Proof of Attorney's Fees, Costs, and Expenses of the State.

(a) General. The petitioner may submit evidence of costs, fees, expenses, and reasonable and necessary attorney's fees incurred by the state. Costs include all expenses incurred by the department in instituting the penalty proceeding and all expenses incurred thereafter in the prosecution of the penalty. Costs specifically include, but are not limited to, investigative costs, witness fees and deposition expenses, travel expenses of witnesses, fees for professional services of expert witnesses, costs of adjudication before the office, and any other costs that are necessary for the preparation of the state's case.

(b) Submission. The petitioner may submit evidence of costs, fees, expenses, and reasonable and necessary attorney's fees as part of its case-in-chief or by motion after the issuance of the judge's proposal for decision. Postponement of the introduction of evidence of costs until after the issuance of a proposal for decision shall not constitute a waiver of the petitioner's right to recover any part of the state's incurred costs.

(c) Procedure for motion. A motion filed by the petitioner after the issuance of a proposal for decision shall be filed on or before the due date for exceptions. A respondent wishing to contest the amount of the award may file a request for a hearing to examine the award. The respondent shall submit the request no later than the due date for reply to exceptions. The judge shall reopen the hearing for the limited purpose of permitting the respondent to examine the recommended cost, fees, and expenses if a timely request is submitted. The judge shall rule on the motion through a ruling on exceptions or by amending the proposal for decision.

§29.146. Filing of Exceptions, Briefs, and Replies.

Any party of record may, within 20 days after the date of service of a proposal for decision, file exceptions and briefs to the proposal for decision, and replies to such exceptions and briefs may be filed within 15 days after the date for filing of such exceptions and briefs. A request for extension of time within which to file exceptions, briefs, cr replies shall be filed with the judge, and a copy thereof shall be served on all other parties of record by the party making such request. The judge shall promptly notify the parties of his or her action upon the same and shall allow additional time only in extraordinary circumstances where the interests of justice so require.

§29.147. Form and Content of Briefs, Exceptions, and Replies.

Briefs, exceptions, and replies shall be of such size and conform, as near may be, to the form of pleadings set forth in §29.114 of this title (relating to Form and Content of Pleadings). The points involved shall be concisely stated. The evidence in support of each point shall be abstracted or summarized, and/or briefly stated in the form of proposed findings of fact. Complete citations to the page number of the record of exhibit referring to evidence shall be made. The specific purpose for which the evidence is relied upon shall be stated. The argument and authorities shall be organized and directed to each point properly proposed as a finding of fact in a concise and logical manner. Briefs shall contain a table of contents and authorities. Prior to the issuance of a proposal for decision, briefs may be filed only when requested or permitted by the judge.

§29.148. Final Decisions and Orders.

(a) All final decisions and orders shall be in writing and shall be signed by the director or the director's designee. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party submits proposed findings of fact or exceptions, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order.

(b) The director or the director's designee may change the proposal for decision including any finding of fact or conclusion of law for reasons of policy and shall state the reason and legal basis in writing. It is the policy of the director or the director's designee to change a finding or conclusion if it is clearly:

(1) erroneous;

(2) against the great weight of the evidence; or

(3) not sufficient to protect the public interest.

(c) If the director or the director's designee seeks clarification or additional information relating to the proposal for decision, the director or the director's designee may send written questions, including a request to reopen the hearing if necessary, to the judge with copies to all parties of record.

(d) Based on the findings of fact, conclusions of law, and proposal for decision, the director or the director's designee may find that a violation occurred and impose a penalty or may find that no violation has occurred. The director or the director's designee may increase or decrease the amount of penalty recommended by the judge within the limits provided for penalties provided for the violation of a similar federal safety regulation.

(e) If the director or the director's designee finds that a violation occurred, the director or the director's designee's final decision may adopt the judge's finding, setting out costs, fees, expenses, and reasonable and necessary attorney fees incurred by the state in bringing the proceeding.

(f) A final decision shall include a statement of the right of the person assessed a penalty to obtain judicial review of the order.

§29.149. Administrative Finality.
A decision is final, in the absence of a timely motion for rehearing, and is final on the date of rendition of the order overruling the motion for rehearing, or on the date the motion is overruled by operation of law.

§29.150. Motions for Rehearing.
A motion for rehearing is a prerequisite for appeal. A motion for rehearing must be filed within 20 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the director or the director's designee within 30 days after the date of rendition of the final decision or order. Action on the motion must be taken within 45 days after the date of rendition of the final decision or order. If action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date of rendition of the final decision or order. The director or the director's designee may by written order extend the period of time for filing the motions and replies and taking action, except that an extension may not extend the period for action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order, the parties may by agreement with the approval of the director or the director's designee, provide for a modification of the times provided in this section.

§29.151. Rendering of Final Decision or Order.
Parties shall be notified in accordance with the Administrative Procedures Act by first-class mail of any decision or order. When the director or the director's designee issues a final decision or order ruling on a motion for rehearing, the director or the director's designee shall send a copy of that final decision or order by first-class mail to the parties and shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order as required by this section shall be presumed to have been notified on the date such notice is mailed.

§29.152. Judicial Review.

(a) Not later than the 30th day after the date on which the order is final, the person assessed the penalty shall comply with the order or file a petition for review in accordance with the legal requirements of Texas Civil Statutes, Article 6675c.

(b) If a person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the director or the director's designee may refer the matter to the attorney general for collection of the amount.

(c) A person filing an affidavit to stay enforcement of a penalty based on financial inability to give a supersedeas bond shall serve a copy of the affidavit by certified mail on the director or the director's designee. The affidavit shall be mailed to the attorney of record for the department in the penalty proceeding.

(d) A supersedeas bond filed under this rule shall be executed by a person authorized to do business in Texas as a surety.

§29.153. The Record.

(a) The record in a contested case shall include:

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

(2) evidence received or considered;

(3) a statement of matters officially noticed;

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

(5) proposed findings and exceptions;

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

(7) all staff memoranda or data submitted to or considered by the judge or members of the department who are involved in making the decision.

(b) Findings of fact shall be based exclusively on the evidence presented and matters officially noticed.

§29.154. Certified Record.

(a) Upon receiving a copy of a petition filed in district court which seeks judicial review of a final decision in a penalty proceeding decided under this title, the department shall prepare a certified copy of the entire record of the proceeding under review, and transmit it to the reviewing court.

(b) The department shall assess the expenses incurred by the department in preparing the record, including transcriptions costs, to the party seeking judicial review.

§29.155. Ex Parte Consultations.
Unless required for the disposition of ex parte matters authorized by law, members and employees of the office or department assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

§29.156. Conflicts.
If there is a conflict between the office rules of procedure and these rules of procedure, these rules shall control. If there is conflict between these rules and Texas Civil Statutes, Article 6675c and Article 6675d, the provisions of Texas Civil Statutes, Article 6675c and Article 6675d shall control.

§29.157. Effective Date.
These sections shall govern all proceedings filed after they take effect, and they also govern all proceedings then pending, and except to the extent that the director or the director's designee shall determine that their application in a particular pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

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 February 12, 1996.

TRD-9602175
James R. Wilson
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 424-2890

Part XIII. Texas Commission on Fire Protection

Chapter 423. Fire Suppression

Subchapter C. Minimum Standards for Marine Fire Protection Personnel

37 TAC §§423.305, 423.307, 423.309

The Texas Commission on Fire Protection proposes amendments to §§423.305, 423.307, and 423.309, concerning higher levels of marine fire protection personnel certification. The changes increase the years of experience for intermediate, advanced and master levels of certification from three, six, and nine years to four, eight, and twelve years, respectively. In addition, the National Fire Academy course requirements for intermediate and advanced levels are increased from 80 hours to 96 for Option #2, and from 40 hours to 48 hours for Option #3 to more closely align the classroom hours of NFA courses with college courses. The amendments will have a January 1, 1997, effective date.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the amendments are is in effect there will be no fiscal implications for state and local governments.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be that recognition of higher levels of certification with appropriate levels of training and experience will enable those persons holding such certifications to better serve local communities. There will be no additional costs of compliance for small or large businesses. Individuals required to comply with the sections as amended may incur additional training costs of approximately $40 per person as a result of the increase in NFA hour requirements. The commission has determined that the proposed amendments relating to higher levels of marine fire protection personnel certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 is affected by the proposed amendments.

§423.305. Minimum Standards For Intermediate Marine Fire Protection Personnel

(a) Applicants for Intermediate Marine Fire Protection Personnel Certification must complete the following requirements:

(1) (No changes.)

(2) acquire a minimum of ***four***[three] years of fire protection experience and complete the courses listed in one of the following options:

(A) (No changes.)

(B) Option #2 - Complete a minimum of ***96*** [80] hours of instruction in any National Fire Academy courses.

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of ***48***[40] hours in any National Fire Academy courses.

(b)-(d) No change.

§423.307. Minimum Standards For Advanced Marine Fire Protection Personnel Certification.

(a) Applicants for Advanced Marine Fire Protection Personnel certification must complete the following requirements:

(1) (No changes.)

(2) acquire a minimum of ***eight*** [six] years of fire protection experience and complete the courses listed in one of the following options:

(A) (No changes.)

(B) Option 2 - Complete a minimum of ***96***[80] hours of instruction in any National Fire Academy courses; or

(C) Option 3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of ***48***[40] hours in any National Fire Academy courses.

(b)-(d) No change.

§423.309. Minimum Standards for Master Marine Fire Protection Personnel Certification.

(a) Applicants for Master Marine Fire Protection Personnel Certification must complete the following requirements:

(1) (No changes.)

(2) acquire a minimum of ***twelve***[nine] years of fire protection experience and 60 college semester hours which includes at least 15 college semester hours in fire science subjects.

(b) (No changes.)

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

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

Issued in Austin, Texas, on February 15, 1996.

9602329
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 918-7189

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Chapter 425. Fire Protection Instructors

Subchapter A. Fire Service Instructor Certification

37 TAC §425.1

The Texas Commission on Fire Protection proposes an amendment to §425.1, concerning minimum standards for fire service instructor certification. The amendment allows the commission staff to consider International Fire Service Accreditation Congress (IFSAC) instructor certification in evaluating out-of- state or military instructor training programs for equivalency. The amendment has a proposed effective date of January 1, 1997.

Mr. Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be no fiscal implications for state government as a result of administering or enforcing the section as amended. Local governments may experience a reduction in cost of $250 attributed to the tuition cost of "Methods of Teaching" if an employee from out-of-state or the military is able to document equivalent training through IFSAC certification.

Mr. Calagna also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that duplicative training costs to local governments deemed unnecessary by the commission are eliminated. In addition, the amendment will increase access to qualified instructors for fire protection personnel. There will be no additional costs of compliance for small or large businesses or individuals required to comply with the section as amended. The commission has determined that the proposed amendment relating to minimum standards for fire service instructor certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

Texas Government Code, §419.028 is affected by the proposed amendment.

§425.1. Minimum Standards for Fire Service Instructor Certification

(a) No change.

(b) An out-of-state or military instructor training program may be accepted by the commission as meeting the training and experience requirements for certification as a fire service instructor if the program has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved instructor course for that particular level of fire service instructor certification. ***A program that has been accredited by the International Fire Service Accreditation Congress shall be considered for evaluation for equivalence to the commission's training requirements for the corresponding level of certification.***

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

Issued in Austin, Texas, on February 15, 1996.

9602330
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 918-7189

♦ ♦ ♦

Chapter 437. Fees

37 TAC §437.13, §437.15

The Texas Commission on Fire Protection proposes amendments to §437.13 and §437.15, concerning fees for basic certification examinations and proficiency examinations. The changes to fees implement changes to Chapter 439 proposed in this issue of the Texas Register concerning performance skills testing procedures. The proposed changes add a charge of $5.00 for a performance skills book and delete the $15.00 charge for skills testing at training facilities which will no longer be conducted under the supervision of staff proctors. The proposed changes also make the testing fees "non-refundable" to discourage persons from applying for test dates and not showing up. The changes have a proposed effective date of January 1, 1997.

Mr. Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the amended sections are in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the proposed sections. The commission will experience a decrease in revenue for skills testing fees each year of approximately $21,000 (1400 examinees at $15.00 each). There will also be a corresponding decrease in costs to the commission for travel and personnel time associated with administering the skills tests. Local governments will experience a decrease in costs for state testing fees of $15.00 per student with a corresponding increase in personnel costs associated with local administration of skills testing.

Mr. Calagna also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the new program will provide skill sheets that will promote uniformity in performance skills training and testing, and allow additional state fiscal resources to be devoted to curriculum development and compliance. There will be an increase in the cost of compliance for individuals who are tested in Austin by staff examiners from $15.00 to $50.00 for proficiency testing. The commission has determined that the proposed amendment relating to fees for basic certification examinations and proficiency examinations will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and §419.026, which provides the commission with authority to establish fees for certification and examinations.

Texas Government Code, §419.026 is affected by the proposed amendments.

§437.13. Fees-Basic Certification Examination

(a) A ***non-refundable*** fee of $15.00 shall be charged for each basic certification written examination.

(b) Basic certification examination fees will not be combined with any other fees, such as renewal fees, fees for commission manuals, and copying fees.

(c) ***A fee of $5.00 shall be charged for each basic certification performance skills book.*** [A fee of $15.00 shall be charged for each proficiency performance skills examination administered at a training facility providing field proctors. If the proficiency performance skills examination is administered at Austin, or another place designated by the commission, a fee of $50 shall be charged.]

(d) A non-refundable fee of $50.00 shall be charged for each basic certification skills examination administered by commission staff examiners at Austin or other designated locations.

§437.15. Fees-Proficiency Examination

(a) A ***non-refundable*** fee of $15.00 shall be charged for each proficiency written examination.

(b) Proficiency examination fees will not be combined with any other fees, such as renewal fees, fees for commission manuals, and copying fees.

(c) A ***non-refundable*** fee of $15.00 shall be charged for each proficiency performance skills examination administered at a training facility providing field proctors. If the proficiency performance skills examination is administered at Austin, or another place designated by the commission, a fee of $50.00 shall be charged.

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Executive Director
Texas Commission on Fire Protection
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Chapter 439. Examinations for Certification

37 TAC §439.13

Editor's Note:

The Texas Commission on Fire Protection proposes the repeal of §439.13, concerning performance skills examinations procedure. The repealed language is being replaced with a new section containing similar subject matter to provide for performance skills testing by skills examiners on the staff of approved training academies. The repeal has a proposed effective date of January 1, 1997.

Mr. Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the section that replaces the repealed section is in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the new sections. The commission will experience a decrease in revenue for skills testing fees each year of approximately $21,000 (1400 examinees at $15.00 each). There will also be a corresponding decrease in costs to the commission for travel and personnel time associated with administering the skills tests. Local governments will experience a decrease in costs for state testing fees of $15.00 per student with a corresponding increase in personnel costs associated with local administration of skills testing.

Mr. Calagna also has determined that for each of the first five years the section that replaces the repealed section is in effect the public benefit anticipated as a result of enforcing the sections will be that the new program will provide skill sheets that will promote uniformity in performance skills training and testing, and allow additional state fiscal resources to be devoted to curriculum development and compliance. There will be no additional costs of compliance for large or small businesses and individuals required to comply with the new section. The commission has determined that the proposed repeal relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The repeal is proposed under 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), concerning basic certification examinations.

Texas Government Code, §419.032(b) is affected by the proposed repeal.

§439.13. Performance Skills

Issued in Austin, Texas, on February 15, 1996.

9602330
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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37 TAC §439.5, §439.13

The Texas Commission on Fire Protection proposes amendment to §439.5, concerning definitions pertaining to examinations, and new §439.13, concerning performance skills. The amendment and new section implement a change to performance skills testing procedure by allowing skills examiners on the staff of approved training academies to administer skills testing for fire protection personnel. The new procedure is intended

to insure that examiners are tested on all of the performance skills in the applicable curriculum in a manner that is more cost effective to the state and local governments. The amendment and new section have a proposed effective date of January 1, 1997.

Mr. Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the sections are in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the amendment and new section. The commission will experience a decrease in revenue for skills testing fees each year of approximately $21,000 (1400 examinees at $15 each). There will also be a corresponding decrease in costs to the commission for travel and personnel time associated with administering the skills tests. Local governments will experience a decrease in costs for state testing fees of $15 per student with a corresponding increase in personnel costs associated with local administration of skills testing.

Mr. Calagna also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the new program will provide skill sheets that will promote uniformity in performance skills training and testing, and allow additional state fiscal resources to be devoted to curriculum development and compliance. There will be no additional costs of compliance for large or small businesses and individuals required to comply with the amendment and new section. The commission has determined that the proposed amendment relating to examinations for certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and Attorney General's Private Real Property Rights Preservation Act Guidelines, §2.18.

Comments on the proposal may be submitted to: Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendment and new section are proposed under 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), concerning basic certification examinations.

Texas Government Code, §419.032(b) is affected by the proposed amendment and new section.

§439.5. Definitions

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

Certificate of Completion - A signed statement certifying that an individual has successfully completed a commission approved basic certification curriculum for a particular discipline *, including having been evaluated on all NFPA skills*. The Certificate of Completion will be on a form provided by the commission and is to be completed and signed by the provider of training and issued to the individual upon successful completion of the training. The certificate of completion shall, as a minimum, identify the provider of training, the course I.D. number, the course approval number, hours of instruction, date issued, ***training officer/coordinator***, [name of instructor,] and the name of the person completing the course.

Skills Examiner[Field proctor] - An individual that has successfully completed the commission administered ***skills examiner*** [field proctor] orientation and has received a certificate of completion from the commission. The ***skills examiner***[field proctor] must as a minimum possess a fire service instructor certification, or a fire education specialist certification, or an associate instructor certification. The ***skills examiner*** [field proctor] must be approved by the commission to instruct all subject areas identified in the curriculum that they will be ***evaluating***[proctoring]. The ***skills examiner*** [field proctor] shall work under the supervision of a staff ***examiner*** [proctor] to administer commission examinations, ***except when evaluating performance skills during an approved basic certification school. All examiners, staff and skills, shall receive a commission administered skills examiner orientation course every four years.***

Staff ***examiner*** [proctor] - A member of the commission staff who has been assigned by the commission the responsibility to administer a commission examination.

§439.13. Performance Skills.

(a) If performance skills are part of a commission curriculum at a certified training facility, the performance skills shall be conducted as follows:

(1) All performance skills required by a curriculum must be evaluated for competency prior to completion of the curriculum. The performance skills associated with a particular subject may be evaluated for competency at the same time the subject is taught.

(2) The performance skills associated with more than one subject contained in a curriculum may be grouped together and evaluated for competency any time during the course of instruction.

(3) All instructors that serve as skills examiners must be approved by the Texas Commission on Fire Protection.

(4) Each student's performance skill sheet for each skill shall be signed by the skills examiner performing the evaluation. At the completion of the basic training, the training officer/course coordinator of the training facility shall sign and submit a statement which contains as a minimum: The name(s) of the candidates that passed all of the required performance skills, the name(s) of any candidates that failed the performance skills, and a statement that all skills were evaluated for competency.

(5) A performance skills booklet shall be made available by the commission office, to approved training facilities at no charge.

(6) The number of opportunities to successfully complete particular performance skills is at the discretion of the training officer/ course coordinator.

(7) A member of the Texas Commission on Fire Protection may observe any performance skills evaluations.

(b) Individuals submitting documentation from a commission approved training facility showing successful completion of the required performance skills within a curriculum may be exempt on a one-time basis from the performance skills as part of an original commission certification examination.

(c) If performance skills are part of a commission proficiency examination or an individual is testing for certification status the performance skills shall be conducted as follows:

(1) The performance skills portion of the examination shall consist of at least four practical skill objectives, which must be physically demonstrated by each examinee before a skills examiner;

(2) The practical skills objectives chosen for the examination shall be selected from the practical skill objectives listed in that portion of the Commission Certification Curriculum Manual, pertaining to the discipline for which the examination is intended and will include only skills that are determined by the commission to be critical skills and shall be tested in accordance with §439.15 of this title relating to Fees-Basic Certification Examination;

(3) The practical skills objectives shall consist of one skill pertaining to self-contained breathing apparatus and at least three other skills which are randomly selected by the staff skills examiner prior to the examination;

(4) An examinee shall not be notified of the specific skills objectives to be tested until the time of the examination;

(5) An examinee who fails a practical skill shall be allowed two retests at a time and place to be determined by the staff skills examiner. Generally, a retest should not be conducted until after the conclusion of the performance skill portion of the examination. If the candidate fails the first retest, remedial training conducted by a certified instructor will be required. Remedial training will be of no less duration than the recommended curriculum instructional hours of the section in which the failed skill(s) is reflected;

(6) An examinee being retested on a practical skill shall be retested on any skill from the same subject area as the practical skill that was failed. The practical skill shall be randomly selected by the staff skills examiner.

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

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9602333
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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Chapter 451. Fire Cause and Origin Investigator

37 TAC §451.1, §451.3

The Texas Commission on Fire Protection proposes new Chapter 451, concerning fire cause and origin investigator. The new Chapter establishes minimum standards for a new specialized certification for persons who investigate the cause and origin of fires, but who are not required to be licensed peace officers. The training required is the same curriculum required for fire and arson investigator certification. The new certification is a voluntary certification for full-time or part-time fire protection employees of a local government who are assigned fire cause and origin investigation duties. The new standard expressly limits the authority of the certificate holder to determining fire cause and origin and required that the investigation be immediately transferred to a peace officer if evidence of criminal conduct is discovered.

Anthony C. Calagna, Fire Protection Personnel Advisory Committee Chairman, has determined that for the first five year period the Chapter is in effect there will be fiscal implications for state and local governments as a result of enforcing or administering the new rules. It is estimated that there will be an increase in revenue to the commission for certification ($20) and testing fees ($15) for new applicants as follows: 1st year - 150 applicants ($5,250); 2nd year - 100 ($3500); 3rd year - 100 ($3500); 4th year - 75 ($2625); and 5th year - 75 ($2625). There will be a corresponding increase in administrative costs for testing and certification. Local governments that choose to pay for training and certification costs will incur the following estimated costs per person: training - $500; travel - $200; testing fees - $15; and certification fees - $200.

Mr. Calagna also has determined that for each of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that training of cause and origin investigator will be promoted resulting in improved cause and origin determination, evidence preservation, and arson abatement. In addition, the new standard allows more efficient utilization of state and local tax resources in that certified arson investigators are not required on every suspicious fire scene. There will be no additional costs of compliance for small or large businesses. Individuals who seek the new voluntary certification will incur the same costs for training, travel, testing and certification outlined previously for local governments if their employer does not pay these costs. The commission has determined that the proposed rule relating to professional qualification requirements for fire cause and origin investigator certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and the Attorney General's Private Real Property Rights Preservation Act Guidelines, §2.18 .

Comments on the proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The new sections are proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to propose rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

Texas Government Code, §419.022 will be affected by the proposed new sections.

§451.1. Minimum Standards for Fire Cause and Origin Investigation Personnel.

(a) The effective date of this chapter shall be January 1, 1997. All full-time, full-paid fire protection personnel or part-time fire protection employees employed by a local government entity in Texas who are assigned fire cause and origin investigation duties may be certified by the commission.

(b) All individuals holding a Fire Cause and Origin Investigator certification shall be required to comply with the continuing education requirements in §441.15 of this title (relating to Continuing Education Requirements for Fire and Arson Investigator).

(c) An individual certified under this chapter shall limit his or her investigation to determining fire cause and origin. If evidence of criminal conduct in violation of the Penal Code, Chapter 28 (Arson, Criminal Mischief, and other Property Damage or Destruction) is discovered, the investigator shall immediately transfer custody and control of the investigation to a certified fire and arson investigator or certified peace officer. Minimum Standards for Fire Cause and Origin Investigator Certification

§451.3. Minimum Standards for Fire Cause and Origin Investigator Certification.

(a) Training programs that are intended to satisfy the requirements of this section meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Fire Cause and Origin Investigator an individual must complete a commission approved basic fire and arson investigator program and successfully pass the commission examination as specified in Chapter 439 of this title within one year from the date of initial appointment to the position. An approved basic fire and arson investigator program shall consist of one of the following:

(1) Completion of the commission approved Basic Fire and Arson Investigator Curriculum as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual", as approved by the commission in accordance with Chapter 443, of this title, (relating to Certification Curriculum Manual); or

(2) Successful completion of the National Fire Academy Resident Fire Arson Investigator Course; or

(3) Successful completion of an out-of-state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire and Arson Investigator Curriculum as specified in Chapter 5, of the commission's document titled "Commission Certification Curriculum Manual"; or

(4) Successful completion of the following college courses: Arson Investigation I 3 Semester Hours Arson Investigation II 3 Semester Hours Hazardous Materials I 3 Semester Hours Building Construction 3 Semester Hours Fire Protection Systems 3 Semester Hours Total Semester Hours 15 The 3 semester hour course "Building Codes and Construction" may be substituted for Building Construction.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time fire cause and origin investigator may be certified as a full-time fire cause and origin investigator without meeting the applicable examination requirements.

(d) A person who holds or is eligible to hold a certificate upon employment as a Fire Cause and Origin Investigator may be certified as a Fire and Arson Investigator by meeting the requirements of Chapter 431, but shall not be required to meet the applicable examination requirements.

(e) There are no higher levels of certification for the Fire Cause and Origin Investigator.

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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9602334
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 918-7189

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Chapter Standards for Volunteer Certification

Subchapter

37 TAC §471.5

The Texas Commission on Fire Protection proposes an amendment to §471.5, concerning the definition of "college credits" to include courses presented through the National Emergency Training Center and recommended for credit by the American Council on Education (ACE). The section has a proposed effective date of January 1, 1997.

Jack Yates, Volunteer Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The change may increase the number of individuals seeking higher levels of volunteer certification at $5.00 each. There are no facts on which to base an estimate of the number of additional certifications. There will be no fiscal implication for local governments.

Mr. Yates also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be that the additional route for meeting college hour requirements for higher levels of volunteer certification will encourage more volunteer fire protection personnel to take courses from the National Emergency Training Center (including resident NFA and EMI courses) resulting in a more skilled and knowledgeable fire service. There will be no additional costs of compliance for small or large businesses or for individuals required to comply with the section as amended. The commission has determined that the proposed amendment relating to standards for volunteer certification will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) the Attorney General's Private Real Property Rights Preservation Act Guidelines, §2.18.

Comments on the proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P. O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed amendment.

§471.5. Definitions.

Certain definitions used in describing the minimum standards and related requirements as specified by the commission. Definitions used include:

College Credits-Credits earned for studies satisfactorily completed at an accredited institution of higher ***education, or courses delivered through the National Emergency Training Center residency programs, and recommended for college credit by the American Council on Education (ACE)*** [learning in a program leading to an academic degree].

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 February 15, 1996.

9602335
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 918-7189

Chapter 476. Volunteer Fire Investigator

Subchapter

37 TAC §476.1

The Texas Commission on Fire Protection proposes an amendment to §476.1, concerning minimum standards for volunteer fire investigator. The amendment provides that a certified volunteer fire investigator shall limit his or her investigation to fire cause and origin and requires transfer of the investigation to a certified peace officer if evidence of a crime is discovered. The amendment has a proposed effective date of January 1, 1997.

Jack Yates, Volunteer Fire Fighter Advisory Committee Chairman, has determined that for the first five year period the amended section is in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the section as amended.

Mr. Yates also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the sections will be clarification of the limit of authority of certified volunteer fire investigators and preservation of evidence at a suspicious fire scene. There are no additional costs of compliance for small or large businesses or individuals required to comply with the section as amended. The commission has determined that the proposed amendment relating to volunteer fire investigator will have no impact on private real property interests and no takings impact assessment is required pursuant to the Government Code, §2007.043(b) and §2.18 of the Attorney General's Private Real Property Rights Preservation Act Guidelines.

Comments on the proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which proves the commission with authority to establish voluntary certification standards for volunteer fire fighters.

Texas Government Code, §419.071 is affected by the proposed amendment.

§476.1. Minimum Standards for Volunteer Fire Investigator.

(a) The effective date of this chapter shall be April 1, 1995. Only volunteer personnel appointed by a fire department or governmental entity who are assigned fire investigation activities, may be certified by the commission as Volunteer Fire Investigator. ***An individual certified under this chapter shall limit his or her investigation to determining fire cause and origin. If evidence of criminal conduct in violation of the Penal Code, Chapter 28 (Arson, Criminal Mischief, and other Property Damage or Destruction) is discovered, the investigator shall immediately transfer custody and control of the investigation to a certified fire and arson investigator or peace officer.***

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

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

Issued in Austin, Texas, on February 15, 1996.

9602336
Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XII. Texas Department of Occupational Therapy Examiners

Chapter 371. Inactive/Retiree Status

40 TAC §371.1

The Texas Board of Occupational Therapy Examiners proposes amending §371.1, concerning Inactive Status. This amended section allows a licensee to be on inactive status for up to six consecutive years, and it clarifies the procedures for remaining on inactive status and for changing to active status.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendment is in effect there will be no affect on state or local government.

Mr. Maline also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule will be licensees will have specific guidelines for inactive license status. There

will be no effect on small businesses. There is no anticipated economic cost to persons having to comply with this amended rule as proposed.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

§371.1. Inactive Status.

A request for a change to inactive status, in accordance with §25A of the Act, may only be made at renewal date.

(1) A written request to change ***a regular license in good standing from active*** to inactive status must be postmarked prior to the expiration date of the license. ***The request must include the appropriate fee and proof of having met the continuing education renewal requirements for that renewal cycle.***

(2) A licensee may remain on inactive status for a period of no more than ***six*** [five] consecutive years. A licensee must submit a written petition to the board requesting an extension of inactive status for more than ***six*** [five] years.

(3) A licensee ***requesting to re-enter*** [re-entering] active status after more than ***six consecutive*** [five] years without the prior approval of the board ***may not renew his/her license. In order to obtain licensure, the individual*** must again pass the AOTCB certification examination ***and comply with the requirements and procedures for obtaining an extended temporary license.***

(4) A licensee on inactive status shall be required to complete the [yearly] continuing education ***renewal requirements of licensees on active status.*** [requirement]

(5) A licensee on inactive status will not have to pay a [yearly] renewal fee but will have to pay ***an appropriate late fee if he/she does not notify the board prior to the expiration of the license of his/her intent to remain on inactive status. A licensee will have to pay*** a fee to change to active status.

(6) (No change.)

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

Issued in Austin, Texas, on February 12, 1996.

9602025
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-6900

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40 TAC §371.2

The Texas Board of Occupational Therapy Examiners proposes amending §371.2, concerning Retiree Status. This amended section allows a licensee on active or inactive status to change to retiree status, and establishes a procedure on how a licensee in retiree status may reestablish licensure.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendment is in effect there will be no affect on state or local government.

Mr. Maline also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule will be to delineate a permanent retiree status for individuals who have retired from the profession of occupational therapy. There will be no effect on small businesses. There is no anticipated economic cost to persons having to comply with this amended rule as proposed.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

§371.2. Retiree Status.

A licensee who has retired from practicing occupational therapy may request "retiree" status.

(1) A written request ***to change a regular license in good standing from active or inactive status to retiree status*** [for retiree status] must be postmarked prior to the expiration date of the license. ***The request must include the appropriate fee.***

[(2) A person on retiree status will not have to pay a yearly renewal fee but will have to pay a fee to change to active status.

[(3) After the change to active status, a person must submit proof of having earned 30 hours of continuing education by the end of the first year that he/she has returned to active status.]

(2) ***[(4)]Retirement of a license is permanent. In order to obtain licensure, the individual must again pass the AOTCB certification examination and comply with the requirements and procedures for obtaining an extended temporary license.*** [If a person on retiree status for more than five consecutive years wishes to return to the profession, retaking the AOTCB certification examination is required.]

(3) *[(5)]*A licensee may not represent himself/herself as an OTR or COTA while on retiree status.

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

Issued in Austin, Texas, on February 12, 1996.

9602024
John P. Maline
Executive Director

Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 305-6900

♦ ♦ ♦

40 TAC §375.1

The Texas Board of Occupational Therapy Examiners proposes amending §375.1, concerning Fees. This amended section cancels the option of paying an additional year of licensure at time of application, and deletes the option to have all or some of the costs waived for changing a license from inactive or retiree status to active status.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the proposed amendment is in effect there will be no affect on state or local government.

Mr. Maline also has determined that for each year of the first five years the proposed amendment is in effect the public benefit anticipated as a result of enforcing the rule will be increased efficiency of license issuance. There will be no effect on small businesses. There is no anticipated economic cost to persons having to comply with this amended rule as proposed.

Comments on the proposed rule may be submitted to Alicia Dimmick Essary, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amended section is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this new section.

§375.1. Fees.

(a)[(1) License fees are as follows:] Fees are prescribed by the Executive Council and may be subject to change by legislative mandate. The fees are required to be paid by check or money order before a license or a renewal is issued. The application fee will be submitted with the application and is non-refundable.

(b)[(2)] A cashier's check, ***certified check,*** or money order must accompany all future payments to the board after an insufficient funds check has been processed ***by the board.***

(c)[(3)] An applicant ***for a license*** [who applies for an initial regular license after his or her birthday] shall pay the application fee plus the appropriate license fee. [If the applicant's birthday is less than six months away, the applicant shall have the option of paying the fee for the next full year in addition to the prorated fee.]

(d)[(4)] The board will not refund any application fee or license fee to an applicant who is denied a license. ***Applicants requesting that the board cease the license application process shall forfeit all fees paid. Such requests must be received by the board in writing.***

(e)[(5)] ***There shall be no refunds issued to individuals who have had their licenses suspended or revoked.*** [An applicant or licensee who has had his or her license suspended or revoked shall not be entitled to a refund of any fees.]

(f)[(6)] ***Licensees who have had their licenses suspended for failure to pay child support shall pay all applicable fees before licenses will be reissued.*** [The board may consider a waiver of all or some of the costs of changing from inactive/retiree to active status. All requests for such waivers will be made to the board in writing, stating the justification for waiver.]

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

Issued in Austin, Texas, on February 12, 1996.

9602023
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 24, 1996
For further information, please call: (512) 305-6900

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Part XIX. Texas Department of Protective and Regulatory

Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.3044, 725.3045, 725.3047, 725.3049, 725.3050, 725.3056, 725.3065, 725.3068, 725.3069, 725.3071, 725.3075-725.3077, and 725.4013; and new §725.3078 in its General Licensing Procedures chapter. The purpose of the amendments and new section is to include maternity homes in the rules regarding agency and institutional licensing procedures and appeals of licensing staff decisions.

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

Mr. Abel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that risks to the health, safety, and welfare of pregnant women served by maternity homes will be reduced. 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 Joanna E. Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-167, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*..

Subchapter EE. Agency and Institutional Licensing Procedures

40 TAC §§725.3044, 725.3045, 725.3047, 725.3049, 725.3050, 725.3056, 725.3065, 725.3068, 725.3069, 725.3071, 725.3075-725.3078

The amendments and new section are proposed under the Human Resources Code, Chapters 40 and 42, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The amendments and new section implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§725.3044. Application.

(a) Each governing body planning to operate a facility subject to licensing or certification must complete an application and send it to licensing staff. Facilities subject to licensing must attach a $35 non-refundable application fee plus $35 (or $50 for a child-placing agency ***or maternity home***) provisional license fee to the department's Licensing Fee Schedule and send these to the department. The provisional license fee may be refunded if the department does not issue the provisional license.

(b) The requirements do not apply to

(1) (No change.)

(2) Non-profit 24-hour ***child*** care facilities that

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

(3)-(4) (No change.)

(c)-(g) (No change.)

(h) The applicant may appeal any dispute about the amount of time the department took to decide that an application was complete or to approve or deny an application. To appeal, the applicant must submit a written request within 30 days after the department's time limit expires. The applicant must send the request stating the nature of the dispute to the ***deputy for*** [director of] licensing. If the department exceeded the time limit without establishing good cause, the appeal is decided in the applicant's favor. In this case, the department must reimburse the application fee.

(i) The requirements regarding an application received after revocation or denial of a license are as follows.

(1) If Texas Department of Protective and Regulatory Services (TDPRS) denies an application for a license because of non-compliance with standards or violation of the child care ***or maternity home*** licensing law, time limits for an appeal must have ended and the facility must have closed and remained closed before a new application for a license can be accepted. If a facility ceases operation before the end of the time to request an appeal, and if that facility waives in writing the right to request an appeal, licensing staff accept a completed application. If the facility begins operation before the provisional license is issued, licensing staff deny the application. An application fee and provisional license fee must be sent to TDPRS when a completed application is sent to licensing staff. The cost of reimbursing TDPRS for publishing the notice of revocation, as required by the Human Resources Code, Chapter 42, §42.077, must be added to the application fee.

(2) (No change.)

§725.3045. Personal History Statement.

(a) A personal history statement is required as a part of the application for:

(1) (No change.)

(2) People responsible for the operation of a child-caring ***facility,*** [or] child-placing facility , ***or maternity home*** including administrators/directors of a child-placing agency ***or maternity home*** and foster parents or designated responsible persons for an independently licensed foster group or foster family home. The department does not require a personal history statement as a part of the application for licensed administrators or applicants for an administrator's license.

(b) (No change.)

§725.3047. Issuance of Provisional License.

(a) A provisional license is appropriate for a facility if

(1) a facility applies for a license but has not yet accepted children ***or maternity home clients*** for care.

(2)-(5) (No change.)

(6) a facility changes location ***or*** makes changes in the type of child care services offered.

(7) a facility changes ownership, which results in changes in the facility's policies and procedures or changes in the staff who have direct contact with [the] children ***or maternity home clients.***

(b) A provisional license is issued when a facility meets all the appropriate minimum standards (except those where waivers or variances have been granted) and has paid the $35 application fee and $35 (or $50 for a child-placing agency ***or maternity home***) provisional license fee.

§725.3049. Facilities Not Providing Services in Provisional Licensing Period.

Provisional licensees who do not become operational during the provisional licensing period are not eligible for a license since the department cannot determine compliance with all minimum standards. The facility is entitled to be notified in writing of the right to appeal. The only issue on an appeal is whether there was continuing compliance with all minimum standards based on information available to the department. The licensee may apply for another provisional license by completing another application form and submitting a new $35 application fee and $35 provisional license fee for child care facilities ***or*** [and] $35 application fee and $50 provisional fee for child-placing agencies ***and maternity homes.***

§725.3050. License.

A facility is eligible for a license providing:

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

(4) The annual license fee of $35 plus $1 for each child the facility is licensed to serve, [or] $100 for a child-placing agency, ***or $50 plus $2.00 for each client the maternity home is licensed to serve*** has been paid. An annual fee for a license may be refunded if the licensee pays the fee but the department does not issue the license.

§725.3056. Denial or Revocation of a License without a Standard-by-standard Evaluation.

Licensing staff may deny or revoke a license/certificate without completion of a standard-by-standard evaluation if they determine that a dangerous situation exists or that an incident resulting in one of the following has occurred in a regulated facility as a result of a violation of minimum standards or the law:

(1) Death of a child ***or maternity home client.***

(2) Serious injury to a child ***or a maternity home client***, or a child ***or a maternity home client*** has contracted a serious illness.

(3)-(4) (No change.)

(5) Presence of a person(s) at the facility that is a violation of standards or causes a serious threat of violation to exist and when that person's behavior is believed to constitute an actual or potential threat to the children ***or maternity home clients*** in care.

(6) (No change.)

(7) Violations of standards which threaten serious harm to children ***or maternity home clients***.

§725.3065. Operating Unlicensed Child Care Facilities or Maternity Homes.

An operating, unregulated facility must send an application to the department within the time frames established in writing by the licensing representative. The facility is entitled to be notified of the findings of an investigation and if legal action will be taken, unless immediate action is taken under other rules of the department.

§725.3068. Requesting an Administrative Review.

A licensee/applicant/certificate holder may request an administrative review when he disagrees with a decision or action of a licensing representative or a state supervisor. He makes the request to the ***deputy for*** [director of] licensing and describes the decision or action in dispute. When the request concerns a decision or action involving a time limit or limits for correction of non-compliance with standards, the licensee/applicant/certificate holder must make the request for administrative review before the end of the time limits.

§725.3069. Purpose of an Advisory Opinion.

An advisory opinion which is acted upon becomes a declaratory order, and is valid for the duration of the applicable minimum standards in effect at the time of the opinion or for a lesser period specified in the opinion. The requestor must make a written request for an advisory opinion to the licensing representative. He must include in the written request a detailed description of the plan or planned changes and must submit the request in triplicate. The requestor must include in the request the specific questions the advisory opinion is to address. The ***deputy for*** [director of] licensing only issues advisory opinions based on requests for answers to specific questions related to cited minimum standards.

§725.3071. Reasons for Probation or Evaluation.

A facility may be placed on probation or evaluation if it has:

(1) Failed on more than one occasion to comply with standards, but the health, safety, and well-being of [the] children in care ***or maternity home clients*** are not in immediate danger;

(2) (No change.)

(3) Committed a single, serious violation of the standards if there is not a situation which continues to immediately endanger children ***or maternity home clients***.

§725.3075. Annual License Fee.

Before the annual anniversary date of the issuance of the license, the governing body of the facility must pay the annual license fee of $35 plus $1.00 for each child the facility is licensed to serve , [or] $100 for a child-placing agency, ***or $50 plus $2.00 for each client the maternity home is licensed to serve***. At least two months before the anniversary date of issuance, licensing staff sends the governing body a notice that the payment is due.

§725.3076. Non-payment of Annual License Fee.

(a) If the governing body fails to pay the annual license fee within one month after the due date, the license is suspended until the fee is paid. Children ***or maternity home clients*** must not be in care at the facility while the license is suspended.

(b) The department may revoke a facility's license after it has been suspended for not paying the licensing fees if the facility continues caring for children ***or maternity home clients***. The revocation letter must state that the right to appeal the decision of revocation is limited only to the issues of paying the required fee and providing care while the license is suspended for failure to pay the licensing fee.

(c) To appeal the decision, the licensee must send a written request for an appeal within 30 days after receiving the revocation letter. The licensee must send the administrator of residential child care licensing a letter stating the reasons against the revocation. If the licensee appeals a decision and continues to care for children ***or maternity home clients***, he and his staff must permit licensing staff to inspect the facility during the appeal process.

§725.3077. Emergency Suspension and Closure.

An order for emergency suspension and closure is imposed when the facility is in violation of any standard and the violation(s) creates an immediate threat to the health and safety of children ***or maternity home clients*** attending or residing in the facility.

(1) (No change.)

(2) When an order of suspension and closure is imposed, the Texas Department of Protective and Regulatory Services' (TD-PRS's) Licensing Division must make arrangements for children ***or maternity home clients*** attending or residing in the facility to be placed elsewhere. The facility may be required to assist in notifying parents and making other placement arrangements for children ***or maternity home clients***.

(3)-(4) (No change.)

§725.3078. Change of Administrator or Director.

A new maternity home administrator or director must submit a personal history statement and a $20 fee to the Texas Department of Protective and Regulatory Services.

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 February 15, 1996.

TRD-9602181

Nancy Murphy

Section Manager, Media and Policy Services

Texas Department of Protective and Regulatory

Proposed date of adoption: April 1, 1996

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

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40 TAC §725.4013

The amendment is proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

§725.4013. Rules of Evidence.

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

(d) Judicially known facts and telephonic testimony may be recognized as follows:

(1) Official notice may be taken of all facts judicially known. Also, notice may be taken of generally recognized facts within the area of the department's specialized knowledge. Parties must be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data. Parties must be given an opportunity to contest material officially noticed. The special skills or knowledge of the department staff may be used ***in evaluating*** [inevaluating] the evidence.

(2) (No change.)

(e)-(f) (No change.)

(g) A deposition may be returned to the department either by mail, by a party interested in taking the deposition, or by any other person. If returned by mail, the department must endorse on the deposition that it was received from the post office and the department employee receiving the deposition must sign it. If not sent by mail, the person delivering the deposition to the department must make an affidavit before a representative of the department that he ***received*** [receive] it from the hands of the officer before whom it was taken, that it has not been out of his possession since, and that it has undergone no alteration. A deposition, after being filed with the department, may be opened by an employee of the department at the request of either party or his counsel. The employee must endorse on the deposition on what day and at whose request it was opened, and the employee must sign the deposition. It stays on file with the department and may be inspected by any party.

(h)-(k) (no change.)

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

Issued in Austin, Texas, on February 15, 1996.

TRD-9602182
Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory
Proposed date of adoption: April 1, 1996
For further information, please call: (512) 438-3765

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Chapter 727. Licensing of Maternity Facilities

The Texas Department of Protective and Regulatory Services (TDPRS) proposes the repeal of §§727.101-727.111, 727.201, 727.301, 727.302, 727.401, 727.402; 727.501-727.514, 727.601, 727.602, 727.701-727.707, 727.801-727.806, 727.901-727.903, 727.1001-727.1006, and new &§;727.101, 727.103, 727.105, 727.107, 727.109, 727.111, 727.201, 727.203, 727.205, 727.207, 727.301, 727.303, 727.305, 727.401, 727.403, 727.405, 727.407, 727.409, and 727.411 in its Licensing of Maternity Facilities chapter. The purpose of the repeals and new sections is to establish the minimum requirements for issuance and maintenance of a maternity home license.

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

Mr. Abel also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that risks to the health, safety, and welfare of pregnant women served by maternity homes will be reduced. 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 Joanna E. Taylor at (512) 438-3259 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-152, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

Subchapter A. Application Procedures

40 TAC §§727.101-727.111

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

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implementTexas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

§ §727.101. Criteria for Licensing.

§727.102. Building Approval.

§727.103. Applicant Disclosure Requirements.

§727.104. Increase in Capacity.

§727.105. Renewal Procedures and Qualifications.

§727.106. Change of Ownership.

§ §727.107. Criteria for Denying a License or Renewal of a License.

§727.108. License Fees.

§727.109. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services.

§727.110. Fees for Issuance and Renewal of Permits to Administer Medications.

§727.111. Method of Payment.

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 February 15, 1996.

TRD-9602183
Nancy Murphy

Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory
Proposed date of adoption: April 1, 1996
For further information, please call: (512) 438-3765

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40 TAC §§727.101, 727.103, 727.105, 272.107, 727.109, 727.111

The new sections are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code, §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.101. Legal Basis for Operation.

The maternity home must:

(1) be legally established to operate within Texas and comply with all applicable statutes;

(2) along with the application for a license, submit documentation of the legal basis for operation to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division;

(3) notify TDPRS's Licensing Division of any planned change in the home's legal basis for operation before that change is made;

(4) report any planned change impacting the conditions of the license to TDPRS's Licensing Division prior to that change taking place; and

(5) be licensed as a child-placing agency before engaging in any child-placing activity.

§727.103. Governing Body of the Maternity Home.

(a) The maternity home must:

(1) have a governing body that is responsible for, and has authority over the home's policies and activities;

(2) submit a written copy of the names, addresses, and titles of the officers or executive committee of the governing body with the application for a license;

(3) submit written notice of any change in the composition of the governing body to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division within ten working days of such change; and

(4) inform TDPRS's Licensing Division of any change in the information about governing body officers or executive committee members within ten working days of learning about such change.

(b) The maternity home's policies must clearly state the responsibilities assigned to the governing body.

(c) The governing body of the maternity home must carry out its assigned responsibilities.

§727.105. General Administration.

The maternity home must:

(1) allow licensing staff to visit and inspect the facility at all times;

(2) make its records available to and open for Texas Department of Protective and Regulatory Services' licensing staff to review;

(3) display the license at the facility;

(4) observe the conditions of the license;

(5) not offer other types of care in the maternity home facility; and

(6) obtain the written informed consent of a client and the parents or managing conservator of a minor client before involving a client in any fund raising and/or publicity for the facility.

§727.107. Fiscal Accountability.

(a) General fiscal requirements. The maternity home must

(1) be established and maintained on a sound fiscal basis;

(2) maintain complete financial records;

(3) have a fee policy that clearly describes what fees are charged and what services are covered by the fees; and

(4) not accept any payment for adoption referrals.

(b) Fiscal requirements for new maternity homes. New maternity homes must

(1) submit a 12-month budget to the Texas Department of Protective and Regulatory Services' Licensing Division when the signed application is submitted;

(2) have reserve funds or documentation of available credit at least equal to operating costs for the first three months of operation; and

(3) have predictable funds sufficient for the first year of operation.

§727.109. Maternity Home Policies.

The maternity home must:

(1) have clearly stated, current, governing body approved policies that at least meet minimum standards and are fully implemented.

(2) have policies that include a statement that describes the home's services. The statement must describe who the home will serve and what services the home will provide.

(3) maintain current copies of all policies. Policies must indicate governing body approval and effective date.

(4) have policies available for review upon request by the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division and maternity home clients.

(5) operate according to its written policies.

(6) report any changes in the written policies to TDPRS's Licensing Division prior to implementing the change.

§727.111. Serious Incident Reports.

The maternity home must:

(1) complete written reports for serious incidents involving staff or clients within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff or clients involved, the nature of the incident, and the surrounding circumstances.

(2) report the following types of serious incidents to the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division and to a minor client's parent or managing conservator by the next workday:

(A) suicide attempts;

(B) abusive treatment and abusive activity among clients, including alleged abuse;

(C) incidents that critically injure or permanently disable a client; and

(D) a client's death.

(3) have current written policies and procedures to follow when a client is absent without permission. These must include

(A) time frames for determining when a client is absent without permission;

(B) actions that maternity home staff must take to locate the client; and

(C) procedures, including time frames, that staff must follow to notify the parents or managing conservator of a minor client and the appropriate law enforcement agency.

(4) report when a minor client is not found. Absence without permission must be reported to the client's parents or managing conservator and to the appropriate law enforcement agency.

(5) document if a minor client is absent without permission, the circumstances surrounding the absence, efforts to locate the client, and notification of the client's parents or managing conservator and the appropriate law enforcement agency. If the parent or managing conservator cannot be located, attempts to report the client's absence must be documented.

(6) report to TDPRS's Licensing Division, by the next workday, disasters or emergencies, such as fires or severe weather, that requires any living unit to close.

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 February 15, 1996.

TRD-9602193
Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: April 1, 1996
For further information, please call: (512) 438-3765

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Subchapter B. Standards for Licensure

40 TAC §727.201

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

The repeal is proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implementTexas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.201. Standards for Maternity Facilities.

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

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Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3765

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40 TAC §§727.201, 727.203, 727.205, 727.207

The new sections are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.201. Personnel Policies.

The maternity home must:

(1) have a current organization chart showing the administrative structure and staffing, including lines of authority;

(2) have a written job description for each employee;

(3) have volunteer policies describing the way volunteers will be used, if the home uses volunteers; and

(4) have written policies covering volunteer qualifications and orientation and training programs if volunteers have contact with clients.

§727.203. General Personnel Requirements.

(a) The maternity home must reassign or remove from direct contact with clients any employee or volunteer against whom:

(1) an indictment is returned alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act; or

(2) an indictment is returned alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency; or

(3) an official criminal complaint is accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(b) Reassignment or removal of any employee or volunteer from direct contact with clients must remain in effect pending resolution of the charges as specified in subsection (a)(1)-(3) of this section.

(c) No one may serve as a staff or volunteer having contact with clients who has been convicted of any felony classified as

an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Director of Licensing, Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division, has ruled that proof of rehabilitation has been established.

(d) The maternity home must report any occurrences as stated in subsections (a)-(c) of this section to TDPRS's Licensing Division by the end of the first workday after learning of the occurrence.

(e) Persons whose behavior or health status presents a danger to clients must not be allowed at the maternity home.

(f) Before having contact with clients, staff, volunteers and any family members or other persons residing at the maternity home must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities.

(g) The maternity home must have a personnel file for each employee and volunteer whose work relates to maternity home services. Each file must contain

(1) the date of employment;

(2) documentation that the person meets the qualifications for the position;

(3) tuberculosis test reports, if required, for persons having contact with clients;

(4) criminal background check reports;

(5) documentation that the person meets training requirements; and

(6) the date and the reason for separation, if applicable.

§ §727.205. Personnel Qualifications and Responsibilities.

(a) Administrative responsibilities.

(1) The maternity home must have an administrator who is responsible for

(A) the overall administrative responsibility for the home;

(B) managing the maternity home according to the policies adopted by the governing body; and

(C) ensuring that the maternity home's operation complies with minimum standards specified in this chapter.

(2) The maternity home administrator must meet one of the following qualifications:

(A) a master's or higher degree and at least one year of experience in human services' management, supervision, or administration;

(B) a bachelor's degree and at least two years of experience in management, supervision, or administration, one year of which must have been in human services;

(C) an associate's degree and at least four years of experience in management, supervision, or administration, one year of which must have been in human services; or

(D) a high school diploma or general educational development (GED) certificate and at least six years of experience in management, supervision, or administration, one year of which must have been in human services.

(b) Service program responsibilities.

(1) The maternity home must employ a person who is responsible for the overall services provided by the home. This person must

(A) approve maternity home admissions;

(B) develop and update service plans for maternity home clients or approve service plans developed or updated by less qualified staff; and

(C) provide general program oversight.

(2) The person responsible for maternity home services must have at least a bachelor's degree in a human services field and two years of experience in human services or a bachelor's degree in any field and at least four years of supervised maternity home experience.

(c) Other maternity home staff.

(1) The maternity home must employ sufficient qualified staff to protect the health, safety, and well-being of clients and provide maternity home services.

(2) Staff persons who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must have at least a bachelor's degree and direct supervision from a person who meets the requirements specified in subsection (b)(2) of this section.

(3) Other staff persons working with clients must have at least a high school diploma or GED certificate.

(4) At least one staff person must be immediately accessible at the maternity home at all times when clients are present. At least one other staff person must be immediately available in case of emergency.

(5) The maternity home must ensure that staff and volunteers are supervised:

(A) to protect clients' health, safety and well-being; and

(B) to ensure that assigned duties are performed adequately.

§727.207. Training Requirements.

(a) The maternity home must have a written training plan or program for all staff. The plan must include stated time frames for assessment of each staff person's training needs, training content, and number of training hours required.

(b) New staff who will work with clients must receive an orientation to the facility's policies and services.

(c) Client care staff must successfully complete training from a certified instructor in cardiopulmonary resuscitation (CPR) and first aid before assuming their responsibilities. CPR and first aid training must be updated as required to maintain certification. CPR and first aid training must meet criteria established by the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division.

(d) The maternity home administrator, the person responsible for the service program, and any staff who provide casework services,

including admissions assessment, counseling, placement planning, and discharge planning, must obtain at least 20 clock hours of job-related training annually.

(e) Maternity home staff working with clients must receive at least 15 hours of training each year related to maternity home services.

(f) Persons who hold related professional licenses or credentials that require continuing education will be considered as meeting the training requirements by meeting the requirements to maintain their professional license or credential.

(g) At least 75% of the required annual training must consist of course work from an accredited educational institution, workshops, seminars, or other direct training provided by qualified agencies, organizations and individuals. In-service training and self-instruction programs may be counted in the formal training component if the training includes stated learning objectives, curriculum and learning activities, and an evaluation program. Training must be documented, including date, subject, number of hours, and training provider.

(h) When maternity home staff complete training in excess of the minimum requirements, up to one-half of the following year's annual training requirement may be carried over from the previous year.

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

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Nancy Murphy
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Subchapter B. Maternity Home Personnel

40 TAC §§727.201, 727.203, 727.205, 727.207

The new sections are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.201. Personnel Policies.
The maternity home must:

(1) have a current organization chart showing the administrative structure and staffing, including lines of authority;

(2) have a written job description for each employee;

(3) have volunteer policies describing the way volunteers will be used, if the home uses volunteers; and

(4) have written policies covering volunteer qualifications and orientation and training programs if volunteers have contact with clients.

§727.203. General Personnel Requirements.

(a) The maternity home must reassign or remove from direct contact with clients any employee or volunteer against whom:

(1) an indictment is returned alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act; or

(2) an indictment is returned alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency; or

(3) an official criminal complaint is accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(b) Reassignment or removal of any employee or volunteer from direct contact with clients must remain in effect pending resolution of the charges as specified in subsection (a)(1)-(3) of this section.

(c) No one may serve as a staff or volunteer having contact with clients who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Director of Licensing, Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division, has ruled that proof of rehabilitation has been established.

(d) The maternity home must report any occurrences as stated in subsections (a)-(c) of this section to TDPRS's Licensing Division by the end of the first workday after learning of the occurrence.

(e) Persons whose behavior or health status presents a danger to clients must not be allowed at the maternity home.

(f) Before having contact with clients, staff, volunteers and any family members or other persons residing at the maternity home must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities.

(g) The maternity home must have a personnel file for each employee and volunteer whose work relates to maternity home services. Each file must contain

(1) the date of employment;

(2) documentation that the person meets the qualifications for the position;

(3) tuberculosis test reports, if required, for persons having contact with clients;

(4) criminal background check reports;

(5) documentation that the person meets training requirements; and

(6) the date and the reason for separation, if applicable.

§ §727.205. Personnel Qualifications and Responsibilities.

(a) Administrative responsibilities.

(1) The maternity home must have an administrator who is responsible for

(A) the overall administrative responsibility for the home;

(B) managing the maternity home according to the policies adopted by the governing body; and

(C) ensuring that the maternity home's operation complies with minimum standards specified in this chapter.

(2) The maternity home administrator must meet one of the following qualifications:

(A) a master's or higher degree and at least one year of experience in human services' management, supervision, or administration;

(B) a bachelor's degree and at least two years of experience in management, supervision, or administration, one year of which must have been in human services;

(C) an associate's degree and at least four years of experience in management, supervision, or administration, one year of which must have been in human services; or

(D) a high school diploma or general educational development (GED) certificate and at least six years of experience in management, supervision, or administration, one year of which must have been in human services.

(b) Service program responsibilities.

(1) The maternity home must employ a person who is responsible for the overall services provided by the home. This person must

(A) approve maternity home admissions;

(B) develop and update service plans for maternity home clients or approve service plans developed or updated by less qualified staff; and

(C) provide general program oversight.

(2) The person responsible for maternity home services must have at least a bachelor's degree in a human services field and two years of experience in human services or a bachelor's degree in any field and at least four years of supervised maternity home experience.

(c) Other maternity home staff.

(1) The maternity home must employ sufficient qualified staff to protect the health, safety, and well-being of clients and provide maternity home services.

(2) Staff persons who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must have at least a bachelor's degree and direct supervision from a person who meets the requirements specified in subsection (b)(2) of this section.

(3) Other staff persons working with clients must have at least a high school diploma or GED certificate.

(4) At least one staff person must be immediately accessible at the maternity home at all times when clients are present. At least one other staff person must be immediately available in case of emergency.

(5) The maternity home must ensure that staff and volunteers are supervised:

(A) to protect clients' health, safety and well-being; and

(B) to ensure that assigned duties are performed adequately.

§727.207. Training Requirements.

(a) The maternity home must have a written training plan or program for all staff. The plan must include stated time frames for assessment of each staff person's training needs, training content, and number of training hours required.

(b) New staff who will work with clients must receive an orientation to the facility's policies and services.

(c) Client care staff must successfully complete training from a certified instructor in cardiopulmonary resuscitation (CPR) and first aid before assuming their responsibilities. CPR and first aid training must be updated as required to maintain certification. CPR and first aid training must meet criteria established by the Texas Department of Protective and Regulatory Services' (TDPRS's) Licensing Division.

(d) The maternity home administrator, the person responsible for the service program, and any staff who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must obtain at least 20 clock hours of job-related training annually.

(e) Maternity home staff working with clients must receive at least 15 hours of training each year related to maternity home services.

(f) Persons who hold related professional licenses or credentials that require continuing education will be considered as meeting the training requirements by meeting the requirements to maintain their professional license or credential.

(g) At least 75% of the required annual training must consist of course work from an accredited educational institution, workshops, seminars, or other direct training provided by qualified agencies, organizations and individuals. In-service training and self-instruction programs may be counted in the formal training component if the training includes stated learning objectives, curriculum and learning activities, and an evaluation program. Training must be documented, including date, subject, number of hours, and training provider.

(h) When maternity home staff complete training in excess of the minimum requirements, up to one-half of the following year's annual training requirement may be carried over from the previous year.

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Subchapter C. Construction Standards for Maternity Facilities

40 TAC §727.301, §727.302

(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 Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.301. Introduction and Application

§727.302. General Requirements.

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

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Subchapter C. Service Management

40 TAC §§727.301, 727.303, 727.305

The new sections are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.301. Admission.

(a) Admission Policies.

(1) The maternity home must have current written admission policies and criteria describing the age and type of client served.

(2) The maternity home may only admit clients who meet the admission policies and criteria and for whom the home has an operational program.

(3) A maternity home whose policies permit the admission of a client whose behavior or history indicates that she may be a danger to herself or others must arrange for the client to be evaluated by a qualified professional. The evaluation may be done by:

(A) a psychiatrist;

(B) a psychologist;

(C) a licensed Master Social Worker, Advanced Clinical Practitioner;

(D) an obstetrician/gynecologist; or

(E) a licensed professional counselor.

(4) The evaluation of a client who may be a danger to self or others must be done within 72 hours following admission. The evaluation must be documented in the client's record and include:

(A) an assessment of potential danger to self or others;

(B) an assessment of client's need for care, treatment, and supervision; and

(C) recommendations for care, treatment, supervision, and further evaluation, if any, if the client is admitted to the maternity home.

(5) A maternity home that admits a client who may be a danger to self or others must document precautions and level of supervision taken until the professional evaluation is performed and implemented.

(6) A maternity home that admits a client who may be a danger to self or others must

(A) evaluate the client's needs, as identified in the professional assessment, in relation to the home's admission policy and criteria;

(B) evaluate the potential danger to the client or others, as identified in the professional assessment, in relation to the safeguards and services the maternity home can provide; and

(C) arrange for the client's discharge as soon as possible if the evaluation indicates that the home's program cannot meet her needs or that the home cannot provide necessary safeguards.

(7) If the maternity home decides to provide care for a client who may be a danger to self or others, the home must include the professional assessment and recommendations in the client's service plan and ensure that recommendations are followed.

(8) Maternity homes that have admission policies, rules for group living, or other requirements that may make the home an inappropriate choice for a prospective client must provide the prospective client with a list of licensed maternity homes so that she can locate a facility that better meets her needs.

(b) Admission procedures.

(1) The maternity home must complete an admission assessment, including pregnancy testing, for each client within five working days of admission to determine that the program will be able to meet the client's needs.

(2) The admission assessment must be in writing and must include information on each of the following:

(A) the circumstances that led to the client's referral;

(B) the client's plan for her baby;

(C) the client's history including

(i) medical history information and information about the pregnancy;

(ii) educational background and records that may be needed to enroll the client in school or a general educational development program;

(*iii*) social history with a description of the family situation and relationships, previous placements, and work history; and

(*iv*) psychological history (if applicable and available) including any results of testing, evaluation, and/or assessment;

(D) a description of any special needs (physical, emotional, or intellectual) the client might have;

(E) the client's expectations of maternity home placement; and

(F) the level of parent/family involvement with the client during stay at the maternity home.

(3) Clients must have a medical examination by a licensed physician within 30 days before admission or an examination must be arranged or scheduled within two work days after admission. The arrangement or scheduling must include an assessment by a registered nurse or physician's assistant to ensure that the client is not in immediate need of medical treatment.

(4) Clients must be tested for tuberculosis according to the recommendations of their physician.

(5) A written placement agreement between the maternity home and the parents or managing conservator of a minor client must be completed at or before placement. A copy of the placement agreement must be in the client's record. The placement agreement must include:

(A) authorization for the minor client to reside at the maternity home; and

(B) a medical consent form signed by a person authorized to give consent by the Texas Family Code.

(6) If a minor client has been living independent of her parents or her parents refuse to sign the placement agreement, the minor client may admit herself to the maternity home. This must be documented in the client's record.

(7) Maternity homes must inform clients and the parents/managing conservators of minor clients, in writing, at or before admission of:

(A) rules and guidelines for group living that maternity home clients will be expected to follow, including visits, gifts, mail, and telephone calls;

(B) the type and frequency of reports the maternity home will make to parents/managing conservators of minor clients;

(C) the maternity home's religious policy or program, if any; and

(D) the maternity home's fee policy.

§727.303. Service plan.

(a) Within 15 working days of admission, the maternity home must develop a service plan with the client.

(b) The service plan must include:

(1) the client's individual needs in addition to basic needs for food, clothing, shelter, and routine medical care related to the pregnancy, delivery, and postpartum period;

(2) a specific description of how the maternity home will address any needs of the client in addition to basic needs; and

(3) a specific description of what the maternity home expects of the client in terms of meeting the service plan.

(c) The service plans for minor clients must address the level of supervision the maternity home will provide for the client.

(d) The maternity home must give a copy of the service plan to the client and the parents or the managing conservator of a minor client.

(e) The maternity home must carry out the service plan.

(f) The maternity home must develop a policy for reviewing plans of service. The policy must state how frequently plans will be reviewed.

(g) The maternity home must review the service plan at least as frequently as stated in the home's policy with the client. The review must be in writing and show what has been accomplished in meeting the client's needs, any change in the client's needs, and any change in how the client's needs will be met.

§727.305. Discharge.

(a) The maternity home must involve the client and the parents or the managing conservator of a minor client in discharge planning.

(b) The date and circumstances of the client's discharge must be documented in the client's record.

(c) The maternity home must inform clients of how long and where client records will be maintained.

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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Subchapter D. General Requirements for All Facilities Facility Construction

40 TAC §727.401, §727.402

(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 Department of Protective and Regulatory Srevices or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.401. Plans, Approvals, and Construction Procedures.

§727.402. Construction and Initial Survey of Completed Construction.

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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40 TAC §§727.401, 727.403, 727.405, 727.407, 727.409, 727.411

The new sections are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.401. Nutrition.

The maternity home must:

(1) provide food that meets clients' individual nutritional requirements.

(2) make provision for three regularly scheduled meals daily and provide for additional nutrition between meals, midmorning, afternoon, and evening, as needed and desired by clients.

(3) provide any special diet prescribed by a client's physician.

(4) offer nutritional counseling and guidance to all clients. Content of the counseling and guidance program must meet generally accepted standards in regard to nutrition during pregnancy and lactation.

(5) maintain food preparation, storage, and serving facilities and implement procedures that meet local health department requirements and recommendations.

§727.403. Housing.

(a) Health and safety. The maternity home must:

(1) construct, maintain, clean, and repair buildings so that there are no hazards to the health and safety of clients.

(2) establish and maintain grounds so that there are no hazards to the health and safety of clients.

(3) have approved fire, health, and safety inspections. The home must submit approved inspection reports with the application for the license. The home must obtain approved inspections annually. Inspection reports must be kept on file at the home. The home must:

(A) have an annual fire inspection with a written report by a local or state fire marshal. The home must be in compliance with corrections, conditions, or restrictions specified in the report.

(B) have an annual sanitation inspection with a written report by a local or state sanitation official. The home must be in compliance with any corrections, restrictions, or conditions stated in the report.

(C) have an annual gas-pipe inspection, if gas is used. The inspection must be documented.

(D) have an inspection by an inspector certified by the Liquefied Petroleum Gas Division of the Railroad Commission, if the home has a liquid petroleum gas system.

(4) have written plans and procedures for assuring the health and safety of clients in case of a disaster or emergency, such as fire or severe weather. Staff must know these procedures and a copy must be available at the home for licensing staff to review.

(5) have first aid supplies readily available to staff, including a sterile emergency delivery pack, in designated locations.

(b) Living space. Maternity homes must:

(1) provide adequate living space, appropriate furnishings, and bathroom facilities for clients.

(2) have bedrooms with at least 75 square feet of floor space per occupant with a maximum of four clients per bedroom. Bedrooms must have at least one window with outside exposure.

(3) provide each client with her own bed and provisions for personal storage space.

(4) have at least 40 square feet per client of indoor activity space exclusive of halls, kitchen, bathrooms, and any other space not regularly available to clients. Where bedrooms exceed the minimum square footage requirements, the difference may be counted towards indoor activity space.

(5) have bathrooms located convenient to client bedrooms.

(6) have at least one lavatory and commode for each six residents and one tub or shower for each ten residents.

(7) have food preparation and dining areas appropriate to the home's food service program.

§727.405. Medical and Dental Care.

The maternity home must:

(1) have current written policies and procedures for providing routine medical care relating to pregnancy and delivery and for emergency diagnosis and treatment of other medical and dental problems.

(2) ensure that clients have access to prenatal medical care, delivery and immediate postpartum medical care, and postpartum convalescent medical care for the period post delivery and prior to discharge from the maternity home.

(3) ensure that each client is informed of the need for a postpartum examination, unless the examination is provided before her discharge from the home.

(4) provide for other emergency medical and dental diagnosis and treatment as needed, when such is ordered by the client's primary physician.

(5) ensure that maternity home staff do not provide any medication or treatment to a client except on written orders of a

licensed physician. If, in an emergency, instructions are given verbally, the physician must write and sign orders within 24 hours.

(6) ensure that a minor client's physician has authorized, in writing, a self-medication program or that maternity home staff administer the minor client's medication.

§727.407. Other Services.

The maternity home must:

(1) ensure that counseling about the different options regarding pregnancy is available to clients.

(2) ensure that clients have information, training, and counseling available regarding health aspects of pregnancy, preparation for child birth, and recovery from child birth.

(3) make provisions for minor clients who have not completed high school or received a general educational development program certificate (GED) to continue their education while in the maternity home.

(4) provide a recreational program planned according to the individual needs of the clients.

(5) provide transportation for clients' medical and counseling appointments.

(6) ensure that clients have adequate and appropriate clothing.

§727.409. Client Rights.

The maternity home must ensure that:

(1) clients have the right to initiate their discharge from the maternity home at any time.

(2) clients have the right to communicate freely by telephone and mail. The rules and guidelines for group living may establish reasonable rules for long distance calls and telephone hours.

(3) maternity home policies and practices do not infringe upon the client's right to self- determination, privacy, and personal dignity.

(4) clients are not subjected to any form of abuse, punishment, humiliation, coercion, or intimidation. A client must not be subjected to any pressure to relinquish her child for adoption or to parent her child.

(5) each client has the right to manage her own money.

(6) clients have the right to receive and send uncensored mail. Any exceptions must be part of the client's individual service plan.

(7) clients have the right to receive visitors. The rules and guidelines for group living may establish reasonable rules for visits. Any exceptions must be part of the client's individual service plan.

§727.411. Client Records.

The maternity home must ensure that:

(1) records for each client are kept accurate and current.

(2) client records are locked and kept in a safe location.

(3) client records are not released to any agency, organization, or individual without the written consent of the client.

(4) client records and information are kept confidential. All maternity home staff and consulting, contracting, and volunteer professionals and others with access to information about the client must be informed, in writing, of their responsibility to maintain client confidentiality.

(5) client records are retained permanently when the client chooses to relinquish her child for adoption. The maternity home has the option of transferring the record to the licensed child-placing agency that handled the adoption. Records for other clients must be retained for a minimum of two years.

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

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Subchapter E. Medication Aides

40 TAC &§;727.501-727.514

(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 Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.501. Introduction.

§727.502. Requirements for Administering Medications.

§727.503. Allowable and Prohibited Practices of a Permit Holder.

§727.504. Training Requirements; Nursing Graduates; Reciprocity.

§727.505. Application Procedures.

§727.506. Examination.

§727.507. Determination of Eligibility.

§727.508. Permit Renewal.

§727.509. Changes.

§727.510. Training Program Requirements.

§727.511. Permitting of Persons with Criminal Backgrounds.

§727.512. Violations, Complaints, and Disciplinary Actions.

§727.513. Requirements for Correctional Institutions.

§727.514. Application Processing.

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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Subchapter F. Inspections, Surveys, and Visits

§727.601, §727.602

(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 Department of Protective and Regulatory or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.601. *Procedural Requirements.*

§727.602. *Determinations and Actions Pursuant to Inspections.*

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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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

40 TAC §§727.701-727.707

(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 Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.701. *Definitions.*

§727.702. *Incidents of Abuse and Neglect Reportable to the Department by Facilities.*

§727.703. *Complaint Investigation.*

§727.704. *Reporting Incidents and Complaints.*

§727.705. *Investigations of Incidents and Complaints.*

§727.706. *General Provisions.*

§727.707. *Reporting of Resident Death Information.*

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 February 15, 1996.

TRD-9602189

Nancy Murphy

Section Manager, Media and Policy Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: April 1, 1996

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

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Subchapter H. Enforcement

40 TAC §§727.801-727.806

(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 Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.801. *Enforcement Generally.*

§727.802. *Suspension.*

§727.803. *Revocation.*

§727.804. *Referral to the Attorney General.*

§727.805. *Emergency Suspension and Closing Order.*

§727.806. *Administrative Hearing.*

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

Issued in Austin, Texas, on February 15, 1996.

TRD-9602190

Nancy Murphy

Section Manager, Media and Policy Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: April 1, 1996

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

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Subchapter I. Trustees for Facilities

40 TAC §§727.901-727.903

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

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code, §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.901. General.

§727.902. Appointment of a Trustee by Agreement.

§727.903. Involuntary Appointment of a Trustee.

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 February 15, 1996.

TRD-9602191
Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory
Proposed date of adoption: April 1, 1996
For further information, please call: (512) 438-3765

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Subchapter J. Provisions to Facilities Generally

40 TAC §§727.1001-727.1006

(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 Department of Protective and Regulatory Services or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code, §249, which provides the department with the right to adopt rules to implement Texas Civil Statutes, Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§727.1001. Investigation of Facility Employees.

§727.1002. Interpretive Memoranda.

§727.1003. Procedures for Inspection of Public Records.

§727.1004. Operating a Part of a Facility Under the Standards of a Lesser Licensing Category.

§727.1005. Required Postings.

§727.1006. Notice of Changes in Key Personnel.

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 February 15, 1996.

TRD-9602192
Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory Services
Proposed date of adoption: April 1, 1996
For further information, please call: (512) 438-3765

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Part XX. Texas Workforce Commission

Chapter 803. Skills Development Fund

40 TAC §803.1

The Texas Workforce Commission proposes new §803.1, concerning the operation of the skills development fund.

The Labor Code, as amended by Chapter 655, Acts of the 74th Legislature, 1995, establishes the skills development fund and provides that the Executive Director of the Texas Workforce Commission, or his appointee, shall be responsible for the distribution of money from the fund.

C. Ed Davis, Deputy Administrator for Legal Affairs, has determined that for the first five years the section as proposed is in effect, there will be minimal fiscal implications as a result of enforcing or administering the rule, beyond the legislative appropriation establishing the corpus of the fund.There will be minimal additional costs to the state as a result of enforcing the rule. There will be no reduction in costs to the state. There will be no costs to local governments other than those attendant to obtaining a grant.

Mr. Davis also has determined that for the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be the development of customized training programs for businesses and trade unions and the sponsorship of small and medium-sized business networks and consortiums. There will be no economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to Leslie Geballe, Intergovernmental Relations, Texas Workforce Commission Building, 101 East 15th Street, Room 662, Austin, Texas 78778, (512) 463-2213.

The new section is proposed under Texas Civil Statutes, Labor Code, §303.001ff, as amended by Chapter 655, Acts of the 74th Legislature, 1995, which establishes the skills development fund; §302.002, which authorizes the Executive Director to obligate funds from the skills development fund in a manner consistent with rules adopted by the Commission for that program; and §301.061, which directs the Commission to adopt rules as necessary for the administration of Title 4 of the Labor Code.

No other statute, article or code will be affected by this proposal.

§803.1. Requirements for Skills Development Fund.

(a) Purpose

(1) The purpose of the skills development fund is to enhance the ability of public community and technical colleges to respond to industry and workforce training needs and to develop incentives for public community and technical colleges to provide customized assessment and training in a timely and efficient manner.

(2) Uses of the Fund.

(A) The skills development fund may be used by public community and technical colleges as start-up or emergency funds for the following:

(i) to develop customized training programs for businesses and trade unions; and

(ii) to sponsor small and medium-sized business networks and consortiums.

(B) The skills development fund may not be used:

(i) to pay the training costs and related costs of an employer who relocates the employer's worksite from one place in Texas to another; or

(ii) for any proprietary or production equipment required for the training program of a single local employer; or

(iii) for wages for trainees.

(b) Definitions.

(1) Assessment-The evaluation of an employer's workforce needs and requirements.

(2) Customized Training Program-A program designed by a private business or trade union in partnership with a public community or technical college for the purpose of providing specialized workforce training to employees or prospective employees of the private business or members of the trade union with the intent of either adding to the workforce or preventing a reduction in the workforce.

(3) Director-The Executive Director of the Texas Workforce Commission.

(4) Grant Recipient-Any public community or technical college awarded a grant from the skills development fund.

(5) Non-Local Public Community and Technical College-A public community or technical college headquartered outside of a private partner's local taxing district.

(6) Prospective Private Partner-Any person, sole proprietorship, partnership, corporation, association, consortium, or private organization that submits a joint proposal for a customized training program in partnership with a public community or technical college.

(7) Public Community Colleges-Two-year institutions primarily serving their local taxing districts and service areas in Texas and offering vocational, technical and academic courses for certification or associate degrees. Public community colleges also provide continuing education, remedial and compensatory education consistent with open-admission policies, and counseling and guidance programs.

(8) Public Technical Colleges-Coeducational institutions of higher education offering courses of study in vocational and technical education, for certification or associate degrees.

(9) Trade Union-Any organization, agency, or employee committee, in which employees participate and which exists for the purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(10) Training Provider-Any public community or technical college that provides training; or, any person, sole proprietorship, partnership, corporation, association, consortium, governmental subdivision or public or private organization, other than a state agency, with whom a public community or technical college has subcontracted to provide training.

(c) Program Administration.

(1) Grant Administration. The director is responsible for the distribution of money from the skills development fund. The director may designate an employee or employees of the Texas Workforce Commission who are knowledgeable in the administration of grants to administer the program. The director is not required to fund all proposals for customized training programs that are submitted. The director may allocate the use of funds throughout the biennium in any manner that in his judgment furthers the goals and objectives of the fund. The director may limit the amount of funds awarded under any specific grant.

(2) Procedure for requesting funding, evaluating proposals, administering the contract, and evaluating the training program.

(A) A prospective private partner and a public community or technical college shall present to the director a joint proposal requesting funding for a customized training program or other appropriate use of the fund. The public community or technical college may be non-local.

(B) Proposals may be verbal and should contain the following information:

(i) a brief outline of the proposed training program;

(ii) a brief description of the measurable training objectives;

(iii) a budget summary, including anticipated program costs and resource contributions;

(iv) an outline of the agreement between the prospective private partner and the public community or technical college;

(v) a statement explaining the basis for the determination that there is an actual or projected labor shortage in the occupation in which the proposed training program will be provided that is not being met by an existing institution or program in the local workforce development area; and

(vi) any additional information as requested by the director.

(C) The director shall elicit the following information and consider it when evaluating proposals:

(i) the number of proposed jobs created or preserved;

(ii) the proposed initial wages for trainees who complete the program;

(iii) the prevailing wage for that occupation in the local labor market;

(iv) the proposed wage increase over duration of employment;

(v) the proposed employment benefits;

(vi) the proposed duration of employment, favoring longer duration;

(vii) the transferability of skills gained through training;

(viii) the nature of skills acquired through training;

(ix) a comparison of program costs per trainee to the public community or technical college's costs for similar instruction;

(x) any resources that the prospective private partner is willing to commit to the project;

(xi) the financial stability of the prospective private partner;

(xii) the regional economic impact; and,

(xiii) the prospective private partner's equal employment opportunity practices.

(D) The director shall evaluate each proposal considering the above-listed factors along with any other factors unique to the circumstances which the director determines are appropriate. If the director determines in his best business judgment that a proposal is appropriate for funding through the skills development fund, the director shall enter into a contract with the grant recipient on behalf of the Commission.

(E) The grant recipient shall serve as fiscal agent, shall administer the contract and, in cooperation with the private partner and any separate training provider, submit financial and performance reports to the Commission.

(F) Contract Completion. No later than 30 days following completion of a customized training program, a public community or technical college that is a party to an executed contract shall provide the Commission with the following information:

(i) fiscal data needed for independent verification and/or copies of any audits performed on the customized training program;

(ii) an evaluation of the number of jobs created/preserved and the wages paid as a result of the training program along with a description of the methodology used to prepare the evaluation;

(iii) an evaluation of the effectiveness of the training program in furthering the outcomes considered by the director along with the methodology used to prepare the evaluation;

(iv) average costs per program trainee; and,

(v) a detailed breakdown reflecting the expenditure of funds received.

(G) Full payment under a contract will be contingent upon the director's evaluation of the program using the outcome objectives specified in the contract.

(3) The Texas Workforce Commission will inform the Texas Higher Education Coordinating Board that a grant from the skills development fund has been made to a public community or technical college to provide a customized training program in order that it may conduct its review of the training program pursuant to Texas Civil Statutes, Labor Code, §303.004.

(4) The director shall promote the following program objectives when administering the skills development fund:

(A) the growth of industry and emerging occupations in Texas;

(B) creation and attraction of high value, high skill jobs for Texas;

(C) retention of jobs by providing retraining in response to new or changing technology; and

(D) expansion of the state's capacity to respond to workforce training needs.

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

Issued in Austin, Texas, on February 15, 1996.

9602238
C. Ed Davis
Deputy Adminstrator for Legal Affairs
Agency
Earliest possible date of adoption: March 29, 1996
For further information, please call: (512) 463-2291

♦ ♦ ♦

Name: Anthony Lipscomb
Grade: 3
School: Sheridan Elementary School, Cypress Fairbanks ISD

Name: Nick Joseph
Grade: 5
School: Sheridan Elementary School, Cypress Fairbanks ISD

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

16 TAC §3.21

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed repealed section, which appeared in the September 5, 1995, issue of the *Texas Register* (20 TexReg 6877).

Issued in Austin, Texas, on February 15, 1996.

9602245
Mary Ross McDonald
Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 1996
For further information, please call: (512) 463-7008

♦ ♦ ♦

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed new section, which appeared in the September 5, 1995, issue of the *Texas Register* (20 TexReg 6878).

Issued in Austin, Texas, on February 15, 1996.

9602246
Mary Ross McDonald
Assistant Director, Gas Services Section, Office of General Counsel
Railroad Commission of Texas
Effective date: February 15, 1996
For further information, please call: (512) 463-7008

♦ ♦ ♦

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 463. Applications

22 TAC §463.31

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption the proposed amended section, which appeared in the January 9, 1996, issue of the *Texas Register* (21 TexReg 247).

Issued in Austin, Texas, on February 15, 1996.

9602281
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: February 16, 1996
For further information, please call: (512) 305-7700

♦ ♦ ♦

Chapter 473. Fees

22 TAC §473.1

The Texas State Board of Examiners of Psychologists has withdrawn from consideration for permanent adoption the proposed amended section, which appeared in the January 2, 1996, issue of the *Texas Register* (21 TexReg 20).

Issued in Austin, Texas, on February 15, 1996.

9602282
Rebecca E. Forkner
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: February 16, 1996
For further information, please call: (512) 305-7700

♦ ♦ ♦

Part XXV. Structural Pest Control Board

Chapter 593. Licenses

22 TAC §593.23

The Structural Pest Control Board has withdrawn from consideration for permanent adoption the proposed amended section), which appeared in the December 19, 1995, issue of the *Texas Register* (20 TexReg 10876).

Issued in Austin, Texas, on February 12, 1996.

9602080
Benny M. Mahthis, Jr.
Executive Director
Structural Pest Control Board
Effective date: February 13, 1996
For further information, please call: (512) 835-4066

♦ ♦ ♦

Part I. Texas Natural Resource Conservation Commission

Chapter 115. Control of Air Pollution From Volatile Organic Compounds

Subchapter J. Administrative Provisions

General Permits

30 TAC §115.950

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed repealed section, which appeared in the September 5, 1995, issue of the *Texas Register* (20 TexReg 6910).

Issued in Austin, Texas, on February 15, 1996.

9602219
Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission
Effective date: February 15, 1996
For further information, please call: (512) 239-1970

♦ ♦ ♦

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

Subchapter B. New Source Review Permits

Permit Application

30 TAC §116.119

The Texas Natural Resource Conservation Commission has withdrawn from consideration for permanent adoption the proposed new section, which appeared in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8306).

Issued in Austin, Texas, on February 14, 1996.

9602156
Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission
Effective date: February 15, 1996
For further information, please call: (512) 239-1966

♦ ♦ ♦

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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.

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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.

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7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
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37. Public Safety and Corrections
40. Social Services and Assistance
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704..............950, 1820

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