

Texas Register

Volume 17, Number 90, December 4, 1992

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except February 28, November 6, December 1, December 29, 1992. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711. Subscriptions costs: one year - printed, \$95 and electronic, \$90; six-month - printed, \$75 and electronic, \$70. Single copies of most issues are available at \$5 per copy.

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POSTMASTER: Please send Form 3579 changes to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824.

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- Attorney General** - summaries of requests for opinions, opinions, and open records decisions
- Secretary of State** - opinions based on the election laws
- Texas Ethics Commission** - summaries of requests for opinions and opinions
- Emergency Sections** - sections adopted by state agencies on an emergency basis
- Proposed Sections** - sections proposed for adoption
- Withdrawn Sections** - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the **Texas Register** six months after proposal publication date
- Adopted Sections** - sections adopted following a 30-day public comment period
- Open Meetings** - notices of open meetings
- In Addition** - miscellaneous information required to be published by statute or provided as a public service

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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, Austin. Material can be found using **Texas Register** indexes, the **Texas Administration Code**, section numbers, or TRD number.

Texas Administrative Code

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

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

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Texas Register Publications



a section of the
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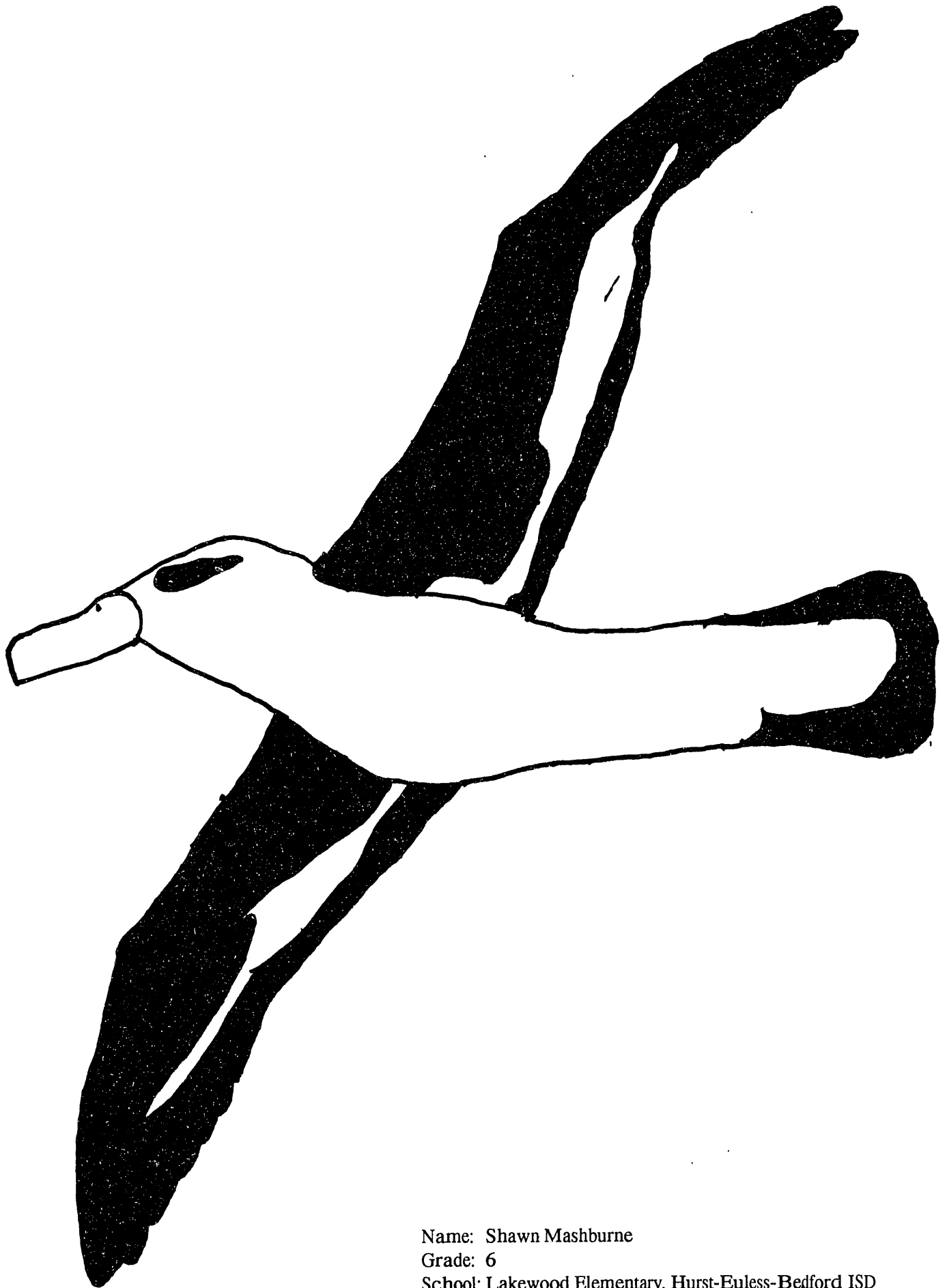
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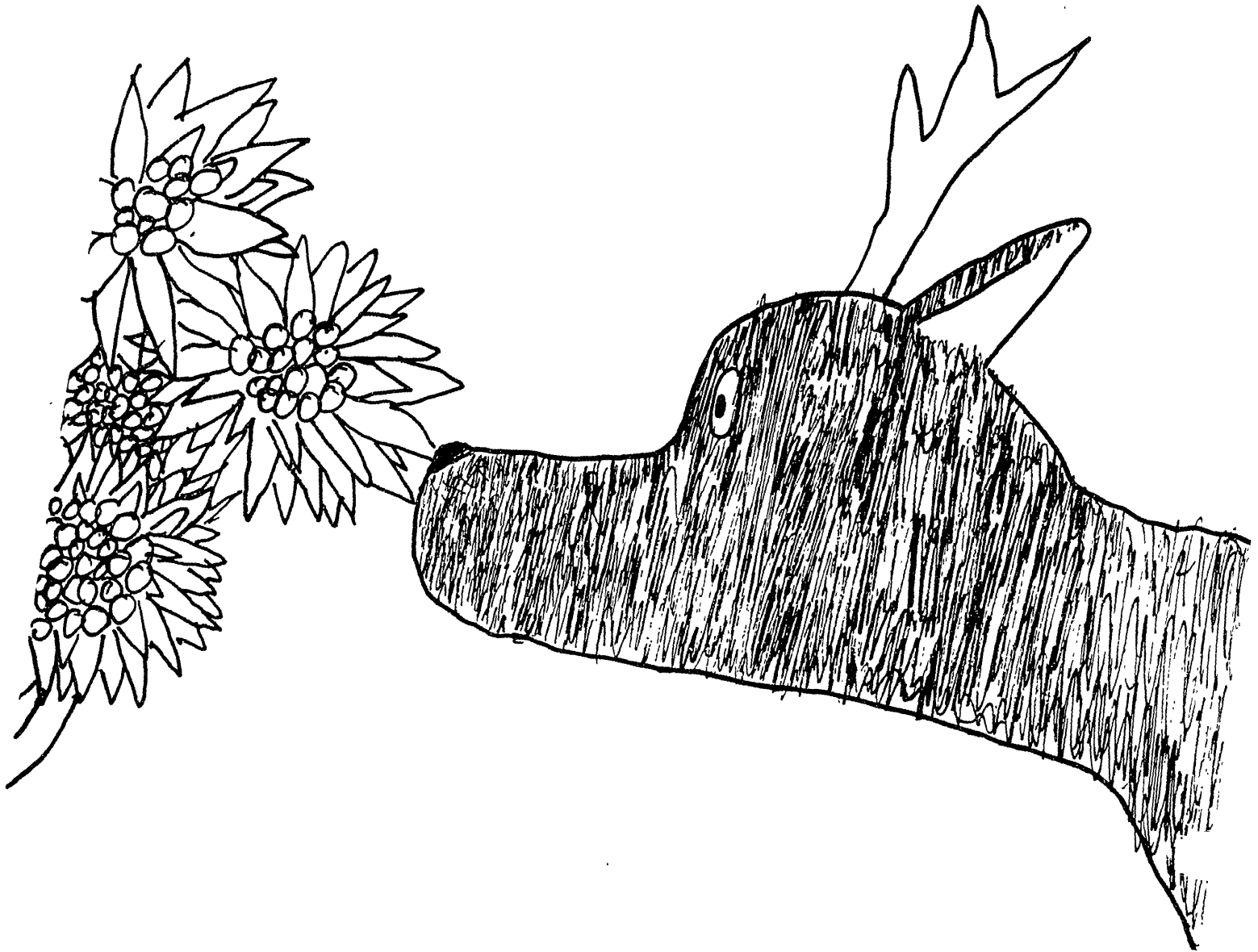
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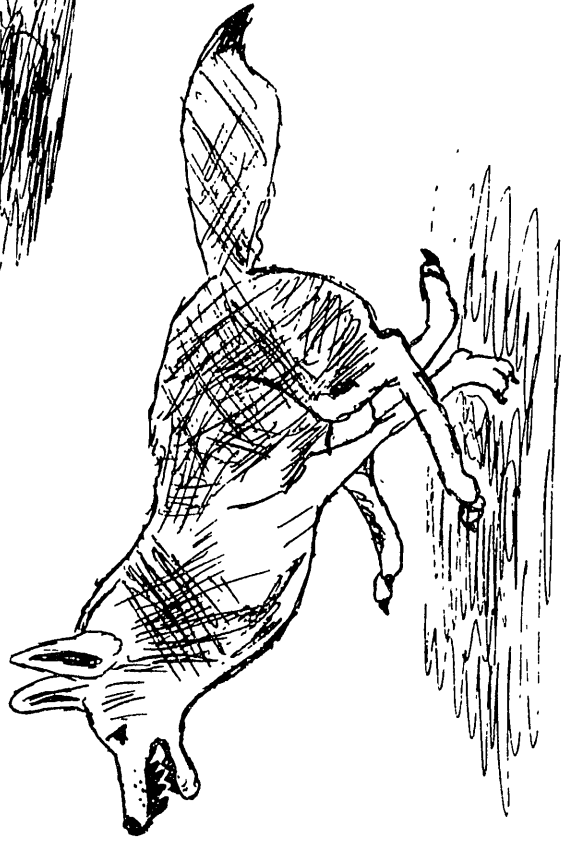
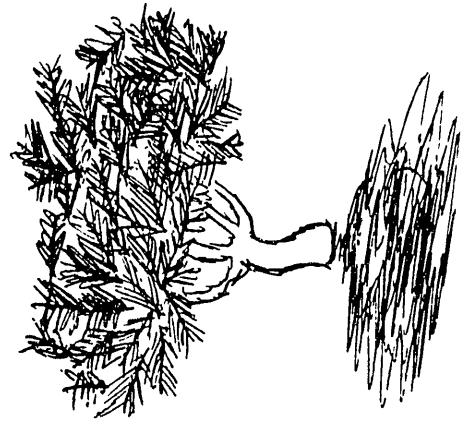
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Houston



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Emergency Sections

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 5. Quarantines

Pine Shoot Beetle Quarantine

• 4 TAC §§5.51-5.59

The Texas Department of Agriculture (the department) adopts on an emergency basis, new §§5.51-5.59, concerning the establishment of a pine shoot beetle quarantine for the State of Texas.

The department is acting upon requests from Christmas tree growers, nurserymen, and the forest industry of this state. This section is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees and other conifers. The Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus), was identified from a Christmas tree farm near Lorain County, Ohio, in July of 1992. Subsequent surveys by the United States Department of Agriculture (USDA) have located the pest in six states bordering the Great Lakes Region and the USDA has established a federal quarantine made up of this area. The pine shoot beetle is a highly destructive pest of pine trees and other conifers. Many species of pine can serve as host for any life stage of this pest, but scotch pine is preferred. Spruce, larch, and fir trees sometimes serve as breeding and reproduction sites. The pine shoot beetle breeds in felled logs and in standing trees weakened by fire, disease, or prior attack by defoliating insects. Adults usually overwinter in hollowed-out pine shoots. In spring, they emerge and select sites for breeding and reproduction, causing damage in the dying trees and recently cut logs where reproduction and immature stages occur.

Healthy trees are also at risk, when pest population densities are high. After the larval stage, which is spent in feeding galleries under the bark, the new adults emerge from the bark and begin "maturation feeding." Maturation feeding takes the form of boring up the center of the pine shoots, and causes stunted and distorted growth in host trees.

In addition to causing serious damage to the growth of healthy trees, as well as weak and dying trees, the pine shoot beetle is also an important vector of several diseases of pine, spruce, larch, and fir trees.

Once established in an area, the pine shoot beetle has a great potential to spread. Adults can fly at least one kilometer, and wood, nursery stock, and Christmas trees they infest

are often transported long distances. The pine shoot beetle has not been trapped, surveyed, or detected within the interior of Texas. If permitted to enter the state, the common pine shoot beetle could become an established pest causing severe economic damage to the timber, Christmas tree, and nursery industries of this state.

The department has determined that a public emergency exists in which there is a likelihood of the introduction or dissemination of an insect pest that is dangerous to the interest of horticulture and agriculture of this state. The immediate application of this quarantine will prevent the artificial movement of this serious economic pest into Texas. Further, to prevent the contamination of the forest, Christmas tree, and ornamental horticulture industries in Texas, it has been determined that the adoption of this quarantine is immediately necessary to avert a public menace.

The new sections establish the pine shoot beetle quarantine, provide definitions for use in the new sections, provide the purpose of the quarantine, establish regulated areas, and provide for regulated articles and conditions of movement of such regulated articles.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.001, which provides the department with the authority to establish a quarantine against out-of-state diseases and pests; §71.007, which provides the department with the authority to adopt rules necessary for the protection of agricultural and horticultural interests, including rules that prevent the selling, moving, or transporting of any plant, plant product, or substance found to be from a quarantined area; and §71.004, which gives the Texas Department of Agriculture the authority to establish a quarantine on an emergency basis, without notice and comment for a period of 30 days.

§5.51. Quarantined Pest. The quarantined pest is the Pine Shoot Beetle, *Tomicus piniperda*.

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

Certificate—A document issued or authorized to be issued by the Commissioner to allow the movement of regulated articles to any destination.

Commissioner—The duly elected or appointed commissioner of the Texas De-

partment of Agriculture or the commissioner's designee.

Infestation—The presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

Moved—(Move, Movement) Shipped, offered for shipment received for transportation, transported, carried, or allowed to be moved or shipped.

Person—Any individual, partnership, corporation, company, society, association, or other organized group.

§5.53. Declaration of Quarantine. Under the authority of the Texas Agriculture Code, §71.004, a quarantine is hereby established prohibiting the movement of regulated articles capable of transporting the insect pest known as the common pine shoot beetle, *Tomicus piniperda* (L.) into the State of Texas from locations designated as regulated areas, unless such articles comply with the conditions specified herein.

§5.54. Purpose of the Quarantine. The purpose of this quarantine is to prevent the introduction of the common pine shoot beetle, *Tomicus piniperda* (L.) into the State of Texas.

§5.55. Regulated Areas.

(a) The following counties in the state listed are hereby considered regulated areas because of the presence of *Tomicus piniperda* (L.):

- (1) Illinois—Kane County;
- (2) Indiana—Allen, Elkhart, Fulton, Jasper, LaGrange, Lake, LaPorte, Marshall, Noble, Porter, Pulaski, St. Joseph, Starke, and Steuben Counties;
- (3) Michigan—Monroe, Berrien, and Cass Counties;
- (4) New York—Erie and Niagara Counties;
- (5) Ohio—Ashland, Ashtabula, Cuyahoga, Geauga, Huron, Lake, Lorain, Mahoning, Medina, Portage, Richland, Summit, Trumbull, and Wayne Counties;
- (6) Pennsylvania—Crawford, Erie, and Lawrence Counties.

(b) Any other county in the United

States where the presence of the pine shoot beetle *Tomicus piniperda* (L.) is confirmed is also considered a regulated area for purposes of this quarantine.

§5.56. *Regulated Articles.* The following are designated as regulated articles:

(1) the pine shoot beetle *Tomicus piniperda* (L.) in any living stage of development;

(2) plants of the genus *Pinus* spp. whether balled and burlapped or cut live for use as Christmas trees;

(3) ornamental foliage from the genus *Pinus* spp;

(4) timber from the genus *Pinus* spp. with bark intact.

§5.57. *Conditions of Movement of Regulated Articles.* The following regulated articles may be moved into the State of Texas from any regulated area, only in accordance with the following conditions:

(1) the common pine shoot beetle (in any living state of development). Before the common pine shoot beetle (in any living state of development) is allowed entry into Texas a permit must be obtained from the Commissioner. Such permit shall be issued only after it has been determined that the insects are being used for scientific purposes subject to specified safeguards.

(2) live plants and cut Christmas trees of the genera *Pinus*, *Abies*, and *Picea* or the foliage from such plants. A certificate from the state of origin, prepared by either a federal or state plant protection official, must be securely attached in a conspicuous location to each article or load of articles to a single destination, and to the bill of lading, indicating that each article in the shipment was carefully inspected by a duly authorized inspector, and that no live state of the common pine shoot beetle, *Tomicus piniperda* (L.), is present in or on any of the regulated articles;

(3) timber products with bark attached, including logs and stumps, from the genera *Pinus*, *Abies*, and *Picea*. A certificate from the state of origin, prepared by either a federal or state plant protection official, must be securely attached in a conspicuous location to each article or load of articles to a single destination, and to the bill of lading indicating that each article in the shipment was fumigated with methyl bromide in accordance with USDA treatment schedules.

§5.58. *Quarantine duration.* This quarantine shall be in effect immediately upon its filing with the Office of the Secretary of State in accordance with Texas Civil Statutes, Article 6252-13a, §5 is in effect for the time provided by law.

§5.59. *Enforcement.* In addition to any other enforcement action allowed by the Texas Agriculture Code, Chapter 71 Subchapter A, any quarantined article found to be imported or shipped into the State of Texas in violation of this quarantine are subject to stop sale, return to point of origin, or destruction at the discretion of the Commissioner.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215777

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Effective date: November 24, 1992

Expiration date: December 24, 1992

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

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Proposed Sections

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

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

TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

• 4 TAC §35.4

The Texas Animal Health Commission proposes an amendment to §35.4, concerning entry and change of ownership.

The proposed amendment is necessary to allow non-vaccinated females between the ages of four and 12 months to enter from a premise of origin and be vaccinated on arrival at a premise in Texas.

Bill Hayden, director of administration, 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 advise the public that these females may now be vaccinated on arrival, thus allowing an alternative to vaccination prior to entry. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters 161 and 163, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§35.4. *Entry and Change of Ownership.*

(a) (No change.)

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All female cattle born after January 1, 1983, and four months of age and older entering shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements are:

(A)-(G) (No change.)

(H) nonvaccinated female cattle between four and 12 months of age moving from the premise of origin may enter on a calfood vaccination permit and must be vaccinated at no expense to the state within five days after arriving at the premise of destination.

(2) (No change.)

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

Issued in Austin, Texas, on November 20, 1992.

TRD-9215828

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 479-6697

Chapter 41. Fever Ticks

• 4 TAC §41.1

The Texas Animal Health Commission proposes an amendment to §41.1, concerning tick eradication.

The proposed amendment is necessary to clarify regulatory language.

Bill Hayden, director of administration, 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 as a result of enforcing the section will be to advise the public of tick regulations in clearer, more understandable language. 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 Jo Anne Conner, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendment is proposed under the Agriculture Code, Texas Civil Statutes, Chapters

161 and 167, which provides the commission with authority to adopt rules and sets forth the duties of this commission to control disease.

§41.1. *Tick Eradication.*

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

(1) (No change.)

(2) Certificate—A document authorizing movement of livestock issued by an authorized representative of the Commission [for movement of livestock,] after the [said] livestock have been treated in a manner prescribed by the Commission for the area and premise from which they originate.

(3) (No change.)

(4) Control purpose quarantine area—An area [Area] designated by the commission for a systematic inspection of livestock and premises and control of the movement of livestock in order to investigate and control a suspected exposure of animals to ticks outside the tick eradication quarantine area. The boundaries [extent] of the area will [shall] be determined by [the appropriate] evaluation of the barriers to the potential spread of ticks.

(5) Dipping [Dip, dipped, dipping] or treating [treated]—Submerging livestock in a vat, spraying livestock in an adequate facility, or other [any sanitary] treatment of livestock as may be approved by the Texas Animal Health Commission. The [In order for such] treatment [for ticks to be officially recognized, it] must be supervised by an authorized representative of the Commission, [written records maintained in the area tick office of the United States Department of Agriculture of all treatments,] and each animal must be paint marked so that it can be identified for at least [a period of] 17 days.

(6) Exposed livestock—Livestock that have entered an infested or exposed premise and have not been dipped [within 14 days after the entry] and removed from the infested or exposed premise[,] within 14 days after entry; or livestock that have occupied an exposed premise [premises] and have not completed treatment required

for movement from an exposed premise; [.] or livestock that [which] have entered Texas from [the Republic of] Mexico without a certificate from the United States Department of Agriculture.

(7) Exposed premise—A premise on which ticks have been found on livestock that have been on the [said] premise for less than 14 days; or a premise that has received exposed livestock, or equipment or material capable of carrying ticks from an infested or exposed premise, and upon which systematic treatment has not been completed.

(8) Free area—An area [Areas] designated by the Commission as being free of ticks or exposure to ticks. The extent of the [said] area will [shall] be determined by the appropriate barriers to the potential spread of ticks.

(9) Infested livestock—Livestock on which ticks have been found, or livestock which occupy a premise where [on which] ticks have been found on livestock that have been on the [said] premise more than 14 days and upon which eradication treatment [has not been completed] for movement from an infested premise has not been completed.

(10) Infested premise—A premise where [on which] ticks have been found on livestock that have been on the [said] premise for more than 14 days, and systematic treatment has not been completed.

(11) Livestock—Any domestic animal or captured wild animal that is capable of hosting or transporting ticks capable of carrying babesia (the causative [causating] agent of cattle tick fever), including, but not limited to, cattle, horses, mules, jacks, jennets, zebras, buffalo, giraffe, and deer.

(12) Permit—A document issued by an authorized representative of the Commission allowing specified movement of [the] livestock [specific movement privileges].

(13) Premise—An area which can be defined by boundaries of recognizable physical barriers [creating its boundaries] that prevent livestock from crossing the boundaries [said boundary] under ordinary circumstances; or an area that livestock do not ordinarily inhabit that [which] the commission defines by recognizable features.

(14) Premise inspection—A routine inspection by an authorized representative of the Commission of premise boundaries and the livestock within for the purpose of documenting exposure of the [said] premise [by an authorized representative of the Commission. A written record of all inspections must be recorded in the area tick office of the United States

Department of Agriculture for the inspection to be official].

(15) (No change.)

(16) Range inspection of livestock—An inspection of livestock [under conditions which will allow the person inspecting the animal] to see the animal close enough to detect ticks on the animal. [A written record of inspections must be recorded in the area tick office of the United States Department of Agriculture for the inspection to be official.]

(17) Scratch inspection of livestock—An inspection of livestock by an authorized representative of the commission in an approved facility that allows [which will allow] the inspector [person inspecting the animal] to touch and see all parts of the livestock. [A written record of all scratch inspections must be recorded in the area tick office of the United States Department of Agriculture for the inspection to be official.]

(18) Temporary preventative quarantine area—An area [Areas] designated by the commission for [a] systematic inspection and treatment of livestock and premises, and [treatment and] control of movement of livestock, in order to detect and [investigate,] eradicate, [and eliminate additional] infestation and exposure from infested or exposed premises outside [of] the tick eradication quarantine area. The extent of the [said] area will [shall] be determined by evaluating the [appropriate] barriers to the potential spread of ticks.

(19)-(20) (No change.)

(21) Tick eradication quarantine area—An area [Areas] designated by the commission for [a] systematic inspection and treatment of livestock and premises, and [treatment and] control of movement of livestock, in order to detect and [investigate,] eradicate, [and eliminate additional] infestation from infested or exposed premises. The extent of the [said] area will [shall] be determined by evaluating the [appropriate] barriers to the potential spread of ticks. This is the permanent quarantine area which is designated in Texas Animal Health Commission Proclamation Number 426, §41.2 of this title (relating to Quarantine Line; Defining and Establishing Tick Eradication Areas), and in the United States Department of Agriculture Code of Federal Regulations Part 72.5, parallel to the Rio Grande River, commonly known as the buffer zone or systematic area.

(b) Designation of an area.

(1) Each area [All areas] of the state will [shall] be classified by the commission as [one of either] a free area, control purpose quarantine area, temporary preventative quarantine area, or tick eradication quarantine area. The commission will

[shall] immediately redesignate an area when any [upon the] change in circumstances that warrants reclassification. Each area will [All areas except free areas, shall] be determined by the Animal Health Commission according to the needs of inspection and treatment for known or suspected infestation [infestations] of ticks.

(2) Upon the designation of any area other than a [the] Free Area, and upon the request of five livestock owners within that [the] area, the commission will [shall] appoint an area advisory committee from recommendations made by livestock owners within the area. The [area] committee will [shall] be kept informed [at all times] of the general plan of inspection and treatment for the area, of the results of all inspections of livestock and premises, and of changes in boundaries [due to straying or change in area designation].

(3) The commission will [shall] notify all livestock owners within an area, except the free area, as to the type area in which their livestock are located. All changes in designation of an area will [shall] be in writing with the reason for change given.

(c) Designation of a Premise.

(1) Each premise [All premises] within a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area will [shall] be classified by the commission as [either] infested, exposed, adjacent, or check premise. The commission will [shall] immediately redesignate a premise when a [upon the] change in circumstances [that] warrants reclassification. The boundaries of each premise will [all premises shall] be determined according to [the needs of] inspection and treatment needs for known or suspected infestation [infestations] of ticks.

(2) The commission will [shall] notify all livestock owners within an area, except the free area, as to the type premise on which their livestock are located. All changes in designation of premises will [shall] be in writing with the reason for change given.

(d) Movement of Livestock.

(1) When livestock are moved from a quarantined area, the person moving the livestock must [in charge of the movement (trail boss, truck driver) shall] have in his or her possession a copy of any certificate or permit required [of the livestock] for movement.

(2) A permit or certificate is [All permits or certificates shall be] void unless the livestock begin movement to the stated destination immediately upon issuance.

(3) Movement must be direct to the destination stated on the permit or cer-

tificate [If moved on foot, the movement must follow a designated route.] No livestock may be unloaded at any [other] destination not [than] shown on the permit or certificate.

(4) Any livestock that become exposed during movement **must** [shall] be scratch inspected and dipped within 14 days of the [such] exposure.

(5) No certificate for movement **will** [shall] be issued unless the owner of the livestock [to be moved] has fully complied with these [all] regulations [of this tick program].

(6) **When livestock are allowed to move after** [On any movement allowed following] a required dip, the livestock **must** [to be moved shall] be loaded in the transporting conveyance wet, or held on [placed in] a premise and for a period of time [both to be] approved by an authorized representative of the Commission.

(7) **Livestock may not move** [No movement shall be made] when a dip is required prior to movement, and rain that **results in the dip dripping to the ground occurs before the dip dries** [occurs prior to the drying of the dip that results in the dip dripping to the ground]. In such event, the certificate for movement is void, and another dip is required before movement.

(e) Restrictions on movement of livestock.

(1) Movement from a [originating in the] free area. There are no restrictions on the movement of livestock from a designated Free Area.

(2) Movement from a [originating in the] tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantined area. The owner or caretaker of livestock located in a [the] tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area **must** [shall] not move, or allow the movement, of any livestock from the area [said Area, or from any premise therein] without a permit or certificate for movement [covering the livestock to be moved] issued by an authorized representative of the commission. [; nor shall any] No person **may** accept a [such] shipment of livestock [in or] from a tick eradication quarantine area, temporary preventative quarantine area, or control purpose quarantine area [the said Area], unless the livestock are accompanied by [owner first delivers unto them] an original permit or certificate for movement [the livestock].

(A) Movement from [originating in] an infested premise or exposed premise. A **certificate** [Certificates] for movement **will** [shall] be issued [either]

after the livestock [to be moved] have **had** [been dipped by] three consecutive dips not less than seven nor more than 14 days apart without scratch inspection unless required under subsection (k) of this section; or, if moving directly to slaughter by sealed conveyance, have **had** [been dipped by] two consecutive dips not less than seven nor more than 14 days apart without scratch inspection unless required by subsection (k) of this section or have **had two dips** [been dipped following a scratch inspection that does not reveal ticks and] not less than seven days nor more than 14 days apart, **with each dip** [later dipped again] following a scratch inspection that does not reveal ticks [; or have been dipped following a scratch inspection and not less than 12 days nor more than 14 days later dipped following a scratch inspection that does not reveal ticks].

(B) Movement from an adjacent premise or check premise. Certificates for movement **will** [shall] be issued after the livestock [to be moved have been found free from ticks by scratch inspection and] have been found free from ticks by scratch inspection and [have] then [been] dipped; or, have **had** [been dipped by] three [consecutive] dips not less than seven nor more than 14 days apart without scratch inspection unless required under subsection (k) of this section; or, if moving directly to slaughter by sealed conveyance, have **had** [been dipped by] two [consecutive] dips not less than seven nor more than 14 days apart without scratch inspection unless required under subsection (k) of this section.

(3) Movement originating in other states. In addition to other requirement, livestock originating in a fever tick quarantined area **must** be accompanied by a certificate issued by an authorized representative of the Commission showing them to be free of infestation and exposure and that they were dipped under supervision in an approved dipping solution immediately prior to shipment. The livestock **must** be transported in clean and disinfected trucks railroad cars, or other vehicles.

[(3) Certificates for movement originating in the control purpose quarantine area. Certificates for movement originating in a premise within the control purpose quarantine area shall be issued after the livestock to be moved have been found free from ticks by scratch inspection and have been dipped; or, have had been dipped by three consecutive dips not less than seven nor more than 14 days apart without scratch inspection unless required under subsection (k) of this section; or, if moving directly to slaughter by sealed conveyance, have had been dipped by two consecutive dips not less than seven nor more than 14 days apart without scratch inspection unless

required under subsection (k) of this section.

[(4) Waiver of restriction. The Commission may for good cause waive in writing any of the restrictions on the movement of livestock.

[(5) Movement originating in other states. Cattle originating in fever tick quarantined areas must, in addition to other requirements, be accompanied by a certificate issued by a regularly employed state or federal inspector showing animals to be shipped free of infestation and exposure and dipped under supervision in a recognized dipping solution immediately prior to shipment, and transported in clean and disinfected trucks, railroad cars, or other vehicles.]

(f) Restrictions on movement of hides and carcasses.

(1) Movement from a [the] free area. There are no restrictions on the movement of hides and carcasses [or parts thereof] from a [the] free area.

(2) Movement from any area other than a [the] free area. Hides and carcasses and parts thereof of any animal, **must be inspected and undergo any treatment deemed necessary.** [whether livestock or other shall not move without inspection, treatment, and a] permit for movement issued by a representative of the Commission **must accompany the shipment** [when deemed necessary].

(g) Dipping of livestock; general. All dipping prescribed in this section **must** [shall] be done under the supervision of a representative [representatives] authorized by the commission. The commission **will** [shall] authorize for use in [official] dipping [of animals] only those [proprietary brands of] dips [and in the applicable concentration that has] that have been approved by the Animal and Plant Health Inspection Service of the United States Department of Agriculture and the Texas Animal Health Commission for use in official dipping to rid animals of the tick. The concentration of the dipping chemical used **must** [shall] be maintained in the percentage specified for official use[,] by means of the approved vat management techniques established for the use of the [applicable] agent; or, if applicable, by an officially approved vat side test or field test of the Commission. The owner or caretaker of the livestock is [shall be] responsible for presenting the livestock to the dipping vat, dipping the livestock, and removing the livestock, and **will** [shall] provide such labor as is necessary to perform all required functions.

(h) Required Dipping of Livestock.

(1) The owner or caretaker of livestock on infested or exposed premises in the tick eradication quarantine area, or in-

fested or exposed premises in the temporary preventative quarantined area must [shall] present them to be scratch inspected and dipped with subsequent [, followed by regular] dipping every [at intervals of] seven to 14 days until the [said] livestock are moved from the premise in accordance with these regulations, except as provided in paragraph (5) of this subsection. [or for the period of time shown on Table I (Pasture Vacation Schedule, South of Highway 90) or Table II (Pasture Vacation Schedule, North of Highway 90) for the appropriate locality and starting date.]

(2) The 14-day interval may be extended due to circumstances beyond the control of the owner upon approval by an authorized representative of the commission. In no event will [shall] the extension be more [for a period greater] than three days. If the extension is granted, no certificate for movement will [shall] be issued after the 14th day, and the next dip must [shall] be on the original 14-day schedule.

(3) All scratch inspection and dipping must [shall] be done under instructions issued by the commission. All requirements will [of the owner shall] be in written form directed to the owner or caretaker. An inspector for the Commission will [shall] deliver the instructions in person along with a copy of these regulations. All premise boundaries will [shall] be listed in the instructions [order].

(4) (No change.)

(5) The starting date for Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90), is [shall be] the date of the last scratch inspection and dip when [that] live ticks are discovered, or when 100% of the livestock on the premise have been dipped. Copies of Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

(6) A dip is not [shall not be] official unless 100% of the livestock within the premise affected are dipped on schedule.

(i) Vacation of Premise. Upon the removal of all livestock from a premise, the premise remains [shall remain] classified as before [the removal] for the period shown on Table I (Pasture Vacation Schedule, south of Highway 90) or [and] Table II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable. [for the locality and starting date.] The starting date is the date the last live tick is found, or when 100% of the livestock on the premise have been dipped and continued on an official dipping schedule until removed from the premise. Upon expiration of the time

shown in Tables I (Pasture Vacation Schedule, South of Highway 90) or [and] II (Pasture Vacation Schedule, North of Highway 90), whichever is applicable, or when determined by the commission that [when] the premise has no infestation, the premise will [shall] be reclassified [as is appropriate within the area or shall be reclassified as a check premise of control purpose quarantine area].

(j) Required inspection of premise. An infested premise, exposed premise, or [and] adjacent premise will [shall] be [premise] inspected every 14 days by an authorized representative of the commission. The 14-day interval may be extended due to circumstances that prevent the inspection. A check premise will [shall] be [premise] inspected when deemed necessary by an authorized representative of the commission.

(k) Required scratch inspection of livestock. The owner or caretaker of livestock on any premise must [shall] present them to be scratch inspected at any time specified by notice from an authorized representative of the commission.

(l) Handling and feeding of livestock.

(1) (No change.)

(2) All material removed from [such] conveyance or that has held infested or exposed livestock [premise, except on an infested or exposed premise,] must be kept in an enclosure inaccessible to livestock, at a [being separated for a] minimum distance of 15 feet. No material will [shall] be removed from the [said] enclosure without approval in writing by the Commission.

(3) Hay, feed, or [and] any other commodity capable of carrying ticks may not be moved from an infested or exposed premise without a permit.

(m) [Hearing on] protest of designation of area or premise, dipping direction, or other orders.

(1) Any person that desires a hearing for the purpose of protesting the designation of an area or premise, or [against the enforcement of] any dipping direction, or scratching notice, or any other order of the commission issued under the provisions of these regulations, may file an appeal pursuant to Chapter 32 of this title (relating to Hearing and Appeal Procedures) [with an authorized representative of the commission a sworn application for a hearing, which application shall be forwarded by the authorized representative to the commission. In case of a protest from dipping, the application must be filed 10 days prior to the dipping date. The commission shall set a hearing on applications and give notice to the applicant and other parties who join the action.]

[(2) The applicant may appear at the hearing either in person or by attorney, or both, and may submit such ex parte affidavits as he desires. The hearing shall be conducted and governed by the terms and provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a. The commission shall also consider controverting affidavits and statements. The Administrative Procedure and Texas Register Act provides generally as follows with respect to hearings: the commission may swear witnesses and take their testimony under oath, and the rules of evidence as applied in nonjury civil cases shall be followed. Upon a showing of good cause, witnesses and records can be subpoenaed for testimony and used at the hearing or on deposition, and any party can be compelled to produce such records and documents as may be necessary and proper for the proceedings; witnesses shall be subject to cross-examination; and the commission can take notice of those generally recognized facts within the commission's area of expertise.

[(3) The commission shall render its decision in writing and transmit the same to the authorized representative who received the original application, who shall thereupon either deliver the same in person to the applicant or transmit the same to him by registered mail to the address shown in said application.

[(4) If the protest is for dipping and the commission overruled said application, it shall be the duty of said person to thereafter dip said livestock on all the dipping dates prescribed in said dipping direction, but he shall not be required to dip said livestock on the first dipping date following the delivery to him of a copy of the decision rendered by said Commission, unless two full days intervene between the date of said service and the said dipping date, providing that where service is by registered mail, the time of depositing same in the mail without regard to whether it is received shall be regarded as the time of said service, but he shall not be required to dip said livestock on the first dipping date following said service, unless four full days intervene between the date of depositing the same in said registered mail and the first dipping date thereafter.]

(n) Regulations on cattle and products imported from [the Republic of] Mexico.

(1) All livestock moved into Texas from [the Republic of] Mexico must [will] be identified in a manner so that their Mexico origin can be determined.

(2) A copy of the certificate issued by an authorized inspector of the Animal and Plant Health Inspection Service, United States Department of Agriculture, for the movement of Mexico cattle into

Texas must [shall] accompany such animals to their final destination in Texas, or so long as they are moving through Texas.

(3) The owner or caretaker of livestock that [which] have been in [the Republic of] Mexico within six months of their entry into Texas may [shall] not move, or allow the movement of the [such] livestock to any area of Texas other than a [the] free area; nor may [shall] any person accept a shipment of such livestock into any area other than a [the] free area.

(4) No person, firm, corporation, or carrier may [shall] move or transport from Mexico into [the State of] Texas any commodity capable of carrying ticks [for any purpose] unless the commodity has [such products have] been treated in accordance with requirements of the commission [, or] and the United States Department of Agriculture. A certificate of treatment issued by an authorized inspector must [shall] accompany such products to their final destination in Texas, or so long as they are moving through Texas.

(o) (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 November 20, 1992.

TRD-9215829

Terry Beals, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 479-6697

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter F. Bills of Lading and Waybills

• 16 TAC §5.92

The Railroad Commission of Texas, pursuant to a petition filed by the Texas Tank Truck Carriers Association, Inc., proposes an amendment to §5.92, concerning contents of bills of lading. The section requires that certain information be included on each bill of lading. The section as proposed would require a shipper offering a commodity for transportation to furnish the carrier with the proper commodity description as set forth in the applicable tariff.

Jackye Greenlee, assistant director-central operations, 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.

Gary W. Elkins, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the standardization of commodity descriptions, which will clarify which rate in the tariffs should apply. 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 Gary W. Elkins, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 911b, §4, which authorize the Railroad Commission of Texas to prescribe all rules and regulations necessary for the government of motor carriers, and to supervise and regulate motor carriers in all matters affecting the relationship between such carriers and the shipping public.

§5.92. *Contents of Bills of Lading.* Each bill of lading shall show in addition to other information required by law the following information:

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

(7) the number and an exact tariff description of the commodity, goods, articles, packages, or property tendered and received for transportation, showing separately those items of differing classification and those which are subject to varying rates or charges. The company offering a commodity for transportation shall furnish the carrier, at the time of shipment, with the exact commodity word description as set forth in the applicable rate tariff and shall describe the commodity on the shipping paper, bill of lading, or shipping order by such exact commodity word description. The proper commodity description as detailed in this paragraph shall be in addition to the proper hazardous material description as required by the United States Department of Transportation;

(8)-(10) (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 November 23, 1992.

TRD-9215722

Nolan Ward
Hearings Examiner, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 463-7096

Subchapter K. Safety Require- ments

• 16 TAC §5.171, §5.173

The Railroad Commission of Texas proposes amendments to §5.171, concerning Safety Regulations of the Department of Transportation Adopted and §5.173, concerning Driver's Daily Log, pursuant to a request from the Department of Public Safety (DPS). Section 5.171 adopts certain of the safety regulations of the Department of Transportation (DOT) as the safety requirements of the commission. The proposed amendment would adopt the safety regulations of the DOT as they have been adopted by the DPS. Section 5.173 provides that every motor bus company and motor carrier shall require its drivers to maintain a daily log. The proposed amendment specifically applies the daily log requirement to motor bus companies and motor carriers certificated or permitted by the commission.

Jackye Greenlee, assistant director-central operations, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Kenneth W. Mills, hearings examiner, 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 DPS and commission safety regulations will be the same, simplifying and assisting enforcement of both sets of regulations, and that the daily logs of drivers of certificated and permitted motor bus companies and motor carriers will be maintained. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Kenneth W. Mills, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendments are proposed under the Texas Motor Bus Act, Texas Civil Statutes, Article 911a, and the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorizes the commission to regulate motor bus companies and motor carriers, respectively, in all matters.

§5.171. *Safety Regulations of the Department of Transportation Adopted.* [The safety regulations of the Department of Transportation (49 Code of Federal Regulation, Parts 390-394, inclusive, and 396) as revised, supplemented, or amended, insofar as they relate to physical requirements of drivers, equipment, and inspection and maintenance of equipment, are hereby adopted as the safety requirements of the Railroad Commission of Texas, and all motor carriers and motor bus companies oper-

ating under the jurisdiction of the commission shall be governed thereby.]

(a) The commission incorporates by reference the Federal Motor Carrier Safety Regulations, 49 Code of Federal Regulations Parts 390-393 and 395-397, including amendments and interpretations thereto.

(b) For purposes of this section only, and with respect to the adoption in subsection (a) of this section, certain terms when used in the federal regulations as adopted in subsection (a), of this section will be defined as follows:

(1) the definition of a motor carrier will be the same as that given in Texas Civil Statutes, Article 6701d, §2(o);

(2) the definition of hazardous material shipper will be the same as that given in Texas Civil Statutes, Article 6701d, §2(p);

(3) interstate or foreign commerce will include all movements by motor vehicle, both interstate and intrastate, over the streets and highways of this state;

(4) department means the Railroad Commission of Texas;

(5) regional highway administrator means the director of the Texas Department of Public Safety;

(6) farm vehicle means any vehicle or combination of vehicles controlled and/or operated by a farmer or rancher begin used to transport agriculture products, farm machinery, and farm supplies to or from a farm or ranch; and

(7) private carrier means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle" who or which transports by motor vehicle property of which person is the owner lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

(c) Exceptions to the adoption in subsection (a) of this section were made by Texas Civil Statutes, Article 6701d, §139, and are adopted as follows.

(1) The regulations shall be applicable to vehicles with an actual gross weight, a registered gross weight, or a gross weight rating in excess of 26,000 pounds, except that the regulations will be applicable to farm vehicles with an actual gross weight, a registered gross weight, or vehicles with a gross rating of 48,000 pounds or more. Vehicles transporting 15 or more passengers and all vehicles transporting hazardous materials requiring a placard are subject to the regulations.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following eight consecutive hours off duty.

(3) Such regulations shall not apply to vehicles operated intrastate used in oil or water well servicing or drilling which are constructed as a machine consisting of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes.

(4) Such regulations shall not apply to a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights when operated intrastate.

(5) The maintenance of any type of government form, separate company form, driver's record of duty status, or a driver's daily log is not required if the vehicle is operated within a 150 air mile radius of the normal work reporting location:

(A) if owner has another method by which he keeps, as a business record, date and time of delivery of product or service, and location of delivery of product or service so that a general record of the driver's hours of service may be compiled; or

(B) if another law requires or specifies the maintenance of delivery tickets, sales invoices, or other documents which show the date of delivery and quantity of merchandise delivered, so that a general record of the driver's hours of service may be compiled; and

(C) provided that the business records generally conform with the following:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day; and

(iv) the total time for the preceding seven days in accordance with 49 Code of Federal Regulations, Part 395.8 of the Federal Motor Carrier Safety Regulations for drivers used for the first time or intermittently.

(6) Drivers who are not transporting hazardous materials and were regularly employed in Texas as an intrastate motor carrier prior to the effective date of this adoption are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday after September 1, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as exemption from drug testing requirements contained in Part 391.

(d) Exceptions adopted by the commission not specified in Texas Civil Statutes, Article 6701d, §139, are as follows.

(1) 49 Code of Federal Regulations, Part 393.86 requiring rear end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991.

(2) Under this section, the Texas Department of Public Safety may provide a waiver for a person who is otherwise disqualified under 49 Code of Federal Regulations, Part 391.41(b)10, provided the person meets the vision standards adopted by the Texas Department of Public Safety in 37 Texas Administrative Code §15.51 (relating to Vision Tests).

(A) Applications for a waiver shall not be accepted by the Texas Department of Public Safety after January 1, 1990.

(B) Waivers granted under this paragraph are automatically renewed, provided the applicant continues to meet vision standards adopted by the Texas Department of Public Safety in 37 Texas Administrative Code §15.51 (relating to Vision Tests).

(3) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period.

(4) 49 Code of Federal Regulations, Part 391.11b(1) is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age.

(5) 49 Code of Federal Regulations Part 391.11b(2) is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas driver's license and be a minimum age of 18 years old.

(6) 49 Code of Federal Regulations, Part 391.51 pertaining to driver qualification files is effective on and after January 1, 1990.

(7) The parts of 391, 49 Code of Federal Regulations as they pertaining to drug testing requirements, are effective on and after December 21, 1990, for intrastate drivers.

(8) Texas Civil Statutes, Article 6701d, §132(b) and (c) concerning brakes on trailers weighing 15,000 pounds gross weight or less, take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification.

(9) Texas Civil Statutes, Article 6701b-1, concerning identifying markings on commercial motor vehicles shall take precedence over 49 Code of Federal Regulations, Part 390.21 for vehicles operated in intrastate commerce.

(10) Peace officers of any Texas city having a population of 300,000 or more are considered to be certified by the Texas Department of Public Safety and eligible to enforce the Federal Motor Carrier Safety Regulations, provided each officer enforcing the Federal Motor Carrier Safety Regulations must have completed a course of training of which the curriculum and instructors have been approved by the director of the Texas Department of Public Safety. Peace officers requesting certification as required in this paragraph shall submit to the Texas Department of Public Safety a schedule of the courses which have been completed, including identification of the instructor(s). Peace officers certified by the director of the Texas Department of Public Safety shall have the authority to enforce the regulations herein adopted applicable to intrastate drivers and vehicles and all regulations in 49 Code of Federal Regulations, Parts 390-393 and 395-397, applicable to interstate drivers and vehicles.

(11) Regulations and exceptions adopted herein are applicable to intrastate drivers and vehicles. All regulations contained in 49 Code of Federal Regulations, Parts 390-393 and 395-397 and all amendments thereto pertaining to interstate drivers and vehicles are adopted.

(12) Nothing in this section shall be construed to prohibit an employer from requiring and enforcing more stringent requirements relating to safety of operation and employee safety and health.

§5.173. Driver's Daily Log.

(a) Except as provided in subsections (c) and (e) of this section, every certificated or permitted motor carrier and every certificated or permitted motor bus company shall require that a driver's daily

log shall be made by each of its drivers, and every driver who operates a motor vehicle subject to the jurisdiction of the Railroad Commission of Texas shall make a daily log. Driver's logs shall be made on and in accordance with the instructions of BMC-59, driver's daily log, as revised from time to time, as prescribed by the department of transportation, and they shall reflect the true facts as to the activities of each driver for the full 24 hours of each day.

(b) All driver's logs shall be maintained by each certificated or permitted motor carrier and certificated or permitted motor bus company in accordance with Subchapter D of this chapter (relating to Maintenance, Preservation, and Destruction of Records).

(c)-(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 November 25, 1992.

TRD-9215723

Nolan Ward
Hearings Examiner, Legal
Division-General Law
Railroad Commission of
Texas

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 463-7094

Part IV. Texas Department of Licensing and Regulation

Chapter 67. Auctioneers

- 16 TAC §§67.10, 67.20, 67.22, 67.40, 67.70

The Texas Department of Licensing and Regulation proposes new §§67.10, 67.22, and 67.70 and amendments to §67.20 and §67.40, concerning auctioneers. Section 67.10 defines "recurring basis" for owner's exemption; §67.20 adds a time requirement for reporting changes of address; §67.22 provides for two free reschedules for exam applicants who request rescheduling before the exam, and for payment of the exam fee if the applicant does not appear; §67.40 identifies the license holders from which the pro-rata share to be paid into the education and recovery fund will be due upon renewal; and §67.70 establishes responsibilities of the license holder.

James D. Brush II, director, policies and standards, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush II 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 the public will be provided more information. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards, P.O. Box 12157, Austin, Texas 78711, (512) 463-7357.

The amendments and new sections are proposed under Texas Civil Statutes, Article 8700, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules to assure compliance with the Act.

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

Recurring basis—More than once every 12 months.

§67.20. License Requirements—General.

(a) (No change.)

(b) All licensees must report any change of address to the department within 30 days.

§67.22. License Requirements—Examinations.

(a) An applicant who wishes to reschedule his examination for a later date must notify the department in writing, post-marked no later than five working days before the exam date. Two free reschedules are allowed.

(b) An applicant who does not take an examination for which he was scheduled, and does not notify the department that he will not take the exam, must pay another exam fee.

§67.40. Education and Recovery Fund.

(a) (No change.)

(b) The pro-rata share will be due from all license holders whose renewal date falls between the next September 1 and August 31 of the following year. The renewal notice sent by the department will reflect the amount due to the fund [in order to renew the license].

(c) (No change.)

§67.70. Requirements of the License Holder.

(a) An auction company must list the license number under which it is operating in any yellow page advertisement which consists of more than name, address, and phone number.

(b) An auctioneer must furnish to the department the name, address, and phone number of all auction companies which he owns or operates. Any auction company using an assumed name must furnish a copy of the assumed name registration.

(c) An auctioneer who is supervising an associate auctioneer must be on premises for any auction which is bid-called by the associate auctioneer.

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 November 20, 1992.

TRD-9215689

Jack W. Garison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 463-3127

◆ ◆ ◆
TITLE 19. Education
Part II. Texas Education
Agency

Chapter 169. Relationship with
University Interscholastic
League

• **19 TAC §169.1**

The Texas Education Agency (TEA) proposes new §169.1, concerning review and implementation of rules relating to extracurricular activities. The section authorizes the State Board of Education (SBOE) to review all rules and procedures proposed by the University Interscholastic League (UIL).

Marvin Veselka, Associate Commissioner for Curriculum and Assessment, has determined that for 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.

Mr. Veselka and Criss Cloudt, director of policy planning and evaluation, have 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 a clearer, more concise statement of the rules relating to the University Interscholastic League. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed section submitted in accordance with the Administra-

tion, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The new section is proposed under the Texas Education, §21.921, which requires the UIL to submit its rules and procedures to the SBOE for approval, disapproval, or modification.

§169.1. Review and Implementation of Rules Relating to Extracurricular Activities.

(a) The State Board of Education shall review all rules and procedures submitted by the University Interscholastic League (UIL). It shall either approve, disapprove, or modify any rule or procedure submitted.

(b) All rules and procedures must be submitted to the commissioner of education at least 60 days before the board meeting at which action on them is to be scheduled.

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 November 30, 1992.

TRD-9215929

Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Earliest possible date of adoption: January 4, 1993

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

◆ ◆ ◆
The Texas Education Agency (TEA) proposes the repeal of §169.1, concerning review and implementation of rules relating to extracurricular activities. The chapter is being repealed in accordance with the sunset review process mandated by Senate Bill 1, 71st Legislature. A new Chapter 169 is being proposed in a separate submission.

Marvin Veselka, Associate Commissioner for Curriculum and Assessment, has determined that for the first five-year period the proposed repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Veselka and Criss Cloudt, director of policy planning and evaluation, have 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 section will be a clearer, more concise statement of the rules relating to the University Interscholastic League. 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 Criss Cloudt, Policy Planning and Evalua-

tion, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed repeal submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the section has been published in the *Texas Register*.

The repeal is proposed under Senate Bill 1, §2.25, 71st Legislature, Sixth Called Session, which authorizes the State Board of Education to review all rules, other than portions of Chapter 75, under Title 19, Texas Administrative Code, relating to public education.

§169.1. Review and Implementation of Rules Relating to Extracurricular Activities.

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 November 30, 1992.

TRD-9215928

Criss Cloudt
Director of Policy Planning
and Evaluation
Texas Education Agency

Earliest possible date of adoption: January 4, 1993

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

◆ ◆ ◆
TITLE 22. EXAMINING
BOARDS

Part XI. Board of Nurse
Examiners

Chapter 217. Licensure and
Practice

• **22 TAC §§217.4, 217.5, 217.6**

The Board of Nurse Examiners proposes amendments to §§217.4, 217.5, and 217.6, concern Licensure by Endorsement; Requirements for Licensure of Nurses Not Eligible for Endorsement Under §217.4; and Temporary Permit. These proposed amendments are being made to clarify the rules in relation to an applicant writing both the Canadian Nurses Association Testing Service Examination (CNATSE) and the National Council Licensure Examination for Registered Nurses (NCLEX-RN).

Louise Waddill, Ph.D., R.N., executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Waddill 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 a Canadian nurse will know upon application that if he/she is sitting for both the CNATSE and the NCLEX-RN, the prevailing examination will be the NCLEX-RN. This will clarify the licens-

ing procedures for those applicants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Louise Waddill, Ph.D., R.N., Executive Director, Board of Nurse Examiners, Box 140466; Austin, Texas 78714. Comments will be accepted through December 28, 1992.

The amendments are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

§217.4. *Licensure by Endorsement.* The requirements for licensure by endorsement are as follows:

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

(4) filing of an application for registration by endorsement containing the following:

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

(D) evidence of English proficiency by Canadian applicants who took CNATSE in French;

(E)[(D)] a recent, fade-proof identification photograph, properly identified; and

(F)[(E)] required licensure fee, which is not refundable;

(5) any applicant applying for licensure by endorsement who has taken or is scheduled to take both the NCLEX-RN and CNATSE will be licensed based on the results of NCLEX-RN;

(6)[(F)] nurses who have not practiced professional nursing for a period of four years or more immediately preceding the request for endorsement, shall meet the requirements as stated in §217.8 of this title (relating to Reactivation from Inactive Status).

§217.5. *Requirements for Licensure of Nurses Not Eligible for Endorsement Under §217.4.*

(a) (No change.)

(b) Filing an application for registration by endorsement, which includes the following:

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

(5) except for Canadian graduates, evidence of passing the Commission on Graduates of Foreign Nursing Schools examination or its equivalent.

(c)-(d) (No change.)

§217.6. *Temporary Permit.*

(a) Examination candidates eligible for temporary permits.

(1) A nurse who has graduated from an accredited school in the United States or Canada, has never taken the SBTPE, NCLEX-RN, or CNATSE, and is scheduled for the first available licensure examination following graduation will be issued a permit to practice professional nursing which is valid until the results of the examination are released. Any applicant who has taken or is scheduled to take both the NCLEX-RN and CNATSE will be issued a permit based upon NCLEX-RN.

(2) A nurse who has graduated from an accredited nursing program in another jurisdiction or Canada and is coming to Texas before the results of NCLEX-RN or CNATSE [the examination] are available, may secure a permit to practice by submitting:

(A) (No change.)

(B) evidence that he or she is/was a first time candidate for the NCLEX-RN or CNATSE in another state, province or territory; and

(C) (No change.)

(3) A nurse who has graduated from an accredited nursing program outside of the United States or Canada, has never taken the SBTPE [or] NCLEX-RN, or CNATSE, has passed CGFNSE, is enrolled in a board-approved nursing accustomation course, and is scheduled for the first available licensure examination will be issued a permit to practice professional nursing.

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

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

(b) Examination candidates not eligible for temporary permits.

(1) (No change.)

(2) A graduate who has failed the SBTPE, NCLEX-RN or CNATSE [examination] in any state, province, or territory [jurisdiction] is not eligible for a permit to practice in Texas.

(c)-(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 November 24, 1992.

TRD-9215880

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: January 20, 1993

For further information, please call: (512) 835-8650

Part XIII. Texas Board of Licensure for Nursing Home Administrators

Chapter 245. Examination

• 22 TAC §245.1

The Texas Board of Licensure for Nursing Home Administrators proposes an amendment to §245.1, concerning the exams required for licensure. This amendment will require nursing home administrators to pass the NAB exam and a State Standards exam. The requirement of a comprehensive exam will be abolished.

Rene Pepin, director of business management, 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. Pepin 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 that Nursing Home Administrators will be better prepared to promote and protect public health and welfare after successfully completing the NAB exam which is a more thorough test of knowledge of the health care field and long term care services than the comprehensive exam which it is replacing. Nursing Home Administrators will be eligible for reciprocity in other states after successfully completing the NAB exam. 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 for applicants in training: \$115 for fiscal years 1993-1997.

Comments on the proposal may be submitted to Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 442d, §8, which provides the Texas Board of Licensure for Nursing Home Administrators with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in the Social Security Act, §1908 (42 United States Code, §1396g), the Federal rules and regulations promulgated thereunder, and other pertinent Federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two-thirds majority of the Board.

§245.1. *Scheduling of Examinations and Reexaminations.*

(a) The board will administer the state standards examination and the NAB [comprehensive] examination for the purpose of determining applicants qualified for licensure effective January 1993.

(b) -(g) (No change.)

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

Issued in Austin, Texas, on November 24, 1992.

TRD-9215853 Janet E. Lacy
Administrative Technician
III
Texas Board of Licensure
for Nursing Home
Administrators

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 458-1955

Chapter 247. Education

• 22 TAC §247.4

The Texas Board of Licensure for Nursing Home Administrators proposes an amendment to §247.4 concerning the continuing education requirements for licensure renewal: hours and categories.

Rene Pepin, director of business management has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Pepin also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section as proposed will be that current rules do not require enough continuing education hours to ensure the promotion and protection of the public health and welfare. This section is promulgated under the authority of the Texas Tax Code, Title 2; therefore no analysis of the effect on small businesses is required. 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 Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 442d, §8, which provide the Texas Board of Licensure for Nursing Home Administrators with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; pro-

vided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§247.4. Continuing Education.

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

[(e) For renewal, all nursing home administrators are required to obtain a minimum of 28 hours, with at least seven hours in supplemental update, management theory and problems of resocialization. The additional seven hours may be in any category. After August 31, 1988, nursing home administrators will be required to obtain 24 hours minimum, with six each in Texas Regulatory Changes and management theory. The additional twelve hours may be in any category.]

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 November 25, 1992.

TRD-9215854 Janet E. Lacy
Administrative Technician
III
Texas Board of Licensure
for Nursing Home
Administrators

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 458-1955

The Texas Board of Licensure for Nursing Home Administrators proposes an amendment to new §247.4 concerning the continuing education requirements for licensure renewal: hours and categories.

Rene Pepin, director of business management, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated additional cost of \$120,017 in 1993; \$126,369 in 1994; \$129,283 in 1995; \$132,276 in 1996; \$135,339 in 1997. The estimated increase in revenue will be \$128,000 in 1993-1997.

Rene Pepin 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 as proposed will be the increase in the requirement of continuing education hours will ensure continued professional competency by providing the licensees with the knowledge, skills, and abilities necessary to practice their profession in a manner that promotes public health, safety, and welfare. The continuing education will ensure that licensed administrators maintain minimum skills, and are exposed to advances in their field of practice. This section is promulgated under the authority of the Texas Tax Code, Title 2; therefore no analysis of the effect on small businesses is required. The anticipated economic cost to

persons who are required to comply with the section as proposed for licensed administrators will be \$250 in 1993-1997.

Comments on the proposal may be submitted to Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 442d, §8, which provide the Texas Board of Licensure for Nursing Home Administrators with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the state to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§247.4. Continuing Education.

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

(e) The nursing home administrators will be required to obtain 40 hours minimum every biennium with 12 hours in Texas Regulatory Changes, six hours each in Management Theory and Ethics. The additional sixteen hours may be in any category. Of the required continuing education hours, six hours in Texas Regulatory Changes and six hours in Ethics must be taken through TBLNHA.

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 November 25, 1992.

TRD-9215852 Janet E. Lacy
Administrative Technician
III
Texas Board of Licensure
for Nursing Home
Administrators

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 458-1955

Chapter 249. License Certificates

• 22 TAC §249.5

The Texas Board of Licensure for Nursing Home Administrators proposes new §249.5 concerning a required written notification of a change in employment status when the administrator is employed as administrator of record at a nursing facility.

Rene Pepin, director of business management, 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

Renee Papin, 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 as proposed will be that the Texas Board of Licensure for Nursing Home Administrators will be made more efficient in that it will not have to rely on the Texas Department of Health for this information and errors in administrator investigations will be eliminated. This section is promulgated under the authority of the Texas Tax Code, Title 2; therefore no analysis of the effect on small businesses is required. 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 Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756. Comments will be accepted for 30 days following publication in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 442d, §8, which provide the Texas Board of Licensure for Nursing Home Administrators with the authority to make rules and regulations not inconsistent with law as may be necessary or proper for the performance of its duties, and to take such other actions as may be necessary to enable the State to meet the requirements set forth in §1908 of the Social Security Act (42 United States Code §1396g), the federal rules and regulations promulgated thereunder, and other pertinent federal authority; provided, however, that no rule shall be promulgated, altered, or abolished without the approval of a two thirds majority of the board.

§249.5. Notification. A licensed Nursing Home Administrator must submit to the TBLNHA written notification of a change in employment status within 30 days of either beginning employment or leaving employment when employed as administrator of record at a nursing home facility.

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 November 24, 1992.

TRD-9215851

Janet E Lacy
Administrative Technician
III
Texas Board of Licensure
for Nursing Home
Administrators

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 458-1955

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 465. Rules of Practice

• 22 TAC §465.36

The Texas State Board of Examiners of Psychologists proposes new §465.36, concerning ethics code. The Board determined that the ethics code for psychologists needed to be codified as a specific Board Rule.

Patricia S. Bizzell Tweedy, 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. Bizzell Tweedy 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 that persons bound by the Ethics Code as well as the general public will be able to refer to a specific Board Rule concerning the ethical practice of 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 Patricia S. Bizzell Tweedy, M. P.A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The new section 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 reasonable necessary for the proper performance of its duties and regulations of proceedings before it

§465.36. Ethics Code.

(a) Preamble. Psychologists work to develop a valid and reliable body of scientific knowledge based on research. They may apply that knowledge to human behavior in a variety of contexts. In doing so, they perform many roles, such as researcher, educator, diagnostician, therapist, supervisor, consultant, administrator, social interventionist, and expert witness. Their goal is to broaden knowledge of behavior and, where appropriate, to apply it pragmatically to improve the condition of both the individual and society. Psychologists respect the central importance of freedom of inquiry and expression in research, teaching, and publication. They also strive to help the public in developing informed judgments and choices concerning human behavior. This Ethics Code provides a common set of values upon which psychologists build their professional and scientific work.

(1) This Code is intended to provide both the general principles and the decision rules to cover most situations encountered by psychologists. It has as its primary goal the welfare and protection of

the individuals and groups with whom psychologists work. It is the individual responsibility of each psychologist to aspire to the highest possible standards of conduct. Psychologists respect and protect human and civil rights, and do not knowingly participate in or condone unfair discriminatory practices.

(2) The development of a dynamic set of ethical standards for a psychologist's work-related conduct requires a personal commitment to a lifelong effort to act ethically; to encourage ethical behavior by students, supervisees, employees, and colleagues, as appropriate; and to consult with others, as needed, concerning ethical problems. Each psychologist supplements, but does not violate, the Ethics Code's values and rules on the basis of guidance drawn from personal values, culture, and experience.

(b) General Principles

(1) Competence Psychologists strive to maintain high standards of competence in their work. They recognize the boundaries of their particular competencies and the limitations of their expertise. They provide only those services and use only those techniques for which they are qualified by education, training, or experience. Psychologists are cognizant of the fact that the competencies required in serving, teaching, and/or studying groups of people vary with the distinctive characteristics of those groups. In those areas in which recognized professional standards do not yet exist, psychologists exercise careful judgment and take appropriate precautions to protect the welfare of those with whom they work. They maintain knowledge of relevant scientific and professional information related to the services they render, and they recognize the need for ongoing education. Psychologists make appropriate use of scientific, professional, technical, and administrative resources.

(2) Integrity. Psychologists seek to promote integrity in the science, teaching, and practice of psychology. In these activities psychologists are honest, fair, and respectful of others. In describing or reporting their qualifications, services, products, fees, research, or teaching, they do not make statements that are false, misleading, or deceptive. Psychologists strive to be aware of their own belief systems, values, needs, and limitations and the effect of these on their work. To the extent feasible, they attempt to clarify for relevant parties the roles they are performing and to function appropriately in accordance with those roles. Psychologists avoid improper and potentially harmful dual relationships.

(3) Professional and Scientific Responsibility. Psychologists uphold professional standards of conduct, clarify their

professional roles and obligations, accept appropriate responsibility for their behavior, and adapt their methods to the needs of different populations. Psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interests of their patients, clients, or other recipients of their services. Psychologists' moral standards and conduct are personal matters to the same degree as is true for any other person, except as psychologists' conduct may compromise their professional responsibilities or reduce the public's trust in psychology and psychologists. Psychologists are concerned about the ethical compliance of their colleagues' scientific and professional conduct. When appropriate, they consult with colleagues in order to prevent or avoid unethical conduct.

(4) **Respect for People's Rights and Dignity.** Psychologists accord appropriate respect to the fundamental rights, dignity, and worth of all people. They respect the rights of individuals to privacy, confidentiality, self-determination, and autonomy, mindful that legal and other obligations may lead to inconsistency and conflict with the exercise of these rights. Psychologists are aware of cultural, individual, and role differences, including those due to age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, and socioeconomic status. Psychologists try to eliminate the effect on their work of biases based on those factors, and they do not knowingly participate in or condone unfair discriminatory practices.

(5) **Concern for Others' Welfare.** Psychologists seek to contribute to the welfare of those with whom they interact professionally. In their professional actions, psychologists weigh the welfare and rights of their patients or clients, students, supervisees, human research participants, and other affected persons, and the welfare of animal subjects of research. When conflicts occur among psychologists' obligations or concerns, they attempt to resolve these conflicts and to perform their roles in a responsible fashion that avoids or minimizes harm. Psychologists are sensitive to real and ascribed differences in power between themselves and others, and they do not exploit or mislead other people during or after professional relationships.

(6) **Social Responsibility.** Psychologists are aware of their professional and scientific responsibilities to the community and the society in which they work and live. They apply and make public their knowledge of psychology in order to contribute to human welfare. Psychologists are concerned about and work to mitigate the causes of human suffering. When undertaking research, they strive to advance human welfare and the science of psychology. Psy-

chologists try to avoid misuse of their work. Psychologists comply with the law and encourage the development of law and social policy that serve the interests of their patients and clients and the public. They are encouraged to contribute a portion of their professional time for little or no personal advantage.

(c) **Ethical Standards.**

(1) **General Standards.** These General Standards are potentially applicable to the professional and scientific activities of all psychologists.

(A) **Applicability of the Ethics Code.** The activity of a psychologist subject to the Ethics Code may be reviewed under these Ethical Standards only if the activity is part of his or her work-related functions or the activity is psychological in nature. Personal activities having no connection to or effect on psychological roles are not subject to the Ethics Code.

(B) **Relationship of Ethics and Law.** If psychologists' ethical responsibilities conflict with law, psychologists make known their commitment to the Ethics Code and take steps to resolve the conflict in a responsible manner.

(C) **Professional and Scientific Relationship.** Psychologists provide diagnostic, therapeutic, teaching, research, supervisory, consultative, or other psychological services only in the context of a defined professional or scientific relationship or role. (See also paragraph (2)(A) of this subsection, Evaluation, Diagnosis, and Interventions in Professional Context, and paragraph (7)(B) of this subsection, Forensic Assessments.)

(D) **Boundaries of Competence.**

(i) Psychologists provide services, teach, and conduct research only within the boundaries of their competence, based on their education, training, supervised experience, or appropriate professional experience.

(ii) Psychologists provide services, teach, or conduct research in new areas or involving new techniques only after first undertaking appropriate study, training, supervision, and/or consultation from persons who are competent in those areas or techniques.

(iii) In those emerging areas in which generally recognized standards for preparatory training do not yet exist, psychologists nevertheless take reasonable steps to ensure the competence of their work and to protect patients, clients, stu-

dents, research participants, and others from harm.

(E) **Maintaining Expertise.** Psychologists who engage in assessment, therapy, teaching, research, organizational consulting, or other professional activities maintain a reasonable level of awareness of current scientific and professional information in their fields of activity, and undertake ongoing efforts to maintain competence in the skills they use.

(F) **Basis for Scientific and Professional Judgments.** Psychologists rely on scientifically and professionally derived knowledge when making scientific or professional judgments or when engaging in scholarly or professional endeavors.

(G) **Describing the Nature and Results of Psychological Services.**

(i) When psychologists provide assessment, evaluation, treatment, counseling, supervision, teaching, consultation, research, or other psychological services to an individual, a group, or an organization, they provide, using language that is reasonably understandable to the recipient of those services, appropriate information beforehand about the nature of such services and appropriate information later about results and conclusions. (See also paragraph (2)(I) of this subsection, Explaining Assessment Results.)

(ii) If psychologists will be precluded by law or by organizational roles from providing such information to particular individuals or groups, they so inform those individuals or groups at the outset of the service.

(H) **Human Differences.** Where differences of age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status significantly affect psychologists' work concerning particular individuals or groups, psychologists obtain the training, experience, consultation, or supervisor necessary to ensure the competence of their services, or they make appropriate referrals.

(I) **Respecting Others.** In their work-related activities, psychologists respect the rights of others to hold values, attitudes, and opinions that differ from their own.

(J) **Nondiscrimination.** In their work-related activities, psychologists do not engage in unfair discrimination based on age, gender, race, ethnicity, national origin, religion, sexual orientation,

disability, socioeconomic status, or any basis proscribed by law.

(K) Sexual Harassment.

(i) Psychologists do not engage in sexual harassment. Sexual harassment is sexual solicitation, physical advances, or verbal or nonverbal conduct that is sexual in nature, that occurs in connection with the psychologists' activities or roles as a psychologist, and that either:

(I) is unwelcome, is offensive, or creates a hostile workplace environment, and the psychologist knows or is told this; or

(II) is sufficiently severe or intense to be abusive to a reasonable person in the context. Sexual harassment can consist of a single intense or severe act or of multiple persistent or pervasive acts.

(ii) Psychologists accord sexual harassment complainants and respondents dignity and respect. Psychologists do not participate in denying a person academic admittance or advancement, employment, tenure, or promotion, based solely upon their having made, or their being the subject of, sexual harassment charges. This does not preclude taking action based upon the outcome of such proceedings or consideration of other appropriate information.

(L) Other Harassment. Psychologists do not knowingly engage in behavior that is harassing or demeaning to persons with whom they interact in their work based on factors such as those person's age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

(M) Personal Problems and Conflicts.

(i) Psychologists recognize that their personal problems and conflicts may interfere with their effectiveness. Accordingly, they refrain from undertaking an activity when they know or should know that their personal problems are likely to lead to harm to a patient, client, colleague, student, research participant, or other person to whom they may owe a professional or scientific obligation.

(ii) In addition, psychologists have an obligation to be alert to signs of, and to obtain assistance for, their personal problems at an early stage, in order to prevent significantly impaired performance.

(iii) When psychologists become aware of personal problems that may interfere with their performing work-related duties adequately, they take appro-

priate measures, such as obtaining professional consultation or assistance, and determine whether they should limit, suspend, or terminate their work-related duties.

(N) Avoiding Harm. Psychologists take reasonable steps to avoid harming their patients or clients, research participants, students, and others with whom they work, and to minimize harm where it is foreseeable and unavoidable.

(O) Misuse of Psychologists' Influence. Because psychologists' scientific and professional judgments and actions may affect the lives of others, they are alert to and guard against personal, financial, social, organizational, or political factors that might lead to misuse of their influence.

(P) Misuse of Psychologists' Work.

(i) Psychologists do not participate in activities in which it appears likely that their skills or data will be misused by others, unless corrective mechanisms are available. (See also paragraph (7)(D) of this subsection, Truthfulness and Candor.)

(ii) If psychologists learn of misuse or misrepresentation of their work, they take reasonable steps to correct or minimize the misuse or misrepresentation.

(Q) Multiple Relationships.

(i) In many communities and situations, it may not be feasible or reasonable for psychologists to avoid social or other nonprofessional contacts with persons such as patients, clients, students, supervisees, or research participants. Psychologists must always be sensitive to the potential harmful effects of other contacts on their work and on those persons with whom they deal. A psychologist refrains from entering into or promising another personal, scientific, professional, financial, or other relationship with such persons if it appears likely that such a relationship reasonably might impair the psychologist's objectivity or otherwise interfere with the psychologists' effectively performing his or her functions as a psychologist, or might harm or exploit the other party.

(ii) Likewise, whenever feasible, a psychologist refrains from taking on professional or scientific obligations when preexisting relationships would create a risk of such harm.

(iii) If a psychologist finds that, due to unforeseen factors, a potentially harmful multiple relationship has arisen, the psychologist attempts to resolve

it with due regard for the best interests of the affected person and maximal compliance with the Ethics Code.

(R) Barter (With Patients or Clients). Psychologists ordinarily refrain from accepting goods, services, or other nonmonetary remuneration from patients or clients in return for psychological services because such arrangements create inherent potential for conflicts, exploitation, and distortion of the professional relationship. A psychologist may participate in bartering only if:

(i) it is not clinically contraindicated; and

(ii) the relationship is not exploitative. (See also paragraph (I)(Q) of this subsection, Multiple Relationships, and paragraph (I)(Y) of this subsection, Fees and Financial Arrangements.)

(S) Exploitative Relationships.

(i) Psychologists do not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, and clients or patients. (See also paragraph (4)(E)-(G) of this subsection regarding sexual involvement with clients or patients.)

(ii) Psychologists do not engage in sexual relationships with students or supervisees in training over whom the psychologist has or may have evaluative or direct authority, because such relationships are so likely to impair judgment or be exploitative.

(T) Consultations and Referrals.

(i) Psychologists arrange for appropriate consultations and referrals based principally on the best interests of their patients or clients, with appropriate consent, and subject to other relevant considerations, including applicable law and contractual obligations. (See also paragraph (5)(A) of this subsection, Discussing the Limits of Confidentiality, and paragraph (5)(F) of this subsection, Consultations.)

(ii) When indicated and professionally appropriate, psychologists cooperate with other professionals in order to serve their patients or clients effectively and appropriately.

(iii) Psychologists' referral practices are consistent with law.

(U) Third-Party Requests for Services.

(i) When a psychologist

agrees to provide services to a person or entity at the request of a third party, the psychologist clarifies to the extent feasible, at the outset of the service, the nature of the relationship with each party. This clarification includes the role of the psychologist (such as therapist, organizational consultant, diagnostician, or expert witness), the probable uses of the services provided or the information obtained, and the fact that there may be limits to confidentiality.

(ii) If there is a foreseeable risk of the psychologist's being called upon to perform conflicting roles because of the involvement of a third party, the psychologist clarifies the nature and direction of his or her responsibilities, keeps all parties appropriately informed as matters develop, and resolves the situation in accordance with this Ethics Code.

(V) Delegation to and Supervision of Subordinates.

(i) Psychologists delegate to their employees, supervisees, and research assistants only those responsibilities that such persons can reasonably be expected to perform competently, on the basis of their education, training, or experience, either independently or with the level of supervision being provided.

(ii) Psychologists provide proper training and supervision to their employees or supervisees and take reasonable steps to see that such persons perform services responsibly, competently, and ethically.

(iii) If institutional policies, procedures, or practices prevent fulfillment of this obligation, psychologists attempt to modify their role or to correct the situation to the extent feasible.

(W) Documentation of Professional and Scientific Work.

(i) Psychologists appropriately document their professional and scientific work in order to facilitate provision of services later by them or by other professionals, to ensure accountability, and to meet other requirements of institutions or the law.

(ii) When psychologists have reason to believe that records of their professional services will be used in legal proceedings involving recipients of or participants in their work, they have a responsibility to create and maintain documentation in the kind of detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum. (See also paragraph (7)(A) of this subsection, Professionalism, under Forensic Activities.)

(X) Records and Data. Psychologists create, maintain, disseminate, store, retain, and dispose of records and data relating to their research, practice, and other work in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code. (See also paragraph (5)(D) of this subsection, Maintenance of Records.)

(Y) Fees and Financial Arrangements.

(i) As early as is feasible in a professional or scientific relationship, the psychologist and the patient, client, or other appropriate recipient of psychological services reach an agreement specifying the compensation and the billing arrangements.

(ii) Psychologists do not exploit recipients of services or payors with respect to fees.

(iii) Psychologists' fee practices are consistent with law.

(iv) Psychologists do not misrepresent their fees.

(v) If limitations to services can be anticipated because of limitations in financing, this is discussed with the patient, client, or other appropriate recipient of services as early as is feasible. (See also paragraph (4)(H) of this subsection, Interruption of Services.)

(vi) If the patient, client, or other recipient of services does not pay for services as agreed, and if the psychologist wishes to use collection agencies or legal measures to collect the fees, the psychologist first informs the person that such measures will be taken and provides that person an opportunity to make prompt payment. (See also paragraph (5)(K) of this subsection, Withholding Records for Non-payment.)

(Z) Accuracy in Reports to Payors and Funding Sources. In their reports to payors for services or sources of research funding, psychologists accurately state the nature of the research or service provided, the fees or charges, and where applicable, the identity of the provider, the findings, and the diagnosis. (See also paragraph (5)(E) of this subsection, Disclosures.)

(AA) Referrals and Fees. When a psychologist pays, receives payment from, or divides fees with another professional other than in an employer-employee relationship, the payment to each is based on the services (clinical, consultative, administrative, or other) provided and is not based on the referral itself.

(2) Evaluation, Assessment, or

Intervention.

(A) Evaluation, Diagnosis, and Interventions in Professional Context.

(i) Psychologists perform evaluations, diagnostic services, or interventions only within the context of a defined professional relationship. (See also paragraph (1)(C) of this subsection, Professional and Scientific Relationship.)

(ii) Psychologists' assessments, recommendations, reports, and psychological diagnostic or evaluative statements are based on information and techniques (including personal interviews of the individual when appropriate) sufficient to provide appropriate substantiation for their findings. (See also paragraph (7)(B) of this subsection, Forensic Assessments.)

(B) Competence and Appropriate Use of Assessments and Interventions.

(i) Psychologists who develop, administer, score, interpret, or use psychological assessment techniques, interviews, tests, or instruments do so in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the techniques.

(ii) Psychologists refrain from misuse of assessment techniques, interventions, results, and interpretations and take reasonable steps to prevent others from misusing the information these techniques provide. This includes refraining from releasing raw test results or raw data to persons, other than to patients or clients as appropriate, who are not qualified to use such information. (See also paragraph (1)(B) of this subsection, Relationship of Ethics and Law, and paragraph (1)(D) of this subsection, Boundaries of Competence.)

(C) Test Construction. Psychologists who develop and conduct research with tests and other assessment techniques use scientific procedures and current professional knowledge for test design, standardization, validation, reduction or elimination of bias, and recommendations for use.

(D) Use of Assessment in General and With Special Populations.

(i) Psychologists who perform interventions or administer, score, interpret, or use assessment techniques are familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and uses of, the techniques they use.

(ii) Psychologists recog-

nize limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals.

(iii) Psychologists attempt to identify situations in which particular interventions or assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation because of factors such as individuals' gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status.

(E) Interpreting Assessment Results. When interpreting assessment results, including automated interpretations, psychologists take into account the various test factors and characteristics of the person being assessed that might affect psychologists' judgments or reduce the accuracy of their interpretations. They indicate any significant reservations they have about the accuracy or limitations of their interpretations.

(F) Unqualified Persons. Psychologists do not promote the use of psychological assessment techniques by unqualified persons. (See also paragraph (I)(V) of this subsection, Delegation to and Supervision of Subordinates.)

(G) Obsolete Tests and Outdated Test Results.

(i) Psychologists do not base their assessment or intervention decisions or recommendations on data or test results that are outdated for the current purpose.

(ii) Similarly, psychologists do not base such decisions or recommendations on tests and measures that are obsolete and not useful for the current purpose.

(H) Test Scoring and Interpretation Services.

(i) Psychologists who offer assessment or scoring procedures to other professionals accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use.

(ii) Psychologists select scoring and interpretation services (including automated services) on the basis of evidence of the validity of the program and procedures as well as on other appropriate considerations.

(iii) Psychologists retain appropriate responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score

and interpret such tests themselves or use automated or other services.

(I) Explaining Assessment Results. Unless the nature of the relationship is clearly explained to the person being assessed in advance and precludes provision of an explanation of results (such as in some organizational consulting, preemployment or security screenings, and forensic evaluations), psychologists ensure that an explanation of the results is provided using language that is reasonably understandable to the person assessed or to another legally authorized person on behalf of the client. Regardless of whether the scoring and interpretation are done by the psychologist, by assistants, or by automated or other outside services, psychologists take reasonable steps to ensure that appropriate explanations of results are given.

(J) Maintaining Test Security. Psychologists make reasonable efforts to maintain the integrity and security of tests and other assessment techniques consistent with law, contractual obligations, and in a manner that permits compliance with the requirements of this Ethics Code. (See also paragraph (I) (B) of this subsection, Relationship of Ethics and Law.)

(3) Advertising and Other Public Statements.

(A) Definition of Public Statements. Psychologists comply with this Ethics Code in public statements relating to their professional services, products, or publications or to the field of psychology. Public statements include, but are not limited to, paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.

(B) Statements by Others.

(i) Psychologists who engage others to create or place public statements that promote their professional practice, products, or activities retain professional responsibility for such statements.

(ii) In addition, psychologists make reasonable efforts to prevent others whom they do not control (such as employers, publishers, sponsors, organizational clients, and representatives of the print or broadcast media) from making deceptive statements concerning psychologists' practice or professional or scientific activities.

(iii) If psychologists learn of deceptive statements about their work

made by others, psychologists make reasonable efforts to correct such statements.

(iv) Psychologists do not compensate employees of press, radio, television, or other communication media in return for publicity in a news item.

(v) A paid advertisement relating to the psychologists' activities must be identified as such, unless it is already apparent from the context.

(C) Avoidance of False or Deceptive Statements.

(i) Psychologists do not make public statements that are false, deceptive, misleading, or fraudulent, either because of what they state, convey, or suggest or because of what they omit, concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated. As examples (and not in limitation) of this standard, psychologists do not make false or deceptive statements concerning:

(I) their training, experience, or competence;

(II) their academic degrees,

(III) their credentials;

(IV) their institutional or association affiliations;

(V) their services;

(VI) the scientific or clinical basis for, or results or degree of success of, their services;

(VII) their fees; or

(VIII) their publications or research findings. (See also paragraph (6) (O) of this subsection, Deception in Research, and paragraph (6)(R) of this subsection, Providing Participants With Information About the Study.)

(ii) Psychologists claim as credentials for their psychological work, only degrees that:

(I) were earned from a regionally accredited educational institution; or

(II) were the basis for psychology licensure by the state in which they practice.

(D) Media Presentations. When psychologists provide advice or comment by means of public lectures, demonstrations, radio or television programs, prerecorded tapes, printed articles, mailed material, or other media, they take reasonable precautions to ensure that:

(i) the statements are based on appropriate psychological literature and practice;

(ii) the statements are otherwise consistent with this Ethics Code, and

(iii) the recipients of the information are not encouraged to infer that a relationship has been established with them personally.

(E) Testimonials. Psychologists do not solicit testimonials from current psychotherapy clients or patients or other persons who because of their particular circumstances are vulnerable to undue influence.

(F) In-Person Solicitation. Psychologists do not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential psychotherapy patients or clients or other persons who because of their particular circumstances are vulnerable to undue influence. However, this does not preclude attempting to implement appropriate collateral contacts with significant others for the purpose of benefiting an already engaged therapy patient.

(4) Therapy.

(A) Structuring the Relationship.

(i) Psychologists discuss with clients or patients as early as is feasible in the therapeutic relationship appropriate issues, such as the nature and anticipated course of therapy, fees, and confidentiality. (See also paragraph (1)(Y) of this subsection, Fees and Financial Arrangements, and paragraph (5)(A) of this subsection, Discussing the Limits of Confidentiality.)

(ii) When the psychologist's work with clients or patients will be supervised, the above discussion includes that fact, and the name of the supervisor, when the supervisor has legal responsibility for the case.

(iii) When the therapist is a student intern, the client or patient is informed of that fact.

(iv) Psychologists make reasonable efforts to answer patient's ques-

tions and to avoid apparent misunderstandings about therapy. Whenever possible, psychologists provide oral and/or written information, using language that is reasonably understandable to the patient or client.

(B) Informed Consent to Therapy.

(i) Psychologists obtain appropriate informed consent to therapy or related procedures, using language that is reasonably understandable to participants. The content of informed consent will vary depending on many circumstances; however, informed consent generally implies that the person:

(I) has the capacity to consent;

(II) has been informed of significant information concerning the procedure;

(III) has freely and without undue influence expressed consent; and

(IV) consent has been appropriately documented.

(ii) When persons are legally incapable of giving informed consent, psychologists obtain informed permission from a legally authorized person, if such substitute consent is permitted by law.

(iii) In addition, psychologists:

(I) inform those persons who are legally incapable of giving informed consent about the proposed interventions in a manner commensurate with the persons' psychological capacities;

(II) seek their assent to those interventions; and

(III) consider such persons' preferences and best interests.

(C) Couple and Family Relationships.

(i) When a psychologist agrees to provide services to several persons who have a relationship (such as husband and wife or parents and children), the psychologist attempts to clarify at the outset:

(I) which of the individuals are patients or clients; and

(II) the relationship the psychologist will have with each person. This clarification includes the role of the psychologist and the probable uses of the services provided or the information obtained. (See also paragraph (5)(A) of this subsection, Discussing the Limits of Confidentiality.)

(ii) As soon as it becomes apparent that the psychologist may be called on to perform potentially conflicting roles (such as marital counselor to husband and wife, and then witness for one party in a divorce proceeding), the psychologist attempts to clarify and adjust, or withdraw from, roles appropriately. (See also paragraph (7)(C) of this subsection, Clarification of Role, under Forensic Activities.)

(D) Providing Mental Health Services to Those Served by Others. In deciding whether to offer or provide services to those already receiving mental health services elsewhere, psychologists carefully consider the treatment issues and the potential patient's or client's welfare. The psychologist discusses these issues with the patient or client, or another legally authorized person on behalf of the client, in order to minimize the risk of confusion and conflict, consults with the other service providers when appropriate, and proceeds with caution and sensitivity to the therapeutic issues.

(E) Sexual Intimacies With Current Patients or Clients. Psychologists do not engage in sexual intimacies with current patients or clients.

(F) Therapy With Former Sexual Partners. Psychologists do not accept as therapy patients or clients persons with whom they have engaged in sexual intimacies.

(G) Sexual Intimacies With Former Therapy Patients.

(i) Psychologists do not engage in sexual intimacies with a former therapy patient or client for at least five years after cessation or termination of professional services.

(ii) Because sexual intimacies with a former therapy patient or client are so frequently harmful to the patient or client, and because such intimacies undermine public confidence in the psychology profession and thereby deter the public's use of needed services, psychologists do not engage in sexual intimacies with former therapy patients and clients even after a five-year interval except in the most unusual circumstances. The psychologist who engages in such activity after the

five years following cessation or termination of treatment bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(I) the amount of time that has passed since therapy terminated;

(II) the nature and duration of the therapy;

(III) the circumstances of termination;

(IV) the patient's or client's personal history;

(V) the patient's or client's current mental status;

(VI) the likelihood of adverse impact on the patient or client and others; and

(VII) any statements or actions made by the therapist during the course of therapy suggesting or inviting the possibility of a post-termination sexual or romantic relationship with the patient or client. (See also paragraph (I)(Q) of this subsection, Multiple Relationships.)

(H) Interruption of Services.

(i) Psychologists make reasonable efforts to plan for facilitating care in the event that psychological services are interrupted by factors such as the psychologist's illness, death, unavailability, or relocation or by the client's relocation or financial limitations. (See also paragraph (5)(I) of this subsection, Preserving Records and Data.)

(ii) When entering into employment or contractual relationships, psychologists provide for orderly and appropriate resolution of responsibility for patient or client care in the event that the employment or contractual relationship ends, with paramount consideration given to the welfare of the patient or client.

(I) Terminating the Professional Relationship.

(i) Psychologists do not abandon patients or clients. (See also paragraph (I)(Y)(v) of this subsection, under Fees and Financial Arrangements.)

(ii) Psychologists terminate a professional relationship when it becomes reasonably clear that the patient or client no longer needs the service, is not

benefiting, or is being harmed by continued service.

(iii) Prior to termination for whatever reason, except where precluded by the patient's or client's conduct, the psychologist discusses the patient's or client's views and needs, provides appropriate pre-termination counseling, suggests alternative service providers as appropriate, and takes other reasonable steps to facilitate transfer of responsibility to another provider if the patient or client needs one immediately.

(5) Privacy and Confidentiality. These standards are potentially applicable to the professional and scientific activities of all psychologists.

(A) Discussing the Limits of Confidentiality.

(i) Psychologists discuss with persons and organizations with whom they establish a scientific or professional relationship (including, to the extent feasible, minors and their legal representatives):

(I) the relevant limitations on confidentiality, including limitations where applicable in group, marital, and family therapy or in organizational consulting; and

(II) the foreseeable uses of the information generated through their services.

(ii) Unless it is not feasible or is contraindicated, the discussion of confidentiality occurs at the outset of the relationship and thereafter as new circumstances may warrant.

(iii) Permission for electronic recording of interviews is secured from clients and patients.

(B) Maintaining Confidentiality. Psychologists have a primary obligation and take reasonable precautions to respect the confidentiality rights of those with whom they work or consult, recognizing that confidentiality may be established by law, institutional rules, or professional or scientific relationships. (See also paragraph (6)(Z) of this subsection, Professional Reviewers.)

(C) Minimizing Intrusions on Privacy.

(i) In order to minimize intrusions on privacy, psychologists include in written and oral reports, consultations, and the like, only information germane to the purpose for which the communication is made.

(ii) Psychologists discuss confidential information obtained in clinical or consulting relationships, or evaluative data concerning patients, individual or organizational clients, students, research participants, supervisees, and employees, only for appropriate scientific or professional purposes and only with persons clearly concerned with such matters.

(D) Maintenance of Records. Psychologists maintain appropriate confidentiality in creating, storing, accessing, transferring, and disposing of records under their control, whether these are written, automated, or in any other medium. Psychologists maintain and dispose of records in accordance with law and in a manner that permits compliance with the requirements of this Ethics Code.

(E) Disclosures.

(i) Psychologists disclose confidential information without the consent of the individual only as mandated by law, or where permitted by law for a valid purpose, such as:

(I) to provide needed professional services to the patient or the individual or organizational client;

(II) to obtain appropriate professional consultations;

(III) to protect the patient or client or others from harm; or

(IV) to obtain payment for services, in which instance disclosure is limited to the minimum that is necessary to achieve the purpose.

(ii) Psychologists also may disclose confidential information with the appropriate consent of the patient or the individual or organizational client (or of another legally authorized person on behalf of the patient or client), unless prohibited by law.

(F) Consultations When consulting with colleagues:

(i) psychologists do not share confidential information that reasonably could lead to the identification of a patient, client, research participant, or other person or organization with whom they have a confidential relationship unless they have obtained the prior consent of the person or organization or the disclosure cannot be avoided; and

(ii) they share information only to the extent necessary to achieve

the purposes of the consultation. (See also paragraph (5)(B) of this subsection, Maintaining Confidentiality.)

(G) Confidential Information in Databases.

(i) If confidential information concerning recipients of psychological services is to be entered into databases or systems of records available to persons whose access has not been consented to by the recipient, then psychologists use coding or other techniques to avoid the inclusion of personal identifiers.

(ii) If a research protocol approved by an institutional review board or similar body requires the inclusion of personal identifiers, such identifiers are deleted before the information is made accessible to persons other than those of whom the subject was advised.

(iii) If such deletion is not feasible, then before psychologists transfer such data to others or review such data collected by others, they take reasonable steps to determine that appropriate consent of personally identifiable individuals has been obtained.

(H) Use of Confidential Information for Didactic or Other Purposes.

(i) Psychologists do not disclose in their writings, lectures, or other public media, confidential, personally identifiable information concerning their patients, individual or organizational clients, students, research participants, or other recipients of their services that they obtained during the course of their work, unless the person or organization has consented in writing or unless there is other ethical or legal authorization for doing so.

(ii) Ordinarily, in such scientific and professional presentations, psychologists disguise confidential information concerning such persons or organizations so that they are not individually identifiable to others and so that discussions do not cause harm to subjects who might identify themselves.

(I) Preserving Records and Data. A psychologist makes plans in advance so that confidentiality of records and data is protected in the event of the psychologist's death, incapacity, or withdrawal from the position or practice.

(J) Ownership of Records and Data. Recognizing that ownership of records and data is governed by legal principles, psychologists take reasonable and lawful steps so that records and data remain available to the extent needed to serve the

best interests of patients, individual or organizational clients, research participants, or appropriate others.

(K) Withholding Records for Nonpayment. Psychologists may not withhold records under their control that are requested and imminently needed for a patient's or client's treatment solely because payment has not been received, except as otherwise provided by law.

(6) Teaching, Training Supervision, Research, and Publishing.

(A) Design of Education and Training Programs. Psychologists who are responsible for education and training programs seek to ensure that the programs are competently designed, provide the proper experiences, and meet the requirements for licensure, certification, or other goals for which claims are made by the program.

(B) Descriptions of Education and Training Programs.

(i) Psychologists responsible for education and training programs seek to ensure that there is a current and accurate description of the program content, training goals and objectives, and requirements that must be met for satisfactory completion of the program. This information must be made readily available to all interested parties.

(ii) Psychologists seek to ensure that statements concerning their course outlines are accurate and not misleading, particularly regarding the subject matter to be covered, bases for evaluating progress, and the nature of course experiences. (See also paragraph (3)(C) of this subsection, Avoidance of False or Deceptive Statements.)

(iii) To the degree to which they exercise control, psychologists responsible for announcements, catalogs, brochures, or advertisements describing workshops, seminars, or other non-degree-granting educational programs ensure that they accurately describe the audience for which the program is intended, the educational objectives, the presenters, and the fees involved.

(C) Accuracy and Objectivity in Teaching.

(i) When engaged in teaching or training, psychologists present psychological information accurately and with a reasonable degree of objectivity.

(ii) When engaged in teaching or training, psychologists recognize the power they hold over students or

supervisees and therefore make reasonable efforts to avoid engaging in conduct that is personally demeaning to students or supervisees. (See also paragraph (1)(I) of this subsection, Respecting Others, and paragraph (1)(L) of this subsection, Other Harassment.)

(D) Limitation on Teaching. Psychologists do not teach the use of techniques or procedures that require specialized training, licensure, or expertise, including, but not limited to, hypnosis, biofeedback, and projective techniques, to individuals who lack the prerequisite training, legal scope of practice, or expertise.

(E) Assessing Student and Supervisee Performance.

(i) In academic and supervisory relationships, psychologists establish an appropriate process for providing feedback to students and supervisees.

(ii) Psychologists evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

(F) Planning Research.

(i) Psychologists design, conduct, and report research in accordance with recognized standards of scientific competence and ethical research.

(ii) Psychologists plan their research so as to minimize the possibility that results will be misleading.

(iii) In planning research, psychologists consider its ethical acceptability under the Ethics Code. If an ethical issue is unclear, psychologists seek to resolve the issue through consultation with institutional review boards, animal care and use committees, peer consultations, or other proper mechanisms.

(iv) Psychologists take reasonable steps to implement appropriate protections for the rights and welfare of human participants, other persons affected by the research, and the welfare of animal subjects.

(G) Responsibility.

(i) Psychologists conduct research competently and with due concern for the dignity and welfare of the participants.

(ii) Psychologists are responsible for the ethical conduct of research conducted by them or by others under their supervision or control.

(iii) Researchers and assistants are permitted to perform only those

tasks for which they are appropriately trained and prepared.

(iv) As part of the process of development and implementation of research projects, psychologists consult those with expertise concerning any special population under investigation or most likely to be affected.

(H) Compliance With Law and Standards. Psychologists plan and conduct research in a manner consistent with federal and state law and regulations, as well as professional standards governing the conduct of research, and particularly those standards governing research with human participants and animal subjects.

(I) Institutional Approval. Psychologists obtain from host institutions or organizations appropriate approval prior to conducting research, and they provide accurate information about their research proposals. They conduct the research in accordance with the approved research protocol.

(J) Research Responsibilities. Prior to conducting research (except research involving only anonymous surveys, naturalistic observations, or similar research), psychologists enter into an agreement with participants that clarifies the nature of the research and the responsibilities of each party.

(K) Informed Consent to Research.

(i) Psychologists use language that is reasonably understandable to research participants in obtaining their appropriate informed consent (except as provided in Standard 6.12, Dispensing With Informed Consent). Such informed consent is appropriately documented.

(ii) Using language that is reasonably understandable to participants, psychologists inform participants of the nature of the research; they inform participants that they are free to participate or to decline to participate or to withdraw from the research; they explain the foreseeable consequences of declining or withdrawing; they inform participants of significant factors that may be expected to influence their willingness to participate (such as risks, discomfort, adverse effects, or limitations on confidentiality, except as provided in Standard 6.15, Deception in Research); and they explain other aspects about which the prospective participants inquire.

(iii) When psychologists conduct research with individuals such as students or subordinates, psychologists take special care to protect the prospective par-

ticipants from adverse consequences of declining or withdrawing from participation.

(iv) When research participation is a course requirement or opportunity for extra credit, the prospective participant is given the choice of equitable alternative activities.

(v) For persons who are legally incapable of giving informed consent, psychologists nevertheless:

(I) provide an appropriate explanation;

(II) obtain the participant's assent; and

(III) obtain appropriate permission from a legally authorized person, if such substitute consent is permitted by law.

(L) Dispensing With Informed Consent. Before determining that planned research (such as research involving only anonymous questionnaires, naturalistic observations, or certain kinds of archival research) does not require the informed consent of research participants, psychologists consider applicable regulations and institutional review board requirements, and they consult with colleagues as appropriate.

(M) Informed Consent in Research Filming or Recording. Psychologists obtain informed consent from research participants prior to filming or recording them in any form, unless the research involves simply naturalistic observations in public places and it is not anticipated that the recording will be used in a manner that could cause personal identification or harm.

(N) Offering Inducements for Research Participants.

(i) In offering professional services as an inducement to obtain research participants, psychologists make clear the nature of the services, as well as the risks, obligations, and limitations. (See also paragraph (I)(R) of this subsection, Barter (With Patients or Clients).

(ii) Psychologists do not offer excessive or inappropriate financial or other inducements to obtain research participants, particularly when it might tend to coerce participation.

(O) Deception in Research.

(i) Psychologists do not conduct a study involving deception unless they have determined that the use of decep-

tive techniques is justified by the study's prospective scientific, educational, or applied value and that equally effective alternative procedures that do not use deception are not feasible.

(ii) Psychologists never deceive research participants about significant aspects that would affect their willingness to participate, such as physical risks, discomfort, or unpleasant emotional experiences.

(iii) Any other deception that is an integral feature of the design and conduct of an experiment must be explained to participants as early as is feasible, preferably at the conclusion of their participation, but no later than at the conclusion of the research. (See also paragraph (6)(R) of this subsection, Providing Participants With Information About the Study.)

(P) Sharing and Utilizing Data. Psychologists inform research participants of their anticipated sharing or further use of personally identifiable research data and of the possibility of unanticipated future uses.

(Q) Minimizing Invasiveness. In conducting research, psychologists interfere with the participants or milieu from which data are collected only in a manner that is warranted by an appropriate research design and that is consistent with psychologists' roles as scientific investigators.

(R) Providing Participants With Information About the Study.

(i) Psychologists provide a prompt opportunity for participants to obtain appropriate information about the nature, results, and conclusions of the research, and psychologists attempt to correct any misconceptions that participants may have.

(ii) If scientific or humane values justify delaying or withholding this information, psychologists take reasonable measures to reduce the risk of harm.

(S) Honoring Commitments. Psychologists take reasonable measures to honor all commitments they have made to research participants.

(T) Care and Use of Animals in Research.

(i) Psychologists who conduct research involving animals treat them humanely.

(ii) Psychologists acquire, care for, use, and dispose of animals in

compliance with current federal, state, and local laws and regulations, and with professional standards.

(iii) Psychologists trained in research methods and experienced in the care of laboratory animals supervise all procedures involving animals and are responsible for ensuring appropriate consideration of their comfort, health, and humane treatment.

(iv) Psychologists ensure that all individuals using animals under their supervision have received instruction in research methods and in the care, maintenance, and handling of the species being used, to the extent appropriate to their role.

(v) Responsibilities and activities of individuals assisting in a research project are consistent with their respective competencies.

(vi) Psychologists make reasonable efforts to minimize the discomfort, infection, illness, and pain of animal subjects.

(vii) A procedure subjecting animals to pain, stress, or privation is used only when an alternative procedure is unavailable and the goal is justified by its prospective scientific, educational, or applied value.

(viii) Surgical procedures are performed under appropriate anesthesia; techniques to avoid infection and minimize pain are followed during and after surgery.

(ix) When it is appropriate that the animal's life be terminated, it is done rapidly, with an effort to minimize pain, and in accordance with accepted procedures.

(U) Reporting of Results.

(i) Psychologists do not fabricate data or falsify results in their publications.

(ii) If psychologists discover significant errors in their published data, they take reasonable steps to correct such errors in a correction, retraction, erratum, or other appropriate publication means.

(V) Plagiarism. Psychologists do not present substantial portions or elements of another's work or data as their own, even if the other work or data source is cited occasionally.

(W) Publication Credit.

(i) Psychologists take responsibility and credit, including authorship credit, only for work they have actually performed or to which they have contrib-

uted.

(ii) Principal authorship and other publication credits accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their relative status. Mere possession of an institutional position, such as Department Chair, does not justify authorship credit. Minor contributions to the research or to the writing for publications are appropriately acknowledged, such as in footnotes or in an introductory statement.

(iii) A student is usually listed as principal author on any multiple-authored article that is substantially based on the student's dissertation or thesis.

(X) Duplicate Publication of Data. Psychologists do not publish, as original data, data that have been previously published. This does not preclude republishing data when they are accompanied by proper acknowledgement.

(Y) Sharing Data. After research results are published, psychologists do not withhold the data on which their conclusions are based from other competent professionals who seek to verify the substantive claims through reanalysis and who intend to use such data only for that purpose, provided that the confidentiality of the participants can be protected and unless legal rights concerning proprietary data preclude their release.

(Z) Professional Reviewers. Psychologists who review material submitted for publication, grant, or other research proposal review respect the confidentiality of and the proprietary rights in such information of those who submitted it.

(7) Forensic Activities.

(A) Professionalism. Psychologists who perform forensic functions, such as assessments, interviews, consultations, reports, or expert testimony, must comply with all other provisions of this Ethics Code to the extent that they apply to such activities. In addition, psychologists base their forensic work on appropriate knowledge of and competence in the areas underlying such work, including specialized knowledge concerning special populations. (See also paragraphs (I)(F), Basis for Scientific and Professional Judgments; (I)(H), Human Differences; (I)(O), Misuse of Psychologists' Influence; and (I)(W) of this subsection, Documentation of Professional and Scientific Work.)

(B) Forensic Assessments.

(i) Psychologists' forensic

assessments, recommendations, and reports are based on information and techniques (including personal interviews of the individual, when appropriate) sufficient to provide appropriate substantiation for their findings. (See also paragraphs (I)(C), Professional and Scientific Relationships; (I)(W), Documentation of Professional and Scientific Work; (2)(A), Evaluation, Diagnosis, and Interventions in Professional Context; and (2)(E) of this subsection, Interpreting Assessment Results.)

(ii) Except as noted in clause (iii) of this subparagraph, psychologists provide written or oral forensic reports or testimony of the psychological characteristics of an individual only after they have conducted an examination of the individual adequate to support their statements or conclusions.

(iii) When, despite reasonable efforts, such an examination is not feasible, psychologists clarify the impact of their limited information on the reliability and validity of their reports and testimony, and they appropriately limit the nature and extent of their conclusions or recommendations.

(C) Clarification of Role. In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters. When psychologists may be called on to serve in more than one role in a legal proceeding - for example, as consultant or expert for one party or for the court and as a fact witness - they clarify role expectations and the extent of confidentiality in advance to the extent feasible, and thereafter as changes occur, in order to avoid compromising their professional judgment and objectivity and in order to avoid misleading others regarding their role.

(D) Truthfulness and Candor.

(i) In forensic testimony and reports, psychologists testify truthfully, honestly, and candidly and, consistent with applicable legal procedures, describe fairly the bases for their testimony and conclusions.

(ii) Whenever necessary to avoid misleading, psychologists acknowledge the limits of their data or conclusions.

(E) Prior Relationships. A prior relationship with a party does not preclude psychologists from testifying as fact witnesses or from testifying to their services to the extent permitted by applicable law. Psychologists appropriately take into account ways in which the prior relationship might affect their professional objectivity or

opinions and disclose the potential conflict to the relevant parties.

(F) Compliance with Law and Rules. In performing forensic roles, psychologists are reasonably familiar with the rules governing their roles. Psychologists are aware of the occasionally competing demands placed upon them by these principles and the requirements of the court system, and attempt to resolve these conflicts by making known their commitment to this Ethics Code and taking steps to resolve the conflict in a responsible manner. (See also paragraph (1)(B) of this subsection, Relationship of Ethics and Law.)

(8) Resolving Ethical Issues.

(A) Familiarity With Ethics Code. Psychologists have an obligation to be familiar with this Ethics Code, other applicable ethics codes, and their application to psychologists' work. Lack of awareness or misunderstanding of an ethical standard is not itself a defense to a charge of unethical conduct.

(B) Confronting Ethical Issues. When a psychologist is uncertain whether a particular situation or course of action would violate this Ethics Code, the psychologist ordinarily consults with other psychologists knowledgeable about ethical issues, with state or national psychology ethics committees, or with other appropriate authorities in order to choose a proper response.

(C) Conflicts Between Ethics and Organizational Demands. If the demands of an organization with which psychologists are affiliated conflict with this Ethics Code, psychologists clarify the nature of the conflict, make known their commitment to the Ethics Code, and to the extent feasible, seek to resolve the conflict in a way that permits the fullest adherence to the Ethics Code.

(D) Informal Resolution of Ethical Violations. When psychologists believe that there may have been an ethical violation by another psychologist, they attempt to resolve the issue by bringing it to the attention of that individual if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved.

(E) Reporting Ethical Violations. If an apparent ethical violation is not appropriate for informal resolution under paragraph (8)(D) of this subsection or is not resolved properly in that fashion, psychologists take further action appropriate to the

situation, unless such action conflicts with confidentiality rights in ways that cannot be resolved. Such action might include referral to state or national committees on professional ethics or to state licensing boards.

(F) Cooperating With Ethics Committees. Psychologists cooperate in ethics investigations, proceedings, and resulting requirements of the APA or any affiliated state psychological association to which they belong. In doing so, they make reasonable efforts to resolve any issues as to confidentiality. Failure to cooperate is itself an ethics violation.

(G) Improper Complaints. Psychologists do not file or encourage the filing of ethics complaints that are frivolous and are intended to harm the respondent rather than to protect the public.

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 November 23, 1992.

TRD-9215732

Patricia S. Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 835-2036

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Certification by Reciprocity

• 22 TAC §511.140

The Texas State Board of Public Accountancy proposes new §511.140 concerning application for certification by reciprocity in approved states. The new section would eliminate many of the formalities that are currently required for reciprocity.

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

Mr. Treacy 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 that the process for reciprocal licenses will be simplified for individuals certified in states with substantially the same certification requirements as

Texas, which will promote interstate cooperation. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to application for certification by reciprocity in approved states.

§511.140. Application for Certification by Reciprocity in Approved States.

(a) The licensing authority of any state may submit to the board on an application form approved by the board, evidence of a certification and licensing process which is substantially equivalent to the certification and licensing process of the board. The board following its review of the application and determination that its process is substantially equivalent, may designate the state as an approved state.

(b) An individual holding a valid certificate and license in good standing as a certified public accountant in an approved state may be exempted from providing the evidence required in paragraphs (1)-(4) and (6)-(8) of §511.141 of this title (relating to Application for Certification by Reciprocity), and subsections (a) and (b) of §511.142 of this title (relating to Qualifications for Certification by Reciprocity).

(c) The board may designate a state an approved state in part, and require an application for reciprocity to provide only that information which the board determines is needed to produce a substantially equivalent certification and licensing process.

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 November 25, 1992.

TRD-9215856

William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption. January 4, 1993

For further information, please call: (512) 450-7066

Certification

• 22 TAC §511.171

The Texas State Board of Public Accountancy proposes new §511.171 concerning consent revocation. The new section

establishes procedures for voluntary revocation of a CPA's certificate and for reinstatement of the certificate.

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

Mr. Treacy, 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 that the procedures for revocation and reinstatement are clarified. 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 J. Randel (Jerry) Hill, General Counsel, 1033 La Posada, Suite 340, Austin, Texas 78752-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to consent revocation.

§511.171. Consent Revocation. Any individual holding a certificate or registration who has failed to obtain a license pursuant to §21(c)(10) of the Public Accountancy Act of 1991, may waive the notice and hearing requirements provided for in §21 of the Act and have his/her certificate voluntarily revoked pursuant to §21(c)(10) of the Act. The individual revoked may be reinstated by paying all fees that were due and not paid following certification and providing evidence of all continuing education required but not accrued following certification.

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 November 25, 1992.

TRD-9215857 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

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Chapter 523. Continuing Professional Education

Continuing Professional Education Programs

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• **22 TAC §523.5**

The Texas State Board of Public Accountancy proposes an amendment to §523.5,

concerning program developers. The amendment does not change the substantive meaning of the rule; it is only a grammatical change.

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

Mr. Treacy 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 that the rule will be grammatically consistent. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to continuing professional education program developers.

§523.5. Program Developers. Programs should be developed by individual(s) [(individuals)] qualified in the subject matter and in instructional design. This standard is not intended to require that any individual program developer be both technically competent and competent in instructional design. Its purpose is to ensure that both types of competency are represented in a program's development, whether one or more persons are involved in that development. Mastery of the technical knowledge or skill in instructional design is a teaching plan that considers the organization and interaction of the materials as well as the method of presentation, such as lecture, seminar, workshop, or programmed instruction.

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 November 25, 1992

TRD-9215858 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

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• **22 TAC §523.7**

The Texas State Board of Public Accountancy proposes an amendment to §523.7, concerning program review. The amendment does not change the substantive meaning of

the rule; it is only a grammatical change.

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

Mr. Treacy 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 that the rule will be grammatically consistent. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to continuing education program review.

§523.7. Program Review. Programs should be reviewed by a qualified person(s) [(persons)] other than the preparer(s) [(preparers)] to ensure compliance with the provisions of these sections. In order to ensure that programs meet the standards for program development, they should be reviewed by one or more individuals in the subject area and in instructional design, but both aspects of a program should be reviewed. However, it may be impractical to review certain programs, such as a short lecture given only once. In these cases, more reliance must be placed on the competence of the presenter.

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 November 25, 1992.

TRD-9215859 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

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Continuing Professional Education Standards

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• **22 TAC §523.21**

The Texas State Board of Public Accountancy proposes an amendment to §523.21, concerning program presentation standards. The amendment does not change the substantive meaning of the rule, it is only a grammatical change.

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

Mr. Treacy 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 that the rules are grammatically consistent. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to continuing education program presentation standards.

§523.21. Program Presentation Standards. Participants should be informed in advance of objectives, prerequisites, experience level, content, advance preparation, teaching method(s) [(methods)], and recommended credit hours. In order for potential participants to most effectively plan their continuing education, the salient features of any program should be disclosed through brochures or other announcements.

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 November 25, 1992.

TRD-9215860 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

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• 22 TAC §523.29

The Texas State Board of Public Accountancy proposes an amendment to §523.29, concerning minimum number of hours required as a participant. The amendment requires that a minimum of 50% of the requirement must be from involvement as a participant in a CPE program

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

Mr. Treacy 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 that the rule simplifies reporting requirements for Continuing Professional Education. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to minimum hours required as a participant in a qualified continuing education program.

§523.29. Minimum Hours Required as a Participant. A minimum of 50% [16 continuing education credit hours] of the [annual] requirement must be from involvement as a participant in a qualified continuing 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 November 25, 1992.

TRD-9215861 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

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• 22 TAC §523.30

The Texas State Board of Public Accountancy proposes an amendment to §523.30, concerning limitation for nontechnical courses. The amendment conforms the rule to the biennial reporting periods.

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

Mr. Treacy 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 that the rule simplifies reporting requirements for Continuing Professional Education. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Ac-

countancy with the authority to promulgate rules relating to limitation for nontechnical courses.

§523.30. Limitation for Nontechnical Courses. [For the license year 1992, or later.] CE credit hours may be claimed for nontechnical courses limited to not more than 50% of the [annual] requirement

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 November 25, 1992.

TRD-9215862 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call (512) 450-7066

◆ ◆ ◆
Continuing Professional Education Reporting

• 22 TAC §523.41

The Texas State Board of Public Accountancy proposes an amendment to §523.41, concerning standards for CPE reporting. The amendment makes a grammatical correction, change "contact hours" to "credit" hours, and makes it clear that the CPA is responsible for retaining documentation of courses attended

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

Mr. Treacy 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 that the CPA's responsibilities are clearly defined. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to standards for continuing professional education reporting

§523.41. Standards for CPE Reporting.

(a) Participants in group or self-study programs must document their participation, including:

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

- (3) date(s) [(dates)];
- (4) (No change.)
- (5) number of credit [contact] hours.

(b) These standards are designed to encourage participants to document their attendance at group programs or participation in self-study programs. Evidence of completion would normally be the certificate supplied by the sponsor. Documentation by the licensee must be retained for the three most recent full reporting periods.

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 November 25, 1992.

TRD-9215863 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption January 4, 1993

For further information, please call. (512) 450-7066

◆ ◆ ◆
• 22 TAC §523.42

The Texas State Board of Public Accountancy proposes an amendment to §523.42, concerning sponsor's record. The amendment reduced the time for retention of records from five to three years.

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

Mr. Treacy 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 that the record retention time is reduced. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to continuing education sponsor's record.

§523.42. *Sponsor's Record.*

(a) In order to support the reports required of participants, the sponsor of group or self-study programs must retain for an appropriate period:

- (1)-(2) (No change.)
- (3) date(s) [(dates)];
- (4) location;
- (5) instructor(s) [(instructors)];
- (6)-(7) (No change.)

(b) Because participants may come from any state or jurisdiction, the appropriate time for the sponsor to retain this information is not dependent solely on the location of the program or sponsor. To satisfy the detailed requirements of all jurisdictions, a retention period of three [five] years from the date the program is completed is appropriate. The record of attendance should reflect the credit hours earned by each participant, including those who arrive late or leave early.

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 November 25, 1992.

TRD-9215864 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption January 4, 1993

For further information, please call: (512) 450-7066

◆ ◆ ◆
Chapter 523. Continuing Professional Education

Mandatory Continuing Education (CE) Program

• 22 TAC §523.61

The Texas State Board of Public Accountancy proposes an amendment to §523.61, concerning establishment of mandatory CE program. The amendment replaces the old citation to the Public Accountancy Act with the updated citation.

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

Mr. Treacy 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 that the rule cites to the current version of the Public Accountancy Act. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to establishment of a mandatory CE program.

*§523.61. *Establishment of Mandatory CE Program.*

(a) (No change.)

(b) The Public Accountancy Act of 1991 [1979, as amended 1989], §15A, continuing education states:

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

(c) A licensee shall be responsible for ensuring that CE credit hours claimed conformed to the board's standards as outlined in §§523.21-523.31 [523.29] of this title (relating to Program Presentation Standards; Instructors; Program Sponsors; Learning Environment; Evaluation; Program Measurement; Credits for Instructors and Discussion Leaders; Credits for Published Articles and Books; Minimum Hours Required as a Participant; Limitation for Nontechnical courses, and Alternative Sources of Continuing Education).

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 November 25, 1992.

TRD-9215865 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

◆ ◆ ◆
• 22 TAC §523.62

The Texas State Board of Public Accountancy proposes an amendment to §523.62, concerning mandatory continuing education reporting. The amendment deletes language which refers to annual reporting periods.

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

Mr. Treacy 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 that the amendment will allow reporting to take place biennially. 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 J. Randel (Jerry) Hill, General Counsel,

1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to mandatory continuing education reporting.

§523.62. Mandatory CE Reporting.

(a) To receive a [1990 or later] license, a licensee shall report CE credit hours accrued during the applicable reporting period. A blank on the reporting form will be interpreted as a zero.

(b) (No change.)

(c) The board may not grant exemptions from the requirement to report CE credit hours accrued. A licensee must report CE credit hours on the [annual] license renewal form, even if the number reported is zero.

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 November 25, 1992

TRD-9215866 William Treacy Executive Director Texas State Board of Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

• 22 TAC §523.63

The Texas State Board of Public Accountancy proposes an amendment to §523.63, concerning mandatory continuing education attendance. The amendment makes some grammatical corrections to the rule. The amendment also allows an exemption for CPAs who will not be employed during the upcoming biennium.

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

Mr. Treacy 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 that the rule is grammatically consistent. Further, the amendment permits CPAs who will not be employed during the upcoming biennium to receive exemptions, regardless of whether the CPA has retired status. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to mandatory continuing education attendance.

§523.63. Mandatory CE Attendance. A licensee shall complete at least 120 hours of continuing professional education every three years. The individual shall complete at least 20 hours of continuing professional education each year.

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

(3) The board will consider granting an exemption from the continuing education requirement on a case-by-case basis if:

(A) a licensee completes and forwards to the board a sworn affidavit indicating that the licensee will not be employed [retirement status] during the biennium for which the exemption is requested. A licensee who has been granted this exemption and who re-enters the work force shall be required to accrue continuing education hours missed as a result of the exemption subject to a maximum of 200 hours. Such continuing education hours shall be accrued from the technical area only as described in §523.2 of this title (relating to Standards for CPE Program Development);

(B) a licensee completes and forwards to the board a sworn affidavit indicating no association with accounting work. The affidavit shall include, as a minimum, a brief description of the duties performed, job title, and verification by the licensee's immediate supervisor.

(i) For purposes of this section, the term "association with accounting work" shall include the following:

(I) working or supervising work performed in the areas of financial accounting and reporting; tax compliance, planning or advice; management advisory services; data processing; treasury, finance, or audit; or

(II) representing to the public, including an employer, that the licensee is a CPA or public accountant in connection with the sale of any services or products, including such designation on a business card, letterhead, promotional brochure, advertisement, or office; or

(III) offering testimony in a court of law purporting to have expertise in accounting and reporting, auditing, tax, or management advisory services;

or

(IV) (No change.)

(i) (No change.)

(C) a licensee not residing in Texas, who [and] submits a sworn statement to the board that the continuing education requirements for a resident [requirement] of the resident jurisdiction have been met;

(D)-(E) (No change.)

(4) (No change.)

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

Issued in Austin, Texas, on November 25, 1992.

TRD-9215867 William Treacy Executive Director Texas State Board of Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

Mandatory Continuing Education (CE) Program

• 22 TAC §523.64

The Texas State Board of Public Accountancy proposes an amendment to §523.64, concerning disciplinary actions related to continuing education. The amendment cites to the Public Accountancy Act of 1991 instead of the previous version of the Act.

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

Mr. Treacy 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 that the rule cites to the current version of the Public Accountancy Act. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas 78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to disciplinary actions relating to continuing education

§523.64. Disciplinary Actions Relating to CE.

(a) A licensee who fails to comply with the provisions of §523.62 of this title (relating to Mandatory CE Reporting) or §523.63 of this title (relating to Mandatory CE Attendance) may be subject to disciplinary action under the Public Accountancy Act of 1991 [1979], §21, [as amended,] (Texas Civil Statutes, Article 41a-1), for violation of the Rules of Professional Conduct, §501.25 of this title (relating to Mandatory Continuing Education), which requires compliance with §523.62 of this title and §523.63 of this title.

(b)-(c)(No change.)

(d) Evidence of falsification, fraud, or deceit in the CE information or documentation supplied may necessitate disciplinary action as authorized in the Public Accountancy Act of 1991, [1979] §21 [(b), as amended] (Texas Civil Statutes, Article 41a-1).

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 November 25, 1992.

TRD-9215868 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

Registered Continuing Education Sponsors

• 22 TAC §523.74

The Texas State Board of Public Accountancy proposes an amendment to §523.74, concerning the national registry of continuing professional education. The amendment corrects the rule number cited to.

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

Mr. Treacy 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 that the correct rule is cited. 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 J. Randel (Jerry) Hill, General Counsel, 1033 LaPosada, Suite 340, Austin, Texas

78752-3892.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the national registry of continuing professional education sponsors.

§523.74. National Registry of CPE Sponsors. The board shall accept courses offered by sponsors shown as being in good standing on the National Association of State Boards of Accountancy's National Registry of CPE Sponsors; however, organizations are not required to register with the National Association of State Boards of Accountancy. Organizations that elect to register with this board shall adhere to the obligations of the sponsor identified in §523.73 [523.72] of this title (relating to Obligations of the Sponsor), and to the standards promulgated by this board.

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 November 25, 1992.

TRD-9215869 William Treacy
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 450-7066

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Midwives

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

The Texas Department of Health (department) proposes the repeal of §37.180, concerning basic midwifery education and continuing education. The new section outlines the dates before which a midwife must meet certain voluntary and mandatory education, experience, and examination requirements. The existing rules for voluntary basic education courses and examinations, sponsored by the Midwifery Program since 1985, will expire September 1, 1993, when the new mandated requirements become effective.

The department is proposing this new section at the present time for two purposes: to per-

mit midwives the ample time to meet the new education and examination requirements for the purpose of seeking exemption from the mandatory basic education program requirement; and to afford both midwives and the public the chance to comment on the proposed rules after sufficient time to review and study their content.

The new section will cover "core curriculum", clinical requirements, requirements for and frequency of continuing education offerings, responsibilities and qualifications of those who teach or oversee the education courses, and a system for approval, disapproval, and revocation of approval of courses.

Joey Alexander, CNM, the Program Coordinator, Texas Department of Health, has determined that for the first five-year period the proposed amendment is in effect there will be fiscal implications for state government as the result of enforcing or administering the amendment. Additional costs to the state will arise from the statutory duty for the department to enforce the amendment and from the added administrative, investigation, and enforcement responsibilities. These costs, which include additional travel and per diem expense Midwifery Board and Educational Subcommittee meetings, additional administrative expense for transcribing minutes, correspondence, and posting meeting notices and the expense of administrative hearings for educational programs whose approval is revoked. The additional cost for added meetings of the two subcommittee four times a year is \$6,000 per year. In addition, the present cost of each administrative hearing conducted by the department is approximately \$1,574 (the number of hearings cannot be projected). There is no cost to local governments as a result of enforcing or administering this section.

Ms. Alexander has also determined that for each year of the first five-year period the section is in effect, the public benefit anticipated is that there will be an improvement in the knowledge base of midwives through compulsory education. In addition, the sections will clarify for the public, the education and clinical experience required for midwives. There is no anticipated economic costs to small or large businesses to comply with the section as proposed. The anticipated costs for individual midwives will be the cost for their basic education and continuing education. There will be no effect on local employment.

Written comments on the proposal may be submitted to Joey Alexander CNM, Midwifery Program Coordinator, Bureau of Maternal and Child Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3185. Telephone inquiries may also be made to Joey Alexander, CNM, at (512) 458-7700. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

• 25 TAC §37.180

The new section is proposed under the Texas Civil Statutes, Article 4512i, §8A, that requires the Midwifery Board to adopt rules prescribing minimum standards for approval and revocation of approval of basic midwifery education courses and midwifery continuing education courses and requires the Board to approve rules adopted by the Midwifery

Board, and Health and Safety Code, §12.001, which provides for the Texas Board of Health to adopt rules for the performance of legal duties imposed on the Texas Board of Health, Texas Department of Health and the Commissioner of Health. The repeal affects Texas Civil Statutes, Article 4512i, §8A.

§37.180. Education.

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 November 25, 1992.

TRD-9215845

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 458-7700

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The new section is proposed under the Health and Safety Code, §12.001, which provides for the Texas Board of Health to adopt rules for the performance of legal duties imposed on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health and Texas Civil Statutes, Article 4512i, §8A that requires the Midwifery Board to adopt rules prescribing minimum standards for approval and revocation of approval of basic midwifery education courses and midwifery continuing education courses and requires the Board to approve rules adopted by the Midwifery Board.

§37.180. Education. The purpose of this section is to establish standards for approval of voluntary basic midwifery education courses, mandatory basic midwifery education and continuing education courses. This section also sets forth requirements for taking the Texas Department of Health's (department) current voluntary midwifery exam, provides for a mandatory basic midwifery education course exam. The rules for the approval of voluntary basic midwifery education courses in paragraph (1)(A) of this section will apply only until September 1, 1993. The new rules for challenging the mandatory basic midwifery education course examination in paragraph (1)(B) will be in effect from September 1, 1993 to November 30, 1993 only. The rules for voluntary basic midwifery education course and examination requirements in paragraph (2) of this section will be in effect until September 1, 1993 only. The rules relating to mandatory basic midwifery education; continuing education; and revocation of course, facility and instructor approval contained in paragraphs (3)-(6) of this section will be effective September 1, 1993, and thereafter as amended.

(1) Approval of additional voluntary basic midwifery education courses and a mandatory basic midwifery education voluntary examination for exemption from the mandatory basic midwifery education requirements. Until September 1, 1993, when the new mandatory basic midwifery education course and continuing midwifery education course requirements become effective, additional voluntary courses may be approved by the Midwifery Board to fulfill the educational requirements (Texas Civil Statutes, Article 4512i, §10(e)). Texas Civil Statutes, Article 4512i, §10(e), also specifies that between September 1, 1993 and November 30, 1993, a midwife who has passed the exam of a mandatory basic midwifery education course, approved by the Midwifery Board, is also exempt from the basic education requirements. Criteria for the courses and exam are as follows.

(A) Voluntary basic midwifery education courses.

(i) The courses must include at least 45 hours of didactic learning or equivalent self-study, with emphasis on discussion and "hands on" experiences. The following topics must be part of the subject matter and must be adequately:

(I) prenatal care;

(II) management of labor and delivery;

(III) newborn care and postpartum care up to six weeks;

(IV) high risk factors, both maternal and fetal/infant (to include consideration of those conditions which preclude midwifery care);

(V) signs and symptoms of complications and appropriate management (to include referral to a physician);

(VI) sterile technique and infection control measures;

(VII) laboratory tests and screening; and

(VIII) state laws and regulations effecting midwifery practice.

(ii) Primary instructors for the voluntary basic midwifery education courses must be:

(I) a midwife with at least four years of experience (including antepartum, postpartum, and newborn care)

and 100 personally managed births;

(II) a certified nurse-midwife; or

(III) a licensed physician specializing in obstetrics, pediatrics, and/or family medicine.

(iii) The sponsor of a course which fulfills all of the requirements in clauses (i) and (ii) of this subparagraph may apply to the Midwifery Board by letter, or on an application form developed by the program, for approval of her/his voluntary basic midwifery education course. A midwife who has taken such a course may also apply on behalf of the course which she/he has completed in the past, for retroactive approval of the course by the Midwifery Board.

(iv) The Midwifery Board's Education Subcommittee will evaluate the application(s) and recommend approval or disapproval of the courses to the full Midwifery Board. The deliberations, formulations and recommendations are subject to the provisions of the Texas Open Meetings Act.

(v) Graduates of midwifery training in other states or countries may submit their credentials to the Education Subcommittee of the Midwifery Board for similar consideration. These applicants may also be eligible to take the approved exams referenced in subparagraph (B) of this paragraph, between September 1, 1993 and November 30, 1993.

(vi) Proof of the midwife's completion of an approved voluntary basic midwifery education course must be sent to the Midwifery Program by November 30, 1993, in order to exempt the midwife from the mandatory basic education requirement cited in Texas Civil Statutes, Article 4512i, §26(c)(1).

(B) Mandatory basic midwifery education course examination. The Midwifery Board, upon recommendations of the Educational Subcommittee, will approve the mandatory basic midwifery education examination which may be taken between September 1, 1993 and November 30, 1993. Passing this examination will fulfill the requirements of Texas Civil Statutes, Article 4512i, §26(c)(3) and will exempt the midwife from the mandatory basic midwifery education course requirement. Application for this exemption must be made to the Midwifery Program before November 30, 1993.

(2) Voluntary basic midwifery education course and examination and exemption from the mandatory basic midwifery education course requirement. A

midwife who has taken the department's voluntary basic midwifery education course and or who has passed the department's voluntary examination between September 1, 1983, and August 31, 1993, are exempt from the mandatory basic midwifery education course requirement as provided by Texas Civil Statutes, Article 4512i, §26(c)(1) and (2). Midwives seeking exemption under this provision must apply to the Midwifery Program with proof of taking the course or passing the voluntary examination before November 30, 1993.

(3) Mandatory basic midwifery education. On September 1st, 1993, all midwives in Texas, with the exception of those who take and pass the examination cited in paragraph (1) (b) of this section and those who have been exempted through taking the department's voluntary basic midwifery education course and/or passing the voluntary basic midwifery education course exam, or taking one of the approved courses mentioned in paragraph (1)(A) of this section, must satisfactorily complete an approved mandatory basic midwifery education course before they can apply for documentation and practice midwifery.

(A) Education subcommittee. An educational subcommittee will be appointed by the chairperson of the Midwifery Board to review all the applications for approval from sponsors of mandatory basic midwifery education courses. The subcommittee will consist of a midwife chairperson and two other members: one other midwife and a physician or the certified nurse midwife. The deliberations, formulations and recommendations of the subcommittee are subject to the provisions of the Texas Open Meetings Act.

(i) The subcommittee members will review all applications from sponsors of mandatory basic education courses, and the Subcommittee chairperson will present recommendations to the chairperson of the Midwifery Board for approval or rejection of the applications by the full Midwifery Board.

(ii) Applications may be submitted at any time but will only be acted upon four times a year. Two months will be allowed for review of each application by the subcommittee.

(iii) Each course will be re-evaluated by the education subcommittee of the Midwifery Board every three years, following the criteria as set forth in subparagraph (B) of this paragraph.

(iv) The Midwifery Board will consider all appeals for reconsideration of rejected course applications. The course sponsor should request by letter to appear at a regularly scheduled Midwifery Board meeting.

(B) The instructional curriculum. In order for a mandatory basic midwifery education course to be approved, it must fulfill the following requirements.

(i) The didactic portion of the course must be at least 75 hours, with exceptions being considered for home study courses. A student must have been present during at least 65 of these hours to complete the course satisfactorily.

(ii) The course must be based upon and completely cover the Midwives Alliance of North America Core Competencies and Standards of Practice.

(iii) The course must require pertinent reading and study to include at least one current comprehensive nurse-midwifery text, and/or obstetric text all of which must be approved by the Midwifery Board. Instructional materials used in education must be current.

(iv) Courses given at community and other colleges on subjects which are applicable to the education of midwives can be taken for credit and may be considered as part of the required curriculum. Such courses may include anatomy and physiology, nutrition, microbiology, psychology, women's studies, and others.

(v) The Texas Midwifery Basic Information Manual approved by the Midwifery Board and approved as rule by the Texas Board of Health must be a part of the curriculum of any course taught in Texas. A midwife who has taken his or her approved training courses outside of Texas will still be required to read and study this manual. The manual will address the following topics:

(I) the Midwifery Law (Texas Civil Statutes, Article 4512i) and the rules;

(II) other Texas laws impacting midwifery practice;

(III) the Texas Midwifery Board Standards of Practice

(IV) the Midwives Alliance of North America (M. A.N.A.) Standards of Practice;

(V) M.A.N.A. Core Competencies;

(VI) birthing center and vital statistics requirements; and

(VII) requirements

for mandatory basic and continuing midwifery education.

(C) Clinical requirements. In order for a mandatory basic midwifery education course to be approved, it must provide an adequate clinical experience outlined as follows.

(i) This clinical experience must be accomplished under the supervision of a qualified preceptor. It must be accompanied by appropriate observational experience including:

(I) at least of 35 labors, deliveries, and immediate postpartum period; and

(II) 10 initial histories and physical examinations; return prenatal visits, postpartum visits or newborn physical examinations.

(ii) Each student midwife must also satisfactorily perform or manage:

(I) 15 initial complete prenatal histories and physical exams;

(II) 15 prenatal return visits;

(III) 25 labors;

(IV) 25 deliveries;

(V) 25 immediate postpartum patients;

(VI) 15 postpartum (at 12-36 hours and at six weeks); and

(VII) 15 newborn exams.

(D) Midwife's academic background. In order for a mandatory basic midwifery education course to be approved, it must require that each midwife student be a high-school graduate or have the equivalent (GED).

(E) Course and clinical supervision. Educational instruction and clinical experience must be supervised in person by a documented midwife, a certified nurse-midwife or a licensed physician, with the following qualifications.

(i) The course supervisor is responsible for the theoretical/didactic part of midwifery education. The minimal requirements for the course coordinator are

that she/he:

(I) be a high-school graduate or equivalent (GED);

(II) be a documented midwife in Texas or an equivalent in another state, or a licensed physician or CNM;

(III) have at least two years in midwifery (obstetric) practice and have independently performed at least 100 births (to include prenatal, postpartum and newborn care); and

(IV) have at least 150 hours of teaching or preceptor experience.

(ii) The preceptor for student clinical experience (who could also be the course coordinator) must at least:

(I) be a high-school graduate or equivalent (GED);

(II) be a documented midwife in Texas or equivalent, or a licensed physician or CNM;

(III) have at least two years in midwifery (obstetrics) practice and have independently performed at least 100 births (to include prenatal, postpartum, and newborn care);

(IV) have adequate clinical facilities for student clinical experience; and

(V) have at least 150 hours of experience as a preceptor.

(F) If there are changes in the course, clinical experience or the supervisor or preceptor, the Midwifery Board must be notified in writing within 30 days of the change.

(4) Mandatory continuing education. The Midwifery Board will approve or disapprove of continuing education courses, and may also periodically require courses on specific subjects essential to the well-being of mothers and babies.

(A) Application review. The Continuing Education Subcommittee of the Midwifery Board will advise the Midwifery Board regarding continuing education courses. The subcommittee consists of a chairperson, a midwife and the certified nurse-midwife or one of the physicians, all appointed by the Midwifery Board chairperson. The deliberations, formulations and recommendations of the subcommittee are subject to the provisions of the Texas Open Meetings Act.

(i) All courses will be reviewed concerning topic, relevance to midwifery, teaching methods and the qualifications of the instructor(s).

(ii) To have a course reviewed, an applicant must complete and submit a Continuing Education Approval Application Form to the Midwifery Program at least 90 days prior to the offering. The Midwifery Board's decision regarding approval or disapproval will be given in writing, from the Midwifery Program, at least 60 days before the course is scheduled to begin.

(iii) A midwife who requests approval of courses not pre-approved must submit the Retroactive Continuing Education Approval Form to the Midwifery Board within 60 days of completing the course. A copy of the course brochure and proof of attendance must also be submitted, and there must be documentation showing relevancy of the topic for midwifery and qualifications of the instructor(s). Notice of approval or rejection of the request will be made within 30 days.

(iv) Continuing education course approval granted by other organizations will not automatically guarantee approval by the Midwifery Board.

(v) Course approval is granted for three years and may be renewed by reapplication. Reapplication is also necessary if there are changes in the course or instructors.

(vi) Challenges to decisions on continuing education courses must be addressed directly to the Chairperson of the Midwifery Board and a decision will be made by the full board.

(vii) A listing of approved courses and dates, for continuing education will be maintained by the Midwifery Program.

(viii) Continuing education courses must be designed around current subjects necessary for midwives' practice, such as newly emerging concepts, principles, theories and research or review of established information relevant to midwifery.

(ix) Research under appropriate supervision will be considered, as well as correspondence courses.

(B) Compliance standard. Every midwife must provide proof of receipt of 30 contact hours of approved continuing education every three years. One contact hour is equivalent to sixty minutes.

(C) Sources of continuing education credit. Possible sources for continuing education include:

(i) Association of Texas Midwives;

(ii) Texas Department of Health;

(iii) Midwives Alliance of North America;

(iv) American College of Nurse-Midwives;

(v) Nursing associations;

(vi) Medical associations;

(vii) Childbirth education organization;

(viii) Lactation organizations;

(ix) International Confederation of Midwives;

(x) American Academy of Pediatrics; and

(xi) American College of Obstetrics and Gynecology.

(5) Revocation of course, instructor, facility approval. After notice to the course or examination sponsor, and a hearing, the Midwifery Board may revoke the approval of an education course if the Midwifery Board determines that:

(A) the course does not meet the standards set by the law or this section;

(B) course instructors do not have the qualifications required by this section;

(C) the course facilities are inappropriate for learning;

(D) the approval of the course, course instructors, or facility was obtained by fraud or deceit; and

(E) a course or examination sponsor has falsified the course attendance or examination pass/fail records and reported this false information to the department.

(6) Informal hearing rules. Notice and hearings required under this section will be conducted according to will be governed by the board's formal hearing rules in Chapter 1 of this title (relating to Board of Health) and the applicable provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

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 November 25, 1992.

TRD-9215844

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13,

For further information, please call: (512) 458-7700

Chapter 98. HIV and STD Control

Subchapter A. Texas HIV Services Grant Program

General Provisions

The Texas Department of Health (department) proposes amendments to §§98.7, 98.23, 98.31, and 98.67, concerning the Texas HIV Services Grant Program and the HIV Education Grant Program. The amendments to §§98.7, 98.23, and 98.31 designate a membership category on the HIV Service Advisory Committee representing the religious community which was inadvertently omitted from the original rules; change the "financial evaluator with experience in developing cost-of-care analyses in the medical setting" category to a "person with AIDS/HIV" category to allow for consistent representation from this segment of the community by providing two "person with AIDS/HIV" categories; and include new language regarding client and public complaints which clarifies the Department's responsibilities regarding notification and investigation of complaints.

The amendment to §98.67 modifies the existing membership categories of the State HIV Education, Prevention and Risk Reduction Advisory Committee. The changes are as follows: change "the Texas Department of Criminal Justice internal school system (Windham School System)" category to "person with AIDS/HIV"; change "the planned parent-hood/family planning program representative" category to "family planning program representative"; change "the Texas Association of Retarded Citizens" category to "representative with AIDS/HIV experience that is currently serving in an agency that advocates or promotes for the rights of individuals with disabilities"; change the "community-based organization for hearing impaired" category to "representative with AIDS/HIV experience from a community with a population of less than 30,000"; add "with HIV/AIDS experience" to all new and existing categories (excluding the "person with AIDS/HIV" and "parent" categories).

Bryan Shirley, Budget Officer III, has determined that for the first five-year period that 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. Shirley 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 the amendment will validate the intentions of the original rules to include a member of the religious community on the HIV Services Advisory Committee. The modification of existing language will assist clients regarding compliant procedures and new language defines the Department's procedures regarding

investigation of public complaints. The modification of the categories on the HIV Education, Prevention, and Risk Reduction Advisory Committee will enable the Committee to provide more effective and knowledgeable advice to the HIV Division. There is no anticipated cost to small businesses to comply with these sections. There will be no economic cost to persons who are required to comply with these sections. There will be no impact on local employment.

Comments on the proposed changes may be submitted to Charles E. Bell, M.D., Bureau of HIV & STD Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7463. Public comments will be accepted 30 days after publication of the sections in the *Texas Register*.

• 25 TAC §98.7

The amendment is being proposed under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, §§85.031-85.044, which provides the Board of Health with the authority to establish advisory committees to assist the Board in the implementation of the HIV Services Grant Program and the State HIV Education Grant Program; the Health and Safety Code, §11.016, which provides the Board of Health with the authority to appoint advisory committees; and §12.001, which provides the Board with the authority to adopt rules to implement its duties. The amendment affects the Code, Chapter 85.

§98.7. HIV Services Advisory Committee.

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

(d) Membership. The board shall appoint a 15-member statewide HIV Services Advisory Committee consisting [representative] of a:

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

(7) person with AIDS/HIV [financial evaluator with experience in developing cost-of-care analyses in the medical setting];

(8)-(10) (No change.)

(11) member of the religious community with experience in HIV/AIDS (clergy);

(12)-(15) (No change.)

(e) (No change.)

(f) Officers. The officers of the committee shall consist of a chairperson, [and a] vice-chairperson, and secretary and shall be selected at the committee's first regular meeting each year by the committee's membership. Officers shall serve one-year terms but terms will be extended until the first regular meeting of the committee in the new year and officers shall be eligible for re-election for one additional term. The chairperson will be the presiding officer of the committee. The vice-chairperson shall assume the authority and duties of the chairperson in his or her absence. The secretary shall be responsible for the minutes of each committee meeting.

(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 authority to adopt.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215843

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 458-7463

AIDS/HIV Services Providers

• 25 TAC §98.23, §98.31

The amendments are proposed under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, §§85.031-85.044, which provides the Texas Board of Health with the authority to establish advisory committees to assist the Board in the implementation of the HIV Services Grant Program and the State HIV Education Grant Program; the Health and Safety Code, §11.016, which provides the Texas Board of Health with the authority to appoint advisory committees; and §12.001, which provides the Board with the authority to adopt rules to implement its duties. The amendment affects Chapter 85 of the code.

§98.23. Client Complaint, Internal Reconsideration, Due Process Requirements.

(a) Client complaints.

(1) To obtain and continue provider status, an applicant for approval or a provider must have in place a procedure to resolve client complaints that assures confidentiality to the extent possible in an effective procedure. This procedure shall be made available to all clients and will be posted in a prominent place in the provider's facility. At a minimum, the complaint procedure must include:

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

(2) (No change.)

(b)-(f) (No change.)

§98.31. Public Complaints.

(a) (No change.)

(b) Investigation of complaints.

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

(4) Written complaints received by the HIV Division will be screened to determine the appropriate action [Investigations of complaints under this section shall be conducted by the commissioner or the commissioner's designee].

(A) If it is determined to be a client complaint, §98.23 of this title relating to (Client Complaint, Internal Reconsideration, Due Process Requirements) will apply.

(B) If applicable, other complaints will be referred to the appropriate licensing and/or regulatory authority for investigation.

(C) Any complaints not covered by subparagraph (A) or (B) of this paragraph will be investigated by the appropriate department staff.

(5) (No change.)

(c)-(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 November 25, 1992.

TRD-9215842

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 458-7463

Subchapter B. HIV Education Grant Programs

General Provisions

• 25 TAC §98.67

The amendment is being proposed under the Human Immunodeficiency Virus Services Act, Health and Safety Code, Chapter 85, §§85.031-85.044, which provides the Board of Health with the authority to establish advisory committees to assist the Board in the implementation of the HIV Services Grant Program and the State HIV Education Grant Program; the Health and Safety Code, §11.016, which provides the Board of Health with the authority to appoint advisory committees; and §12.001, which provides the Board with the authority to adopt rules to implement its duties. The amendment affects Chapter 85 of the code.

§98.67. *State HIV Education, Prevention and Risk Reduction Advisory Committee.*

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

(d) Membership. The Board shall appoint a fifteen member statewide AIDS/HIV Education, Prevention, and Risk Reduction Advisory Committee consisting [which is representative] of a:

(1) [a] community-based youth outreach program representative with HIV/AIDS experience;

(2) [the] Texas Youth Commission/local correctional facility representative with HIV/AIDS experience;

(3) person with AIDS/HIV [the Texas Department of Criminal Justice internal school system (Windham School System)];

(4) [a] community-based drug treatment/outreach program representative with HIV/AIDS experience;

(5) [the planned parenthood/] family planning program representative with HIV/AIDS experience;

(6) [a] local health department representative with AIDS/HIV experience;

(7) [a] community-based program to reach gay/bisexual men representative with HIV/AIDS experience;

(8) representative with AIDS/HIV experience that is currently serving in an agency that advocates or promotes for the rights of individuals with disabilities [the Texas Association of Retarded Citizens];

(9) [a] member of the religious community (clergy) with HIV/AIDS experience;

(10) representative with AIDS/HIV experience from a community with a population of less than 30,000 [a community-based organization for hearing impaired];

(11) [a] PTA representative with HIV/AIDS experience;

(12) [a] parent;

(13) [a] teacher/principal/HIV educator/HIV counselor with HIV/AIDS experience;

(14) [a] community-based organization to reach Hispanics representative with HIV/AIDS experience; and

(15) [a] community-based organization to reach African Americans representative with HIV/AIDS experience.

(e)-(h) (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 November 25, 1992.

TRD-9215841

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 458-7463

Chapter 128. Licensure and Regulation of Marriage and Family Therapists

Subchapter A. Introduction

The Texas State Board of Examiners of Marriage and Family Therapists proposes amendments to existing sections §§128.2, 128.20, 128.143, 128.234, and 128.237 regarding the licensing and regulation of marriage and family therapists. The sections cover definitions; processing applications; supervisor requirements; license renewal; and surrender of a license.

The amendments will delete unnecessary language; clarify language concerning regionally accredited universities or colleges; supervisor requirements acceptable to the board; declare applicant and licensee responsibility for address/information changes; and include editorial corrections

Bobby D. Schmidt, Executive Director, has determined that for the first five years there will be no fiscal implications to state or local government as a result of enforcing or administering the sections as proposed.

Mr. Schmidt has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be to assure that the licensing and regulation of marriage and family therapists continues to identify competent licensees by updating and clarifying the rules. There will be no fiscal implications for small businesses as a result of enforcing the sections. There is no anticipated cost to persons who are required to comply with the sections. There will be no impact on local employment.

Comments on the proposal may be submitted to Mr. Bobby D. Schmidt, Texas State Board of Examiners of Marriage and Family Therapists, 1100 West 49th Street, Austin, Texas 78756-3183 (Telephone: (512) 834-6657). Public comments will be accepted for 30 days after publication of the sections in the *Texas Register*.

• 25 TAC §128.2

The amendment is proposed under the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, §13(c), which provides the Texas Board of Health, with the advice of the Texas State Board of Marriage and Family Therapists, with the authority to adopt rules to license and regulate marriage and family therapists; and the Health and Safety Code §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The sections affect Texas Civil Statutes, Article 4512c, §13.

§128.2. *Definitions.* The following words and terms when used in this Chapter shall have the following meanings unless otherwise indicated within the context.

Act—the Licensed Marriage and Family Therapist Act relating to the licensing and regulation of marriage and family therapists, (Act) Texas Civil Statutes, Article 4512c-1.

Regionally Accredited Institutions—the following accreditation associations will be accepted for licensing purposes: Middle States Association of Colleges and Schools, New England Association of Schools and Colleges, North Central Association of Colleges and Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, and Western Association of Schools and Colleges.

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 November 25, 1992.

TRD-9215835

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6657

Subchapter B. The Board

• 25 TAC §128.20

The amendment is proposed under the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, §13(c), which provides the Texas Board of Health, with the advice of the Texas State Board of Marriage and Family Therapists, with the authority to adopt rules to license and regulate marriage and family therapists; and the Health and Safety Code §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The sections affect Texas Civil Statutes, Article 4512c, §13.

§128.20. Processing Applications.

(a)-(f) (No change.)

(g) The board is not responsible for lost, misdirected, or undelivered renewal forms and fees if sent to the address last reported to the board.

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 November 25, 1992.

TRD-9215834

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6657

Subchapter G. Experience Requirements for Examination and Licensure

• 25 TAC §128.143

The amendment is proposed under the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, §13(c), which provides the Texas Board of Health, with the advice of the Texas State Board of Marriage and Family Therapists, with the authority to adopt rules to license and regulate marriage and family therapists; and the Health and Safety Code §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The sections affect Texas Civil Statutes, Article 4512c, §13.

§128.143. Supervisor Requirements.

(a) A supervisor acceptable to the board must be licensed by the board for at least 24 months or have been eligible for licensure by the board for at least 24 months.

(b) (No change.)

(c) A supervisor approved by the board must meet and document the following educational, experiential, and supervision requirements:

(1) education:

(A) a graduate degree in marriage and family therapy, or a graduate degree in a mental health field, such as counseling and guidance, psychology, psychiatry, and clinical social work, from a regionally accredited educational institution, as defined in §128.2 of this title relating to (Definitions); and

(B) a one semester graduate course in marriage and family therapy supervision (45 contact hours); or

(C) an equivalent course of study consisting of marriage and family therapy supervision workshops in combination with direct study of the literature. Fifteen of the 45 contact hours must have been in a class or workshop format which included a minimum of four persons training to become supervisors of marriage and family therapy. Direct study must have been approved and monitored by a licensed marriage and family therapy supervisor; and

(2) post-master's degree experience:

(A) at least 3,000 hours of client contact in the practice of marriage and family therapy over a minimum of three years; and

(B) provision of a minimum of 180 hours of marriage and family therapy supervision over at least two years.

(d) Supervisors in training must be able to:

(1) describe several major models of marriage and family therapy supervision, and contrast these models in terms of their philosophical assumptions and pragmatic implications;

(2) articulate a personal model of supervision, drawing from existing models of supervision and from a preferred style of therapy;

(3) observe and describe the co-evolving therapist-client and supervisor-therapist-client relationship;

(4) monitor, evaluate, and identify problems in therapist-client and supervisor-therapist-client relationships;

(5) structure supervision, solve problems, and implement supervisory interventions in a range of supervisory modalities (i.e., live supervision, video supervision, audio supervision);

(6) address the distinctive issues that arise in supervision of supervision;

(7) be aware of and sensitive to the cultural, gender, ethnic, economic, ethical and legal issues of supervision, and be familiar with Subchapter C of this Chapter (relating to Code of Ethics); and

(8) understand the requirements and procedures for supervising applicants for licensure as marriage and family therapists and marriage and family therapist's supervisors.

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 November 25, 1992.

TRD-9215833

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6657

Subchapter J. License Renewal and Inactive Status

• 25 TAC §128.234, §128.237

The amendments are proposed under the Licensed Marriage and Family Therapist Act, Texas Civil Statutes, Article 4512c-1, §13(c), which provides the Texas Board of Health, with the advice of the Texas State Board of Marriage and Family Therapists, with the authority to adopt rules to license and regulate marriage and family therapists; and the Health and Safety Code §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the commissioner of health. The sections affect Texas Civil Statutes, Article 4512c, §13.

§128.234. License Renewal.

(a)-(f) (No change.)

(g) The board is not responsible for lost, misdirected, or undelivered renewal forms and fees if sent to the address last reported to the board.

§128.237. Surrender of a License.

(a) Surrender by licensee.

[(1)] A licensee may at any time voluntarily offer to surrender his or her license for any reason, without compulsion.

[(2)] Payment for the license may be delivered by any means to the board office, return receipt requested.]

(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 authority to adopt.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215832 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6657

Subchapter K. Continuing Education Requirements

• 22 TAC §681.174

The amendment is proposed under Texas Civil Statutes, Article 4512g, §6, which provides the Texas State Board of Examiners of professional counselors, subject to the approval of the Texas Board of Health, with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act; and the Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on

the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§681.174. *Types of Acceptable Continuing Education.* Continuing education undertaken by a counselor shall be acceptable if the experience falls in one or more of the following categories:

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

(6) participation or teaching in programs (e.g., institutes, seminars, workshops or conferences) which are approved or offered by an accredited college or university or by a nationally recognized professional organization in the mental health field or its state or local equivalent organization.

(A) The board shall maintain and make available on request a listing of nationally recognized [acceptable] professional organizations in the mental health field or their state or local equivalent organization.

(B) Continuing education hours meeting the requirements of this paragraph shall be accepted for renewals occurring on or after July 20, 1992 [This paragraph shall apply to continuing education hours required for any renewals occurring after the effective date of this paragraph].

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 November 25, 1992.

TRD-9215830 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Proposed date of adoption: February 13, 1993

For further information, please call: (512) 834-6658

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 163. Standards

• 37 TAC §§163.3, 163.5, 163.21, 163.23, 163.25, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, 163.43

The Texas Department of Criminal Justice-Community Justice Assistance Division

(TDCJ-CJAD) proposes new §§163.3, 163.5, 163.21, 163.23, 163.25, 163.31, 163.33, 163.35, 163.37, 163.39, 163.41, and 163.43, concerning the objectives of TDCJ-CJAD standards, waiver to standards, administration of community supervision and corrections departments, community justice councils and community justice task forces, community justice plans, programs and services, probation officers, supervision, reports and records, residential services, medical and psychological information and funding and financial management.

The proposed new §163.3 explains the overall purposes and goals which these standards are to achieve.

The proposed new §163.5 establishes the manner in which a community supervision and corrections department or other state-aid recipient that is not in compliance with TDCJ-CJAD's standards can obtain a waiver from TDCJ-CJAD.

The proposed new §163.21 provides certain administrative requisites by which a community supervision and corrections department must operate. This new section establishes eligibility criteria for the appointment of a director of a community supervision and corrections department, mandates the development of an administrative manual for all departments, requires that a department prepare written job descriptions for all positions, requires that departments comply with the Equal Employment Opportunity Act, directs that departments provide a Code of Ethics adopted by TDCJ-CJAD to every probation officer, requires that departments maintain records for statistical purposes and conduct internal audits to ensure compliance with standards, provides that departments prepare and operate from an annual budget, establishes a procedure by which multi-county jurisdictions can create more than one department, requires that departments comply with local, state, and federal laws and notify offenders and the public that they can direct written complaints to TDCJ-CJAD and mandates that departments develop procedures to protect the public from unmanageable offenders.

The proposed new §163.23 provides the manner in which district judges establish community justice councils and community justice task forces and the manner in which TDCJ-CJAD recognizes said councils and task forces. The new section also lists the persons who should be appointed to councils and task forces.

The proposed new §163.25 establishes the manner in which community justice councils develop community justice plans and the manner in which district judges approve and submit said plans to TDCJ-CJAD. In addition, this new section provides that TDCJ-CJAD staff will review each plan and that the director of TDCJ-CJAD may conditionally accept said plan.

The proposed new §163.31 provides that each community supervision and corrections department will establish certain programs and services for offenders. These programs and services will include a continuum of sanctions to address the risk and needs of proba-

tioners, services to address offender risk and needs as identified in a department's community justice plan, community service restitution programs, educational skill level screening and evaluation services and literacy programs. This new section requires that a department director work with the local community justice council and on a regional basis to identify and develop purposes, functions and services which must be made available to offenders, and clearly define referral procedures for probationers in the department's manual of policies and procedures. Finally, this new section requires that all directors of departments ensure that the religious freedom of each probationer is fully protected.

The proposed new §163.33 establishes the criteria for the employment, training and certification of probation officers and residential officers. This new section lists the eligibility criteria for the appointment of persons as probation officers. In addition, this new standard provides that the director, all probation officers, and all residential officers, of a community supervision and corrections department must receive not less than 80 hours of professional skill-based training during two consecutive fiscal years and that all direct care staff of a residential facility must be provided at least 40 hours of training applicable to their job duties every two consecutive fiscal years. Moreover, this new section mandates that any probation officer who is first employed by a community supervision and corrections department after September 1, 1987, complete the certification coursework and obtain a passing grade on the certification examination within one year of the beginning date of employment and any residential probation officer hired on or after September 2, 1989, satisfactorily complete the certification coursework and examination for residential officers not later than the first anniversary of the date on which the officer begins employment with the department's residential facility. This new section further explains the process by which an officer who fails the examination can take the examination again, the process by which an officer who is exempt from certification requirements can take the examination and the process by which an officer, who fails to maintain certification, can be recertified. Finally, this new section provides that TDCJ-CJAD may suspend or revoke a probation officers' certification and withhold funding for cases being supervised by an ineligible probation officer.

The proposed new §163.35 provides standards for the maintenance of caseloads and the supervision of probationers. This new section defines certain terms relating to caseload management and supervision of offenders, explains the four tier supervision level, and defines the indirect supervision of cases, and requires administrators of a community supervision and corrections department to assign cases among their officers in such a manner to promote public protection and attainment of a 100 point workload. This new section also requires probation officers who provide direct supervision to conduct an orientation session with the offender, complete an assessment on every offender, administer a case classification and strategies

for case supervision interview, develop a case supervision plan within 30 days of intake, conduct reassessments on offenders every six months, and make supervision contacts with the offender, family, community or other persons. In addition, this new section requires that probation officers use a problem oriented record keeping system on offenders. This new section also requires a director of the community supervision and corrections department to develop specific written policies and procedures to administratively handle violations of conditions of probation and to ensure notification to other jurisdictions when a probationer will be working or residing in that jurisdiction temporarily. Finally, this new section provides that probation officers shall not transport offenders held in a county jail pursuant to an arrest warrant.

The proposed new §163.37 provides for the development and maintenance of a case record management system on offenders. This new section explains the circumstances under which a presentence investigation (PSI) report must be prepared in felony and misdemeanor cases, the format to be used in preparing PSI reports, and the items to be included in the reports. In addition, this new section provides that all presentence investigation reports and the information obtained in connection with the reports are confidential. Moreover, this new section requires all directors of community supervision and corrections departments to have sufficient staff and resources to conduct presentence investigation reports and requires that PSI reports shall be maintained in the individual offender's case file and forwarded to a county that transfers a defendant to the institutional division. This new section provides that all PSI reports prepared in accordance with this new section shall be eligible for state funding. Finally, this new section provides that directors of community supervision and corrections departments shall utilize uniform transfer procedures as provided by and approved by TDCJ-CJAD.

The proposed new §163.39 establishes standards for the administration and operation of residential programs and facilities. This new section identifies the type of facilities which the state may fund and the purposes for which these facilities are to be established. The new section also identifies the target population to be served, the eligibility criteria for offender placement and procedure for denying admission for inappropriate offenders. In addition, this new section examines the criteria for participation in a residential facility and requires that supervision of and services for residents be conducted in accordance with policies and procedures contained in the facility's operations manual. Moreover, this new section requires that a public hearing be conducted prior to the establishment of a community corrections facility, that a community corrections facility comply with local and state safety, health and sanitation codes and ordinances, and that the facility operate at a minimum 90% capacity. This new section further requires an agency operating or utilizing a residential facility to submit on a timely basis data as required by TDCJ-CJAD, provide training to all staff who work in a community corrections facility or county correctional

center, and comply with certain financial management and fiscal accounting practices and procedures. Finally, this new section provides that community supervision and corrections departments, counties and municipalities are eligible to receive funding from TDCJ-CJAD for residential services.

The proposed new §163.41 provides certain standards involving medical and psychological issues. This new section requires a director of community supervision and corrections department to develop and implement policies relevant to the Human Immunodeficiency Virus (HIV). Moreover, this new section requires all employees of a community supervision and corrections department to attend a HIV-AIDS training program. In addition, this new section provides that information regarding HIV-AIDS testing and results is strictly confidential. Finally, this new section provides for the manner in which a department must maintain files containing medical and psychological information.

The proposed new §163.43 establishes standards for the qualification to receive of state funding, for the expenditure of state monies, and for the financial management and accounting practices of departments. This new section specifies the manner in which departments, counties, municipalities, and non-profit organizations can qualify for grant funding. In addition, this new section describes the manner in which state-aid is allocated to departments and grant funding is allocated to departments, counties, municipalities, and non-profit organizations. This new section further describes the manner in which funds and fees are deposited into local accounts, the manner in which funds are disbursed and distributed, the manner in which funds are used for residential programs and facilities, and the restrictions placed on the expenditure of state funds. Also, this new section requires that TDCJ-CJAD be provided with certain data and information, that financial records be made available to TDCJ-CJAD, and that departments prepare and operate within budget guidelines and comply with all funding provisions as set forth in the Financial Management Manual for TDCJ-CJAD funding. This new section provides for the manner in which TDCJ-CJAD determines and recovers unexpended monies, departments invest idle funds and TDCJ-CJAD may refuse or suspend state funding. This new section also requires counties to provide facilities, equipment and utilities for a community supervision and corrections department, authorizes departments to annually contract with counties for auditing and bookkeeping services and describes the manner in which a department can certify the use of judicial district funds for the expansion of department operations. Finally, this new section requires certain employees of community supervision and corrections departments to post honesty bonds, requires departments to reimburse employees for the use of personal automobiles on official business, and to require employees to maintain automobile liability insurance coverage on their personal automobiles, and authorizes departments to use judicial district funds to pay for the expense of training for employees.

Bob Young, director, Austin Budget Office, TDCJ Finance Administration Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Young determined that, regarding the public benefit and cost, these proposed new sections represent an effort to consolidate, reorganize and clarify current sections on existing statutory programs.

Mr. Young also determined that the proposed sections will not have any fiscal implications over those currently required in existing provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and, being the sections concern only requirements placed on local governments, councils and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of the implementation of these sections.

Comments on the proposed sections may be submitted to Nancy Bartlett, Director of Program Audits and Operations, TDCJ-CJAD, 8100 Cameron Road, B-450, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this rule in the *Texas Register*.

The new sections are proposed under the Government Code, §493.003(a) and the Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to: fund programs, facilities and services for community supervision and corrections departments; establish minimum standards for programs, facilities, equipment and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

§163.3. Objectives. The objectives of the Community Justice Assistance Division (CJAD) standards are:

- (1) to make probation services available to every judicial district in Texas;
- (2) to make probation a viable criminal justice sanction;
- (3) to assist community supervision and corrections departments (CSCD) in providing protection to the community through risk control management of, and rehabilitation services for, the offender;
- (4) to provide technical assistance in the establishment, improvement and expansion of community-based programs;
- (5) to coordinate information and services available from federal, state and local resources;

(6) to establish uniform community corrections administration standards;

(7) to establish a statewide statistical information service;

(8) to enhance the professional knowledge and skills of CSCD personnel by providing statewide and regional education and training and by providing assistance for in-service training within the departments;

(9) to establish an on-going assessment and evaluation of probation and community-based correctional methods and systems; and

(10) to establish regionally-based programs serving two or more jurisdictions where such programs address similar offender profiles.

§163.5. Waiver to Standards. The Community Justice Assistance Division (CJAD) director may grant a waiver to a community supervision and corrections department, or other state-aid recipient, from a standard or standards upon receipt and approval of a Request for Waiver by CJAD. The Request for Waiver must include a plan to comply with said standard or standards by a certain date, and an explanation as to why the agency is not currently in compliance with said standard or standards. When out of compliance with any standard, the Request for Waiver of standards must immediately be submitted by the agency director to the CJAD director. If the waiver is approved by the CJAD director, the waiver becomes part of the audit record for compliance with that standard.

§163.21. Administration.

(a) Community supervision and corrections department (CSCD) director. The judge or judges shall appoint a CSCD director, who shall meet, at a minimum, the same eligibility criteria as a probation officer as cited in Article 42.131, §5 of the Texas Code of Criminal Procedure and §163.33 of this title (relating to Probation Officers). The director shall employ a sufficient number of officers and other employees to perform the professional and clerical work of the department as required by law, Community Justice Assistance Division (CJAD) standards and local community corrections needs. The CJAD director is to be notified by the Administrative Judge of the appointment of a CSCD director, and shall be responsible for providing the director with copies of the standards and other appropriate information within 30 days of notification.

(b) Public protection. CSCD directors shall provide opportunities for risk control management and rehabilitation of offenders. Directors shall initiate appropri-

ate action to impose more restrictive sanctions or remove promptly from the community those offenders who, through their behavior, have demonstrated their failure to follow the rules imposed by the court.

(c) Administrative manual. CSCD directors shall be responsible for the development of an administrative manual defining general purposes and functional objectives, incorporating all written policies and procedures, assuring that they are distributed to all staff members. These policies and procedures shall include, at a minimum, the guidelines as noted in Initial Guidelines for the Organization, Management, and Operation of Local CSCDs and CJAD policy statements. The policies and procedures shall be reviewed by the CSCD director periodically and revised as necessary. The CSCD director shall provide the CJAD director with a copy of the CSCD's administrative manual for review at least every two years or as requested.

(d) Job description. CSCD directors shall have written job descriptions for all positions. The CSCD director shall review job descriptions periodically and revise as necessary.

(e) Equal employment opportunity. CSCD directors shall comply with the Equal Employment Opportunity Act

(f) Ethics. CSCD directors shall provide each probation officer with a copy of the Code of Ethics adopted by the CJAD and a copy of the procedure developed by the CSCD director to be used in reviewing and investigating any alleged violation.

(g) Internal audits. CSCDs shall have a designated procedure to monitor the skill levels and training needs of individual staff members and develop a plan for meeting those needs. Internal audits shall be conducted of direct supervision cases to check for standards compliance, for utilization of case classification, and for supervision planning.

(h) Records. CSCD directors shall maintain and provide to CJAD program records and statistical data consistent with the requirements of the law and CJAD standards.

(i) Budget. The CSCD director shall prepare and operate from an annual budget in a manner consistent with good accounting practices and approved by the judge(s) of their judicial district. The budget shall be submitted to the CJAD director in a format as required and within the provisions as outlined in §163.43 of this title (relating to Funding and Financial Management).

(j) Multi-department districts.

(1) Judicial districts composed of more than one county may apply to the

CJAD Director for authorization to establish more than one CSCD within that judicial district. The application submitted by the judge(s) shall explain how the creation of more than one department will promote:

(A) administrative convenience;

(B) economy; or

(C) improved community supervision and corrections services, and other reasons, if any.

(2) The application shall indicate the financial impact and the approval of the judges in the judicial district or districts hearing criminal cases affected by the change.

(k) Complaint notice. Each recipient of CJAD funding shall post in a conspicuous public area of each of its offices a sign notifying offenders and members of the public that they can direct written complaints to the CJAD. The sign shall include the CJAD's mailing address.

(l) Compliance with statutes. CSCD directors shall ensure that all CSCD operations comply with all local, state, and federal laws.

§163.23. Community Justice Councils and Community Justice Task Forces.

(a) Establishment. A Community Justice Council (CJC) must be established by the district judge or judges, unless a board or council exists in the community on or before September 1, 1991, that performs duties substantially similar to those imposed on a CJC. The CJC shall provide continuing policy guidance and direction for the development of community justice plans and community corrections facilities and programs. The council membership should consist of the following persons or their designees:

(1) a sheriff of a county served by the Community Supervision and Corrections Department (CSCD), chosen by the sheriffs of the counties served by the department;

(2) a county commissioner or a county judge from a county served by the CSCD, chosen by the county commissioners and county judges of the counties served by the CSCD;

(3) a city council member of the most populous municipality in a county served by the CSCD, chosen by the members of the city councils of cities served by the CSCD;

(4) not more than two state legislators elected from a county served by the

CSCD, chosen by the state legislators elected from the counties served by the CSCD;

(5) the presiding judge from a judicial district served by the CSCD chosen by the district judges from the judicial districts served by the CSCD;

(6) a judge of a statutory county court exercising criminal jurisdiction in a county served by the CSCD to be chosen by the judges of statutory county courts with criminal jurisdiction in counties served by the CSCD;

(7) a county attorney with criminal jurisdiction from a county served by the CSCD, chosen by the county attorneys with criminal jurisdiction from the counties served by the CSCD;

(8) a district attorney or criminal district attorney from a judicial district served by the CSCD chosen by the district attorneys or criminal district attorneys from the judicial districts served by the CSCD;

(9) an elected member of the board of trustees of an independent school district in a county served by the CSCD, chosen by the members of the boards of trustees of independent school districts located in counties served by the CSCD; and

(10) members of the general public and representatives of any non-profit organizations which play a significant role in the corrections system of the community.

(b) Community justice task force. The community justice council shall appoint a community justice task force to provide support staff for the development of a community justice plan. The task force may consist of any number of members, but should include:

(1) the county or regional director of the Texas Department of Human Services with responsibility for the area served by the CSCD;

(2) the chief of police of the most populous municipality served by the CSCD;

(3) the chief juvenile probation officer of the juvenile probation office serving the most populous area served by the CSCD;

(4) the superintendent of the most populous school district served by the CSCD;

(5) the supervisor of the Department of Public Safety region closest to the CSCD, or the supervisor's designee;

(6) the county or regional director of the Texas Department of Mental Health and Mental Retardation with responsibility for the area served by the CSCD;

(7) a substance abuse treatment professional appointed by the Council of Governments serving the area served by the CSCD;

(8) the chief/director of the CSCD;

(9) the local or regional representative of the Board of Pardons and Paroles Division of the Texas Department of Criminal Justice with responsibility for the area to be served by the CSCD;

(10) the representative of the Texas Employment Commission with responsibility for the area served by the CSCD;

(11) the representative of the Texas Rehabilitation Commission with responsibility for the area served by the CSCD;

(12) a licensed attorney who practices in the area served by the CSCD and whose practice consists primarily of criminal law;

(13) a court administrator, if one serves the area served by the CSCD.

(14) a representative of a community service organization that provides services to the area served by the CSCD; and

(15) a representative of an organization in the area served by the CSCD that is actively involved in issues relating to defendant's rights, chosen by the county commissioners and county judges of the counties served by the CSCD. As with the membership of the CJC, it is encouraged that the membership of the community justice task force be expanded to include members of the general public and representatives of any non-profit organizations which play a significant role in the corrections system of the community.

(c) Recognition. In order for a group to be recognized as a designated CJC under the provisions of the Texas Code of Criminal Procedure, the judge(s) responsible for establishing the CJC shall forward to the Community Justice Assistance Division (CJAD) director the following items:

(1) a list of names and titles of the individual members of the CJC or group functioning as a CJC;

(2) documentation as to the date of formation of the CJC or group;

(3) written documentation indicating the charge, responsibilities, and/or duties of the CJC or group;

(4) a list of names and titles of the individual members of the community justice task force; and

(5) written documentation indicating the charge, responsibilities, and/or duties of the task force. The CJAD director, after a review of the materials submitted by the jurisdiction, will issue a letter of recognition.

(d) Continuing recognition. In order for a CJC to maintain its recognition status the judge(s) responsible for establishing the CJC shall file with the CJAD director by September 1 each year a list of active members of the council and of the task force. It is the intent for establishing jurisdictions to replace members of the councils as vacancies occur.

§163.25. Community Justice Plan.

(a) Purpose. In accordance with Texas Code of Criminal Procedure, beginning September 1, 1990, in order for a jurisdiction to receive any state aid, a plan and supporting documentation must be submitted to, and determined acceptable by, the Community Justice Assistance Division (CJAD). The plan and supporting documentation shall include, but not be limited to:

(1) a description as to how the current and proposed community based correctional programs will achieve a targeted level of intermediate sanctions; and

(2) a comprehensive description as to how CJAD resources for community corrections programs, including revenues of the Community Supervision and Corrections Department (CSCD), will be effectively used.

(b) Development. All community justice plans must be approved by the district judge(s) who manage the department. Unless otherwise specified by the district judge(s), the CSCD director or designee shall serve as the primary manager of the planning process, coordinating council activities, data collection, plan composition, program prioritization and plan drafting and submission. The community justice council shall provide direction for the development of the community justice plan. The council, after judicial approval, shall submit the plan to the CJAD director.

(c) Format. The community justice plan and supporting documentation must include all items required by law and guidelines published by the CJAD. The plan shall demonstrate an effective planning process which results in strategies to achieve the targeted level of alternative sanctions other than jail and prison. A format outline shall be provided by the CJAD director.

(d) Policies and procedures. Each council shall provide continuing policy guidance for the development of the plans, community corrections facilities and programs. Procedures should also outline how action will be taken and what recommendations will be made for funding these proposals. The recommendations of the local council, with approval of the district judge(s), will then be submitted to the CJAD director for review and acceptance of the plan.

(e) Plan submission. After the district judge managing the department has approved the community justice plan, the council shall submit the plan to the CJAD director in accordance with CJAD submission requirements distributed to the CSCDs.

(f) Review and acceptance.

(1) Each plan will be reviewed by the CJAD staff to determine if it presents a comprehensive description of how each jurisdiction will achieve the intent of the Texas Code of Criminal Procedure.

(2) The CJAD director may conditionally accept plans that meet established review criteria. Final acceptance, for purposes of state aid eligibility under subsection (a) of this section, may be conditioned upon review and evaluation by the CJAD staff and the Judicial Advisory Council of the plan and all supporting documentation, as well as any grant-in-aid applications submitted by the jurisdiction pursuant to this subchapter.

§163.31. Programs and Services.

(a) Continuum of sanctions. All Community Supervision and Corrections Department (CSCD) directors shall develop and implement a continuum of sanctions to address the risk and needs of probationers in their jurisdictions and to provide alternatives to incarceration for offenders. The continuum shall be based upon the offender populations, risks and needs as addressed in the CSCD's community justice plan.

(b) Local/regional planning. CSCD directors shall work with the local community justice council in identifying and developing programs and services to meet the needs of the local offender population. CSCD directors participating in regional programs and services shall work with the directors of CSCDs impacted by those regional efforts in the planning, development, and implementation of regional programs/services to address offender needs. Regional programs/services shall be designed to address regional needs as identified in each jurisdiction's community justice plan and as the more efficient economical response to specific offender issues for each of the participating jurisdictions.

(c) Information for offenders. CSCD directors shall develop written information describing purposes, functions and services which shall be made available to offenders under supervision.

(d) Services for offenders. Services shall be designed to address offender risk and needs as identified in the CSCD's community justice plan. Participation by the offenders may be ordered as a condition of probation or term of release; however, efforts shall be made to present the services at a time, place, and in a manner which assists successful adjustment.

(e) Referral procedures. Referral procedures shall be clearly defined in the CSCD's manual of policies and procedures in order to efficiently and effectively refer probationers to needed programs and services.

(f) Community service restitution (CSR). CSCD directors shall maintain written agreements with governmental and/or non-profit agencies and organizations to provide offenders opportunities to comply with court-ordered community service restitution and work probation programs according to the Texas Code of Criminal Procedure. The agreements shall specify the types of opportunities each agency/organization will be able to provide offenders. The CSCD directors shall have written policies and procedures specifying how CSR referrals are made, how offender CSR hours are documented and how those hours will be monitored.

(g) Educational skill level. The CSCD director shall ensure that all persons placed on probation shall be screened to determine if they:

(1) possess educational skills equal to or greater than the sixth grade level; and

(2) possess the intellectual capacity or learning ability to achieve the sixth grade skills level. Programs which assist persons in attaining the educational skill level of sixth grade and above shall be developed and/or made available to the courts for probationer referral.

(h) Literacy. CSCD directors shall maintain written agreements with schools and volunteer organizations to provide tutoring to teach reading to functionally illiterate probationers. Those agreements shall specify what the CSCD, schools and volunteers will provide in delivering the services, how probationers in need of the services will be identified and referred, what specific services will be provided and how offender progress will be monitored. Such agreements are not necessary where the CSCD operates its own literacy program as the CSCD shall specify those same issues in its policies and procedures for its literacy program.

(i) Religious freedom. All CSCD directors shall ensure that no person being supervised by, or receiving services from, the CSCD will be required to participate in any religious activity or religious function unless the offender voluntarily signs a consent form to participate.

§163.33. Probation Officers.

(a) Eligibility. To be eligible for appointment as probation officer who supervises probationers a person:

(1) must have acquired a bachelor's degree conferred by an institution of higher education accredited by an accrediting organization recognized by the Texas Higher Education Coordinating Board; and

(2) unless the bachelor's degree is in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Community Justice Assistance Division (CJAD) director, the person must have:

(A) one year of graduate study in one of those fields; or

(B) one year of experience in full-time casework, counseling, or community or group work that has been approved by the CJAD director;

(3) cannot be employed as a peace officer; and

(4) cannot be currently on probation or parole or serving a sentence for a criminal offense. Community Supervision and Corrections Department (CSCD) directors may apply to the CJAD director, as specified in §163.5 of this title (relating to Waiver to Standards), for a waiver of subsection (a)(2) of this section. The Request for Waiver shall document what efforts were made to employ a probation officer meeting the requirements specified in the Texas Code of Criminal Procedure and state why the efforts were unsuccessful. All probation officers appointed by the CSCD director must comply with the code of ethics developed by the CJAD.

(b) Training. CSCD directors and all probation officers shall be provided not less than 80 documented hours of professional skill-based training during two consecutive fiscal years. All of the hours are to be approved by the CSCD director with at least 40 of these hours to be approved by CJAD director, or her designee. The CSCD director shall ensure that training records are maintained and available for CJAD auditors. Those records shall reflect the number of training hours accrued, and the type of training attended, for all employees required to have training as designated in this section. Cases supervised by any probation officer failing to obtain the required 80 hours of training within the two year cycle will be ineligible for funding until the required training hours are achieved.

(c) Certification. Any probation officer who is first employed by a CSCD director or Judicial District in this state after September 1, 1987, is required to complete the certification coursework and obtain a passing grade on the certification examination within one year of the beginning date of employment as an adult probation offi-

cer. Officers failing to achieve certification within one year of their hire date shall be immediately terminated by the CSCD director or Presiding Judge on the specific date by which they were to have achieved certification. They will be eligible for rehire only after becoming certified probation officers. A probation officer who was employed by any probation department in this state on or at any time before September 1, 1987, is exempt from the requirements of the certification program. A probation officer who is subject to the certification requirement and who leaves the field of probation work for more than one year is required to become recertified within one year after resuming employment as an adult probation officer by taking and successfully passing the certification exam. If that officer has not been a Texas probation officer for two years or less, s/he may first re-take the certification exam, one time, without having to complete the certification course. If the exam is successfully passed, the officer can be recertified on that basis. If that officer does not pass the exam after one attempt, s/he must then complete the certification course and successfully pass the exam.

(d) Certification examination. If a new probation officer, hired on or after September 2, 1987, completes the certification coursework but fails the examination, the officer will be allowed to attempt to pass the examination one more time. If the officer fails the examination a second time, the officer will be required to complete the certification coursework again before being allowed to attempt to pass the examination a third time. In any event, the officer must pass the certification exam within one year of his/her hire date to remain an employee of the CSCD.

(e) Exempt officers certification. Certification coursework and the certification examination will be available to probation officers appointed prior to September 2, 1987. Such an officer who wishes to be certified will be given two opportunities to pass the certification examination in order to be certified. If the officer fails both attempts to pass the examination, the officer must complete the certification coursework before attempting to pass the examination again.

(f) Exempt non-officers certification. Effective September 1, 1989, individuals who are not CSCD employees may attend the CJAD certification coursework and take the examination if they meet the minimum statutory qualifications to be an adult probation officer, pay the certification training fees out of their own financial resources, and there is space available in a coursework session so as not to exclude any probation officer required to be certified.

(g) Residential officer certification. A residential probation officer, hired on or after September 2, 1989, shall satisfactorily

complete the certification coursework and examination for residential officers offered by CJAD not later than the first anniversary of the date on which the officer begins employment with the department's residential facility. Provisions of subsections (c), (d), (e), (g), (h), (i), (j), and (k) of this section shall also apply to residential probation officers. Probation officers with both regular and residential certification need only complete 80 hours of skill-based probation related training as specified in subsection (b) of this section to maintain both certifications.

(h) Recertification. In accordance with the requirements of subsection (b) of this section, once an officer has been certified, the officer will be required to document attendance at, and successful completion of, 80 documented hours of approved professional, skill-based training directly related to adult probation work to maintain the officer's status of current certification. If the officer fails to maintain certification, recertification will be immediately required by successful completion of the certification examination. If the officer fails the examination, the certification coursework and examination must be completed for recertification.

(i) Revocation or suspension of certification. If the CJAD director proposes to revoke or suspend a probation officer's certification, the officer is entitled to a hearing before the action is taken. The CJAD director may conduct the hearing or appoint an official to conduct the hearing and report the results to the director. The hearing shall be conducted in accordance with Texas Code of Criminal Procedure, and Texas Civil Statutes (The Administrative Procedures and Texas Register Act).

(j) Certification status. If any officer (exempt or non-exempt) fails to maintain his/her certification by not receiving 80 hours of training in accordance with subsection (b) of this section, cases s/he supervises will be ineligible for funding until recertification is achieved.

(k) Employment and certification. Each CSCD director is to determine the minimum requirements for hiring probation officers as long as the individuals hired meet the minimum statutory requirements.

(l) Residential personnel training. All CSCD direct care staff of a residential facility shall be provided at least 40 hours of training applicable to their job duties every two consecutive fiscal years beginning September 1, 1993. All direct care staff of a residential facility shall receive training in: specific reintegration model training programs offered by the CJAD designed to improve their skills in working with probationers in residential facilities; first aid procedures as well as CPR certifi-

cation, and they must continue to receive the necessary training required to maintain certification in those procedures. Additional training requirements for specific residential staff include: all staff whose primary duty is to transport facility residents must receive defensive driving courses, or course updates, annually, and all other direct care staff must receive this training at least once every three years; substance abuse treatment facility direct care staff shall receive a minimum of 20 hours of substance abuse training every two consecutive fiscal years; court residential treatment center direct care staff shall receive a minimum of 20 hours of training, every two consecutive fiscal years, in working with the mentally impaired offender and/or substance abusers. The facility administrator will be responsible for arranging the appropriate training and keeping documentation of the successful completion of staff training. Such documentation shall be provided to the CSCD director and CJAD auditors upon request. CSCD directors contracting for residential services shall ensure that the services offered by the contractors include a case management system equivalent to the residential training modules offered by the CJAD.

§163.35. Supervision.

(a) Definitions. The following words and terms, when used in this section, shall be defined as follows and apply to both felonies and misdemeanors, unless the context clearly indicates otherwise.

(1) Case—An adult assigned to a probation officer for supervision.

(2) Collateral contact—A probation officer telephones, initiates an office visit with, or receives written information from any person providing information about the offender.

(3) Collateral field visit—A probation officer visits outside the office with a family member, community resource, or other relevant individual who provides significant information on the offender.

(4) Direct supervision—Probationers who are legally on probation supervision, receive a minimum of one face-to-face contact with a probation officer every three months, and who work and/or reside in the jurisdiction in which they are being supervised. Local community supervision and corrections departments (CSCD) may maintain direct supervision of probationers living and/or working in adjoining jurisdictions if the CSCD has documented approval from the adjoining jurisdictions.

(5) Face to face contact—A probation officer visits and communicates in person with the offender.

(6) Field visit—A probation officer visits and communicates in person with

the offender at the offender's place of residence or at a location outside the CSCD office.

(7) Indirect supervision—Maintenance of a file and/or record of an adult under supervision who is not being seen personally by the probation officer on a regularly scheduled basis. It includes but is not limited to the following:

(A) probationers who neither reside nor work within the jurisdiction of the CSCD and who receive the supervision in other jurisdictions;

(B) probationers who neither reside nor work within the jurisdiction but continue to submit written reports on a monthly basis because they are ineligible or unacceptable for supervision in other jurisdictions;

(C) probationers who have absconded or who have not contacted their probation officer in person within three months; or

(D) probationers who reside and/or work in the jurisdiction, but who, while being in compliance with the orders of the court, nevertheless do not meet the criteria for direct supervision.

(b) Tier supervision levels. CSCD directors shall develop a four tier system of supervision which is based upon, but not limited to:

(1) the jurisdiction's profile of offenders who get revoked most often;

(2) the profiles of offenders requiring different levels of intervention by an officer;

(3) the offender's identified risk and needs; and

(4) the following guidelines to determine a level of supervision for probationers and conditions under which that level of supervision will change.

(A) Level I. This classification is calculated as 4 workload points and extends the most restrictive non-residential supervision to offenders who:

(i) have a documented pattern of serious non-compliance while supervised at a less restrictive level; or

(ii) have a motion to revoke filed for a law violation; or

(iii) match the jurisdiction's profile of offenders historically committed to prison/jail; or

(iv) have regressed from a less restrictive level of supervision.

(B) Level II. This classification is calculated as 2.5 workload points and extends a heightened level of supervision to offenders who:

(i) are a demonstrable risk based on:

(I) shock probation; or

(II) in lieu of revocation; or

(III) direct sentence;

(ii) have progressed from a more restrictive level of supervision, including residential supervision; or

(iii) have regressed from a less restrictive level of supervision; or

(iv) have documented special risk or needs which are included in the CSCD's profile of offenders historically committed to prison/jail.

(C) Level III. This classification is calculated as 1.33 workload points and extends a moderate level of supervision to offenders who:

(i) regressed from a less restrictive level of supervision; or

(ii) progressed from a more restrictive level of supervision, including residential supervision; or

(iii) demonstrate a documentable necessity for a moderate level of supervision.

(D) Level IV. This classification is calculated as 1 workload point and extends a minimal level of supervision to offenders who:

(i) progressed from a more restrictive level of supervision; or

(ii) present the least risk to the community; or

(iii) are considered to be initial or interim probation placements but have not yet been classified.

(c) Supervision workload distribution. CSCD administrators shall assign cases among their officers in such a manner as to promote public protection through offender supervision and the attainment of a 100 point workload. Caseloads with a mixture of levels shall also average 100 points. The following weights shall be used to compute workloads:

(1) Level I = 4;

- (2) Level II = 2.5;
- (3) Level III = 1.33;
- (4) Level IV = 1.

(d) Supervision. Probation officers shall provide direct supervision for cases to include, but not be limited to, the following tasks:

(1) Orientation/intake. An orientation/intake session with the offender shall be conducted after the court has placed the defendant under supervision. This session shall include a thorough discussion of the conditions of probation or terms of release. The probation officer shall determine that the offender has received a copy of the conditions of probation or terms of release ordered by the court as provided by law.

(2) Assessments. An assessment process that gathers relevant and valid information shall be completed on every offender. This process shall specifically address the offender's risk factors, need areas, obstacles to meeting those needs, offender strengths, and offender resources. The probation officer shall request specialized assessments for offenders when alcohol or drug abuse contributed to the offense and pursue specialized evaluations when they would significantly assist in the development of appropriate supervision plans for special need offenders.

(3) Case classification. Within 30 days of intake, the probation officer shall complete the Community Justice Assistance Division case classification instrument to assist in the evaluation of the degree of supervision needed by each individual based on the offender's risk and/or needs.

(4) Strategies for case supervision (SCS) interviews. Within 30 days of intake, the probation officer shall conduct a SCS interview on each offender classified at Level I or Level II.

(5) Case supervision plan. Within 30 days of intake, the probation officer shall develop a written individualized case supervision plan based on the offender's risk and need factors to address specific problem areas and achieve responsible behavior for that offender.

(6) Reassessments. Probation officers shall re-evaluate risk and need factors and supervision plans every six months for all Level II, III, and IV cases which are not intensive case, and every three months for:

- (A) all Level I cases;
- (B) any intensive program or intensive caseload; and
- (C) residential placements. Any necessary modification of the supervi-

sion plan and level of supervision shall be indicated in writing in the case file.

(7) Supervision contacts. Probation officers shall make face to face, field visit, and collateral contacts with the offender, family, community, or other persons pursuant to and consistent with a supervision plan and the level of supervision on which the offender is being supervised. Each CSCD director shall establish supervision contact and casework standards at a level appropriate for that jurisdiction, but in all cases, offenders at higher levels of supervision shall receive a higher level of contacts than offenders at lower levels of supervision. Supervision contacts shall be specified in the CSCD's written policies and procedures.

(8) Documentation in supervision case files. Probation officers shall use a problem oriented record keeping system to document all significant actions, decisions, services rendered, and periodic evaluations in the offender's case file, including but not limited to, the offender's status regarding the level of supervision, compliance with the conditions of probation, progress with the supervision plan, and responses to intervention.

(9) Violations. CSCD directors shall work in conjunction with the local judiciary to specify written policies and procedures wherein probation officers may make recommendations to the courts regarding violations of conditions of probation, as well as when violations may be handled administratively. The availability of the continuum of sanctions or alternatives to incarceration shall be considered by the probation officer and recommended to the court in eligible cases as determined appropriate by the jurisdiction.

(10) Courtesy supervision. CSCD directors shall ensure notification to other jurisdictions when a probationer will be working or residing in that jurisdiction temporarily. Except in cases of non-CSCD residential facility placements, courtesy supervision shall be requested if a probationer will be in another jurisdiction for more than 30 days, except when good cause can be shown. Only the court retaining jurisdiction over a defendant has the authority to modify or alter a condition of probation. As such, CSCD directors shall ensure that probation officers providing direct supervision to probationers transferred from other Texas jurisdictions shall fully enforce the order of the court which placed the individual on probation. CSCD directors shall ensure that probation officers provide the same level of supervision to courtesy cases as they do for the probationers in their jurisdiction. When transferring a case for courtesy supervision, the documents necessary for transfer shall include, at a minimum, the transfer form, the court order placing the person on proba-

tion citing all conditions of probation, the presentence investigation report where legally mandated, and any assessments which have been completed. CSCD directors who decline to provide courtesy supervision to probationers from other jurisdictions shall immediately notify the original jurisdiction of the reasons for declining courtesy supervision.

(11) Transporting offenders. Probation officers shall not transport offenders held in a county jail pursuant to an arrest warrant. All other transportation of offenders shall be in accordance with the CSCD's policies and/or pursuant to a lawful court order.

§163.37. Reports and Records.

(a) Case records. Community supervision and corrections department (CSCD) directors shall develop and maintain a case record management system on offenders receiving any type of supervision by the CSCD. Each case record shall contain a chronological recording of all significant actions, decisions, services rendered, assessments, presentence investigation reports (PSIR) and periodic evaluations. In instances of misdemeanor cases which do not have a PSIR, those case records shall contain a written criminal history record or summary issued by a law enforcement agency.

(b) Confidentiality. All PSIRs prepared by a probation officer, and all information obtained in connection with the presentence investigations, are confidential and may be released only to those persons and under those circumstances as authorized by law and as directed by the court for the effective supervision of the defendant. Medical and psychiatric records obtained by court order shall be sealed within, or kept separate from, the offender's probation case file and may be released only by order of the court.

(c) Presentence investigation reports. The CSCD director shall ensure that a probation officer(s) will prepare a PSIR on all felony offenders prior to the time a trial judge assesses punishment or decides whether to grant probation. A probation officer shall prepare a PSIR on all misdemeanor offenders prior to the time the trial judge assesses punishment or decides whether to grant probation unless the defendant requests a report not be made and the court agrees, or if the court finds there is sufficient information in the record to permit the meaningful exercise of sentencing discretion. The PSIR shall provide the court with the following accurate, objective, and relevant elements:

- (1) court/legal information;
- (2) defendant information;

- (3) custodial information;
- (4) current offense;
- (5) victim information;
- (6) criminal history;
- (7) social history;
- (8) substance abuse information;
- (9) supervision plan; and
- (10) may include as attachments any other documents or information relevant to a sentencing decision.

(d) PSIR format. CSCD directors shall ensure that probation officers completing PSIRs follow, at a minimum, the required Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) PSIR format in preparing felony PSI reports. CSCD probation officers may use a format other than the TDCJ-CJAD PSIR format in preparing misdemeanor reports as long as the content requirements outlined in subsection (c) of this section are met.

(e) Staffing for PSIRs. CSCD directors shall have the necessary trained staff and resources to conduct presentence investigations on all cases and shall provide written reports of the results for the courts for all felony and misdemeanor cases as required by the law and the court.

(f) Filing. Copies of the completed PSIRs shall be maintained in the individual offender's case file within the CSCD filing system and made available for periodic audits by Community Justice Assistance Division (CJAD) staff.

(g) Funding. Felony PSIRs prepared by the CSCD probation officers shall be eligible for funding as noted in §163.43 of this title.

(h) Transfer to the institutional division. CSCD directors shall forward to a county that transfers a defendant to the Institutional Division (ID) that defendant's PSIR prepared according to the TDCJ-CJAD format for PSIRs, as well as information required in the Texas Code of Criminal Procedure, Article 42.09, §8(c). Additional information, if prepared by a probation officer for a revocation hearing updating information in the PSIR, shall also be forwarded to the county for the defendant's transfer to the ID.

(i) Intrastate and interstate transfer. CSCD directors shall utilize uniform transfer procedures as provided by and approved by the CJAD.

§163.39. Residential Services.

(a) Purpose. Residential facilities and contract residential beds funded by

Community Justice Assistance Division (CJAD) shall provide the courts with a sentencing alternative designed to:

(1) reduce reliance on incarceration to jails and prisons;

(2) provide public protection by ensuring levels of security appropriate for the population served by the facility, including as a minimum a monitored and structured environment in which residents' interior and exterior movements and activities can be supervised by specific destination and time;

(3) provide an intermediate sanction for offenders who require a level of supervision/services greater than that of non-residential supervision to ensure compliance with the conditions of probation and law-abiding behavior; and

(4) provide services that target reintegration of the offender back into the community.

(b) Types of programs. Residential facilities and contract residential beds funded by CJAD may include the following.

(1) Community corrections facilities (CCF).

(A) CCFs include, but are not limited to, the following types of facilities:

- (i) restitution centers;
- (ii) court residential treatment centers;
- (iii) substance abuse treatment facilities;
- (iv) custody camps and boot camps;
- (v) residential facilities for the mentally impaired;
- (vi) intermediate sanction facilities;
- (vii) halfway houses;
- (viii) work facilities; and
- (ix) pre-parole transfer facilities.

(B) Only Community Supervision and Corrections Departments (CSCD) are authorized to establish and operate CCFs. CSCDs may contract with another local governmental entity or private contractor for the leasing of the facility and/or delivery of services.

(2) County correctional centers (CCC).

(A) CCCs include, but are not limited to, the following types of facilities:

- (i) restitution centers;
- (ii) court residential treatment centers;
- (iii) substance abuse treatment facilities;
- (iv) custody camps and boot camp;
- (v) residential facilities for the mentally impaired;
- (vi) intermediate sanction facilities;
- (vii) halfway houses;
- (viii) work facilities; and
- (ix) pre-parole transfer facilities.

(B) The commissioners court of a county may establish a CCC after receiving written consent of the sheriff.

(C) The sheriff of the county in which a CCC has been established is responsible for the operation of the CCC and must consult with the chief/director of the CSCD serving the county about issues related to probationers participating in the CCC programs.

(D) The sheriff through the CCC program may:

(i) house and provide work programs and counseling for eligible defendants; and

(ii) in cooperation with the CSCD serving the county, operate work programs and counseling programs for probationers.

(3) Contract residential services (CRS).

(A) CJAD funds may be used by CSCD, sheriffs' departments, or other governmental entities to contract for residential services that include, but are not limited to, the following types of beds and services:

- (i) restitution centers;
- (ii) court residential treatment centers;
- (iii) substance abuse treatment facilities;
- (iv) custody camps and boot camp;
- (v) residential facilities for the mentally impaired;
- (vi) intermediate sanction facilities;
- (vii) halfway houses;

- (viii) work facilities; and
- (ix) pre-parole transfer facilities.

(B) CRS provided to CSCDs, sheriffs' departments, or other governmental entities through CJAD funds must meet all applicable CJAD Residential Services standards.

(c) Target population and offender eligibility. A CSCD, sheriff's department, or other governmental entity that operates a residential facility, contracts for the operation of a residential facility, or contracts for residential beds/services, shall define a specific target population of offenders to be served. Placement of offenders in a CCF shall only be by an order of the court and shall meet minimum eligibility criteria as outlined in this section. Upon placement into a jail, the sheriff may transfer the offender into a CCC. Eligibility criteria for residential placement must include, but is not limited to, the following.

(1) Community corrections facilities:

(A) the defendant did not cause serious bodily injury or death of another as a result of the commission of the offense as determined by the trier of facts;

(B) the defendant did not use a deadly weapon during the commission of or flight from the offense as determined by the trier of facts;

(C) the defendant matches the profile of offenders historically committed to county jail/prison from that jurisdiction; or the defendant has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of probation; and

(D) for restitution centers only:

(i) the defendant must have been convicted or pled guilty or nolo contendere to a felony offense other than those under Title 5 of the Texas Penal Code; and

(ii) the defendant must be employable.

(2) County correctional centers. The defendant is eligible for placement:

(A) if convicted of a misdemeanor and sentenced to a term of confinement in county jail;

(B) in lieu of jail time as a condition of misdemeanor or felony probation;

(C) in lieu of jail time as punishment for violation of conditions of probation; or

(D) if required as a condition of probation to participate in a work program or counseling program through a county correctional center and:

(i) the defendant matches the profile of offenders historically committed to county jail/prison from that jurisdiction; or

(ii) the defendant has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of probation.

(3) Contract residential services. Placement of offenders into a residential facility other than a community corrections facility or county correctional center must meet the facility's eligibility criteria, and the defendant matches the profile of offenders historically committed to county jail/prison from that jurisdiction; or the defendant has high risk/needs, who, if supervised at a lower supervision level would have an increased likelihood of violating the conditions of probation.

(d) Denying admission. An offender placed into a community corrections facility or a county correctional center as a condition of probation and who is an inappropriate placement, by statute or standard, or does not meet eligibility criteria of the facility as approved by the CJAD shall be returned to the court of original jurisdiction by the agency director who is responsible for the management of the CCF or CCC. If placement occurs as a condition of probation, an eligible offender for residential placement may be placed on a waiting list or returned to the court for an alternative sanction if the facility has reached capacity.

(e) Term of participation and discharge. All discharges from residential placement shall only be by an order of the court. Terms of participation in residential facilities shall be based on the following criteria:

(1) the offender has made sufficient progress towards meeting the objective of the supervision plan and program requirements;

(2) the offender has satisfied a sentence of confinement;

(3) the offender has satisfied a period of placement as a condition of probation; or

(4) the offender has demonstrated non-compliance with program criteria or a court order.

(f) Policies and procedures. Residential facilities and residential service providers shall provide supervision/services that address the level of risk and needs of a specific target population of offenders. Supervision/services shall be provided in accordance with policies and procedures as described in the facility's operations manual.

(1) The policies and procedures of CCF and CCC shall be approved by the CJAD director as per minimum guidelines established by the CJAD in the "Community Corrections Facilities and County Correctional Centers: Guidelines for Operations."

(2) The CJAD director must approve the policies and procedures of CCFs and CCCs prior to those facility directors accepting offenders for residential placement. All policies and procedures of CCFs and CCCs are to be reviewed and updated as necessary and approved every two years thereafter by the CJAD director.

(3) CSCD's, sheriff's departments, or other governmental entities that contract for residential beds/services (CRS) shall require service providers under contract through CJAD funds to make available their related fiscal and program records to the CJAD upon request. All CRS providers shall maintain a CJAD "Advisement Religious Services Participation" form, signed by the offender, in the case file of each offender who is a resident of a CRS program that requires residents to participate in religious-oriented activities.

(g) Physical plant.

(1) Community corrections facilities (CCF). Agencies operating CCFs shall provide, each fiscal year, to the CJAD documentation that the facility meets local and state safety, health and sanitation standards, codes, and ordinances. The facility shall also maintain compliance with minimum guidelines and standards established by CJAD for physical plants of CCFs.

(2) County correctional centers (CCC). Sheriffs' departments operating CCCs shall maintain compliance with CCC standards and rules as adopted by the Texas Commission on Jail Standards.

(3) Contract residential services (CRS). Community supervision and corrections departments, sheriff's departments, or other governmental entities that contract for residential beds/services shall ensure that CRS providers under contract through CJAD funds maintain compliance with local and state safety, health and sanitary standards, codes, and ordinances.

(h) Maximum resident capacity and facility utilization. The maximum resident capacity of a CCF or CCC shall be defined as the total number of offenders

who can be housed at the facility at any given time as determined by the operating agency and approved by the CJAD director. CCFs and CCCs funded through CJAD shall reach 90% capacity within the first six months of operation and maintain a minimum of 90% capacity thereafter, utilizing appropriate and eligible placements only.

(i) Public hearing. Agencies interested in establishing a CCF shall hold a public hearing regarding the proposed site of the CCF. A minimum of 30 days prior to the public hearing, the agency proposing to operate the CCF shall:

(1) publish notice of the date, hour, place, and subject of the public hearing along with the address of the proposed site of the CCF in three consecutive issues of a newspaper, or in newspapers that collectively have, general circulation in the county in which the proposed CCF is to be located;

(2) mail a copy of the notice to each city council member, county commissioner, state representative and state senator who represents the area in which the proposed CCF is to be located. A copy of the notice is also to be mailed to each member of the jurisdiction's community justice council; and

(3) hold the public hearing at a site as close as practical to the proposed location of the CCF.

(j) Data. Agencies operating or utilizing residential facilities under this section shall submit on a timely basis, data as required by the CJAD.

(k) Courtesy supervision. CCFs shall, on a space-available basis, accept eligible adult offenders needing the residential services on courtesy supervision from other jurisdictions. Community supervision and corrections departments that manage CCFs are responsible for the direct supervision of all probationers in the CCF while in the residential placement.

(l) Training. Probation officers, CCF personnel, and community supervision and corrections department personnel who work in a CCC shall meet minimum training standards as set forth in §163.33 of this title (relating to Probation Officers).

(m) Fiscal. The financial management and fiscal accounting practices and procedures for the operating funds of a community corrections facility or county correctional center shall meet minimum fiscal standards as set forth in §163.43 of this title (relating to Funding and Financial Management).

(n) Funding eligibility. Community supervision and corrections departments, counties, and municipalities, are eligible, upon application and approval, for CJAD

funding for residential services. See §163.43 of this title for funding rules, requirements and information.

§163.41. Medical and Psychological Information.

(a) Human immunodeficiency virus (HIV) policies. Community supervision and corrections department (CSCD) directors shall develop and implement policies relevant to the HIV in accordance with guidelines promulgated by the Texas Department of Health and adopted by the Community Justice Assistance Division. These policies, to be incorporated in the CSCD's administrative manuals, shall include but not be limited to the following:

(1) education/training;

(2) confidentiality;

(3) workplace guidelines; and

(4) supervision of individuals with Acquired Immune Deficiency Syndrome (AIDS) or HIV infection.

(b) Employee training. In accordance with Senate Bill 959, each employee of the CSCD shall attend a HIV-AIDS training program. Upon completion of an initial training, all employees shall attend an annual training in HIV-AIDS as updated information regarding HIV-AIDS becomes available.

(c) HIV confidentiality. Information regarding HIV-AIDS testing and results are strictly confidential and may not be released to any other staff of the CSCD, staff of other CSCDs in Texas, staff of probation jurisdictions in other states or documented in official probation records of the department unless the probationer voluntarily completes and signs a "Voluntary Consent and Waiver of Confidentiality" (Texas Health Standards Code, §81.102).

(d) Medical and psychological information. All records and other information concerning an offender's physical or mental state, including all information pertaining to an offender's HIV status, must be kept in strict confidence. Upon execution of a duly authorized release of medical or psychological information, a file, separate and apart from the supervision file, shall be created to maintain all confidential information pertaining to an offender's medical or mental status, and shall also include all medical and psychiatric records obtained by court order pursuant to the Texas Code of Criminal Procedure, Article 42.12, §9(j). Medical and psychological information contained in this file shall be maintained in a safe and secure manner with access to this confidential information restricted to only those persons who have been authorized to receive this information in a duly executed waiver of confidentiality. Depending on the

extent to which an offender may waive confidentiality to information concerning his HIV status, a department may be required to take additional measures to restrict access to information concerning the offender's HIV status.

§163.43. Funding and Financial Management.

(a) Funding.

(1) Qualifying for community justice assistance division (CJAD) state aid. Community supervision and corrections departments (CSCDs) qualify for CJAD state aid by:

(A) being in compliance with CJAD Standards;

(B) having a community justice council that serves the jurisdiction and is recognized by the CJAD;

(C) having a CJAD-approved community justice plan with related budgets;

(D) the district judge(s) appointing a chief probation officer to administer all CSCD funds;

(E) the district judge(s) designating a chief fiscal officer to account for, disburse, and report on all CSCD funds.

(2) Qualifying for CJAD grant funding. CSCDs, counties, municipalities, and non-profit organizations whose judicial districts' CSCDs comply with CJAD standards, qualify for CJAD grant funding by:

(A) being in compliance with CJAD Standards;

(B) having a community justice council that serves the jurisdiction and is recognized by the CJAD;

(C) having a CJAD-approved community justice plan with related budgets and the grant proposal is contained within the community justice plan; and

(D) the grant funding recipient designating a chief fiscal officer to account for, disburse, and report on all CJAD grant funding.

(3) Allocating state aid. State aid will be made available to eligible CSCDs in accordance with statutory requirements and requirements as set forth in the Financial Management Manual for CJAD Funding.

(4) Allocating CJAD grant funding. CSCDs, counties, municipalities, and non-profit organizations who are eligible to receive grant funding must meet requirements as set forth in the Financial Management Manual for CJAD Funding to be approved by the CJAD director to receive such funds. Grant funding will be made available in accordance with statutory requirements and requirements as set forth in the Financial Management Manual for CJAD Funding.

(b) Financial procedures.

(1) Requested information from CSCDs and other eligible CJAD funding recipients. The director of a CSCD or other eligible CJAD funding recipient shall present data and information requested by the CJAD as necessary to determine the amount of state financial aid to which the CSCD or other eligible recipient is entitled. A CSCD or other recipient receiving CJAD funding shall submit reports and other documentation as required by the CJAD.

(2) Deposit of CJAD funding. Each CSCD, county, or municipality shall deposit all CJAD funding received in a special fund of the county treasury or municipal treasury, as appropriate, to be used solely for the provision of services, programs, and facilities as approved by CJAD. Non-profit organizations shall deposit all CJAD funding received in a special fund as approved by CJAD, to be used solely for the provision of services, programs, and facilities approved by CJAD.

(3) Fees deposit. Adult probation fees collected by the court shall be deposited to the same special fund of the county treasury receiving state financial aid, to be used for community supervision and corrections services.

(4) Disbursement of CJAD funding. The CJAD will make quarterly funding payments, and other payments as frequently as deemed necessary by the CJAD director, to all eligible entities in accordance with respective statutory requirements for CJAD line item appropriations and the Financial Management Manual for CJAD Funding.

(5) Counties' financial responsibility. The county or counties served by a CSCD shall provide physical facilities, utilities, and equipment for a CSCD in accordance with subsection (d) of this section. If a CSCD serves two or more counties, those counties may enter into an agreement that the total expenses of such facilities, utilities, and equipment be distributed approximately in the same proportion as the population in each county bears to the total population of all the counties, according to the last preceding census.

(6) Restrictions on CJAD funding and CSCD funds. No funds from CJAD funding or CSCD generated revenue shall be used to:

(A) provide physical facilities, utilities, and equipment for community supervision and corrections departments unless approved by the CJAD through the certification process or as provided for in the Financial Management Manual for CJAD Funding; or

(B) support religious-oriented activities or services whose principal or primary effect is to advance a sectarian or doctrinal belief or practice. No offender can be required to participate in a religious-oriented activity or service arranged through the CSCD unless the offender signs the CJAD-required waiver.

(7) Available records. The community supervision and corrections department and/or the designated chief fiscal officer accounting for, disbursing, and reporting on the CJAD funding shall make financial records available to the CJAD. CSCDs and/or other CJAD funding recipients shall provide financial reports to CJAD as set forth in the Financial Management Manual for CJAD Funding. The chief fiscal officer must provide a Statement of Financial Position at close of each fiscal year and as set forth in the Financial Management Manual for CJAD Funding.

(8) Budgets. CJAD funding recipients shall prepare and operate from a budget(s) developed within the guidelines set forth in the Financial Management Manual for CJAD Funding.

(9) Funding recipient obligations. All CJAD funding recipients shall comply with all funding provisions as set forth in the Financial Management Manual for CJAD Funding and any special conditions associated with their respective funding awards.

(10) Local Government Code. CSCDs or entities receiving funds from CJAD shall comply with the Local Government Code, §140.003.

(11) Distribution of probation supervision fees and state aid for direct supervision. The judicial district having jurisdiction of the case shall receive the probation supervisory fee. The judicial district providing direct supervision shall receive the state aid designated for direct supervision.

(12) Fees for fiscal services. The judicial district, if approved by CJAD and as set forth in the Financial Management Manual for CJAD Funding, may use up to 3.0% of the state funding received for the first quarter or .75% of total funding received on grant funding and state aid to contract annually with the county or counties providing services for auditing, bookkeeping, and those services set forth in the

statutes and other services deemed necessary by the judicial district. Other services deemed necessary include the following:

(A) timely and accurate preparation of quarterly financial reports; and

(B) preparation of a Statement of Financial Position at the close of each fiscal year or designated funding period.

(13) Honesty bond. CSCDs shall insure that all public monies are protected by requiring that all employees with access to monies are covered by honesty bonds and all funds maintained on CSCD premises are protected by appropriate insurance or bonding. The fee for these bonds/insurance may be paid from the judicial district fund.

(14) Travel reimbursements. Reimbursements for the use of personal automobiles on official business by authorized individuals to be paid from the judicial district CSCD fund shall be for mileage based on state rates. Per diem reimbursements shall be at a rate not less than state rates. If established county rates for a CSCD exceed the state rates, the CSCD shall not exceed the county rates.

(15) Automobile liability insurance. CSCDs shall require all individuals using their automobiles for department business to provide documentation of liability insurance coverage or fiscal responsibility as required by law for personal motor vehicles used in conduct of official business.

(16) Expenses for training. CSCDs may use judicial district funds to pay the expenses of training for employees. The training must be related to CSCD services or to the employee's particular function or professional advancement within the department. CSCDs may use judicial district funds to pay the expenses of training for judges trying criminal cases. Training for judges must be related to community supervision and corrections or to the judge's function as an administrator of the CSCD.

(17) Extradition. CJAD state aid shall not be used to pay nor reimburse agencies or persons for the cost of transfer of prisoners.

(18) Investment of idle funds. The director of the CSCD shall consult with the chief fiscal officer to determine the appropriate amount of idle funds to be invested. Idle funds herein refers to state aid and probation fees only. The investment shall provide for a reasonable interest rate, necessary protection of principal, and flexibility. Interest received shall be considered locally generated monies for determining the surplus apportionment at the end of the fiscal year.

(19) Refusal or suspension of CJAD funding.

(A) Residential facilities. The CJAD shall adjust grant funding for residential facilities on the basis of annual evaluations made by the CJAD. The CJAD may require CSCDs to deobligate surplus balances of grant-funded residential facilities during the fiscal year.

(B) Noncompliance. If a CSCD is not in substantial compliance with TDCJ standards, the CJAD shall take the following actions:

(i) reduce, refuse, or suspend payment of state aid to the CSCD or payment of CJAD funding to funding recipients; or

(ii) impose budget control over the CSCD. The Texas Board of Criminal Justice shall provide for notice and a hearing in cases in which the CJAD proposes to take action per this section;

(iii) substantial non-compliance includes, but is not limited to illegal acts, habitual and willful acts of non-compliance, repeat non-compliance in an area after it being identified by CJAD, and intentional misappropriation of equipment purchased with CJAD funding.

(c) Determination and recovery of unexpended monies.

(1) CJAD funding. CJAD funding allocated to any entity, organization, or CSCD shall require separate budgets in accordance with the Financial Management Manual for CJAD Funding. At the close of the fiscal year, all unexpended/unencumbered CJAD funding shall be refunded to CJAD.

(2) Refund calculation. Close out financial reports shall be submitted to the CJAD on all CJAD funding by November 30 of each year and in accordance with the Financial Management Manual for CJAD Funding. Upon receipt of the final report, the surplus refund due to the state from all CJAD funding recipients shall be calculated by CJAD in accordance with the Financial Management Manual for CJAD Funding.

(3) CSCD unexpended monies. All monies deposited into the CSCD's judicial district fund shall be considered in the apportionment of any unexpended monies available after all financial payments have been completed. The chief fiscal officer designated by the judicial district shall be allowed a period of two months to complete payment of a prior fiscal year's financial commitments. After this two month period, all expenditures shall be charged to the budget of the current fiscal year regardless

of when the expenditure was incurred. The fiscal year shall end August 31st.

(4) Revenue percentage calculation for CSCDs. After the close out financial report is submitted to CJAD, a determination will be made by CJAD staff that an unexpended balance does exist. CJAD will identify all monies deposited into the fund for that fiscal year as either locally generated or state generated. Locally generated monies include, but are not limited to, probation fees and interest on time deposits. After the sources of monies are identified, CJAD will prepare a calculation to indicate the percentage contributed by each source.

(5) Application of percentage to CSCD unexpended monies. The balance of unexpended monies corresponding to the percentage of state monies deposited will be refunded to CJAD. The balance of surplus monies corresponding to the percentage of local monies deposited will be retained in the judicial district CSCD fund. These locally retained, unexpended monies shall be considered in the succeeding year's operating budget as a source of funding and shall be designated as locally generated monies in the succeeding year's apportionment of judicial district CSCD unexpended monies.

(6) Application of percentage to unexpended monies for CSCD direct supervision. After a surplus refund due to the state is calculated, any remaining direct supervision monies deposited by a CSCD shall be retained in the judicial district fund. These locally retained, unexpended monies for direct supervision shall be considered in the CSCD's succeeding year's general operating budget as a source of funding and shall be designated as locally generated monies in the succeeding year's apportionment of judicial district fund unexpended monies.

(d) Facilities, utilities, and equipment.

(1) CSCDs. The county or counties served by a CSCD shall provide, at a minimum, the following facilities, equipment and utilities for a CSCD.

(A) Minimum facilities for CSCDs. Each adult probation officer shall be provided a private office. Each office shall have the necessary lighting, air conditioning, equipment, privacy and decor to provide and promote the delivery of professional community corrections services.

(B) Minimum utilities for CSCDs. Each community supervision and corrections department office shall be provided adequate utilities necessary to provide efficient and professional community corrections services.

(C) Minimum equipment for CSCDs. Each adult probation officer shall be furnished adequate furniture, telephone, photocopy equipment, and other equipment as necessary and consistent with efficient office operations. Adequate insurance, maintenance, and repair of the equipment shall be maintained.

(D) Location. Each CSCD office providing direct court services shall be located in the courthouse or as near the courthouse as practically possible to promote prompt and efficient services to the court.

(E) Satellite offices. Satellite CSCD offices shall be established in the area of the judicial district to provide efficient supervision of and services to probationers as dictated by population, caseload size, or geographical distance.

(2) Residential facilities. CJAD funding may be used to:

(A) lease buildings, land, or other real property for use as community corrections facilities (CCF) or county correctional centers (CCC);

(B) lease or purchase equipment necessary for the operations of CCFs or CCCs;

(C) renovate leased or donated buildings for use as CCFs or CCCs; and

(D) pay other costs necessary for the operations of CCFs and CCCs.

(3) Inventory and disposal of equipment, furniture and/or vehicles purchased with CJAD funding.

(A) All equipment, furniture, and vehicles purchased with CJAD funding are to be inventoried with CJAD in accordance with procedures set forth in the Financial Management Manual for CJAD Funding.

(B) Any CSCD or other entity wanting to dispose of equipment, furniture and/or vehicles purchased with CJAD funding shall adhere to procedures set forth in the Financial Management Manual for CJAD Funding.

(e) Certification of facilities, utilities, and equipment for CSCDs.

(1) Expansion of CSCD offices. Judicial district funds may be expended

only for expansion of the CSCD with CJAD Director approval unless otherwise specified in the Financial Management Manual for CJAD Funding. The county or counties served by the CSCD shall continue to provide all costs associated with current level CSCD operations.

(2) Certification process. The following certification process shall be completed to be considered for CJAD director approval for purchasing facilities, utilities, or equipment to expand CSCD operations.

(A) Public meeting. Requests for expanded facilities, utilities, and equipment must be initially requested from the county and reviewed at a formal commissioners' court meeting.

(B) Certification letter. If the commissioner's court determines that funds are not available to expand the CSCD's facilities, utilities, or equipment, a certification shall be issued to the district judge indicating that funds are not available.

(C) Certification information. As part of the first request for certification in a fiscal year, the county shall provide the following information to CJAD for the four most current fiscal years unless otherwise noted.

(i) the total dollar amount of the county's general revenue financial contribution to the CSCD;

(ii) the total dollar amount of the county budgets;

(iii) the total dollar amount of the county tax rolls;

(iv) the population of the county for the four most recent calendar years;

(D) Information forwarded and listing of itemized expansion costs. The district judge shall forward to CJAD:

(i) the county certification document, with the certification information;

(ii) a list of expansion items and their approximate costs;

(iii) an itemized list of approximate costs for each equipment item;

(iv) a cover letter signed by the district judge indicating agreement with the county certification.

(E) Lease contracts, rent and utilities. Lease contracts, rent, and utilities shall be limited to the fiscal year approved. Each year it is necessary for a CSCD to

request that the county pay for lease, rent, and/or utilities for the CSCD expansion space. If the county cannot pay for the lease, rent, and/or utilities, they must go through the certification process again.

(F) Budget amendments and approval of expansion requests. The director of the CSCD shall forward an amended budget to reflect the proposed certification expenditures. All facility, utility, and equipment purchases charged to the judicial district fund which require certification must be approved by the CJAD director before the purchase is made.

(3) Equipment. Inventory labels, indicating CSCD ownership, shall be placed on each equipment item purchased with judicial district funds, regardless of whether or not certification was required.

(f) Audits. The CJAD may inspect and evaluate a CSCD or conduct audits of financial records of CJAD funding activity or transactions at any reasonable time to determine compliance with TDCJ rules and standards.

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 November 23, 1992.

TRD-9215665

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 463-9988

◆ ◆ ◆
• 37 TAC §163.31

(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 Department of Criminal Justice or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §163.31 concerning community justice plans.

Section 163.31 is being repealed and revised in its entirety. It is being resubmitted for proposed adoption under §163.25 of this chapter.

Bob Young, director, Austin Budget Office, TDCJ Finance Administration Division, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Young also has determined that the repeal of this section will not have any fiscal implications over those currently required in

existing provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and being the sections concern only requirements placed on local governments, councils and community supervision, and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of this repeal.

Comments on this proposed action may be submitted to Nancy Bartlett, Community Justice Assistant Division, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this rule in the *Texas Register*.

The repeal is proposed under Vernon's Annotated Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment and other aspects of the operation of departments; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

§163.31. Community Justice Plan.

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 November 23, 1992.

TRD-9215666

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 463-9988

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Chapter 321. Standards

• 37 TAC §§321.2, 321.6, 321.8, 321.12

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

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §§321.2, 321.6, 321.8, and 321.12 concerning the administration of community supervision and corrections departments, probation officers, facilities, equipment, fiscal and community rehabilitation centers.

These prior rules of the Texas Adult Probation Commission (TAPC) are being repealed as part of the recodification process required by the reorganization of the Texas Depart-

ment of Criminal Justice (TDCJ) under which the TAPC became the TDCJ-CJAD.

Bob Young, director, Austin Budget Office, TDCJ Finance Administration Division, has determined that there will be no fiscal implications resulting from these proposed repeals and recodification process.

Mr. Young determined that, regarding the public benefit and cost, these proposed repeals represent an effort to consolidate, reorganize and clarify current sections on existing statutory programs.

Mr. Young also has determined that the repeal of these sections will not have any fiscal implications over those currently required in existing provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and being the sections concern only requirements placed on local governments, councils and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of the repeal of these sections.

Comments on this proposed action may be submitted to Nancy Bartlett, Community Justice Assistant Division, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this rule in the *Texas Register*.

The repeal and recodification is proposed under the Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

§321.2. Probation Officers.

§321.6. Facilities.

§321.8. Fiscal.

§321.12. Human Immunodeficiency Virus (HIV).

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 November 23, 1992.

TRD-9215668

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 463-9988

Chapter 323. Fund Distribution

• 37 TAC §§323.1, 323.2, 323.3, 323.5

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

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §§323.1, 323.2, 323.3, and 323.5 concerning per capita funding, program funding, determination and recovery of judicial district adult probation fund surplus and discretionary grants.

These prior rules of the Texas Adult Probation Commission (TAPC) are being repealed as part of the recodification process required by the reorganization of the Texas Department of Criminal Justice (TDCJ) under which the TAPC became the TDCJ-CJAD.

Bob Young, director, Austin Budget Office, TDCJ Finance Administration Division, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Young determined that, regarding the public benefit and cost, these proposed repeals represent an effort to consolidate, reorganize, and clarify current sections on existing statutory programs.

Mr. Young also has determined that the repeal of these sections will not have any fiscal implications over those currently required in existing provisions. As a result, there should not be any additional cost imposed on state or local governments over the next five years and being the sections concern only requirements placed on local governments, councils and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of the repeal of these sections.

Comments on this proposed action may be submitted to Nancy Bartlett, Community Justice Assistant Division, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this rule in the *Texas Register*.

The repeal and recodification is proposed under the Code of Criminal Procedures; Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require com-

munity supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

§323.1. Per Capita Funding.

§323.2. Program Funding.

§323.3. Determination and Recovery of Judicial District Adult Probation Fund Unexpended Monies.

§323.5. Discretionary Grants.

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 November 23, 1992.

TRD-9215670

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 463-9988

Chapter 325. Agency Procedures

• 37 TAC §325.6, §325.12

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

The Texas Department of Criminal Justice-Community Justice Assistance Division (TDCJ-CJAD) proposes the repeal of §325.6 and §325.12 concerning fees and grant funding.

These prior rules of the Texas Adult Probation Commission (TAPC) are being repealed as part of the recodification process required by the reorganization of the Texas Department of Criminal Justice (TDCJ) under which the TAPC became the TDCJ-CJAD.

Bob Young, director, Austin Budget Office, TDCJ Finance Administration Division, has determined that there will be fiscal implications resulting from these proposed repeals and recodification process.

Mr. Young determined that, regarding the public benefit and cost, these proposed repeals represent an effort to consolidate, reorganize and clarify current sections on existing statutory programs.

Mr. Young also has determined that the repeal of these sections will not have any fiscal implications over those currently required in existing provisions. As a result, there should not be any additional cost imposed on state

or local governments over the next five years and being the sections concern only requirements placed on local governments, councils and community supervision and corrections departments, there should be no effect on small businesses. Also, it is not anticipated that any increase in economic costs to persons will occur as a result of the repeal of these sections.

Comments on this proposed action may be submitted to Nancy Bartlett, Community Justice Assistant Division, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753. Written comments should be submitted within 30 days after the date of the publication of this rule in the *Texas Register*.

The repeal and recodification is proposed under the Code of Criminal Procedures, Article 42.13, §2(a) and §3(a), which provides the TDCJ-CJAD with the authority to establish minimum standards for programs, facilities, equipment and other aspects of the operation of departments; establish an application process and procedures for funding community corrections facilities; establish a format for community justice plans; and to require community supervision and corrections departments to keep financial and statistical records; submit a community justice plan; and submit periodic financial audits and statistical reports to TDCJ-CJAD.

§325.6. Setting Fees.

§325.12. Grant Funding.

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 November 23, 1992.

TRD-9215672

Jackee Cox
General Counsel
Texas Department of
Criminal Justice

Proposed date of adoption: January 15, 1993

For further information, please call: (512) 463-9988

Part XIII. Texas Commission on Fire Protection

Chapter 423. Fire Suppression

Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

• 37 TAC §423.1

The Texas Commission on Fire Protection proposes an amendment to §423.1, concerning minimum standards for basic structural fire protection personnel. The amendment deletes the requirement of one year of employment with a duty assignment in structural fire

suppression for certification as basic structure fire protection personnel.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bostick also has determined that for each year of the first five years the sections is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of a one-year waiting period for certification deemed unnecessary by the commission, due to a change in the law requiring completion of basic fire suppression training prior to assignment to fire suppression duties. 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 Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel.

§423.1. Minimum Standards for Basic Structural Fire Protection Personnel.

(a) (No change.)

(b) All full-time, full-paid employees of any local government entity, who are assigned structure fire protection duties must be certified by the commission. In order to be certified, structure fire protection personnel must:

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

[(4) complete one year of employment, with a duty assignment defined by the commission as full-time, full-paid structure fire protection personnel. Out-of-state, or military personnel who have met the training requirements by either of the methods specified in paragraph (1), (B) or (C) of this subsection, will have already met the one-year requirement of this subsection.]

(c)-(e) (No change.)

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

Issued in Austin, Texas, on November 25, 1992.

TRD-9215793

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel

• 37 TAC §§423.205, 423.207, 423.209

The Texas Commission on Fire Protection proposes new sections 37 TAC §§423.205, 423.207, and 423.209, concerning minimum standards for higher levels of certification for aircraft crash and rescue fire protection personnel. The new sections replace repealed sections relating to the same subject matter for intermediate, advanced, and master levels of certification.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bostick 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 requirements for higher levels of certification for various disciplines will be harmonized, generally, and specifically the higher level of skill and training for advanced levels of aircraft crash and rescue fire protection personnel will enhance the safety for aircraft crews and the flying public. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections will vary depending upon the education and experience of the applicant. For approximately 90% of applicants there will be no additional economic cost due to the training points and experience previously acquired. However, for the remaining 10%, there may be additional training cost of varying amounts imposed by the new sections depending on education and experience of the applicant. However, higher certification levels are completely voluntary.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5) which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel.

§423.205. Minimum Standards for Intermediate Aircraft Crash and Rescue Fire Protection Personnel Certification.

(a) Applicants for Intermediate Aircraft Crash and Rescue Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Aircraft Crash and Rescue Fire Protection Personnel Certification, as defined in §423.203 of this title (relating to Minimum Standards for Basic Aircraft Crash and Rescue Fire Protection Personnel Certification).

(2) acquire one of the following combinations of college education or training points, and the listed years of fire protection experience, which may include the training points and the years of experience used to qualify for all lower levels of Aircraft Crash and Rescue Fire Protection Personnel Certification:

(A) 20 training points and at least eight years of service; or

(B) 20 training points which includes at least 15 college semester hours in fire science subjects and at least seven years of service; or

(C) 40 training points and at least six years of service; or

(D) 40 training points which includes at least 15 college semester hours in fire science subjects and at least five years of service; or

(E) An associates degree or 60 training points and at least four years of service; or

(F) An associate degree or 60 training points, either of which includes at least 15 college semester hours in fire science subjects and at least three years of service; or

(G) A baccalaureate degree or an associate degree in Fire Science or 120 training points and at least two years of service.

(3) As part of the training specified in paragraph (2) of this subsection, complete the courses listed in one of the following options:

(A) Option #1—Fire Administration I (college level) and Fire Fighting Tactics and Strategy (college level);

(B) Option #2—Fire Service Supervision-Increasing Personal Effectiveness (12 hours); Managing Company Tactical Operations: Preparation (12 hours); Managing Company Tactical Operations:

Decision Making (12 hours); and Incident Command Systems (16 hours) .

(b) College level courses from both the upper and lower division may be used to satisfy the educational requirement for Aircraft Crash and Rescue Fire Protection Personnel Certification.

(c) This section shall become effective April 1, 1993.

§423.207. Minimum Standards for Advanced Aircraft Crash and Rescue Fire Protection Personnel Certification.

(a) Applicants for Advanced Aircraft Crash and Rescue Fire Protection Certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Aircraft Crash and Rescue Fire Protection certification, as defined in §423.205 of this title (relating to Minimum Standards for Intermediate Aircraft Crash and Rescue Fire Protection Personnel Certification);

(2) acquire one of the following combinations of college education or training points, and the listed years of fire protection experience, which may include the training points and years of experience used to qualify for all lower levels of certification:

(A) 40 training points and at least 12 years of service; or

(B) 40 training points which includes at least 15 college semester hours in fire science subjects and at least 10 years of service; or

(C) an associate degree or 60 training points and at least nine years of service; or

(D) an associate degree or 60 training points, either of which includes at least 15 college semester hours in fire science subjects and at least six years of service; or

(E) a baccalaureate degree or an associate degree in Fire Science or 120 training points and at least four years of service; or

(F) a baccalaureate degree or 120 training points either of which includes at least 15 college semester hours in fire science subjects and at least three years of service;

(3) as part of the training specified in paragraph (2) of this subsection,

complete the courses listed in one of the following options:

(A) Option #1:

(i) Fire Administration II (college level), or Fire Safety Education (college level); and

(ii) Hazardous Materials I (college level).

(B) Option #2:

(i) Firefighter Safety and Survival: The Company Officer Responsibility (12 hours);

(ii) Public Fire Education Planning (12 hours);

(iii) Fire Service Supervision-Increasing Team Effectiveness (12 hours); and

(iv) Hazardous Materials Incident Analysis (12 hours).

(b) College level courses from both the upper and lower division may be used to satisfy the educational requirement for Advanced Aircraft Crash and Rescue Fire Protection Personnel Certification.

(c) This section shall become effective April 1, 1993.

§423.209. Minimum Standards for Master Aircraft Crash and Rescue Fire Protection Personnel Certification.

(a) Applicants for Master Aircraft Crash and Rescue Fire Protection Certification must complete the following requirements:

(1) hold as a prerequisite an Advanced Aircraft Crash and Rescue Fire Protection certification, as defined in §423.207 of this title (relating to Minimum Standards for Advanced Aircraft Crash and Rescue Fire Protection Personnel Certification);

(2) acquire one of the following combinations of college education or training points, and the listed years of fire protection experience, which may include the training points and years of experience used to qualify for all lower levels of certification:

(A) an associate degree or 60 college semester hours and at least 12 years of service; or

(B) an associate degree of 60 college semester hours, either of which must include at least 15 college semester hours in fire science subjects and at least nine years of service; or

(C) an associate degree in Fire Science and at least six years of service; or

(D) a baccalaureate degree or 120 college semester hours and at least six years of service; or

(E) a baccalaureate degree or 120 college semester hours, either of which must include at least 15 college semester hours in fire science subjects and at least four years of service.

(F) a master's degree and at least four years of service.

(b) College level courses from both the upper and lower divisions may be used to satisfy the educational requirement for Master Aircraft Crash and Rescue Fire Protection Personnel Certification.

(c) This section shall become effective April 1, 1993.

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 November 25, 1992.

TRD-9215794 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

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Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel

• 37 TAC §§423.211, 423.213, 423.215

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

The Texas Commission on Fire Protection proposes the repeal §§423.211, 423.213, and 423.215, concerning minimum standards for intermediate, advanced, and master aircraft crash and rescue fire protection personnel certification. The sections proposed for repeal will be replaced by new sections relating to the same subject matter published in this issue of the *Texas Register* as proposed new rules.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the repeals are in effect there

will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Bostick also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be replacement of obsolete language by new sections intended to harmonize requirements for advanced levels of certification in various disciplines and enhance the training and skills of holders of higher levels of aircraft crash and rescue fire protection personnel certification. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the new sections which replace the repealed sections is discussed in the preamble for those proposed new §§423.205, 423.207, and 423.209.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with the authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel.

§423.211. Minimum Standards for Intermediate Aircraft Crash and Rescue Fire Protection Personnel.

§423.213. Minimum Standards for Advanced Aircraft Crash and Rescue Fire Protection Personnel.

§423.215. Minimum Standards for Master Aircraft Crash and Rescue Fire Protection 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 November 25, 1992.

TRD-9215799 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

Chapter 427. Training Facilities

Subchapter A. Minimum Standards for Structure Recruit Training Facilities

• 37 TAC §427.9, §427.11

The Texas Commission on Fire Protection proposes amendments to §427.9 and §427.11, concerning structural recruit training facilities testing and staff. The proposed amendments reflect changes to the name of the curriculum in other sections, a change to the subject matter covered by the final test given at the conclusion of training by the training facility, and a new provision allowing instructors certified under the volunteer certification program to teach at training facilities for paid fire fighters.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bostick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clearer understanding by members of the fire services of testing requirements for structure recruit training facilities and a greater integration between paid and volunteer fire services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment are proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with the authority to adopt rules necessary to administer its powers and duties; and the Texas Government Code, §419.028(b)(1), which provides the commission with authority to approve or revoke the approval of an institution or facility for training fire protection personnel or recruits.

§427.9. Testing and Records-Structure Training Facility.

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

(d) Performance testing shall be done and records kept indicating that each trainee has demonstrated an ability to consistently perform, individually and as a ability member of a team, all tasks and operations associated with the training in a safe manner and level of competency which contributes to the successful achievement of the purpose for which the task or operation is being performed. Performance testing should be utilized to the maximum extent practical. The performance skills contained in the Basic Fire Suppression Curriculum

shall [commission basic fire fighter lesson plans manual should] be utilized to satisfy performance skill requirements. Each trainee shall be prepared to demonstrate fire fighter skills before a commission representative as required in Chapter 439, Examinations for Certification.

(e) (No change.)

(f) A minimum of eight periodic written tests shall be administered during the course, covering the subjects listed in the Basic Fire Suppression Curriculum [basic fire fighter curriculum]. Trainees must maintain a grade average of not less than 70% for all periodic tests administered during the course. These tests serve the dual purpose of permitting the instructor to evaluate the effectiveness of the instruction and the comprehension of the trainees. The instructor must determine that each trainee understands and comprehends the subject matter being presented.

(g) In addition to periodic written tests, comprehensive written tests shall be administered utilizing one of the following options:

(1) Option A—A midterm and a final comprehensive written tests shall be administered, if this option is utilized. The first or midterm comprehensive test shall be given no later than midway through the Basic Fire Suppression Curriculum [basic fire fighter training curriculum] and shall relate to subjects presented from the beginning of the training until the date of test. The final comprehensive test shall be given at the conclusion of the training curriculum and shall relate to subject presented from the beginning of the training until the date of the test [subject matter presented since the previous comprehensive test]. Each trainee must maintain a grade average of not less than 70% for the two comprehensive tests.

(2) Option B—A final comprehensive test shall be administered at the conclusion of the course and shall cover all subject listed in the Basic Fire Suppression Curriculum [basic firefighter curriculum]. Each trainee must score a grade of not less than 70% on the final examination.

(h) Copies of written test will be maintained for periodic review by commission representatives. The training facility shall maintain copies of all tests for a period of three years.

(i) The tests required in subsections (f) and (g) of this section are in addition to the commission examination required in Chapter 439 of this title (relating to Examinations for Certification).

§427.11. Staff-Structure Training Facility.

(a) (No change.)

(b) All instructors, except quest instructors, shall possess as a minimum, a Basic Fire Protection Instructor Certificate from the Commission as provided in §425.1 of this title (relating to Minimum Standards for Basic Fire Protection Instructor Certification) of Basic Volunteer Fire Fighter Instructor Certificate as provided in §475.1 of this title (relating to Minimum Standards for Basic Volunteer Fire Fighter Instructor Certification) [be certified by the commission]. A guest instructor is defined as an individual with special knowledge, skill and expertise in a specific subject area who has the ability to enhance the effectiveness of the training.

(c)-(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 November 25, 1992.

TRD-9215800

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

Chapter 437. Fees

• 37 TAC §§437.1, 437.3, 437.5

The Texas Commission on Fire Protection proposes amendment to §§437.1, 437.3, and 437.5, concerning fees for certification, curriculum manuals, and renewal fees. The amendment reflect changes to the name of the commission, the manual, and include language clarifications applicable to renewal fees.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bostick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the deletion of obsolete language and a clearer understanding in the fire service of rules applicable to fees for certification, curriculum manuals, and renewal fees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under the Texas Government Code, §419.008, which

provides the Texas Commission on Fire Protection with the authority to adopt rules for the administration of its powers and duties; the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel; and the Texas Government Code, §419.025 and §419.026, which authorizes the commission to set and collect fees for each certificate that the commission issues or renews and for manuals.

§437.1. Fees-Purpose and Scope.

(a) The purpose of these sections is to set forth requirements, governing the fees charged for the issuance of certificates to full-time, full-paid fire protection personnel, to establish the procedures for the collection of annual renewal fees, manual fees, Commission Certification Curriculum Manual [lesson plan] fees and copying fees as prescribed by the Government Code, Executive Branch, Chapter 419, §419.025 and §419.026 and commission rule.

(b) These sections shall govern all proceedings before and dealing with the Texas Commission on Fire Protection [Personnel Standards and Education], concerning certification fees, renewal fees, manual fees, Commission Certification Curriculum Manual [lesson plan] fees and copying fees. Hearings and appellate proceedings regarding these fees shall be governed by these sections where applicable and by the rules of the practice and procedure of the Texas Commission on Fire Protection [Personnel Standards and Education] and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

§437.3. Fees-Certification.

(a) (No change.)

(b) Certification fees shall not be combined with other fees such as renewal fees, fees for Commission manuals, fees for Commission Certification Curriculum Manual [state lesson plans] or copying fees.

(c) (No change.)

(d) Nothing in this section shall prohibit an individual from paying a certification fee for any certificate which he or she is qualified to hold, providing the certificate is not required as a condition of employment (see subsection (c) of this section concerning Certification Fees).

(e) The following are minimum level certificates as defined by The Government Code, Executive Branch, Chapter 419 and Commission rules as being required as a condition of assignment to the respective discipline.

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

(f) In addition to the certificates listed in subsection (e) of this section (concerning minimum level certificates), one of the following instructor certificates, as a minimum, is required for personnel who will provide fire service training approved by the Commission that is to be applied toward any level of certification:

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

(g)-(j) (No change.)

§437.5. Fees-Renewal.

(a) The annual renewal fee shall be \$20 and shall be assessed for each certified employee of an entity. If an individual holds more than one certificate, the commission may collect only one \$20 renewal fee which will renew all certificates held by the individual [as a condition of employment].

(b) Renewal fees shall not be combined with other fees, such as certification fees, fees for Commission manuals, fees for Commission Certification Curriculum Manual [state lesson plans] and copying fees.

(c)-(l) (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 November 25, 1992.

TRD-9215795 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

Chapter 439. Examinations for Certification

• 37 TAC §439.5, §439.17

The Texas Commission on Fire Protection proposes amendments to §439.5, and §439.17, concerning examinations for certification. The amendment to §439.5 changes the definition of "commission" to reflect a statutory reorganization by the 72nd Legislature. The amendment to §439.17 is intended to conform the rule to a statutory change concerning proficiency examinations.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bostick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result

of enforcing the sections will be the deletion of obsolete language inconsistent with statutory changes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules necessary to administer its duties and responsibilities; and the Texas Government Code, §419.032(b), which authorizes the commission to establish qualifications relating to basic certification tests.

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

Commission—The Texas Commission on Fire Protection [Personnel Standards and Education].

§439.17. *Testing for Proof of Proficiency.*

(a) If an individual becomes employed to a position as defined in §421.5(b)(14) of this title (relating to Definitions), [more than] one year or longer after passing a commission examination pertaining to the discipline to which the individual is assigned, the individual shall:

(1)-(2) (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 November 25, 1992.

TRD-9215796 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

Chapter 441. Continuing Education

• 37 TAC §441.5, §441.7

The Texas Commission on Fire Protection proposes amendments to §§441.5, and 441.7, concerning continuing education requirements. The change to §441.5 is intended to provide an exemption from continuing education requirements for a person who does not serve at least six months in any discipline requiring continuing education.

The language in §441.7 applicable only to structural fire protection personnel is deleted. In addition, a new subsection (f)(4) in §441.5, authorizes remedial measures, including a voluntary suspension, to correct a continuing education hour deficiency.

Alton Bostick, Standards and Licensing Division director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Bostick 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 greater flexibility for assignment of fire protection personnel to various disciplines and the avoidance of costly or unnecessary public hearings through the use of voluntary suspensions in the case of continuing education deficiencies. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Jim Fiero, Chairman, Fire Protection Personnel Advisory Committee, P.O. Box 2286, Austin, Texas 78768-2286.

The amendment is proposed under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with the authority to adopt rules for the administration of its duties and responsibilities; and the Texas Government Code, §419.032(b), which authorizes the commission establish to establish qualifications relating to continuing education.

§441.5. *Requirements.*

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

(e) Any person who does not serve at least six months in a discipline requiring continuing education may be exempted from the continuing education requirements for that certification period only. Such exemptions shall be determined by the head of the department and reported to the commission at the time of certification renewal.

(f)[(e)] Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply and must complete the following requirements in order to maintain the appropriate certificate:

(1) complete the continuing education requirements for the certification period in which the individual failed to comply, within 60 days from the end of that certification period. The Administrative Head of the Department or the training chief shall document to the Commission in writing that the individual's continuing education requirements for the certification period in question were met within the 60-day period allowed; or

(2) if more than 60 days have passed since the end of the certification period and the continuing education requirements were not met, pass a commission examination pertaining to the discipline or disciplines; or

(3) if more than 60 days have passed since the end of the certification period and the continuing education requirements were not met, complete the current requirements, set by the commission for the discipline or disciplines that would be applied to an individual that had not been certified by the commission; or [.]

(4) if more than 60 days have passed since the end of the certification period and the continuing education requirements were not met, the commission, acting through the executive director upon the recommendation of the commission staff, may order that the certificate be suspended for a period of time not to exceed 60 days while the continuing education requirements are made up. During the suspension period, the individual will not be permitted to perform any duties authorized by the certificate. The administrative head of the department must request this option in writing from the Standards and Licensing Division Director and must document in writing for commission approval when the continuing education requirements are met. At this time, the certificate may be reinstated by the Standards and Licensing Division Director.

§441.7. Continuing Education For Structural Fire Protection Personnel.

(a) Continuing education will be required for personnel assigned as Structural Fire Protection. [Any person assigned to structure fire fighting during a certification period, who does not serve at least six months in the discipline may be exempted from the continuing education requirement for that certification period only. Such exemption shall be determined by the head of the department and reported to the Commission at the time of certification renewal.]

(b) (No change.)

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

Issued in Austin, Texas, on November 25, 1992.

TRD-9215797

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700

Part XIII. Texas Commission on Fire Protection

Chapter 591. Storage and Sale of Fireworks

- 37 TAC §§591.1, 591.5,
591.7-591.19, 591.21-591.26,
591.28, 591.30

The Texas Commission on Fire Protection proposes amendments to §§591.1, 591.5, 591.7-591.19, 591.21-591.26, 591.28, and 591.30, concerning regulation of the sale, distribution, and use of fireworks. In the amendments, a new classification of fireworks, 1.3G and 1.4G instead of Class B and Class C, respectively, is used to conform to classifications used in federal regulations. The definition of "school" is added to §591.8 to clarify constraints relating to the proximity of fireworks displays to schools. Section 591.13 is amended to allow flexibility in the final determination of exactly where a public display will be conducted. The same section is also amended to allow fax and photocopies of display applications to be sent to the licensing section of the Texas Commission on Fire Protection. Also, applications may be received closer in time to the display than is permitted under the present rule. Section 591.17 is amended to make clear that labeling of fireworks in this state will conform to the requirements of the Consumer Product Safety Commission and the Department of Transportation. Other amendments make minor clarifications of existing rules.

Ernest Emerson, state fire marshal, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Emerson 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 the regulation of the fireworks business will be made more effective due to greater clarity in regulations, combined with greater flexibility regarding requirements for public display permit approval. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Mike Hines, Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768-2286.

The amendments are proposed under the Texas Insurance Code, Article 5.43-4, §5 and §5A, which provides the Texas Commission on Fire Protection with the authority to adopt rules necessary to its administration through the state fire marshal for the protection and preservation of life and property.

§591.1. Purpose. The purpose of the rules set forth in these sections is to regulate the sale, distribution, and use of certain fireworks in the interest of protecting and pre-

serving lives and property pursuant to the Insurance Code, Article 5.43-4.

§591.5. Notices. All notices by the state fire marshal [marshal] required by any statutory provision or by [of] these sections, must be given by personal service or mailed, postage prepaid, to the person's residence or business address as it appears on the records in the Office of the State Fire Marshal [office of the State Fire Marshall].

§591.7. Administration.

(a) The state fire marshal is charged with the duty to administer these sections, the orders of the Commission [Board] and the enforcement of the Insurance Code, Article 5.43-4.

(b)-(c) (No change.)

§591.8. Definitions. The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Agricultural, industrial, or wildlife control permits—Permits authorizing the holder to use Fireworks 1.3G [Class B fireworks] for specified purposes in these business activities.

Barricade—A natural or artificial barrier that will effectively screen a magazine, building, railway, or highway from the effects of an explosion in a magazine or building containing explosives. It shall be of such height that a straight line from the top of any side wall of a building, or magazine containing explosives to the eave line of any magazine, or building, or to a point 12 feet above the center of a railway or highway, will pass through such natural or artificial barrier.

[Board—The State Board of Insurance.]

Bulk Storage, Fireworks 1.4G [Class C fireworks]—The storage of 500 or more cases of Fireworks 1.4G [Class C fireworks].

Business—The manufacturing, importing, distributing, jobbing, retailing of permissible fireworks, acting as a pyrotechnic operator, the conducting of multiple public fireworks displays, using fireworks for agricultural, wildlife, or industrial purposes.

Commission—The Texas Commission on Fire Protection.

Common fireworks, Class C—A small fireworks device, designed primarily to produce visible and/or audible effects by combustion, that complies with the construction and chemical composition requirements of Title 16 C.F.R. Part 1507 (1984), and the labeling requirements of the United States Consumer Product Safety Commission, and that is classified as a Class C explosive by the D.O.T.

Fireworks—Any composition or device designed to produce a visible or audible effect by combustion, explosion, deflagration, or detonation, and that is defined as "special fireworks" by Title 49 C.F.R. §173.88(d), (1983), or as "common fireworks" by Title 49 C.F.R. §173.100(r), (1983). Exceptions to this definition are found in the Insurance Code, Article 5.43-4, §4.

Highway—The paved surface, or where unpaved, the edge of a graded or maintained public street, public alley, or public road.

Magazine—Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G [Class B fireworks].

Permissible fireworks—Those Fireworks 1.4G [Class C fireworks] specified in the Insurance Code Article 5.43-4, §2.

Person—An individual or entity, including an owner, manager, officer, employee, occupant, sole proprietorship, partnership, or corporation.

Public display—The igniting of Fireworks 1.3G [Class B fireworks] for public or private amusement.

Public display permit—A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G [Class B fireworks], on a single occasion, at a designated location and during a designated time period.

Pyrotechnic operator—An individual who, by experience, training, and passing any required examination, has demonstrated the necessary skills and ability for safely assembling, discharging, and supervising public displays of Fireworks 1.3G [Class B fireworks].

Retail fireworks site—The structure from which Fireworks 1.4G [Class C fireworks] are sold and in which Fireworks 1.4G [Class C fireworks] are held pending retail sale.

Safety container—A container especially designed, tested, and approved for the storage of flammable liquids.

School—Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school, or institution of higher education.

Selling opening—An open area including the counter, through which fireworks are viewed[,] and sold at retail.

Storage facility—Any building, structure, or facility in which finished Fireworks 1.4G [Class C fireworks] are stored, but in which no manufacturing is performed.

§591.9. General Requirements, Licenses, and Permits.

(a) Each firm or person engaged in the manufacture, transportation, storage, wholesale or retail sales of fireworks, public displays utilizing Fireworks 1.3G [Class B

fireworks], and pyrotechnic operators shall have an applicable license or permit issued by the state fire marshal.

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

(b)-(c) (No change.)

(d) License and permit holders shall take every reasonable precaution to protect their license or permit documents from loss, theft, defacement, destruction, or unauthorized duplication or use. Unauthorized use or duplication shall be reported immediately to the state fire marshal.

(e)-(g) (No change.)

(h) A person engaging in the business using or storing Fireworks 1.3G [Class B fireworks] should obtain a federal license or permit if required by Title XI, Regulation of Explosives of the Crime Control Act[,] (18 United States Code, Chapter 40).

(i) Licensees and permittees shall have adequate storage facilities which comply with appropriate provisions of §591.22 and §591.23 of this title (relating to Storage of Black Powder [Powders] and Class B Fireworks at Other Than Display Sites; Bulk Storage of Class C Fireworks).

(j) (No change.)

§591.10. Requirements, Licensees.

(a) (No change.)

(b) The change of a nonincorporated firm's ownership invalidates the current license. A change of [in] ownership must be reported to the state fire marshal within 14 days of such change.

(c)-(e) (No change.)

§591.11. Requirements, Pyrotechnic Operator License.

(a) Applicants for a pyrotechnic operator license[,] shall take a written examination and obtain at least a passing grade of 70%. Written examinations may be supplemented by practical tests or demonstrations deemed necessary to determine the applicant's knowledge and ability. The content, type, frequency, and location of the examinations shall be set by the state fire marshal.

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

(e) A pyrotechnic operator license shall not be issued to any person who fails to meet subsection (a) of this section and the following:

(1) assisted in conducting at least three permitted or licensed public displays in the State of Texas under the direct supervision of a pyrotechnic operator licensed in Texas;

(2) be at least 21 years of age.

(f) (No change.)

§591.12. Expiration, License, and Permit.

(a) A license shall be valid for a period of one year from the date of issuance.

(b) Permits expire depending on permit type.

(1) Retail permits expire on January 31 each year.

(2) Public display permits expire at the conclusion of the single display at the time and on the date stated on the permit.

(3) Agricultural, industrial, and wildlife control permits expire one year from the date of issuance.

§591.13. Applications for Licenses and Permits.

(a) (No change.)

(b) Applications must be signed by the sole proprietor, by each partner of a partnership, or by an officer of a corporation or association. Applications from foreign [Foreign] and out of state corporations shall be accompanied by [with] evidence of [its] authority to conduct business in this state granted by the Texas Secretary of State[,] and where applicable, the applicant shall evidence compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code, Chapter 36 [§36.01].

(c) Applications for a public display license or permit shall include the following information:

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

(3) the [exact] location or alternate location for the display;

(4) (No change.)

(5) the size and number of fireworks to be discharged, the number of set pieces, and other items;

(6) (No change.)

(7) a diagram of the grounds on which the display is to be held the:

(A) area meeting appropriate distance regulations which outlines the parameters within which the particular site may be adjusted on the day of the proposed display to address safety concerns or wind changes from which fireworks will be discharged [point from which fireworks will be discharged];

(B) (No change.)

(C) distance from spectators to discharge point; and

(D) (No change.)

(8) (No change.)

(9) the name and license number of the manufacturer or distributor licensed in Texas who is to supply the fireworks; and

(10) (No change.)

(d) A completed application for a public display license or permit shall be received by the state fire marshal [at least 14 days] before the display is to be conducted. A facsimile or other photocopy of the application received by the state fire marshal during normal working hours prior to the date of the display and determined to be in compliance with the provisions of this section, along with the appropriate fee, shall be acceptable for purposes of this section. An applicant issued a permit under the facsimile provisions of this section shall maintain original documentation of the application for a period of one year and shall provide such original materials to the state fire marshal on request. [Such application is deemed to be timely filed when its envelope bears a legible postmark on or before 14 days prior to the date of the desired display.]

(e) (No change.)

§591.14. Fees.

(a) Fees required by the Insurance Code, Article 5.43-4, and these sections, shall be paid by cash, money order, or check. Money orders and checks shall be made payable to the Texas Commission on Fire Protection. ["The State Board of Insurance."]

(b) (No change.)

(c) Fees shall be as follows:

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

(8) Class B public display permit \$50; and

(9) (No change.)

(d)-(f) (No change.)

§591.15. Retail Permits.

(a) (No change.)

(b) Retail permits may be obtained at any time of the year from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal, and shall be signed by the applicant prior to said permit becoming effective.

(1) A retail permittee shall purchase Fireworks 1.4G [Class C fireworks] only from a distributor or jobber licensed in this state.

(2) Bulk storage of Fireworks 1.4G [Class C fireworks] by a retail permittee shall be in compliance with §591.23 of this title (relating to Bulk Storage of Class C Fireworks).

(3) Fireworks 1.4G [Class C fireworks] shall be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the Insurance Code, Article 5.43-4, §8(a)(1) and (2).

(4) A copy of the Insurance Code, Article 5.43-4, and the fireworks rules shall be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of the Insurance Code, Article 5.43-4, and the fireworks rules shall be made available through the State Fire Marshal's office [Office].

(c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.

(1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's office [Office] within a week from the time the last permit in each book has been issued.

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

§591.16. Agricultural, Industrial, and Wildlife Control Permits.

(a) Applicants shall:

(1) (No change.)

(2) indicate the specific purpose for which fireworks are to be used; and

(3) (No change.)

(b)-(c) (No change.)

(d) Fireworks 1.3G [Class B fireworks] for agricultural, industrial, or [industry and] wildlife control purposes shall be purchased only from distributors licensed in this state.

§591.17. Retail Sales General Requirements.

(a) (No change.)

(b) Bulk storage of Fireworks 1.4G [Class C fireworks] by retailer shall comply with §591.23 of this title (relating to Bulk Storage of Class C Fireworks).

(c)-(n) (No change.)

(o) Fireworks offered for sale to the general public in this state shall conform to the labeling requirements of the United States Consumer Product Safety Commission and the United States Department of Transportation. Only labeling specifications or requirements mandated by either of these agencies

shall be required for the labeling of items offered for sale in Texas.

§591.18. Fireworks Retail Site Requirements for Design, Construction, and Storage.

(a) Retail stand construction. The fireworks stand in which Fireworks 1.4G [Class C fireworks] are held for retail sale shall be constructed of wood, metal, masonry, or concrete, or combinations thereof. Each stand of less than 16 feet in length shall have at least one walk door, which opens outward. Stands measuring 16 feet or longer must have at least two walk doors, one in each end, which open outward. A minimum of combustible material such as posters, signs, and decorations may be used on interior walls. A minimum distance of six feet shall be maintained from the front of the customer counter to the back side of the stand.

(b) -(c) (No change.)

(d) Overnight storage. If the fireworks stand is used for the overnight storage of Fireworks 1.4G [Class C fireworks], it must be equipped with suitable locking devices to prevent unauthorized entry.

(e) Bulk Storage. Storage of Fireworks 1.4G [Class C fireworks] by a retailer in excess of 500 cases shall comply with §591.23 of this title (relating to Bulk Storage of Class C Fireworks).

(f) (No change.)

§591.19. Records and Reports.

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

(c) The loss, theft, or unlawful removal of black powder and Fireworks 1.3G [Class B fireworks] shall be reported immediately to the state fire marshal.

(d) (No change.)

§591.21. Manufacturing Operations.

(a) Building site security

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

(6) Magazines [Separation of magazines] storing Fireworks 1.3G [Class B fireworks], black powder, and salutes shall be separated from inhabited buildings, highways, or other magazines containing black powder or salutes in accordance with Table 3 in §591.24 of this title (relating to Distance Tables).

(7) (No change.)

(b) (No change.)

(c) Heat, light, electrical equipment.

(1) No stoves, exposed flames, or electrical heaters shall be used in any

part of a process or mixing building. Heating shall be by means of steam, indirect hot air[,] radiation, hot water, or any other means approved by the state fire marshal. Unit heaters[,] located inside buildings shall be equipped with motors and switches suitable for use in Class II, Division 1 locations found in National Electrical Code, 1984, Article 502.

(2)-(6) (No change.)

(d) (No change.)

(e) Fire, explosion prevention.

(1) (No change.)

(2) Rags, combustible[,] pyrotechnic[,] or explosive scrap, and paper shall be kept separate from each other and placed in approved marked containers. All waste and reject hazardous material shall be removed from all buildings daily and removed from the plant at regular intervals and destroyed in an appropriate manner.

(3)-(8) (No change.)

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

§591.22. Storage of Black Powder and Class B Fireworks at Other Than Display Sites.

(a) General provisions.

(1) Fireworks 1.3G [Class B fireworks] and black powder shall be stored in magazines unless they are in process of manufacture, being physically handled in the operating process, being packaged, or being transported.

(2) Black powder and Fireworks 1.3G [Class B fireworks] shall be stored in a magazine meeting or exceeding the requirements for a Type 4 magazine.

(3) Magazines containing Fireworks 1.3G [Class B fireworks] or black powder shall be separated from inhabited buildings, other magazines, fireworks manufacturing plant buildings, passenger railroads, and public highways in accordance with Table 3 in §591.24 of this title (relating to Distance Tables).

(4) (No change.)

(b) Construction of magazines-general.

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

(3) Magazine heating systems, if installed, shall meet the following requirements.

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

(F) The heating source for a water or steam system, if used, shall be separated [separate] from the magazine by a distance of not less than 25 feet when electric and 50 feet when fuel-fired. The area between the heating unit and the magazine shall be cleared of all combustible materials.

(G) (No change.)

(4) When lights are necessary inside the magazine, electrical safety flashlights [flash lights] or electric safety lanterns should be used. The authority having jurisdiction may authorize interior lighting of special design for magazines provided that adequate safety is maintained.

(5) (No change.)

(c) Construction of magazines. Magazines for storage of Fireworks 1.3G [Class B fireworks] and black powder shall meet or exceed the following specifications for Type 4 magazines.

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

(3) Permanent Type 4 magazines shall be constructed in accordance with those provisions for Type 4 magazines relating to foundations, ventilation, locks, hinges, hasps, and locking hardware as required by Title 27 C.F.R. [Code of Federal Regulations,] Part 55, November 1, 1984 edition.

(d) Magazine operations.

(1) (No change.)

(2) When containing Fireworks 1.3G [Class B fireworks] or black powder, the magazine shall be opened and inspected at intervals of not greater than three days to determine whether there has been an unauthorized entry or attempted entry into the magazines; or to determine whether there has been unauthorized material removal from the magazines.

(3)-(6) (No change.)

(7) Tools for opening containers of Fireworks 1.3G [Class B fireworks] or

black powder shall be constructed of nonsparking materials, except that metal slitters shall be used for opening fiberboard containers. A wood wedge, a fiber, rubber, or wood mallet shall be used for opening or closing wood containers of explosives.

(8)-(11) (No change.)

(e) Additional safety precautions.

(1) Smoking, matches, open flames, spark-producing devices, and firearms (except firearms carried by authorized guards) shall not be permitted inside of or within 50 feet of magazines.

(2) (No change.)

§591.23. Bulk Storage of Class C Fireworks.

(a) General provisions.

(1) These provisions apply to licensees and retail storage of more than 500 cases of Fireworks 1.4G [Class C fireworks].

(2) Storage facilities containing Fireworks 1.4G [Class C fireworks] shall be of solid construction using sound engineering principles [principals].

(3) (No change.)

(4) Storage facilities containing Fireworks 1.4G [Class C fireworks] shall comply with the following.

(A)-(G) (No change.)

(5) Storage buildings shall have fencing in compliance with §591.21(a) (1) of this title (relating to Manufacturing Operations) or one of the following:

(A) personnel on the premises 24 hours per day and lighted at night; or [and]

(B) a security alarm system.

(6) (No change.)

(b) (No change.)

§591.24. Distance Tables. The following distance tables shall be applicable to these sections.

Table 1
**Minimum Separation Distances of Class C Fireworks, Processing Buildings, and
 Fireworks Storage Buildings from Inhabited Buildings, Passenger Railways, and
 Public Highways**

NET WEIGHT OF FIREWORKS ¹ <u>Pounds</u>	DISTANCE FROM PASSENGER RAILWAYS AND PUBLIC HIGHWAYS <u>Feet</u>	DISTANCE FROM INHABITED BUILDINGS <u>Feet</u>
100	50	50
200	50	60
400	50	70
600	50	80
800	50	90
1,000	50	100
2,000	58	115
3,000	62	124
4,000	65	130
5,000	68	135
6,000	70	139
8,000	73	140
10,000	75	150

Note 1: Net weight in Table 1 is the weight of all pyrotechnic and explosive composition and fuse only.

Table 2
Minimum Separation Distances at Fireworks Manufacturing Plants[.]

NET WEIGHT FIREWORKS ¹	DISTANCE OF MAGAZINES AND STORAGE BUILDINGS FROM PROCESS BUILDINGS AND NONPROCESS BUILDINGS ²		DISTANCE BETWEEN PROCESS BUILDINGS AND BETWEEN PROCESS AND NONPROCESS BUILDINGS ²	
	Class C Fireworks	Class B Fireworks	Class C Fireworks	Class B Fireworks
<u>Pounds</u>	<u>Feet</u>	<u>Feet</u>	<u>Feet</u>	<u>Feet</u>
100	30	30	37	57
200	30	35	37	69
400	30	44	37	85
600	30	51	37	97
800	30	56	37	105
1,000	30	60	37	112
2,000	30	76	37	172
3,000	35	87	48	222
4,000	38	95	60	264
5,000	42	103	67	300
6,000	45	109	72	331
8,000	50	120	78	382
10,000	54	129	82	423

Note 1: Net weight is the weight of all pyrotechnic and explosive compositions and fuse only.

Note 2: For the purpose of applying the separation distances in Table 2, a process [of] building includes a mixing building, any building in which pyrotechnic or explosive compositions are pressed or otherwise prepared for finishing and assembling, and any finishing and assembling building. Nonprocess buildings means [building mean] office buildings, warehouses [warehouse], and other fireworks plant buildings where no fireworks or explosive compositions are processed or stored.

Table 3
Table of Distances for Storage of Low Explosives

Pounds		From inhabited building distance (feet)	From public railroad and highways distance (feet)	From above ground magazine (feet)	
Over	Net Over			Unbarricaded	Barricaded
0	1,000	75	75	50	36
1,000	5,000	115	115	75	61
5,000	10,000	150	150	100	78
10,000	20,000	190	215	125	98
20,000	30,000	215	215	145	112
30,000	40,000	235	235	155	124
40,000	50,000	250	250	165	135
50,000	60,000	260	260	175	145
60,000	70,000	270	270	185	155
70,000	80,000	280	280	190	165
80,000	90,000	295	295	195	175
90,000	100,000	300	300	200	185
100,000	200,000	375	375	250	285
200,000	300,000	450	450	300	385

§591.25. Distribution and Transportation.

(a) With regard to Fireworks 1.3G [Class B fireworks] only, Title 49 C.F.R. [Code of Federal Regulations] Parts 171, 172, 173, 177, and 178, November 1, 1984, edition, governing the transportation of hazardous materials, are adopted by reference as rules governing the safe distribution and transportation of fireworks as hazardous materials in Texas. These rules are subject to the following explanations and exceptions.

(1) When the term "interstate" or "foreign commerce" is used in the federal regulations, it will, for the purpose of such adoption, include all modes of [or] transportation in Texas.

(2) When the term "department" is used in the text of the federal regulations as being the Department of Transportation, it shall, for the purpose of such adoption, mean the Texas Commission on Fire Protection [State Board of Insurance].

(3) (No change.)

(b) A copy of Title 49 C.F.R. [Code of Federal Regulations] shall be kept available for inspection in the Office of the State Fire Marshal.

§591.26. Preparing and Conducting Public Displays.

(a) Storage. Public display fireworks [Storage of public displays] may be stored temporarily for a period not to exceed 30 days prior to display date in a

locked area, in regular Class B shipping cartons, not accessible by the general public, and in a location approved by the local fire prevention officer.

(b) Sobriety. Pyrotechnic operators or assistants shall not be under the influence or consume alcoholic beverages and/or [beverages/or] controlled substances during the public display.

(c) Display criteria.

(1) (No change.)

(2) Mortars shall be separated from spectator viewing and parking areas; from health care, church, asylum, school, and penal facilities; from storage of hazardous materials;[,] and from residential occupancies by the minimum distances specified in the following table:

Mortar Separation Distances

Mortar	Spectator Viewing Areas	Health Care & Penal Facilities	Storage of Hazardous Materials
	Parking Areas 1 & 2-Family Dwellings		
2 in.	100 ft.	600 ft.	600 ft.
3 in.	125 ft.	600 ft.	600 ft.
4 in.	125 ft.	600 ft.	600 ft.
5 in.	150 ft.	600 ft.	600 ft.
6 in. & larger	200 ft.	600 ft.	600 ft.

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

(6) If, at any time, steady winds of 25 mph or other conditions prevail[,] which in the opinion of either the authority having jurisdiction or the licensed pyrotechnic operator, pose [poses] a danger, the public display shall be postponed until conditions improve to an acceptable level.

(7) (No change.)

(d) Pyrotechnic equipment and installation. Reusable mortars shall be made of steel tubing or equivalent (cast iron and other fragmenting types of metal are prohibited) having a smooth bore and a steel bottom plate equal in thickness[,] to the tube welded continuously around its perimeter except as follows.

(1) Wooden base plugs in good condition may be substituted for welded steel bottom plates [plate] where such plugs have a minimum thickness of 1/2 inch per inch of bore diameter [and securely fastened.]. Plugs shall be securely fastened. Wooden base plugs shall be discarded and replaced when split, shrunken, charred to less than minimum required thickness, or otherwise damaged. Screw type caps for plugs are prohibited.

(2) Mortars limited solely for the firing of single break shells and finale batteries may be made of spiral or convolute wound chipboard or kraft [draft] paper tubes. Tubes for two-inch shells shall have a wall thickness of not less than 1/4 inch. Tubes for three-inch shells shall have a wall thickness of not less than 3/8 inch. Tubes for four, five, and six inch shells shall have a wall thickness of not less than 1/2 inch. All tubes shall have a base plug in good condition, the thickness of which shall be not less than 1/2 the inside diameter of the tube. The base plug shall be securely fastened to the tube.

(3) For single break shells, three-inch and four-inch mortar tubes may be made of 26 gauge or heavier galvanized iron riveted [rivetted] along their seams, beginning at a point within one inch of each end and spaced not more than three inches between rivets and having a two-inch wooden base plug.

(4) -(6) (No change.)

(e) (No change.)

(f) Ready boxes.

(1) (No change.)

(2) A flame retardant tarp or a wood, rubber, or steel cover shall protect all ready boxes from the time they are placed in position until they are emptied, except that the cover may be lifted when shells are taken from or returned to the boxes.

(3) The use of compartmentation[,] to avoid the mixing of shell sizes[,] is recommended in large displays. Individual boxes should be used for each different shell size.

(g) Loading mortars.

(1) Mortars shall be cleared of paper or other burning material after being fired, if necessary. No shell hang firing shall be cleared from mortars for at least 30 minutes after being lighted.

(2) (No change.)

(h) Firing mortars.

(1) (No change.)

(2) Electric firing, if utilized, shall comply with the following requirements.

(A) Connecting any electric firing circuit to any power supply, whether battery or other, is prohibited until all special effects fireworks, pyrotechnics, and explosives in the sequence are connected to firing leads and are cleared for actual firing. Circuitry may be tested with a galvanometer equipped with a silver chloride battery.

(B) Power sources for firing fireworks[,] and pyrotechnics shall be restricted to batteries or individually isolated, ungrounded generators used for firing purposes only. Commercial or house power circuits may be used for this purpose in conjunction with an appropriate transformer.

(C) Short circuiting shunts shall be maintained on all electrically fired pyrotechnic items during preparatory operations[,] including loading, setting, and adjustment.

(D) (No change.)

(E) Each explosive charge set in or on [the] water, either salt or fresh, shall be fired by an individual two wire circuit.

(i) Public display safety precautions.

(1) A display must be conducted in accordance with all local regulations[,] and conditions prescribed by the fire prevention officer at the time of the site inspection.

(2) During the display, at least one approved Class A type 2 1/2 gallon fire extinguisher[,] or charged garden hose connected to a water line or equivalent means of fire protection shall be provided.

(3) Fireworks articles [Articles] or items shall not be permitted to cross over

or burst directly above the spectator area during such display and it shall be in full view of the pyrotechnic operator at the time of the burst.

(4) (No change.)

§591.28. *Existing Facilities and Conditions.* Existing facilities and conditions outlined below [following] which do not comply with the Insurance Code, Article 5.43-4[,] and these sections, shall come into compliance within the following time periods after the effective date of these sections:

(1) manufacturing facilities-five years;

(2) bulk storage facilities-three years; and

(3) individuals applying for a pyrotechnic operator license before September 1, 1986, may be issued a license if they otherwise qualify and have passed the required examination, but do not comply with the supervisory requirement of §591.11(e)(1) of this title (relating to Requirements, Pyrotechnic Operator License [Expiration, License and Permit]).

§591.30. *Savings Clause.* Each cause of action, pending litigation, matter in process before the Texas Commission on Fire Protection [State Board of Insurance] or the state fire marshal, or matter hereafter arising from an event occurring prior to the time these sections become effective shall be determined in accordance with and governed by the provisions of statutes, sections, orders, or official interpretations in effect at the time of the occurrence of the subject event, including, but in particular not limited to, those matters arising in §§591.1-591.7 of this title (relating to Storage of Fireworks by Jobbers and Distributors (Class A and Class B); Storage of Class C Fireworks by Jobbers and Distributors; Storage of Fireworks by Jobbers and Dealers for the Purpose of Transportation; Granting of Permits for, and the Presentation of, Public Displays of Fireworks; Minimum Requirements for Retail Fireworks Stands; Transportation of Fireworks on Highways; and Savings Clause), and §§591.101-591.106 of this title (reserved for [relating to] Purpose; Definitions; Fireworks Stand Design and Construction; Stand Location; Safety Requirements; and Supervisor Required), and this section operates to save from repeal in that circumstance the application of such law and procedure in respect of any such circumstances from the amendment, change, or repeal contemplated by these sections, notwithstanding any provision of these sections to the contrary, if any, or any provision of conflict or ambiguity.

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 November 25, 1992.

TRD-9215798

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Earliest possible date of adoption: January 4, 1993

For further information, please call: (512) 873-1700



Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure and Texas Register Act, Article 6252-13a, Texas Civil Statutes, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

The State Board of Insurance, at a Board meeting scheduled for 9 a.m. January 6,

1993, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, will consider a proposal filed on behalf of the Texas Workers' Compensation Insurance Facility (the Facility). The Facility proposed rules on procedures for hearing appeals. The rules were proposed in a petition (Reference Number W-1092-66), filed by the Facility on October 29, 1992.

According to the Facility's petition, these rules were approved by the Facility's Governing Committee on October 19, 1992. If approved by the Board, these rules will become a part of the Texas Basic Manual of Rules, Classifications and Rates for Workers' Compensation and Employers Liability Insurance.

The proposed rules are intended to codify current informal procedures at the Facility. The Facility asserts that the codification of the current appeals procedures will be beneficial to the efficient administration of their appeals process.

A copy of the petition containing the full text of the proposed rules is available for review in

the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Wanda Carr at (512) 463-6527 (refer to Reference W-1092-66).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedures and Texas Register Act.

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

Issued in Austin, Texas, on November 30, 1992.

TRD-9215925

Linda K. von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

For further information, please call: (512) 463-6328





Name: Kevin Kamin
Grade: 5
School: Lakewood Elementary, Hurst-Euless-Bedford ISD

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter G. Resident Assessment

• 40 TAC §19.604

The Texas Department of Human Services has withdrawn from consideration the proposed amendment to §19.604, concerning Preadmission Screening and Annual Resident Review (PASARR), in its Long Term Care Nursing Facility Requirements rule chapter. The proposed amendment appeared in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4081). The effective date of the withdrawal is the date of filing.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215992 Nancy Murphy
Agency liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: November 31, 1992





Name: Charlotte Hsieh

Grade: 6

School: Lakewood Elementary, Hurst-Euless-Bedford ISD

Adopted Sections

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE Part III. Texas Feed and Fertilizer Control Service Chapter 61. Feed

Labeling

• 4 TAC §61.22

The Texas Feed and Fertilizer Control Service adopts an amendment to §61.22, with changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7143).

Editorial changes were necessary to make the text correct.

The section will function as before. The changes were editorial.

One comment was received noting that the word maximum in §61.22(4)(A)(vi) (I) should be minimum.

The name of a group or association making comments for the section is as follows: OTSC Staff.

Agency agrees with comment and changes document to reflect agreement.

The amendment is adopted under the Texas Agriculture Code, Chapter 141, §141.004, which provides the Texas Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

§61.22. Labeling of Commercial Feed. Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this part on the principal display panel of the product with the following general format, unless otherwise specifically provided.

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

(4) Guaranteed analysis of the feed.

(A) The guaranteed analysis of the feed shall include the following items in the following order, unless exempted in accordance with subparagraph (E) of this paragraph.

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

(v) The guarantees for minerals shall be expressed as follows.

(I) Commercial feeds containing a total of 6.5% or more calcium, phosphorus, and/or salt shall include a guaranteed analysis of the following minerals in the following order:

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

(-d-) such other minerals as may be required by subclause (IV) of this clause.

(II) Minerals, except salt, shall be guaranteed in terms of percentage of the element:

(-a-) (No change.)

(-b-) other minimum mineral guarantees shall be stated in percentage when the concentration is 1.00% (10,000) ppm or greater; below 10,000 ppm these guarantees may be expressed either in percentage or in ppm as long as the system used is consistent among these minerals on a given product label and among the product labels.

(III)-(IV) (No change.)

(vi) The guarantees for vitamins shall be expressed as follows.

(I) If made, guarantees for minimum vitamin content of commercial feeds and feed supplements shall be stated on the label in milligrams per pound of feed, except that:

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

(-f-) oils and premixes containing vitamins A, D, and/or E may be labeled to show vitamin content in terms of units per gram.

(II) If made, guarantees for vitamin content on the label of a commercial feed shall state the guarantees as menadione, riboflavin, d-pantothenic acid, thiamine, niacin, vitamin B₆, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid, and/or carotene.

(vii)-(ix) (No change.)

(B)-(E) (No change.)

(5) Feed ingredients.

(A) The feed ingredients statement for a commercial feed shall include the name of each ingredient in the feed or the collective term for each grouping of feed ingredients contained in the feed, unless exempted under subparagraph (J) of this paragraph.

(B)-(J) (No change.)

(6)-(7) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in College Station, Texas, on November 24, 1992.

TRD-9215878

George W. Latimer, Jr.
Texas State Chemist
Texas Feed and Fertilizer
Control Service

Effective date: December 16, 1992

Proposal publication date: October 16, 1992

For further information, please call: (409) 845-1121

TITLE 16. ECONOMIC REGULATION Part I. Railroad Commission of Texas Chapter 5. Transportation Division

Subchapter H. Tariffs and Schedules

• 16 TAC §5.133

The Railroad Commission of Texas adopts an amendment to §5.133, concerning Allowances Prohibited, with changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7144).

Current sand and gravel transportation industry practices with regard to combined bids for both regulated and unregulated transportation present a problem because something of value, namely the difference between fair market charges for the involved unregulated transportation and the actual charge for such transportation in a combined bid, is being provided to shippers by carriers in order to

secure regulated transportation business. That practice is a violation of the Commission's regulations. Adoption of subsection (d) will assist in the enforcement of existing Commission regulations prohibiting allowances to shippers. The text of subsection (d) has been revised to: clarify the kinds of combined quotes that must separately state regulated and unregulated charges; and change a reference to unregulated "commodities" to unregulated "transportation." Proposed subsection (e) is not adopted because the segregated charge for unregulated transportation may not accurately reflect the fair market value for the service in every instance.

The amended section will prevent manipulation of regulated transportation rates and will facilitate enforcement of the commission's regulations prohibiting allowances given to shippers.

Comments were received from 11 sand and gravel carriers, as well as from the Sand and Gravel Motor Carriers Association, Inc., an association of sand and gravel carriers. All of the comments were in opposition to the proposed amendment on the grounds that the Commission should not "regulate" unregulated transportation, and that there is no problem that needs to be addressed by this amendment. The commission believes that a problem does exist with respect to the possibility of allowances in the form of unreasonably low unregulated charges being given to shippers by carriers as an inducement to receive regulated transportation. By not adopting proposed subsection (e), the commission is not regulating transportation outside its jurisdiction.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorizes the commission to regulate motor carriers in all matters.

§5.133. Allowances Prohibited.

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

(d) No motor carrier authorized to transport sand, gravel, aggregate, and other construction materials or road building materials, in bulk, shall directly or indirectly offer to provide any regulated motor carrier service pursuant to certificates issued by this commission on the basis of a combination bid, quote, or invoice that includes both the regulated transportation of these materials at approved commission rates and the unregulated transportation of these materials unless there is clearly shown and set forth in the bid, quote, or invoice the exact and true rate to be charged for such unregulated transportation, and a separate and distinct statement for freight charges for not less than the established commission rate for any associated regulated transportation to the same project or the same customer.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215721

Nolan Ward
Hearings Examiner, Legal
Division-General Law
Railroad Commission of
Texas

Effective date: December 14, 1992

Proposal publication date: October 16, 1992

For further information, please call: (512) 463-7094

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §163.3

The Texas State Board of Medical Examiners adopts the repeal of §163.3 concerning examinations required by the board for licensure, without changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7305).

Extensive rewrite of the section was felt necessary; therefore repeal with simultaneous new wording is adopted.

The section will function by clarification by omission.

No comments were received regarding adoption of the repeal.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215762

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: December 15, 1992

Proposal publication date: October 20, 1992

For further information, please call: (512) 834-4502

The Texas State Board of Medical Examiners adopts new §163.3 concerning examinations required by the board for licensure, without changes to the proposed text as published in the October 20, 1992 issue of the *Texas Register* (17 TexReg 7306).

Extensive rewrite was felt necessary; therefore, repeal with simultaneous new chapter

wording is adopted to allow for acceptance of the United States Medical Licensing Examination for licensure in Texas.

The section will function by clarifying the rules under which a physician may be licensed based on passage of the United States Medical Licensing Examination.

One comment was received. The commenter requested that a new paragraph be added to the rules stating that the National Board of Osteopathic Medical Examiners examination be accepted as an examination for licensure by the board.

The issue of licensure by examination based on the National Board of Osteopathic Medical Examiners Examination was addressed in a previous rule change. The Texas State Board of Medical Examiners voted to not accept this as a means for licensure by examination.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215763

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: December 15, 1992

Proposal publication date: October 20, 1992

For further information, please call: (512) 834-4502

• 22 TAC §163.9

The Texas State Board of Medical Examiners adopts an amendment to §163.9 concerning procedural rules for all licensure applicants, with changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7306).

The section will clarify the term "full force" as used in the Medical Practice Act regarding procedural rules for licensure applicants.

The section will function by clarifying the rules regarding whether a licensure applicant by reciprocal endorsement has a valid license in another state with which to reciprocate.

No comments were received regarding adoption of the amendment.

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

§163.9. Procedure Rules for all Licensure Applicants.

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

(j) Applicants for licensure by reciprocal endorsement, must possess a license in another jurisdiction which is in full force and not canceled, suspended, revoked, or restricted. A physician with a license in full force may include a physician who does not have a current, active, valid annual permit in another jurisdiction because:

(1) that jurisdiction requires the physician to practice in the jurisdiction before the annual permit is current or;

(2) that jurisdiction requires the physician, prior to practicing in that jurisdiction, to hold a current professional liability insurance policy before the annual permit is current.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215764

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: December 15, 1992

Proposal publication date: October 20, 1992

For further information, please call: (512) 834-4502

Chapter 165. Administration of Examinations

• 22 TAC §165.1

The Texas State Board of Medical Examiners adopts an amendment to §165. 1, concerning examination administration, without changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7307).

The amendment will allow for acceptance of the United States Medical Licensing Examination as a means for licensure in Texas.

The amendment will enable clarification of the examinations to be administered by the board.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215765

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: December 15, 1992

Proposal publication date: October 20, 1992

For further information, please call: (512) 834-4502

Chapter 171. Institutional Permits

• 22 TAC §171.9

The Texas State Board of Medical Examiners adopts new §171.9, concerning teaching fellow permit, without changes to the proposed text as published in the October 20, 1992, issue of the *Texas Register* (17 TexReg 7307).

The new section will allow for a teaching permit at Texas medical schools under certain conditions.

The section will function by allowing qualified physicians to teach at Texas medical schools without obtaining full licensure. The permit will be issued to the institution authorizing the named teaching fellow to practice within the teaching confines of the medical school as a part of the duties and responsibilities assigned by the school.

No comments were received regarding adoption of the new section.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215766

Homer R. Goehrs, M.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: December 15, 1992

Proposal publication date: October 20, 1992

For further information, please call: (512) 834-4502

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §217.11

The Board of Nurse Examiners adopts the repeal of §217.11, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6848).

The adoption of the repeal of this section will allow the adoption of a new, more current section.

The adoption of the repeal of this section will permit the adoption of a new section with extensive rewrite for clarification purposes.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215881

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: December 16, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512) 835-8650

The Board of Nurse Examiners adopts new §217.11, with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6848).

The adoption of this section will provide clarification to RNs as to the board's definition of the current legal standards of nursing practice that would ensure the welfare of the client. These recommendations were made by the task force convened by the Board of Nurse Examiners to review the rule.

The adoption of the new section will provide a clearer definition of standards of professional nursing practice which addresses current aspects of nursing practice.

COMMENT: Four commenters suggested that §217.11(1) which requires the RN to "know and conform to the Nurse Practice Act and the Board's rules and regulations as well as all Federal, state, or local laws, rules, or regulations affecting the practice of professional nursing" is too broad.

RESPONSE: The board agrees with the commenters and made appropriate changes.

COMMENT: One commenter questioned the exact meaning of the term "systematic approach" in §217.11(3).

RESPONSE: The Board does not believe the change is substantive. The task force recommended the change from "nursing process" in the current rules to "systematic approach" to allow other systems (i.e., case management, etc.) to meet this standard.

COMMENT: Two commenters questioned the addition of the term "non-eficacious" in §217.11(5) and asked if it could be construed that the RN is making a medical judgment.

RESPONSE: The board believes that "non-eficacious" is a term frequently related to drug utilization and that RNs should be expected to question the non-eficacious use of drugs.

COMMENTS: Three commenters questioned §217.11(20) regarding the reporting of other health care practitioners to their boards. Two agreed that RNs should report unsafe practice but should not assume responsibility for monitoring others. One commenter raised a question about the liability of RNs who report other health care providers.

RESPONSE: The board believes that the language "The RN should report unsafe practice conditions or other practitioners to the appropriate authority or licensing board," does not require the RN to monitor or sit in judgment. It merely indicates to the RN that the board expects RNs to report unsafe conditions or practitioners. This mirrors the language in Article 4525a, §7. The wording in §217.11(20) was added in response to the Senate Subcommittee's question about whether the board could take action against an RN for failing to report blatant abuse by facilities or other health care providers. The statutory provisions regarding immunity in Article 4525a, §10(a) relate to those filing a report.

COMMENT: One commenter recommended using consistent wording where "educational preparation, knowledge, ability, and experience" appear.

RESPONSE: The board agrees and will make those changes in §217.11(15) and (17).

COMMENT: One commenter suggested that "supervise" does not indicate the quality of the supervision in §217.11(16).

RESPONSE: This is the current language and it has not presented a problem.

COMMENT: One commenter stated that §217.11(20) should track the identical language in the statute.

RESPONSE: The comment appears semantic and not substantive; therefore, the board made no changes.

Each of the following commenters were neither for nor against the proposed new rule; rather, they offered suggestions for the board's consideration: The University of Texas at Arlington; Directors of Nursing Services, Methodist Hospital, Lubbock; Texas Nurses Association.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the au-

thority to make and enforce and rules and regulations necessary for the performance of its duties before it.

§217.11. Standards of Professional Nursing Practice. The responsibility of the Texas Board of Nurse Examiners (board) is to regulate the practice of professional nursing within the State of Texas. The purpose of defining standards of practice is to identify roles and responsibilities of the registered professional nurse (RN) in any health care setting. The standards for professional nursing practice shall establish a minimum acceptable level of professional nursing practice. The RN shall:

(1) know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules, or regulations affecting the RN's current area of nursing practice;

(2) provide, without discrimination, nursing services regardless of the age, disability, economic status, gender, national origin, race, religion, or health problems of the client served;

(3) use a systematic approach to provide individualized, goal-directed nursing care by:

(A) performing nursing assessments regarding the health status of the client;

(B) making nursing diagnoses which serve as the basis for the strategy of care;

(C) developing a plan of care based on assessment and nursing diagnosis;

(D) implementing nursing care; and

(E) evaluating the client's responses to nursing interventions;

(4) institute appropriate nursing intervention which might be required to stabilize a client's condition and/or prevent complications;

(5) clarify any order or treatment regimen that the nurse has reason to believe is inaccurate, non-eficacious, or contraindicated by consulting with the appropriate licensed practitioner and notifying the ordering practitioner when the RN makes the decision not to administer the medication or treatment;

(6) know the rationale for and the effects of medications and treatments and shall correctly administer the same;

(7) accurately report and document the client's symptoms, responses, and status;

(8) implement measures to promote a safe environment for clients and others;

(9) implement measures to prevent exposure to infectious pathogens and communicable conditions;

(10) respect the client's right to privacy by protecting confidential information unless obligated or allowed by law to disclose the information;

(11) promote and participate in client education and counseling based on health needs;

(12) collaborate with the client, members of the health care team and, when appropriate, the client's significant other(s) in the interest of the client's health care;

(13) consult with, utilize, and make referrals to appropriate community agencies and health care resources to provide continuity of care;

(14) when acting in the role of nurse administrator, assure that adequate strategies are in place to verify the current Texas licensure and credentials of personnel for whom he/she is responsible;

(15) make assignments to others that take into consideration client safety and which are commensurate with the educational preparation, experience, knowledge, and ability of the persons to whom the assignments are made;

(16) supervise nursing care provided by others for whom the RN is administratively or professionally responsible;

(17) accept only those nursing assignments that are commensurate with one's own educational preparation, experience, knowledge, and ability;

(18) obtain instruction and supervision as necessary when implementing nursing procedures or practices;

(19) be responsible for one's own continuing competence in nursing practice and individual professional growth;

(20) report unsafe nursing practice by an RN which a nurse has reasonable cause to suspect has exposed or is likely to expose a client unnecessarily to risk of harm as a result of failing to provide client care that conforms to the minimum standards of acceptable and prevailing professional practice. The RN should report unsafe practice conditions or other practitioners to the appropriate authority or licensing board.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

Effective date: December 16, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512)
835-8650◆ ◆ ◆
• 22 TAC §217.13

The Board of Nurse Examiners adopts the repeal of §217.13, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6849).

The adoption of the repeal of this section is necessary to allow the adoption of a new section.

The adoption of the repeal will allow adoption of the new section offering further clarification of the definition of "unprofessional conduct" by a registered nurse.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

Effective date: December 16, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512)
835-8650

The Board of Nurse Examiners adopts new §217.13, with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6849).

The new section is being adopted to provide further clarification of the board's definition of "unprofessional conduct." The language provides a clear list of behaviors which the board deems to be unprofessional and thereby harmful to the public. These recommended changes are the result of the task force convened by the Board of Nurse Examiners to review the rules.

The adoption of this section will provide greater public protection as a result of establishing a clearer definition of "unprofessional conduct" by a registered nurse.

COMMENT: Four commenters suggested that §217.13(1) which requires the RN to

"know and conform to the Nurse Practice Act and the Board's rules and regulations as well as all Federal, state, or local laws, rules, or regulations affecting the practice of professional nursing" is too broad.

RESPONSE: The board agrees with the commenters and made the appropriate change in the wording.

COMMENT: One commenter stated that the addition of "emotional condition" in §217.13(11) would be obvious and the nurse would not practice if she/he was emotionally unable.

RESPONSE: The board disagrees with the commenter and believes the subsection as stated is necessary in order to more effectively protect the public.

COMMENT: One commenter questioned what "failing to take precautions" constitutes in §217.13(15).

RESPONSE: This is not new language. The current rule already contains the language which has not presented any problems.

COMMENT: One commenter questioned "within a reasonable time" in §217.13(20).

RESPONSE: Again, this is not new language.

COMMENT: One commenter asked the board to include qualifiers in its unprofessional conduct rules stating that these qualifiers would reduce unnecessary reporting of minor violations.

RESPONSE: The commenter's proposed language would significantly narrow the intent and expressed language of Article 4525a. Therefore, the board does not believe any change is necessary.

COMMENT: One commenter recommended using consistent wording where "educational preparation, knowledge, ability and experience" appear.

RESPONSE: The board agrees and will make those changes in §217.13(9) and (11).

COMMENT: One commenter stated that §217.13(20) should track the identical language in the statute.

RESPONSE: The comment appears semantic and not substantive; therefore, no change was necessary.

COMMENT: One commenter suggested splitting §217.13(10) into two separate parts.

RESPONSE: The board does not feel this is necessary.

COMMENT: One commenter suggested that an additional qualifier be added to §217.13(13).

RESPONSE: The proposed language is consistent with current language and has not presented a problem.

COMMENT: One commenter suggested that §217.13(18) include a reference to the Health and Safety Code regarding referrals.

RESPONSE: The board believes nurses do not have access to the Health and Safety Code and that the proposed language gives the nurse appropriate direction.

Each of the following commenters were neither for nor against the proposed new rule; rather, they offered suggestions for the board's consideration: The University of Texas at Arlington; Directors of Nursing Services, Methodist Hospital, Lubbock; Texas Nurses Association.

The new section is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce rules and regulations necessary for the performance of its duties before it.

§217.13. *Unprofessional Conduct.* The unprofessional conduct rules are intended to protect clients and the public from incompetent, unethical, or illegal conduct of licensees. The purpose of these rules is to identify unprofessional or dishonorable behaviors of the registered professional nurse (RN) which the board believes are likely to deceive, defraud, or injure clients or the public. These behaviors include, but are not limited to:

(1) failing to know and conform to the Texas Nurse Practice Act and the board's rules and regulations as well as all federal, state, or local laws, rules, or regulations affecting the RN's current area of nursing practice;

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

(3) failing to administer medications or treatments or both in a responsible manner;

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

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

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

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

(8) when acting in the role of nurse administrator, failing to assure that strategies are in place to verify the current Texas licensure/credentials of personnel for whom he/she is administratively responsible;

(9) delegating nursing care functions to a person who lacks the educational preparation, experience, knowledge, or ability to perform these functions;

(10) making assignments of nursing care to a person who lacks the ability or knowledge to perform such assignments, or failing to supervise the delivery of nursing care for which the RN is responsible;

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

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

(13) leaving a nursing assignment without notifying one's immediate supervisor;

(14) failing to follow the policy and procedure for the wastage of medications at the facility where the RN was employed or working at the time of the incident;

(15) misappropriating, in connection with the practice of nursing, medications, supplies, equipment, or personal items of the client, employer, or any other person or entity or failing to take precautions to prevent such misappropriation;

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

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

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

(19) physically, emotionally, or financially exploiting the client or the client's significant other(s);

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

(21) failing to report the unauthorized practice of professional nursing;

(22) failing to repay a guaranteed student loan, as provided in the Texas

Education Code, §57.491.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215884

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: December 16, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512) 835-8650

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**Chapter 218. Delegation of
Selected Nursing Tasks by
Registered Nurses to
Unlicensed Personnel**

• 22 TAC §§218.1-218.12

The Board of Nurse Examiners adopts the repeal of §§218.1-218.12, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6850).

The repeals are adopted to enable the adoption of the new chapter of delegation rules.

Adoption of the repeals of this chapter will be clarification by omission and enabling the adoption of the rewrite of the chapter.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215885

Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: December 16, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512) 835-8650

◆ ◆ ◆
• 22 TAC §§218.1-218.11

The Board of Nurse Examiners adopts new §§218.1-218.11. Sections 218.4, 218.8, and 218.9 are adopted with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6851). Sections 218.1-218.3,

218.5-218.7, 218.10, and 218.11 are adopted without changes and will not be republished.

The adoption of this chapter will provide clear direction to the RN regarding delegation of selected nursing tasks to unlicensed persons providing service in a variety of settings. This new language was the result of recommendations made by the task force convened by the Board of Nurse Examiners.

The rules provide guidance as to what may and may not be delegated and under what conditions tasks may be delegated. This will better protect the recipient of nursing care by providing guidelines for nursing care that may be safely delegated to unlicensed persons in a variety of settings.

COMMENT: Five commenters asked the board to broaden the delegable task to include injectable medications such as insulin.

RESPONSE: Based upon the discussion which occurred during the task force meetings, it was felt that this would generate a great deal of opposition.

COMMENT: One commenter suggested that the board retain the exclusions in the current rules, especially §218.12; that maintaining the exclusions would assist parents in dealing with school districts.

RESPONSE: The board felt the exclusions were no longer necessary since the proposed new rules are set forth to guide the nurse.

COMMENT: One commenter recommended strengthening the language regarding partnership between the nurse and client.

RESPONSE: The rules do address partnership. The amount of partnership varies from setting to setting and over emphasis of this one aspect may be inappropriate at certain times and in certain settings.

COMMENT: One commenter suggested that the language regarding "communication through traditional or non-traditional means" which was dropped from the rules be reinstated.

RESPONSE: The board agreed with the commenter.

COMMENT: One commenter was concerned that no minimum standards for frequency of supervision had been established for those delivering services in the independent living environments and that lack of a standard could cause conflict between the nurse and client.

RESPONSE: The task force felt that the RN should make the decision based on the many variables involved. The board agreed with the task force.

COMMENT: One commenter stated that the rules give no direction on how to document the verification of the unlicensed person's knowledge and ability to perform the delegated task.

RESPONSE: The board's rules typically have not been prescriptive.

COMMENT: One commenter suggested that the word complex be used to replace the word skilled in §218.4(2)(B).

RESPONSE: The board feels that RNs are familiar with the term "skilled" as it relates to home health service and therefore, no changes are necessary.

COMMENT: A suggestion was made to add "unless the context indicates otherwise" to the definition of client.

RESPONSE: It was felt this wording is not necessary.

COMMENT: A suggestion was made that §218.4(2)(C) be reworded to add "individual client and, if appropriate, families and significant others."

RESPONSE: The board had no objection and added the language.

COMMENT: A suggestion was made to add "where the client participates in the management of their care" to §218.8(2) to clarify the client's involvement.

RESPONSE: The board agreed as the suggestion does not change the content or intent of the rules.

None of the following were opposed, rather offering suggested changes. Seven groups commended the board and the task force for its efforts in developing the rules: Texas Nurses Association; Early Childhood Intervention Program; Personal Attendant Services Task Force; Texas Respite Resource Network; Association for Retarded Citizens; Texas Planning Council for Developmental Disabilities; Visiting Nurses Association; Texas Department of Human Services; Amarillo Area Hospital Home Care; ADVOCACY, Inc.; Texas Association of Home Care.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce rules and regulations necessary for the performance of its duties before it.

§218.4. *Supervision.* The registered professional nurse shall provide supervision of all nursing tasks delegated to unlicensed persons in accordance with the following conditions.

(1) The degree of supervision required shall be determined by the RN after an evaluation of appropriate factors involved including, but not limited to, the following:

(A) the stability of the condition of the client;

(B) the training and capability of the unlicensed person to whom the nursing task is delegated;

(C) the nature of the nursing task being delegated; and

(D) the proximity and availability of the RN to the unlicensed person when the nursing task will be performed.

(2) When the RN delegates nursing tasks to unlicensed persons, the RN or another equally qualified RN shall be available in person or by telecommunications, and shall make decisions about appropriate levels of supervision using the following examples as guidelines.

(A) In situations where the RN's regularly scheduled presence is required to provide nursing services, including assessment, planning, intervention, and evaluation of clients whose health conditions are changing and/or to evaluate client's health status, the RN must be readily available to supervise the unlicensed person in the performance of delegated tasks. Settings include, but are not limited to, acute care, long term care, rehabilitation centers, and/or clinics providing public health services.

(B) In situations where nursing care is provided in the client's residence and the RN is required to assess, plan, intervene, and evaluate the client's unstable and unpredictable condition and need for skilled nursing services, the RN shall be responsible for the nursing care rendered and shall make supervisory visits at least every two weeks. The RN shall assess the between the unlicensed person and the client to determine whether health care goals are being met. Settings include, but are not limited to, group homes, foster homes, and/or the client's residence.

(C) In situations where nursing care is provided in the client's residence or independent living environments and the client has stable and predictable health care needs, the RN shall make supervisory visits when, in consultation with the individual client and when appropriate, family and significant others, the RN determines it is necessary to assure that safe and effective services are provided. The ability or desire of the client to participate in the supervision of the care provided by the unlicensed person should be considered when establishing the frequency of supervisory visits. Settings include, but are not limited to, hospice care, group homes, foster homes, the client's residence, school, and place of work.

§218.8. *Administration of Medications.* The administration of medications may be delegated only in accordance with this section.

(1) In settings where the registered professional nurses' regularly scheduled presence is required to perform ongoing assessment, intervention, and evaluation of the client's health status/stability, the RN may only delegate in compliance with subparagraphs (A) and (B) of this section.

(A) An RN may delegate the administration of medications to unlicensed persons working in a long-term care setting and holding valid medication aide permits issued by the Texas Department of Health under the Health and Safety Code, Chapter 242, Subchapter F. The RN shall be knowledgeable regarding the rules of the Texas Department of Health governing medication aides and shall assure that the medication aide is in compliance with the statute.

(B) An RN may delegate the administration of medications to unlicensed persons working in a home health setting and holding valid home health medication aide permits issued by the Texas Department of Health under the Health and Safety Code, Chapter 142, Subchapter B. The RN shall be knowledgeable regarding the rules of the Texas Department of Health governing home health medication aides and shall assure that the home health medication aide is in compliance with the statute. The RN shall make a supervisory visit while the medication aide is in the client's residence at least weekly or when any change in medication regimen is ordered.

(2) In independent living environments where the client's clinical and behavioral status is stable and predictable, does not require the regular presence and assessment, intervention, and evaluation by an RN, and the client has expressed his/her ability and willingness to participate in the management of his/her care, including hospice settings where the client's deteriorating condition is predictable, the RN may delegate the administration of medications. The delegation may only occur after the RN has trained or verified the training of the unlicensed person to administer the medication. The RN may only delegate medications which are administered orally or via permanently placed feeding tubes, sublingually, or topically, including eye, ear, and nose drops and vaginal or rectal suppositories.

(3) An RN shall not delegate the following tasks to any medication provider:

(A) calculation of any medication doses except for measuring a prescribed amount of liquid medication and breaking a tablet for administration, provided the RN has calculated the dose;

(B) administration of the initial dose of a medication that has not been previously administered to the client;

(C) administration of medications by any injectable route;

(D) administration of medications used for intermittent positive pressure breathing or other methods involving medication inhalation treatments;

(E) administration of medications by way of a tube inserted in a cavity of the body except as stated in paragraph (2) of this section (relating to administration of medications);

(F) responsibility for receiving verbal or telephone orders from a physician, dentist, or podiatrist; and

(G) responsibility for ordering a client's medication from the pharmacy.

§218.9. Specific Nursing Tasks Which May Be Delegated.

(a) By way of example, and not in limitation, the following nursing tasks are ones that are within the scope of sound professional nursing practice to be delegated, regardless of the setting, provided the delegation is in compliance with §218.3 of this title (relating to General Criteria for Delegation) and the level of supervision required is determined by the RN:

(1) non-invasive and non-sterile treatments unless otherwise prohibited by §218.10 of this title (relating to Nursing Tasks That May Not Be Routinely Delegated);

(2) the collecting, reporting, and documentation of data including, but not limited to:

(A) vital signs, height, weight, intake and output, clintest, and hematocrit results;

(B) changes from baseline data established by the RN;

(C) environmental situations;

(D) client or family comments relating to the client's care; and

(E) behaviors related to the plan of care;

(3) ambulation, positioning, and turning;

(4) transportation of the client within a facility;

(5) personal hygiene and elimination, including vaginal irrigations and cleansing enemas;

(6) feeding, cutting up of food, or placing of meal trays;

(7) socialization activities;

(8) activities of daily living; and

(9) reinforcement of health teaching planned and/or provided by the registered nurse.

(b) By way of example, and not in limitation, in independent living environments, where the client has stable and predictable health care needs, the RN may delegate activities of daily living and nursing tasks required for maintenance of the client's status. These tasks may only be delegated in accordance with §218.3 and §218.4 of this title (relating to General Criteria and Supervision) when the RN has assessed the client's available support systems and the client has expressed, through traditional or non-traditional means of communication, his/her ability and willingness to share in the management of his/her care. Delegable tasks, in addition to those identified in subsection (a) of this section include:

(1) medication administration in compliance with §218.8(2) of this title (relating to Administration of Medications);

(2) assistance with feeding, including tube feeding through permanently placed tubes;

(3) assistance with elimination, including intermittent catheterization; and

(4) assistance with other activities necessary to maintain the independence of the client such as maintenance of skin integrity and mobility.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215886 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: December 16, 1992

Proposal publication date: October 6, 1992

For further information, please call: (512) 835-8650

Chapter 221. Advanced Nurse Practitioners

• 22 TAC §221.2

The Board of Nurse Examiners adopts an amendment to §221.2, without changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 6996).

The amendment is being adopted in response to the recommendations made by the ANP Advisory Committee for a petitioning

process for individuals not previously qualified to be recognized as Advanced Nurse Practitioners due to ANP educational programs lacking accreditation.

This amendment creates the petitioning process for those individuals not previously qualified to be recognized as ANPs due to educational programs lacking accreditation. Those early pioneers of the Nurse Practitioner movement will be afforded the opportunity to demonstrate that they are safe and effective practitioners; to obtain board approval and to meet the health care needs of their communities through advanced practice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215887 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: December 16, 1992

Proposal publication date: October 9, 1992

For further information, please call: (512) 835-8650

Part XXVI. Texas Board of Licensure for Professional Medical Physicists

Chapter 601. Medical Physicists

• 22 TAC §§601.1-601.18

The Texas Board of Licensure for Professional Medical Physicist (Board), with the approval of the Texas Department of Health adopts new §§601.1-601.18, concerning licensure and regulation of medical physicists. Sections 601.2, 601.4, 601.6, 601.7, 601.8 and 601.9 are adopted with changes to the proposed text as published in the August 11, 1992, issue of the *Texas Register* (17 Tex Reg 5595). Sections 601.1, 601.3, 601.5, and 601.10-601.18 are adopted without changes and will not be republished.

The sections implement the requirements of the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, (Senate Bill 521, Texas Legislature, Regular Session, 1991) which became effective September 1, 1991. The sections ensure the protection of the health, safety, and welfare of the citizens of Texas from the harmful effects of excessive radiation and from the threat if medical physics is practiced by incompetent persons.

The following comments were received concerning the proposed sections.

COMMENT: The board received questions and concerns regarding how the rules and act would function and requests for clarification related to enforcement decisions, including what constitutes the practice of medical physics.

RESPONSE: The board made no rule changes at this time and has appointed a committee of the board to study the concerns.

COMMENT: Concerning §601.2, several commenters stated that several of the definitions were too broad and that the meanings overlapped.

RESPONSE: Since the definitions were taken directly from the Act, the department made no changes.

COMMENT: Concerning §601.4, a commenter recommended that the time frame for penalty fees be clarified.

RESPONSE: The board agreed and changed the language for both the annual and the temporary license to a 1-90 day penalty fee and a 91-day to two-year penalty fee.

COMMENT: Concerning §601.5, a request was made to include chiropractors in the exemptions.

RESPONSE: Chiropractors are included in the definition of a "practitioner" in §601.2. Practitioners are exempt when performing radiologic procedures as set out in §601.5(c)(1).

COMMENT: Concerning §601.5, a request was made to include nuclear pharmacists to the exemptions.

RESPONSE: Nuclear pharmacists are licensed under the Texas Pharmacy Act by the Texas State Board of Pharmacy. A pharmacist may perform any activities within his or her scope of practice as determined by that Act and that board. If the activities of a pharmacist are not within the pharmacist's license and constitute engaging in the practice of medical physics, the person performing the activities would have to be a licensed medical physicist. The Texas Medical Physics Practice Act includes specified exemptions; other exemptions cannot be promulgated in these rules.

COMMENT: Concerning §601.6(c)(2)(A), a commenter wanted clarification for the necessity of a notarized copy of a voter registration card or a current Texas driver's license.

RESPONSE: The board's response is that at least one of these items is required to prove Texas residency as required by the Act.

COMMENT: Concerning §601.6(c)(2)(E)(i), a comment was made that the board should include osteopathic, chiropractic and medical practitioners in the list of persons who may provide a professional reference for the license applicant.

RESPONSE: The board disagreed with the comment; however, for clarification the board added a definition for "physician" to §601.2.

COMMENT: Concerning §601.6, comments were received concerning duties and responsibilities of a licensed medical physicists.

RESPONSE: The board agreed that a guideline was needed and has set up a committee to write guidelines as to what is and is not engaging in the practice of medical physics.

COMMENT: Concerning §601.6(c)(2)(E), a commenter noted that the Act required three professional references and §601.6(c)(2)(E) of the rules are more specific, requiring that the references be two medical physicists and one physician. Another commenter recommended that the physicists and physician references be in the specialty area for which an applicant is applying.

RESPONSE: The board agreed and changed the subparagraph to reflect that the two medical physicists references would be in the area of an applicant's specialty. If applying for more than one specialty, one physicist must be in one specialty area and the other must be in one of the other specialty areas. The physician reference would have to be practicing and certified in one of the specialty areas for which the applicant is applying. In addition, the board changed the wording in §601.8(g)(2) to reflect the same language.

COMMENT: Concerning §601.8(d)(4)(A) and §601.8(a), comments were received concerning the use of the term, annual license.

RESPONSE: The board referred to it as an annual license because it is a one-year license which is renewed annually and to differentiate it from a temporary license.

COMMENT: Concerning §601.7(a)(2)(A), a commenter wanted an explanation how nuclear engineering would prepare an applicant to be a medical physicist.

RESPONSE: The board's response is that a degree in nuclear engineering from an accredited college or university is listed in §19 of the Act as an accepted degree to obtain a license.

COMMENT: Concerning §601.7(b)(2)(A), numerous comments were received regarding the successful completion of a training course if applying for a license without examination and having 10 years of full-time work experience in the medical physics specialty applied for during September 1, 1979 to August 31, 1991.

RESPONSE: The board agreed with the commenters' concerns and revised the rule on the training course to require at least 100 hours (the 100 hours do not have to be consecutive hours) of classroom and/or laboratory instruction. The board also revised the setting acceptable for a course and the acceptable instructors as well as deleting clinical experience as part of the course.

COMMENT: Concerning §601.7(b)(2), a comment was received requesting that the board accept programs that provide Category I credit by the Accreditation Council for Continuing Medical Education as an accredited training course.

RESPONSE: The board disagreed with the comment, but has reworded this paragraph as described in the previous response.

COMMENT: Concerning §601.7(b)(3), a comment was received that the ten years of experience should be accepted through Sep-

tember 1, 1994, to take in more individuals who are currently practicing medical physics.

RESPONSE: The board's response is that the statute sets out that the 10 years of work experience must be during the 12 years preceding the effective date of the Act. The 12-year period is limited by the statute from September 1, 1979 to August 31, 1991.

COMMENT: Concerning §601.7(d)(3)(B) and §601.8(d)(1)(A), a commenter had questions about the different examinations that would be offered by the board.

RESPONSE: The board's response is that in §601.7(d)(3)(B), individuals applying for a license who do not reside in the State of Texas must take the examination included in the application packet. The board decided to expand this examination by adding three questions. Regarding examinations set out in §601.8(d)(1)(A), the board is currently accepting proposals. Until a contract is executed clarification will not be available.

COMMENT: Concerning §601.8(g)(2)(B), a comment was received requesting more specific information concerning the board certification required of physicians by the rule regarding the three professional references.

RESPONSE: The board reworded the paragraph to read one licensed physician practicing and certified in at least one of the specialties for which the temporary licensee is making application for an annual license.

COMMENT: Concerning §601.8(f)(1), one commenter remarked that a person who failed an examination three times must complete one year of supervised work experience; however under §601.9(e) an individual holding a temporary permit was not required to have any supervision.

RESPONSE: The board agreed with the concern and added a requirement under §601.9(e) that an individual holding a temporary permit must be supervised by a medical physicist holding an annual license.

COMMENT: Concerning §601.18(a), one commenter requested that a hearing should only be conducted before an unbiased hearing examiner and not by the board.

RESPONSE: The board wishes to retain the option of having a hearing before a hearing examiner or the board; therefore, no change was made. In either case, the board will always make the final decision.

COMMENT: Several comments were received concerning the delegation of duties by the medical physicist.

RESPONSE: The statute does not include any provision for delegation of duties which constitute engaging in the practice of medical physics; therefore, the board could not add this to the rules.

COMMENT: Another commenter asked that the term "quality assurance" be defined.

RESPONSE: The board disagreed because this term already understood by the profession and does not require further definition.

COMMENT: Commenters questioned if radiation safety officers needed to be licensed as medical physicists.

RESPONSE: The board indicated that radiation safety officers who do not engage in the practice of medical physics are not required to be licensed. A committee of the board was appointed to define what is or is not the practice of medical physics.

COMMENT: It was suggested that a limited licensure be established for someone who performs specific procedures licensed by another authorizing agency.

RESPONSE: Limited licensure was not included in the statute; the board has no authority to issue a limited license.

Other comments were received that pertained only to the statutory provisions of the Act. The board could not make any discretionary decisions regarding these matters.

The new sections are adopted under the Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, §11, which provides the Texas Board of Licensure for Professional Medical Physicists with the authority to adopt rules, with the approval of the Texas Department of Health, that are reasonably necessary for the proper performance of its duties under the Act.

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

Act—The Texas Medical Physics Practice Act (Act), Texas Civil Statutes, Article 4512n, relating to the licensure and regulation of professional medical physicists.

Applicant—A person who applies to the Texas Board of Licensure for Professional Medical Physicists (board) for a license or temporary license.

APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Board—The Texas Board of Licensure for Professional Medical Physicists.

Commissioner—The Commissioner of Health of the Texas Department of Health.

Department—The Texas Department of Health.

Diagnostic radiological physics—The branch of medical physics that deals with the diagnostic application of roentgen rays, gamma rays from sealed sources, ultrasonic radiation, or radiofrequency radiation and the use of equipment associated with the production and use of that radiation.

Hearing examiner—An attorney duly designated and appointed by the chair of the board who conducts hearings under this chapter on behalf of the board.

License—A certificate issued by the board authorizing the license holder to engage in the practice of medical physics and includes the temporary license and the annual license unless the context clearly indicates otherwise.

Licensed medical physicist—A person who holds a license issued under the Act.

Medical health physics—The branch of medical physics that deals with the safe use of roentgen rays, gamma rays, electron or other charged particle beams, neutrons, radionuclides, and radiation from sealed radionuclide sources for both diagnostic and therapeutic purposes in humans and the use of equipment required to perform appropriate radiation tests and measurements.

Medical nuclear physics—The branch of medical physics that deals with the therapeutic and diagnostic application of radionuclides, except those used in sealed sources for therapeutic purposes, and the use of equipment associated with the production and use of radionuclides.

Medical physics—The branch of physics that is associated with the practice of medicine; and includes, but is not limited to, the field of radiological physics.

Physician—A person licensed to practice medicine by the Texas State Board of Medical Examiners under Texas Civil Statutes, Article 4495b, or if out-of-state a person who holds a valid license to practice medicine in that state or territory.

Practice of medical radiological physics—The use of principles and accepted protocols of physics to assure the correct quality, quantity, and placement of radiation during the performance of a radiological procedure prescribed by a practitioner that will protect the patient and others from harmful excessive radiation. The term includes radiation beam calibration and characterization, quality assurance, instrument specification, acceptance testing, shielding design, protection analysis on radiation-emitting equipment and radiopharmaceuticals, and consultation with a physician to assure accurate radiation dosage to a specific patient.

Practitioner—A doctor of medicine, osteopathy, podiatry, dentistry, or chiropractic who is licensed in this state and who prescribes radiologic procedures for other persons.

Radiation—Ionizing and/or nonionizing radiation above background levels used to perform a diagnostic or therapeutic medical or dental radiological procedure.

Radiological physics—The branch of medical physics that includes diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, and medical health physics.

Radiological procedure—A test, measurement, calculation, or radiation exposure used in the diagnosis or treatment of disease or other medical or dental conditions in humans that includes therapeutic radiation, diagnostic radiation, nuclear magnetic resonance, or nuclear medicine procedures. The activities and services which fall within the definitions in the Act of the practice of medical radiological physics, diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medi-

cal health physics are not radiological procedures. The activities and services which fall within the Texas Regulations for Control of Radiation, Part 32, §§32.11; 32.20(h); 32.30(c)(1)(iv); 32.41(c); 32.60(c) (1), (2), and (3); and 32.70(c) (adopted by reference at §289.116 of this title (relating to Use of Radiation Machines in the Healing Arts and Veterinary Medicine)), as amended, are not radiological procedures.

Therapeutic radiological physics—The branch of medical physics that deals with the therapeutic application of roentgen rays, gamma rays, electron and other charged particle beams, neutrons, or radiations from radionuclide sources and the use of equipment associated with the production and use of that radiation.

§601.4. Fees. The purpose of this section is to set out the fees for licensure as a medical physicist prescribed by the Texas Board of Licensure for Professional Medical Physicists (board).

(1) The schedule of fees for licensure as a medical physicist is as follows:

(A) application processing and initial licensing fee:

(i) first specialty on initial application—\$125;

(ii) additional specialties on initial application—\$25 each;

(iii) additional specialties on subsequent applications—\$75 each; and

(iv) upgrade of temporary license to annual license—\$75.

(B) renewal fee:

(i) first specialty—\$75;

(ii) additional specialties—\$25 each;

(C) one to 90-day penalty fee—one-half of the renewal fee (plus the renewal fee that was due at the time of expiration);

(D) 91-day to two-year penalty fee—the renewal fee (plus the renewal fee that was due at the time of expiration);

(E) license and/or identification card replacement fee—\$10; and

(F) examination fee—the fee for the specialty examination as set by contract with the examining body.

(2) The schedule of fees for a temporary license as a medical physicist is as follows:

§601.6. Application Procedures.

(A) application processing and initial temporary license fee:

(i) first specialty on initial application-\$125;

(ii) additional specialties on initial application-\$25 each; and

(iii) additional specialties on subsequent applications-\$75 each;

(B) temporary license renewal fee:

(i) first specialty-\$75; and

(ii) additional specialties-\$25 each;

(C) one to 90-day penalty fee-one-half of the temporary license renewal fee (plus the temporary license renewal fee that was due at the time of expiration);

(D) 91-day to two-year penalty fee-the renewal fee (plus the renewal fee that was due at the time of expiration); and

(E) temporary license replacement fee-\$10.

(3) All fees are non-refundable and shall be submitted in the form of a check or money order.

(4) An applicant whose check for the application processing and initial licensing fee is returned due to insufficient funds, account closed or payment stopped shall be allowed to reinstate the application by remitting a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. An application will be considered incomplete until the fee has been received and cleared through the appropriate financial institution. If the license or temporary license has already been issued, it shall be invalid.

(5) A license holder whose check for the renewal fee is returned due to insufficient funds, account closed, or payment stopped shall remit a money order or cashier's check for guaranteed funds within 30 days of the date of receipt of the board's notice that the check was returned. If the fee is not remitted timely, the license shall not be renewed. If the renewal card has already been issued, it shall be invalid.

(6) The board shall notify the applicant's or licensee's employer that the person has failed to comply with this section.

(a) Purpose. The purpose of this section is to set out the application procedures for licensure of professional medical physicist.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of qualifications on forms prescribed by the Texas Board of Licensure for Professional Medical Physicists (board).

(2) The board shall not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(3) The executive secretary shall send a notice listing the required additional materials to an applicant who does not complete the application in a timely manner. An application not completed within 30 days after the date of the notice may be invalidated.

(c) Required application materials.

(1) Application form. The application form shall include the following:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, other state licenses and certifications held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Act and this chapter and agrees to abide by them;

(C) the applicant's permission to the board to seek any information or references it deems necessary to determine the applicant's qualifications;

(D) a statement that the applicant, if issued a license, shall return the license and identification card(s) to the board upon the revocation or suspension of the license;

(E) a statement that the applicant understands that fees submitted are nonrefundable;

(F) a statement that the applicant understands that materials submitted become the property of the board and are nonreturnable (unless prior arrangements have been made);

(G) a statement that the information in the application is truthful and

that the applicant understands that providing false information of any kind may result in the voiding of the application and failure to be granted a license, or the revocation of any license issued;

(H) a statement that if issued a license, the applicant shall keep the board advised of his or her current mailing address; and

(I) the signature of the applicant which has been dated and notarized.

(2) Required documentation. Applicants for a license must submit:

(A) if applying under §601.7(a) or (b) of this title (relating to Licensure Without Examination), a notarized copy of a current Texas voter registration card or a notarized copy of a current Texas driver's license;

(B) evidence of relevant work experience, including a description of the responsibilities and duties performed;

(C) an official transcript from a college or university granting the applicant's degree or certificate of completion of training course;

(D) a statement of the medical physics specialty for which the application is submitted;

(E) three current professional references as follows:

(i) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application;

(ii) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine; and

(iii) if applying for a temporary license, post-secondary academic references may be substituted; and

(F) a fee as prescribed by the board.

(d) Consideration of application. This subsection is intended to address the applications procedures required by the Texas Medical Physicists Act (Act), §14(c)-(f) and §17(a) and (b).

(1) The board or the executive secretary may require an applicant to appear before the board or executive secretary to present further information in support of the application.

(2) At any time before the board issues or renews a license, the applicant may request in writing that the board withdraw its consideration of the application, but the board shall retain the application and accompanying fee. To reapply, the applicant must submit a new application and fee.

(3) If an applicant meets all requirements of the Act and this chapter and has completed the examination, if required, the executive secretary shall approve the application and issue the annual license. The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this paragraph with a recommendation that the board ratify the approval at its next meeting.

(4) If an applicant has not completed an examination accepted by the board under this chapter, the executive secretary, with direction from the chair, shall forward a summary of the application and a recommendation for action to the appropriate committee of the board for review and recommendation.

(A) If the committee finds that the applicant meets all requirements of the Act and this chapter, the committee shall approve the applicant to take the required examination for an annual license or to be issued a temporary license if appropriate.

(i) The executive secretary shall issue the annual license once the applicant successfully completes the required examination.

(ii) The executive secretary, with direction from the chair, shall prepare and circulate to the board members a summary of each application approved under this subparagraph with a recommendation that the board ratify the approval at its next meeting.

(B) If the committee finds that the applicant does not meet all requirements of the Act and this chapter, the committee shall instruct the executive secretary to give the applicant written notice of the reason of the proposed disapproval of the application and the areas of deficiency and of the opportunity for a formal hearing. The

notice shall be given by the 30th day after the committee makes a decision. Within 30 days after receipt of the written notice, the applicant shall give written notice to the executive secretary if the applicant wants the hearing. If the applicant fails to respond within 30 days after receipt of the notice, the applicant is deemed to have waived the hearing and the board shall finally disapprove the application.

(e) Disapproved applications.

(1) The appropriate committee of the board shall propose disapproval and the board shall disapprove the application if the person:

(A) does not meet the qualifications for a license as set forth in the Act and this chapter;

(B) has failed to pass the prescribed examination, if applicable;

(C) has deliberately presented false information to the board to verify the applicant's qualifications;

(D) has obtained or renewed a license by means of fraud, misrepresentation, or omission of material facts;

(E) has made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(F) has been convicted of a felony or of a misdemeanor that involved moral turpitude or that directly relates to a person's duties and responsibilities as a licensed medical physicist; or

(G) has otherwise violated this Act, a lawful order or rule of the board, or the board's code of ethics.

(2) An applicant whose application has been formally denied under paragraph (1)(E)-(G) of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§601.7. Licensure Without Examination.

(a) The Texas Board of Licensure for Professional Medical Physicists (board) may issue an annual license without an examination to a person who, before September 1, 1994:

(1) is a resident of this state;

(2) has an earned bachelor's, master's, or doctoral degree from an accredited college or university;

(A) in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(B) in a subject area not listed in subparagraph (A) of this paragraph, and the transcript includes at least 16 upper division semester hour credits in physics (general, modern, atomic, nuclear, radiation, or electromagnetic quantum mechanics), medical physics (diagnostic or imaging, nuclear medicine, therapeutic, dosimetry), biophysics, radiological physics or health physics; or

(C) not meeting the requirements of subparagraphs (A) or (B) of this paragraph, but where the board considers and approves the degree as signifying the completion of courses acceptable to the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(3) has demonstrated to the board's satisfaction the completion of at least two years of full-time work experience between September 1, 1986, and August 31, 1991, in the medical physics specialty for which application is made; and

(4) has work experience which includes six additional months for each additional specialty.

(b) The board may issue an annual license without an examination to a person who, before September 1, 1994:

(1) is a resident of this state;

(2) has successfully completed a training course approved by the board in physics, medical physics, biophysics, radiological physics, or medical health physics that had:

(A) been conducted by or in connection with programs for training physicians in a radiologic specialties or medical physicists in a radiology or radiological physics specialty;

(B) at least one instructor who was board certified or board eligible in the appropriate branch of diagnostic radiological physics, therapeutic radiological physics, medical nuclear physics, or medical health physics; and

(C) covered a period of at least 100 hours (the 100 hours do not have

to be consecutive hours) with classroom and/or laboratory instruction which included:

- (i) radiation physics and instrumentation;
- (ii) radiation protection;
- (iii) mathematics

pertaining to the use and measurement of radioactivity; and

- (iv) radiation biology.

(3) has demonstrated to the board's satisfaction the completion of at least 10 years of full-time work experience between September 1, 1979, and August 31, 1991, in the medical physics specialty for which application is made; and

(4) has work experience which includes six additional months for each additional specialty.

(c) The board may issue an annual license to a person who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction that has requirements for the licensing of medical or radiological physicists that are substantially the same as the requirements of the Texas Medical Physicists Act (Act).

(d) The board may issue an annual license to a person who prior to September 1, 1994:

(1) is a resident of a state, territory, or jurisdiction without a medical physics licensure act or practice act;

(2) meets all other requirements for licensure without examination in accordance with subsection (a) or (b) of this section; and

(3) has demonstrated to the board's satisfaction a working knowledge of Texas rules pertaining to the license specialty requested by:

(A) certification that the person has read and understands the Act and this chapter; and

(B) successful completion of an examination offered by the board. A list of the Texas rules is available from the board upon request.

(e) Full-time work experience shall be at least 32 work hours per week in the specialty area. Part-time work experience in the specialty area may be aggregated in order to meet the minimum of 32 work hours per week.

(f) Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Asso-

ciation of Collegiate Registrars and Admissions Officers.

(g) All application materials and fees required under subsections (a), (b), and (d) of this section must be received by the board office or postmarked to the board prior to September 1, 1994.

§601.8. Licensure By Examination.

(a) Eligibility. To be eligible to take an examination for an annual license for a professional medical physicist, a person must:

(1) have an earned master's or doctoral degree from an accredited college or university:

(A) in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(B) in a subject area not listed in subparagraph (A) of this paragraph, where the transcript includes at least 16 upper division semester hour credits in physics (general, modern, atomic, nuclear, radiation, or electromagnetic quantum mechanics), medical physics (diagnostic or imaging, nuclear medicine, therapeutic, or dosimetry), biophysics, radiological physics or health physics; or

(C) not meeting the requirements of subparagraphs (A) or (B) of this paragraph, but where the board considers and approves the degree as signifying the completion of courses acceptable to the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(2) have demonstrated, to the Texas Board of Licensure for Professional Medical Physicists (board) satisfaction, the completion of at least two years of full-time work experience in the five years preceding the date of application (the date of receipt of the application for an annual license or for the upgrade of a temporary license to an annual license) in the medical physics specialty for which application is made; and

(3) submit a completed application as required by the Texas Medical Physicists Act (Act), §14.

(b) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week.

(c) Foreign academic credit. Degrees and course work received at foreign universities shall be acceptable only if such

course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers.

(d) Approved examination.

(1) An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

(A) the examination in the specialty developed and supervised by this board;

(B) for the therapeutic radiological physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in therapeutic radiological physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in radiation oncology physics; or

(iii) the Canadian College of Physicists in Medicine or its successor organization in general medical physics;

(C) for the medical nuclear physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in nuclear medicine physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in nuclear medicine physics;

(iii) the American Board of Science in Nuclear Medicine or its successor organization in physics and instrumentation; or

(iv) the Canadian College of Physicists in Medicine or its successor organization in general medical physics;

(D) for the diagnostic radiological physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in diagnostic radiological physics or radiological physics;

(ii) the American Board of Medical Physics or its successor organization in diagnostic imaging physics; or

(iii) the Canadian College of Physicists in Medicine or its successor organization in general medical physics; or

(E) for the medical health physics specialty, the examination offered by:

(i) the American Board of Radiology or its successor organization in radiological physics;

(ii) the American Board of Health Physics or its successor organization in health physics or comprehensive health physics;

(iii) the American Board of Medical Physics or its successor organization in medical health physics;

(iv) the American Board of Science in Nuclear Medicine or its successor organization in radiation protection; or

(v) the Canadian College of Physicists in Medicine or its successor organization in general medical physics.

(2) An applicant who has successfully completed one of the examinations set out in paragraph (1)(B)-(E) of this subsection shall not be reexamined in that specialty area.

(e) Failure of examination. If the applicant fails the examination in a specialty area, the approval to take the examination will be voided if the applicant does not take either or both of the next two examinations and cannot document medical or physical reasons acceptable to the board for failure to take either of the next two examinations. The applicant will be required to submit a new application for licensure before the applicant may take another examination.

(f) An applicant who fails three examinations in a specialty area may not reapply for licensure in the specialty area until the applicant has demonstrated, to the board's satisfaction, the completion of at least one additional year of full-time work experience after the third failed examination.

(1) The work experience must be under the supervision of a medical physicist holding an annual license in the specialty area.

(2) The applicant must hold a temporary license in the specialty area during the work experience if the experience is gained in this state.

(A) The applicant may be issued a temporary license for a fifth or sixth year only in order to gain the work experience required by this paragraph and to retake the examination once. Any temporary license issued for a fifth or sixth year shall expire upon notification to the board that the applicant failed to appear for the examination, or upon notification to the ap-

plicant of his or her failure of the examination, or upon the issuance of his or her annual license if the examination was passed, whichever occurs first.

(B) An applicant who completes the work experience within the first four years of temporary licensure and for whom an examination is given and results released during the four years is not entitled to any further temporary licenses in that specialty area.

(3) In order to obtain an annual license the applicant must take and pass the next examination after completion of the additional work experience. The applicant must reapply for licensure under subsection (a) of this section in order to take the examination.

(g) Upgrade. Following successful completion of a medical physics specialty examination prescribed by the board and the relevant work experience, a temporary licensee may upgrade the temporary license to an annual license.

(1) An annual license shall not be issued until the applicant has passed the examination. The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply except that the applicant need not file a transcript unless additional relevant course work has been completed.

(2) The temporary licensee must also submit three current professional references as follows:

(A) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application; and

(B) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine.

(h) Expired temporary license. A person whose temporary license has expired may not upgrade the temporary license to the annual license. Application must be made under the provisions set out in §601.6 of this title (relating to Application Procedures).

§601.9. Temporary License.

(a) To be eligible for a temporary license, a person must meet the educational requirements set out in §601.8 of this title (relating to Licensure By Examination).

(b) A temporary license shall be issued for each specialty for a one year period.

(c) Each temporary license may be renewed annually up to three times for a maximum of four years. The four years do not have to be consecutive years.

(d) The application for renewal of a temporary license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(e) The work experience must be under the supervision of a medical physicist holding an annual license in the specialty area.

(f) An applicant may not be approved for a temporary license in a specialty if the applicant has already held a temporary license in that specialty for a period of four years. The time period for which the applicant previously held a temporary license shall be counted towards the four year maximum.

(g) To upgrade a temporary license to an annual license in the same specialty, a licensee must file evidence of relevant work experience meeting the requirements of §601.8 of this title and the upgrade fee.

(h) The application procedures set out in §601.6 of this title (relating to Application Procedures) shall apply.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215768

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of
Health

Effective date: December 15, 1992

Proposal publication date: August 11, 1992

For further information, please call: (512) 834-6628

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 98. HIV and STD Control

Subchapter C. Texas HIV Medication Program

General Provisions

• 25 TAC §98.104, §98.105

The Texas Department of Health (department) adopts amendments to §98.104 and §98.105, concerning the Texas HIV Medication Program, without changes to the proposed text as published in the August 4, 1992, issue of the Texas Register (17 TexReg 5407).

The sections implement the provisions of the Communicable Disease Prevention and Control Act, Health and Safety Code, §§85.061-85.066, concerning the establishment of an HIV Medication Program in Texas. The program assists hospital districts, local health departments, public or non-profit hospitals and clinics, nonprofit community organizations, and HIV infected individuals in the purchase of medications approved by the board that have been shown to be effective in reducing hospitalizations due to HIV-related conditions. Generally, the sections cover eligibility for participation and medication coverage. The amendments expand coverage of the program to include the drugs Acyclovir and Zalcitabine for eligible participants and the procedures for administering the drugs.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Communicable Disease Prevention and Control Act, Health and Safety Code, §85.063, which provides the Texas Board of Health with the authority to adopt rules concerning a Texas HIV Medication Program; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215837

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: December 16, 1992

Proposal publication date: August 4, 1992

For further information, please call: (512) 458-7357

Chapter 123. Respiratory Care Practitioner Certification

• 25 TAC §123.2

The Texas Department of Health (department) adopts an amendment to §123.2, without changes to the proposed text published in the September 1, 1992, issue of the Texas Register (17 TexReg 5994) and will not be republished.

The amendment modifies the definition of "respiratory care education" to include education programs accredited by the Canadian Medical Association.

No comments were received on the proposed amendment.

The amendment is adopted under Health and Safety, §142.012, which provides the Texas Board of Health the authority to adopt rules concerning respiratory care practitioners; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

§123.2. Definitions. The following words and terms when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Respiratory care education program—

(A) an AMA-approved program in respiratory care;

(B) a program approved by an appropriate education agency and working toward becoming an AMA-approved program in respiratory care. A program will qualify as a respiratory care education program under this subparagraph only for a period of one year from the date of the first class offered by the program; after that one year, the program must be an AMA-approved program in respiratory care; or

(C) a program accredited by the Canadian Medical Association and whose graduates are eligible to take the national registry exam given by the Canadian Board of Respiratory Care.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215836

Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Effective date: December 16, 1992

Proposal publication date: September 1, 1992

For further information, please call: (512) 834-6632

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 421. Standards for Certification

• 37 TAC §421.5

The Texas Commission on Fire Protection adopts an amendment to §421.5, concerning definitions, without changes to the proposed text as published in the September 11, 1992, issue of the Texas Register (17 TexReg 6267).

The amendments add a new definition of inactive status and replace the definition of "training chief" with a definition of "training officer." The change is justified by the fact that some departments may not assign a rank or title to the person in charge of training programs.

The amendments to §421 add a new definition of inactive status and replace the definition of "training chief" with a definition of "training officer."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its power and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with the authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215804

Jack Woods
General Counsel
Texas Commission of Fire Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

Chapter 423. Fire Suppression
Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

• 37 TAC §423.1

The Texas Commission on Fire Protection adopts an amendment to §423.1, concerning minimum standards for basic structural fire protection personnel, without changes to the proposed text as published in the September 11, 1992, issue of the *Texas Register* (17 TexReg 6267).

The amendment reflects a change to delete the word "structure" from the name of the Basic Fire Suppression Curriculum to describe its general scope and also reflects an administrative reorganization of other chapters referenced in the section.

The amendment to §423.1 reflects a change to delete the word "structure" from the name of the Basic Fire Suppression Curriculum.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum standards for admission to employment as fire protection personnel and for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215805 Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700



Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel

• 37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209

The Texas Commission on Fire Protection adopts the repeal of §§423.201, 423.203, 423.205, 423.207, and 423.209, concerning minimum standards for aircraft rescue and fire protection personnel certification, without

changes to the proposal as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4073). The effective date of the repeal is April 1, 1993. The repealed sections are replaced by new sections relating to the same subject matter adopted in this issue of the *Texas Register*.

The repeals are necessary to enable the commission to adopt a new curriculum for aircraft rescue and fire protection personnel certification that provides focused specialized training for such personnel and eliminates redundant training already covered in the basic fire suppression curriculum which is also required for aircraft rescue and fire protection personnel certification.

The repealed sections are replaced by new sections eliminating the classification levels of TX-1, TX-2, and TX-3, dependent on airport index and size, and establishing a single basic certification and new curriculum requirements.

No comments were received regarding adoption of repeals.

The repeals are adopted under the Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties and the Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum educational and training standards for admission to employment for advanced or specialized fire protection personnel positions, and the Government Code, §419.038, which provides the commission with authority to adopt requirements for certification of aircraft crash and rescue fire protection personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215806 Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: April 1, 1992

Proposal publication date: June 5, 1992

For further information, please call: (512) 873-1700



• 37 TAC §423.201, §423.203

The Texas Commission on Fire Protection adopts new §423.201 and §423.203, concerning minimum standards for basic aircraft rescue and fire protection personnel certification, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4073). The new sections have an effective date of April 1, 1993.

The new sections are adopted to increase the level of training and competency of aircraft rescue and fire protection personnel to ensure the safety of the flying public and air

crews, and to reduce the duplication of training for applicants for aircraft rescue and fire protection personnel who hold or are eligible to hold certification as basic structure fire protection personnel.

The new sections consolidate the former TX-1, TX-2, and TX-3 classifications into one basic certification level. The new sections also require new applicants to hold or be eligible to hold basic structure fire protection certification (458 hours of training plus certification as an emergency care attendant by the Texas Department of Health) in addition to meeting a curriculum requirement for aircraft rescue and fire protection personnel totaling 94 hours (streamlined from the previous range of 127 to 235 hours depending on airport index).

During the period between publication in the *Texas Register* as proposed rules and the action of the commission in voting to adopt the proposed rules written and oral comments to the proposed new sections were submitted to the commission against the proposals by representatives of the following entities and organizations: El Paso International Airport, City of El Paso, El Paso Aircraft Crash and Rescue Fire Fighter Association, American Association of Airport Executives, and the Air Transport Association. Comments in favor of the proposals were submitted to the commission by representatives of the International Association of Fire Fighters, the Texas State Association of Fire Fighters, and the Fire Protection Personnel Advisory Committee.

One commenter asserted that its airport which services specialized military and NASA aircraft has a unique configuration which prevents response to structure fires at the terminal by its aircraft crash and rescue units, and structure training is therefore unnecessary. The commission disagrees with the commenter because it has concluded that the Basic Fire Suppression Curriculum includes essential training necessary for all fire suppression personnel notwithstanding their specialized discipline.

One commenter asserted that the new regulations would create problems and require unnecessary training and expenditures where cities have separate collective bargaining agreements with structural fire fighters and aircraft crash and rescue units.

The commission disagrees with the commenter for the reason that the commissions proposals pertain to minimum training requirements and do not dictate conditions of or interject the commission into local collective bargaining issues or agreements. Although the new statewide minimum standards may be viewed by individual municipalities as excessive or unnecessary, the commission has concluded that the new minimum requirements will improve the competence of aircraft crash and rescue fire protection personnel generally, and enhance the safety of the flying public and air crews.

One commenter argued that the new rules dictated organizational structure with both structural fire fighters and aircraft crash and rescue units and that structure training will not be used and is unnecessary. Further, it was claimed that in the context of collective bargaining negotiations in a specific city, a

federal mediator or arbitrator determined that an aircraft fire is not the same as a structure fire.

The commission disagrees with the commenter as follows: The new rules establish minimum training requirements deemed necessary for all fire fighters involved in fire suppression duties regardless of specialization. The new rules do not dictate the terms of local collective bargaining agreements or organizational structure. Finally, the supposed determination of a federal mediator or arbitrator was made in the context of a collective bargaining negotiation between specific parties, and would not be binding on the commission in adopting minimum training requirements. Moreover, while structure fires and aircraft fires may have differences which require specialized training for aircraft crash and rescue personnel, the disciplines have other common training requirements which the commission believes are addressed in the Basic Fire Suppression Curriculum.

One commenter argued that the commission's proposal is unproven, that the proposed standards are inconsistent with standards under development at the national level, and that changes to standards should be addressed at the national level.

The commission disagrees with the commenter for the following reasons: The commission believes that its proposed standards are not inconsistent with FAA minimum standards. Moreover, under the provisions of the Texas Government Code, §419.022(b), any new standard adopted by the commission may be no less stringent than those currently in effect, precluding adoption of the 32-hour curriculum in the "national training standard developed and recommended by the commenter.

One commenter argued that the proposed requirements are excessive for facilities with aircraft crash and rescue functions only and that requiring training before assignment to aircraft crash and rescue fire suppression duties does not accommodate smaller airports.

The commission disagrees with the commenter for the reasons previously stated concerning the essential training contained in the Basic Fire Suppression Curriculum. Additionally, while requiring training prior to assignment to actual aircraft fire suppression duties may create some burdens, it is consistent with FAA requirements and existing state law, specifically §419.032(c), which requires training of fire protection personnel prior to assignment to fire suppression duties.

Several commenters speaking in favor of the proposal emphasized that the basic fire suppression curriculum contains essential elements necessary to all disciplines involved in fire suppression in addition to structural fire fighting elements and spoke in support of the commission's duty and responsibility to establish minimum standards for all fire protection personnel disciplines in the State of Texas. One commenter speaking in favor of the proposal asserted that most airports in the State of Texas are protected by municipal fire departments without separate aircraft crash and rescue departments. Accordingly, the commission's proposed new rules have a

positive economic impact on most cities by eliminating redundant training for those cities that furnish fire protection to airports with structurally trained fire fighters.

The new sections are adopted under the Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties and the Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum educational and training standards for admission to employment as fire protection personnel in a permanent, temporary, or probationary status and for specialized fire protection personnel positions; and the Government Code, §419.038, which provides the commission with authority to adopt requirements for certification of aircraft crash and rescue fire protection personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215807 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: April 1, 1993

Proposal publication date: June 5, 1992

For further information, please call: (512) 873-1700

Chapter 425. Fire Protection Instructor

Subchapter A. Instructor Certification

- 37 TAC §§425.1, 425.5, 425.7, 425.9

The Texas Commission on Fire Protection adopts amendments to §§425.1, 425.5, 425.7, and 425.9, concerning minimum standards for fire protection instructor training, without changes to the proposed text as published in the September 11, 1992, issue of the *Texas Register* (17 TexReg 6268).

The amendments to §425.1 and §425.9 are intended to clarify the experience requirements for basic instructor certification and instructor specialist certification to reflect current practice which does not require that fire department experience be devoted to training. The amendments to §425.5 and §425.7 are proposed to conform these sections with changes to the definition of "training officer."

Section 425.1(a)(1) adds wording to clarify the understanding that fire department experience need to be in fire service training. Section 425.5 adds the words "instructor or" to paragraph (3). Finally, §425.9 adds wording to subsection (a)(1) consistent with the changes to §425.1.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.028(b)(3), which provides the commission with authority to prescribe conditions for certification of persons as qualified fire protection personnel instructors.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215808 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

Chapter 427. Training Facilities

Subchapter A. Minimum Standards for Structure Recruit Training Facilities

- 37 TAC §§427.1, 427.3, 427.5, 427.7, 427.13

The Texas Commission on Fire Protection adopts amendments to §§427.1, 427.3, 427.5, 427.7, and 427.13, concerning structure recruit training facilities, including requirements relating to structures, apparatus, equipment, reference materials, and staff, with changes to the proposed text as published in the September 11, 1992, *Texas Register* (17 TexReg 6269). Section 427.1(f)(5) the word "burn" was taken out and the words "suitable for live fire training and added to describe the type of building needed for live fire training. Section 427.3(b) the NFPA standard reference was deleted. Section 427.5(1) the word "full" was added to insure that a full breathing air tank was used during training.

The amendments conform the sections to changes in the basic fire suppression curriculum, delete repetitious references to resources required in the curriculum, update references to NFPA standards, correct references to material in other chapters, and include new requirements for a building suitable for live fire training which is a new section of the suppression curriculum essential to fire training.

Section 427.1 changes the name of the basic curriculum and adds language to require that the training facilities have equipment available to the instructors. Also, §427.1 adds the requirements for a building to be used for live fire training. Section 427.3 conforms the

name of the basic curriculum and deletes the reference at the end of subsection (b).

Section 427.5 adds language to require that a training facility have equipment available for use during training. Section 427.5 also adds a reference in paragraph (1) to require self-contained breathing apparatus to comply with §435.3(2) of this title. Section 427.7 conforms the language relating to the basic fire suppression curriculum. Section 427.13 adds a reference to subsection (e) relating to §425.9 of this title.

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.028(b)(1), which provides a commission with authority to approve or revoke the approval of an institution or facility for a school operated by or for the state or a local government specifically for training fire protection personnel or recruits.

§427.1. Minimum Standards for Recruit Training Facilities for Structural Fire Protection Personnel.

(a) (No change.)

(b) The facilities and training shall be performance oriented. "Hands-on" training with maximum practical participation by trainees should be an integral part of the training program. The evaluation process for each phase of training will emphasize performance testing to determine if the trainee has acquired the knowledge and skills to achieve the required level of competency as required by the Basic Fire Suppression Curriculum.

(c) (No change.)

(d) An organization, installation, or facility may submit a written application for certification as an approved recruit training facility to the commission. Such application will include descriptions and addresses of physical facilities together with inventory of apparatus, equipment, and reference material to be utilized in conducting the Basic Fire Suppression Curriculum as specified by the commission. It is not required that the equipment be permanently assigned nor kept at a training facility, but must be readily available for use by the instructors for instructional purposes. Photographs of resources, annotated to reflect applicant and identity of the resource, may be included with application.

(e) All training must be submitted to the commission for approval prior to the commencement of the training. A recruit training facility should submit a written request to the commission to purchase a Commission Certification Curriculum Manual to be utilized by the recruit training facility instructors. The recruit training facilities in-

structors are responsible for ensuring that all subjects are taught as required by the Basic Fire Suppression Curriculum.

(f) The following minimum resources required for certification as an approved recruit training facility may be combined or separate utilizing one or more structures. In either event the facilities and equipment must be available and used by the instructor and trainees.

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

(5) A burn building meeting the requirements of the Basic Fire Suppression Curriculum shall be available for use by the instructors to teach live fire training. NFPA 1403, Standard on Live Fire Training Evolutions in Structures, shall be used as a guide when conducting live fire training.

§427.3. Apparatus-Structure Training Facility.

(a) A pumper apparatus fully equipped as required by the Basic Fire Suppression Curriculum shall be readily available for use by the instructors for instructional purposes.

(b) Ladders or a ladder truck as required by the Basic Fire Suppression Curriculum shall be readily available for use by the instructors for instructional purposes.

§427.5. Equipment-Structure Training Facility. The following equipment must be available for use by recruit training facilities:

(1) self-contained breathing apparatus in sufficient numbers to enable each trainee to wear the equipment for at least the life of one full breathing air tank during the training (Note: Must comply with §435.3(2) of this title relating to self-contained breathing apparatus);

(2) standard class room equipment to include chalkboard, speaker rostrum, etc.;

(3) supportive instructional aids available to include audio visual projection equipment. The use of cutaways, models, flip charts, and other visual aids are recommended to enhance effectiveness of the instruction (Note: The training instructor needs to ensure all necessary equipment is available for fire fighter trainees to use regarding the basic fire fighter performance skills as identified in the Basic Fire Suppression Curriculum and to comply with §427.9 of this title (relating to Testing and Records.);

(4) other equipment and tools required by the Basic Fire Suppression Curriculum.

§427.7. Reference Material-Structure Training Facility. A reference library is required. The library must contain the pub-

lications required to conduct research and develop lesson plans covering the material required in the Basic Fire Suppression Curriculum.

§427.13. General Information-Structure Training Facility.

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

(e) The Commission shall be notified promptly of any change in the approved recruit training facility coordinator or training officer. A training officer must, as a minimum, possess an intermediate instructor's certification within one year from date of appointment. A newly appointed non-fire service coordinator must be certified by the commission in accordance with established procedures to be eligible to receive, upon appointment, an instructional specialist certificate (refer to §425.9 of this title (relating to Minimum Standards for Instructional Specialist Certification)). The term "coordinator," as used in these standards, is the official responsible for recruit training facilities/schools other than fire department(s), by whatever title he/she may be called.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215809

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

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Chapter 431. Minimum Standards for Fire and Arson Investigator

• 37 TAC §431.9, 431.11

The Texas Commission on Fire Protection adopts amendments to §431.9 and §431.11, concerning minimum standards for fire fighter/arson investigator limited certification and fire and arson investigator certification for law enforcement personnel, without changes to the proposed text as published in the September 11, 1992, issue of the *Texas Register* (17 TexReg 6271).

The amendments correct inaccurate cross references within the text of the rules to §431.1 relating to basic fire and arson investigation certification.

The changes to §431.9 and §431.11 replace the words Advanced Structural Fire Protec-

tion Personnel certification with Basic Fire and Arson Investigation Certification.

No comments were received regarding adoption of the amendments

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish qualifications for admission to employment as fire protection personnel for advanced or specialized fire protection personnel positions.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215810 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

Chapter 437. Fees

- 37 TAC §§437.3, 437.5, 437.7, 437.9, 437.11

The Texas Commission on Fire Protection adopts amendments to §§437.3, 437.5, 437.7, 437.9, and 437.11, concerning fees, without changes to the proposed text as published in the September 11, 1992, issue of the *Texas Register* (17 TexReg 6271).

The amendments delete requirements for payment by cashier's check, money order, or employing entity check to permit payment of fees by personal check, conform the rules pertaining to break in service to statutory changes, correct the cross reference for the Proficiency Test in §437.3, establish a \$12 annual subscription fee for standards manual updates, and substitutes the name of the curriculum manual for "lesson plan" in §437.11. The rules changes will permit a more efficient administration of the commission's fire training approval responsibilities.

Section 437.3 provides the fees for certification and deletes the requirements for payment to be made in the form of a cashier's check, money order, or employing entity check. Section 437.5 provides the fees for a renewal. Section 437.7 provides the fees for the standard manual and adds the fees for the annual subscription revisions. Section 473.9 and §473.11 delete the requirements for payment to be made by money order, certified check, or employing entity check.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its power and duties; and the Texas Government Code, §419.025, authorizing a fee for the standards manual; the Texas Government Code, §419.026, authorizing fees for certification and testing; and the Texas Government Code, §419.034, authorizing fees for certificate renewal and proficiency testing.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215811 Jack Woods
General Counsel
Texas Commission of Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

Chapter 439. Examinations for Certification

- 37 TAC §439.7, §439.15

The Texas Commission on Fire Protection adopts amendments to §439.7 and §439.15, concerning testing procedures and testing for certification status, with changes to the proposed text as published in the September 11, 1992, *Texas Register* (17 TexReg 6273).

The amendment to §439.7 provides for a preliminary notification of test results within 72 hours and official test results within 10 days after completion of an examination. The amendment to §439.15 changes the cross reference for the new definition of "inactive status." The amendments are justified by the need to get preliminary results to examination candidates as soon as practical with official results in a reasonable time thereafter.

Section 439.7 provides for notification of the training officer or coordinator of the official test results in writing within 10 days after completion of the examination. Section 439.15 changes the reference regarding "inactive status."

No comments were received regarding adoption of these amendments.

The amendments are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; the Texas Government Code, §419.026, which authorizes the commission to give examinations to fire protection personnel for basic certification; and the Texas Government Code, §419.034(d), authorizing proficiency examinations.

§439.7. Procedures.

(a)-(k) (No change.)

(l) All official grading and notification shall come from the commission. The commission staff shall inform the training officer or coordinator of preliminary test results within 72 hours after completion of the examination. The commission staff shall notify the training officer or coordinator of the official test results in writing within 10 days after completion of the examination.

(m) (No change.)

§439.15. Testing for Certification Status.

(a) An individual on inactive status, (as defined in §421.5 of this title (relating to Definitions)) for one year or longer may not renew the certificate or certificates that were previously held.

(b) The individual may obtain a new certificate or certificates in the discipline or disciplines which was previously held by becoming employed to a position as defined in §421.5 of this title (relating to Definitions)

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215812 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

Chapter 441. Continuing Education

- 37 TAC §441.5, §441.9

The Texas Commission on Fire Protection adopts an amendment to §441.5 and new §441.9, concerning continuing education, with changes to the text as published in the September 11, 1992, *Texas Register* (17 TexReg 6273). In §441.5(a), the word "required" is changed to "required" and in subsection (c)(1) the last sentence is change to permit continuing education training by a qualified instructor, provided it is administered by a certified instructor. In §441.9 the word "certified" is changed to "assigned" regarding continuing education requirements for Aircraft Crash and Rescue Fire Protection Personnel.

The amendment to §441.5 provides that persons holding certifications in more than one discipline will only have one continuing edu-

cation requirement. New §441.9 establishes a continuing education requirement for aircraft crash and rescue fire protection personnel. The continuing education requirements will ensure that the competency of fire protection personnel is maintained.

Section 441.5 provides that persons holding certifications in more than one discipline will only have one continuing education requirement of 20 hours per year. Section 441.9 regarding continuing education for persons assigned as Aircraft Crash and Rescue Fire Protection Personnel must meet the specific training requirements of FAR 139.319, j-2.

No comments were received regarding adoption of the amendment and new section.

The amendment and new section are adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; the Texas Government Code, §419.032(b), which provides the commission with authority to establish qualifications relating to continuing education programs.

§441.5. Requirements.

(a) Continuing education shall be required in order to renew certification for any discipline which has a continuing education requirement stated in this chapter.

(b) The continuing education requirement for renewal of certification shall consist of 20 hours of training to be conducted during the certification period. Effective January 1, 1993, only 20 total hours of continuing education shall be required to renew all certificates if an individual holds more than one certificate.

(c) Continuing education may consist of either of the following types:

(1) in-service training, in basic subjects contained in the commission approved basic curriculum of the particular discipline, intended to maintain basic knowledge and/or skills. This type of training must be conducted by a qualified instructor and administered by a certified instructor;

(2) (No change.)

(d)-(e) (No change.)

§441.9. Continuing Education for Aircraft Crash and Rescue Fire Protection Personnel. For any certification period beginning after October 31, 1992, continuing education will be required for personnel assigned as Aircraft Crash and Rescue Fire Protection Personnel and must meet the specific training requirements of FAR 139.319, j-2, (pertaining to Aircraft Rescue and Firefighting Operational Requirements).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215813

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

Chapter 443. Adoption by Reference

• 37 TAC §443.1

The Texas Commission on Fire Protection adopts an amendment to §443.1, concerning adoption by reference, with changes to the proposed text as published in the *Texas Register* (17 TexReg 6274). The changes include a change to the date of the curriculum edition and changes to the documents adopted by reference to update reference material and correct formatting and clerical errors.

The amendment changes the name of the Basic Fire Suppression Curriculum by deleting the word "structure" and also adopts a revised edition of the curriculum manual. The name and address of the commission are also changed. The changes to the curriculum are not substantive and require no additional hours; rather, they are changes in formatting and organization of content only. The changes are necessary to improve the training of fire suppression personnel by approved training facilities.

The amendment to §443.1 changes the name of Basic Fire Suppression Curriculum by deleting the word "structure." The amendment also changes the name of the commission, the date of the last amendment to the curriculum, and the address of the commission.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and the Texas Government Code, §419.032(b), which provides the commission with authorization to establish qualifications for training programs for fire protection personnel.

§443.1. Basic Fire Suppression Curriculum.

(a) (No change.)

(b) The Commission on Fire Protection adopts by reference Chapter 1, Basic Fire Suppression Curriculum, of the Commission's document titled "Commission Certification Curriculum Manual" as amended October 14, 1992.

(c) The document adopted by reference in this section is on file in the offices of the Commission on Fire Protection, 3006

B Longhorn Boulevard, Austin, Texas 78759-6735, and is available for public inspection during regular working hours. A copy of the document may be obtained upon request and payment of the fee as specified in Chapter 437 of this title (relating to Fees)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215814

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: December 16, 1992

Proposal publication date: September 11, 1992

For further information, please call: (512) 873-1700

• 37 TAC §443.3

The Texas Commission on Fire Protection adopts new §443.3, concerning adoptions by reference of the basic aircraft rescue and fire protection personnel curriculum, without changes to the proposed text as published in the June 5, 1992, issue of the *Texas Register* (17 TexReg 4076). The section has an effective date of April 1, 1993, and will replace repealed sections pertaining to the same topic.

The new curriculum adopted by the commission improves the training of aircraft crash and rescue fire protection personnel by expanding their specialized training and eliminating redundant training already covered in the basic fire suppression curriculum (which is also a requirement for certification). The practical reduction in the number of hours for most departments that supply aircraft rescue and fire protection with structure trained fire fighters will have an overall positive economic impact for most local governments. The curriculum organizes the competencies, objectives, and reference materials in a manner that improves the delivery of training to aircraft rescue and fire protection personnel. The improved training will enhance the safety of the flying public and aircraft crews.

The adopted curriculum streamlines the specialized training hours previously required from 127 to 235 hours (previously varied depending on airport index) to 94 hours by removing topics covered in the basic fire suppression curriculum. The curriculum is organized by subject matter, competencies, objectives (both written and performances), and includes required equipment and reference materials for each objective.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the adminis-

tration of its power and duties; and the Texas Government Code, §419.038, which provides the Commission with the authority to adopt requirements for certification of aircraft crash and rescue personnel.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215815 Jack Woods
General Counsel
Texas Commission of Fire
Protection

Effective date: April 1, 1993

Proposal publication date: June 5, 1992

For further information, please call: (512) 873-1700

Chapter 471. Standards For Volunteer Certification

• 37 TAC §§471.1, 471.3, 471.5, 471.7

The Texas Commission on Fire Protection adopts new §§471.1, 471.3, 471.5, and 471.7, concerning standards for the commission's volunteer certification program. Section 471.3 is adopted with changes to the proposed text as published in the August 28, 1992, *Texas Register* (17 TexReg 5937). The word "structure" in the definition of module is deleted from the proposed text. Sections 471.1, 471.5, and 471.7 are adopted without changes and will not be republished.

The sections in Chapter 471 establish procedures for meetings of the volunteer fire fighter advisory committee, outlines objectives of the program, defines various terms, and provides for recognition of previous training. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 471.1 provides procedures for the Volunteer Fire Fighter Advisory Committee meetings including the election of officers. Section 471.3 provides the minimum standards and the objectives set by the commission for the volunteer fire fighter certification program. Section 471.5 provides the definitions used in describing the minimum standards and requirements for the program. Finally, §471.7 provides the minimum standards necessary to participate in the volunteer fire fighter program.

No comments were received regarding adoption of the new sections.

The new sections are proposed under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to

education, training programs, continuing education, and testing procedures for the volunteer certification program.

§471.3. Minimum Standards Set by the Commission.

(a) General statement. It shall be clearly understood that the specified minimum standards herein described are designated as a minimum program. Participating entities are encouraged to exceed the minimum program wherever possible. Continuous in-service training beyond the minimum standards for volunteer fire fighter certification is strongly recommended. Nothing in these regulations shall limit or be construed as limiting the powers the participating entity, to enact rules and regulations which establish a higher standard of training than the minimum specified, or which provides for the termination of the services of unsatisfactory personnel during or upon completion of the prescribed probationary period.

(b) Objectives. The objectives of the commission are to raise the level of competence of volunteer fire fighters by establishing specified minimum standards within the scope of the Code creating the commission and outlining its duties and responsibilities. The commission has the authority to:

(1) certify volunteer fire fighter training and educational programs as having attained the minimum required standards specified by the commission;

(2) certify volunteer instructors as having qualified as volunteer fire fighter instructors under such conditions as the commission may prescribe;

(3) direct research in the field of fire protection and to accept gifts and grants for such purposes;

(4) recommend curricula for advanced courses, seminars, and fire science courses in colleges and institutions of higher education at the request of the Coordinating Board, Texas College and University System;

(5) certify persons as having qualified as marine fire protection personnel under such conditions as the commission may prescribe;

(6) certify persons as having qualified as aircraft crash and rescue personnel under such conditions as the commission may prescribe;

(7) certify persons as having qualified in one of the other categories of fire protection personnel under such conditions as the commission may prescribe;

(8) promulgate mandatory minimum requirements for admission in each lowest level categories of fire protection personnel; and

(9) revoke or suspend any certificates issued, or assess administrative penalties, after due process hearing.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215816 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

Chapter 473. Volunteer Fire Fighter

• 37 TAC §§473.1, 473.3, 473.5

The Texas Commission on Fire Protection adopts new §§473.1, 473.3, and 473.5, concerning requirements for volunteer fire fighter certification without changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5939).

The sections in Chapter 473 set forth requirements for certification as a basic volunteer fire fighter, including curriculum requirements, training facilities, examination requirements, and continuing education requirements. The rules outline alternative means of completing an approved basic volunteer fire fighter curriculum and prescribe the content of the curriculum. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 473.1 provides an effective date for the section and also provides the minimum standards for basic volunteer fire fighters. Section 473.3 contains the adoption by reference of Chapter 1, Basic Volunteer Fire Fighter Curriculum, of the commission's document titled "Commission Volunteer Curriculum Manual", as amended. Section 473.5 allows for maintaining certification by the participating individual submitting to the commission documentation of annual continuing education.

No comments were received regarding adoption of the new sections.

The new sections are proposed under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215817

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

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**Chapter 475. Volunteer Fire
Fighter Instructor and
Instructor Training**

- 37 TAC §§475.1, 475.3, 475.9, 475.11

The Texas Commission on Fire Protection adopts new §§475.1, 475.3, 475.9, 475.11, concerning volunteer fire fighter instructor certification and instructor training, without changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5940).

The sections in Chapter 475 outline the requirements for certification as a basic volunteer fire fighter instructor and an intermediate volunteer fire fighter instructor. The requirements are essentially the same as those for paid fire instructors, except that for a limited time period an individual may be certified by the commission as a basic volunteer fire fighter instructor if he or she possesses a State Firemen's and Fire Marshals' Association of Texas Intermediate Fire Fighter certificate and a Level II Instructor certificate from the Association. Section 475.5 and §475.7 are reserved for advanced volunteer fire fighter instructor certification and master volunteer fire fighter instructor certification, respectively. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 475.1 provides the procedures necessary to become certified as a basic volunteer fire fighter instructor. Section 475.3 provides the procedures necessary to become certified as an intermediate volunteer fire fighter instructor. Section 475.9 provides the qualifications necessary to become certified as a volunteer instructional specialist. Finally, Section 475.11 provides information on instructor training courses and substitutions on courses that can be made.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the 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 §419.071(e), which provides the Texas Com-

mission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215818

Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

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**Chapter 477. Volunteer Fire
Fighter Training Facilities**

- 37 TAC §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, 477.13

The Texas Commission on Fire Protection adopts new §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, and 477.13, concerning volunteer fire fighter training facilities. Section 477.3 and §477.11 are adopted with changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5941). A change was made to §477.3(b) to clarify the correct NFPA Standard to use as a reference. Section 477.11(b) was changed to permit a paid instructor certified by the commission under Chapter 425 of this chapter to teach at a volunteer fire fighter training facility. Sections 477.1, 477.5, 477.7, 477.9, and 477.13, are adopted without changes and will not be republished.

The sections in Chapter 477 establish resource requirements for commission approved volunteer fire fighter training facilities, including apparatus, equipment, reference material, testing and records, staff, and administration. It should be noted that §471.1(d) permits an organization to apply for approval to teach all or part of the curriculum. In addition, the resources need not be owned by the training facility applicant but must be available and used by the instructor and trainees." The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 477.1 provides the minimum requirements for certification for an approved training facility. Section 477.3 provides for training dealing with the apparatus used by the authority having jurisdiction. Section 477.5 provides information on equipment used in training. Section 477.7 provides the reference materials that must be kept at the training facility. Section 477.9 provides the requirements for testing and maintenance of records at the training facility. Section 477.11 provides information on the requirements for fac-

ulty at the training facility. Section 477.13 provides general information on training facilities including minimum standards to retain certification as an approved training facility. This section also addresses the circumstances under which a training facilities certification may be revoked.

No comments were received regarding adoption of these new sections.

The new sections are proposed under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education training programs, continuing education, and testing procedures for the volunteer certification program.

§477.3. Apparatus-Training Facility.

(a) A pumper apparatus fully equipped as used by the authority having jurisdiction shall be available for use by the instructors to teach pumper apparatus operation. NFPA Standard 1901, Pumper Fire Apparatus, should be used as a guide.

(b) Ladders or a ladder truck as used by the authority having jurisdiction shall be available for use by the instructors to teach ladders or ladder truck operation. NFPA Standard 1904, Aerial Ladder and Elevating Platform Apparatus, should be used as a guide for ladder truck equipment.

(c) The trainee should become familiar with each major type of apparatus utilized by the authority having jurisdiction.

§477.11. Staff-Training Facility.

(a) The chief training officer, as a minimum, must possess an Intermediate Volunteer Fire Fighter Instructor certification as required in Fighter Training Facilities §475.3 of this title (relating to Minimum Standards for Intermediate Volunteer Fire Fighter Instructor Certification), except as provided in §477.13(e) of this title (relating to General Information-Training Facility). The term "chief training officer" as used in these standards is the fire department training officer by whatever title he/she may be called.

(b) All instructors, except guest instructors, must possess as a minimum a Basic Volunteer Fire Fighter Instructor certificate, as required in §475.1 of this title (relating to Minimum Standards for Basic Volunteer Fire Fighter Instructor Certification), or a Basic Fire Protection Instructor Certificate as provided in §425.1 of this title. A guest instructor is defined as an individual with special knowledge, skill and expertise in a specific subject area who has the ability to enhance the effectiveness of the training.

(c) Guest instructors, utilized on a limited basis, are not required to be certified as instructors. These guest instructors can teach under the endorsement of the instructor responsible for the subject being taught.

(d) The commission encourages all training facility staff to upgrade their instructor certification by completing the required teacher-training courses and other education requirements set forth for higher levels of instructor standards.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215819 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

Chapter 479. Examinations For Volunteer Fire Fighter Certification

• 37 TAC §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11

The Texas Commission on Fire Protection adopts new §§479.1, 479.3, 479.5, 479.7, 479.9, and 479.11, concerning examinations for volunteer fire fighter certification. Section 479.1 is adopted with changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5944). Section 479.1 was changed to require that reasonable accommodations be made in the testing procedures for those individuals with disabilities, as required by the Americans with Disabilities Act. Sections 479.3, 479.5, 479.7, 479.9, and 479.11 are adopted without changes and will not be republished.

The sections in Chapter 479 establish general examination requirements and procedures and outline criteria for eligibility, grading, and performance skills for examinations for certification as a basic volunteer fire fighter. The sections permit an applicant who has completed the relevant portions of the basic volunteer fire fighter curriculum to take an examination on each module or subject area, or, alternatively, to take a comprehensive final examination for commission certification as a basic volunteer fire fighter. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 479.1 provides the general requirements for examinations to become certified under the Basic Volunteer Fire Fighter Certifi-

cation program. Section 479.3 provides definitions of words and terms used in this chapter. Section 479.5 provides procedures for conducting written and/or performance examinations. Section 479.7 provides the requirements for eligibility to sit for the commission approved examination. Section 479.9 explains the scoring and grading of the examination. Section 479.11 provides the procedures for conducting the performance skills portion of a specific module if performance skills are required.

No comments were received regarding adoption of the new sections.

The new sections are proposed under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

§479.1. Requirements-General.

(a) In order to be certified by the commission as a basic volunteer fire fighter, an individual must complete the standards set forth in §473.1(b) of this title (relating to Minimum Standards for Basic Volunteer Fire Fighter) for an approved basic volunteer fire fighter curriculum, as adopted, and must pass all commission approved examinations pertaining to each respective curriculum module or a comprehensive final examination.

(b) Commission approved module examinations and the comprehensive final examination shall consist of at least a written test.

(c) The commission approved module examinations and the comprehensive final examination may also include a skills or proficiency test on certain and specific modules where proficiency in the certain and specific modules is/are deemed important and/or necessary by either NFPA standard, OSHA mandates for life safety, or the Texas Commission on Fire Protection.

(d) The commission shall make reasonable accommodations required by federal law in reference to testing procedures for individuals with disabilities as required by the Americans with Disabilities Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215820 Jack Woods
General Counsel
Texas Commission on Fire
Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

Chapter 481. Volunteer Fire Fighter Certification Fees

• 37 TAC §§481.1, 481.3, 481.5, 481.7, 481.9

The Texas Commission on Fire Protection adopts new §§481.1, 481.3, 481.5, 481.7, and 481.9 concerning volunteer fire fighter fees. Section 481.3 is adopted with changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5946). Section 481.3 subsections (a)-(b) have been rewritten for clarification and a new subsection (c) has been added to require a \$5.00 annual renewal fee required each year for certified volunteer fire fighters regardless of the number of certificates held, instead of an annual participation fee. Sections 481.1, 481.5, 481.7, and 481.9 are adopted without changes and will not be republished.

The sections in Chapter 481 establish fees for the volunteer fire fighter certification program, including a one time \$10 certification fee for each certificate issued as well as an annual participation fee of \$5.00. Fees for standards manuals and curriculum manuals are set at \$20 each. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 481.1 explains the purpose and scope for the fee structure. Section 481.3 describes the type of fees to be collected and the certificates that will be issued by the commission. Section 481.5 provides the cost of the Volunteer Standards Manual. Section 481.7 provides the cost of the Volunteer Curriculum Manual. Section 481.9 provides the cost allowed for copying records furnished by the commission.

No comments were received regarding adoption of the new sections.

The new sections are proposed under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

§481.3. Fees-Participation and Certification.

(a) A \$5.00 annual participation fee is required from each participating individual seeking certification as a volunteer fire fighter.

(b) A one time \$10 certification fee is required for each certificate issued by the

commission under the volunteer certification program.

(c) A \$5.00 annual certification renewal fee is required for each certified volunteer fire fighter regardless of the number of certificates held by said individual.

(d) The certification fees must be in the form of a cashier's check, money order, volunteer entity check, or personal check.

(e) Certification fees shall not be combined with other fees such as fees for commission manuals or copying fees.

(f) The following are certificates issued by the Texas Commission on Fire Protection for which fees are required:

- (1) Basic Volunteer Fire Fighter;
- (2) Basic Volunteer Instructor;
- (3) Intermediate Volunteer Instructor;
- (4) Volunteer Instructor Specialist;
- (5) Approved Training Facility.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215821 Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

Chapter 483. Volunteer Fire Fighter Safety

- 37 TAC §§483.1, 483.3, 483.5

The Texas Commission on Fire Protection adopts new §§483.1, 483.3, and 483.5, concerning volunteer fire fighter safety, without changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5947).

The sections in Chapter 483 concerning volunteer fire fighter safety essentially apply the same standards applicable to paid fire protection personnel for protective clothing and self-contained breathing apparatus, with minor changes to adapt them to the volunteer fire fighter's circumstances. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 483.1 establishes the requirements and references the section of the paid fire protection personnel standards that volunteer

fire fighters should comply with for protective clothing. Section 483.3 establishes the requirements and references the section of the paid fire protection personnel standards that volunteer fire fighters should comply with regarding self-contained breathing apparatus. Section 483.5 provides the commission's recommendations for publications to be sued as guides for all fire protection operations.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215803 Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

Chapter 487. Eligibility For Volunteer Fire Fighter Certification As Fire Protection Personnel

- 37 TAC §487.1, §487.3

The Texas Commission on Fire Protection adopts new §487.1 and §487.3, concerning eligibility for volunteer fire fighter certification as fire protection personnel, without changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5947).

The sections in Chapter 487 outline the requirements and procedures for eligibility for volunteer fire fighter certification as paid fire fighter personnel, as provided in the Texas Government Code, §419.075, including an examination requirement. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote better integration between paid and volunteer fire departments in Texas.

Section 487.1 provides an eligibility requirements for a volunteer fire fighter to be certified to the fire protection personnel under Chapter 423. Section 487.3 provides employment requirements for a volunteer fire fighter who becomes employed in a position as a full-time full-paid structure fire protection personnel.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215822 Jack Woods
General Counsel
Texas Commission on Fire Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

Chapter 489. Volunteer Fire Department Inspections

- 37 TAC §§489.1, 489.3, 489.5, 489.7, 489.9

The Texas Commission on Fire Protection adopts new §§489.1, 489.3, 389.5, 489.7, and 489.9 concerning volunteer fire department inspections, without changes to the proposed text as published in the August 28, 1992, issue of the *Texas Register* (17 TexReg 5948).

The sections in Chapter 489 establish a procedure for a volunteer fire department seeking regulation from the commission to request an inspection for compliance with requirements pertaining to protective clothing, SCBA, training facilities, and training records. Although approval or certification may be denied for non-compliance, the rule authorize administrative penalties only in the case of falsified records, inasmuch as the program is a voluntary certification and regulation program for volunteer fire fighters and departments. The volunteer certification program will raise the level of competency and safety of volunteer fire fighters and promote integration between paid and volunteer fire departments in Texas.

Section 489.1 allows the volunteer fire department to request an administrative inspection. Section 489.3 provides that the commission shall furnish a written report to the volunteer fire department indicating the areas of compliance or non-compliance. Section 489.5 provides the areas where an administrative penalty may be assessed. Section 489.7 provides information on inspections of training facilities. Section 489.9 provides that the volunteer fire department, upon completion of an inspection concerning pro-

ective clothing and self-contained breathing apparatus, may apply to the commission for a certificate of compliance.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the 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 §419.071(e), which provides the Texas Commission on Fire Protection with authority to establish rules for qualifications relating to education, training programs, continuing education, and testing procedures for the volunteer certification program.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215823 Jack Woods
 General Counsel
 Texas Commission on Fire
 Protection

Effective date: January 1, 1993

Proposal publication date: August 28, 1992

For further information, please call: (512) 873-1700

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**TITLE 40. SOCIAL SER-
VICES AND ASSIS-
TANCE**

**Part I. Texas Department
of Human Services**

Chapter 41. Utilization Review

**Waiver for Utilization Review
Procedure**

• **40 TAC §41.102**

The Texas Department of Human Services (DHS) adopts the repeal of §41. 102, adopts

new §41.102, and adopts amendments to §§41.103, 41.104, 41. 106-41.110, and 41.112, without changes to the proposed text as published in the October 16, 1992, issue of the *Texas Register* (17 TexReg 7198).

The justification for the repeal, new section, and amendments is to allow acceptance of facsimile attestation statements if the provider is approved for the procedure by their Medicare fiscal intermediary; to clarify the process to rebill for observation stays; to refine the methodology used to select cases for utilization review; and to clarify the diagnostic related group (DRG) validation process.

The repeal, new section, and amendments will function by providing clearer rules concerning the use of the facsimile machine to transmit attestation statements, the DRG validation process, and the Hospital Utilization Review program's sampling methodology.

No comments were received regarding adoption of the repeal, new section, and amendments.

The repeal is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

• **40 TAC §41.102**

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215738 Nancy Murphy
 Agency liaison, Policy and
 Document Support
 Texas Department of
 Human Services

Effective date: January 1, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 450-3765

The new section is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215739 Nancy Murphy
 Agency liaison, Policy and
 Document Support
 Texas Department of
 Human Services

Effective date: January 1, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 450-3765

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• **40 TAC §§41.103, 41.104,
41.106-41.110, 41.112**

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on November 24, 1992.

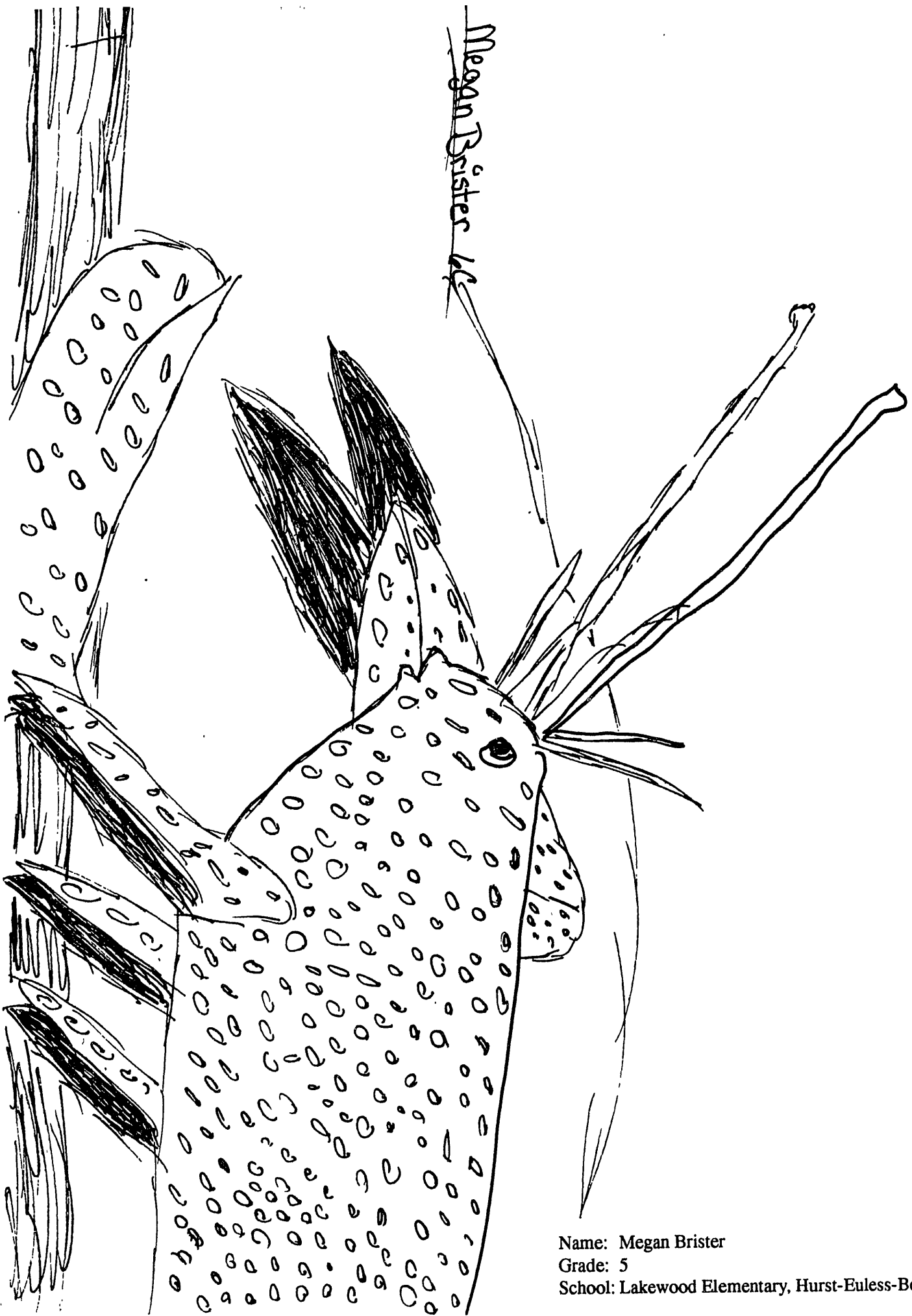
TRD-9215740 Nancy Murphy
 Agency liaison, Policy and
 Document Support
 Texas Department of
 Human Services

Effective date: January 1, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 450-3765

Megan Brister 1/14



Name: Megan Brister
Grade: 5
School: Lakewood Elementary, Hurst-Euless-Bedford IS

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department on Aging

Wednesday, December 2, 1992, 2:30 p.m. (Revised agenda). The Texas Board on Aging's Finance Committee and Internal Audit Subcommittee of the Texas Department on Aging met at 1949 South IH-35, Third Floor Small Conference Room, Austin. According to the complete agenda, the board added the following to Item C. Internal Audit Subcommittee business to include: discussed possible action on fiscal year 1993 audit plan; and to item D. Reviewed Internal Audit Subcommittee report to include: possible action on fiscal year 1993 audit plan.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: November 24, 1992, 1:25 p.m.

TRD-9215755

Thursday, December 3, 1992, 9:30 a.m. (Revised agenda). The Texas Board on Aging/Citizens Advisory Council Joint of the Texas Department on Aging met at the Wyndham Austin Hotel at Southpark, South IH-35 at Ben White Boulevard, Austin. According to the complete agenda, the board added the following to Item C. Citizens Advisory Council Chair's report, considered and possibly acted upon nominations to CAC to fill unexpired terms from Lower Rio Grande Valley and Rio Grande Regions; and to Item H. Internal Audit Subcommittee of Finance Committee, considered and possibly acted upon fiscal year 1993 audit plan.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727.

Filed: November 24, 1992, 1:25 p.m.

TRD-9215754

Texas Department of Agriculture

Thursday, December 3, 1992, 10 a.m. The Texas Rice Producers Board of the Texas Department of Agriculture met at the Harrison County Extension Center, #2 Abercrombie, Houston. According to the complete agenda, the board called the meeting to order; discussed approval of minutes of last meeting; reviewed refund data/report; assess revenue/expenses-took action on budget adjustment; discussed other business; and adjourned.

Contact: Curtis Leonhardt, 6669 Rookin, Houston, Texas 77074, (713) 270-6699.

Filed: November 24, 1992, 4:29 p.m.

TRD-9215778

Friday, December 4, 1992, 9 a.m. The Texas Agricultural Finance Authority of the Texas Department of Agriculture will meet at the Texas Department of Agriculture, 1700 North Congress Avenue, Stephen F. Austin Building, Room 924-A, Austin. According to the complete agenda, the department will call the meeting to order; discuss and act on: minutes of previous meeting, approved loan applications; financial advisors contracts; legislative issues; program rules; and discuss other business.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: November 25, 1992, 9:53 a.m.

TRD-9215824

Thursday, December 10, 1992, 9 a.m. The Texas Department of Agriculture will meet at the Fort Bend County Fairground, Club Room, Building D, Rosenberg. According to the complete agenda, the department will

take public comment on proposed amendments to the Texas Department of Agriculture's general herbicide regulations 4 TAC §§11.3-11.10 as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7831).

Contact: Lacy Fryer, 2626 South Loop West, Suite 130, Houston, Texas 77054, (713) 666-8491

Filed: November 30, 1992, 2:23 p.m.

TRD-9215963

Thursday, December 10, 1992, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, Expressway 83, Two Blocks West of Morningside Road, San Juan. According to the complete agenda, the department will take public comment on proposed amendments to the Texas Department of Agriculture's general herbicide regulations 4 TAC §§11.3-11.10 as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7831).

Contact: Joe Lugo, P.O. Box 1157, Pharr, Texas 78577, (512) 787-8866.

Filed: November 30, 1992, 2:23 p.m.

TRD-9215962

Thursday, December 10, 1992, 10 a.m. The Texas Department of Agriculture will meet at the Texas A&M Research Center, Education Building 101-102, 17360 Coit Road, Plano. According to the complete agenda, the department will take public comment on proposed amendments to the Texas Department of Agriculture's general herbicide regulations 4 TAC §§11.3-11.10 as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7831).

Contact: Jo Anne Noble, 1720 Regal Row, Dallas, Texas 75235, (214) 631-0265.

Filed: November 30, 1992, 2:22 p.m.

TRD-9215961

Thursday, December 10, 1992, 1:30 p.m.
The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120, San Antonio. According to the complete agenda, the department will take public comment on proposed amendments to the Texas Department of Agriculture's general herbicide regulations 4 TAC §§11.3-11.10 as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7831).

Contact: Jim Muse, 8918 Tesoro Drive, Suite 120, San Antonio, Texas 78217, (512) 225-3464.

Filed: November 30, 1992, 2:22 p.m.

TRD-9215960

Thursday, December 10, 1992, 1:30 p.m.
The Texas Department of Agriculture will meet at the Texas A&M Research and Extension Center Auditorium, 1102 East FM 1294, Lubbock. According to the complete agenda, the department will take public comment on proposed amendments to the Texas Department of Agriculture's general herbicide regulations 4 TAC §§11.3-11.10 as published in the November 10, 1992, issue of the *Texas Register* (17 TexReg 7831).

Contact: Ronald Bertrand, 4502 Englewood Avenue, Lubbock, Texas 79414, (806) 799-8555.

Filed: November 30, 1992, 2:22 p.m.

TRD-9215959

Texas Air Control Board

Tuesday, December 8, 1992, 8 a.m. The Permits Oversight Committee's Permit Workshop of the Texas Air Control Board will meet at Park 35 Technology Center, 12118 North IH-35, Room 201S, Austin. According to the complete agenda, the committee will hold a workshop on development of a strategic plan to streamline permit requirements and procedures; and consider and act on recommendation of a strategic plan to streamline permit requirements and procedures.

Contact: Lane Hartsock, 12124 Park 35 Circle, Austin, Texas 78753, (512) 908-1451.

Filed: November 30, 1992, 2:57 p.m.

TRD-9215978

State Banking Board

Wednesday, December 9, 1992, 2:30 p.m.
The State Banking Board will meet at 2601 North Lamar Boulevard, Austin. According to the agenda summary, the board will review and discuss approval of minutes of previous meeting; consider rule relating to substitute members of the State Banking Board; consider emergency rule relating to substitute members of the State Banking Board; consider Trust Company Charter application for Universal Trust Company, Houston; consider Trust Company charter application for West Texas Trust Company, Levelland; consider interim charter applications for New Lakewood Bank, Dallas, and New Waco Bank, Waco; consider conversion applications; review of status of other pending applications; and the board may convene into executive session for consideration of matters pertaining to applications as required by Article 342-115(6)(a) of TBC.

Contact: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Filed: November 30, 1992, 4:29 p.m.

TRD-9215983

Texas Department of Banking

Thursday, December 10, 1992, 10 a.m.
The Prepaid Funeral Guaranty Fund Advisory Council of the Texas Department of Banking will meet at 2601 North Lamar Boulevard, Austin. According to the complete agenda, the council will review and discuss approval of minutes of previous meeting; consider and vote on adoption for publication of proposed Prepaid Funeral Contract Rules 7 TAC §§25.18, 25.19, and 25.20; consider and vote on selection of a vendor to perform an actuarial study; meet in executive session to consider pending or proposed litigation; discuss resignation of industry representative, Stephanie Newburg and her replacement; and discuss dates and times of future meetings.

Contact: Randall S. James, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 475-1300.

Filed: November 24, 1992, 2:03 p.m.

TRD-9215761

Thursday, December 10, 1992, 10:30 a.m. (Revised agenda and Rescheduled from December 10, 1992, at 10 a.m.)
The Prepaid Funeral-Guaranty Fund Advisory Council of the Texas Department of Banking will meet at 2601 North Lamar Boulevard, Austin. According to the complete agenda, the council will review and discuss approval of minutes of previous meeting; consider and vote on adoption for publica-

tion of proposed Prepaid Funeral Contract Rules 7 TAC §§25.18, 25.19, and 25.20; consider and vote on selection of a vendor to perform an actuarial study; discuss resignation of industry representative, Stephenie Newberg and her replacement; discuss dates and times of future meetings; and meet in executive session to consider pending or proposed litigation.

Contact: Randall S. James, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 475-1300.

Filed: November 25, 1992, 3:34 p.m.

TRD-9215901

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons Committee

Friday, December 4, 1992, 9 a.m.
The Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons Committee will meet at the Texas Commission for the Blind, Criss Cole Rehabilitation Center, Staff Training Room, 4800 North Lamar Boulevard, Austin. According to the agenda summary, the committee will call the meeting to order; introduce committee members and guests; accept minutes from September 11, 1992, meeting; discuss and act on new services and renewal services; discuss and act on enclaves; discuss and act on new products and product changes and revisions; discuss and act on report subcommittee's recommendations for annual report; discuss and act on setting meeting dates for 1993; and adjourn.

Contact: Michael T. Phillips, P.O. Box 12866, Austin, Texas 78711, (512) 459-2604.

Filed: November 24, 1992, 1:20 p.m.

TRD-9215752

Texas Bond Review Board

Tuesday, December 8, 1992, 1:30 p.m.
The Staff of the Texas Bond Review Board will meet at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the agenda summary, the staff will call the meeting to order; discuss proposed issues; discuss other business; hold a public hearing regarding proposed amendments to rules for private activity bond allocation program; and adjourn.

Contact: Tom K. Pollard, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: November 30, 1992, 4:14 p.m.

TRD-9215982

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Coastal Coordination Council

Wednesday, December 2, 1992, 9 a.m. The Executive Committee of the Coastal Coordination Council met at the Stephen F. Austin Building, Room 831, 1700 North Congress Avenue, Austin. According to the agenda summary, the committee discussed approval of the minutes from the October 28, 1992, meeting and received status reports from staff on the Beach/Dune Hearings, Consistency Review Process, and the Wetlands Management Program.

Contact: Janet L. Fatheree, 1700 North Congress Avenue, Room 730, Austin, Texas 78701, (512) 463-5385.

Filed: November 24, 1992, 4:05 p.m.

TRD-9215769

◆ ◆ ◆
Texas Department of Criminal Justice

Friday, December 11, 1992, 1:30 p.m. The Subcommittee on Parole Issues of the Board of Criminal Justice of the Texas Department of Criminal Justice will meet at 8610 Shoal Creek Boulevard, Conference Room, Austin. According to the complete agenda, the subcommittee will call the meeting to order; discuss training; computers; communications with field staff; promotions practices; and adjourn.

Contact: Susan McHenry, P.O. Box 13084, Austin, Texas 78711, (512) 463-9985.

Filed: November 30, 1992, 11:28 a.m.

TRD-9215932

◆ ◆ ◆
Texas Commission for the Deaf and Hearing Impaired

Friday, December 11, 1992, 9:30 a.m. The Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH-35, #200, Austin. According to the complete agenda, the commission will call the meeting to order; chairperson's report; discuss approval of minutes; budget/financial reports; BEI report; Camp Sign report; Task Force and committee reports; TCDHI Human Rights Policy; meet in executive session to discuss appointment of Interim Executive Director; act on results of executive session; information items; plan next commission meeting; adjourn; and hold a public hearing.

Contact: Texana Faulk Conn, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: November 30, 1992, 2:11 p.m.

TRD-9215934

◆ ◆ ◆
Texas State Board of Dental Examiners

Friday, December 4, 1992, 1:30 p.m. The Texas State Board of Dental Examiners will meet at the TSBDE Offices, 333 Guadalupe, Tower Three, Suite 800, William Hobby Building, Austin. According to the agenda summary, the board will call the meeting to order; take roll call; discuss approval of settlement orders; appearance before the board-Jack Troutt, DDS; proposed amendment to Rule 101.1(b)(2): "Graduation from an ADA Accredited School"; consider amended examination guidelines; consider request for Attorney General's opinion on licensure by credentials; announcements; and adjourn.

Contact: C. Thomas Camp, 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: November 25, 1992, 11:44 a.m.

TRD-9215847

◆ ◆ ◆
Educational Economic Policy Center

Monday, December 7, 1992, 10 a.m. The Accountability Subcommittee of the Educational Economic Policy Center will meet at the Joe C. Thompson Conference Center, Room 3.120, 2315 Red River Street, Austin. According to the complete agenda, the subcommittee will discuss draft accountability report; and adjourn.

Contact: Mary Ward, LBJ School of Public Affairs, Room 3.310, Austin, Texas 78712, (512) 471-7561.

Filed: November 25, 1992, 2:01 p.m.

TRD-9215850

Monday, December 7, 1992, 2 p.m. The Alternate School Year Subcommittee of the Educational Economic Policy Center will meet at the Joe C. Thompson Conference Center, Room 3.120, 2315 Red River Street, Austin. According to the complete agenda, the subcommittee will discuss future research; and adjourn.

Contact: Mary Ward, LBJ School of Public Affairs, Room 3.310, Austin, Texas 78712, (512) 471-7561.

Filed: November 25, 1992, 2:01 p.m.

TRD-9215849

Texas Education Agency

Thursday-Friday, December 3-4, 1992, 9 a.m. The Texas Commission on Braille Textbook Production of the Texas Education Agency met at Conference Room, Dallas Services for Visually Impaired Children, Inc., 4242 Office Parkway, Dallas. According to the agenda summary, on Thursday, the commission called the meeting to order; welcomed guests; made announcements; chairman's preview: Tour of Dallas services; report on recent State Board of Education decisions affecting braille production; report on decisions by the international committee for accessible document design; summary presentation of draft findings and recommendations; diskette formatting standards and delivery requirements; braille production; electronic instructional media systems; agency, publisher, producer, teacher and state textbook committee relationships; heard public comment; wrap-up; and on Friday, the commission will call the meeting to order; discuss benefits derived from use of diskettes received in December 1991 and January 1992; recapitulation of proposed amendments to House Bill 2277; final consideration of report and recommendations; demonstration of foreign language translators; discuss future activities; report on the national scene; hear public comment; and wrap-up.

Contact: Charles Mayo, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9606.

Filed: November 25, 1992, 11:03 a.m.

TRD-9215840

Monday, December 7, 1992, 12:30 p.m. The State Board of Education (SBOE) of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 2-112, Austin. According to the complete agenda, the board will hold an orientation session for new members of the SBOE and cover areas of interest to the new members. All members of the SBOE have been invited to participate.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: November 25, 1992, 11:02 a.m.

TRD-9215839

◆ ◆ ◆
Texas Employment Commission

Tuesday, December 8, 1992, 8:30 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; meet

in executive session to discuss possible settlement in Figari and Davenport versus TEC and Valerie Lane, and relocation of agency headquarters; actions, if any, resulting from executive session; staff reports; consider proposed or pending legislation and possible action with respect thereto; discussion of and authorization for expenditure for various repairs to TEC cafeteria; internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Dockets 48 and 49; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: November 30, 1992, 4:07 p.m.

TRD-9215980

Texas Commission on Fire Protection

Wednesday, December 2, 10 a.m., Thursday-Friday, December 3-4, 1992, 10 a.m. and 8:30 a.m. respectively. The Fire Protection Personnel Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of previous minutes; overview/staff briefing of agenda items; consider and discuss matters from members and the public; report of testing committee; discuss and possibly act on proposed rule amendments, new sections, or repeals to 37 TAC, Chapters 471, §421.1; 423, Subchapter A; 425, 427, 437, 441, 491 and 493. Discuss and possibly act on approval requirements for hazardous materials training instructors; proposed rule and/or statutory changes concerning eligibility for certification or recertification of fire service members elected to serve in the Legislature or other public office; joint meeting/workshop with Volunteer Fire Fighter Advisory Council regarding Texas Government Code Chapter 419; and discuss and possibly act on future meetings.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: November 25, 1992, 9:27 a.m.

TRD-9215786

Friday-Saturday, December 4-5, 1992, 9 a.m. The Volunteer Fire Fighter Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of previous minutes; election of officers; joint meeting/workshop with Fire Protection Personnel Advisory Committee; consider/discuss matters from members and the public; discuss and possibly act

on proposed new rules and changes to 37 TAC Chapters 471, 473, 477, 479, 481, 483, 485, 487, 489; discuss and possibly act on one year designation of member to represent the Volunteer Fire Fighter Advisory Committee at meetings of the International Fire Service Accreditation Congress; discuss and possibly act on designation of committee representative(s) for presentation of committee report to the commission; and action on future meeting dates, times, and agenda items.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: November 25, 1992, 9:25 a.m.

TRD-9215785

Tuesday-Friday, January 12-15, 1993, 9 a.m. The Funds Allocation Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of the minutes of previous meeting; discuss monitoring reports; discuss and possibly act on: applications for assistance received by November 30, 1992; applications received by August 26, 1992, which were considered at the October 13-14 committee meeting, but upon which no recommendations were made; discuss and recommend interest rate; discuss and possibly act on: possible rule amendments; changes to the applications instructions; recommendations to the commission concerning assistance to fire departments in the acquisition of resources; and election of chair and vice chair.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: November 25, 1992, 9:30 a.m.

TRD-9215787

General Land Office

Monday, November 30, 1992, 9:30 a.m. The Veterans Land Board of the General Land Office held an emergency meeting at the Stephen F. Austin Building, Room 831, Austin. According to the agenda summary, the board considered amending the Veterans' Housing Assistance Bonds, Series 1993 from an amount not to exceed \$100,000,000 to an amount not to exceed \$125,000,000; considered amending Veterans' Land Bonds, Series 1992: method of finance from a competitive sale to negotiated; and, the title of the series to Series 1993. The emergency status was necessary due to an unprecedented demand for housing loans, severely depleting loanable funds and consideration by bond review board for approval of issuance of VLB housing bonds.

Contact: Mae Vrazel, 1700 North Congress Avenue, Austin, Texas 78701, (512) 463-5340.

Filed: November 25, 1992, 3:38 p.m.

TRD-9215902

General Services Commission

Monday, December 7, 1992, 9:30 a.m. The General Services Commission will meet in Room 402, Central Services Building, 1711 San Jacinto, Austin. According to the agenda summary, the commission will consider real property acquisition in Houston; consider and discuss change orders; consider lease with Option to Purchase guidelines; consider proposed amendments to purchasing rules, Chapter 113; consider fiscal year 1993 Deferred Maintenance Fund Project; consider 1994-1995 revised budget; consider and discuss naming of various insurance buildings; briefing on the status of Sunset Review; consider and discuss financing request for the construction project at the Hobby Building; meet in executive session to receive a report concerning the status of pending litigation and to consider personnel matters; and division issues report.

Contact: Judith M. Porras, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3446.

Filed: November 24, 1992, 4:17 p.m.

TRD-9215772

Governor's Task Force on Economic Transition

Thursday-Friday, December 3-4, 1992, 9 a.m. The Governor's Task Force on Economic Transition will meet at the Rudder Building, Fourth Floor Conference Room, Austin. According to the complete agenda, on Thursday, the task force will review status report; review and vote on Volume 11 recommendations; and on Friday, review and vote on Volume 11 recommendations and report.

Contact: Katy Davis, P.O. Box 12697, Austin, Texas 78711, (512) 463-9982.

Filed: November 24, 1992, 11:46 a.m.

TRD-9215744

Texas Department of Housing and Community Affairs

Monday, December 7, 1992, 1:30 p.m. The Board of Directors of the Texas Department of Housing and Community Affairs

fairs will meet at 811 Barton Springs Road, Suite 300, Austin. According to the agenda summary, the board will consider and possibly act upon the following items: discuss approval of the minutes of August 21, 1992 and October 16, 1992 meetings; hear public comment; reports from audit committee, program committee (Resolution Trust Corporation Contract); low income tax credit committee (final approval for tax credit properties); multi-family housing program (resolution for restructuring certain properties); single family program; and report from Lomas; program updates from various departments and programs; and adjourn. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Susan J. Leigh, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3932.

Filed: November 25, 1992, 11:52 a.m.

TRD-9215848

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Texas Department of Human Services

Tuesday, December 8, 1992, 9:30 a.m. The Hospital Payment Advisory Committee of the Texas Department of Human Services will meet at 1100 West 49th Street, Room T-607, Austin. According to the complete agenda, the committee will make opening comments; discuss approval of minutes; reports on dispro share survey; disproportionate share reconstitution recommendations; open discussion; plan next meeting; and adjourn.

Contact: Carolyn Howell, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3053.

Filed: November 30, 1992, 9:44 a.m.

TRD-9215926

Friday, December 11, 1992, 8:30 a.m. The Social Work Certification Advisory Council of the Texas Department of Human Services will meet at 701 West 51st Street, Fifth Floor, West Tower, Conference Room 5W, Austin. According to the complete agenda, the council will review and discuss bylaws; practice of hypnosis; review of proposed rules; sunset commission; and staff report.

Contact: Michael Doughty, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-3248.

Filed: November 30, 1992, 2:57 p.m.

TRD-9215977

Texas Department of Insurance

Friday, December 4, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Exclusive Healthcare, Inc., Omaha Nebraska, for a certificate of authority to operate a health maintenance organization.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 24, 1992, 11:56 a.m.

TRD-9215750

Friday, December 4, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against Alan Doyle Copeland who holds a Group I, Legal Reserve Life Insurance Agent's license and Group V, Local Recording Agent's license.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 24, 1992, 11:56 a.m.

TRD-9215749

Friday, December 4, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the application of Landmark Life Insurance Company, Brownwood, Texas, to acquire control of Union Security Line Insurance Company, Greenville, Texas, pursuant to the provisions of Texas Insurance Code, Article 21.49-1, §5.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 24, 1992, 11:55 a.m.

TRD-9215747

Friday, December 4, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the reinsurance agreement whereby Union

Security Life Insurance Company, Greenville, Texas, will be reinsured by Landmark Life Insurance Company, Brownwood, Texas.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 24, 1992, 11:56 a.m.

TRD-9215748

Monday, December 7, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider whether disciplinary action should be taken against International Underwriters Insurance Company, of Dover, Delaware, which holds a certificate of authority issued by TDI.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 24, 1992, 11:55 a.m.

TRD-9215746

Monday, December 7, 1992, 1:30 p.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the commissioner's hearing section will conduct a public hearing to consider the proposed plan of merger of Members Life Insurance Company, Farmers Branch, Texas, into Cumis Life Insurance, Inc., Madison, Wisconsin, with Cumis Life Insurance, Inc. being the survivor.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 24, 1992, 11:55 a.m.

TRD-9215745

Tuesday, December 8, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether the Homeowner's Premium-by-Territory Data submitted by State Farm Insurance is a trade secret and whether such data is confidential. Docket Number 11578.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:57 p.m.

TRD-9215975

Tuesday, December 8, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at

333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application of Ildefonso Guajardo, Houston, for a local recording agent's license. Docket Number 11625.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:56 p.m.

TRD-9215974

Tuesday, December 8, 1992, 10 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the application for amendment of the articles of incorporation of Utica National Insurance Company of Texas, Dallas, increasing the authorized capital. Docket Number 11621.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:56 p.m.

TRD-9215973

Wednesday, December 9, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the proposed plan of merger of Arizona Reinsurance Company, Phoenix, Arizona, into States General Life Insurance Company, Dallas, with States General Life Insurance Company being the survivor. Docket Number 11622.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:56 p.m.

TRD-9215972

Wednesday, December 9, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the appeal of decision of the Texas Workers' Compensation Insurance Facility regarding Toddler House, Inc. Docket Number 1963.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:56 p.m.

TRD-9215971

Thursday, December 10, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at

333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider whether disciplinary action should be taken against John Hong Nguyen who holds a Group V, Local Recording Agent's license. Docket Number 11587.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:56 p.m.

TRD-9215970

Thursday, December 10, 1992, 9 a.m. The Commissioner's Hearing Section of the Texas Department of Insurance will meet at 333 Guadalupe Street, Hobby II, Fourth Floor, Austin. According to the complete agenda, the section will conduct a public hearing to consider the appeal of decision of the Texas Workers' Compensation Insurance Facility regarding Bill Weems, Inc. doing business as Plaza Tire Center. Docket Number 1964.

Contact: Kelly Townsell, 333 Guadalupe Street, Hobby I, Austin, Texas 78701, (512) 475-2983.

Filed: November 30, 1992, 2:55 p.m.

TRD-9215969

Friday, December 11, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, Room 100, 333 Guadalupe Street, Austin. According to the agenda summary, the board will discuss personnel; solvency; litigation; budget; staff reports; commissioner's orders; consider filings by Arkwright Mutual and Arkwright Insurance Companies, Allendale Mutual Insurance Company, Protection Mutual Insurance Company, Continental Casualty Company, The Medical Protective Company, The Firemen's Fund Group of Companies and USF&G Group; consider possible adoption of amendments to several endorsements to the Texas Automobile Rules and Rating Manual; consider whether a meeting or hearing will be granted regarding a petition filed by the Texas Workers' Compensation Facility and regarding a petition filed by the Texas Department of Insurance.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 30, 1992, 2:46 p.m.

TRD-9215966

Wednesday, December 16, 1992, 9 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at 333 Guadalupe Street, William P. Hobby Building, Room 100, Austin. According to the complete agenda, the board will consider authorization for publication of proposed 28

TAC rules concerning rules of practice and procedure governing benchmark rate hearings; and the deletion to all references to the Fire Marshal in Chapter 1, Subchapter A, Rules of Practice and Procedure.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6527.

Filed: November 25, 1992, 10:01 a.m.

TRD-9215826

◆ ◆ ◆ **Joint Interim Committee on the Environment**

Tuesday, December 8, 1992, 10 a.m. The Joint Interim Committee on the Environment will meet at the Sam Houston Building, Room 117, 201 East 14th Street, Austin. According to the agenda summary, the committee will consider a draft committee report.

Contact: Shayne Woodard, Room 907, Sam Houston Building, Austin, Texas 78701, (512) 463-0390.

Filed: November 30, 1992, 2:43 p.m.

TRD-9215965

◆ ◆ ◆ **Texas Commission on Law Enforcement Officer Stan- dards and Education**

Wednesday, December 9, 1992, 9 a.m. (Revised agenda). The Texas Commission on Law Enforcement Officer Standards and Education will meet at the Doubletree Hotel, 6505 IH-35 North, Austin. According to the agenda summary, the commission will discuss and act on the rescheduling of the March, 1993, work session and regular quarterly meeting to January, 1993.

Contact: Fred Tolar, 1033 LaPosada, #175, Austin, Texas 78752, (512) 450-0188.

Filed: November 25, 1992, 8:48 a.m.

TRD-9215781

Tuesday, December 15, 1992, 10 a.m. The Law Enforcement Management Institute of the Texas Commission on Law Enforcement Officer Standards and Education will meet at TCLEOSE Headquarters, 1033 LaPosada, Austin. According to the agenda summary, the commission will call the meeting to order; recognize visitors; introduce newly appointed member and election of chairman, vice-chairman and secretary (if new board member is appointed); discuss approval of minutes of the August 18, 1992 board of directors meeting; *Issues and Perspectives* Book; discuss and act on time limits for program completion; new districts; discuss and act on selection guide-

lines; staff activity reports; future meeting dates; public comments on any subject without discussion will be received; and adjourn.

Contact: Fred Tolar, 1033 LaPosada, #175, Austin, Texas 78752, (512) 450-0188.

Filed: November 25, 1992, 8:48 a.m.

TRD-9215780

Texas Department of Licensing and Regulation

Wednesday, December 16, 1992, 9 a.m. The Inspections and Investigations; Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for FUQUA Homes, Inc. for violation of Vernon's Texas Civil Statutes, Articles 5221f, §14 and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: November 30, 1992, 8:58 a.m.

TRD-9215911

Thursday, December 17, 1992, 9 a.m. The Inspections and Investigations; Auctioneers of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Robert Richie doing business as Mid-Tex Auto Auction, Inc. for violation of Vernon's Texas Civil Statutes, Articles 8700 Texas Civil Statutes, §7(a)(4), 6252-13a, 16 TAC, Chapter 67 §67.101(4) and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: November 30, 1992, 8:59 a.m.

TRD-9215912

Texas State Board of Medical Examiners

Thursday, December 10, 1992, 12:30 p.m. The District Review Committee Number Two of the Texas State Board of Medical Examiners will meet at the Dallas County Medical Society, 140 East 12th Street, Dallas. According to the complete agenda, the

committee will call the meeting to order; review multiple liability files; and adjourn. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: November 24, 1992, 1:24 p.m.

TRD-9215753

Friday, December 11, 1992, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the division will hold probation appearances; and modification and termination requests. (Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1), and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: November 25, 11:10 a.m.

TRD-9215846

Midwestern State University

Monday, November 30, 1992, 4 p.m. The Executive Committee of the Board of Regents of Midwestern State University met at Midwestern State University, Hardin Board Room, Wichita Falls. According to the complete agenda, the committee discussed property the university owns off of Southwest Parkway in Wichita Falls. The committee reserved the right to discuss this item in executive session when legally justified under the Texas Open Meetings Act.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: November 24, 1992, 4:57 p.m.

TRD-9215779

Texas Board of Licensure for Nursing Home Administrators

Tuesday, December 8, 1992, 2:30 p.m. (Revised agenda). The Texas Board of Licensure for Nursing Home Administrators will meet at 4800 North Lamar Boulevard, Chris Cole Building Auditorium, Austin. According to the complete agenda, the board will call the meeting to order; agenda approval; litigation update; review and possibly take action on proposal for decision concerning Lynn Ray Read; education committee report; discuss and possibly take action on proposed amendment to §247.4(3);

final vote on public comment rule; final vote on application rules; final vote on \$10 fee for continuing education sponsors; set next meeting date; and adjourn.

Contact: Janet Lacy, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 458-1955.

Filed: November 24, 1992, 10:58 a.m.

TRD-9215742

Public Utility Commission of Texas

Thursday, December 17, 1992, 9 a.m. (Rescheduled from December 14, 1992). The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11371-petition of Central Power and Light Company for authority to implement an economic development rider.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 25, 1992, 2:53 p.m.

TRD-9215895

Friday, December 18, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 11585-Medina Electric Cooperative, Inc. standard avoided cost calculation for the purchase of firm energy and capacity from qualifying facilities, pursuant to Substantive Rule 23.66(h).

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 25, 1992, 2:53 p.m.

TRD-9215896

Texas Real Estate Commission

Monday, December 7, 1992, 9:30 a.m. The Texas Real Estate Commission will meet at the TREC Headquarters, Conference Room 235, Second Floor, 1101 Camino La Costa, Austin. According to the agenda summary, the commission will discuss and possibly act on: proposed amendments to 22 TAC §535.121 concerning change of sponsoring broker, to §535.226 concerning sponsorship of apprentices and inspectors-in-training, to new §535.221 concerning inspector advertisements, to §535.71 and §535.72 concerning mandatory

continuing education, to \$535.92 concerning license renewal, and repeal or amendment to \$535.164 and \$535.165 concerning agency disclosure; education providers and courses; meet in executive session to discuss pending litigation; payments from recovery funds; motions for rehearing; and entry of orders.

Contact: Camilla Shannon, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: November 24, 1992, 2:03 p.m.

TRD-9215760

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Texas County and District Retirement System

Thursday, December 10, 1992, 1:30 p.m. The Board of Trustees of the Texas County and District Retirement System will meet at the TCDRS Offices, 400 West 14th Street, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of the minutes of September 30, 1992 regular board meeting; approve applications for service and disability retirement benefits; consider applications for TCDRS participation; consider escheatment of former board member accounts; consider recommendations of personnel policy committee; determine interest rate for 1992; adopt resolutions regarding transfers to distributive benefits account of endowment fund and from endowment fund-general reserves account to expense fund; adopt budget for year 1993; review and act on reports from actuary, investment counsel, legal counsel and director; consider and act on proposed limits on number of direct IRA/Qualified Plan "Rollover" distributions; consider change in actuarial assumptions; consider TCDRS Act amendments; consider proposed amendments of investment policy; election of officers for year 1993; and set date for March 1993 board meeting.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: November 24, 1992, 1:41 p.m.

TRD-9215757

Friday, December 11, 1992, 9 a.m. The Board of Trustees of the Texas County and District Retirement System will meet at the Four Seasons Hotel, 98 San Jacinto Boulevard, Austin. According to the agenda summary, the board will call the meeting to order; discuss approval of the minutes of September 30, 1992 regular board meeting; approve applications for service and disability retirement benefits; consider applications for TCDRS participation; consider escheatment of former board member accounts; consider recommendations of per-

sonnel policy committee; determine interest rate for 1992; adopt resolutions regarding transfers to distributive benefits account of endowment fund and from endowment fund-general reserves account to expense fund; adopt budget for year 1993; review and act on reports from actuary, investment counsel, legal counsel and director; consider and act on proposed limits on number of direct IRA/Qualified Plan "Rollover" distributions; consider change in actuarial assumptions; consider TCDRS Act amendments; consider proposed amendments of investment policy; election of officers for year 1993; and set date for March 1993 board meeting.

Contact: Terry Horton, 400 West 14th Street, Austin, Texas 78701, (512) 476-6651.

Filed: November 24, 1992, 1:42 p.m.

TRD-9215758

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Texas Municipal Retirement System

Saturday, December 12, 1992, 8:30 a.m. The Board of Trustees of the Texas Municipal Retirement System will meet at 1200 North IH-35, Austin. According to the complete agenda, the board will consider and act upon the minutes of the September 26, 1992 regular meeting and November 20, 1992 special meeting; discuss service retirements; disability retirements; supplemental death benefits payments; extended supplemental death benefits; financial statements; transfer of inactive accounts and unclaimed refunds; changes in benefit structure by member cities; consider and act upon request from Pension Review Board for voluntary contributions pursuant to Section 801.113, Government Code; consider and act upon proposed budget for 1993; consider and act upon adoption of resolution transferring monies from interest reserve fund to expense fund; consider and act upon adoption of resolution granting distributive benefits to annuitants and supplemental interest to certain funds and accounts; consider and act upon resolution adopting Section 125 plan covering system's employees; discuss trustee to trustee transfers on refunds paid after January 1, 1993; report of actuary; report of legal counsel; report by the director; election of officers for 1993; and consider any other business to come before the board.

Contact: Gary W. Anderson, 1200 North IH-35, Austin, Texas 78701, (512) 476-7577.

Filed: November 25, 1992, 10:47 a.m.

TRD-9215838

Sam Houston State University

Wednesday, December 9, 1992, 11:30 a.m. The Sam Houston Bicentennial Birthday Celebration Committee of Sam Houston State University will meet at the Guest Quarters Hotel, 303 West 15th Street at Lavaca, Austin. According to the complete agenda, the committee will call the meeting to order; discuss approval of minutes from last meeting, July 20, 1992; review state calendar; potential sales of Sam Houston bust; fund raising support; executive director report; and plan next meeting date.

Contact: Twila Kirkpatrick, P.O. Box 2419, Huntsville, Texas 77341, (409) 294-3625.

Filed: December 1, 1992, 8:58 a.m.

TRD-9215996

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Senate Interim Committee on State Affairs

Thursday, December 10, 1992, 9 a.m. The Subcommittee on Workforce Development of the Senate Interim Committee on State Affairs will meet at the Temporary Senate Chamber, One Capitol Square, 15th and Lavaca Streets, Austin. According to the complete revised agenda, the subcommittee will call the meeting to order; public testimony will be heard on recommendations contained in the staff report to the subcommittee on workforce development. This report, "A Quality Workforce: The Premier Chip In A High Stakes Game," is available at the committee office, Room 904, Sam Houston Building; and adjourn.

Contact: Joe Gagen, P.O. Box 12068, Austin, Texas 78711, (512) 463-0380.

Filed: November 24, 1992, 1:14 p.m.

TRD-9215751

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Structural Pest Control Board

Wednesday, December 9, 1992, 8:30 a.m. The Integrated Pest Management Committee of the Structural Pest Control Board will meet at the Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.210, Austin. According to the complete agenda, the committee will discuss committee writing assignments-standards document; discuss public hearings; invited experts discuss EPA pesticide registration requirements and pesticide toxicology; hear public comments; and discuss guidelines for approval chemicals list provision Texas Structural Pest Control Board Law.

Contact: Benny M. Mathus, Jr., 9101 Burnet Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: November 25, 1992, 10:03 a.m.

TRD-9215827

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The Texas A&M University System, Board of Regents

Thursday-Friday, December 3-4, 1992, 8:30 a.m. and 8 a.m. respectively. The Board of Regents of The Texas A&M University System will meet at the Board of Regents Meeting Room, College Station. According to the agenda summary, the board will adopt resolutions; discuss construction matters for the system parts, selection of architect/engineers; initiation of construction projects; correction and approval of minutes; authorization to seek legislation; authorization for license agreements; authorization for degree programs; change names of institutes; authorization for centers; appointment of peace officer; appropriation of funds; establish fees; appointment of Dean of the College of Nursing at Prairie View A&M University and director of the Panhandle Plains Historical Museum at West Texas State University; easements; disposition and acquisition of real estate; naming of facilities; receive reports from system administration; policy on names for system institutions; consider name change for Corpus Christi State University and Laredo State University; quasi-endowment; terminations; appointment; promotions; and tenure and gifts, grants, loans and bequests.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 25, 1992, 1:45 p.m.

TRD-9215873

Friday, December 4, 1992, 8 a.m. (Revised agenda). The Board of Regents of Texas A&M University will meet at the Board of Regents Meeting Room, College Station. According to the complete revised agenda, the board will discuss resolution regarding the SAGO (System Administrative and General Offices) study implementation plan.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: November 30, 1992, 4:53 p.m.

TRD-9215984

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Texas Department of Transportation

Tuesday, November 24, 1992, 3 p.m. The Texas Transportation Commission of the Texas Department of Transportation held an

emergency meeting at the Dewitt C. Greer Building, 125 East 11th Street, First Floor, Austin. According to the agenda summary, the commission considered concurrence in award of Red River Bridge joint project contract by state of Arkansas; and considered 3% hourly pay increase for maintenance/marine employees. The emergency status was necessary to protect safety of traffic traversing Red River at Bowie County/Arkansas border, and to relieve economic hardship of state employees and their employees.

Contact: Myrna Klipple, 125 East 11th Street, Austin, Texas 78701, (512) 463-8576.

Filed: November 24, 1992, 10:04 a.m.

TRD-9215736

Monday, December 14, 1992, 9 a.m. The Environmental Advisory Committee of the Texas Department of Transportation will meet at the Dewitt C. Greer Building, 125 East 11th Street, First Floor-Red Room, Austin. According to the agenda summary, the committee will discuss approval of minutes; final review of proposed rulemaking concerning private toll roads and public hearings and meetings; and preliminary review of proposed rulemaking concerning transportation enhancement program.

Contact: Roland Gamble, 125 East 11th Street, Austin, Texas 78701, (512) 475-0701.

Filed: December 1, 1992, 9:38 a.m.

TRD-9216002

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Texas Turnpike Authority

Wednesday, December 9, 1992, 2 p.m. The Board of Directors of the Texas Turnpike Authority will meet at the Dallas Marriott Quorum, 14901 Dallas Parkway, Dallas. According to the complete agenda, the board will take roll call of directors; meet in executive session (pursuant to Article 6252-17, Vernon's Revised Civil Statutes) to consult with attorney and staff concerning contract negotiations with Harris County and Dallas County as to respective Turnpike Project acquisitions; briefing and discussion on Dallas County acquisition of the Dallas North Tollway and Mountain Creek Lake Bridge projects; briefing and discussion on Harris County acquisition of the Houston Ship Channel Bridge project; and adjourn.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: November 30, 1992, 2:42 p.m.

TRD-9215964

University of Houston System

Wednesday, December 9, 1992, 3 p.m. The Committees of the Board of Regents of the University of Houston System will meet at Conference Room One, 1600 Smith, 34th Floor, University of Houston System, Houston. According to the agenda summary, the committees will discuss and/or act upon the following: executive committee to discuss refinancing of installment purchase agreement projects at the University of Houston, UH-Clear and UH-Downtown; succeed by a facilities planning and building committee; design of the proposed athletic/alumni facility and revised music building project program guide; and succeed by a finance and audit committee: summary of the fy 1992 financial report; and schedule for issuing of the consolidated revenue bonds, Series 1993.

Contact: Peggy Cervenka, 1600 Smith, 34th Floor, Houston, Texas 77002, (713) 754-7442.

Filed: November 30, 1992, 4:14 p.m.

TRD-9215981

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University of Texas System

Thursday, December 3, 1992, 10 a.m. The Board of Regents and Standing Committees of the University of Texas System met at the Regents' Meeting Room, Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street, Austin. According to the agenda summary, the board and committees considered amendments to RRR; Chancellor's Docket (submitted by system administration); discussed bond matters; sick leave pool policy, internal audit plan; U.T. Austin-shuttle bus contract; degree programs; appointments to endowed academic positions and advisory council; agreements; buildings and grounds matters including approval for projects, preliminary plans, final plans, and award of contracts; investment matters; acceptance of gifts, bequests and estates, establishment of endowed positions and funds; amended PUF policy statement; amended Institutional Funds Investment Policy; established institutional funds short/intermediate term fund; real estate matters; and potential litigation.

Contact: Arthur H. Dilly, P.O. Box N, U.T. Station, Austin, Texas 78713-7328, (512) 499-4402.

Filed: November 25, 1992, 1:05 p.m.

TRD-9215870

University of Texas System, M.D. Anderson Cancer Center

Tuesday, July 21, 1992, 9 a.m. The Institutional Animal Care and Use Committee of the University of Texas System, M.D. Anderson Cancer Center met at 1515 Holcombe Boulevard, M.D. Anderson Cancer Center, Conference Room AW7.707, Seventh Floor, Houston. According to the agenda summary, the committee reviewed protocols of animal care and use and modifications thereof.

Contact: Anthony Mastromarino, 1515 Holcombe Boulevard, Houston, Texas 77030, (713) 792-3991.

Filed: July 16, 1992, 3:10 p.m.

TRD-9209797

Texas Water Commission

Friday, December 4, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 123, Austin. According to the agenda summary, the commission will hold a policy agenda and address the issues of water quality issues concerning silver regulations, and general internal policies regarding coordination of activities between the various offices and divisions.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: November 24, 1992, 4:20 p.m.

TRD-9215773

Tuesday, December 8, 1992, 9:30 a.m. The Task Force 21: Waste Management Policy for the Future of the Texas Water Commission will meet at the Texas Law Center, 1414 Colorado Street, Rooms 202 and 203, Austin. According to the complete agenda, the task force will discuss the following issues: draft solid waste strategic plan; draft siting/locating standards rules; draft spill rules; draft needs assessment rules; upcoming rulemaking; updates on pollution prevention subcommittee; update on permit processing; report to legislature; update on revenue subcommittee; update on legislative reports from the TWC; and update on legislative agenda from the TWC.

Contact: Kari Bourland-Chestnue, 1700 North Congress Avenue, Austin, Texas 78711-3087, (512) 371-6319.

Filed: November 24, 1992, 10:07 a.m.

TRD-9215737

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the com-

mission will consider approving the following matters: new water quality permits; amendments; renewal; district matters; rate matters; water rights; interlocal agreement; emergency order; examiner's memorandum; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: November 24, 1992, 4:21 p.m.

TRD-9215774

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider approving the following matters: enforcement actions; rules; meet in executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, rescheduling an item in its entirety or for particular action at a future date or time.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: November 24, 1992, 4:21 p.m.

TRD-9215775

Wednesday, December 9, 1992, 9 a.m. The Texas Water Commission will meet at 1700 North Congress Avenue, Stephen F. Austin Building, Room 118, Austin. According to the agenda summary, the commission will consider Emergency Order Number 92-22E for Anchor Food Products, Inc. to move the disposal site that is currently authorized under Permit Number 0267 from a location immediately adjacent and south of its plant to a location approximately one mile further south. The treated wastewater is disposed of by irrigation. The food processing plant is at 200 East Palmer, south of Interstate Highway 20, in the City of Pecos, Reeves County.

Contact: Victor Ramirez, P.O. Box 13087, Austin, Texas 78711, (512) 463-8069.

Filed: November 25, 1992, 1:48 p.m.

TRD-9215879

Texas Workers' Compensation Commission

Thursday, December 3, 1992, 9:30 a.m. The Texas Workers' Compensation Commission met at the Southfield Building,

4000 South IH-35, Rooms 910-911, Austin. According to the agenda summary, the commission called the meeting to order; may have discussed approval of the minutes of the public meeting of November 19, 1992; discussed, considered and possibly acted on rules for adoption: Rule 164.14; rules for proposal: Rule 102.9, Rule 126.8, and Rule 126.9; rules for deletion or amendment: Rule 126.7; discussed, considered and possibly acted on Texas Workers' Compensation Commission Internal Audit Plan Fiscal Years 1993-1995; Risk Management Division's report to the commission for submission to the 73rd Legislature; report on donations and gifts received; additional issues to be forwarded to the Legislative Oversight Committee on Workers' Compensation; met in executive session; acted on matters considered in executive session; general reports; discussed and possibly acted on issues relating to commission activities which may include, but are not limited to the following: discussion of future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: November 25, 1992, 3:52 p.m.

TRD-9215904

Thursday, December 3, 1992, 1 p.m. The Texas Certified Self-Insurer Guaranty Association of the Texas Workers' Compensation Commission met at the Southfield Building, 4000 South IH-35, Rooms 910-911, Austin. According to the complete agenda, the association called the meeting to order; discussed, considered and possibly acted on the association's organizational structure including: election of a temporary chairman; responsibilities of the Guaranty Association; functions of the Guaranty Association; and overview of the information to be provided to Guaranty Association Board of Directors; discussed future public meetings; and adjourned.

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 448-7962.

Filed: November 25, 1992, 3:52 p.m.

TRD-9215903

Regional Meetings

Meetings Filed November 24,
1992

The Austin-Travis County Mental Health and Mental Retardation Center Planning and Operations Committee will meet at 1430 Collier Street, Board Room, Austin, December 4, 1992, at 7:30 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9215743.

The East Texas Council of Governments JTPA Board of Directors met at the Kilgore Community Inn, Kilgore, December 3, 1992, at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9215767.

The Trinity River Authority of Texas Board of Directors met at 5300 South Collins Street, Arlington, December 2, 1992, at 10:30 a.m. Information may be obtained from J. Sam Scott, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9215776.

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**Meetings Filed November 25,
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The Ark-Tex Council of Governments Board of Directors met at the Mt. Pleasant Chamber of Commerce, 1604 North Jefferson, Mt. Pleasant, December 3, 1992, at 2 p.m. Information may be obtained from Susan J. Rice, P.O. Box 5307, Texarkana, Texas 75505-5307, (903) 832-8636. TRD-9215893.

The Bastrop Central Appraisal District Board of Directors met at the Bastrop Central Appraisal District, 1200 Cedar Street, Bastrop, December 3, 1992, at 7:30 p.m. Information may be obtained from Dana Ripley, P.O. Box 578, Bastrop, Texas 78602, (512) 321-3925. TRD-9215872.

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, December 1-4, 7-11, 14-17, 21-24, 28-31, 1992, at 8:30 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9215908.

The Central Texas Quality Work Force Planning Committee will meet at the Temple Junior College, 2600 South First Street, Temple, December 11, 1992, at 9:30 a.m. Information may be obtained from Joseph F. Kiefer, Jr., 2600 South First Street, Temple, Texas 76504, (817) 773-9961, ext. 311. TRD-9215889.

The Creedmoor Maha Water Supply Corporation Board of Directors met at 1699 Laws Road, Mustang Ridge, December 2, 1992, at 7 p.m. Information may be obtained from Charles P. Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-1991. TRD-9215783.

The Dallas Area Rapid Transit Construction Contracts Ad Hoc Committee met at the DART Office, 1401 Pacific Avenue, Conference Room B, Dallas, December 1, 1992, at noon. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9215899.

The Dallas Area Rapid Transit Rail Planning and Development met at the DART Office, 1401 Pacific Avenue, Conference Room C, Dallas, December 1, 1992, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237. TRD-9215898.

The East Texas Council of Governments Executive Committee met at the ETCOG Offices, Kilgore, December 3, 1992, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9215784.

The Golden Crescent Regional Planning Commission Board of Directors met at the GCRPC Board Room, Regional Airport, Building 102, Victoria, December 2, 1992, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9215905.

The Hamilton County Appraisal District will meet at the Hamilton County Appraisal District Board Room, 119 East Henry Street, Hamilton, December 8, 1992, at 7 a.m. Information may be obtained from Doyle Roberts, 119 East Henry Street, Hamilton, Texas 76531, (817) 386-8945, FAX (817) 386-8947. TRD-9215890.

The High Plains Underground Water Conservation District Number One Board of Directors will meet at 2930 Avenue Q, Conference Room, Lubbock, December 8, 1992, 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9215788.

The Middle Rio Grande Development Council Board of Directors will meet at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, December 9, 1992, at 1 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9215897.

The Permian Basin Regional Planning Commission Private Industry Council met at the University of Texas Permian Basin, Center for Energy and Economic Diversification, Midland, December 2, 1992, at 4 p.m. Information may be obtained from Tammy Smith, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9215888.

The Region VIII Education Service Center Board of Directors will meet at the Holiday Inn Restaurant, Mt. Pleasant, December 9, 1992, at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9215900.

The Region IX Education Service Center North Texas Quality Work Force Planning

Committee will meet at the Region IX Education Service Center, 301 Loop 11, Wichita Falls, December 4, 1992, at 2 p.m. Information may be obtained from Jim O. Rogers, Ed.D., 301 Loop 11, Wichita Falls, Texas 76305, (817) 322-6928. TRD-9215801.

The San Antonio River Industrial Development Authority Board of Directors will meet at the SARA General Offices, 100 East Guenther Street, San Antonio, December 7, 1992, at 1:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9215825.

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**Meetings Filed November 30,
1992**

The Bell-Milam-Falls Water Supply Corporation Board of Directors will meet at Sirloin Stockade, Taylor, December 4, 1992, at 7 p.m. Information may be obtained from Dwayne Jekel, P.O. Drawer 150, Cameron, Texas 76520, (817) 697-4016. TRD-9215913.

The Brazos River Authority Board of Directors will meet at the Westin Hotel Galleria Dallas, 13340 Dallas Parkway, Dallas, December 7, 1992, at 9 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9215919.

The Capital Area Planning Council General Assembly will meet at the Wyndham Southpark Hotel, IH-35 South and Ben White Boulevard, Austin, December 9, 1992, at 11:30 a.m. Information may be obtained from Richard G. Bean, 2520 IH-35 South, Suite 100, Austin, Texas 78704, (512) 443-7653. TRD-9215930.

The Cash Water Supply Corporation will meet at the Administration Office on FM 1564 East, Greenville, December 8, 1992, at 7 p.m. Information may be obtained from Donna Mohon, P.O. Box 8129, Greenville, Texas 75404, (903) 883-2695. TRD-9215958.

The Coastal Bend Council of Governments Executive Board will meet at the Corpus Christi Airport Holiday Inn, Palermo Room, 5549 Leopard Street, Corpus Christi, December 4, 1992, at noon. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9215918.

The Coastal Bend Council of Governments Membership will meet at the Nueces County Courthouse, Commissioners Courtroom, Third Floor, 901 Leopard Street, Corpus Christi, December 4, 1992, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi,

Texas 78469, (512) 883-5743. TRD-9215917.

The County Education District Number 20 Board of Trustees met at the Dumas High School Library, Third and Kline Streets, Dumas, December 3, 1992, at 7 p.m. Information may be obtained from Dwain Walker, 7200 I-40 West, Amarillo, Texas 79106-2598, (806) 354-4252. TRD-9215914.

The Dawson County Central Appraisal District Board of Directors held an emergency meeting at 1806 Lubbock Highway, Lamesa, December 2, 1992, at 7 a.m. The emergency status was necessary due to need to pay bills. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9215916.

The Golden Crescent Service Delivery Area Private Industry Council, Inc. Executive Committee met at 2401 Houston Highway, Victoria, December 3, 1992, at 4 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9215976.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, December 3, 1992, at 5 p.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9215968.

The Gregg County Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, December 8, 1992, at 9 a.m. Information may be obtained from Bill Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9215922.

The Jasper County Appraisal District CAD Board of Directors met at 137 North Main Street, Jasper County Appraisal District, Jasper, December 3, 1992, at 7 p.m. Information may be obtained from David W. Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384-2544. TRD-9215985.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, December 3, 1992, at 7

p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9215920.

The Middle Rio Grande Development Council Private Industry Council Executive Committee met at the Holiday Inn, 920 East Main Street, Uvalde, December 3, 1992, at 3 p.m. Information may be obtained from Michael M. Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 278-2527. TRD-9215933.

The Middle Rio Grande Foundation, Inc. Board of Directors will meet at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, December 8, 1992, at 5:30 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533. TRD-9215967.

The Millersview-Doole Water Supply Corporation Board of Directors will meet at the Corporations' Business Office, One Block West of FM 765 and FM 2134, Millersview, December 7, 1992, at 7 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9215915.

The Palo Pinto Appraisal District Appraisal Review Board will meet at the Palo Pinto Courthouse, Palo Pinto, December 9, 1992, at 1:30 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9215924.

The Palo Pinto Appraisal District Board of Directors will meet at the Palo Pinto Courthouse, Palo Pinto, December 9, 1992, at 3 p.m. Information may be obtained from Jackie F. Samford, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9215923.

The Rusk County Appraisal District Board of Directors will meet at the Administrative Office, 107 North Van Buren, Henderson, December 8, 1992, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD-9215921.

The Sabine River Authority of Texas Board of Directors will meet at the Westin

Oaks Galleria Hotel, Houston, December 5, 1992, at 9:30 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9215957.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee will meet at the Administration Conference Room, Second Floor, San Antonio Convention Center, San Antonio, December 7, 1992, at 1:30 p.m. Information may be obtained from Charlotte Roszelle, 434 South Main Street, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9215931.

The Texas Water Conservation Association Risk Management Fund Board of Trustees will meet at Houston II, Guest Quarters Hotel, 303 15th Street, Austin, December 4, 1992, at 8 a.m. Information may be obtained from Leroy Goodson, 206 San Jacinto Building, Austin, Texas 78701, (512) 472-7216. TRD-9215979.

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Meetings Filed December 1, 1992

The Bosque, Erath, Hill, Johnson and Somervell County Education District 21 will meet at the Glen Rose Middle School Cafeteria, 812 College Street, Glen Rose, December 7, 1992, at 7:30 p.m. Information may be obtained from Jo Wilson, 726 North Clinton, Stephenville, Texas 76401, (817) 968-7990. TRD-9215994.

The Kendall Appraisal District Board of Directors will meet at 121 South Main Street, Kendall Appraisal Office, Boerne, December 15, 1992, at 5 p.m. Information may be obtained from Joe Pat Davis, P.O. Box 788, Boerne, Texas 78006, (512) 249-8012. TRD-9216001.

The Tax Appraisal District of Bell County Board of Directors will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, December 9, 1992, at 10 a.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9216000.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Banking

Notice of Hearing

The Banking Department has legal authority and jurisdiction over sale of prepaid funeral services and funeral merchandise under Texas Civil Statutes, Article 548b, and rules published at Chapter 25, 7 Texas Administrative Code (T.A.C.).

An allegation has been made by representatives of the Department of Banking that S T.C. Construction Company doing business as Brooks-Sterling Funeral Home has violated Article 548b, and Chapter 25, 7 T.A.C.. Violations alleged are failure to maintain proper records in violation of §5(2) of Article 548b and 7 T.A.C. §25.11; failure to deposit prepaid funeral trust funds within 30 days of collection in violation of §5(2) of Article 548b; failure to meet licensing standards under Article 548b; failure to meet licensing standards under Article 548b; and the sale of prepaid funeral contracts without the requisite permits under Article 548b. Penalties and violations include, but are not limited to, cancellation of permits to sell prepaid funeral services and funeral merchandise and seizure of all records and prepaid funeral funds including interest.

You have a right to be present with counsel at an administrative hearing to receive evidence on the issue of whether the alleged violations occurred and, if so, the appropriate penalties and sanctions to be assessed. That hearing is set for 9:30 a.m. on December 11, 1992, in the State Finance Commission Building, Room 301, 2601 North Lamar Boulevard, Austin, Texas 78705-4294. The Department of Banking will be represented by Brian R. Herrick, Assistant General Counsel, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, (512) 475-1300. The hearing will be conducted under the Administrative Procedures and Texas Register Act, Article 6252-13a. Failure to appear may result in a default decision being entered against you. Mr. Herrick should receive copies of any communications that you or your attorney may care to send me with regard to this matter.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215759 Larry J. Craddock
Hearings Officer
Texas Department of Banking

Filed: November 24, 1992

Notice of Hearing Cancellation

As no opposition has been noted in the application for the First National Bank, Lampasas, to convert to a state charter under the name of First Texas Bank, the hearing previously scheduled for Friday, December 4, 1992, has been cancelled.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215874 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 25, 1992

As no opposition has been noted in the application for the First National Bank, Belton, to convert to a state charter under the name of First Texas Bank, the hearing previously scheduled for Friday, December 4, 1992, has been cancelled.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215875 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 25, 1992

As no opposition has been noted in the application for the First National Bank, Copperas Cove, to convert to a state charter under the name of First Texas Bank, the hearing previously scheduled for Friday, December 4, 1992, has been cancelled.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215876 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 25, 1992

As no opposition has been noted in the application for the First National Bank, Longview, to convert to a state charter under the name of Community Bank, the hearing previously scheduled for Friday, December 4, 1992, has been cancelled.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215891 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 25, 1992

As no opposition has been noted in the application for the First National Bank, Round Rock, to convert to a state charter under the name of First Texas Bank, the hearing previously scheduled for Friday, December 4, 1992, has been cancelled.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215877 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 25, 1992

As no opposition has been noted in the application for the Alice National Bank, Alice, to convert to a state charter under the name of Alice Bank of Texas, the hearing previously scheduled for Monday, November 30, 1992, has been cancelled

Issued in Austin, Texas, on November 20, 1992.

TRD-9215886 William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: November 23, 1992

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Comptroller of Public Accounts
Consultant Contract Award

In accordance with the provisions of Texas Civil Statutes, Article 6252-11c, the Comptroller of Public Accounts furnishes this notice of consultant contract award.

The consultant proposal request was published in the October 27, 1992, issue of the *Texas Register* (17 TexReg 7605).

The consultant will develop and conduct a limited management review of the Central Education Agency (CEA). The program is intended to provide the Comptroller's Office and CEA with measurable results that will offer tangible recommendations and procedures to CEA to improve efficiency and effectiveness.

The contract is awarded to MGT of America, Inc. d/b/a MGT Consultants, Inc., 100 Congress Avenue, Suite 2018, Austin, Texas 78701. The total dollar value of the contract is \$74,845. The contract was executed November 24, 1992, and extends through August 31, 1993.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215910 Arthur F. Lorton
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: November 30, 1992

Correction of Error

The Comptroller of Public Accounts adopted an amendment to 34 TAC §3.357, concerning labor relating to nonresidential real property repair, remodeling, restoration, maintenance, new construction, and residential property. The rule was published in the November 24, 1992, *Texas Register* (17 TexReg 8235). Due to a typographical error by the *Texas Register* the effective date was omitted. It should read "Effective date: December 7, 1992."

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Extension of Consultant Contract

The Comptroller of Public Accounts, in accordance with the requirements of Texas Civil Statutes, Article 6252-11c, §7(c), issues this notice of the extension until February 28, 1993, of the comptroller's contract with MGT of America, Inc., 2425 Torreya Drive, Tallahassee, Florida 32303. The contract term began on June 25, 1992. The extension was necessary in order to provide for the consultant's additional analysis of and participation in discussions of events related to many of the issues covered in the work performed by consultant during the initial contract term.

The total value of the additional work to be performed pursuant to this extension is \$9,900. The value of the original contract prior to the extension was \$319,960.

Issued in Austin, Texas, on November 25, 1992.

TRD 9215855 Tres Lorton
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: November 25, 1992

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Office of Consumer Credit
Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Article 1.04, Title 79, Revised Civil Statutes of Texas, as amended (Article 5069-1.04, Vernon's Texas Civil Statutes).

<u>Types of Rate Ceilings</u>	<u>Effective Period</u> <u>(Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	11/30/92-12/06/92	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Filed: November 25, 1992

Issued in Austin, Texas, on November 23, 1992.

TRD-9215892 Al Endsley
Consumer Credit Commissioner

Court Reporters Certification Board Certification of Court Reporters

Following the examination of applicants on October 23, 1992, the Court Reporters Certification Board certified to the Supreme Court that the following individuals are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Government Code, V.T.C.A.:

Oral Stenography. Camille F. Cowling-Texarkana; Darla Jeanette West-Benito.

Machine Shorthand. Carol Suzanne Adamson-Amarillo; Gina Kay Alexander-San Antonio; Traci Dawn Alexander-Valley View; Bonnie Joann Ames-Rising Star; Kristi Marie Bagley-Joshua; Melanie D'Anne Bailey-Abilene; Laura Beth Ballard-Plano; Vanessa Ann Barret-Bedford; Dawn Kimberly Barton-Weatherford; Dorothy Louise Bedell-Lucas; Karen Berry-Aleksandrowicz-Watauga; Melanie Jean Boyer-Alvin; Kay Brown-Fort Worth; Teresa Gallo-way Brown-Spring; Veronica Lynn Burke-Irving; Julie Frerichs Bynum-Abilene; Sara Callahan-Houston; Shonna Kay Castillo-Austin; Shana Michele Cavazos-Edna; Patricia Alice Cobb-Amarillo; Natalie S. Cogdill-Granbury; Dianna L. Coleman-Clovis, NM; Cindy Conner-Dallas; Pamela Jean Cox-Morgan's Point; Shelley S. Curtis-Arlington; Leticia B. Dittmar-Hamlin; Teresa Ann Easter-Bedford; Dicie Lee Eytcheson-San Antonio; Suzanne E. Ferrier-Houston; Cassandra Denise Foley-Arlington; Jeff L. Foster-Abilene; Carmen G. Rago-San Antonio; Renee Cherie Froning-North Arlington; Robin Renee Fuller-Missouri City; Beverly Gail Gill-Pasadena; Tammy Lynn Glover-San Antonio; Ofelia Gonzalez-Austin; Joy Annette Goodman-Levelland; Yvette Marie Goss-San Antonio; Leslee Grajo-Dallas; Tonya B. Granger-Austin; Regina Dawn Grant-Montalba; Lana K. Hagenbucher-Arlington; Donna Marie Hammons-Vista, CA; Judy Lynn Hansen-Hitchcock; Teena Lou Harmon-Austin; Monika Rae Harvey-Dallas; Kristi R. Henry-Fort Worth; Valerie Kay Hickman-Sadler; Kimberly Elaine Hogan-Merkel; Yvonne V. Hutchings-Eules; Tara Leigh Iverson-Arlington; Kristie M. Kelly-Crawford; Rosalinda V. Kerlin-Eules; Laura Lynn Kerr-Oklahoma City, OK; Leslie A. Kesterson-Metaire, LA; Lori Meneice Kidd-Fort Worth; Tonya Leah King-Dallas; Patti C. Kirkpatrick-Dallas; Ginny Vick Kisiah-Forth Worth; Kathy Kleppel-Cypress; Lana Alise Langham-Angelton; Julia L. LeForce-Idabel, OK; Jenni Rebecca Lindner-Giddings; Shelly Denean Maggio-Port Neches; Terri Dianne Malone-Arlington; Elena Maloney-San Antonio; Cherlyn K. Mann-Wichita, KS; Debra A. J. Martin-San Antonio; Joanna M. Martinez-San Antonio; Teresa Martinez-Sweetwater; Elizabeth Ann Massa-Austin; Deana Faye McManus-Austin; Lillian C. Melancon-Houston; Deborah Sue Monahan-San Antonio; Sandra Alcalá Morales-Dallas; Dorinda Kay Morris-Corpus Christi; Anita Murillo-Sweetwater; Sherri Reena Murphy-Gilmer; Kerri Nippert-Austin; Sherri Kaye Nurse-San Antonio; Diana Orr-Dallas; Robin Holaway Owens-Smithville; Mary Melissa Parkhill-Austin; Sherri C. Pavloske-Katy; Patricia Phelps-San Antonio; Amy Pickens-San Antonio; Christopher G. Poage-San Antonio; Kimberly K. Pruitt-Eules; Donald Wayne Puryear-Deer Park; Elizabeth Flores Reese-Abernathy; Kimberly Paige Reeves-Clyde; Melody Elaine Rejcek-Ennis; Liz Richardson-Fort Worth; Lynn Marie Rigby-Arlington; John Gregory Rochelle-Pasadena; Jennifer L. Rodriguez-San Antonio; Christy Jelene Russell-Mansfield; Rebecca Lewis Salinas-Baytown; Tracy Bates Salmon-

Lubbock; Lucretia Santaella-El Paso; Tina Lou Scates-Pearland; Mary Scopas-Buffalo Gap; Bobbie Martin Showers-Houston; Leslie A. Siller-Houston; Leticia Silvas-Corpus Christi; Laura Kayleen Smith-San Antonio; Kerri Lee Smith-Liverpool; Debra Maureen Smith-Amarillo; Tiffany Lynne Soergel-Dallas; Tina Judith Steele-Dallas; Shari Jan Steen-Arlington; Shelley R. Stingley-Harlingen; April Leigh Stotts-Amarillo; Sammye L. Sumrall-Palestine; Rebecca Kay Terry-Carrollton; Tyra Neill Thrasher-Bedford; Jan Ellen Timm-San Antonio; Karen Franks Tucker-Dyess A.F.B.; Rachel Valdez-Helotes; D. Lori Van Fleet-Mesquite; Leticia Elvira Verdin-San Antonio; Keith L. Vincent-Friendswood; Susan Ann Waldrip-Fairfield; Kimberly D. Walker-Mesquite; Mary Kathleen Wesley-Merkel; Eden M. Whalen-Fort Worth; Roxanne Mae Wheeler-Round Rock; Karen Y. Whitlow-Amarillo; Anne D. Wiese-Hernandez-Austin; Joyce Marie Williams-Austin; Lisa Carole Williams-DeSoto; Wendy Renee Wilson-Fort Worth; Sarah Beth Wilson-Mauriceville; Shelby B. Wolfe-Power-Arlington; Evelyn M. Ybarra-Corpus Christi.

Issued in Austin, Texas, on November 20, 1992.

TRD-9215730 Peg Liedtke
Executive Secretary
Court Reporters Certification Board

Filed: November 24, 1992

Texas Department of Criminal Justice Correction of Error

The Texas Department of Criminal Justice adopted an amendment to 37 TAC §152.3, concerning allocation formulas. The rules were published in the October 2, 1992, *Texas Register* (17 TexReg 6789).

Due to an omission in the agency's submission, the words "weekly" and "cyclical" were left out of the topic headings reflecting the percentages of admissions to the Institutional Division that will be allocated to counties on a weekly and cyclic basis. The words which were omitted from the topic headings in the statistical information are printed in italics as follows.

On page 6789 under the heading "TOP TEXAS COUNTIES", the column for "PERCENTAGE" should read "WEEKLY PERCENTAGE". On page 6790 under the heading "OTHER TEXAS COUNTIES" the "PERCENTAGE" column should read "*CYCLICAL PERCENTAGE*".

Texas Ethics Commission Correction of Error

The Texas Ethics Commission submitted notices of Advisory Opinion Requests (AORs). The notices were published in the November 24, 1992, *Texas Register* (17 TexReg 8209). Due to a proofreading error by the *Texas Register* the notices were printed as "EORs" instead of "AORs".

Office of the Governor, Criminal Justice Division

Request for Applications Under the Juvenile Justice and Delinquency Prevention Act

Notice of Invitation for Applications. The Criminal Justice Division of the Governor's Office (CJD) is soliciting applications for grants to be awarded for projects under the federal Juvenile Justice and Delinquency Prevention (JJDP) Act.

One or more of the following types of projects may be awarded, depending on the availability of funds.

Community-Based Prevention Projects (maximum of \$70,000 per project), to provide early prevention for at-risk youth through coordination of community services and outreach. Eligible applicants are private non-profit organizations and local units of government.

University Mentor Projects (maximum of \$70,000 per project), to match kindergarten through eighth grade students with college-level mentors of similar cultural and socio-economic backgrounds. Eligible applicants are colleges and universities.

Comprehensive Service Projects (maximum of \$70,000 per project), to provide services to at-risk children through the school. Eligible applicants are independent school districts.

Juvenile Offender Employment Projects (maximum of \$70,000 per project), to provide releasees from juvenile detention and correctional facilities with vocational training and job opportunities. Eligible applicants are state agencies and local units of government.

Statewide Pre-Service and In-Service Training Projects (maximum of \$150,000 per project), to provide training to police and juvenile justice personnel that addresses a variety of areas. Eligible applicants are state agencies, colleges and universities, private non-profit organizations, and professional organizations.

Statewide Drug Education and Prevention Projects (maximum of \$150,000 per project), to reduce drug abuse by working with juveniles, parents, law enforcement agencies, educators, and community service organizations. Eligible applicants are private non-profit organizations and state agencies.

Statewide Technical Assistance (maximum of \$75,000 per project), to collect federal compliance data, to develop objective decision-making criteria for personnel, and to provide funds for conferences concerning current juvenile

justice issues. Eligible applicants are state agencies, colleges and universities, private non-profit organizations, and professional organizations.

Runaway Hotline (maximum of \$210,000 per project), to provide a toll-free, 24-hour hotline for runaway youth. Eligible applicants are state agencies and private non-profit organizations.

Contact Person. Detailed specifications, including selection process and schedule for regional workshops for applicants will be made available through CJD. Contact Jim Kester, Program Manager, Criminal Justice Division, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

Application Workshops. December 10, 9 a.m.-12 p.m., Houston-Galveston Area Council, 3555 Timmons, Second Floor, Room A, Houston; January 8, 9 a.m.-12 p.m., North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, Board Room, Arlington; January 13, 3 p.m.-5 p.m., Alamo Area Council of Governments, 118 Broadway, Room 420, San Antonio; January 22, 10 a.m.-12:30 p.m., Rio Grande Council of Governments, 1014 North Stanton, Room 100, El Paso.

Closing Date for Receipt of Applications. The original and seven copies of the proposal must be received at the Criminal Justice Division by 5 p.m., April 2, 1993, or postmarked by April 2, 1993. Applications must be mailed to the contact person listed above.

Selection Process. Applications will be rated by an internal review team according to the standard point system in the application kit. Grants will be awarded on or before September 1, 1993.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215770

David A. Talbot
General Counsel
Office of the Governor

Filed: November 24, 1992

Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Throughout Texas	The Terracon Companies, Inc.	L04632	Dallas	0	10/28/92
Throughout Texas	DJ Contractors, Inc.	L04635	El Paso	0	11/03/92

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Austin	Austin Radiological Association	L00545	Austin	65	10/27/92
Austin	St. David's Community Hospital	L00740	Austin	52	11/02/92
Beaumont	St. Elizabeth Hospital	L00269	Beaumont	54	11/06/92
Brownsville	Pan American Laboratories, Inc.	L00596	Brownsville	10	11/09/92
Dallas	LTV Aerospace and Defense Company	L02670	Dallas	10	10/29/92
Dallas	LTV Aerospace and Defense Company	L02670	Dallas	10	10/29/92
Dallas	5-Star Toxicological Analysis and Consulting	L04199	Dallas	2	10/30/92
Dallas	Loral Vought Systems Corporation	L02670	Dallas	11	10/30/92
Dallas	Syncor International Corporation	L04576	Dallas	1	11/06/92
Deer Park	SGS Control Services, Inc.	L02901	Deer Park	5	10/30/92
El Paso	Providence Memorial Hospital	L02353	El Paso	42	11/02/92
El Paso	Syncor International Corporation	L01999	El Paso	76	11/06/92
Fort Worth	Texas Steel Company	L00163	Fort Worth	33	10/30/92
Houston	Park Plaza Hospital	L02071	Houston	25	10/28/92
Houston	Parkway Hospital	L01964	Houston	31	11/05/92
Houston	The U.T. Health Science Center at Houston	L02774	Houston	22	11/04/92
Katy	Katy Medical Center, Inc.	L03052	Katy	17	11/02/92
Mauriceville	S & T International, Inc.	L03652	Mauriceville	19	11/09/92
Midland	BDC Electronics Inc.	L03865	Midland	9	10/30/92
Paris	Radiology Incorporated/Radiology Center of Paris	L00458	Paris	45	11/03/92
Pasadena	N D S Products and Microtec Services	L00991	Pasadena	29	10/29/92
Pasadena	Ming K. Jeang, M.D.	L04345	Pasadena	3	11/03/92
San Antonio	The U.T. Health Science Center at San Antonio	L01279	San Antonio	57	10/28/92
San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	95	10/29/92
San Antonio	Advanced Medical Imaging	L04305	San Antonio	6	11/04/92
San Antonio	Syncor International Corp.	L02033	San Antonio	62	11/06/92

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Throughout Texas	Trinity Testing Laboratories, Inc.	L04190	Laredo	6	10/29/92
Throughout Texas	Schlumberger Technology Corporation	L01833	Houston	85	10/30/92
Throughout Texas	Goolsby Testing Laboratories Inc.	L03115	Humble	38	10/30/92
Throughout Texas	Allen Engineering and Testing, Inc.	L02863	Friendwoods	9	10/30/92
Throughout Texas	Non-Destructive Inspection Corporation	L02712	Lake Jackson	31	10/30/92
Throughout Texas	Martin K. Eby Construction	L04400	Wichita, Kansas	2	10/30/92
Throughout Texas	Western Atlas International, Inc.	L00446	Houston	102	10/30/92
Throughout Texas	MDT Systems, Inc.	L02031	Midland	28	10/30/92
Throughout Texas	ATEC Associates, Inc.	L02645	Dallas	12	10/30/92
Throughout Texas	Wilson Inspection X-Ray Services, Inc.	L04469	Corpus Christi	11	10/30/92
Throughout Texas	ARCO Exploration and Production	L00134	Plano	52	11/02/92
Throughout Texas	Tuboscope Vetco International	L00287	Houston	91	11/09/92
Throughout Texas	CB! NA-CON, Inc.	L01902	Houston	27	11/06/92
Throughout Texas	Accurate Logging and Perforating	L04221	Tyler	4	11/09/92
Throughout Texas	Wrenco Wireline Services, Inc.	L04411	White Oak	4	11/09/92
Throughout Texas	Texas Radiation Physics Associates, Inc.	L04152	Dallas	4	11/03/92
Throughout Texas	Texas Industrial X-Ray Inc.	L01851	Pasadena	54	11/05/92
Throughout Texas	H & G Inspection Company Inc.	L02181	Houston	72	11/10/92
Throughout Texas	Troxler Electronic Laboratories, Inc.	L01296	Res. Tri. Pk, NC	30	11/10/92
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, Illinois	88	11/10/92
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	26	11/10/92
Throughout Texas	Ultrasonic Specialists, Inc.	L01774	Houston	65	11/10/92
Tyler	Mother Frances Hospital	L01670	Tyler	44	11/06/92
Webster	Humana Hospital Clear Lake	L01680	Webster	30	11/04/92
Wichita Falls	Vetrotex Certainteed Corporation	L02269	Wichita Falls	18	10/30/92
Wichita Falls	Bethania Regional Health Care Center	L01844	Wichita Falls	38	11/03/92

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Austin	Abbott Laboratories, Inc.	L03340	Austin	6	10/28/92
Baytown	Exxon Chemical Company	L02722	Baytown	17	10/30/92
Corpus Christi	Koch Refining Company	L00322	Corpus Christi	19	11/03/92
Corpus Christi	Weatherford-Petco, Inc.	L02756	Houston	11	11/05/92
Port Arthur	Quantum Chemical Corporation USI Division	L00804	Port Arthur	33	11/06/92
San Antonio	Charles R. Leone, Jr., M.D., P.A.	L01483	San Antonio	7	11/03/92
Throughout Texas	Shell Development Company	L02116	Houston	25	10/29/92
Throughout Texas	El Paso Natural Gas Company	L00308	El Paso	26	11/09/92

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Austin	Railroad Commission of Texas	L02749	Austin	5	11/02/92
Dallas	Mobil Exploration and Producing Services, Inc.	L01627	Dallas	31	10/29/92
Dallas	David B. Hammond	L03325	Dallas	5	11/06/92
Laredo	City of Laredo	L02755	Laredo	3	10/30/92
Throughout Texas	Hazardous Materials Detection Services	L04044	Rotan	1	10/29/92
Throughout Texas	Texasgulf, Inc.	L03781	Midland	8	11/09/92
Tyler	Cooper Oil Tool	L00079	Tyler	38	11/09/92

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend-ment #	Date of Action
Dickinson	AnAid, Inc.	L03171	Dickinson	0	10/30/92
Houston	Ultrasonic Specialists, Inc.	L01774	Houston	0	10/30/92
Throughout Texas	Triple G X-Ray & Testing Laboratories	L03136	Humble	0	10/26/92

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with **Texas Regulations for Control of Radiation** in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the **Texas Regulations for Control of Radiation**.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an

agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on November 18, 1992

TRD-9215684 Robert A MacLean, MD
Deputy Commissioner
Texas Department of Health

Filed: November 23, 1992



**Texas Department of Human Services
Public Notice**

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-30, Amendment Number 369. The amendment provides for inoculations for a broader range of nursing facility personnel in compliance with requirements of the Occupational Safety and Health Administration (OSHA). The amendment is effective July 25, 1992. If additional information is needed, please contact Susan Syler, (512) 450-3111.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215986 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 31, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-31, Amendment Number 370. The amendment provides for inoculations for a broader range of personnel of Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) in compliance with requirements of the Occupational Safety and Health Administration (OSHA). The amendment is effective July 25, 1992. If additional information is needed, please contact Terry Childress, (512) 450-3169.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215987 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 31, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-37, Amendment Number 376. The amendment reflects reimbursement methodologies for expendable medical supplies and durable medical equipment provided to EPSDT recipients under the expanded coverage required by the Omnibus Budget Reconciliation Act of 1989 (OBRA '89). The amendment is effective October 1, 1992. If additional information is needed, please contact Janet Kres, (512) 338-6465.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215988 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 31, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-39, Amendment Number 378. The amendment clarifies coverage requiring 18 year-olds to live with specified relatives. The amendment is effective October 1, 1992. If additional information is needed, please contact Kay Priest, (512) 450-3426.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215989 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 31, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-40, Amendment Number 379. The amendment reflects the preprint pages issued under Program Memorandum 92-2 relative to the Drug Utilization Review program enacted by the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), §4401. The amendment is effective January 1, 1993. If additional

information is needed, please contact Curtis Burch, (512) 338-6988.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215990 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 31, 1992

The Texas Department of Human Services (DHS) has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 92-43, Amendment Number 382. The amendment incorporates a Dallas preprint page reflecting cost-sharing requirements. Amendment is effective October 10, 1993. If additional information is needed, please contact Cathy Rossberg, (512) 450-3766.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215991 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 31, 1992

Public Notice of Closed Solicitation

Pursuant to the Human Resources Code, Title 2, Chapters 22 and 32, and 40 TAC §19.2004, in the September 11, 1990, issue of the *Texas Register* (15 TexReg 5315), the Texas Department of Human Services (TDHS) is closing the solicitation for new Medicaid beds in San Jacinto County, County Number 204, which appeared in the April 15, 1990, issue of the *Texas Register* (15 TexReg 2372). The solicitation is being closed effective the date of this public notice.

Issued in Austin, Texas, on November 24, 1992.

9215741 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 24, 1992

Texas Department of Insurance Company Licensing

The following applications have been filed with the Texas Department of Insurance and are under consideration.

1. Application for Admission in Texas for Amalgamated Life Insurance Company, a foreign life insurance company. The home office is in New York, New York.
2. Application for name change in Texas for Merit Mortgage Assurance Corporation, a foreign fire insurance company. The home office is in Blue Bell, Pennsylvania. The proposed new name is Amerin Guaranty Corporation.
3. Application for Admission in Texas for Integrated Administration Services, Inc., a foreign third party administrator. The home office is in Atlanta, Georgia.
4. Application for Admission in Texas for Network Management, Incorporated, a foreign third party adminis-

trator. The home office is in Mercer Island, Washington.

Issued in Austin, Texas, on November 24, 1992.

TRD-9215756 Linda K. von Quintus-Dorn
Chief Clerk
Texas Department of Insurance

Filed: November 25, 1992

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Texas Parks and Wildlife Department
Notice of Public Hearing

Notice is hereby given that the Texas Parks and Wildlife Department (TPWD) will hold a public hearing to receive comment on a proposed rule to place a temporary moratorium on sand and gravel dredging for commercial purposes in the San Jacinto River between Lake Houston Dam and the mouth of the river. The proposed rule would expire on February 1, 1996.

The hearing will be held on December 9, 1992, from 4 p.m. to 6 p.m. and 7 p.m. to 9:30 p.m. at the Highlands Elementary School, 200 East Wallisville Road, Highland, Texas 77562. The hearing is structured for the receipt of oral or written comments by interested persons. Interrogation or cross-examination is not permitted. The Department particularly invites testimony concerning impacts of dredging on bank erosion and subsidence, river channel maintenance, the existence of sedimentary materials in the relevant area, recreation, and navigation.

Copies of the proposed rule are available from the Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744, Catherine Livingston. Written comments not presented at the hearing may be submitted to Catherine Livingston, Natural Resources Attorney, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; telephone (512) 389-4585 or 1-800-792-1112, extension 4585, or Rollin MacRae, Wetlands Program Leader, telephone (512) 389-4639 or 1-800-792-1112, extension 4639.

The Texas Parks and Wildlife Commission will consider this proposal for adoption in a Public Hearing scheduled Thursday, January 21, 1992, beginning at 9 a.m. at 4200 Smith School Road in Austin.

Persons who are planning to attend the hearing and have a special communication or other accommodation needs should contact the Department at (512) 389-4470. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on November 30, 1992.

TRD-9215927 Paul M. Shinkawa
Director, Legal Division
Texas Parks and Wildlife Department

Filed: November 30, 1992

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**Texas Department of Protective and
Regulatory Services**

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Protective and Regulatory Services (TDPRS) is inviting proposals for consultant services.

Description of Services: TDPRS was awarded a research grant by the United States Department of Health and Human Services to complete a project entitled, "Child

Welfare Decision Enhancement Project." The project will require a consultant to assist TDPRS design, test, and implement a process consisting of tools and methods for systematically enhancing critical child welfare decisions, such as, case opening, family preservation, removal of the child(ren), reunification of the family, termination of parental rights, and case closure. It will build on research completed by TDPRS and the American Association for Protecting Children. The research will provide information to guide development and refinement of instruments. These tools will be developed for use by staff in making more accurate critical casework and management decisions. The largest research component will be on decision making, but others will include staff time, service costs, and client outcomes. The model will also employ innovative analytic and statistical procedures to identify alternative arrays of service which maximize beneficial outcomes and minimize cost. The consultant will provide consultation and advice on development and use of the outcome optimization model as well as overall project input. In addition the consultant will serve as a member of the project's national expert panel.

Evaluation and Selection: Evaluation criteria will include proven management, leadership skill, and analytical skills, and knowledge of TDPRS; quality of proposed approach; and cost. This is a continuation of a previous project, and unless a substantially better proposal is received, the award will be made to the current consultant.

Closing Date for Receipt of Offers: The last date offer will be received is January 1, 1993.

Contact Person: To obtain a complete request for proposal packet, contact Charles Gembinski, Texas Department of Protective and Regulatory Services, P.O. Box 149030, MC W-413, Austin, Texas 78714-9030, phone (512) 450-3790.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215782 Nancy Murphy
Agency Liaison, Policy and Document
Support
Texas Department of Human Services

Filed: November 25, 1992.

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Public Utility Commission of Texas
Correction of Error

The Public Utility Commission of Texas submitted a notice of open meeting for November 16, 1992, 1:30 p.m. to hold a prehearing conference in Docket Number 11538 - petition of Sam Houston electric Cooperative, Inc. to change its economic development service schedule. The notice was published in the November 13, 1992, *Texas Register* (17 TexReg 8056).

Due to an error by the *Texas Register* the notice incorrectly referred to "The Hearings Division of the Texas Department of Licensing and Regulation." The reference should have read "The Public Utility Commission of Texas will meet...."

The Public Utility Commission of Texas proposed an amendment to 16 TAC §23.61, concerning Telephone Utilities. The rule was published in the November 20, 1992, *Texas Register* (17 TexReg 8130).

Due to a proofreading error by the *Texas Register* language proposed for deletion in subsection (j) was not enclosed in brackets. The subsection should read as follows.

"(j) **Information regarding rates and services of nondominant carriers.** [Nondominant carriers not providing service on or before September 1, 1983. Nondominant carriers who commence providing service after September 1, 1983, shall provide within 30 days of commencing service the information in subsection (i)(1)(7) of this section.

"[(k) Separate reports. Subject to the conditions and time periods in subsection (i) and subsection (j) of this section, nondominant carriers].."

◆ ◆ ◆
**Notice of Application To Amend
Certificate of Convenience and
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on October 9, 1992, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 50, 52, and 54. A summary of the application follows.

Docket and Title Number: Application of Eastex Telephone Cooperative, Inc. to amend certificate of convenience and necessity within Hardin County, Docket Number 11522, before the Public Utility Commission of Texas.

The Application. In Docket Number 11522, Eastex Telephone Cooperative, Inc. seeks approval of its application to extend its Segno exchange to include currently uncertificated territory within Hardin County in order to provide telephone service to a business customer's radio tower via traditional telecommunications land service.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before February 11, 1993.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215894 John M. Renfrow
 Secretary of the Commission
 Public Utility Commission of Texas

Filed: November 25, 1992

◆ ◆ ◆
**Texas Environmental Awareness
Network**

Notice of Monthly Meeting

The Texas Environmental Awareness Network, an association of state agencies and environmental and educational organizations, will meet Wednesday, December 9, 1992, at 1:30 p.m. at the Texas Air Control Board, Annex Building

(Room 201A-Conference Room), 12124 Park 35 Circle, Austin, Texas 78753.

Agenda items include: Final review and adoption of Goals and Objectives; Briefing on inventories of environmental resource materials compiled by the E. R.I.C. System, Texas Environmental Network and University of Texas at Arlington; Briefing on 501(c)(3) and ethics; Briefing on under-represented populations; Earth Day Flyer; and Details of Texas Science Summit.

More information on the above-listed matters is available from John Williams, TEAN Secretary, at (512) 473-3227.

Issued in Austin, Texas, on November 23, 1992.

TRD-9215683 John Williams
 Secretary
 Texas Environmental Awareness Network

Filed: November 23, 1992

◆ ◆ ◆
**The University of Texas System
U. T. M.D. Anderson Cancer Center
Consultant Proposal Request**

The University of Texas M. D. Anderson Cancer Center (UTMDACC) requests, pursuant to the provisions of Texas Civil Statutes, Article 6252-11C, the submission of proposals leading to the award of a contract for the development and implementation of a Compensation Program for Classified job classifications at UTMDACC.

M. D. Anderson Cancer Center is seeking consulting assistance to enhance and supplement the efforts of its classified staff in the development and implementation of a program to meet future compensation needs of UTMDACC.

The awarded consulting group will be responsible for developing an equitable compensation program which will emphasize internal equity, market competitiveness, and career and salary growth opportunities. Specific tasks will include collecting and analyzing position information and evaluating position relationship utilizing computer assisted techniques; gathering market data and developing salary structures; developing compensation policies for administration and maintenance of the program, meeting with institutional leadership to discuss recommendations; and program implementation to include education of users and communicating the program to employee population in administrative staff positions and UTMDACC Management.

Consultant assistance is scheduled for commencement no later than January 4, 1993 (contingent upon a Finding of Fact, or waiver, by the Governor's Office), and will continue until completed (estimated completion date is September 1, 1994).

The University of Texas M. D. Anderson Cancer Center reserves the right to accept any or all proposals submitted under this consultant proposal request, and to negotiate modifications to improve the quality or cost effectiveness of any proposal.

UTMDACC is an institution of higher education, a government entity and a hospital, and as such should be offered any and all applicable discounts associated with such facilities or activities. These discounts, as applicable, should be identified and noted in proposals submitted.

Respondents must disclose in their proposal any relationship, whether by relative, business associate, funding agreement or any other such kinship that exists, or is anticipated to exist, between respondent and any UTMDACC employee.

Respondents must disclose in this proposal if any key personnel, owner, major officer, or other employee contributing to this proposal, has been employed by the UTMDACC, or other University of Texas Component, within the past 12 months prior to January 4, 1993.

Respondents must indicate in their proposal if their firm is considered a Small and/or Minority Business as defined by the State of Texas.

Proposal packages will be made available to interested parties on or after November 13, 1992, with responses to be submitted 30 days after the date. Proposal packages may be obtained from Rick Bryant at the address below.

Proposals should be submitted as follows: Mailing Address: The University of Texas M. D. Anderson Cancer Center, Attention: Rick Bryant, 1515 Holcombe Boulevard-Box 546, Houston, Texas 77030; Office Location: The University of Texas M. D. Anderson Cancer Center, Attention: Rick Bryant, 1020 Holcombe Boulevard-Suite 230, Houston, Texas 77030.

For further information, please contact Rick Bryant, Manager, Facilities Coordination and Special Projects, at (713) 792-3080 or Caryn Ayers, Manager, Human Resource at (713) 794-5919 UTMDACC specifically requests that all inquiries on this proposal be directed only to these individuals.

Issued in Austin, Texas, on November 25, 1992.

TRD-9215871

Arthur H. Dilly
Certifying Official For The University of
Texas
M D Anderson Cancer Center

Filed: November 25, 1992

◆ ◆ ◆
Texas Water Commission
Meeting Notice

A meeting of the Scientific/Technical Advisory Committee of the Galveston Bay National Estuary Program is scheduled for: Thursday, December 3, 1992, 9 a. m., Forest Room-Bayou Building, University of Houston-Clear Lake, 2700 Bay Area Boulevard, Houston

The S/TAC will review and discuss the original Priority Problems List and the Galveston Bay Ecosystem Matrix in an effort to help the S/TAC priority Problems subcommittee develop a Priority Problems report. This report will indicate, on a preliminary level, the degree of consensus between developing management initiatives and GBNEP scientific characterization efforts. S/TAC will also discuss the "Survey of Galveston Bay Bottom Sediments and Benthic Communities" study in preparation for the development of the Characterization report and the subsequent development of the CCMP. There are a variety of other items which will be discussed as well.

Issued in Austin, Texas, on November 19, 1992

TRD-9215688

Frank S Shipley, Ph D
Program Manager
Galveston Bay National Estuary Program

Filed: November 23, 1992

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1992 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the September-December 1992 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on February 28, November 6, December 1, and December 29. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
66 Tuesday, September 1	Wednesday, August 26	Thursday, August 27
67 Friday, September 4	Monday, August 31	Tuesday, September 1
68 Tuesday, September 8	Wednesday, September 2	Thursday, September 3
69 *Friday, September 11	Friday, September 4	Tuesday, September 8
70 Tuesday, September 15	Wednesday, September 9	Thursday, September 10
71 Friday, September 18	Monday, September 14	Tuesday, September 15
72 Tuesday, September 22	Wednesday, September 16	Thursday, September 17
73 Friday, September 25	Monday, September 21	Tuesday, September 22
74 Tuesday, September 29	Wednesday, September 23	Thursday, September 24
75 Friday, October 2	Monday, September 28	Tuesday, September 29
76 Tuesday, October 6	Wednesday, September 30	Thursday, October 1
77 Friday, October 9	Monday, October 5	Tuesday, October 6
Tuesday, October 13	THIRD QUARTERLY INDEX	
78 Friday, October 16	Monday, October 12	Tuesday, October 13
79 Tuesday, October 20	Wednesday, October 14	Thursday, October 15
80 Friday, October 23	Monday, October 19	Tuesday, October 20
81 Tuesday, October 27	Wednesday, October 21	Thursday, October 22
82 Friday, October 30	Monday, October 26	Tuesday, October 27
83 Tuesday, November 3	Wednesday, October 28	Thursday, October 29
Friday, November 6	NO ISSUE PUBLISHED	
84 Tuesday, November 10	Wednesday, November 4	Thursday, November 5
85 Friday, November 13	Monday, November 9	Tuesday, November 10
*86 Tuesday, November 17	Tuesday, November 10	Thursday, November 12
87 Friday, November 20	Monday, November 16	Tuesday, November 17
88 Tuesday, November 24	Wednesday, November 18	Thursday, November 19
89 Friday, November 27	Monday, November 23	Tuesday, November 24
Tuesday, December 1	NO ISSUE PUBLISHED	
90 Friday, December 4	Monday, November 30	Tuesday, December 1
91 Tuesday, December 8	Wednesday, December 2	Thursday, December 3
92 Friday, December 11	Monday, December 7	Tuesday, December 8
93 Tuesday, December 15	Wednesday, December 9	Thursday, December 10
94 Friday, December 18	Monday, December 14	Tuesday, December 15

95 Tuesday, December 22	Wednesday, December 16	Thursday, December 17
96 Friday, December 25	Monday, December 21	Tuesday, December 22
Tuesday, December 29	NO ISSUE PUBLISHED	
1 Friday, January 1	Monday, December 28	Tuesday, December 29

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