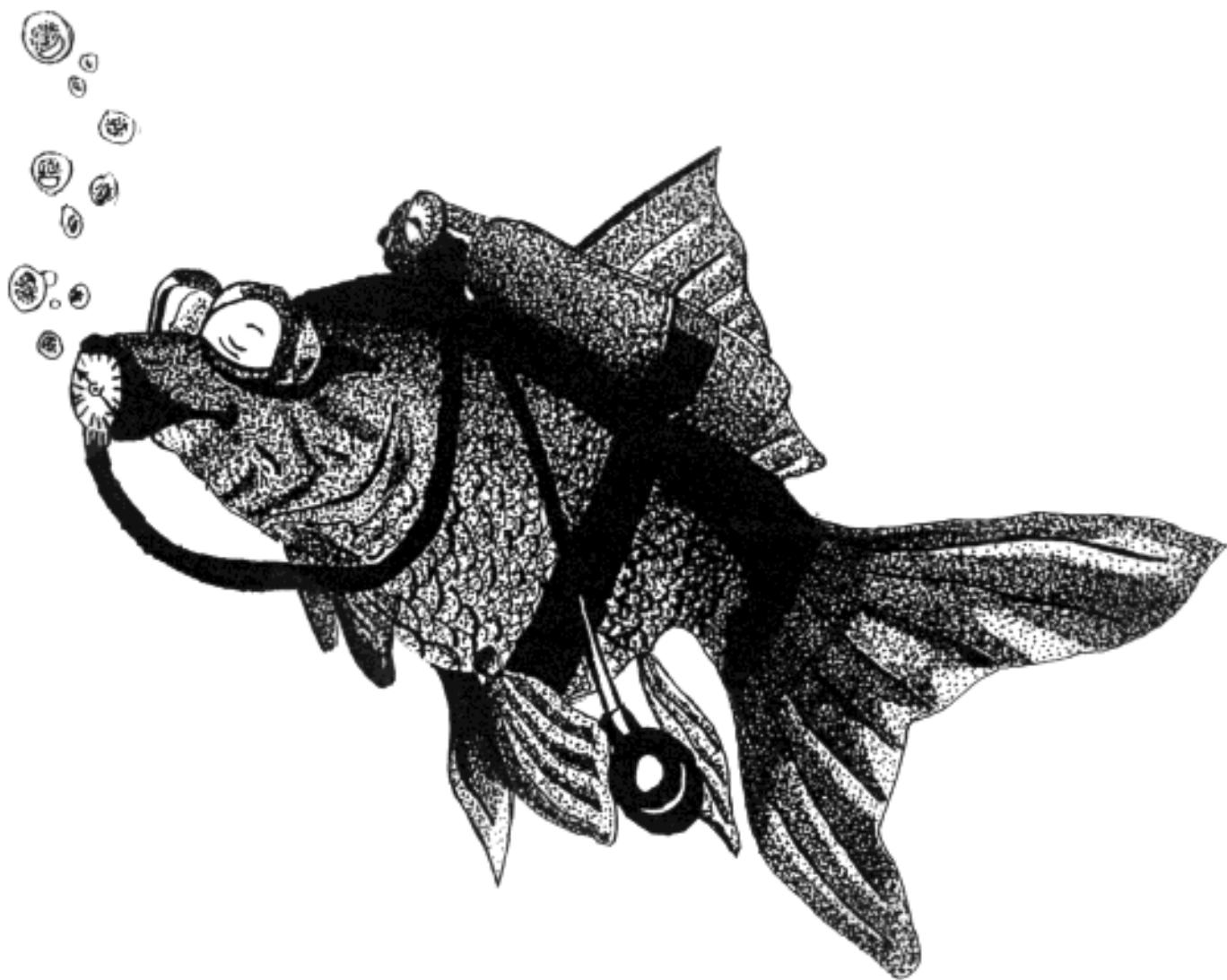


TEXAS REGISTER

Volume 23 Number 28 July 10, 1998

Pages 7145-7303



GOVERNOR

Office of the Governor

Appointments made June 10, 1998.....7153

ATTORNEY GENERAL

Opinions.....7155

EMERGENCY RULES

Interagency Council on Early Childhood Intervention

Early Childhood Intervention

25 TAC §621.62.....7157

Texas Youth Commission

Youth Rights and Remedies

37 TAC §93.1.....7157

PROPOSED RULES

Office of the Secretary of State

Elections

1 TAC §81.62.....7159

Texas Department of Agriculture

Boll Weevil Eradication Program

4 TAC §§3.400–3.405.....7160

Texas Department of Housing and Community Affairs

Introductory Provisions

10 TAC §§21.1-21.10, 21.20.....7161

Board Meetings

10 TAC §§25.1-25.12.....7162

Nonrulemaking Hearings

10 TAC §§29.1-29.9.....7162

Texas Alcoholic Beverage Commission

Marketing Practices

16 TAC §45.109.....7163

16 TAC §45.111.....7163

16 TAC §45.117.....7164

Texas Education Agency

Adaptations for Special Populations

19 TAC §89.1311.....7164

Texas Board of Professional Engineers

Practice and Procedure

22 TAC §131.54.....7165

Texas Board of Physical Therapy Examiners

Definitions

22 TAC §321.1.....7166

Contested Case Procedures

22 TAC §343.3.....7168

Administrative Fines and Penalties

22 TAC 344.1.....7168

Texas Real Estate Commission

Provisions of the Real Estate License Act

22 TAC §535.92.....7169

Texas Department of Health

Purchased Health Services

25 TAC §29.1118.....7170

Pharmacy Services

25 TAC §35.701.....7171

Texas Department of Mental Health and Mental Retardation

Medicaid Programs

25 TAC §409.69.....7171

Employees Retirement System of Texas

Deferred Compensation

34 TAC §§87.1, 87.3, 87.5, 87.11, 87.15, 87.17, 87.21.....7172

Texas Youth Commission

Security and Control

37 TAC §97.9.....7176

37 TAC §97.9.....7177

Texas Department of Human Services

Legal Services

40 TAC §§79.1901, 79.1906, 79.1914, 79.1917, 79.1919.....7178

40 TAC §§79.2003, 79.2009, 79.2011.....7179

Texas Department of Protective and Regulatory Services

Child Protective Services

40 TAC §700.316.....7180

40 TAC §§700.1803-700.1806.....7181

General Licensing Procedures

40 TAC §725.1001.....7185

40 TAC §725.1808, §725.1809.....7186

40 TAC §725.1810.....7186

40 TAC §§725.2006, 725.2036, 725.2046.....7188

Contracted Services

40 TAC §§732.240, 732.242-732.252, 732.254-732.256.....7189

40 TAC §732.241.....7196

Texas Department of Transportation

Environmental Policy

43 TAC §2.24 7196

Employee Practices

43 TAC §§4.61, 4.63, 4.64 7203

Finance

43 TAC §§5.21-5.29 7205

State Infrastructure Bank

43 TAC §6.32 7208

Transportation Planning and Programming

43 TAC §15.60 7210

WITHDRAWN RULES

Texas Department of Protective and Regulatory Services

General Licensing Procedures

40 TAC §725.2048 7213

ADOPTED RULES

Office of the Attorney General

Sexual Assault Prevention and Crisis Services

1 TAC §§62.25–62.32 7215

Office of the Secretary of State

Texas Register

1 TAC §91.63 7220

1 TAC §§91.131, 91.133, 91.135, 91.137 7220

Texas Department of Agriculture

Pesticides

4 TAC §7.22 7221

Texas Education Agency

School Districts

19 TAC §§61.11–61.14 7221

19 TAC §61.1033 7222

Texas Board of Professional Engineers

Practice and Procedure

22 TAC §131.18 7222

22 TAC §131.52 7222

22 TAC §131.101 7223

22 TAC §131.114, §131.116 7223

22 TAC §131.155 7223

Texas Department of Health

Zoonosis Control

25 TAC §§169.21–169.24, 169.26–169.31, 169.33–169.34 7224

Texas Department of Human Services

Income Assistance Services

40 TAC §3.704, §3.705 7228

40 TAC §3.902 7229

Texas Department of Protective and Regulatory Services

Child Protective Services

40 TAC §§700.401-700.413 7231

Texas Workforce Commission

General Administration

40 TAC §800.61 7234

40 TAC §800.62 7235

Food Stamp Employment and Training

40 TAC §813.1, §813.2 7237

Apprenticeship Training

40 TAC §837.1, §837.2 7237

40 TAC §837.21, §837.22 7239

40 TAC §§837.41–837.44 7239

40 TAC §§837.61–837.65 7239

40 TAC §§837.81–837.85 7240

40 TAC §837.100, §837.101 7240

40 TAC §§837.121–837.125 7241

Welfare to Work

40 TAC §§839.1–839.3 7241

Texas Department of Transportation

Management

43 TAC §1.1, §1.2 7241

EXEMPT FILINGS

Texas Department of Insurance

ADOPTED ACTIONS 7243

RULE REVIEW

Proposed Rule Review

Texas Real Estate Commission 7245

Adopted Rule Review

Texas Rehabilitation Commission 7245

TABLES AND GRAPHICS

Tables and Graphics

Tables and Graphics 7247

OPEN MEETINGS

Texas State Board of Public Accountancy	
Wednesday, July 8, 1998, 2:00 p.m.....	7253
State Office of Administrative Hearings	
Monday, July 6, 1998, 1:30 p.m.	7253
Thursday, July 9, 1998, 9:00 a.m.	7253
Wednesday, August 19, 1998, 9:00 a.m.	7254
Texas Department of Agriculture	
Tuesday, July 14, 1998, 10:00 a.m.....	7254
Tuesday, July 14, 1998, 11:00 a.m.....	7254
Texas Commission on Alcohol and Drug Abuse	
Friday, July 10, 1998, 10:00 a.m.....	7254
Texas Council on Alzheimer's Disease and Related Disorders	
Thursday, July 9, 1998, 9:30 a.m.....	7254
Texas Association of Counties, County Government Risk Management Pool	
Thursday, July 2, 1998, 9:00 a.m.....	7254
State Board of Barber Examiners	
Monday, July 6, 1998, 2:30 p.m.....	7255
Texas Board of Chiropractic Examiners	
Thursday, July 9, 1998, 9:00 a.m.....	7255
Thursday, July 9, 1998, 9:00 a.m.....	7255
Thursday, July 9, 1998, 10:00 a.m.....	7255
Thursday, July 9, 1998, 10:00 a.m.....	7255
Thursday, July 9, 1998, 11:00 a.m.....	7256
Thursday, July 9, 1998, 1:30 p.m.....	7256
Council on Competitive Government	
Wednesday, July 8, 1998, 9:30 a.m.....	7256
Credit Union Department	
Thursday, July 16, 1998, 2:00 p.m.....	7256
Friday, July 17, 1998, 10:00 a.m.....	7257
Texas Department of Criminal Justice	
Tuesday, July 7, 1998, 2:00 p.m.	7257
Thursday, July 9, 1998, 1:30 p.m.	7257
Thursday, July 9, 1998, 2:00 p.m.	7257
Thursday, July 9, 1998, 3:00 p.m.	7258
Friday, July 10, 1998, 9:00 a.m.	7258
Texas Education Agency	
Thursday, July 9, 1998, 10:00 a.m., or upon adjournment of the joint meeting of the Committees on Instruction and School finance/ Permanent School Fund (PSF) which convenes at 10:00 a.m.....	7258
Friday, July 10, 1998, 9:00 a.m.....	7259
Wednesday, July 22, 1998, 8:30 a.m.....	7259
Texas Ethics Commission	
Friday, July 10, 1998, 9:30 a.m.....	7259
State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments	
Saturday, July 18, 1998, 9:00 a.m.....	7259
Saturday, July 18, 1998, 10:00 a.m.....	7260
Saturday, July 18, 1998, 11:00 a.m.....	7260
General Land Office	
Tuesday, July 7, 1998, 3:00 p.m.....	7260
Texas Geographic Information Council (TGIC)	
Wednesday, July 22, 1998, 2:00 p.m.....	7260
Texas Health Care Information Council	
Tuesday, July 7, 1998, 1:00 p.m.....	7260
Texas Department of Health	
Saturday, July 11, 1998, 8:15 a.m.....	7261
Saturday, July 11, 1998, 9:00 a.m.....	7261
Saturday, July 11, 1998, Noon.....	7261
Saturday, July 11, 1998, 12:30 p.m.....	7261
Saturday, July 11, 1998, 1:15 p.m.....	7262
Wednesday, July 15, 1998, 3:00 p.m.....	7262
Wednesday, July 15, 1998, 6:00 p.m.....	7262
Thursday, July 16, 1998, 8:00 a.m.....	7262
Health Professions Council	
Monday, June 29, 1998, 1:00 p.m.....	7263
Texas Higher Education Coordinating Board	
Wednesday, July 8, 1998, 1:00 p.m.....	7263
Thursday, July 16, 1998, 8:30 a.m.....	7263
Thursday, July 16, 1998, 9:45 a.m.....	7263
Thursday, July 16, 1998, 10:15 a.m.....	7263
Thursday, July 16, 1998, 11:00 a.m.....	7263
Thursday, July 16, 1998, 11:45 a.m.....	7263
Thursday, July 16, 1998, 12:00 p.m.....	7264
Thursday, July 16, 1998, 1:00 p.m.....	7264
Thursday, July 16, 1998, 1:45 p.m.....	7264
Thursday, July 16, 1998, 2:15 p.m.....	7264
Thursday, July 16, 1998, 3:00 p.m.....	7264
Thursday, July 16, 1998, 3:15 p.m.....	7264
Thursday, July 16, 1998, 3:30 p.m.....	7264
Thursday, July 16, 1998, 4:15 p.m.....	7265

Friday, July 17, 1998, 8:30 a.m.....7265

Texas Department of Housing and Community Affairs

Thursday, July 16, 1998, 10:00 a.m..... 7265

Texas Commission on Human Rights

Thursday July 9, 1998, 9:00 a.m.....7265

Texas Department of Insurance

Tuesday, July 14, 1998, 9:00 a.m.....7265

Monday, August 3, 1998, 9:00 a.m.....7266

Wednesday, August 5, 1998, 9:00 a.m.....7266

Thursday, August 6, 1998, 9:00 a.m.....7266

Texas Department of Licensing and Regulation

Wednesday, July 8, 1998, 1:30 p.m. (Rescheduled from May 13, 1998).....7266

Tuesday, August 4, 1998, 9:30 a.m.....7266

Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Monday, July 6, 1998, 9:30 a.m.....7266

Texas State Board of Examiners of Marriage and Family Therapists

Sunday, July 19, 1998, 1:00 p.m.....7267

Sunday, July 19, 1998, 2:00 p.m.....7267

Sunday, July 19, 1998, 3:00 p.m.....7267

Monday, July 20, 1998, 8:30 a.m.....7267

Texas Natural Resource Conservation Commission

Wednesday, July 1, 1998, 9:30 a.m.....7268

Friday, July 3, 1998, 8:30 a.m.....7268

Thursday, July 16, 1998, 10:00 a.m.....7268

Tuesday, July 28, 1998, 10:00 a.m.....7268

Thursday, July 30, 1998, 7:00 p.m.....7268

Wednesday, August 26, 1998, 9:30 a.m.....7269

Board of Nurse Examiners

Thursday-Friday, July 16–17, 1998, 8:30 a.m.....7269

Texas Council on Offenders with Mental Impairments

Wednesday, July 15, 1998, 8:30 a.m.....7269

Texas Optometry Board

Thursday-Friday, July 8–9, 1998, 10:00 a.m. July 8, and 8:30 a.m. July 9, 1998.....7269

Texas State Board of Examiners of Perfusionists

Wednesday, July 8, 1998, 10:30 a.m.....7270

Texas State Board of Plumbing Examiners

Wednesday, July 8, 1998, 9:00 a.m.....7270

Texas State Board of Examiners of Psychologists

Thursday-Friday, July 30–31, 1998, 8:30 a.m.....7270

Texas Department of Public Safety

Thursday, July 9, 1998, 3:00 p.m.....7270

Public Utility Commission of Texas

Wednesday-Friday, July 8–10, 1998, 9:30 a.m. each day.....7270

Thursday-Friday, July 9–10, 1998, 9:30 a.m. each day.....7271

Monday, July 13, 1998, 9:00 a.m.....7271

State Office of Risk Management

Wednesday, July 8, 1998, 1:00 p.m.....7271

School Land Board

Tuesday, July 7, 1998, 10:00 a.m.....7272

Special Board of Review

Monday, July 6, 1998, 5:30 p.m.....7272

Stephen F. Austin State University

Thursday, July 2, 1998, 10:00 a.m.....7272

Telecommunications Infrastructure Fund Board

Thursday, July 9, 1998, 2:00 p.m.....7272

Friday, July 10, 1998, 8:30 a.m.....7272

Friday, July 10, 1998, 9:30 a.m.....7273

Friday, July 10, 1998, 10:00 a.m.....7273

Texas Title Insurance Guaranty Association

Tuesday, July 14, 1998, 10:00 a.m.....7273

Trinity Higher Education Facilities Corporation

Wednesday, July 8, 1998, 12:30 p.m.....7274

Texas Department of Transportation

Thursday, July 9, 1998, 9:30 a.m.....7274

The University of Texas System

Monday, July 6, 1998, 1:00 p.m.....7274

Tuesday, July 7, 1998, 9:30 a.m.....7274

Tuesday, July 7, 1998, 1:00 p.m.....7274

Texas Workers' Compensation Commission

Thursday, July 2, 1998, 9:30 a.m.....7275

Texas Workforce Commission

Thursday, July 2, 1998, 9:00 a.m.....7275

Tuesday, July 7, 1998, 9:00 a.m.....7276

Tuesday, July 7, 1998, 9:00 a.m.....7276

Regional Meetings

IN ADDITION

Texas Commission on Alcohol and Drug Abuse

Correction of Error.....	7281	Health and Human Services Commission	Public Notices.....	7291
Coastal Coordination Council		Houston-Galveston Area Council	Request for Proposals	7292
Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program	7281	Texas Department of Insurance	Insurer Services.....	7292
Comptroller of Public Accounts		Notice of Public Hearings.....	7292	
Notice of Withdrawal of Request for Proposals.....	7282	Third Party Administrator Applications.....	7292	
Office of Consumer Credit Commissioner		Texas Natural Resource Conservation Commission	Correction of Errors	7293
Notice of Rate Ceilings.....	7282	Extension of Comment Period.....	7293	
Texas Department of Criminal Justice		Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions.....	7293	
Notices to Bidders.....	7282	Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions.....	7294	
Deep East Texas Council of Governments		Proposal to Modify Opacity Recertification Requirements	7296	
Request for Qualificaitons	7283	Provisionally-Issued Temporary Permits to Appropriate State Water Listed below are permits issued during the period of June 30, 1998	7296	
Texas Education Agency		North Texas Tollway Authority	Request for Qualifications-Architectural and Architectural Engineering Design Services.....	7298
Correction of Errors.....	7284	Public Utility Commission of Texas	Notice of Applications for Amendment to Service Provider Certificate of Operating Authority	7298
Employees Retirement System of Texas		Notice of Application for Temporary Waiver of Requirements Under P.U.C. Substantive Rules §§23.11(c), (d), (k) and §23.12(b).....	7299	
Consultant Contract Award.....	7285	Notices of Intent to File Pursuant to P.U.C. Substantive Rule §23.27	7299	
Request for Proposals-HealthSelect of Texas.....	7285	Notices of Petitions for Rulemaking	7300	
Request for Proposals-HealthSelect Plus.....	7285	Public Notices of Interconnection Agreements.....	7300	
Request for Proposals-Prescription Drug Program for HealthSelect of Texas	7286	Request for Proposals for Consulting Services to Provide Support in the Implementation of the Windows NT Local Area Network ..	7302	
General Services Commission		Texas Water Development Board	Applications Received.....	7302
Notice of Contract Award	7286	Texas Workers' Compensation Commission	Correction of Errors	7303
Notices of Request for Offers.....	7286			
Notice of Request for Proposal for Consultant Services Contract	7287			
Office of the Governor				
Request for Applications-Combating Underage Drinking.....	7287			
Texas Department of Health				
Correction of Errors.....	7288			
Notice of Amendment to License of Waste Control Specialists.	7289			
Notice of Extended Deadline for Notice of Request for Proposals for Projects to Provide Abstinence Education	7290			
Notice of Intent to Revoke Certificates of Registration	7290			
Notice of Intent to Revoke the Radioactive Material License of Houston Woodtech.....	7291			
Notice of Revocation of Certificates of Registration.....	7291			

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Office of the Governor

Appointments made June 10, 1998

To be appointed to the MIDWESTERN STATE UNIVERSITY BOARD OF REGENTS for terms to expire February 25, 2004: Jaime A. Davidson, M.D., 6804 Harvest Glen, Dallas, Texas 75248 (replacing Robert G. West of Fort Worth whose term expired); Carolyn Park, 1500 Shady Creek Drive, Euless, Texas 76040 (replacing Margaret Furr Darden of Dallas whose term expired); Chaunce O. Thompson, Jr., 5 Sendero Road, Breckenridge, Texas 76424 (replacing Ervin Garnett of Wichita Falls whose term expired).

To be appointed to the TEXAS COUNCIL ON WORKFORCE AND ECONOMIC COMPETITIVENESS for a term to expire September 1, 2001: Wanda Chandler Rohm, 422 East Hildebrand, San Antonio, Texas 78212. Ms. Rohm will be filling the unexpired term of Irene Hernandez of San Antonio who resigned.

To be appointed as chairman of the CHILDREN'S TRUST FUND OF TEXAS COUNCIL: Anne C. Crews for a term at the pleasure of the Governor. Ms. Crews will be replacing Dr. Peggy Smith of Houston as Chairman. Dr. Smith no longer serves on the council.

Appointments made June 15, 1998

To be appointed as members of the TEXAS JUVENILE PROBATION COMMISSION for terms to expire August 31, 2003: The honorable Mary Craft, Judge, 314th District Court, P.O. Box 130059, Houston, Texas 77219 (replacing Judge Eric Andell of Houston whose term expired); William E. (Bill) Miller, American Bank of Commerce,

3414 63rd Street, Lubbock, Texas 79413 (replacing Victoria H. Baldwin of Austin whose term expired); The Honorable Mike Cantrell, Dallas County Commissioner, 715 Rowlett Road, Garland, Texas 75043 (replacing Theresa B. Lyons of Fort Worth whose term expired).

Appointments made June 29, 1998

To be appointed to the LOWER NECHES VALLEY AUTHORITY BOARD OF DIRECTORS for a term to expire July 28, 2001 pursuant to House Bill Number 2919, 75th Legislature: Lonnie Arrington, 1215 Wilchester Circle, Beaumont, Texas 77706. Mr. Arrington will be filling the unexpired term of G. Paul Pepper of Beaumont who is deceased.

To be appointed to the AIR CONDITIONING AND REFRIGERATION CONTRACTORS ADVISORY BOARD for terms to expire February 1, 2003: Cassie L. Hughes, 13290 County Road 114, Abilene, Texas 79601 (reappointment); David D. Munoz, 5370 FM 1863, Bulverde, Texas 78163 (reappointment).

Appointments made June 30, 1998

To be appointed to the TEXAS WORKFORCE COMMISSION for a term to expire February 1, 2003: Ron Lehman, Four Red Bud Trail, Round Rock, Texas 78664. Mr. Lehman will be filling the unexpired term of Bill Hammond of Austin who resigned.

TRD-9810695

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OFFICE OF THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

LO #98-046. (RQ-1075). Request from The Honorable Joe Frank Garza, District Attorney, 79th Judicial District of Texas, P.O. Drawer 3157, Alice, Texas 78333, regarding whether the board of an independent school district may hire as a teacher the spouse of a trustee.

S U M M A R Y. A school district may not hire as a teacher (as opposed to a substitute teacher) the spouse of one of the district's trustees where the spouse was not employed by the district when the trustee-spouse assumed office.

LO #98-047. (RQ-1043). Request from Mr. Wayne Scott, Executive Director, Texas Department of Criminal Justice, P.O. Box 4004, Huntsville, Texas 77342-4004, regarding whether Texas Department of Criminal Justice may adopt policy of mandatory tuberculosis screening of all employees and volunteers

S U M M A R Y. The Texas Department of Criminal Justice may adopt a policy of mandatory tuberculosis screening of department employees and volunteers pursuant to §501.060(a) of the Government Code, subject to constitutional prohibitions against unreasonable searches and seizures.

LO #98-048. (RQ-1124). Request from The Honorable Tom Maness, Criminal District Attorney, Jefferson County, P.O. Box 2553, Beaumont, Texas 77704, regarding whether a member of the Pleasure Island Commission may be appointed to the Parks Board of Jefferson County.

S U M M A R Y. A member of the Pleasure Island Commission may not be appointed to the Board of Park Commissioners of Jefferson County.

LO #98-049. (RQ-1063). Request from The Honorable Charles R. Matthews, Chair, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967, regarding whether the Railroad Commission is authorized to refund certain fees paid pursuant to Natural Resources Code §113.244 and related questions.

S U M M A R Y. The comptroller is authorized to refund fees collected by the Railroad Commission through mistake of fact or law, subject to the limitations of Government Code §403.077.

LO #98-050. (RQ-1091). Request from Mr. Mike Moses, Commissioner, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, regarding liability of independent school district for taxes collected in excess of maximum maintenance tax rate adopted by voters.

S U M M A R Y. The board of trustees of a school district may not levy a maintenance tax at a rate greater than the rate authorized by the majority of the qualified voters of the district, voting at an election held for that purpose, and if it attempts to do so, the tax is illegal. A person who pays an illegal tax voluntarily has no valid claim for its repayment. A taxpayer may show that payment of an ad valorem tax is involuntary pursuant to section 31.115 of the Tax Code by indicating on the instrument by which the tax is paid or in a accompanying document that the tax is paid under protest.

TRD-9810316
Sarah Shirley
Assistant Attorney General
Office of the Attorney General
Filed: June 30, 1998

◆ ◆ ◆

EMERGENCY RULES

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

Symbology in amended emergency sections. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 25. HEALTH SERVICES

Part VIII. Interagency Council on Early Childhood Intervention

Chapter 621. Early Childhood Intervention

Subchapter D. Early Childhood Intervention Advisory Committee

25 TAC §621.62

The Interagency Council on Early Childhood Intervention adopts an amendment to §621.62 on an emergency basis, concerning the size, composition and voting status of members of its Advisory Committee.

This section is adopted on an emergency basis to comply with federal regulations.

The amendments are adopted on an emergency basis under the Human Resources Code, Chapter 73 which authorizes the Interagency Council on Early Childhood Intervention to establish rules regarding services provided for children with developmental delays.

§621.62. *Size, Composition, and Terms of Office.*

(a) *Size.* The advisory committee shall consist of 24 [22] members which the governor shall appoint.

(b) *Composition.* The advisory committee shall be composed as follows.

(1) Official members must include:

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

(E) one representative from each of the following agencies and public program: the Texas Department of Public Health; the Texas Department of Mental Health and Mental Retardation; the Texas Department of Human Services; the Texas Education Agency; [and] the Texas Department of Insurance; the Texas Workforce Commission and Head Start. The representative must have sufficient authority to engage in policy planning and implementation on behalf of his or her agency. The Texas Education Agency representative must be responsible for preschool services to children with developmental disabilities;

(F)- (H) (No change).

(2) Ex officio members may be appointed by the Board [~~council~~] to perform specific, time-limited tasks as needed. Voting status of ex officio members is determined by the Board [~~Ex officio members may not vote.~~]

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

Filed with the Office of the Secretary of State, on June 26, 1998.

TRD-9810177

Donna Samuelson

Deputy Executive Director

Interagency Council on Early Childhood Intervention

Effective date: June 26, 1998

Expiration date: October 24, 1998

For further information, please call: (512) 424-6754

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 93. Youth Rights and Remedies

37 TAC §93.1

The Texas Youth Commission is renewing the effectiveness of the emergency adoption of amended §93.1, for a 60-day period. The text of amended §93.1 was originally published in the May 8, 1998 issue of the *Texas Register* (23 TexReg 4431).

Filed with the Office of the Secretary of State, on June 25, 1998.

9810156

Steve Robinson

Executive Director

Texas Youth Commission

Effective date: June 26, 1998

Expiration date: August 25, 1998

For further information, please call: (512) 424-6244

PROPOSED RULES

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

Symbology in proposed amendments. New language added to an existing section is indicated by the text being underlined. [Brackets] and ~~strike-through~~ of text indicates deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 81. Elections

Subchapter D. Voting Systems Certification

1 TAC §81.62

The Office of the Secretary of State, Elections Division, proposes a new rule, §81.62, concerning audit logs for automatic tabulating equipment. The new rule is proposed to require automatic tabulating equipment to include a continuous feed printer dedicated to a real-time audit log for certification in the state of Texas.

Ann McGeehan, Deputy Assistant Secretary of State for Elections, has determined that for the first five-year period that this rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Ms. McGeehan has determined also that for each year of the first five years that the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to enhance public confidence in the accuracy and security of electronic voting systems by requiring automatic tabulation equipment to provide a detailed document to facilitate post election review. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Ann McGeehan, Deputy Assistant Secretary of State for Elections, Office of the Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

The rule is proposed under the Code, Chapter 31, Subchapter A, §31.003, which provides the Secretary of State with authority to promulgate rules to obtain uniformity in the interpretation and application of the Code, and under the Code, Chapter 122, §122.001(c), which authorizes the Secretary of State to prescribe additional standards for voting systems.

The Code, Chapter 122, §122.001(c) is affected by this proposed rule.

§81.62. Use of Audit Logs in Automatic Tabulation Equipment.

(a) For any voting tabulation device, or any modification to a voting tabulation device, to be certified for use in Texas elections, the device shall include a continuous feed printer dedicated to a real-time audit log. All significant election events and their date and time stamps shall be printed to the audit log.

(b) The definition of "significant election events" in subsection (a) of this rule includes but is not limited to:

- (1) error messages and operator response to those messages;
- (2) number of ballots read for a given precinct;
- (3) completion of reading ballots for a given precinct;
- (4) input ports used for modem transfers from precincts;
- (5) users logging in and out from election system;
- (6) precincts being zeroed;
- (7) reports being generated; and
- (8) diagnostics of any type being run.

(c) The audit log for an election shall be retained by the custodian of election records for the appropriate preservation period.

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

Filed with the Office of the Secretary of State, on June 23, 1998.

TRD-9810044

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 463-5650

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 3. Boll Weevil Eradication Program

Subchapter H. Use of Bio-Intensive Controls in Active Boll Weevil Eradication Zones

4 TAC §§3.400–3.405

The Texas Department of Agriculture (the department) proposes new §3.400-3.405, concerning the use of bio-intensive controls in active boll weevil eradication zones. The new sections are proposed to provide procedures and requirements to allow a cotton grower in an active boll weevil eradication program to use bio-intensive controls as pest control methods, in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D, §74.130. New §§3.400-3.405 propose a definition of bio-intensive control, procedures for requesting to use bio-intensive controls, items to be considered by the Texas Boll Weevil Eradication Foundation in reviewing requests, recordkeeping and treatment requirements, procedures for appeals of denial of a request or withdrawal of approval once given, and requirements for payment of costs of bio-intensive controls.

Katie Dickie Stavinoha, special assistant for producer relations, 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 section.

Ms. Stavinoha 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 ability for cotton growers to have alternative control measures in boll weevil eradication zones. There will be no effect on small businesses. The anticipated economic cost to persons who will be required to comply with the new sections, as proposed, is not determinable at this time. The costs to individual growers wishing to use bio-intensive controls will depend on the control method selected. .

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

The new sections are proposed under the Texas Agriculture Code, §74.130, which directs the commissioner of agriculture to develop and adopt rules to allow a cotton grower in an eradication program to use biological, botanical, or other non-synthetic pest control methods.

The codes affected by the proposal are the Texas Agriculture Code, Chapter 74.

§3.400. Definitions.

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

(1) Bio-intensive control – the use of biologically based pest control tactics such as biological controls, resistant host plants, cultural controls, botanical insecticides or sterile insect techniques that cause little or no detrimental effect on non-target organisms.

(2) Department – Texas Department of Agriculture.

(3) Foundation – Texas Boll Weevil Eradication Foundation.

(4) Work unit – That area of cotton within a boll weevil eradication zone overseen by a Foundation Field Unit Supervisor.

§3.401. Request for Approval to Use Bio-intensive Control Method(s).

(a) Any cotton producer who wishes to use a bio-intensive control method in an active boll weevil eradication zone, other than for fields on which a grower has certified organic production, shall request approval in writing from the Foundation at least 90 days prior to traditional cotton planting dates in the area in which he farms.

(b) The request shall be considered by the Foundation and shall be granted or denied in writing at least 30 days prior to traditional planting time, and if approved, certification issued designating the time period for which the approval is valid.

(c) In the request for use of bio-intensive controls, the grower must state:

(1) the specific locations of the cotton fields;

(2) the alternative control(s) to be used and its source and availability;

(3) the expected date of crop planting;

(4) the duration and timing expected in using the control method(s);

(5) any scientific or field study trials relevant to the request;

(6) the expected cost for using the alternative method;

(7) the plan for coordinating the monitoring methods between the Foundation and the grower;

(8) the grower's name, address and phone numbers; and

(9) other pertinent information the grower wishes to be used in determining approval for the use of alternative controls.

(d) In making its decision to grant approval for bio-intensive control methods in an active boll weevil eradication program, the Foundation shall consider:

(1) any and all scientific or field study trials relevant to the requested alternative method, giving special attention to studies conducted in similar growing regions;

(2) whether the grower has the fiscal means to pay for the alternative control method and pay any assessment;

(3) the overall progress of the boll weevil eradication program in the area and the location of the cotton on which alternative methods are proposed to be used;

(4) how the use of alternative methods would impact cotton in close proximity to the field(s) in question; and

(5) the recommendation from the Foundation technical committee.

(e) If a bio-intensive control method is approved by the Foundation in accordance with subsection (b) of this section, the grower shall document treatment dates and outcomes, and make the records available to the Foundation at a pre-determined time, and stay in weekly contact with the Foundation's Field Unit Supervisor for his area for updates on weevil numbers trapped and area weevil infestation counts.

(f) If the Foundation disapproves the request to use bio-intensive control methods in accordance with subsection (b) of this section, the grower may appeal the decision in writing, within 10 days of receipt of the notification of disapproval, to the Department and furnish any additional information the grower wants considered. The Department shall determine whether the Foundation complied with this subchapter in making its decision and rule on the appeal within 15 days of the receipt of the grower's filing of an appeal.

§3.402. Treatment of Fields Approved for Use of Alternate Control Methods.

The Foundation shall not treat with its regular regimen of chemical applications fields for which a grower has been approved to use alternative control methods.

§3.403. Withdrawal of Approval to Use Bio-Intensive Control Methods.

(a) If weevil numbers in traps or field infestations monitored by the Foundation in the field(s) approved for bio-intensive control methods exceed those in a majority of fields within the Foundation's work unit by 25 percent for any period of time during mid-season spraying, the Foundation shall notify the grower of this event.

(b) If, after discussion between the grower and the Foundation, no other alternative is available, the grower's approval to use a bio-intensive control method shall be withdrawn by the Foundation and notice of withdrawal provided to the grower in writing.

(c) A grower may appeal the withdrawal of the certification to the Department within 10 days of receipt of the notice of withdrawal. The grower shall provide a notice of the appeal to the Foundation. The Foundation shall not treat the grower's field while TDA reviews the appeal. In making its decision on the appeal, the Department shall consider the impact the decision will have on the overall success of the eradication program in the zone.

§3.404. Payment of Costs of bio-intensive controls.

Under all circumstances, any grower who uses alternative methods for treating boll weevils shall pay any additional cost of bio-intensive controls in addition to any assessment required to be paid by growers in the zone in accordance with the Texas Agriculture Code, Chapter 74, Subchapter D.

§3.405. Annual Approval.

A grower must apply for approval annually.

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

Filed with the Office of the Secretary of State, on June 24, 1998.

TRD-9810091

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 463-7541



TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 21. Introductory Provisions

10 TAC §§21.1-21.10, 21.20

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§21.1-21.10 and 21.20, concerning Introductory Provisions. The sections are proposed to be repealed in order to discard outdated and unnecessary rules as well as comply with Section 167, Article IX, of the General Appropriations Act.

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

Mr. Larry Paul Manley, Executive Director, has determined that for the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules for the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Ms. Anne Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711-3941 or by fax 512/475-3978 within 30 days of this notice.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and Section 167, Article IX, of the General Appropriations Act.

No other codes, articles or statutes are affected by this repeal.

§21.1. Purposes.

§21.2. Definitions.

§21.3. Business Offices and Mailing Address of the Agency.

§21.4. Board Meetings.

§21.5. Seal of Agency.

§21.6. Secretary of State Liaison.

§21.7. Delegation of Responsibility.

§21.8. Public Records.

§21.9. Copies and Certificates.

§21.10. Use and Effect.

§21.20. Reporting Requirements for Housing Finance Corporations.

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810267

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 475-3726



Chapter 25. Board Meetings

10 TAC §§25.1-25.12

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§25.1-25.12, concerning Board Meetings. The sections are proposed to be repealed in order to discard duplicative and unnecessary rules as well as comply with Section 167, Article IX, of the General Appropriations Act.

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

Mr. Larry Paul Manley, Executive Director, has determined that for the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules for the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Ms. Anne Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711-3941 or by fax 512/475-3978 within 30 days of this notice.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and Section 167, Article IX, of the General Appropriations Act.

No other codes, articles or statutes are affected by this repeal.

§25.1. *Chairman.*

§25.2. *Executive Administrator.*

§25.3. *Transcript and Minutes.*

§25.4. *Agenda.*

§25.5. *Registration Form.*

§25.6. *Quorum.*

§25.7. *Request for Action by the Board.*

§25.8. *Placing Matters on Agenda.*

§25.9. *Public Hearing Prior to Presentation to Board.*

§25.10. *Presentation to Board without Prior Public Hearing.*

§25.11. *Public Appearances.*

§25.12. *Order of the Hearing.*

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810266

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 475-3726



Chapter 29. Nonrulemaking Hearings

10 TAC §§29.1-29.9

(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 Housing and Community Affairs or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§29.1-29.9, concerning Nonrulemaking Hearings. The sections are proposed to be repealed in order to discard duplicative and unnecessary rules as well as comply with Section 167, Article IX, of the General Appropriations Act.

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

Mr. Larry Paul Manley, Executive Director, has determined that for the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be to permit the adoption of new rules for the Department. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Ms. Anne Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, P. O. Box 13941, Austin, Texas 78711-3941 or by fax 512/475-3978 within 30 days of this notice.

The repeal is proposed pursuant to the authority of the Texas Government Code, Chapter 2306; and Section 167, Article IX, of the General Appropriations Act.

No other codes, articles or statutes are affected by this repeal.

§29.1. *Calling the Hearing.*

§29.2. *Petition for Hearing Other than a Petition for the Adoption of Rules.*

§29.3. *Action on Request for a Hearing.*

§29.4. *Presiding Officer.*

§29.5. *Official Notice.*

§29.6. *Documentary Evidence.*

§29.7. *Evidence in Uncontested Proceedings.*

§29.8. *Admissibility of Prepared Testimony and Exhibits.*

§29.9. *Witnesses Limited.*

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810268

Larry Paul Manley

Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: August 9, 1998
For further information, please call: (512) 475-3726

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TITLE 16. ECONOMIC REGULATION

Part III. Texas Alcoholic Beverage Commission

Chapter 45. Marketing Practices

Subchapter D. Advertising and Promotion - All Beverages

16 TAC §45.109

The Texas Alcoholic Beverage Commission proposes an amendment to §45.109 governing restocking and rotation of alcoholic beverages. The proposed amendment, contained in subsection (c) of the rule, seeks to modify the ability of industry members to move competitor's products.

Lou Bright, General Counsel, has determined that for the first five year period the rule is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Mr. Bright has determined that the public will benefit by this proposed amendment in that it allows for a more efficient and economical rotation of alcoholic beverage displays in retail stores. Increased efficiency will serve to lower operating costs for members of the alcoholic beverage industry. There is no anticipated costs to small businesses or other persons subject to this rule that are imposed by this amendment.

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

This amendment is proposed under the Alcoholic Beverage Code, §5.31, which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §102.20, is affected by this amendment.

§45.109. Restocking and Rotation of Alcoholic Beverages.

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

(c) Licensees and permittees subject to this rule may, at retail premises, with permission of the retailer, organize and construct displays of alcoholic beverages they sell. Notwithstanding the provisions of subsection (b) of this section, products of other industry members, arranged in floor or end cap displays, may be moved, with the permission of the retailer, in order to perform the services allowed by this subsection. Displays constructed under this subsection must be accessible to the consumer. [; provided products of other industry members are not altered or disturbed. Such displays must be accessible to the consumer.]

(d)-(e) (No change.)

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

Filed with the Office of the Secretary of State on June 24, 1998.

TRD-9810108
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 10, 1998
For further information, please call: (512) 206-3204

◆ ◆ ◆
16 TAC §45.111

The Alcoholic Beverage Commission proposes new §45.111 governing the ability of members of the alcoholic beverage industry to place signs or other advertising materials at temporary civic or charitable events.

Lou Bright, General Counsel has determined that for the first five year period the rule is in effect, there will be no fiscal impact for state or local government as a result of enforcing the rule.

Mr. Bright has determined that the public will benefit by this rule because the rule allows and encourages greater involvement by members of the alcoholic beverage industry in civic and charitable events. There is no anticipated costs imposed by this rule on small businesses or persons required to comply with the rule.

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

This rule is proposed pursuant to Alcoholic Beverage Code, §5.31 and §108.53 which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §108.53, is affected by this rule.

§45.111. Advertising Signs at Charitable or Civic Events.

(a) This rule is enacted pursuant to §108.53(d) of the Alcoholic Beverage Code.

(b) At a charitable or civic event of a temporary nature, members of the alcoholic beverage industry may place signs or other advertising materials indicating their participation in, or sponsorship of, the charitable or civic event.

(c) It is the intent of this rule that any proceeds from signs advertising alcoholic beverages be received directly by the charity or civic endeavor.

(d) Notwithstanding any other provision of the Alcoholic Beverage Code, signs at a charitable or civic event of a temporary nature may be within 200 feet of the licensed premises of a retailer of alcoholic beverages provided that there is no consideration of any kind given directly or indirectly to any retailer.

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

Filed with the Office of the Secretary of State on June 24, 1998.

TRD-9810110
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: August 10, 1998
For further information, please call: (512) 206-3204

Chapter 89. Adaptations for Special Populations

Subchapter CC. Commissioner's Rules Concerning Adult and Community Education

19 TAC §89.1311

The Texas Education Agency (TEA) proposes new §89.1311, concerning a memorandum of understanding (MOU) to provide educational services to released offenders. The MOU is between the Texas Department of Criminal Justice (TDCJ) and the Texas Education Agency (TEA) to provide educational services to released offenders. The MOU is to realize a human service system that offers releasees choices and opportunities, within the realm of educational services, to remain outside prison and achieve maximum integration in the community. The following guiding principles should be considered to accomplish the objectives of this memorandum: (1) the releasee will achieve more success outside of prison if a support system is in place to promote educational growth; (2) the releasee may be less likely to become a repeat offender if he/she pursues education further; and (3) the releasee must be encouraged to recognize the need for increasing his/her educational level to remain in the free world and learn to function as a productive citizen.

Pursuant to the Texas Government Code, §508.318, the TDCJ and the TEA shall set forth the respective responsibilities of the board and the agency in implementing a continuing education program to increase the literacy of releasees.

Joe Wisnoski, coordinator for school finance and fiscal analysis, 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. Wisnoski and Criss Cloudt, associate commissioner for policy planning and research, 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 to ensure services that offer releasees educational choices and opportunities to remain outside prison and achieve maximum integration in the community. As such, releasees may be less likely to become repeat offenders if they pursue education further. In addition, the releasee will likely achieve more success outside prison if a support system is in place to promote educational growth. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically at <http://www.tea.state.tx.us/rules/> commissioner or faxed to (512) 475-3499. All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register*.

The new section is proposed under the Texas Government Code, §508.318, as added by the 75th Texas Legislature, 1997, Chapter 165, §12.01, which authorizes the Texas Department of Criminal Justice and the Texas Education Agency to adopt a memorandum of understanding that establishes the respective

16 TAC §45.117

The Texas Alcoholic Beverage Commission proposes an amendment to §45.117 governing gifts and advertising specialties that may be offered by members of the distilled spirits and wine industries to retailers and consumers. The proposed amendment contained in §45.117(d)(2), seeks to change the ability of members of the manufacturing and wholesale tiers to provide meeting rooms, product samples, and food to members of the retail tier.

Lou Bright, General Counsel, has determined that for the first five years this rule is in effect, there will be no fiscal impact for state or local government as a result of enforcing this rule.

Mr. Bright has determined that the public will benefit by this rule because it allows members of the distilled spirits and wine industry to more effectively market new products, thereby increasing choices available to consumers. There is no anticipated costs imposed by the rule on persons subject to the rule or small businesses.

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

This amendment is imposed under the authority of the Alcoholic Beverage Code, §5.31 which provides the Alcoholic Beverage Commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code, §102.07, is affected by this rule.

§45.117. *Gifts and Advertising Specialties.*

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

(d) Service provided to retailer. Manufacturers and wholesalers may:

(1) service and repair items furnished to retailers under the provisions of this rule; and

(2) furnish meeting rooms to retailers for purposes of product promotions. In no event shall anything be furnished to retailers except samples of the manufacturer's or wholesaler's product or food provided as a courtesy in accompaniment to such samples.

(e) (No change.)

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

Filed with the Office of the Secretary of State on June 24, 1998.

TRD-9810109

Doyne Bailey

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: August 10, 1998

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

TITLE 19. EDUCATION

Part II. Texas Education Agency

responsibilities of the board and the agency in implementing a continuing education program to increase the literacy of releases.

The proposed new section implements the Texas Government Code, §508.318, as added by the 75th Texas Legislature, 1997, Chapter 165, §12.01.

§89.1311. Memorandum of Understanding to Provide Educational Services to Released Offenders.

(a) Purpose. This memorandum of understanding is a non-financial, mutual agreement between the Texas Department of Criminal Justice (TDCJ) and the Texas Education Agency (TEA). Pursuant to the Texas Government Code, §508.318, the TDCJ and the TEA shall set forth the respective responsibilities of the board and the agency in implementing a continuing education program to increase the literacy of releasees.

(b) Objective. This memorandum of understanding is to realize a human service system that offers releasees choices and opportunities, within the realm of educational services, to remain outside prison and achieve maximum integration in the community. The following guiding principles should be considered to accomplish the objectives of this memorandum:

(1) the releasee will achieve more success outside of prison if a support system is in place to promote educational growth;

(2) the releasee may be less likely to become a repeat offender if he/she pursues education further; and

(3) the releasee must be encouraged to recognize the need for increasing his/her educational level to remain in the free world and learn to function as a productive citizen.

(c) Participation.

(1) The Texas Department of Criminal Justice (TDCJ) will:

(A) establish a continuing education system to increase literacy for releasee(s) in the Day Resource Centers;

(B) establish a system whereby the TDCJ will inform adult education cooperatives of the process and requirements for continued education of the releasee(s);

(C) provide adult education cooperatives with assessment and educational profile information that will facilitate student placement in appropriate programs;

(D) coordinate with adult education cooperatives in implementing a system for identification of student needs and barriers, student referral, outreach activities, and releasee's compliance with educational requirements;

(E) identify resources that assist local adult education cooperatives in expanding services for releasees; and

(F) participate in training necessary to develop the capacity at the local level to access and interact effectively with adult education service providers.

(2) The Texas Education Agency will:

(A) coordinate with the TDCJ to inform local parole offices of services available through the adult education cooperative system in which local school districts, junior colleges, and educational service centers provide instructional programs throughout the state;

(B) assist the TDCJ in identifying barriers to provide adult education services to released offenders;

(C) assist local adult education programs in developing the capacity to serve the released offender population;

(D) coordinate with the TDCJ in establishing a referral process between local parole offices and local adult education cooperatives whereby releasees will be referred to adult education programs;

(E) assist local adult education cooperatives in providing services to releasees in adult education programs on a first-come, first-served basis and to the extent the funds and classroom space are available;

(F) assist local adult education cooperatives in communicating and coordinating with local parole offices on prospective students awaiting referral to education programs, availability of services, identification of financial resources, and other educational programs available for released offenders;

(G) coordinate with the TDCJ in developing program objectives and collecting data to establish educational performance standards for released offenders;

(H) coordinate with the TDCJ in providing training to assist local parole officers with the coordination of adult education services to released offenders; and

(I) monitor program quality and compliance of local adult education programs serving released offenders.

(d) Terms of the memorandum of understanding. This memorandum of understanding shall be adopted by rule by each participating agency and shall be effective October 1, 1998. The memorandum may be considered for expansion, modification, or amendment at any time upon the mutual agreement of the executive officers of the named agencies.

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810230

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Earliest possible date of adoption: August 9, 1998

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

TITLE 22. EXAMINING BOARDS

Part VI. Texas Board of Professional Engineers

Chapter 131. Practice and Procedure

Subchapter B. Application for License

22 TAC §131.54

The Texas Board of Professional Engineers proposes an amendment to §131.54, concerning application for license.

The section is being amended to clarify that applicants for relicensure must submit an entirely new application.

John R. Speed, P.E., executive director, Texas Board of Professional Engineers, has determined that for the first five-year

period the section is in effect there will no effect for state or local government.

Mr. Speed 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 clarification on relicensure. 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 John R. Speed, P.E., Executive Director, Texas Board of Professional Engineers, P.O. Drawer 18329, Austin, Texas 78760-8329.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

Texas Civil Statutes, Article 3271a, §12 and §13 is affected by the proposed amendment.

§131.54. Applications from Former Texas License Holders.

(a) (No change.)

(b) The applicant shall:

(1) prepare a new ~~an~~ application form in its entirety and submit it with the current application fee;

(2) complete all sections of the new application form and list all employment engagements;

(3)-(7) (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 legal authority to adopt.

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810264

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 440-7723



Part XVI. Texas Board of Physical Therapy Examiners

Chapter 321. Definitions

22 TAC §321.1

The Texas Board of Physical Therapy Examiners proposes an amendment to §321.1, concerning Definitions. This amendment will eliminate duplication of effort by allowing physical therapy aides to record quantitative data in a patient's permanent record for tasks delegated by the supervising PT or PTA. The document must include the name of the delegating PT or PTA, as well as the name of the aide carrying out the task.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be eliminating duplication of effort by the physical therapist or physical therapist assistant treating patients.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amended section.

§321.1. Definitions.

The following words, terms, and phrases, when used in the rules of the Texas Board of Physical Therapy Examiners, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited curriculum in physical therapy education - A body of courses in a physical therapy program at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

(2) Accredited physical therapist assistant program - A body of courses at a school, college, or university which has satisfied the accreditation standards of the Commission on Accreditation for Physical Therapy Education.

(3) Evidence satisfactory to the board - Should all official school records be destroyed, sworn affidavits satisfactory to the board must be received from three persons having personal knowledge of the applicant's physical therapy education. These affidavits will not be used when official school records are available.

(4) Foreign-trained applicant - Any applicant whose education is from a country outside the United States, the District of Columbia, or Territories of the United States.

(5) Hearing - An adjudicative proceeding concerning the issuance, denial, suspension, reprimand, revocation of license, after which the legal rights of an applicant or licensee are to be determined by the board.

(6) On-site supervision - The physical therapist or physical therapist assistant is on the premises and readily available to respond.

(7) Physical therapist assistant - The supervision of the physical therapist assistant shall include the following:

(A) The supervising physical therapist is responsible for and will participate in the patient's care.

(B) The supervising physical therapist must be on call and readily available.

(C) A current written plan of care will be formulated for each patient by the physical therapist. The plan of care shall be revised following periodic reevaluations by the physical therapist, not to exceed 30 days. The physical therapist is responsible for the content and validity of the discharge summary and must sign the discharge summary.

(D) Each progress note in a patient's chart made by a physical therapist assistant must include the name of the supervising physical therapist.

(E) The physical therapist may assign responsibilities to the physical therapist assistant to:

(i) provide physical therapy services as specified in the written plan of care developed by the physical therapist prior to treatment by a physical therapist assistant which includes:

(I) preparing patients, treatment areas, and equipment;

(II) implementing treatment programs that include therapeutic exercises; gait training and techniques; ADL training techniques; administration of therapeutic heat and cold; administration of ultrasound; administration of therapeutic electric current; administration of ultraviolet; application of traction; performance of intermittent venous compression; application of external bandages, dressings, and support; performance of goniometric measurement;

(III) modifying treatment techniques as indicated in the plan of care;

(ii) respond to acute changes in physiological state;

(iii) teach other health care providers, patients, and families to perform selected treatment procedures and functional activities;

(iv) identify architectural barriers;

(v) interact with patients and families in a manner which provides the desired psycho-social support by:

(I) recognizing his own reaction to illness and disability;

(II) recognizing patients' and families' reactions to illness and disability;

(III) respecting individual cultural, religious, and socioeconomic differences in people;

(IV) utilizing appropriate communicative processes;

(vi) demonstrate appropriate and effective written, oral, and nonverbal communication with patients and their families, colleagues, and the public;

(vii) recognize his own strengths and limitations and interpret for others his scope and function;

(viii) demonstrate safe, ethical, and legal practice;

(ix) understand basic concepts related to the health care system, including multidisciplinary team approach, quality care, governmental agencies, private sector, role of other health care providers, health care facilities, issues, and problems;

(x) understand basic principles of levels of authority and responsibility, planning, time management, supervisory process, performance evaluations, policies and procedures, and fiscal consideration (provider and consumer).

(F) The physical therapist assistant may not:

(i) specify and/or perform definitive (decisive, conclusive, final) evaluative and assessment procedures; however, physical therapist assistants may screen patients designated by the physical therapist by gathering information using a uniform predetermined format and reporting the findings on all patients

screened to the physical therapist. Further intervention will be determined by the physical therapist;

(ii) alter a plan of care or goals;

(iii) recommend wheelchairs, orthoses, prostheses, other assistive devices, or alterations to architectural barriers to persons;

(iv) sign progress notes which include assessments used to design or modify patient care.

(8) Physical therapy - The evaluation, examination, and utilization of exercises, rehabilitative procedures, massage, manipulations, and physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound in the aid of diagnosis or treatment. Physical therapists may perform evaluations without referrals. Physical therapy practice includes the use of modalities, procedures, and tests to make evaluations. Physical therapy practice includes, but is not limited to the use of: Electromyographic (EMG) Tests, Nerve Conduction Velocity (NCV) Tests, Thermography, Transcutaneous Electrical Nerve Stimulation (TENS), bed traction, application of topical medication to open wounds, sharp debridement, provision of soft goods, inhibitive casting and splinting, Phonophoresis, Iontophoresis, and biofeedback services.

(9) Physical therapy aide - All rules governing the direction of the physical therapist assistant are further modified for the physical therapy aide.

(A) The physical therapist or physical therapist assistant is responsible for the supervision of the physical therapy aide.

(B) The physical therapy aide may support physical therapy activities within the scope of on-the-job training and with on-site supervision by a physical therapist or physical therapist assistant within reasonable proximity of the physical therapy aide. The physical therapist or physical therapist assistant must interact with the patient regarding the patient's condition, progress and/or achievement of goals during each treatment session.

(C) The physical therapy aide may not:

(i) evaluate, assess, and/or initiate physical therapy treatment including exercise instruction; or

(ii) write or sign physical therapy documents in the permanent record. However, an aide may record quantitative data for tasks delegated by the supervising PT or PTA. Any document reflecting aide activities must identify the aide and the supervising PT or PTA.

(10) Supervision-The delegation and continuing direction by a person or persons responsible for the practice of physical therapist, physical therapist assistant, or physical therapy aide as specified in the Physical Therapy Practice Act.

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

Filed with the Office of the Secretary of State, on June 25, 1998.

TRD-9810162

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 305-6900



Chapter 343. Contested Case Procedures

22 TAC §343.3

The Texas Board of Physical Therapy Examiners proposes amendments to §343.3, Referral Requirements and Exceptions to Referral Requirements. These amendments are necessary to correct errors made in filing adopted changes in December 1997. Staff filed the adoption document erroneously, and were not able to withdraw the action prior to adoption.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be rules that accurately reflect Board decisions.

Comments on the proposed rule may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The amendment is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this amended section.

§343.3. *Referral Requirement and Exceptions to Referral Requirement.*

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

(1) (No change.)

(2) Emergency medical care - Bona fide emergency services provided after the sudden onset of a medical condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in: placing the patient's health in serious jeopardy; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part. ~~For a physical therapist, the emergency medical care must be provided within 24 hours from the sudden onset of acute symptoms or 72 hours from the time the injury occurred.~~

(3) (No change.)

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

(e) Conditions for treatment without referral:

(1) (No change.)

(2) The physical therapy provided must not be for more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first. At the conclusion of this time or treatment, the physical therapist must confer with the referring healthcare personnel before continuing treatment; [For all episodes of physical therapy subsequent to that which was initiated by the referral, the physical therapist treats the patient for not more than 20 treatment sessions or 30 consecutive calendar days, whichever occurs first, whereupon the physical therapist must confer with the referring practitioner in order to continue the current episode of treatment.]

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

(f)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 25, 1998.

TRD-9810163

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 305-6900



Chapter 344. Administrative Fines and Penalties

22 TAC 344.1

The Texas Board of Physical Therapy Examiners proposes new §344.1, Administrative Fines and Penalties. This new rule will allow the Board to impose monetary penalties for violations of the Board's rules on licensees and non-exempt physical therapy facilities.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on state or local government.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be greater protection due to increased enforcement capabilities for the Board.

Comments on the proposed rule may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701.

The new rule is proposed under the Physical Therapy Practice Act, Texas Civil Statutes, Article 4512e, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 4512e is affected by this new section.

§344.1. *Administrative Fines and Penalties.*

(a) Any physical therapist or physical therapist assistant who violates any provision of these rules, or any provision of the Physical Therapy Practice Act shall be, at the discretion of the Board, subject to the following penalties.

(1) The Board may impose suspension or revocation of a license, or other disciplinary action including probation, tutorial hours and additional education;

(2) The Board may assess fines, not to exceed \$200 for each day of the offense, based on the following schedule:

(A) first offense: \$100 - \$1,000

(B) subsequent offense: \$200 - \$5,000

(b) Any facility providing physical therapy services in violation of the Texas Physical Therapy Practice Act, shall be, at the discretion of the Board, subject to the following penalties.

(1) The Board may impose suspension or revocation of a facility registration, or other disciplinary action;

(2) The Board may assess fines, not to exceed \$200 for each day of the offense, based on the following schedule:

(A) first offense: \$200 - \$3,600

(B) subsequent offense: \$200 - \$10,000

(c) Assessment of the penalties will follow procedures as established in §343.41, Agreed Orders. The nature and amount of the penalty shall be based on:

(1) the seriousness of the violation, including nature, circumstances, extent, and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(d) The provisions of subsections (a)-(c) of this section shall not be construed so as to prohibit other appropriate civil or criminal action and remedy and enforcement under other laws.

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

Filed with the Office of the Secretary of State, on June 25, 1998.

TRD-9810164

John P. Maline

Executive Director

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 305-6900



Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Subchapter I. Licenses

22 TAC §535.92

The Texas Real Estate Commission (TREC) proposes an amendment to §535.92, concerning license renewals for real estate licensees. The amendment would permit a real estate licensee to renew a license in active status prior to the completion of mandatory continuing education (MCE). Under the current section, failure to complete the MCE requirements prevents a licensee from practicing until the required courses have been taken. If the licensee is a broker, those salespersons sponsored by the broker also are unable to practice. A licensee applying for renewal of an active license without first having completed the MCE courses would be required within 60 days after the license is renewed to pay an additional fee of \$200 and

to complete the required courses. The section would obligate TREC to notify the licensee of the requirement to pay the fee and complete the MCE courses. Those courses completed after renewal of the license would not, however, satisfy the licensee's MCE obligations for the subsequent license renewal. Failure to complete the courses or pay the fee timely would be grounds for disciplinary action. TREC was authorized by Senate Bill 1100, 75th Legislature (1997), to adopt a rule permitting such license renewals.

Don Dudley, director of licensing and education, has determined that for the first five-year period the section is in effect there will be fiscal implications for the state as a result of enforcing or administering the section. Mr. Dudley has estimated that TREC will receive an increase of \$85,000 per year in filing fees for each year of the first five year period after the proposed section is in effect. There are no anticipated fiscal implications for local government, and there is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Dudley 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 will be the elimination of hardships due to licensees' failure timely to complete MCE courses required for a license renewal. There will be no effect on small businesses. Licensees who renew their licenses on an active basis prior to the completion of required MCE courses would be obligated to pay an additional fee of \$200. A licensee could alternatively renew a license on an inactive basis and satisfy the MCE requirements before returning to active status without incurring the \$200 fee.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute that is affected by this section is Texas Civil Statutes, Article 6573a.

§535.92. *Renewal: Time for Filing; Satisfaction of Mandatory Continuing Education Requirements.*

(a)-(g) (No change.)

(h) Notwithstanding any provisions of the Act to the contrary, when[If] a licensee files a timely application to renew a current license in an active status and has satisfied all requirements other than the completion of [but has not satisfied] applicable MCE requirements, the commission shall renew the current license and notify [advise] the licensee [applicant] in writing that if licensee does not complete the required number of MCE hours prior to the expiration date of the current license, the licensee must pay an additional fee of \$200 and complete the required number of MCE hours within 60 days after the date the commission renews the license [of the number of MCE hours required to renew the license and the time for satisfying MCE requirements]. If the required MCE courses are not completed prior to the expiration date of the current license, the licensee shall complete the required number of hours of MCE courses and pay the additional fee within 60 days after the date the commission renews the license [If MCE requirements have not been satisfied by the expiration date of the existing license, the commission shall place the license in an inactive status]. MCE courses completed after expiration of the current license under this provision may not be applied to the

following renewal of the license. Original applications and return to active status are subject to MCE requirements imposed by the Act.

(i) - (k) (No change.)

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

Filed with the Office of the Secretary of State, on June 23, 1998.

TRD-9810022

Mark A. Moseley

General Counsel

Texas Real Estate Commission

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 465-3900



TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 29. Purchased Health Services

Subchapter L. General Administration

25 TAC §29.1118

(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.)

Subject to the approval of the State Medicaid Director, the Texas Department of Health (department) proposes the repeal of §29.1118 and new §29.1118 concerning provider re-enrollment or provider contract or agreement modification. The section proposed for repeal regarding certification and recertification will be replaced by the proposed new section which contains the new legislative requirements for provider re-enrollment.

The proposed new rule affects providers of services in the Medicaid program who currently have a signed provider agreement with an agency operating part of the Medicaid program. Section 2.07 of Senate Bill 30, enacted by the 75th Legislature, 1997, requires the Health and Human Services Commission (HHSC) to develop a new provider contract for health care services that contains provisions designed to strengthen the HHSC's ability to prevent provider fraud under the Texas Medicaid program. Senate Bill 30 also requires that, after the development of the new provider contract, the HHSC and each agency operating part of the Texas Medicaid program by rule shall require each provider who enrolled in the program before completion of the new contract to re-enroll in the program under the new contract or modify the provider's existing contract to comply with the requirements of the new contract. This process should enable the HHSC to better prevent provider fraud in the Texas Medicaid program through the new contract provisions. Those agencies that are operating part of the Texas Medicaid program who re-enroll providers will also be able to gather updated information on the providers in the program which will enhance the ability of the HHSC, in cooperation with agencies operating part of the Medicaid program, to prevent fraud in the program.

Joe Moritz, Health Care Financing Budget Director, has determined that for the first five-year period the section is in effect, there will be no net fiscal implications for state and local gov-

ernment as a result of enforcing or administering the section. The new contract provisions may result in savings to the State of Texas some time in the future but those potential savings cannot be quantified at this time.

Mr. Moritz also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section will be additional provisions and information available to the HHSC to prevent provider fraud in the Texas Medicaid program, potentially resulting in savings to the State of Texas. There may be incidental costs to providers in complying with this new rule, such as secretarial or other administrative time in completing a new application for those agencies that choose to re-enroll providers and managerial time in reviewing the application or amended contract. Otherwise, there will be no costs to small businesses or persons complying with the rule as proposed. There will be no adverse economic effect on small businesses. There is no anticipated impact on local employment.

Comments on the proposal may be submitted to Genie DeKneef, Program Administrator V, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 338-6509. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The repeal is proposed under the Human Resources Code, §32.021 and Government Code §531.021, which provide the Health and Human Services Commission with the authority to propose rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The repeal affects Chapter 32 of the Human Resources Code.

§29.1118. *Certification and Recertification.*

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810271

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 9, 1998

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



The new section is proposed under the Human Resources Code, §32.021 and Government Code §531.021, which provide the Health and Human Services Commission with the authority to propose rules to administer the state's medical assistance program and is submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The new section affects Chapter 32 of the Human Resources Code.

§29.1118. Provider Re-enrollment or Provider Contract or Agreement Modification.

(a) No later than September 1, 1999, a provider who is enrolled in the Medicaid program who wants to continue to participate in the program must, in accordance with instructions from an agency operating part of the Medicaid program, either re-enroll in the Medicaid program under a new contract or agreement approved by the Health and Human Services Commission or modify the provider's existing contract or agreement using language approved by the Health and Human Services Commission.

(b) A provider enrolled in the Medicaid program who does not re-enroll in the program under the new contract or agreement or modify the existing provider contract or agreement in accordance with the instructions of an agency operating part of the Medicaid program by September 1, 1999, does not retain eligibility to participate in the Medicaid program.

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810269

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 9, 1998

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



Chapter 35. Pharmacy Services

Subchapter G. Pharmacy Claims

25 TAC §35.701

Subject to the approval of the State Medicaid Director, The Texas Department of Health (department) proposes an amendment to §35.701, concerning the submission of claims to the Vendor Drug Program for the correct quantity of drugs. This amendment clarifies existing rules regarding billing for claims as prescribed and dispensed.

The department proposes to clarify its policies concerning billing only for the quantity of drug actually dispensed in order to prevent abuse in the Texas Vendor Drug Program, by addressing the practice of partially filling prescriptions and billing for the entire amount.

The amendment would require Medicaid providers to dispense the quantity prescribed or ordered by the physician, except as limited by the policies and procedures described in the department's Pharmacy Provider Handbook and to submit claims for the amount actually dispensed where actual quantity dispensed deviates from the physician's prescription.

Joe Moritz, Health Care Financing Budget Director, has determined that for the first five year period the section is in effect, there will be no fiscal implications to state or local government as a result of implementing the sections as proposed.

Mr. Moritz also has determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of implementing the section will be improved provider understanding of billing policies and prevention of incorrect billings that might result in overpayments to providers. There

will be no impact on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no anticipated impact on the local employment.

Comments on the proposal may be sent to Patricia Gladden, Director of Standards and Procedures, Bureau of Vendor Drug, 1100 West 49th Street, Austin, Texas 78756-3168, (512) 338-6967. Comments will be accepted for 30 days following the publication date of this proposal in the *Texas Register*.

This amendment is proposed under the Human Resources Code, §32.021 and Texas Government Code Chapter 531, which provides the Health and Human Services Commission with the authority to adopt rules to administer the State's medical assistance program, and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under the Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

The amendment affects Chapter 32 of the Human Resources Code.

§35.701. Pharmacy Claims.

(a) (No change.)

(b) Providers must dispense the quantity prescribed or ordered by the physician except as limited by the policies and procedures described in Texas Department of Health's Pharmacy Provider Handbook. Where actual quantity dispensed deviates from the physicians' prescription, the provider must bill for the amount actually dispensed. The quantity [Quantity] of drugs [as prescribed by the physician, always] must be entered in the metric decimal quantity field. The quantity shown as the metric decimal quantity unit must be calculated after referencing the pricing unit shown in the Texas Drug Code Index.

(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 legal authority to adopt.

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810270

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: August 9, 1998

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



Part II. Texas Department of Mental Health and Mental Retardation

Chapter 409. Medicaid Programs

Subchapter C. Fraud and Abuse and Recovery of Benefits

25 TAC §409.69

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §409.69 of Chapter 409, Subchapter C, governing Fraud and Abuse and Recovery of Benefits,

which concerns the re-enrollment of providers in the Texas Medicaid program under a new contract to provide services or the amendment of the providers' existing contracts to provide services under the Medicaid program. This new section affects providers of services in the Medicaid program who currently have a signed provider agreement with TDMHMR. Section 2.07 of Senate Bill 30, enacted by the 75th Legislature, requires that the Health and Human Services Commission (commission) develop a new provider contract for health care services that contains provisions designed to strengthen the commission's ability to prevent provider fraud under the Texas Medicaid program. Senate Bill 30 also requires that, after the development of the new provider contract, the commission and each agency operating part of the Texas Medicaid program by rule shall require each provider who enrolled in the program before completion of the new contract to re-enroll in the program under the new contract or modify the provider's existing contract to comply with the requirements of the new contract. This process should enable the commission and TDMHMR to better prevent provider fraud in the Texas Medicaid program through the new contract provisions. If TDMHMR re-enrolls providers, it will also be able to gather updated information on those providers in the program, which will enhance the ability of the commission, in cooperation with TDMHMR, to prevent fraud in the program.

Don Green, chief financial officer, has determined that for each year during the first five-year period that the section will be in effect, there will be no net fiscal implications for state or local government as a result of enforcing or administering the new section. The new contract provisions may result in savings to the State of Texas some time in the future but those potential savings cannot be quantified at this time.

Ernest McKenney, director, Medicaid Administration, has determined that for each year during the first five-year period the section will be in effect, the public benefit anticipated as a result of adopting the proposed section will be additional provisions and information available to the commission and TDMHMR to prevent provider fraud in the Texas Medicaid program, potentially resulting in savings to the State of Texas. There may be incidental costs to providers in complying with this new section, such as administrative and managerial time in reviewing and completing a new application or amended contract. Otherwise, there will be no costs to persons complying with the section as proposed. There will be no adverse economic effect on small businesses because of the minimal cost associated with compliance.

A public hearing will be held at 8:30 a.m., July 30, 1998, in auditorium of the main TDMHMR Central Office building (Building 2), 909 West 45th Street, Austin, Texas, to accept oral and written testimony concerning the proposal. Persons requiring an interpreter for the deaf or hearing impaired should notify Sheila Wilkins, Office of Policy Development, at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the proposal may be directed to Ron Gernsbacher, Medicaid Administration, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668 (512) 206-5752.

Comments on the proposal may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, TX 78711-2668, within 30 days of publication of this notice.

The new section is proposed under the Texas Health and Safety Code, §532.015(a), which provides TDMHMR with broad rule-making authority; and Human Resources Code, §32.021, and Government Code, §531.021, which provide the commission with the authority to administer federal medical assistance funds and administer the state's medical assistance program. Senate Bill 509 of the 74th Texas Legislature clarifies the commission's authority to delegate the operation of all or part of a Medicaid program to a health and human service agency. The commission has designated TDMHMR as the operating agency for selected Medicaid programs. Section 2.07 of Senate Bill 30 of the 75th Texas Legislature requires that Medicaid providers re-enroll under a new contract or agreement or modify their existing contract or agreement by September 1, 1999, to continue participating in the Medicaid Program.

The new section is proposed under the Texas Human Resources Code, §32.021, Texas Government Code, §531.021, and Texas Health and Safety Code, §532.015(a).

§409.69. Provider Re-enrollment or Provider Contract or Agreement Modification.

(a) No later than September 1, 1999, a provider enrolled in the Medicaid program who wants to continue to participate in the program must, in accordance with instructions from the department, either re-enroll in the Medicaid program under a new contract or agreement approved by the Health and Human Services Commission or modify the provider's existing contract or agreement using language approved by the Health and Human Services Commission.

(b) A provider enrolled in the Medicaid program who does not re-enroll in the program under the new contract or agreement or modify the existing provider contract or agreement in accordance with the instructions from the department by September 1, 1999, does not retain eligibility to participate in the Medicaid program.

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

Filed with the Office of the Secretary of State, on June 29, 1998.

TRD-9810224

Charles Cooper

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 206-4516

◆ ◆ ◆
TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 87. Deferred Compensation

34 TAC §§87.1, 87.3, 87.5, 87.11, 87.15, 87.17, 87.21

The Employees Retirement System of Texas (ERS) proposes amendments to §§87.1, 87.3, 87.5, 87.11, 87.15, 87.17, and 87.21, concerning the deferred compensation plan. The amendments are being proposed in order to reflect changes in federal law which require deferred compensation funds to be placed in trust for the exclusive benefit of plan participants and beneficiaries. Amendments to §87.1 also include the numbering of definitions as required by the *Texas Register*.

William S. Nail, Deputy Executive Director and General Counsel, ERS, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing these rules.

Mr. Nail also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be greater protection for deferred compensation funds. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule amendments as proposed.

Comments on the proposed rule amendments may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendments are proposed under Government Code, §609.508, which provides the board of trustees the authority to adopt any rules necessary to administer the deferred compensation plan.

Government Code §609.508 is affected by these proposed amendments.

§ 87.1. Definitions.

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

(1) Account - A record that a qualified vendor uses to account for deferrals and investment income on a participant-by-participant basis.

(2) Agency coordinator - An employee of a state agency who has been designated by the agency to perform certain administrative functions with respect to the plan.

(3) Basic pension plan - The retirement program in which an employee must participate.

(4) Board of trustees - The Board of Trustees of the Employees Retirement System of Texas.

(5) Call-in day - The first five working days of the month.

(6) Change agreement - A contract signed by a participant to request certain changes concerning the participant's deferrals, investment income, and participation in the plan.

(7) Data collection center - A private entity used by the State Treasury Department to collect information from state depositories regarding deposits of state funds.

(8) Day - A calendar day.

(9) DCP - Deferred compensation plan.

(10) Deferral - The amount of compensation the receipt of which a participant has agreed to defer under the plan.

(11) Distribution agreement - A contract signed by a participant or beneficiary indicating the disposition of the participant's deferrals and investment income.

(12) Disclosure form - A document completed by a vendor representative and signed by both the representative and an employee disclosing the rate of return, fees, withdrawal penalties, and payout options for the qualified investment product selected.

(13) Emergency withdrawal application - A form completed by a participant requesting the full or partial distribution of

the participant's deferrals and investment income because of a sudden and unforeseeable emergency.

(14) Employee - A person who provides services as an officer or employee to a state agency.

(15) Executive director - The executive director of the Employees Retirement System of Texas.

(16) FDIC - The Federal Deposit Insurance Corporation or its successor in function. The FDIC consists of two funds, the Savings Association Insurance Fund (SAIF), which insured savings associations and savings banks, and the Bank Insurance Fund (BIF), which insures commercial banks.

(17) Fee - The term includes a fee, penalty, charge, assessment, market value adjustment, forfeiture, or service charge.

(18) Gross income - The total of:

(A) the present value of salary or wages;

(B) plus the present value of longevity pay, hazardous duty pay, imputed income, special duty pay, and benefit replacement pay; and

(C) minus the present value of contributions to the Employees Retirement System, the Teacher Retirement System, the Optional Retirement Program, and the TexFlex program administered by the Employees Retirement System.

(19) Home office - The primary location at which a qualified vendor maintains its files and other records concerning the vendor's participation in the plan and the participants whose deferrals and investment income have been invested in the vendor's qualified investment products. The term is usually equivalent to the vendor's headquarters.

(20) Inactive qualified vendor - A qualified vendor is an inactive qualified vendor if:

(A) no new deferrals have been invested in any of the vendor's qualified investment products for 12 consecutive months; and

(B) a transfer of deferrals or investment income to any of the vendor's qualified investment products has not occurred for 12 consecutive months.

(21) Includes - A term of enlargement and not of limitation or exclusive enumeration. The use of the term does not create a presumption that components not expressed are excluded.

(22) Includible compensation - Compensation from a state agency that is includible in a participant's gross income under the Internal Revenue Code of 1986. The term excludes deferrals.

(23) Investment income - The interest, capital gains, and other income earned through the investment of deferrals in qualified investment products.

(24) Investment product - The term includes a life insurance product, fixed or variable rate annuity, mutual fund, certificate of deposit, money market account, or passbook savings account. A vendor's investment product that is in any respect different from another investment product of the same vendor is a different investment product.

(25) NCUA - National Credit Union Administration, a United States Government Agency which regulates, charters and insures deposits of the nation's federal credit unions. Shares and

deposits in credit unions are insured by the NCUSIF as detailed in this section.

(26) NCUSIF - National Credit Union Share Insurance Fund, is administered by the NCUA as detailed in this section and insures members' share and deposit accounts at federally insured credit unions.

(27) Non-filer - A qualified vendor which does not ensure that the plan administrator receives a quarterly report by the due date specified in §87.19(d)(1) of this title (relating to Reporting and Recordkeeping by Qualified Vendors).

(28) One-time election form - A form completed by a participant requesting the full distribution of deferred compensation funds with a total balance that does not exceed the dollar limit under Internal Revenue Code of 1986, §457(e)(9) as of the date of the election.

(29) Participant - A current, retired, or former employee who either has elected to defer a portion of the employee's current compensation or has a balance in a qualified investment product.

(30) Participation agreement - A contract signed by an employee agreeing to defer the receipt of part of the employee's compensation in accordance with the plan and containing certain information regarding vendors, qualified investment products, and other matters.

(31) Plan - The deferred compensation program of the State of Texas that is governed by the Internal Revenue Code of 1986, §457, and authorized by Chapter 609, Government Code [Texas Civil Statutes, Article 6252-3g]. This plan is a continuation of the plan previously administered by the Comptroller of Public Accounts.

(32) Plan administrator - The Board of Trustees of the Employees Retirement System of Texas or its designee.

(33) Product approval notice - A written notice from the plan administrator to a vendor informing the vendor that a particular investment product has been approved for participation in the plan.

(34) Product contract - A contract between a qualified vendor and the plan administrator concerning the participation of one of the vendor's investment products in the plan.

(35) Product type - A categorization of an investment product according to its relevant characteristics. Examples of product types are life insurance products, mutual funds, certificates of deposit, savings accounts and annuities.

(36) Qualified investment product - An investment product concerning which the plan administrator and the sponsoring qualified vendor have signed a product contract.

(37) Qualified vendor - A vendor with whom the plan administrator has signed a vendor contract. The term includes a qualified vendor's officers and employees.

(38) Separation from service - A termination of the employment relationship between a participant and the participant's employing state agency, as determined in accordance with the agency's established practice. The term excludes a paid or unpaid leave of absence.

(39) State agency - A board, commission, office, department, or agency in the executive, judicial, or legislative branch of state government. The term includes an institution of higher education as defined by the Education Code, §61.003, other than a public junior college.

(40) Transfer - The redemption of deferrals and investment income from a qualified investment product for investment in another qualified investment product.

(41) Trust - The deferred compensation trust fund established to hold and invest deferrals and investment income under the plan for the exclusive benefit of participants and their beneficiaries.

(42) Trustee - The Board of Trustees of the Employees Retirement System of Texas.

(43) Vendor - An insurance company, bank, savings and loan association, credit union, or mutual fund distributor that sells investment products. The term includes a vendor's officers and/or employees.

(44) Vendor contract - A contract between the plan administrator and a vendor concerning the vendor's participation in the plan.

(45) Vendor representative - An agent, independent agent, independent contractor, or other representative of a vendor who is not an employee or officer of the vendor.

§87.3. Administrative and Miscellaneous Provisions.

(a) (No change.)

(b) Participation by state agencies in the plan.

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

(3) Agency coordinators. An agency coordinator is responsible for:

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

(E) monitoring the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of \$8,000 [~~\$7,500~~] (as adjusted) or 25% of the participant's gross income is not exceeded;

(F)-(P) (No change.)

(c) (No change.)

§87.5. Participation by Employees.

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

(e) Participants with existing life insurance products. When a participant has deferrals and investment income in a life insurance product, the State of Texas, or effective January 1, 1999, the trust:

(1) retains all of the incidents of ownership of the life insurance product;

(2) is the sole beneficiary of the life insurance product;

(3) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(4) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(f) Normal maximum amount of deferrals.

(1) (No change.)

(2) The normal maximum amount of deferrals is equal to the lesser of \$8,000 [~~\$7,500~~] (as periodically adjusted in accordance with Internal Revenue Code §457(e)(15)) or 33 1/3% of a participant's includible compensation. Mathematically, the preceding is equivalent to the lesser of \$8,000 [~~\$7,500~~] (as adjusted) or 25% of the participant's gross income.

(3) (No change.)

(4) The participant's employing agency will monitor the annual deferral limits for each plan participant to ensure the maximum annual deferral limit of the lesser of \$8,000 [~~\$7,500~~] (as adjusted) or 25% of a participant's gross income is not exceeded. If a participant makes deferrals in excess of the normal maximum annual deferral limit and is not participating under the catch-up provision, the following actions will be taken.

(A) Upon notification by the participant's agency, the vendor will return to the participant's agency the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$8,000 [~~\$7,500~~] (as adjusted) or 25% of the participant's gross income without any reduction for fees or other charges.

(B) Upon receipt of the funds, the participant's agency will reimburse the participant through its payroll system.

(g) Catch-up exception to the normal maximum amount of deferrals.

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

(8) No participant shall be permitted to participate in any catch-up provision during or after the calendar year in which the participant reaches normal retirement age. If a participant makes deferrals in excess of the normal plan limits under the catch-up provision during or after the calendar year in which the participant reaches normal retirement age, the following actions will be taken.

(A) Upon notification by the participant's state agency, the vendor will return to the participant's state agency, the amount of deferrals in excess of the normal plan limits, that is, the lesser of \$8,000 [~~\$7,500~~] (as adjusted) or 33 1/3% of includible compensation without any reduction for fees or other charges.

(B) (No change.)

(h)-(k) (No change.)

(l) Ownership of deferrals and investment income. [A participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.]

(1) A participant's deferrals and investment income are the property of the State of Texas until the deferrals and investment income are actually distributed to the employee.

(2) Effective January 1, 1999, in accordance with Chapter 609, Government Code and Internal Revenue Code §457(g), all amounts currently and hereafter held under the plan, including deferrals and investment income, shall be held in trust by the Board of Trustees for the exclusive benefit of participants and their beneficiaries and may not be used for or diverted to any other purpose, except to defray the reasonable expenses of administering the plan. In its sole discretion, the Board of Trustees may cause plan assets to be held in one or more custodial accounts or annuity contracts that meet the requirements of Internal Revenue Code §§ 457(g) and 401(f). In addition, effective January 1, 1999, the Board of Trustees does hereby irrevocably renounce, on behalf of the State of Texas and participating state agencies, any claim or right which it may have retained to use amounts held under the plan for its own benefit or for the benefit of its creditors and does hereby irrevocably transfer and assign all plan assets under its control to the Board of Trustees in its capacity as the trustee of the trust created hereunder. Adoption of this rule shall constitute notice to vendors holding assets under the plan to change their records effective January 1, 1999, to reflect that assets are held in trust by the Board of Trustees for the exclusive benefit of the participants and beneficiaries. Failure of a vendor to change its

records on a timely basis may result in the expulsion of the vendor from the plan.

(m) Market risk and related matters.

(1) The plan administrator, the trustee, an employing state agency, or an employee of the preceding are not liable to a participant if all or part of the participant's deferrals and investment income are diminished in value or lost because of:

(A) market conditions;

(B) the failure, insolvency, or bankruptcy of a qualified vendor; or

(C) the plan administrator's initiation of a transfer in accordance with the sections in this chapter.

(2) (No change)

(n) (No change)

§87.11. *Advertising Material and Solicitation.*

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

(d) General requirements for solicitation.

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

(5) A qualified vendor or vendor representative may not state, represent, or imply that its qualified investment product is endorsed or recommended by the plan administrator, the trustee, a state agency, the State of Texas, or an employee of the foregoing.

(6)-(9) (No change.)

(e) (No change.)

§87.15. *Transfers.*

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

(d) Procedures for making a transfer of all deferrals and investment income from a qualified investment product.

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

(3) If a check is used to make a transfer, this paragraph applies.

(A) The qualified vendor must make the check payable to the State of Texas, or effective January 1, 1999, the trust, and promptly send the check to the plan administrator.

(B)-(E) (No change.)

(4) (No change.)

(e) Procedures for making a transfer of less than all deferrals and investment income from a qualified investment product.

(1) (No change.)

(2) If the plan administrator initiates a transfer, this paragraph applies.

(A) (No change.)

(B) The qualified vendor must make the check payable to the State of Texas, or effective January 1, 1999, the trust, and promptly send the check to the plan administrator.

(C)-(H) (No change.)

(3) If a participant initiates a transfer, this paragraph applies.

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

(C) After receiving notification of a transfer from the plan administrator, a qualified vendor shall issue a check payable to the State of Texas, or effective January 1, 1999, the trust, in an amount equal to the transfer. The vendor shall ensure that the plan administrator receives the check no later than the 30th day after the vendor receives notification of the transfer.

(D)-(F) (No change.)

(f) (No change.)

(g) Transfers into life insurance products.

(1) (No change.)

(2) When a participant chooses to transfer deferrals and investment income to an existing replacement life insurance product within the same vendor, the State of Texas, or effective January 1, 1999, the trust:

(A) retains all of the incidents of ownership of the life insurance product;

(B) is the sole beneficiary of the life insurance product;

(C) is not required to transfer the life insurance product to the participant or the participant's beneficiary; and

(D) is not required to pass through the proceeds of the product to the participant or the participant's beneficiary.

(h) (No change.)

§87.17. *Distributions.*

(a)-(j) (No change.)

(k) Emergency withdrawals.

(1)-(8) (No change.)

(9) If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the TexaSaver 401(k) [~~TexaSaver~~] plan for a twelve month period following the approval.

(10) (No change.)

(l)-(t) (No change.)

(u) Federal withholding and reporting requirements.

(1) (No change.)

(2) A qualified vendor shall file an application for authorization to act as agent of the State of Texas, or effective January 1, 1999, the plan, with the District Director of the Internal Revenue Service Center where the qualified vendor files its returns. The application shall include Form 2678 - Employer Appointment of Agent under Section 3504 of the Internal Revenue Code, which shall be supplied by the plan administrator, and shall be completed and filed in accordance with the instructions set forth in Internal Revenue Service Publication 1271. The qualified vendor shall promptly furnish to the plan administrator a copy of such vendor's letter of authorization from the Internal Revenue Service approving the appointment of the qualified vendor as agent.

(3)-(6) (No change.)

§87.21. *Remedies.*

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

(e) A qualified vendor's failure to act.

(1) A qualified vendor shall reimburse the State of Texas, or effective January 1, 1999, the trust, for a financial loss that results from the vendor's failure to process a request for a transfer in a reasonable time, not to exceed 30 days.

(2) (No change.)

(f)-(h) (No change.)

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

Filed with the Office of the Secretary of State, on June 19, 1998.

TRD-9809873

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Earliest possible date of adoption: August 9, 1998

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 97. Security and Control

Subchapter A. Security and Control

37 TAC §97.9

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

The Texas Youth Commission (TYC) proposes the repeal of §97.9, concerning search. This section is being repealed to allow for the adoption of a new replacement section.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the repeal as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Graham also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeals will be adoption of an updated rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The repeal is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the accomplishment of its functions.

The proposed repeal implements the Human Resource Code, §61.034.

§97.9. *Search.*

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

Filed with the Office of the Secretary of State, on June 25, 1998.

TRD-9810159

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 424-6244



37 TAC §97.9

The Texas Youth Commission (TYC) proposes new §97.9, concerning search. The new section, applicable to youth committed to TYC and held in a residential facility, will require that strip searches, be based on reasonable belief that the youth is carrying contraband. Body cavity searches will be conducted only with specific authorization.

Terry Graham, Assistant Deputy Executive Director for Financial Support, 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. Graham 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 increased protection for youth housed in residential facilities and staff. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to adopt policies and make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§97.9. Search.

(a) Purpose. The purpose of this rule is to establish requirements for searching Texas Youth Commission (TYC) youth, their property, and youth rooms in order to detect contraband.

(b) Applicability. Requirements in this rule are consistent with (GAP) §93.1 of this title (relating to Basic Youth Rights).

(c) Designated staff may conduct a search of a TYC youth or a youth's room in a residential facility other than the youth's home, for the purpose of finding and seizing contraband.

(d) Room searches and pat down searches to detect and deter possession of contraband or to protect persons may be conducted with or without probable cause so long as searches are conducted in a reasonable manner.

(1) Searches will be conducted in accordance with the following rules.

(A) Searches may be unannounced and irregularly timed.

(B) Searches are to be conducted no more frequently than necessary to control possession by youth of unauthorized items or to recover missing or stolen property.

(C) Two staff members must be in attendance for searches.

(D) Staff will follow precautionary guidelines in accordance with Workplace Guidelines.

(2) The presence of the youth whose property is being searched is preferable for all room searches.

(e) Strip searches including visual inspection of body cavities and/or manual inspection of the mouth will be conducted in accordance with paragraphs (1)-(4) of this subsection. Strip searches:

(1) will be based on reasonable belief that the youth is carrying contraband or other prohibited material. Reasonable belief is not required when youth returns from contact with the general public or from outside the facility;

(2) shall take place in a private setting that aids in the avoidance of unnecessary force, embarrassment, or indignity to the youth;

(3) may be conducted by juvenile correctional officers. Any staff conducting strip search must be of the same sex as the youth and must be trained personnel; and

(4) Police, other law enforcement officers, detention workers, and duly designated agents of the court may assist TYC staff in such a search if necessary.

(f) Body cavity searches refers to manual or instrument inspection of body cavities including the vagina or rectum, but excluding the mouth. Body cavity searches:

(1) may occur only on probable cause that the youth possesses contraband; and

(2) only with the authorization of the superintendent; and

(3) shall be conducted only by medical personnel; and

(4) shall take place in a private setting that aids in the avoidance of unnecessary force, embarrassment, or indignity to the youth.

(g) Searches of rooms, searches of youth being admitted to facilities, and searches of youth after visitation may be conducted routinely. Documentation of routine searches is not required unless unauthorized items are seized. Searches other than the routine searches named herein shall be documented. At all times when unauthorized items are seized from a youth, the search and disposition of items shall be documented. Also see (GAP) §97.11 of this title (relating to Control of Unauthorized Items Seized).

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

Filed with the Office of the Secretary of State, on June 25, 1998.

TRD-9810158

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 424-6244

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 79. Legal Services

The Texas Department of Human Services (DHS) proposes to amend §§79.1901, 79.1906, 79.1914, 79.1917, 79.1919, 79.2003, 79.2009, and 79.2011, concerning introduction and legal basis, advance notice of hearing, recessing the hearing, effect of an administrative determination of intentional program violation, court actions in relation to administrative disqualification, determination and disposition of intentional program violations, referral of food stamp and aid to families with dependent children (AFDC) intentional program violation claims to administrative disqualification hearing officer, and collection action on food stamp and aid to families with dependent children (AFDC) intentional program violation claims, in its Legal Services chapter. The purpose of the amendments is to update the existing rules to bring them into compliance with the name change of Aid to Families with Dependent Children (AFDC) to Temporary Assistance for Needy Families (TANF), and 7 CFR 273.16(4) Scheduling of Hearing.

Eric M. Bost, commissioner, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the sections.

Mr. Bost 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 rules will be updated and in compliance with 7 CFR 273.16(4). The proposed rules change the term AFDC to TANF and amend state rules to coincide with federal regulations as related to administrative disqualification hearing procedures. These changes are primarily technical in nature and have no impact on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Barbara Stegall at (512) 438-4878 in DHS's Hearings Department. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-295, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter T. Administrative Fraud Disqualification Hearings

40 TAC §§79.1901, 79.1906, 79.1914, 79.1917, 79.1919

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

§79.1901. Introduction and Legal Basis.

A household member becomes ineligible to participate in the Food Stamp program and/or Temporary Assistance for Needy Families

(TANF) [Aid to Families with Dependent Children (AFDC)] program if a state or federal court or administrative agency determines he has committed an intentional program violation, in Food Stamps/Aid to Families with Dependent Children (AFDC)/TANF.

§79.1906. Advance Notice of Hearing.

(a) The hearing officer sends the household member an advance notice of the hearing in sufficient time to allow receipt at least 30 calendar days before the scheduled hearing date. The notice is sent first class and [by] certified mail, return-receipt requested, and marked "return service requested" [~~do not forward, address-correction requested~~] to the address where the household member last received benefits. Delivery is not restricted to the addressee. The notice specifies the charges against the household member and a summary of the evidence (including how and where it may be examined). If the notice is returned showing a new address, it will be resent and the normal due process rules will be reapplied.

(b) Advance notice requirements are met when the certified mail [~~receipt~~] is returned showing the notice was delivered or refused. If the household member fails to appear and the returned receipt for certified mail has not been returned or the first class mail is returned as undeliverable, the hearing will be conducted[; delivery of the notice was refused; or the notice was unclaimed. The hearing is held as scheduled unless the hearing officer grants a postponement].

~~[(c) Advance notice requirements are not met when the notice is returned showing that the household member moved and there is no forwarding address or if there is a new address.]~~

(1) If the returned notice shows a new address, another notice is mailed following the procedures in subsection (a) of this section, and the 90-day time requirement for issuing a decision begins again with the date that the second notice is mailed.

(2) If the household member claims non-receipt of notice of the hearing, he has 30 days after the date of the written notice of the hearing decision to claim good cause for not appearing at the hearing. In all other instances, the household member has ten days to claim good cause for not appearing. If the household member is found to have committed an intentional program violation but a hearing officer later determines that good cause existed for not appearing, the previous decision shall no longer be valid and a new hearing will be conducted [notice is returned showing that the household member has moved and there is no forwarding address, the hearing officer dismisses the case without prejudice].

§79.1914. Recessing the Hearing.

(a) If the household member, the investigator, or the hearing officer requests to have the Food Stamp or Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children (AFDC)] record at the hearing, the hearing may be recessed to obtain the record. The household member may question or refute any additional testimony or evidence after a recess.

(b) (No change.)

§79.1917. Effect of an Administrative Determination of Intentional Program Violation.

(a) If a hearing officer finds that a household member committed an intentional program violation, the household member is disqualified from the Food Stamp and/or Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children (AFDC)] programs for the following periods.

(1) TANF [AFDC]. The person is disqualified:

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

(2) (No change.)

(b) The disqualification period does not depend upon the amount of benefits involved. The disqualification period set at the time of the hearing is applicable regardless of current eligibility [only against months in which the household member would otherwise be eligible]. The household member may not:

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

(c)-(e) (No change.)

§79.1919. *Court Actions in Relation to Administrative Disqualification.*

(a) The temporary assistance for needy families (TANF) [~~aid to families with dependent children (AFDC)]~~ and food stamp federal regulations provide for a court of appropriate jurisdiction to order an individual disqualified from participating in the program for the time periods described in §79.1917 of this title (relating to Effect of an Administrative Determination of Intentional Program Violation).

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

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

Filed with the Office of the Secretary of State, on June 23, 1998.

TRD-9810038

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 438-3765



Subchapter U. Fraud Involving Recipients

40 TAC §§79.2003, 79.2009, 79.2011

The amendments are proposed under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

§79.2003. *Determination and Disposition of Intentional Program Violations.*

(a) The Texas Department of Human Services (DHS) determines the existence of intentional program violations; refers cases for investigation, administrative hearings, and prosecution; takes collection action[.] and ensures clients' rights according to applicable Texas criminal statutes and the following:

(1) Temporary Assistance for Needy Families (TANF) - as provided in Personal Responsibility and Work Opportunity Act (PL 104-193), and Chapter 31 Human Resources Code. [Aid to Families with Dependent Children (AFDC) Program - 45 Code of Federal Regulations §233.20

(a) (13)(B), §235.110, §235.112, and §235.113.]

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

(b) Individuals found to have committed an intentional program violation in the food stamp and/or TANF [AFDC] programs either through an administrative disqualification hearing or by a court of appropriate jurisdiction, or who have signed a waiver of right

to an administrative disqualification hearing, or on the basis of a plea of guilty or nolo contendere or otherwise in cases referred for prosecution in a state or federal court are ineligible to participate in the program for 12 [six] months for the first violation, 24 [12] months for the second violation, and permanently for the third violation. In TANF [AFDC] cases, DHS does not take the needs of the disqualified individual into account during the period he is disqualified when determining the assistance unit's need and amount of assistance. DHS considers any resources and income of the disqualified individual as available to the assistance unit. DHS does not disqualify an individual from the TANF [AFDC] program unless the overissuance of benefits resulting from the intentional violation occurred in the month of October 1988 or later.

(c) Disqualified individuals are ineligible for TANF [AFDC] Medicaid benefits during the disqualification period. However, they may qualify for and receive benefits under provisions of Chapter 2 of this title (relating to the Medically Needy Program) or under provisions of Chapter 4 of this title (relating to the Medical Programs for Children and Pregnant Women).

(d)-(e) (No change.)

§79.2009. *Referral of Food Stamp and Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children (AFDC)] Intentional Program Violation Claims to Administrative Disqualification Hearing Officer.*

(a) If the investigator has documented evidence to substantiate that an individual in a food stamp or TANF [AFDC] household has committed an intentional program violation, an administrative disqualification hearing may be held.

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

§79.2011. *Collection Action on Food Stamp and Temporary Assistance for Needy Families (TANF) [Aid to Families with Dependent Children (AFDC)] Intentional Program Violation Claims.*

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

(e) If the household against which collection action has been initiated for repayment of an intentional program violation claim is currently participating in the program and does not respond to the written demand letter within 10 days of the date the notice is mailed, DHS will reduce the household's food stamp allotment and/or TANF [AFDC] grant. If a nonparticipating household against which collection action has been initiated fails to respond to the first demand letter, DHS sends additional demand letters at reasonable intervals, until:

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

(f)-(h) (No change.)

(i) If the investigator interviews the person suspected of committing an intentional program violation and the person expresses that he does not want to have an administrative disqualification hearing and is willing to repay the overissuance, the following policies and procedures apply.

(1) (No change.)

(2) By signing the waiver of hearing and repayment agreement forms, the recipient agrees that he does not want a hearing, that he will repay the overissuance, and that he understands that he will be disqualified from receiving food stamps and/or TANF/Aid to Families with Dependent Children (AFDC) [AFDC] for a period of time determined by whether it is the first, second, or third offense. In some cases, the client may be given an opportunity to waive his right to a hearing through direct mail contact.

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

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

Filed with the Office of the Secretary of State, on June 23, 1998.

TRD-9810039

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Earliest possible date of adoption: August 9, 1998

For further information, please call: (512) 438-3765



Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter C. Eligibility for Child Protective Services

40 TAC §700.316

The Texas Department of Protective and Regulatory Services (TDPRS) proposes an amendment to §700.316, concerning eligibility requirements for Title IV-E, MAO, and state-paid foster care, in its Child Protective Services (CPS) chapter. The purpose of the amendment is to allow CPS to provide up to 3 and 1/2 months of transitional state-paid foster care assistance to youth and completed high school (usually in May), but who are not able to move into a college dormitory until August or September. Obtaining short-term housing in these situations can be difficult, as current CPS policy requires that paid foster care end the month the youth graduates from high school.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The effect on state government for the first five-year period the amendment will be in effect is an estimated additional cost of \$291,006 for fiscal year 1999; \$296,826 for fiscal year 2000; \$302,763 for fiscal year 2001; \$308,817 for fiscal year 2002; and \$314,993 for fiscal year 2003. These will be no fiscal implications for local government.

Ms. Brown 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 placement services that better meet the needs of individual youth. Youth will have a greater likelihood of following through with their college and vocational goals because they have a continuity of stable living arrangement before they begin their higher educational or vocational program. There will be no effect on small businesses because there is no cost to small businesses in terms of employees, labor, or sales. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Janet Luft at (512) 438-5442 in TDPRS's Child Protective Services section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-285,

Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Texas Family Code, Title 5, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect. In addition, the amendment is proposed under Public Law No. 96-272, Title I, which authorizes the department to administer foster-care and adoption assistance programs provided for under the Social Security Act, Title IV-E.

The amendment is also proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; grants authority to contract to that department; and establishes the department's rulemaking authority.

The amendment implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.316. Eligibility Requirements for Title IV-E, MAO, and State-Paid Foster Care Assistance.

The child must meet all of the following criteria to be eligible for Title IV-E, Medical Assistance Only (MAO), or state-paid foster care assistance.

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

(3) Age if attending school. A youth's eligibility for foster care assistance can be extended until the end of the month of his graduation from high school or the end of the month of his completion of vocational or technical training classes when the conditions specified in subparagraph (A) of this paragraph are satisfied or when the conditions specified in subparagraphs (B) or (C)(i) [(€)] of this paragraph are satisfied in addition to the conditions in subparagraph (A) of this paragraph.

(A) General conditions. The youth must:

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

(iii) be scheduled to:

(I) (No change.)

(II) graduate from high school before or during the month of his 20th birthday as specified in subparagraph (C)(i) [(€)] of this paragraph.

(B) (No change.)

(C) Special condition affecting state-paid foster-care assistance.

(i) A youth who is scheduled to graduate from high school after his 19th birthday is eligible to receive state-paid foster-care assistance from the beginning of the first full month following his 18th birthday until the end of the month of his graduation or withdrawal, as long as the youth is scheduled to graduate from high school before or during the month of his 20th birthday.

(ii) If a youth has been accepted for admission to a college or vocational program that does not begin immediately, the youth's eligibility for state-paid foster care assistance can be extended for a period not to exceed 3 and 1/2 months following the end of the month in which the youth graduated from high school or completed the GED. In these situations, the youth qualifies for state-paid foster care assistance at a level of care (LOC) 1.

(4)-(8) (No change.)

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810238

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765

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Subchapter R. Cost-finding Methodology for 24-Hour Child-care Facilities

40 TAC §§700.1803-700.1806

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§700.1803-700.1806, concerning definition of allowable and unallowable costs, allowable costs, unallowable costs, and costs not included in recommended payment rates, in its Child Protective Services chapter. The purpose of the amendments is to create one set of cost principles and guidelines for both residential child care contractors and purchase-of-service contractors. The basis of the principles and guidelines is found in the federal circulars.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown 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 residential child care contractors will have one set of rules for cost reporting and expenditures. Purchase-of-service contractors will no longer have differences between federal circulars and TDPRS's rules, unless the state specifically desires to be more restrictive than federal guidelines. There will be no effect on small businesses because those small businesses which are currently contracting with TDPRS have been required to be in compliance with the relevant federal regulations under the terms of their contracts with TDPRS. There is no anticipated economic cost to persons who are required to comply with the proposed sections for similar reasons.

Questions about the content of the proposal may be directed to Nancy Kimble at (512) 833-3405 in TDPRS's Contract Administration Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-237, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendments are proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, and other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that Department.

The amendments implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§700.1803. *Definition of Allowable and Unallowable Costs.*

~~{(a)}~~ General information. The Texas Department of Protective and Regulatory Services (TDPRS) defines allowable and unallowable costs in order to identify the reasonable expenses that a prudent and cost effective provider must incur to provide the 24-hour child-care services specified in the provider's contract or agreement with TDPRS. The primary objective of TDPRS's cost-reporting system is to determine a fair and reasonable reimbursement rate for a prudent and cost effective provider. To achieve this objective, TDPRS compiles a rate base that includes only information about allowable costs. TDPRS reimburses its residential child care contractors only for costs which are allowable, reasonable, necessary, and properly allocated to the specific contract. The cost principles, guidelines, and definitions for allowable and unallowable costs for cost-reporting purposes (such as rate setting) and for expenditure purposes are the same. Those guidelines are published in §§732.240 and 732.242-732.256 of this title (relating to Contract Administration). ~~[When TDPRS classifies a particular type of expense as unallowable, the classification means only that TDPRS will not include the expense in the rate base because the department does not consider the expense reasonable and necessary to provide contracted services. The classification does not mean that individual providers must not make these expenditures.]~~

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

~~{(1)}~~ "Allowable costs" are expenses that are reasonable and necessary in the normal conduct of operations relating to child-care services in a 24-hour, residential child-care facility. To the extent possible, TDPRS includes only allowable costs in the rate base. The key terms in this definition and in the definition of unallowable costs are further explained as follows:]

~~{(A)}~~ "Reasonable" refers to the amount expended. An amount is reasonable if it does not exceed the cost that a prudent and cost effective operator seeking to contain costs would incur.]

~~{(B)}~~ "Necessary" refers to the relationship of the cost to the provision of child-care services. A cost is necessary if it is usual and customary in the operation of a 24-hour child-care facility, and if it satisfies all of the following conditions:]

~~{(i)}~~ The cost is not listed as an unallowable cost in §700.1805 and §700.1806 of this title (relating to Unallowable Costs and Costs Not Included in Recommended Payment Rates).]

~~{(ii)}~~ The cost is not unallowable under other federal, state, or local laws or regulations.]

{(iii)} The cost is not for personal or other activities that are not specifically related to the provision of child-care services in a 24-hour child-care facility.]

{(iv)} The cost bears a significant relationship to the provision of 24-hour child-care services. PRS considers the relationship significant if eliminating the expenditure would adversely affect the health, safety, or welfare of children in the facility.]

{(v)} The cost is incurred in the purchase of materials, supplies, or services provided directly to the children or staff of individual 24-hour child-care facilities in the conduct of normal operations relating to child-care services.]

{(C)} Expenses incurred "in the normal conduct of operations relating to 24-hour child-care services" include but are not limited to the following types of special expenses:]

{(i)} Expenses for facilities, materials, supplies, and services. The allowable portion of expenses for facilities, materials, supplies, and services that are used both for providing 24-hour child-care services and for other purposes. Whenever otherwise allowable costs can be attributed partially to personal or other business interests and partially to child-care services, the portion attributed to child-care services may be allowed on a pro rata basis if the attribution is well-documented.]

{(ii)} Expenses in related-party transactions. In related-party transactions, the allowable cost to the 24-hour child-care facility is the cost to the related party. Allowable costs in related-party transactions are limited to the lesser of the actual purchase price paid by the related party or the usual and customary charge for comparable goods or services. Two or more individuals or organizations constitute related parties whenever they are affiliated or associated in a manner that entails some degree of legal control or practical influence of one over the other. The affiliation or association may be based on common ownership, past or present mutual interests in child care or other types of enterprises, or family ties. Allowable costs that result from arm's-length transactions involving unrelated parties are not affected by the provisions of this clause.]

{(2)} "Third-party payors" are reimbursement sources other than the provider, including county agencies, parents, insurance, and state or federal agencies.]

{(3)} "Unallowable costs" are expenses that are not reasonable and necessary in the normal conduct of operations relating to child-care services in a 24-hour, residential child-care facility. To the extent possible, PRS does not include unallowable costs in the rate base.]

§700.1804. Allowable Costs.

The cost principles for allowable costs are found in §§732.240 and 732.242-732.256 of this title (relating to Contract Administration). [The following list of allowable costs is designed to function as a general guide and to clarify certain key expense areas. The list is not comprehensive, and the absence of a particular cost does not necessarily mean that the cost is not allowable.]

{(1)} Compensation of 24-hour child-care facility employees. This cost includes compensation only of those employees who provide services directly to the residents or staff of a 24-hour child-care facility in the normal conduct of operations relating to resident care. Compensation includes the following elements:]

{(A)} Wages and salaries. This includes deferred compensation, overtime pay, incentive pay and bonuses, and any other monies subject to withholding taxes and Federal Insurance Contributions Act (FICA) deductions.]

{(B)} Payroll taxes and insurance. This includes FICA and other social security contributions, unemployment compensation insurance, and workers' compensation insurance.]

{(C)} Employee benefits. This includes employer-paid health, life, accident, and disability insurance for employees; employer contributions to employee retirement accounts; uniform and clothing allowances; and housing and meals provided to employees as a part of the employment contract.]

{(2)} Compensation of outside consultants who provide direct services to residents or staff of a 24-hour child-care facility.]

{(3)} Routine child-care expenses. This includes expenses for recreational fees and supplies, clothing expenses that are not covered by a third-party payor, allowances (except for amounts paid from a child's trust fund), personal-care supplies, laundry, linen, housekeeping, personal educational supplies, and gifts for children.]

{(4)} Dietary services expenses. This includes expenses for food, food-related supplies, kitchen equipment, and depreciation of kitchen equipment.]

{(5)} Therapy expenses. This includes the cost and depreciation of supplies for therapy.]

{(6)} Central-office overhead expenses. A facility may use an indirect rate that has been approved by the federal government to allocate these expenses. If a facility does not have an approved indirect rate, it must develop a reasonable method of allocation.]

{(7)} Building, equipment, and capital expenses. This includes expenses for the rental, lease, and depreciation of buildings and equipment, land and leasehold improvements, taxes, insurance, utilities, maintenance, and interest.]

{(A)} Depreciation and amortization expense. Property owned by the provider, and improvements to owned, leased, or rented property valued at more than \$500 at the time of purchase, must be depreciated or amortized using the straight-line method. The minimum useful lives to be assigned to depreciable property are as follows:]

{(i)} buildings: 30 years, with a minimum salvage value of 10% or a use-fee formula specified by Texas Department of Protective and Regulatory Services (PRS) based on an approved appraisal:]

{(ii)} building equipment, buildings and grounds improvements and repairs, furniture and appliances, and power equipment and tools used for buildings and grounds maintenance: minimum schedules consistent with Estimated Useful Lives of Depreciable Hospital Assets, published by the American Hospital Association; and]

{(iii)} transportation equipment used for the transport of residents or of materials and supplies utilized by the 24-hour child-care facility: a minimum of three years for passenger automobiles; five years for light trucks and vans; and seven years for buses, with a minimum salvage value of 10%.]

{(B)} Rental and lease expense. Rental and lease expense paid to a related party is limited to the lower of the cost to the related party or organization; or the cost to the provider; or the price of comparable services, facilities, or supplies purchased in an arm's-length transaction. This includes rental and lease expenses for buildings, transportation equipment, building equipment, furniture, and so forth.]

[(C) Interest expense. Interest expense is allowable on loans for the acquisition of allowable items, subject to all of the requirements governing allowable costs and to the following additional requirements:]

[(i) the loan must be evidenced in writing; and]

[(ii) the loan must be made in the name of the provider as maker or co-maker of the note.]

[(D) Interest expense on related-party loans. Interest expense on related-party loans is limited to the lesser of:]

[(i) the interest expense to the provider, which is the expense to the related party; or]

[(ii) the prevailing national average prime interest rate during the year in which the loan contract is concluded, as the rate is reported by the U. S. Department of Commerce's Bureau of Economic Analysis in the Survey of Current Business and the Business Conditions Digest.]

[(E) Tax expense. This includes ad valorem taxes, real and personal property taxes, motor vehicle registration fees, sales taxes, Texas corporate franchise taxes, and organization filing fees.]

[(F) Insurance expense. This includes expenses for building, grounds, and contents insurance; facility fire and casualty insurance; professional liability and malpractice insurance; and transportation-equipment insurance.]

[(G) Utilities expense. This includes expenses for natural gas, electricity, water, waste water, garbage collection, and telephone service.]

[(8) Client transportation expenses. These expenses are limited to costs directly related to providing transportation for 24-hour child-care residents. They include rental, lease, and contract costs for transportation equipment; depreciation; purchased transportation; and operating and maintenance costs. Mileage is allowed when:]

[(A) adequately documented,]

[(B) related to the delivery of services for which PRS has contracted; and]

[(C) the cost per mile does not exceed the current reimbursement rate set by the legislature for state employee travel.]

[(9) Business and professional association dues. This expense is limited to dues for associations primarily devoted to child care.]

[(10) Outside training expenses. These expenses are limited to the direct costs of training personnel who provide direct child-care services to the facility's residents. Direct costs of training include expenses for transportation, meals, lodging, and tuition and registration fees. The training must:]

[(A) take place in the continental United States; and]

[(B) relate directly and primarily to child care.]

[(11) Expenses for nonprescription drugs and medical supplies that do not have to be administered by medically trained personnel.]

[(12) Expenses for prescription medications. Expenses for prescription medications not covered by Medicaid, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Medicaid, or paid by county reimbursements, parents, insurance, or any other third-party payor.]

[(13) Expenses for providing 24-hour on-call services. Expenses for providing 24-hour on-call medical, psychiatric, and nursing services for clients in levels of care V and VI. These are the expenses associated with a plan, agreement, or contract to provide 24-hour on-call medical, psychiatric, and nursing services for clients in levels of care V and VI. These expenses exclude the actual costs of treatment and all costs paid by third-party payors.]

[(14) Medical and dental expenses. Allowable medical and dental expenses are those that are considered medically necessary (not cosmetic) and that are not covered by Medicaid, EPSDT Medicaid, or paid by county reimbursements, parents, insurance, or any other third-party payor. "Medically necessary" refers to the need for medical services in an amount and frequency sufficient, according to accepted standards of medical practice, to preserve health and life and to prevent future impairment. Prior approval by the department is necessary for those medical and dental expenses that are not considered medically necessary but have been determined by a physician (M.D., D.O., or psychiatrist) as necessary for the emotional well being of the child.]

[(15) The value of in-kind donations. The value of in-kind donations includes only the depreciation of the value of donated buildings and donated vehicles used exclusively for the provision of 24-hour child care services. The historical cost used to depreciate buildings must be consistent with an appraisal by an independent third-party appraiser or the documented historical cost to the donor. The historical cost used to depreciate vehicles must be consistent with the National Automobile Dealer's Association (NADA) listings or the documented historical cost to the donor. For additional information, see paragraph (7)(A) of this section.]

[(16) Educational expenses. Allowable educational expenses are those that are not reimbursed or provided by a state agency, county agency, the local school district, or any other third-party payor. Allowable expenses include:]

[(A) educational expenses for facilities that provide educational services to children who reside in emergency shelters and children who must attend an on-facility educational program due to health, safety, and quality of services reasons as determined by the local school district's Admission, Review, and Dismissal (ARD) Committee. A copy of the local school district's document describing the ARD decision must be included in the child's record and maintained at the on-facility school. These education expenses include:]

[(i) textbooks and salary costs for teachers and teachers' that are in excess of the district's Texas Education Agency (TEA) allocation aides for which the local school district bills the facility. The excess costs must be determined necessary by the ARD Committee and documented in the student's Individual Educational Plan (IEP).]

[(ii) expenses for the rental, lease, and depreciation of buildings and equipment used to provide educational services, as well as related utility, insurance, tax, and maintenance expenses, including compensation of staff for facility maintenance. These expenses include the costs of buildings and equipment in buildings or spaces within a building that are used for both educational and noneducational purposes. When a building or a space within a building is used for both educational and noneducational purposes, the portion of building and equipment expenses directly related to providing educational services in that building or space is allowed on a pro rata basis. The provider must clearly document the proportion of use for educational purposes.]

~~[(iii) teaching aid supplies.]~~

~~[(B) course enrollment and testing fees for obtaining a general equivalency diploma.]~~

~~[(C) educational enrichment expenses not paid for by a state agency, county agency, the local school district, Foster Parent Associations, Child Welfare Boards, parents, or other similar third-party payors. Allowable educational enrichment expenses are those expenses that would normally be paid for by the parents of a child and are directly related to school-sponsored events. Allowable educational enrichment expenses include tutors, class rings, cheerleader uniforms, and other similar items used for extra-curricular activities related to school-sponsored events.]~~

~~[(D) expenses for vocational or farm programs that are not part of the structured educational program, less any revenue earned by the facility from those programs.]~~

§700.1805. Unallowable Costs.

The cost principles for unallowable costs are found in §§732.240 and 732.242-732.256 of this title (relating to Contract Administration). [The following list is designed to function as a general guide to the types of unallowable costs frequently included in cost reports. The list is not comprehensive, and the absence of a particular cost does not necessarily mean that the cost is allowable.]

~~[(1) Advertising expenses. Advertising expenses are unallowable. However, the Texas Department of Protective and Regulatory Services (PRS) treats the following expenses as allowable exceptions: advertisements to recruit employees, yellow-page listings that require no more than one column-inch of page space, and pamphlets or brochures published to meet statutory or regulatory requirements or to inform the public about the provider's 24-hour child-care program.]~~

~~[(2) Allowances for bad debts, and other similar accounts.]~~

~~[(3) Business expenses and expenses for activities unrelated to providing the 24-hour services for which PRS has contracted.]~~

~~[(4) Political and charitable contributions.]~~

~~[(5) Corporate headquarters expenses that are not directly related to providing services or supplies to support the normal operations and child-care services of a 24-hour child-care facility.]~~

~~[(6) Depreciation expenses that are not based on the straight-line method of depreciation as specified in §700.1804(7)(A) of this title (relating to Allowable Costs).]~~

~~[(7) Building depreciation expenses based on less than a 30-year life as specified in §700.1804(7)(A)(i) of this title (relating to Allowable Costs).]~~

~~[(8) Vehicle depreciation expenses based on less than the life of the vehicle as specified in §700.1804(7)(A)(iii) of this title (relating to Allowable Costs).]~~

~~[(9) Discounts for administrative reasons; courtesies; cash, trade, and quantity discounts; rebates; and any other discounts granted to the provider.]~~

~~[(10) Dues and fees for membership in organizations whose primary purposes are not related to the services for which PRS has contracted.]~~

~~[(11) Entertainment expenses, except for entertainment reported as an employee benefit.]~~

~~[(12) Expenses that are not the legal obligation of the provider.]~~

~~[(13) Fees and travel expenses for the corporation or association board of directors.]~~

~~[(14) Partnership or corporation filing fees.]~~

~~[(15) Fines and other penalties for violations of statutes or ordinances; penalties for late payment of taxes, utilities, mortgages, or loans; and other similar penalties.]~~

~~[(16) Franchise fees.]~~

~~[(17) Premiums for life insurance in which the beneficiary is the provider organization, unless life insurance is required in a loan agreement related to child care.]~~

~~[(18) Contributions to self-insurance funds that do not represent payments on current liabilities.]~~

~~[(19) Premiums for insuring items of unallowable cost.]~~

~~[(20) Interest expenses on loans for assets not related to the delivery of services for which PRS has contracted. In general, interest expenses must be reduced or offset by interest income. However, interest income from funded depreciation accounts or qualified pension funds must not be used to offset interest expenses.]~~

~~[(21) Personal compensation and personal expenses not related to the delivery of 24-hour child-care services.]~~

~~[(22) Expenses for the purchase of facilities, supplies, or services from parties or organizations related to the provider, to the extent that these expenses exceed the lower of:]~~

~~[(A) the cost to the related party or organization; or]~~

~~[(B) the price of comparable services, facilities, or supplies purchased in an arm's-length transaction.]~~

~~[(23) Rental or lease expenses on items not related to the delivery of services for which PRS has contracted.]~~

~~[(24) Federal, state, and local income taxes; and all taxes levied on assets not related to the delivery of services.]~~

~~[(25) Transportation expenses for vehicles that are not generally suited for functions related to 24-hour child-care services.]~~

~~[(26) Expenses that are not adequately documented.]~~

~~[(27) Forms of compensation that are not clearly enumerated in dollar amounts or that represent distributions of profit.]~~

~~[(28) Expenses related to college enrollment and attendance.]~~

~~[(29) Medical and dental expenses, including medications that were paid for by a third-party payor or covered by Medicaid and EPSDT Medicaid.]~~

~~[(30) Hospitalization expenses.]~~

§700.1806. Costs Not Included in Recommended Payment Rates.

Information concerning costs not included in recommended payment rates is found in §732.256 of this title (relating to Unallowable Costs). [Although the Texas Department of Protective and Regulatory Services (PRS) has the authority to require providers to report the following costs, PRS does not include them in its recommended payment rates. The department captures these costs for statistical purposes only.]

~~[(1) The value of in-kind donated items, including depreciation and amortization of the value of the donations, except~~

those described as allowable costs in §700.1804(15) of this title (relating to Allowable Costs).]

~~[(2) The values assigned to the services of unpaid workers or volunteers.]~~

~~[(3) Fund-raising, promotional, and public-relations expenses.]~~

~~[(4) Educational expenses for those facilities that educate in an on-facility school those children for whom no Admission, Review, and Dismissal (ARD) Committee determination about attendance (based on health, safety, and quality of service reasons) has been made. These expenses include:]~~

~~[(A) compensation for administrators, teachers, and teachers' aides for providing educational services;]~~

~~[(B) expenses for textbooks and teaching aid supplies;]~~

~~[(C) the rental, lease, and depreciation of buildings and equipment used to provide educational services, as well as related utility, insurance, tax, and maintenance expenses. This expense also includes compensation of staff for facility maintenance.]~~

~~[(D) the costs of buildings or spaces within a building that are used for both educational and noneducational purposes. When a building or a space within a building is used for both educational and noneducational purposes, the portion of building and equipment expenses directly related to providing educational services in that building or space is unallowable on a pro rata basis.]~~

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

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TRD-9810247

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765



Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.1001, 725.2006, 725.2036, 725.2046, concerning definitions, submission and acceptance of application and application fees, restriction and posting for registered family homes, and regulations for registered family homes; and proposes new §725.1808 and §725.1809, concerning posting of the probation notice and application returned as incomplete, in its General Licensing Procedures chapter. The purpose for the amendments to §725.1001 and §725.2046 is to define primary caretaker and to clarify that the registered caregiver must be the primary caretaker in the home as stipulated in the Human Resources Code, §42.002(9). The purpose of new §725.1808 is to require that the probation notice be posted in the facility or family home so that parents and others can view it. The purpose of the amendment to §725.2006 and new §725.1809 is to show the correct address for submitting requests for appeals of a denied application and to establish that an applicant must wait a period of one year to reapply if three pervious applications have been received by licensing staff and returned as incomplete within

one year. The purpose of the amendment to §725.2036 is to ensure that Licensing Division notices of inspection results are posted in the registered family home for parents to see.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that parents are allowed to see notices of noncompliances and probation and for applicants to plan appropriately before caring for children. This will affect all registered family homes who operate small businesses. If the registrant wishes to work outside the home and have another resident of the home assume the responsibilities of the caretaker, a new registration may be requested at a cost of \$35. If applications are returned as complete within 30 days, no additional application fee is required. If the applicant must wait a period of one year to reapply, this may affect the applicant's ability to earn income from child care for one year. As TDPRS does not know how the registrant will choose to arrange to provide care, it cannot estimate the costs. TDPRS believes these rules will not have fiscal costs for very many registrants as reading the statute would have led most applicants to operate their own homes.

Questions about the content of the proposal may be directed to Mary Panella at (512) 438-3246 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-283, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter A. Definitions

40 TAC §725.1001

The amendment is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendment implements the Human Resources Code, §§42.001- 42.077.

§725.1001. Definitions.

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

(1)-(18) (No change.)

(19) Primary caretaker - The person who takes care of children in the caretaker's home.

(20) [(49)] Regular care - Care that is provided at least four hours a day, three or more days a week, for more than nine consecutive weeks.

(21) [(20)] Religious organization - A church, synagogue, or other religious institution whose purpose is to support and serve the propagation of truly held religious beliefs.

(22) [(24)] State of Texas or state - Does not include political subdivisions of the state.

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

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765



Subchapter S. Administrative Procedures

40 TAC §725.1808, §725.1809

The new sections are proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The new sections implement the Human Resources Code, §§42.001- 42.077.

§725.1808. Posting of the Probation Notice.

(a) This section applies to all facilities and family homes regulated by the Texas Department of Protective and Regulatory Services (TDPRS) as listed in the Human Resources Code, Chapter 42.

(b) TDPRS's Probation Notice form must be posted during the probation period in a prominent place where parents and others may view it. Information about the non-compliances, the corrections needed, and the conditions of probation are included in the letter of notification from TDPRS. The facility/family home must make the letter of notification available to parents and others who request to read it.

(c) TDPRS's Probation Notice form will be provided by TDPRS to the facility or family home when the facility or family home is being placed on probation. The facility or family home will be advised of the time frame for posting the notice at the time the notice is provided.

§725.1809. Application Returned as Incomplete.

If three applications are returned as incomplete within a period of one year, an applicant may not reapply until one year from the date the last application was returned as incomplete. This section applies to applications for licenses, certifications, registrations, and listings.

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

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C. Ed Davis

Deputy Director, Legal Services

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For further information, please call: (512) 438-3765



40 TAC §725.1810

The Texas Department of Protective and Regulatory Services (TDPRS) proposes new §725.1810, concerning administrative penalties, in its General Licensing Procedures chapter. The purpose of the new section is to outline the conditions under which an administrative penalty will be assessed. This is a new enforcement tool in §42.078 of the Human Resources Code (Administrative Penalty). TDPRS is withdrawing from consideration the proposal of administrative penalties in §725.2048 which appeared in the May 8, 1998, issue of the *Texas Register* because of an error in subsection (a)(1) and to renumber the section. The reference to §725.4020 has been corrected to §725.4020(f) and §725.4020(g) in that subsection. The section number has been changed to make it clear that this rule applies to all licensed and registered facilities and homes.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state or local government as a result of enforcing or administering the section. The amount cannot be determined at this time. The cost to state government will depend upon the number of violations for which penalties are assessed, and the number of those which are appealed.

Ms. Brown 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 in the form of increased compliance with child care regulations, and therefore increased protection for children in out-of-home care. This will affect all registered family homes who operate small businesses. There is a maximum amount of fines stipulated in the statute based upon number of children in care. Larger businesses will be penalized more because fines will be assessed based upon the number of children in care. Thus the fines will have a greater impact on facilities that have more children in care. There is an anticipated economic cost to persons who are required to comply with the proposed section. Maximum fine amounts are stipulated in law. Estimated costs cannot be determined at this time. Costs to facilities and family homes would depend on the number of days of violations according to the schedule of penalties in these sections.

Questions about the content of the proposal may be directed to Mary Panella at (512) 438-3246 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-230, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs and specifically §42.078 HRC which mandates rules for administrative penalties.

The new section implements the HRC, §42.078.

§725.1810. Administrative Penalties.

(a) Administrative penalties are fines imposed against a facility or family home, licensed or registered, when that facility or family home violates Chapter 42 of the Human Resources Code (HRC) or a rule or order adopted under that chapter. Nonmonetary, administrative penalties or remedies including, but not limited to, corrective action plans, probation, and evaluation periods shall be imposed, when appropriate, before monetary penalties. The Texas Department of Protective and Regulatory Services (TDPRS) may

proceed to suspension, probation or revocation without imposing administrative penalties in any instance in which, in TDPRS's opinion, the violation is serious enough to warrant such action.

(1) Fines may be assessed for repeated, but less serious, violations, within a three- month period, of those standards identified in §725.4020 (f) and (g) of this title (relating to Judicial Review) which pose a risk to the health and safety of children when violated, but where the violations were not serious enough to warrant more severe nonmonetary sanctions.

(2) Fines may be assessed for failure to comply with any corrective action plan after time limits for correction have expired.

(b) Penalty assessment shall be based on the day the facility/family home is notified that a repeated violation has been cited or any corrective action plan has not been implemented. The ending period for the fine shall be the date the facility notifies TDPRS the violation has been corrected, unless a subsequent site visit determines no proper correction has been made.

(c) When notified of the penalty, it shall be the responsibility of the facility/family home to notify TDPRS when the violation is corrected. If necessary, a site visit by TDPRS staff may be made within seven calendar days to confirm that the violation has been corrected.

(d) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation may be in an amount not to exceed the following limits, based on the number of children receiving care at the facility or family home at the time of the violation:
Figure: 40 TAC §725.1810(d)

(e) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts and the hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the history of previous violations;

(3) the amount necessary to deter future violations; and

(4) efforts to correct the violation.

(f) In determining the amount of the penalty, the primary consideration shall always be the actual or potential harm posed to children in care by the violation, and the number of children exposed to that actual or potential harm.

(g) Monetary penalties shall not be assessed for violations of clerical errors or standards which do not clearly apprise the facility or family home of the action required by the standard.

(h) Upon determination that a violation has occurred, the executive director may issue a recommendation on the imposition of a penalty, including a recommendation on the amount of the penalty.

(i) Within 14 days after the date the recommendation is issued, the executive director shall give written notice of the recommendation to the person owning or operating the facility. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(j) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director, or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) If the person accepts the determination and recommended penalty of the executive director or fails to respond to the notice in a timely manner, the executive director shall issue an order and impose the recommended penalty.

(l) If the person requests a hearing, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law and issue a final decision finding that a violation has occurred and imposing a penalty or finding that no violation occurred.

(m) The notice of the administrative law judge's order given to the person under Chapter 2001, Government Code, must include a statement of the right of the person to judicial review of the order.

(n) Within 30 days after the date the administrative law judge's order becomes final as provided by §2001.144, Government Code, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(o) Within the 30-day period, a person who acts under subsection (n)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond that is approved by the court for the amount of the penalty and that is effective until all judicial review of the order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(p) On receipt of a copy of an affidavit under subsection (o)(2) of this section, the executive director may file with the county, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(q) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(r) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(s) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(t) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount .

(u) A penalty collected under this section shall be sent to the comptroller for deposit in the general revenue fund.

(v) All proceedings under this section are subject to Chapter 2001, Government Code.

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

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765



Subchapter U. Day Care Licensing Procedures

40 TAC §§725.2006, 725.2036, 725.2046

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§725.1001, 725.2006, 725.2036, 725.2046, concerning definitions, submission and acceptance of application and application fees, restriction and posting for registered family homes, and regulations for registered family homes; and proposes new §725.1808 and §725.1809, concerning posting of the probation notice and application returned as incomplete, in its General Licensing Procedures chapter. The purpose for the amendments to §725.1001 and §725.2046 is to define primary caretaker and to clarify that the registered caregiver must be the primary caretaker in the home as stipulated in the Human Resources Code, §42.002(9). The purpose of new §725.1808 is to require that the probation notice be posted in the facility or family home so that parents and others can view it. The purpose of the

amendment to §725.2006 and new §725.1809 is to show the correct address for submitting requests for appeals of a denied application and to establish that an applicant must wait a period of one year to reapply if three pervious applications have been received by licensing staff and returned as incomplete within one year. The purpose of the amendment to §725.2036 is to ensure that Licensing Division notices of inspection results are posted in the registered family home for parents to see.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that parents are allowed to see notices of noncompliances and probation and for applicants to plan appropriately before caring for children. This will affect all registered family homes who operate small businesses. If the registrant wishes to work outside the home and have another resident of the home assume the responsibilities of the caretaker, a new registration may be requested at a cost of \$35. If applications are returned as complete within 30 days, no additional application fee is required. If the applicant must wait a period of one year to reapply, this may affect the applicant's ability to earn income from child care for one year. As TDPRS does not know how the registrant will choose to arrange to provide care, it cannot estimate the costs. TDPRS believes these rules will not have fiscal costs for very many registrants as reading the statute would have led most applicants to operate their own homes.

Questions about the content of the proposal may be directed to Mary Panella at (512) 438-3246 in TDPRS's Licensing Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-283, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register* .

The amendments are proposed under the Human Resources Code, Title 2, Chapter 42, which authorizes the department to administer general child-placing and child care licensing programs.

The amendments implement the Human Resources Code, §§42.001- 42.077.

§725.2006. Submission and Acceptance of Application and Application Fees.

(a) Each governing body planning to operate a facility or family home [~~subject to licensing or certification~~] must complete and send an application to licensing staff.

(b) Applicants for licensure as facilities [~~Facilities~~] and registered family homes [~~subject to licensing~~] must attach a non-refundable \$35 application fee [plus a \$35 provisional license fee] to the department's Licensing Fee Schedule and send these to the department. The applicant for a license must also include a \$35 fee for a provisional license if the applicant is eligible for a provisional license. The provisional license fee may be refunded if the department does not issue the provisional license.

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

(e) Within 21 calendar days [~~15 workdays~~] of receiving the application, the department notifies the applicant in writing that:

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

(f) The applicant may authorize the department by telephone to change or add to an incomplete application. Staff making the changes must date and initial them and send the applicant a copy with the letter notifying the person [~~him~~] that the application is complete and accepted for filing.

(g) Within two [~~2~~] months of the date that a completed application is accepted for filing, the department decides to issue or deny a license, registration, certification, or listing.

(h) [~~The applicant may appeal any dispute about the amount of time the department took to decide that an application was complete or to approve or deny an application.~~] To appeal a denial, the applicant must submit a written request within 30 days after the department's time limit expires. The applicant must send the request stating the nature of the dispute to the Docket Clerk, Legal Services Division, Mail Code E-611, Texas Department of Protective and Regulatory Services, P.O. Box 149030, Austin, Texas 78714 [~~director of licensing~~]. [~~If the department exceeded the time limit without establishing good cause, the appeal is decided in the applicant's favor. In this case, the department must reimburse the application fee.~~]

§725.2036. Restrictions [~~Restriction~~] and Posting of Notices for Registered Family Homes.

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

(c) The letter or compliance evaluation form from the most recent licensing inspection or investigation, including any restrictions or corrective action, must be posted for at least two months from the date the letter or form was received, in a prominent place where parents and others may view it, if the notification includes a requirement for posting.

§725.2046. Regulations for Registered Family Homes.

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

(e) The registered caregiver must be the primary caretaker of the children in the registered family home, as defined in §725.1001(19) of this title (relating to Definitions). The primary caretaker must be in the home when children are receiving care in that home and must be responsible for the children on a daily basis.

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

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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For further information, please call: (512) 438-3765



Chapter 732. Contracted Services

Subchapter L. Contract Administration

The Texas Department of Protective and Regulatory Services (TDPRS) proposes amendments to §§732.240, 732.242-732.252, and 732.254-732.256, concerning general principles of allowable and unallowable costs, start-up costs, em-

ployee compensation, consumable supplies, food expenses, equipment, depreciation and use allowances, transportation of clients, insurance, rental costs, space rental, renovations and remodeling, telephone, professional fees, and unallowable costs; and proposes the repeal of §732.241, concerning allowable costs for cost reimbursement contracts and for developing unit rates, in its Contracted Services chapter. The purpose of the amendments and repeal is to create one set of cost principles and guidelines for both residential child care contractors and purchase-of-service contractors. The basis of the principles and guidelines is found in the federal circulars.

Cindy Brown, Budget and Analysis Division Director, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown 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 residential child care contractors will have one set of rules for cost reporting and expenditures. Purchase-of-service contractors will no longer have differences between federal circulars and TDPRS's rules, unless the state specifically desires to be more restrictive than federal guidelines. There will be no effect on small businesses because those small businesses which are currently contracting with TDPRS have been required to be in compliance with the relevant federal regulations under the terms of their contracts with TDPRS. There is no anticipated economic cost to persons who are required to comply with the proposed sections for similar reasons.

Questions about the content of the proposal may be directed to Nancy Kimble at (512) 833-3405 in TDPRS's Contract Administration Division. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-237, Texas Department of Protective and Regulatory Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

40 TAC §§732.240, 732.242-732.252, 732.254-732.256

The amendments are proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, and other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that Department.

The amendments implement the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§732.240. General Principles of Allowable and Unallowable Costs.

(a) The Texas Department of Protective and Regulatory Services (TDPRS) reimburses its contractors only for costs (both direct and indirect) which are allowable, reasonable, necessary, and properly allocated to the specific contract. The cost guidelines, principles, and definitions for allowable and unallowable costs (both direct and indirect) for purposes of preparing budgets, for expenditure purposes, and for cost-reporting purposes are the same. Those guidelines are published in federal and state regulations. Contractors

receiving Title IV-E funding are required to be in compliance with 45 Code of Federal Regulations (CFR) Part 74 and 48 CFR Part 31 regarding the use and expenditure of Title IV-E funds. Contractors receiving Title IV-B funding are required to be in compliance with 45 CFR Part 92 regarding the use and expenditure of Title IV-B funds. All purchased client services contractors (both for-profits and nonprofits) are required to be in compliance with Office of Management and Budget (OMB) Circular A-110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations) and this section and §§732.242-732.256 of this title (relating to Contract Administration) regarding the guidelines for use and expenditure of funds received from TDPRS, which consist of federal and/or state revenues. If the contractor is a governmental entity, the contractor shall remain in compliance with OMB Circular A- 87 (Cost Principles for State and Local Governments). If the contractor is either a for-profit entity or a nonprofit entity, the contractor is required to be in compliance with OMB Circular A-122 (Cost Principles for Nonprofit Organizations). In the event of any conflict or contradiction between or among the regulations referenced in this subsection, the regulations shall control in the following order of precedence:

(1) federal regulations - for Title IV-E funding, 45 CFR Part 74 and 48 CFR Part 81; for Title IV-B funding, 45 CFR Part 92;

(2) federal OMB circulars - OMB Circular A-110 and either OMB Circular A-87 or OMB Circular A-122, as applicable;

(3) state regulations - §732.240 of this title (relating to General Principles of Allowable and Unallowable Costs) and §§732.242- 732.256 of this title (relating to Contract Administration); and

(4) any other applicable departmental regulations.

(b) [(a)] Only those items that represent an actual cash outlay, an accrued expense paid within 90 days of incurrence, or the compensation for the use of buildings, other capital improvements, and equipment on hand through a use allowance or depreciation [that reflect a use charge or depreciation charge on a contractor-owned building or fixed equipment] are allowable. The value of donated goods or services (in-kind) are not allowable (i.e., unallowable). However, [a contractor may budget a use charge or] depreciation or a use allowance [charge] on a donated building, donated capital improvements, or [on] donated equipment subject to ownership requirements and/or donor-imposed conditions is allowable. Contractors shall not use revenues from TDPRS to finance activities other than those activities specifically allowable under their contract with TDPRS. Unallowable uses of contract revenues from TDPRS include, but are not limited to, interfund loans/transfers, interdepartmental loans/transfers, intercompany loans/transfers, and employee loans not considered salary advances.

(c) [(b)] Costs budgeted, expended, used, and/or reported by a contractor and/or paid by TDPRS [the department] must be [reasonable, allowable, properly allocated, and] consistent with generally accepted accounting principles (GAAP), which are those principles approved by the [as published by the Account Principles Board,] American Institute of Certified Public Accountants (AICPA). Internal Revenue Services (IRS) laws and regulations do not necessarily apply in the preparation of budgets, the expenditure and/or use of funds received from the department, and/or the reporting of costs to TDPRS. In cases where there are differences between TDPRS's rules, GAAP, IRS, or other authorities, TDPRS's rules take precedence.

(d) The contractor's accounting system must include an accurate and consistent method for gathering statistical information that properly relates the costs incurred to the units of service rendered.

(e) [(e)] The contractor is responsible for designing and implementing fiscal policies and ensuring that financial data are [is] collected, recorded, and analyzed as part of the delivery of service under a contract with TDPRS [the department].

(f) Costs incurred under less-than-arms-length (related-party) transactions are allowable only up to the cost to the related party (see OMB Circulars A-87 and A-122). However, the cost must not exceed the price of comparable services, equipment, facilities, or supplies that could be purchased or leased elsewhere. The purpose of this principle is twofold: to avoid the payment of a profit factor to the contractor through the related organization (whether related by common ownership or control), and to avoid payment of artificially-inflated costs which may be generated from less-than-arms-length bargaining. The related organization's costs include all reasonable costs, direct and indirect, incurred in the furnishing of services, equipment, facilities, and supplies to the contractor. The intent is to treat the costs incurred by the related organization as if they were incurred by the contractor itself. An exception is provided to the general rule applicable to related organizations and applies if the contractor demonstrates by convincing evidence to the satisfaction of TDPRS that certain criteria have been met. Those criteria are:

(1) The related organization is a bona fide separate corporation and not merely an operating division of the contractor's organization.

(2) A majority of the related organization's business activity of the type carried on with the contractor is transacted with other organizations not related to the contractor or the related organization by common ownership or control and there is an open, competitive market for the type of services, equipment, facilities, or supplies furnished by the related organization. In determining whether the business activities are of a similar type, it is important also to consider the scope of the business activity. The requirement that there be an open, competitive market is intended to assure that the item supplied has a readily discernible price that is established through arms-length bargaining by well-informed buyers and sellers.

(3) The charge to the contractor is in line with the charge of such services, equipment, facilities, or supplies in the open, competitive market and no more than the charge made under comparable circumstances to others by the related organization for such services, equipment, facilities, or supplies.

(g) In determining whether a contractor is related to a supplying organization, the tests of common ownership and control are to be supplied separately. Related to a contractor means that the contractor to a significant extent is associated or affiliated with, has control of, or is controlled by the organization furnishing the services, equipment, facilities, or supplies. Common ownership exists if an individual or individuals possess any ownership or equity in the contractor and the supplying organization. Control exists if an individual or an organization has the power, directly or indirectly, to significantly influence or direct the actions or policies of an organization or institution. If the elements of common ownership or control are not present in both organizations (i.e., the contractor and the supplying organization), then the organizations are deemed not to be related to each other. The existence of an immediate family relationship will create an irrebuttable presumption of relatedness through control or attribution of ownership or equity interests where the significance tests are met. The following persons are considered immediate family: husband and wife; natural parent, child, and

sibling; adopted child and adoption parent; stepparent, stepchild, stepsister, and stepbrother; father-in-law, mother-in-law, sister-in-law, brother-in-law, son-in-law, and daughter-in-law; grandparent and grandchild; uncles and aunts by blood or marriage; nephews and nieces by blood or marriage; and first cousins by blood or marriage.

(1) A determination as to whether an individual (or individuals) or organization possesses ownership or equity in the contractor and the supplying organization, so as to consider the organizations related by common ownership, will be made on the basis of the facts and circumstances in each case. This rule applies whether the contractor or supplying organization is a sole proprietorship, partnership, corporation, trust or estate, or any other form of business organization, proprietary or nonprofit. In the case of a nonprofit organization, ownership or equity interest will be determined by reference to the interest in the assets of the organization, for example, a reversionary interest provided for in the articles of incorporation of a nonprofit organization.

(2) The term control includes any kind of control, whether or not it is legally enforceable and however it is exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. The facts and circumstances in each case must be examined to ascertain whether legal or effective control exists. Since a determination made in a specific case represents a conclusion based on the entire body of facts and circumstances, such determination should not be used as a precedent in other cases unless the facts and circumstances are substantially the same. Organizations, whether proprietary or nonprofit, are considered to be related through control to their directors in common.

(h) Disclosure of all less-than-arms-length (related-party) transactions is required for all costs budgeted, expended, used, and/or reported by the contractor, including related-party transactions occurring at any level in the contractor's organization. The contractor must make available, upon request, adequate documentation to support the costs incurred by the related party. Such documentation could include an identification of the related organization's total costs, the basis of allocation of direct and indirect costs to the contractor, and other business entities served. If a contractor fails to provide adequate documentation to substantiate the cost to the related organization, then the cost is unallowable.

(i) Direct costing must be used whenever reasonably possible. Direct costing means that costs, direct or indirect, incurred for the benefit of, or directly attributable to, a specific business component must be directly charged to that particular business component. For direct costs as defined in OMB Circulars A-122 and A-87, direct costing is required. For indirect costs as defined in OMB Circulars A-122 and A-87, it is necessary to allocate these costs either directly or as a pool of costs across those business components sharing in the benefits of those costs. If cost allocation is necessary, contractors must use reasonable methods of allocation and must be consistent in their use of allocation methods across all program areas and business entities in which the contractor has an interest (see OMB Circulars A-87 and A-122).

(1) Each employee is required (see OMB Circulars A-122 and A-87) to have time sheets. Time sheets must be prepared at least monthly and must coincide with one or more pay periods. Time sheets must account for the total activity for which the employee is compensated and which is required to fulfill the employee's obligation to the contractor. If an employee performs only one function and only performs that one function for one contract/program area, then that employee's time sheet can include the minimum information: name,

date, beginning time, ending time, total time worked, appropriate signature(s), and accounting for paid and unpaid leave time.

(2) Direct care staff must be directly costed between program areas (business components) based upon their time sheets (not a time study). If a direct care employee performs more than one function, performs one function for more than one contract/program area, and/or performs more than one function for more than one contract/program area, the time sheets must account for those different functions and/or contracts/program areas. These time sheets should be the documentation for the percentages of salaries budgeted to the various contracts. In other words, if a counselor works on a contractor's nonresidential contract and for one or more of the contractor's residential contracts, the percentage of that counselor's salary in the nonresidential budget should be based upon the results of time sheets for a recent historical period prior to the submission of the budget. The actual amounts charged to the nonresidential contract for that counselor should be based upon the counselor's time sheets during the contract period, with a reconciliation to the contract's budget. If the actual counselor's time is less than that budgeted, the contractor is reimbursed based upon the actual time. If the actual counselor's time is more than that budgeted, the contractor is reimbursed based upon the budgeted amount. The counselor's time sheets for that contract period then become the basis for the estimates used for the next year's contract budget.

(3) Any cost allocation method should be a reasonable reflection of the actual business operations. Allocation methods that do not reasonably reflect the actual business operations and resources expended toward each unique business entity are not acceptable. An indirect allocation method approved by some other department, program, or governmental entity is not automatically approved by TDPRS. The purpose of cost allocation of shared indirect costs is to ensure that those costs are properly and accurately recorded within each program area, so that each program receives its fair share of those shared indirect costs which benefit that program and so that each program's costs are properly identified (direct and indirect). There are three basic methods for allocating shared (pooled) indirect costs: units of service, cost-to-cost, and functional.

(A) In order to use the units-of-service cost allocation method, each of your program areas would have to deliver the same type of services (i.e., equivalent services) and would have to be measured with the same units of service (i.e., equivalent units). If your program areas (business components) do not have equivalent units of equivalent services, you must use a cost-to-cost or functional allocation method for shared indirect costs that are not directly chargeable to a specific program area (business component).

(B) Cost-to-cost allocation methods merely calculate a program's percentage of a specified cost basis and use that percentage to then calculate that program's share of indirect costs. Shared indirect costs are always allocated first to each program area, then any unallowable shared indirect costs are removed from (or separately reported for) each program area for purposes of contracting with TDPRS. In this manner, it is ensured that 100% (and only 100%) of the total shared indirect costs have been allocated across the various program areas. The specific cost bases for a cost-to-cost allocation methodology include: salaries; salaries, payroll taxes and employee benefits; salaries and contract labor; salaries, payroll taxes, employee benefits, and contract labor; all direct program costs; and all direct program costs minus building costs. These shared indirect costs must be allocated across all the program areas which benefit from these shared indirect costs. If there are some shared indirect costs that benefit only a portion of the corporation's program areas, then an allocation method must be used to properly allocate that subset of

the total shared indirect costs to those program areas benefiting from those shared indirect costs. In such complex financial systems, these subsets of shared indirect costs become part of the basis for allocating the shared administration costs benefiting all program areas. For example, if a contractor has a subset of shared indirect costs that only benefits the contractor's residential programs, that subset could be allocated based upon units of service. When allocating on a cost-to-cost basis those shared indirect costs benefiting all program areas (business components) for the contractor, the cost basis for each of the contractor's residential programs would include the residential program's direct care costs and its allocated share of the subset of shared indirect costs.

(C) Functional cost allocation for an administrative staff person can be based upon a time study. Time studies can only be used to allocate administrative time and cannot be used to allocate direct care time. In other words, if an administrative employee also performs direct care duties, that employee must have time sheets (not a time study) to document his/her direct care time.

(i) The baseline for allocation using a time study can be calculated upon time sheets recording daily time/effort for an entire month.

(ii) Daily time sheets are then completed for a randomly-selected period throughout the remainder of the fiscal year. That "randomly- selected period" could be a randomly-selected week each quarter, randomly-selected two days per month, or other time period which would result in time sheets representing at least 20 days per year, in addition to the baseline.

(iii) A contractor can use the results of the baseline time study for allocating the employee's salary for the remainder of the year and make any necessary adjustments required from the results of the randomly-selected periods during the last month of the year or a contractor can allocate the employee's salary each month based upon the results of that month's time study.

(iv) A contractor must have its time study methodology and procedures in writing.

(D) Other shared indirect costs may be more accurately allocated based upon a functional methodology rather than a cost-to-cost allocation method.

(i) Maintenance staff costs could be functionally allocated, based upon the percentage (or dollar amounts) of work orders performed for the various program areas.

(ii) If one program pays its employees weekly and another program pays its employees monthly, payroll costs could be functionally allocated based upon each program's pro rata share of the number of payroll checks issued.

(4) Each cost allocation method will be reviewed on a case-by- case basis in order to ensure that the allocated costs fairly and reasonably represent the operations of the contractor. If in the course of an audit it is determined that the cost allocation method does not fairly and reasonably represent the operations of the contractor, then an adjustment to the allocation method will be made.

(5) Cost allocation methods must be clearly and completed documented in the contractor's workpapers, with details as to how pooled costs are allocated to each segment (component) of the business entity, for both contracted and noncontracted programs.

§732.242. Start-up Costs.

(a) Start-up costs (or pre-award costs) and policies are discussed in Office of Management and Budget (OMB) Circulars

A-110, A- 87, and A-122. Start-up costs are those reasonable and necessary preparation costs incurred by a contractor in the period of developing the contractor's ability to deliver services. Start-up costs can be incurred prior to the beginning of a newly-formed business and/or prior to the beginning of a new contract or program for an existing business. Allowable start-up costs include, but are not limited to, employee salaries, utilities, rent, insurance, employee training costs, and any other allowable costs incident to the start-up period. Start-up costs do not include capital purchases, which are purchased assets meeting the criteria for depreciation. Any costs properly identifiable as organization costs or capitalizable as construction costs must be appropriately classified as such and excluded from start-up costs. If a business or corporation never commences actual operations or if the new contract/program never delivers services, the start-up costs are unallowable.

(b) ~~(a)~~ Contractors with cost reimbursement contracts that are expanding into a new service area or are just beginning to provide services may, if allowed by program-specific policy and with appropriate Texas Department of Protective and Regulatory Services (TDPRS) [PRS] approvals, budget and bill for start-up costs. Hiring and orienting staff, purchasing equipment and supplies, and recruiting eligible clients are included.

(c) ~~(b)~~ If a contractor who requires start-up costs does not receive required licensure and/or certification to provide contracted services within 30 days after the effective date of the contract, no start-up costs are allowed.

(d) ~~(c)~~ Every effort should be made to contract with contractors that will not require TDPRS [the department] to provide start-up costs.

(e) Start-up costs are to be amortized using the straight-line method over a period of not less than 60 months.

§732.243. Employee Compensation.

(a) Employee compensation costs (or compensation for personal services) must be calculated in compliance with Office of Management and Budget (OMB) Circulars A-87 and A-122.

(b) ~~(a)~~ A contractor must:

(1) compensate employees according to policy, program, and procedures that effectively relate individual compensation to the person's contribution to performance of the contract work; result in internally consistent, equitable treatment of employees; and effectively relate compensation paid within the organization to that paid for similar services outside the organization.

(2) review and approve salaries by position or function.

(3) not provide retroactive salary increases or future increases unless the contract specifically allows for increases.

(4) keep time sheets on part-time employees or employees who devote a portion of their time to the contract.

(5) provide job descriptions when required by the Texas Department of Protective and Regulatory Services (TDPRS) [~~PRS~~] and only hire or promote people who meet job qualifications.

(c) ~~(b)~~ A contractor must not bill and receive reimbursement from funding sources for more than 100% of an employee's total salary or work time.

(d) ~~(c)~~ Contractors substantially engaged in activities other than the services for which TDPRS [PRS] is contracting must provide compensation for employees engaged in contract services that is comparable to compensation for other comparable contractor

activities. The contractor also must provide compensation to employees that is considered reasonable and comparable to the compensation paid for similar work in the labor market in which the contractor competes for the kind of employees involved.

(c) ~~(d)~~ Overtime is allowable as a cost to TDPRS ~~[the department]~~ only under the following conditions:

(1) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, or temporary, unavoidable situations.

(2) When periodically paying overtime to current staff will cost the department less than hiring temporary or additional staff.

(3) When services are required to meet client needs and no substitute direct service staff are available.

(f) ~~(e)~~ Overtime is reimbursable subject to allowability and budget limitations of the contract.

(g) ~~(f)~~ Merit raises or other additional compensation reimbursed by TDPRS ~~[the department]~~ and instituted by a contractor must meet the following requirements:

(1) Incentive compensation must be reasonable.

(2) Payment is made according to an agreement entered into in good faith between the contractor and its ~~[his]~~ employees before the services are rendered or according to an established plan that the contractor follows.

(h) ~~(g)~~ A contractor must determine its ~~[his]~~ responsibilities and comply with applicable state and federal laws and regulations to include the following:

(1) Workers' compensation-questions may be addressed to a qualified local insurance agency, the State Board of Insurance, or the State Industrial Accident Board.

(2) F.I.C.A. - questions may be addressed to IRS.

(3) Federal unemployment taxes - questions may be addressed to IRS.

(4) State unemployment taxes - questions may be addressed to the Texas Workforce ~~[Employment]~~ Commission.

(i) ~~(h)~~ A contractor may be reimbursed for budget costs incurred by its ~~[his]~~ employees (who are providing services under the contract) for travel including mileage, food, and lodging costs) and travel-related expenses in a cost reimbursement contract. However, the budget for the cost reimbursement contract must follow the requirements in §732.239 of this title (relating to Budget Changes), §732.240 of this title (relating to General Principles of Allowable and Unallowable Costs), and §§732.242-732.256 of this title (relating to Contract Administration) [§§732.239 through 732.256 of this title (relating to) Budget Changes, Allowable Costs, Allowable Costs for Reimbursement Contracts and for Developing Unit Rates, Start-up Costs, Employee Compensation, Consumable Supplies, Food Expenses, Equipment Depreciation and Use Allowances, Transportation of Clients, Insurance, Rental Costs, Space Rental, Renovations and Remodeling, Janitorial Services, Telephone, Professional Fees, and Unallowable Costs)].

(1) Certification of travel. The contractor must certify that travel expenses were incurred by staff while performing official contract business. The purpose for the trip, points of departure and arrival, and times of departure and arrival must be specified.

(2) Mileage. Allowable ~~[Budgeting and agency]~~ reimbursement for mileage is ~~[are]~~ computed on a per mile rate, not

exceeding the current mileage reimbursement rate set by the Texas Legislature for state employee travel ~~[state mileage rate currently in effect]~~. For audit purposes, contractors must keep copies of travel forms that TDPRS ~~[PRS]~~ approved in writing. Contractors may reimburse staff at rates in excess of those currently in effect for state employees if the contractor pays the difference. TDPRS ~~[PRS]~~ will not pay for the difference in mileage rate.

(3) Food and lodging. Costs for staff food may be reimbursed either on a per-diem rate or an actual cost basis, with the results of either method not exceeding the current per-diem rate set by the Texas Legislature for state employee travel. Costs for staff lodging must not exceed the per-night rate set by the Texas Legislature for state employee travel. Reimbursement must be substantiated by adequate documentation. [Budgeting and contractor reimbursement may be accomplished using either a per diem or cost-incurred basis. Only one method may be used for each trip.]

~~[(A) Per diem rate - Budgeting and reimbursement is computed on a per diem rate not to exceed the state per diem rate currently in effect. Reimbursement must be substantiated by adequate documentation.]~~

~~[(B) Cost-incurred basis - Budgeting and reimbursement using this method must be substantiated by receipts documenting the expenses claimed. The costs must be reasonable.]~~

(4) Other travel-related expenses. All other travel-related expenses, such as air fare and taxi fare, may be budgeted and are allowed on a cost-incurred basis if these costs are reasonable, necessary, and substantiated by adequate documentation.

(5) Volunteer travel. Travel for volunteers may be paid, if appropriate. Travel to and from home is not included, but travel on agency business is.

(6) Out-of-state travel. Out-of-state travel may be budgeted. The purpose and destination must be stated and the contract manager's previous approval is required for all contracts with the exception of residential child care contracts. The determination of allowability of out-of-state travel is based upon a comparison of total costs for similar or comparable travel purposes available within the state.

§732.244. Consumable Supplies.

(a) The contractor must follow Office of Management and Budget (OMB) Circulars A-110, A-87, and A-122, as applicable, in calculating the costs of consumable supplies (or materials and supplies).

(b) ~~[(a)]~~ A consumable supply is defined as any article costing less than \$50 per unit and having a useful life of less than one ~~[+]~~ year. Items meeting the cost standard but having a greater useful life expectancy are not considered consumable supplies as long as the cost of control and recordkeeping required on such items is reasonable in relationship to their value.

(c) ~~[(b)]~~ Consumable supplies charged by a contractor as a direct cost must include only the materials and supplies actually used to carry out the contract, and due credit must be given for any excess materials or supplies retained or returned to vendors.

§732.245. Food Expenses.

(a) Food costs for clients are considered direct costs. Contractors must follow Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable, in calculating food costs for clients.

(b) [(a)] Food expenses for clients may be budgeted in the contract. Staff meals may be reimbursed through the contract, if eating at a facility with the clients is a condition of employment. Food costs paid for by any other source, federal or state, are included in the total budget but are not reimbursable under the contract. This section does not apply to the food services program.

(c) [(b)] Contractors that charge staff for their meals may reimburse these staff members on a fringe benefit basis, and this reimbursement may be budgeted as such. When staff must pay on a meal-by-meal basis, the staff may continue to pay in this manner and submit a bill similar to travel reimbursement. In either instance, the Texas Department of Protective and Regulatory Services [department] reimburses the contractor for reasonable costs incurred. Accountability by the contractor must be maintained for each meal.

§732.246. *Equipment.*

(a)-(g) (No change.)

(h) If equipment purchased through a cost reimbursement contract is stolen, lost, vandalized, or misused, the contractor must immediately notify the department in writing. The department may require the contractor to repair or replace the equipment at its [his] expense or to reimburse the department for the state and federal share of the residual value of the equipment.

(i) (No change.)

§732.247. *Depreciation and Use Allowances.*

(a) Contractors must follow Office of Management and Budget (OMB) Circulars A-110, A-87, and A-122, as applicable, in calculating depreciation and use allowances.

(b) [(a)] Contractors may be compensated for certain costs related to the use of buildings, capital improvements, and usable equipment through depreciation or use allowance. Contractors may not use allowance or depreciation for the cost of land. Depreciation or use allowance on assets donated by third parties is allowable, subject to ownership requirements and donor conditions. However, any limitations on the amount of depreciation that would be applicable to the donor also apply to the recipient organization.

(c) [(b)] A contractor must not combine or change depreciation and use allowance methodologies unless the department approves in advance. The contract manager decides on the appropriateness of the combination of a use allowance and depreciation applicable to a single asset. The decision considers the amount of depreciation previously charged, the estimated useful life remaining, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the use of the asset.

(d) [(e)] A contractor electing to depreciate a particular class of assets is not allowed depreciation, rental, or a use charge on any assets that have been fully depreciated.

(e) [(d)] A contractor must exclude from the computation of use allowance and/or depreciation the cost or any portion of the cost of buildings and equipment borne by or donated by the federal government, no matter where the title was originally vested or where it presently resides.

(f) [(e)] "Acquisition cost" means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation, must be included in or excluded from the acquisition cost according to the contractor's regular written accounting practices. If the property is acquired with a trade-in the acquisition cost of the new

property is the amount expended for the property plus the acquisition cost of the property traded in less the amount of depreciation-to-date of trade-in for the property. Fully depreciated property has a book value of zero when traded in.

(g) [(f)] Charges for use allowances or depreciation must be supported by adequate contractor property records, and physical inventories must be taken at least once every two [2] years (a statistical sampling basis is acceptable) to ensure that assets exist and are usable and needed. When the depreciation method is followed, adequate depreciation records indicating the amount of depreciation taken each period must also be maintained. Records must be kept in the contractor's books of account.

(h) [(g)] The following methods are used to compute use allowances:

(1) For buildings and improvements, an annual rate of no more than 2% of acquisition cost is computed. The entire building must be treated as a single asset; the building's components (plumbing, heating, air conditioning, and so on) cannot be segregated from the building's shell.

(2) In those cases where the institution maintains current records on usable equipment on hand, an annual rate of not more than 6-2/3% of acquisition cost is computed.

(3) When no equipment records are maintained, the contractor must justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate of no more than 6-2/3% of the estimate.

(i) [(h)] The method of depreciation a contractor uses to assign the cost of an asset (or group of assets) to accounting periods must reflect the pattern of consumption of the asset during its useful life. Depreciation expense for any time period is the portion of the acquisition/depreciable basis of the property assigned to that time period. The acquisition cost/depreciable basis of the property is divided by the number of years of estimated useful-service life of the property to compute the depreciation expense per year (straight line method [with no salvage value]). The minimum useful lives to be assigned to depreciable property are as follows: [The number of years of estimated useful life of property is based on the Department of Treasury, Internal Revenue Services policies on depreciation for tax purposes.]

(1) buildings: 30 years, with a minimum salvage value of 10%;

(2) transportation equipment: a minimum of three years for passenger automobiles (including minivans), with a minimum salvage value of 10%; five years for light trucks and vans, with a minimum salvage value of 10%; and seven years for buses and airplanes, with a minimum salvage value of 10%. The estimated life of a previously owned (used) vehicle is the longer of the number of years remaining in the vehicle's depreciable life or three years.

(A) Luxury automobiles are defined as passenger automobiles (which include automobiles and minivans) and light trucks and vans (up to 15-passenger vans), with an historical cost at the time of purchase or a market value at execution of the lease exceeding \$30,000 when purchased or leased prior to January 1, 1997. Buses are excluded from the definition of luxury vehicles. For vehicles leased or purchased on or after January 1, 1997, luxury vehicles are defined as a base value of \$30,000 with 2% being added (using the compound method) to the base value each January 1 beginning January 1, 1998. Any amount above the definition of a luxury vehicle stated above is an unallowable cost. When a passenger

vehicle's cost exceeds the definition of a luxury vehicle stated above, the historical cost is reduced to the amount determined by the definition of a luxury vehicle. When a passenger vehicle's market value at the execution of the lease exceeds the amount determined by the definition of a luxury vehicle stated above, the allowable lease payment is limited to the lease amount for a vehicle with a base value as determined above, with adequate supporting documentation maintained by the contractor.

(B) Specialized equipment added to a vehicle to assist a client should be depreciated separately from the vehicle. Wheelchair lifts have an estimated useful life of four years; and

(3) all other depreciable assets, either based upon policies on depreciation for tax purposes of the Department of Treasury, Internal Revenue Service, or minimum schedules consistent with Estimated Useful Lives of Depreciable Hospital Assets, published by the American Hospital Association.

(j) Effective with their corporate fiscal year ending in 1997, residential child care contractors are required to depreciate purchases made during their corporate fiscal years ending in 1998 and thereafter of any single asset valued at \$1,000 or more and with an estimated useful life of more than one year at the time of purchase.

(k) [(+) The contractor must maintain adequate property records. The straight line [(with no salvage value)] method of computing depreciation must be used and must be consistently applied for any specific asset or class of assets and result in equitable charges.

§732.248. *Transportation of Clients.*

A contractor must follow Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable, in calculating transportation costs. A contractor may use one of the following options to place client transportation costs in the contract budget:

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

§732.249. *Insurance.*

A contractor must follow Office of Management and Budget (OMB) Circulars A-110, A-87, and A-122, as applicable, in calculating insurance costs. The contractor must adhere to the following:

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

§732.250. *Rental Costs.*

Rental costs are discussed in Office of Management and Budget (OMB) Circulars A-110, A-87, and A-122. Rental costs may be charged against the contract budget, but must be reasonable in light of rental costs of comparable property, if any; market conditions in the area; alternatives available; and the type, life expectancy, condition, and value of the property leased. The only limitations are as follows:

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

§732.251. *Space Rental.*

(a) A contractor must follow Office of Management and Budget (OMB) Circulars A-110, A-87, and A-122, as applicable in calculating rental costs.

(b) [(a)] The contractor must specify the number of square feet and the cost per square foot of its rental space. The total area must be reasonable for the number of staff and clients served. A copy of the lease agreement must be made available to the department's contract manager.

(c) [(b)] When a contracted program shares a facility with other programs, the contractor must allocate the cost on the basis of square footage used in each program. This allocation applies to rent, utilities, maintenance services and supplies (including custodian's

salary), repairs, insurance, and other related costs. Under certain circumstances, other allocation bases may be used, but only if square footage is inappropriate.

§732.252. *Renovations and Remodeling.*

A contractor may not be reimbursed by the Texas Department of Protective and Regulatory Services for [budget] renovations and remodeling costs unless the department specifically approves. A contractor must follow Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable, in calculating the costs of renovations and remodeling.

§732.254. *Telephone.*

The contractor must specify the number of lines, monthly base rate, and estimated monthly long distance charges in its budget. For billing purposes, all long distance charges must be fully documented to show applicability to the contract.

§732.255. *Professional Fees.*

Contractors must follow Office of Management and Budget (OMB) Circulars A-87 and A-122, as applicable, in calculating professional service fees. Contractors may budget the following:

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

[(5) Audit fees if the department requires the audits.]

§732.256. *Unallowable Costs.*

In addition to those costs defined as allowable costs by Office of Management and Budget (OMB) Circulars A-110, A-87, and A-122, [~~Contractors~~] residential child care contractors may not budget nor be reimbursed for the following costs under contracts with the Texas Department of Protective and Regulatory Services [for the following]:

(1) Values assigned to the services of unpaid workers or volunteers.

(2) Client educational expenses for those facilities that educate in an onsite school those children for whom no Admission, Review, and Dismissal (ARD) Committee determination about attendance (based on health, safety, and quality of service reasons) has been made. These expenses include:

(A) compensation for administrators, teachers, and teachers' aides for providing client educational services;

(B) expenses for textbooks and teaching aid supplies;

(C) the lease and/or depreciation (or use allowance) of buildings and equipment used to provide client educational services, as well as related utilities, insurance, tax, and maintenance expenses. This expense also includes compensation of staff for facility maintenance; and

(D) the costs of buildings or spaces within a building that are used for both client educational and noneducational purposes. When a building or a space within a building is used for both client educational and noneducational purposes, the portion of building and equipment expenses directly related to providing client educational services in that building or space is unallowable on a pro rata basis.

(3) Hospitalization expenses for clients.

(4) Medical and dental expenses (including medications) for clients paid for by a third-party payor or covered by Medicaid and/or EPSDT Medicaid.

(5) Expenses related to college enrollment and/or attendance.

(6) Premiums for life insurance in which the beneficiary is the contractor, unless life insurance is required in a loan agreement related to residential child care services.

(7) Any expenses for the corporation or association board of directors, with the exception of errors and omissions insurance (i.e., liability).

~~{(1) Advertising costs for anything other than the recruitment of staff, procurement of scarce items, or disposal of scrap or surplus materials.}~~

~~{(2) Bad debts.}~~

~~{(3) Bidding or proposal costs.}~~

~~{(4) Capital expenditures.}~~

~~{(5) Contingencies.}~~

~~{(6) Contributions and donations by the contractor.}~~

~~{(7) Entertainment costs.}~~

~~{(8) Excess facility costs.}~~

~~{(9) Fines and penalties.}~~

~~{(10) Interest costs and investment counsel costs.}~~

~~{(11) Fund raising costs.}~~

~~{(12) Losses on other grants or contracts.}~~

~~{(13) Organization or reorganization costs.}~~

~~{(14) Public information service, except as specified in the contract.}~~

~~{(15) Publication costs.}~~

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

Filed with the Office of the Secretary of State on June 29, 1998.

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C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765

40 TAC §732.241

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

The repeal is proposed under the Human Resources Code (HRC), Chapter 40, which describes the services authorized to be provided by the Texas Department of Protective and Regulatory Services; and authorizes the department to enter into agreements with federal, state, and other public or private agencies or individuals to accomplish the purposes of the programs authorized by the HRC; and grants authority to contract to that Department.

The repeal implements the HRC, Chapter 40, which authorizes the department to enter into agreements with federal, state, or other public or private agencies or individuals to accomplish the

purposes of the programs authorized by the HRC and which authorizes the department to enter into contracts as necessary to perform any of its powers or duties.

§732.241. *Allowable Costs for Cost Reimbursement Contracts and for Developing Unit Rates.*

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810249

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Proposed date of adoption: October 1, 1998

For further information, please call: (512) 438-3765

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 2. Environmental Policy

Subchapter B. Memoranda of Understanding with Natural Resource Agencies

43 TAC §2.24

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

The Texas Department of Transportation proposes the repeal of §2.24, concerning Memorandum Of Understanding with the Texas Historical Commission and the Texas Antiquities Committee, and new §2.24, concerning Memorandum Of Understanding with the Texas Historical Commission.

EXPLANATION OF PROPOSED REPEAL AND NEW SECTION

Transportation Code, §201.607, requires the department to adopt a Memorandum of Understanding (MOU) with each state agency that has responsibilities for the protection of the natural environment, the preservation of the natural environment, or for the preservation of historic or archeological resources. Section 201.607 also requires the department to adopt the memoranda and all revisions by rule and to periodically evaluate and revise the memoranda. In order to meet the legislative intent and to ensure that historic and archeological resources are given full consideration in accomplishing the department's activities, the department has evaluated the memorandum adopted in 1992 and finds it necessary to propose the repeal of §2.24 and the simultaneous proposed adoption of new §2.24 in a revised form. New §2.24 describes procedures providing for Texas Historical Commission (THC) review of Texas Department of Transportation projects which have the potential to affect cultural resources within the jurisdiction of THC.

New §2.24 describes the purpose of the new section, including implementing provisions of Texas Transportation Code, §201.607, and the rules for coordination of state-assisted trans-

portation projects, Title 43, Texas Administrative Code, §§2.40-2.51, which underline the need for and importance of comprehensive environmental coordination for all transportation projects. Section 2.24 also provides definitions for words and terms used in the MOU.

Subsection (a) explains the purpose of the MOU, including a statement of TxDOT policy regarding the identification of environmental impacts of TxDOT projects; the basis for project decisions; public input; the use of a systematic interdisciplinary approach in project development; and the intention to strive for environmentally sound transportation activities. The MOU provides a formal mechanism by which THC may review TxDOT projects.

Subsection (b) provides the authority for this Memorandum of Understanding under Texas Transportation Code, §201.607, which directs TxDOT to adopt MOUs with appropriate environmental resource agencies including THC.

Subsection (c) provides definitions for this section.

Subsection (d) outlines the responsibilities of the department and THC. The department's responsibilities include planning and designing safe, efficient, effective and environmentally sensitive transportation facilities; the timely and efficient construction of transportation facilities; and the ongoing maintenance of transportation facilities. THC serves as the State Historic Preservation Office in Texas, which includes reviewing federally assisted, licensed or permitted undertakings for their effects to archeological and historic resources, regulating the disposition and management of State Archeological Landmarks and issuing permits for the taking, excavation, restoration or study of State Archeological Landmarks.

Subsection (e) contains a new provision for early project planning for cultural resources which provides for implementation of TxDOT's commitment to performing early identification of cultural resources located within the area of potential effects of proposed transportation projects, implementing alternative methods, techniques, and other strategies that are reasonable and feasible and that will enhance efficiency in complying with cultural resource laws, and to providing the public and interested parties with opportunities to provide input and express their views concerning potential impacts to historic properties.

Subsection (f) contains procedures for coordination regarding archeological resources as required by state and federal statutes and regulations (13 TAC Chapter 26 and 36 CFR Part 800) including provisions for the identification of archeological sites, the requirements for archeological surveys, provisions for determining site significance through archeological eligibility testing, provisions for archeological excavation/data recovery, a process for dealing with archeological sites found after award of contract, and provisions for artifact recovery and curation.

Subsection (g) contains procedures for coordination regarding historic properties as required under state and federal statutes and regulations (13 TAC Chapter 26 and 36 CFR Part 800), including provisions for a consideration of historic properties during early project development.

Subsection (h) outlines provisions for the identification of historic properties as required by state and federal laws and regulations (13 TAC Chapter 26 and 36 CFR Part 800) and for an evaluation of the historic significance of these properties.

Subsection (i) provides for assessing and mitigating effects for these historic properties as required under state and federal statutes and regulations (13 TAC Chapter 26 and 36 CFR Part 800). Subsection (j) concerns the environmental document and public involvement.

Subsection (k) provides for dispute resolution as required under state and federal laws and regulations.

Subsection (l) provides for the review and update of this memorandum by January 1, 2002.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the new section is in effect, there will not be fiscal implications for state or local governments as a result of enforcing or administering the new section. There are no anticipated economic costs for persons required to comply with the section as proposed.

Dianna F. Noble, P.E., Director, Environmental Affairs Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new section.

PUBLIC BENEFIT

Ms. Noble has also 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 new section will be increased coordination and communication between the department and THC resulting from implementation of the memorandum of understanding, ensuring that the state's cultural resources are preserved to the fullest extent possible and enhanced where practicable and ensuring comprehensive environmental coordination for all transportation projects including a full consideration of historic properties and archeological sites in a manner consistent with federal and state laws, regulations and guidelines. There will be no effect on small businesses.

PUBLIC HEARING

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation and the Texas Historical Commission will conduct a joint public hearing to receive comments concerning the proposed new chapter. The public hearing will be held at 1:30 p.m. on July 28, 1998, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested persons may appear and offer comments, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member when possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc. for proper reference. Any suggestions or requests for alternative language or other revisions to the proposed text should be submitted in written form. Presentations must remain pertinent

to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Eloise Lundgren, Director, Public Information Office, 125 East 11th Street, Austin, Texas 78701-2483, 512/463-8588 at least two working days prior to the hearing so that appropriate services can be provided.

SUBMITTAL OF COMMENTS

Written comments on the proposed repeal and new section may be submitted to Dianna F. Noble, P.E., Director of Environmental Affairs, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1998.

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.607, which requires that the department adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or the preservation of the natural environment or for the preservation of historic or archeological resources and that these memoranda and all revisions be adopted as rules.

No statutes, articles, or codes are affected by this proposed repeal.

§2.24. *Memorandum of Understanding with the Texas Historical Commission and the Texas Antiquities Committee.*

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810231

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 1998

For further information, please call: (512) 463-8630



STATUTORY AUTHORITY

The new section is proposed under Transportation Code, §2001.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, §201.607, which requires that the department adopt memoranda of understanding with each agency that has responsibility for the protection of the natural environment or the preservation of the natural environment or for the preservation of historic or archeological resources and that these memoranda and all revisions be adopted as rules.

No statutes, articles, or codes are affected by this proposed new section.

§2.24. *Memorandum of Understanding with the Texas Historical Commission.*

(a) Purpose.

(1) It is the policy of the Texas Department of Transportation (TxDOT) to:

(A) identify the environmental impacts of TxDOT transportation projects, to coordinate these projects with applicable state and federal agencies, and reflect these investigations and coordination in the environmental documentation for each project;

(B) base project decisions on a balanced consideration of the need for a safe, efficient, economical, and environmentally sound transportation system;

(C) receive input from the public through the public involvement process;

(D) utilize a systematic interdisciplinary approach as an essential part of the development process for transportation projects; and

(E) strive for environmentally sound transportation activities through appropriate avoidance, treatment or mitigation, where feasible and prudent, in coordination with appropriate resource agencies.

(2) In order to pursue this policy, the Texas Department of Transportation and the Texas Historical Commission (THC) have agreed to develop this Memorandum of Understanding (MOU), which will supersede the MOU which became effective on October 16, 1992.

(3) It is the intent of this MOU to provide a formal mechanism by which THC may review TxDOT projects which have the potential to affect cultural resources within the jurisdiction of THC in order to assist TxDOT in making environmentally sound decisions, and to develop with TxDOT a system by which information developed by TxDOT and THC may be exchanged to their mutual benefit. Unless otherwise specified in this MOU, all definitions in 13 TAC Chapter 26, Rules of Practice and Procedures for the Antiquities Code of Texas, Texas Historical Commission, will be used.

(b) Authority.

(1) The Texas Transportation Code, §201.607, directs TxDOT to adopt MOUs with appropriate environmental resource agencies, including THC. The rules for coordination of state-assisted transportation projects found in §§2.40-2.51 of this title (relating to Environmental Review and Public Involvement for Transportation Projects), underline the need for and importance of comprehensive environmental coordination for all transportation projects.

(2) This MOU complements a Programmatic Agreement (PA) that TxDOT executed with the Federal Highway Administration (FHWA), the Texas State Historic Preservation Officer (TSHPO), and the Advisory Council on Historic Preservation (Council) in December of 1995. The PA delineates the process by which the signatory parties agree to carry out the National Historic Preservation Act, §106 (16 U.S.C. 470f) for federally assisted, permitted and licensed transportation projects within the state.

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

(1) Antiquities Code of Texas (ACT) - The state statute that designates the Texas Historical Commission as the legal custodian of all cultural resources, historic or prehistoric, within the public domain of the state, the body which issues antiquities permits,

in accordance with 13 TAC Chapter 26 and as provided in ACT §191.054 and 191.091-098. The Texas Historical Commission assumed these responsibilities from the Texas Antiquities Committee which was abolished under Senate Bill 365, enacted by the 74th Legislature in 1995.

(2) Antiquities permit - A permit issued by the Texas Historical Commission in order to regulate the taking, alteration, damage, destruction, salvage, archeological survey, testing, excavation and study of state archeological landmarks including prehistoric and historic archeological sites, and the preservation, protection, stabilization, conservation, rehabilitation, restoration, reconstruction, or demolition of historic structures and buildings.

(3) Area of potential effects - The geographic area or areas within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist, as defined in 36 CFR Part 800.

(4) Cultural resources - A general term referring to buildings, structures, objects, sites, and districts more than 50 years of age with the potential to have significance in local, state, or national history.

(5) Eligibility - A site's eligibility for the National Register of Historic Places as set forth in 36 CFR Part 800, or for designation as a State Archeological Landmark, as set forth in 13 TAC Chapter 26.

(6) Historic property - Any prehistoric or historic district, site, building, structure, or object which is included or eligible for inclusion in the National Register of Historic Places, as defined in 36 CFR Part 800, or meets the requirements for designation as a State Archeological Landmark as set forth in 13 TAC Chapter 26. (This term is used interchangeably with "significant properties" and "significant cultural resources.")

(7) National Register - The National Register of Historic Places (NRHP), which is the nation's inventory of historic places maintained by the U.S. Secretary of the Interior. (Historic properties included in or eligible for inclusion must meet National Register criteria for evaluation, as defined in 36 CFR Part 60.)

(8) State Archeological Landmark (SAL) - Archeological and historic properties as defined in Subchapter D of the Antiquities Code of Texas (ACT) and identified in accordance with 13 TAC Chapter 26.

(d) Responsibilities.

(1) Texas Department of Transportation. The responsibilities of TxDOT pertain primarily to its functions as a transportation agency, and include:

(A) planning and designing safe, efficient, effective, and environmentally sensitive transportation facilities while avoiding, minimizing, or compensating for impacts to cultural resources to the fullest extent practicable;

(B) the timely and efficient construction of transportation facilities, in a manner consistent with approved plans and agreements which TxDOT has executed regarding the protection of significant cultural resources; and

(C) ongoing maintenance to provide safe, efficient, and environmentally sound transportation facilities for the traveling public.

(2) Texas Historical Commission. The responsibilities of THC relate primarily to its functions as a cultural resource agency, and include:

(A) servicing as the State Historic Preservation Office in Texas with responsibility under 36 CFR Part 800 - the regulations implementing §106 of the National Historic Preservation Act (16 U.S.C. 470f);

(B) reviewing federally assisted, licensed, or permitted undertakings with the potential to affect properties included in or eligible for inclusion in the National Register of Historic Places;

(C) providing assistance to agencies in their efforts to comply with the §106 process;

(D) regulating the disposition and management of State Archeological Landmarks which are affected by non-federal undertakings, as described in the Antiquities Code of Texas and 13 TAC Chapter 26; and

(E) issuing permits for the taking, excavation, restoration, or study of State Archeological Landmarks as provided in ACT, §§191.054 and 191.091-098.

(e) Early project planning for cultural resources.

(1) TxDOT is committed to performing early identification efforts for cultural resources located within the area of potential effects of proposed transportation projects and initiating THC coordination during the early planning stages of these projects, when the widest range of alternatives is open for consideration.

(2) TxDOT is committed to implementing, in consultation with THC, alternative methods, techniques, and other strategies that are reasonable and feasible and that will enhance efficiency in complying with cultural resource laws. These include, but are not limited to, a programmatic approach to coordination of selected types of cultural resources, geoarcheological research to reduce archeological liabilities, development of significance standards, and alternative mitigation strategies. When implemented, with the concurrence of THC, such alternative strategies will replace the procedures set forth in this MOU.

(3) TxDOT is also committed to providing the public and interested parties with opportunities to provide input and express their views concerning potential project impacts to historic properties, and will ensure that cultural resource issues are incorporated into its regular public participation programs carried out under the National Environmental Policy Act (42 USC 4321-4347 et seq.), and §§2.42-2.43 of this title (relating to Highway Construction Projects-Federal Aid, and Highway Construction Projects-State Funds), as far as practicable.

(4) Cultural resource investigations by consultants.

(A) TxDOT has the right to perform cultural resource investigations using staff or consultants who meet the professional standards of 13 TAC Chapter 26, and as required by 36 CFR Part 800.

(B) Cultural resource surveys, investigations, permit applications, and other work performed by consultants shall be coordinated with THC through TxDOT's Environmental Affairs Division.

(f) Procedures for coordination regarding archeological resources. Survey and eligibility testing of archeological resources performed by the archeological staff of TxDOT's Environmental Affairs Division will not require an antiquities permit. All other archeological

investigations shall require an antiquities permit. TxDOT and THC will consult to discuss the feasibility and benefits of TxDOT submitting a compilation of survey and test excavation results to THC in an annual or biannual report.

(1) Identification.

(A) TxDOT will undertake sufficient background research to determine which proposed projects require archeological surveys. Background research may include a search of records and files at THC and/or the Texas Archeological Research Laboratory (TARL), gathering information on soils, and a geomorphic history of the projects.

(B) Based on the results of background research, TxDOT will identify projects requiring coordination and/or archeological investigation for archeological resources.

(C) TxDOT will identify projects which are not believed to require individual coordination for archeological sites and will provide THC with a list of such projects on a monthly basis.

(2) Archeological surveys.

(A) All projects, and portions of projects, recommended for survey by TxDOT during the initial phase of coordination will be subject to archeological survey using the methods agreed upon between TxDOT and THC in conformance with 36 CFR Part 800.

(B) An archeological survey will be conducted by a TxDOT professional archeological staff member or other archeologist who meets the state and federal standards. Surveys may be limited to an evaluation of existing impacts or stratigraphic integrity when these are sufficient to determine that any sites present are unlikely to be eligible.

(C) When the archeological survey has been completed, TxDOT will submit the results of the survey to THC in a report of investigations, and request THC's review of the report. With its request for review, TxDOT will include:

(i) details of the results of the survey, including project description, anticipated project impact, and existing disturbance in the project area;

(ii) environmental data on topography, soils, land use, survey methodology, survey results, and recommendations;

(iii) the project location plotted on 7.5' Series USGS quadrangle maps;

(iv) descriptions of any sites found;

(v) submission of electronic or paper copies of archeological site survey forms to TARL; and

(vi) recommendations regarding whether the site(s) merit archeological testing or archeological monitoring.

(D) THC will respond within 30 days of receipt of the TxDOT request for review of the survey results and recommendations. The response will include:

(i) a statement of concurrence or non-concurrence with the results of the survey; and

(ii) any other comments relevant to the archeological resources which could be affected by the project.

(E) TxDOT will include the results of the archeological survey and recommendations in the environmental document for the project, as far as practicable.

(3) Archeological eligibility testing phase.

(A) All sites and portions of sites recommended for eligibility testing by THC will be subject to archeological testing, using the methods agreed upon in writing by TxDOT and THC.

(B) THC may send a representative to observe any or all of the testing procedures.

(C) At the completion of testing, TxDOT will prepare a formal report of the results of testing.

(i) For sites affected by federal undertakings, the report will include recommendations regarding eligibility for the NRHP, as described in 36 CFR Part 800.

(ii) For sites affected by non-federal undertakings, the report will include recommendations regarding the significance of the site and whether designation as a State Archeological Landmark is warranted, in accordance with ACT, §§191.091-092, and 13 TAC Chapter 26.

(D) TxDOT will send the testing report to THC with a request for review.

(E) In accordance with 36 CFR Part 800, THC will respond to the report within 30 days of receipt of TxDOT's request for review. The response will include:

(i) a statement of concurrence or non-concurrence with the results of the archeological testing and recommendations contained in the TxDOT request for review; and

(ii) a determination of the site's eligibility for listing in the National Register of Historic Places, or for designation as a State Archeological Landmark.

(4) Archeological excavation/data recovery.

(A) All sites and portions of sites determined to be eligible for the NRHP (for federal undertakings) or eligible for designation as a State Archeological Landmark (for non-federal undertakings) based on consultation with THC during the survey phase or testing phase, will be subject to data recovery in conformance with a data recovery plan approved by THC.

(B) TxDOT, in consultation with THC, will develop a data recovery plan for each eligible site on a case-by-case basis, in accordance with 36 CFR Part 800 for federal undertakings and ACT §191 for non-federal undertakings. Final data recovery plans must be approved by THC prior to their implementation.

(C) Results of data recovery will be published as required by 36 CFR Part 800 and/or ACT §191.

(D) All data recovery will be performed under an antiquities permit.

(5) Archeological sites found after award of contract.

(A) When previously unknown archeological remains are encountered after award of contract, TxDOT will immediately suspend construction or any other activities that would affect the site.

(B) A TxDOT archeologist will examine the remains and report the findings to THC within 48 hours of the examination. The Federal Highway Administration (FHWA) and/or TxDOT will enter consultations regarding the disposition of the site or sites for federal undertakings, as required by 36 CFR Part 800, or as required by the Texas Antiquities Code for state funded projects.

(C) TxDOT and THC will prepare a plan of action to determine eligibility or significance, and/or mitigate the effects on the site or sites.

(D) TxDOT may continue construction in the affected area upon approval of THC.

(6) Artifact recovery and curation.

(A) Artifact recovery.

(i) The type and quantity of artifacts to be recovered will be detailed in the scope of work and will be selected to address the research questions.

(ii) Artifacts or analysis samples (such as soil samples) that are recovered from survey, testing, or data recovery investigations by TxDOT or their contracted agents that address the research questions must be cleaned, labeled, and processed in preparation for long-term curation.

(iii) To ensure proper care and curation, recovery methods must conform to 36 CFR Part 800, 13 TAC Chapter 26, and Council of Texas Archeologists (CTA) guidelines, as applicable.

(B) Artifact curation.

(i) TxDOT or its permitted contractor may temporarily house artifacts and samples during laboratory analysis and research, but upon completion of the analysis, all artifacts must be transferred to a permanent curatorial facility in accordance with the terms of the antiquities permit.

(ii) Artifacts and samples will be placed at the Texas Archeological Research Laboratory or some regional artifact curatorial repository which fulfills 36 CFR Part 79, the ACT, or CTA Curation Standards, as approved by THC. When appropriate, TxDOT will consult with THC to identify collections or portions of collections that do not have identifiable value for future research or public interpretation. This information may serve as the basis for future consultation between TxDOT and THC regarding the disposition of such collections or portions of collections. Final approval regarding the disposition of collections will be made by THC.

(iii) TxDOT is responsible for the curatorial preparation of all artifacts so that they are acceptable to the receiving curatorial repository and fulfill 36 CFR Part 79 and 13 TAC Chapter 26, as approved by THC.

(g) Procedures for coordination regarding historic properties, early project development. For purposes of this subsection and subsections (h) and (i) of this section, the term historic properties will refer only to non-archeological historic properties.

(1) Early in the project development process, TxDOT will determine whether federally assisted, licensed, or permitted transportation projects (federal projects) constitute undertakings under 36 CFR Part 800. In consultation with THC, it has been determined that certain types of projects do not require individual coordination and may be included in a monthly report. These projects involve culverts and other structures and objects which lack engineering, architectural or historical merit and projects which have a minimal potential to affect historic properties if such are present in the area of potential effects. TxDOT will notify THC of all such projects in a monthly report. The monthly report will include a summary of each project that is sufficient to allow THC to determine if more information is needed. THC will have 30 days to approve the monthly report or to request additional information concerning any of the projects on the list.

(2) Early in the project development process, TxDOT will review its non-federal transportation projects and other activities occurring on any of the lands of the State of Texas (state projects) to determine whether they have the potential to affect properties 50 years of age or older under the terms of the ACT, 13 TAC Chapter 26. Effects include the removal, alteration, or renovation of one or more contributing elements to a historic property. TxDOT will notify THC of state projects which will not have an effect on any properties 50 years of age or older in a monthly report. The monthly report will include a summary of each project that is sufficient to allow THC to determine if more information is needed. THC will have 30 days to approve the monthly report or to request additional information concerning any of the projects on the list.

(3) If TxDOT determines that a federal project constitutes an undertaking as defined in 30 CFR Part 800, or that a state project has the potential to affect a historic property, TxDOT will then individually coordinate the project with THC, except as noted in this MOU, in accordance with the provisions provided in subsequent sections of this agreement.

(h) Identification and evaluation of historic properties.

(1) For state and federal projects requiring individual THC coordination, TxDOT will identify properties 50 years of age or more that will be affected by state projects or that are located within the area of potential effects for federal projects. TxDOT will conduct a search of available records, including listings of Registered Texas Historic Landmarks, State Archeological Landmarks, and properties listed in the National Register as well as local historic property survey files on record at THC. THC will render all reasonable assistance to TxDOT in performing record searches on potentially historic properties.

(2) TxDOT will conduct field surveys for all projects except those which qualify for inclusion on a monthly list. These surveys will be conducted in order to locate properties 50 years of age or more or properties that may otherwise be eligible for inclusion on the National Register of Historic Places or which may qualify as SALs. If no such properties are identified, the following procedures will apply.

(A) For state projects, the project will be added to the monthly report coordinated with THC as described in this MOU.

(B) For federal projects, TxDOT will inform THC in accordance with 36 CFR Part 800.

(3) If the identification efforts reveal properties 50 years of age or more, TxDOT will evaluate the significance of each property to determine if the property:

(A) qualifies as a SAL as defined by ACT, §191.092, for state projects; or

(B) is eligible for inclusion in the National Register, or is a contributing element of a National Register eligible or listed district, for federal projects.

(4) If a state or federal project has the potential to affect a bridge-class structure more than 50 years of age and the structure is included in the State Historic Bridge Inventory (SHBI) that has been formally accepted by THC, the following procedures apply.

(A) If the structure has been determined not historically significant under the SHBI, TxDOT will coordinate with appropriate local entities to determine if the structure has local interest or significance. If no local interest or significance is identified, TxDOT will add the project to the monthly report. If TxDOT or THC iden-

tifies local interest or significance in these structures, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(B) If the bridge-class structure has been determined historically significant under the SHBI, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(5) If a state or federal project has the potential to affect a bridge-class structure more than 50 years of age that has not been included in a SHBI that has been formally accepted by THC, TxDOT will assess the significance of the structure to determine if it has potential engineering, architectural, or historic merit.

(A) In consultation with THC, bridge-class structures of types determined to have no potential merit will include, but not be limited to, common-type structures with no distinguishing features and those structures which have been substantially altered or widened within the past 50 years. When TxDOT determines that a bridge has no potential engineering, architectural or historic merit, TxDOT will add the project to the monthly report.

(B) When TxDOT determines that a bridge has potential engineering, architectural, or historic merit, TxDOT will individually coordinate the project with THC following the procedures set forth under this paragraph.

(C) If a state or federal project has the potential to cause an adverse effect to properties 50 years of age or more, as far as practicable, TxDOT will seek information and input concerning the historic significance of these properties from local entities, such as county historical commissions, local governments, city preservation officers, and neighborhood associations, that are likely to have knowledge of, or an interest in these properties.

(D) TxDOT will coordinate with THC early in the project planning process to determine the historic significance of properties identified as 50 years of age or older that will be affected by state projects or that are located within the area of potential effects for federal projects. For state projects, TxDOT will initiate coordination with THC no later than 60 days prior to the contract bid opening for construction, as required by ACT, §191.098 and 13 TAC §26.22, or for federal projects, coordination for historic significance will follow 36 CFR Part 800 to ensure proper care and curation.

(E) For each project coordinated with THC, TxDOT will provide:

(i) a project description and scope;

(ii) a map showing the location of the project as well as all properties 50 years of age or older documented through identification efforts;

(iii) a statement detailing the efforts and methodology used to identify potentially historic buildings and structures in the project area;

(iv) documentation on each identified property, including at least one photograph of the property, the address if known, an architectural description, and date of construction (estimated or known), and any known local, state or national historical designations;

(v) a statement of historic significance for each identified property, including:

(I) for a state project, whether the property qualifies as a SAL;

(II) for a federal project, whether each property 50 years of age or more is eligible for inclusion in the National Register, including information as to whether the property is a contributing element of a National Register listed historic district or may be a contributing element of a potential National Register district;

(vi) results of any coordination with interested parties concerning the significance of identified properties; and

(vii) the results of TxDOT's historic significance evaluation for each identified property.

(F) THC will respond within 30 days of receipt of TxDOT's request for review of individual projects as follows.

(i) For a state project, THC response will indicate whether the project will require an historic structures permit for a SAL or whether THC or another party intends to institute SAL proceedings for a property previously not designated a SAL in accordance with 13 TAC §§26.11, 26.12 and 26.22, and ACT, §191.098. If THC does not respond within 30 days, TxDOT will assume that THC has no objection, and TxDOT will proceed with the project without further coordination with THC regarding historic property issues.

(ii) For a federal project, all coordination with THC will follow the provisions of 36 CFR Part 800.

(i) Assessing and mitigating effects. TxDOT will assess the effects of state and federal projects on properties determined to qualify as SALs for state projects and on properties determined to be listed or eligible for inclusion in the National Register for federal projects. TxDOT will then consult with THC using the following procedures.

(1) For a state project, TxDOT will consult with THC to determine if a historic structures permit is required for any proposed removals, alterations, or renovations to SALs or to properties on which THC decides to institute SAL proceedings in accordance with 13 TAC §26.22 and ACT, §191.098.

(2) For a federal project, TxDOT will apply the criteria of effect and consult with THC for a determination of effect in accordance with the provisions set forth in 36 CFR Part 800.

(3) TxDOT will, to the maximum extent practicable, provide an early opportunity for the public and interested parties to receive information and to express their views on projects when a historic property may be negatively affected by a transportation project.

(4) TxDOT will also consult with THC to seek ways to avoid, minimize, or mitigate any negative effects on historic properties caused by federal and state projects in accordance with the following procedures.

(A) State project. TxDOT shall take THC comments into account when projects will have an effect on properties that are determined to qualify as SALs or other properties that are listed or determined eligible for listing in the National Register. TxDOT will apply for historic structure permits for all projects that alter, renovate, or remove SALs or other properties on which THC has instituted SAL proceedings, following the procedures delineated in 13 TAC §26.22 and ACT, §191.098.

(B) Federal project. TxDOT will follow the consultation procedures set out in 36 CFR Part 800.

(j) Environmental document and public involvement. TxDOT will include information on its efforts to identify archeological

sites and historic properties, to determine the effects of projects on archeological sites and historic properties, and to mitigate any negative effect on these sites or properties in the environmental document, if one is prepared, and will include this information in public involvement activities to the maximum extent practicable.

(k) Dispute Resolution.

(1) If THC and TxDOT cannot reach agreement on any plans or actions carried out pursuant to this agreement, THC and TxDOT will consult to resolve the objection.

(2) If THC and TxDOT cannot reach a compromise solution or otherwise resolve the objection through consultation, either TxDOT or THC may choose to invoke the dispute resolution provisions which are set forth in paragraph (3) of this subsection.

(3) When these dispute resolution provisions are invoked, if TxDOT and THC cannot resolve their disagreement, the two agencies will resolve their dispute in accordance with the procedures established under state and federal rules.

(A) Federal undertakings will follow the dispute resolution procedures as stipulated in 36 CFR Part 800.

(B) State projects will follow the procedures provided in 13 TAC Chapter 26.

(1) Review of MOU. This memorandum shall be reviewed and updated by January 1, 2002, and by every fifth year from that date, as provided for in Transportation Code, §201.607.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810232

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 1998

For further information, please call: (512) 463-8630



Chapter 4. Employee Practices

Subchapter F. Employee Training and Education

43 TAC §§4.61, 4.63, 4.64

The Texas Department of Transportation proposes amendments to §§4.61, 4.63, and 4.64, concerning the department's employee training and education program.

EXPLANATION OF PROPOSED AMENDMENTS

Government Code, §656.048 requires state agencies to adopt rules relating to the eligibility of the department's administrators and employees for training and education supported by the state agencies and the obligations assumed by the administrators and employees on receiving the training and education.

These sections are amended to reflect organizational changes within the department. Section 4.61 is amended to include definitions for district, district engineer, division, division director, and office director to reflect who will be making the decision concerning the education assistance programs. The definition for senior management team has been deleted to reflect the elimination of the positions in the department.

Sections 4.63 and 4.64 have been amended to allow the district engineer, division director, office director, or administrator to nominate for, approve participation in, and determine eligibility

in the program instead of the management team member. The district engineer, division director, or office director were part of the management team, but the term "management team" is no longer being used. The appropriate district engineer, division director, office director, or administrator may also approve the type of institution and receive credit verification. The director of Human Resources Division may approve an extension in the full-time master's program. Amendments also reflect the reorganization of the Training, Quality and Development Division as a section within the Human Resources Division.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the amendments are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amended sections as proposed.

Cathy Williams, Director, Human Resources Division has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Cathy Williams has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing or administering the amendments is to clarify who in the department makes decisions concerning the education programs. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to Cathy Williams, Director, Human Resources Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1998.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter §656.048 which requires state agencies to adopt rules relating to the eligibility of the department's administrators and employees for training and education and the obligations assumed by the administrators and employees on receiving the training and education.

No statutes, articles, or codes are affected by these proposed amendments.

§4.61. Definitions.

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

(1) Assistance - Financial aid provided by the department to its employees for education expenses.

(2) Department - The Texas Department of Transportation.

(3) District - One of 25 geographical areas, managed by a district engineer, in which the department conducts its primary work activities.

(4) District engineer - The chief administrative officer in charge of a district of the department.

(5) Division director - The chief administrative officer of a division of the department.

(6) Employee - An individual employed with the department in either a full-time or part-time position, not including contract employees.

(7) Executive director - The executive director of the department.

(8) Hardship - A serious or catastrophic illness, family emergency, or extenuating circumstances beyond the control of the student which preclude the student from being reasonably expected to comply with the terms of an education assistance agreement.

~~[Management team member - A senior management team member, district engineer, division director, or special office director.]~~

(9) Office director - The chief administrative officer of a specialized organizational unit of the department which is headquartered in Austin.

(10) Part-time position - An individual employed with the department and working between 20 and 39 hours per week.

(11) Professional development requirement - Education and/or technical training required for an employee to progress higher in that employee's career ladder, or meet increased skill demands of the employee's job assignment.

(12) Program Selection Committee - The committee, approved by the executive director, that selects the employees who will participate in the department-sponsored full-time master's program.

(13) Prospective duty assignment - A department job assignment that may, with reasonable probability, become available in the foreseeable future to an employee.

~~[Senior management team member - The executive director, director of staff services, or a deputy executive or assistant executive director.]~~

(14) Training - Activities designed to improve employee job performance and job-related skills by achieving specific, measurable, predetermined learning objectives.

§4.63. *Education Programs.*

(a) (No change.)

(b) Eligibility.

(1) Education Assistance Program. To be eligible for participation in an associate's, baccalaureate, master's, or doctorate degree program under the educational assistance program an employee must meet the following requirements before assistance is granted:

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

(F) seek enrollment and participation in a field of study that:

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

(iii) meets minimum requirements for a profession other than the employee's current job field in which the department anticipates staffing needs and the employee has demonstrated an aptitude through job performance, provided that the employee receives the ~~[appropriate senior management team member's]~~ approval of the appropriate district engineer, division director, office director, or ad-

ministrator who has consulted with the Director of the Human Resources Division ~~[based upon the employee's aptitude demonstrated through job performance (The Management Team Member in consultation with the Director, Human Resources Division, will verify it is outside the employee's job field-)]~~; and

(G) have ~~[a management team member's]~~ approval of the appropriate district engineer, division director, office director, or administrator for associate, baccalaureate, and master degree programs and the executive director's approval if the employee is seeking a doctoral degree.

(2) Full-time Master's Program. An employee may apply for an in-house competitive program in which the employee who is selected receives funds for tuition, fees, books, and supplies plus salary compensation while pursuing a master's degree on a full-time basis and completing an assigned research project approved by the Program Selection Committee which is related to the department's functions. The master's program duration is four semesters including the summer semester in which the course work and the report/thesis must be completed. An extension may be granted if the employee's approved degree program requires additional time to complete. To be eligible for the program an employee must meet the following requirements before assistance is granted:

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

(H) be nominated by the employee's district engineer, division director, office director, or administrator ~~[management team member]~~; and

(I) be selected by the Program Selection Committee based on qualifications and field or work experience.

(3) Non-degree program. Eligibility requirements do not apply when a full-time employee is not pursuing a degree, but is taking one or more classes as a requirement of the employee's position or is pursuing a general equivalency diploma, except that the appropriate district engineer, division director, office director, or administrator ~~[a management team member]~~ must approve the request.

(c) Continued eligibility.

(1) Education Assistance Program.

(A) In order to maintain eligibility, an employee must:

(i) be enrolled at least two of three semesters during the annual school year unless granted permission in writing to miss a semester or semesters by the appropriate district engineer, division director, office director, or administrator ~~[senior management team member]~~ with the written permission stored in the local file and a copy sent to the Training, Quality and Development Section of the Human Resources Division;

(ii)-(iii) (No change.)

(B) Upon approval of an employee's district engineer, division director, office director, or administrator ~~[management team member]~~, an employee may change his or status from full-time to part-time in order to accommodate class scheduling.

(C) The employee's appropriate district engineer, division director, office director, or administrator ~~[management team member]~~ will reconsider the employee's participation in the program each semester.

(i) Participation during a particular semester may be denied based on extraordinary work requirements as determined by the appropriate district engineer, division director, office director, or

administrator [~~senior management team member~~]. This interruption will not be considered a failure to remain active in the program.

(ii) The department will deny further participation if the employee does not meet the requirements of subparagraph (A) of the paragraph or §4.64(a) of this title, or if the appropriate district engineer, division director, office director, or administrator [~~management team member~~] determines that the employee's participation in a degree program adversely affects the employee's job performance.

(2) Full-time Master's Program.

(A) In order to maintain eligibility in the full-time Master's Program, an employee must:

(i) be enrolled continuously in an institution in a course of instruction leading towards a master's degree in the approved major field of study for four semesters which include the summer semester unless the director of the Human Resources Division [~~Assistant Executive Director for Human Resources Management~~] waives this requirement because the student demonstrated hardship, or the employee's approved degree plan calls for an additional semester(s); and

(ii) obtain a passing grade in each course except as provided in §4.64(d)(2) of this title.

(B) The department will deny further participation if the employee does not meet the requirements of subparagraph (A) of this paragraph or §4.64(a) of this title.

(3) (No change.)

(d) Type of institution.

(1) (No change.)

(2) If granted permission by the district engineer, division director, office director, or administrator [~~management team member~~] to attend a private institution, the employee must earn as many credits at an available public institution that are transferable to keep the overall costs as low as possible.

(3) (No change.)

(e)-(f) (No change.)

§4.64. *Employee Obligations.*

(a) Obligation.

(1) (No change.)

(2) Credit Verification. Each semester, an employee must provide grade reports to the appropriate district engineer, division director, office director, or administrator [~~management team member~~] for verification that full credit was received for courses taken.

(b) (No change.)

(c) Cancellation and suspension.

(1) Cancellation.

(A) The department will cancel the employee's participation in the Education Assistance Program and Non-Degree Program and require the student to repay in accordance with §5.10 of this title (relating to the Collection of Debts) all funds associated with the assistance, received from the department under §4.63 of this title (relating to Education Programs) if the student:

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

(v) fails to complete the full-time Master's Program in four semesters unless an extension is granted based on the approved degree program by the director of the Human Resources Division [~~Assistant Executive Director for Human Resources Management~~].

(B) (No change.)

(2) (No change.)

(d) Repayment.

(1) Education Assistance and Non-Degree Program.

(A) (No change.)

(B) In repayment situations, the Education Assistance Program Coordinator in the Training, Quality, and Development Section of the Human Resources Division will work with the district/division/~~speeial~~ office and the [~~Budget and~~] Finance Division to determine the requirements. Employees will follow the repayment schedule set by the department.

(2)-(7) (No change.)

(8) Resumption of eligibility. If the department cancels an employee's participation in the Education Assistance Program [~~Agreement~~], non-degree Program or and Master's Program, the employee will no longer be eligible for assistance under §4.63 of this title unless the employee has fully repaid the department in accordance with subsection (d) of this section and:

(A) the student demonstrates that the cancellation was due to hardship; or

(B) it has been at least three years since the department canceled the employee's participation in the Education Assistance Program [~~Agreement~~].

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810233

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 1998

For further information, please call: (512) 463-8630



Chapter 5. Finance

Subchapter C. Hardship Financing for Utility Adjustments, Relocations, and Removals

43 TAC §§5.21-5.29

The Texas Department of Transportation proposes new §§5.21-5.29, concerning hardship financing for utility adjustments, relocations, and removals.

EXPLANATION OF PROPOSED NEW SECTIONS

House Bill 1898, 75th Legislature, 1997, amended Transportation Code, §§203.092 and 203.093, and added Transportation Code, §203.0921 to enable the department to finance a utility relocation which is not eligible for state reimbursement when a short-term financial condition exists which prevents the util-

ity from being able to fund the relocation. By financing these utility adjustments, the department will be able to complete its highway projects in a more timely manner and allow displaced utilities to maintain continuous service to the public during highway construction.

New §5.21, Purpose and Scope, sets forth the purpose of the new sections, which is to prescribe a process to finance utility relocations that are not eligible for state participation under Transportation Code, Chapter 203, Subchapter E.

New §5.22, Definitions, defines words and terms used in the subchapter.

New §5.23, Ineligible Payments, details expenses which are not eligible for financing under the subchapter.

New §5.24, Pre-application Procedures, outlines the requirements for a memorandum of understanding which must be entered into prior to applying for financing under the subchapter. Such an agreement is required by Transportation Code, §203.0921(a)(4).

New §5.25, Application, sets forth the requirements for an application to the commission for financing. It contains a list of items which must be included on or attached to the application. The application will enable the commission to determine that the financing meets the established criteria under the subchapter.

New §5.26, Commission Approval, provides criteria which must be met before the commission may approve the requested financing. The commission must make a determination that the relocation is essential for the timely completion of the project, continuous service to the utility's customers is essential to the public well-being or to the local economy, a factual basis exists which establishes that the utility has a hardship, and the utility has the ability to reimburse the amount financed plus interest. These criteria are prescribed by statute.

New §5.27, Reimbursement Agreement, describes the form of the reimbursement agreement and contains a list of minimum terms which must be included in the agreement. This section implements the requirements of the statute and further provides safeguards to ensure repayment of state funds.

New §5.28, Release of Funds, explains how and under what circumstances state funds will be released to the utility's contractor or alternatively, to the department's contractor. It details the final billing and retainage on partial billing.

New §5.29, Repayment and Default, prescribes details of how total costs are determined, the circumstances under which indirect costs will be included, and the results of default.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for each year of the first five-year period the new sections are in effect, there will be fiscal impact of \$120,000 in FY 1999, \$219,000 in FY 2000, \$288,000 in FY 2001, \$336,000 in FY 2002, and \$360,000 in FY 2003 of interest revenue to the state and interest expense to local governments as a result of enforcing or administering the new sections. There are no anticipated economic costs for persons required to comply with the sections as proposed.

Mr. Smith also has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the new sections.

PUBLIC BENEFIT

Mr. Smith has determined that for each year of the first five years the new sections are in effect, the public benefit anticipated as a result of the rules will be the avoidance of delaying highway construction activities with a projected total contract amount of \$48,000,000. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed new sections may be submitted to Frank J. Smith, Director, Finance Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1998.

STATUTORY AUTHORITY

The new sections are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Transportation Code, §203.095, which provides the Texas Transportation Commission with the authority to establish rules to implement Transportation Code, Chapter 203, Subchapter E.

No statutes, articles, or codes are affected by the proposed new sections.

§5.21. Purpose and Scope.

This subchapter prescribes a process to enable the department to complete its highway projects in a timely manner and allow displaced utilities to maintain continuous service to the public during highway construction. In compliance with Transportation Code, Chapter 203, Subchapter E, this subchapter provides policies and procedures to enable the state to finance a utility relocation which is not eligible for state reimbursement when a short-term financial condition exists which prevents the utility from being able to fund the relocation.

§5.22. Definitions.

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

(1) Cash and near-cash assets - All currency, negotiable instruments, bank deposits, savings deposits, certificates of deposit, and all other accounts and marketable financial securities which the utility owns and could convert to currency within one year.

(2) Commission - The Texas Transportation Commission.

(3) Completion of work - That point in time at which operational capability is restored to the utility facility.

(4) CPA - A certified public accountant, licensed to practice in Texas.

(5) Department - The Texas Department of Transportation.

(6) Elective betterment - Any expansion, enlargement, or design enhancement which is not required to comply with current statutes or codes and which is not necessitated by highway construction requirements or technological obsolescence.

(7) Executive director - The executive director of the department.

(8) Hardship - A short term financial condition which prevents a utility from being able to pay for the cost of a relocation or adjustment to its facilities in full or in part at the time of relocation,

or if paid at that time, would adversely affect the utility's ability to operate or provide essential services to its customers.

(9) Interest at six percent per annum - A daily accrual of interest calculated by multiplying the accumulated balance of the total amount expended or advanced under this subsection plus any prior accrued interest less any payments received by a daily interest factor calculated by dividing six percent per annum by 360 days per financial year.

(10) Security - Pledges of revenues, account balances, and/or other assets, other methods of guarantee or surety, or pledges to raise utility rates or taxes, which are sufficient to provide for timely payment of the amount financed under this subchapter plus accrued interest.

(11) Short term financial condition - A financial condition existing for no more than three years prior to the utility relocation and which is expected to exist for no more than three years after the utility relocation.

(12) Utility - A publicly, privately, or cooperatively owned utility that provides telephone, telegraph, communications, electric, gas, heating, water, railroad, storm sewer, sanitary sewer, or pipeline service.

(13) Year - Except as required by Transportation Code, Section 203.0921(b), to be defined by agreement between the department and the utility as either a calendar year or the state fiscal year or the utility's fiscal year.

§5.23. Ineligible Payments.

The following expenses are not eligible for financing under this subchapter:

- (1) refinancing or restructuring existing debt; and
- (2) elective betterments.

§5.24. Pre-Application Procedures.

Prior to applying for financing under this subchapter, a utility must enter into a memorandum of understanding in a form prescribed by the department establishing that:

(1) appropriate safeguards are in place to ensure that relocation work activities are conducted safely in full compliance with applicable law and utility construction standards;

(2) relocation work can be coordinated between the department and the utility in a manner that will ensure that any disruption of utility service is minimized;

(3) all contractors and/or subcontractors selected for relocation work activities will be qualified to perform the relocation activities; and

(4) there exists a factual basis for the commission findings required under §5.26 of this title (relating to Commission Approval).

§5.25. Application.

(a) A utility desiring to obtain financing under this subchapter shall submit an application to the department in a form prescribed by the department.

(b) The application must contain a statement that the utility agrees to enter into a reimbursement agreement pursuant to §5.27 of this title (relating to Reimbursement Agreement) and to secure the payment of the reimbursement including interest.

(c) The application must contain or be accompanied by:

(1) audited or unaudited financial statements, certified by a CPA, covering the prior three years, or the period of time the utility has operated if shorter than three years;

(2) a five year anticipated annual revenue projection statement;

(3) a statement of hardship consisting of either:

(A) an explanation of the short term financial condition which would prevent a utility from being able to pay the cost of the relocation in full or in part at the time of the relocation; or

(B) an explanation of the adverse affect on the utility's ability to operate or provide essential services to its customers if the adjustment is paid at the time of the relocation;

(4) the total estimated cost of the proposed utility adjustment;

(5) the amount being requested;

(6) the source of repayment and citation of the legal authority to pledge selected revenues;

(7) the financing plan for repaying the total amount of the loan, plus interest;

(8) any special request for repayment terms, structure of payments, or considerations that reflect the particular needs of the utility;

(9) a statement explaining other attempts at obtaining financing;

(10) the utility's bond rating (if applicable);

(11) evidence that sufficient time is not available to obtain financing elsewhere;

(12) a credit report, including the utility's default history on other loans; and

(13) a summation of judgments, liens, pending litigation, or outstanding claims against the utility.

(d) The executive director may request further information, data, or explanations as may reasonably be needed to complete and evaluate the application.

§5.26. Commission Approval.

(a) The commission may approve the requested financing if it determines that:

(1) relocation is essential for timely completion of a state highway system improvement project or an off-system bridge project necessitated by safety concerns;

(2) continuous service to the utility's customers is essential to the public well-being or to the local economy;

(3) a factual basis exists which reasonably establishes that the utility has a hardship; and

(4) the utility has the ability to reimburse the amount to be financed by the department, with accrued interest at a rate of six percent per annum within five years from the completion of the relocation, in spite of the hardship.

(b) In making the determination of whether or not to approve the financing, the commission may consider, among other things, the availability of funding.

§5.27. Reimbursement Agreement.

(a) If the financing is approved by the commission, the utility may enter into a written agreement with the department.

(b) The agreement shall be in a form prescribed by the department and shall at a minimum include the following terms:

(1) an agreement to complete the reimbursement within five years from the completion of work;

(2) an agreement to accrue and reimburse interest from the date of completion of work through the date of final payment;

(3) the terms under which the utility will secure the payment of the reimbursement, if applicable;

(4) an agreement that the utility will notify the department immediately of any events or circumstances which may reasonably jeopardize timely reimbursement;

(5) an agreement that the department may audit the utility's books and records as the department may determine is necessary so long as any amount of reimbursement and interest remains outstanding;

(6) other terms and conditions necessary to protect the public safety and safeguard public funds; and

(7) other terms and conditions which are mutually agreed upon.

(c) If no agreement is entered into under this section, the utility shall reimburse the department the amount expended by the department for the relocation within 30 days of completion of work.

§5.28. Release of Funds.

(a) When a utility adjustment or relocation is accomplished by the department's contractor under a general highway construction contract, funds will be obligated and paid directly to the contractor in accordance with the department's standard accounting and payment procedures.

(b) When a utility adjustment or relocation is accomplished by the utility's contractor, payments will be made directly to the contractor at not less than monthly intervals upon submission of a billing in a form acceptable to the department. Upon completion of work, a final billing in a form acceptable to the department will be submitted detailing all costs associated with the adjustment or relocation and all partial payments made to date. Retainage in the amount of five percent of each partial billing will be withheld pending submission of a final billing to the department upon completion of work.

§5.29. Repayment and Default.

(a) The total cost of the utility relocation shall be determined by the department's cost accounting procedures. All direct costs associated with the relocation will be accumulated. When utility adjustment work is included in the highway construction contract under §5.28 of this title (relating to Release of Funds), indirect administrative costs will be included unless the utility is part of a political subdivision of the state or a nonprofit corporation or cooperative.

(b) If the utility fails to meet a scheduled payment under the requirements of the agreement and §5.27 of this title (relating to Reimbursement Agreement), the department will declare the utility to be in default and will commence collection proceedings in accordance with §5.10 of this title (relating to Collection of Debts).

(c) A utility that is declared in default is ineligible for further funding under this subchapter until full reimbursement has been made of the outstanding loan amount plus accrued interest charges.

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810234

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 1998

For further information, please call: (512) 463-8630



Chapter 6. State Infrastructure Bank

Subchapter D. Department and Commission Action

43 TAC §6.32

The Texas Department of Transportation proposes an amendment to §6.32, concerning commission action.

EXPLANATION OF PROPOSED AMENDMENTS

Section 350 of the Federal National Highway System Designation Act of 1995 (Pub. L. No. 104-59) provides that federal funds are available for the provision of financial assistance to eligible transportation projects through a state infrastructure bank. Transportation Code, Chapter 222, Subchapter D created a state infrastructure bank to provide financial assistance for urgently needed transportation systems.

The state infrastructure bank's operating rules currently require applications for financial assistance from the bank to be subject to a two step commission approval process. This process is cumbersome for applications for small amounts of funds, which generally do not involve large, complex projects, or a complex financing structure, requiring a more extensive examination by the department and the commission before a financial assistance decision is made.

The amendments to §6.32 would allow the commission to approve applications for financial assistance in the amount of \$250,000 or less using a one step approval process. Any such approval would still be subject to the project requirements, considerations, and determinations required for other applications. The amendments would also provide the commission with the discretion to require these small loan applications to be subject to the two step approval process if the complexity or size of the project, the type of infrastructure or asset, or the complexity of the project's and the applicant's financial status requires it.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amended section. There are no anticipated costs for persons required to comply with the section as proposed.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended section.

PUBLIC BENEFIT

Mr. Smith has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of enforcing or administering the amended section will be to streamline the approval process for applications for financial assistance that do not involve complex projects or financing, thereby maximizing the financial benefits of the state infrastructure bank and the efficiency of the state's transportation system. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment to §6.32 may be submitted to Frank J. Smith, Director, Finance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1998.

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Transportation Code, Chapter 222, Subchapter D, which requires the commission to, by rule, implement the subchapter and establish eligibility criteria for an entity applying for financial assistance from the state infrastructure bank.

No statutes, articles, or codes are affected by the proposed amendment.

§6.32. Commission Action.

(a) (No change.)

(b) Small loan applications.

(1) Applications for financial assistance in the amount of \$250,000 or less may be approved by the commission without going through both the preliminary and final approval processes prescribed in subsections (c) and (e) of this section. These applications may be approved by the commission using one final approval process.

(2) All considerations, determinations, and project requirements prescribed in subsections (c)-(e) and (h) of this section must be complied with prior to any final approval of applications under this subsection, with the exception of the negotiation process prescribed in subsection (c)(3) of this section, which may be completed after final approval. These applications are also subject to subsections (f) and (g) of this section.

(3) The commission may require small loan applications to be subject to both the preliminary and final approval steps of this section. In making this determination, the commission will consider the complexity and size of the project, the type of infrastructure or asset involved, and the complexity of the project's and the applicant's financial status.

(c) [(b)] Preliminary approval.

(1) Considerations. Prior to granting preliminary approval of an eligible project, the commission will consider:

(A) whether the project is on the state highway system;

(B) transportation need for and anticipated public benefit of the project;

(C) the present and projected financial condition of the bank;

(D) potential social, economical, and environmental impacts;

(E) conformity with the purposes of the bank; and

(F) evidence of local public support.

(2) Project requirements. The commission may grant preliminary approval to a project for bank financing if it finds that:

(A) the project is consistent with the Statewide Transportation Plan and, if appropriate, with the metropolitan transportation plan developed by a metropolitan planning organization;

(B) if the project is in a Clean Air Act non-attainment area, the project will be consistent with the Statewide Transportation Improvement Plan, with the conforming plan and Transportation Improvement Program (TIP) for the metropolitan planning organization in which the project is located (if necessary), and with the State Implementation Plan;

(C) the project will improve the efficiency of the state's transportation systems;

(D) the project will expand the availability of funding for transportation projects or reduce direct state costs; and

(E) the application shows that the project and the applicant are likely to have sufficient revenues to assure repayment of the financial assistance according to the terms of the agreement. In making this finding, the commission will consider:

(i) the probable ability of any pledged revenues to meet all obligations of the project and to repay the financial assistance to the bank;

(ii) management of the project;

(iii) adequacy of working capital and operating funds;

(iv) collateral and other guarantees of repayment;

(v) how quickly the financial assistance will be repaid; and

(vi) the presence of credit insurance or other guarantees.

(3) Authorized actions. By granting preliminary approval, the commission authorizes the executive director to negotiate:

(A) the project's limits, scope, definition, design, and any other factors which might impact the financing of the project;

(B) the amount, type and timing of disbursements of financial assistance;

(C) interest rates including subsidies;

(D) fees;

(E) charges;

(F) repayment schedules;

(G) term to maturity of any financial assistance;

(H) collateral securing the financial assistance;

(I) appropriate covenants applicable to the financial assistance;

(J) default provisions; and

(K) all other provisions necessary to complete an agreement under Subchapter E of this chapter.

(d) [(e)] Social, economical, and environmental impact.

(1) Prior to receiving final approval under subsection (e) [(d)] of this section, the department or the applicant shall complete a study of the social, economical, and environmental impact of the project, consistent with the spirit and intent of the National Environmental Policy Act, Title 42, United States Code, §§4321 et seq., and Title 23, United States Code, §109(h), and shall provide for public involvement and meet all other requirements of Chapter 2, Subchapter C of this title (relating to Environmental Review and Public Involvement For Transportation Projects).

(2) For a project not on the state highway system, the applicant shall be responsible for completing required studies of social, economical, and environmental impacts unless the applicant and the department agree otherwise. If the department agrees to be responsible for these studies, then any costs will be charged according to the department's local participation agreement.

(3) For a project on the state highway system, the department shall be responsible for completing required studies of social, economical, and environmental impacts with any costs to be charged to the project.

(e) [(d)] Final approval. Subsequent to preliminary approval under subsection (c) [(b)] of this section, the completion of negotiations under subsection (c) [(b)] (3) of this section, and the approval of the social, economical, and environmental impact required by subsection (d) [(e)] of this section, the commission may grant final approval if it determines that:

(1) providing financial assistance will protect the public safety and prudently provide for the protection of public funds while furthering the purposes of this chapter; and

(2) the project will provide for all reasonable and feasible measures to avoid, minimize, or mitigate for adverse environmental impacts.

(f) [(e)] Postponement. The commission may postpone final approval if it finds that the current or projected financial condition of the bank warrants this action.

(g) [(f)] Contingencies. The commission may make its preliminary or final approval contingent upon the applicant making changes, levying taxes, performing other acts, or maintaining certain conditions necessary to provide for adequacy of repayments.

(h) [(g)] Order of approval or disapproval. Approval or disapproval of the project, whether preliminary or final, shall be by written order of the commission, and shall include the rationale, findings, and conclusions on which approval or disapproval is based.

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810235

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 1998

For further information, please call: (512) 463-8630



Chapter 15. Transportation Planning and Programming

Subchapter F. State Park Roads

43 TAC §15.60

The Texas Department of Transportation proposes an amendment to §15.60, concerning state park roads.

EXPLANATIONS OF PROPOSED AMENDMENTS

The amended section is necessary to update and clarify the applicable rules implementing state and federal laws and regulations concerning the construction and maintenance of state park roads and support facilities in and adjacent to state parks, fish hatcheries and wildlife management areas.

House Bill 9, §1.02, 72nd Legislature, First Called Session, 1991, gave the responsibility for the design, construction, and maintenance of roads and support facilities in and adjacent to state parks to the Texas Department of Transportation. House Bill 1359, §1.02, 74th Legislature, 1995, amended the previous legislation to include roads and support facilities in and adjacent to state fish hatcheries and state wildlife management areas. Pursuant to these sections, the department maintains a memorandum of agreement with the Texas Parks and Wildlife Department to outline the respective responsibilities of each agency for the development of projects for the subject roads.

Subsection (a) is amended to define a state park road as a public road, under the jurisdiction of the department or the Texas Parks and Wildlife Department, with title or lease in the name of the State of Texas, located in or adjacent to a state park, state fish hatchery or state wildlife management area or support facility. Subsection (a) is also amended to include definitions of state wildlife management area, state fish hatchery, and support facility.

Subsection (b) has been deleted in its entirety as it is no longer needed after the passage of House Bill 1359.

Subsection (c) is amended to update the language consistent with House Bill 1359.

FISCAL NOTE

Frank J. Smith, Director, Finance Division, has determined that for the first five-year period the amended section is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments. There are no anticipated economic costs for persons required to comply with the amendments as proposed.

Robert L. Wilson, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT

Mr. Wilson has also determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing or administering the amendments will be better maintenance of state park roads and support facilities. There will be no effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendment to §15.60 may be submitted to Robert L. Wilson, Director, Design Division, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1998.

STATUTORY AUTHORITY

The amendment to §15.60 is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

No statutes, articles, or codes are affected by these proposed amendment.

§15.60. *State Park Roads.*

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

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

(3) State park - A park administered by the Texas Parks and Wildlife Department [or other qualified state agency, and] with title or lease in the name of the State of Texas.

(4) State park road - A public road [~~within a state park, or a segment of the state highway system, designated by the commission as a state park road,~~] which is located in or adjacent to a state park, state fish hatchery, state wildlife management area or support facility and is under the jurisdiction and control of the department or the Texas Parks and Wildlife Department with title or lease in the name of the State of Texas.

(5) State fish hatchery - A fish hatchery administered by the Texas Parks and Wildlife Department with title or lease in the name of the State of Texas.

(6) State wildlife management area - A wildlife management area administered by the Texas Parks and Wildlife Department with title or lease in the name of the State of Texas.

(7) Support facility - A facility such as, but not limited to, a headquarters or regional office that supports the operation of state parks, state fish hatcheries, or state wildlife management areas and with title or lease in the name of the State of Texas.

~~{(b) Upon request by a state agency or county government, the department may construct and maintain a designated park road connecting a state to a segment of the state highway system if:}~~

~~{(1) estimated traffic patterns justify the connection of such a facility;}~~

~~{(2) all necessary environmental clearance, environmental mitigation, and right of way are furnished at no cost to the department; and}~~

~~{(3) funds are available from a commission designated program.}~~

(b) ~~{(e)}~~ In accordance with House Bill 1359, §1.02, 74th Legislature, 1995 [~~§1.02, House Bill 9, 72nd Legislature, First Called Session~~], for state park [public] roads located in and adjacent to [within a] state parks [park], state fish hatcheries and state wildlife management areas, and roads for support facilities for parks, fish hatcheries, and wildlife management areas, the department will:

(1) coordinate with Texas Parks and Wildlife Department [~~appropriate state agencies having jurisdiction over state park properties~~] for the design, construction, and maintenance of subject roads;

(2) provide through memorandum [~~memoranda~~] of agreement with Texas Parks and Wildlife Department [~~appropriate state agencies~~] for the respective responsibilities in developing and completing state park road projects in accordance with state law; and

(3) [~~identify in such memoranda of agreement the costs/ expenses associated with the respective activities of the parties involved and~~] amend such memorandum of [the] agreement as appropriate on a five year basis unless the Texas Parks and Wildlife Department [appropriate state agency with jurisdiction over the state park] does not desire to extend the terms of the agreement.

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

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810236

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Earliest possible date of adoption: August 10, 1998

For further information, please call: (512) 463-8630



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the *Texas Register*, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the *Texas Register*.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services

Chapter 725. General Licensing Procedures

Subchapter U. Day Care Licensing Procedures

40 TAC §725.2048

The Texas Department of Protective and Regulatory Services (TDPRS) has withdrawn from consideration its proposed new §725.2048, concerning administrative penalties, in its General

Licensing Procedures chapter. The text of the proposed section appeared in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4558). TDPRS has republished this rule, with minor corrections, in this issue of the *Texas Register* as 40 TAC §725.1810. The effective date of the withdrawal is immediately.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810243

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

Effective date: June 29, 1998

For further information, please call: (512) 438-3765



ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part III. Office of the Attorney General

Chapter 62. Sexual Assault Prevention and Crisis Services

1 TAC §§62.25–62.32

The Office of the Attorney General, adopts new §§62.25–62.32, concerning sexual assault prevention and crisis services. Sections 62.25-62.27, and 62.29-62.32 with changes to the proposed text as published in the May 1, 1998, issue of the *Texas Register* (23 TexReg 4155). Section §62.28 is adopted without changes and will not be republished.

The justification for the sections is to implement new state legislation regarding the adoption of rules necessary to establish minimum standards for the currency of practice for sexual assault nurse examiners.

The sections will function by defining a process for currency of practice for sexual assault nurse examiners.

There were no comments on §62.25. However, staff added two definitions for clarity. There were two comments on §62.26 disagreeing with the documentation requirement for clinical hours obtained before 1998, and the content of those clinical hours. The agency disagrees with the comments on §62.26. The requirement of clinical hours gives the applicant an opportunity to practice skills discussed in the classroom. The clinical hours must be related to the information presented in the classroom. A comment on §62.26 recommended changing the term "evidence collection kit" to "evidentiary examination". The agency disagrees with this comment. The term "evidence collection kit" applies to the collection of evidence resulting from a sexual assault while the term "evidentiary examination" applies to the collection of evidence resulting from any crime. A final comment for §62.26 recommended five to six hours be permitted for the classroom presentation of advanced practice skills necessary to complete the sexual assault examination. The agency disagrees with this comment. The intent of the classroom presentation of advanced practice skills necessary to complete the sexual assault examination is to identify and define the skills and not to demonstrate the them. A comment on §62.27 expressed concern over the length of time applicants are permitted to obtain their clinical hours. The agency agrees with this comment and extended the length of time for obtaining clinical hours from six to eight months. Another comment on §62.27 requested that sexual assault exams be conducted in a minimally acceptable manner. The agency disagrees with

this comment. The intent of the rule is to establish currency of practice and not competency of practice. A comment on §62.29 expressed concern over the number of continuing education hours required. The agency agrees with this comment and made the required continuing education hours specific to the type of certification the sexual assault nurse examiner obtained. Staff also added a chart outlining the continuing education requirements by the type of certification. While there were no comments on §§62.30-62.32, staff made modifications to these sections for clarity.

The following persons and medical centers submitted comments regarding the rules: Cathy Miska, Debbie Teague, Hendrick Medical Center, and the University of Texas Health Science Center.

The new rules are proposed under Government Code, § 420.011(c), which provides the Office of the Attorney General with the authority to promulgate these rules.

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

§62.25. *Definitions.*

In this chapter:

(1) "Forensic examination" means a medical examination conducted for the purpose of gathering evidence pertaining to a crime.

(2) "Sexual assault nurse examiner ('SANE') " means a registered nurse who has been specially trained to provide comprehensive care to sexual assault survivors, who demonstrates competency in conducting a forensic exam for the collection of evidence and has the ability to testify as an expert witness.

(3) "Currency of practice certification" means the formal process by which training received and the number of exams performed per year by a SANE are documented.

(4) "Certified Adult SANE" (CAS) means a SANE that demonstrates a currency of practice of the female who has begun their menses and older population, and/or a male who is Tanner Stage three or above in sexual maturity.

(5) "Certified PEDI SANE" (CPS) means a SANE that demonstrates a currency of practice of the female who is pre-menarcheal and/or a male pre-stage three of Tanner Classification of Sexual Maturity.

§62.26. *Requirements for Currency of Practice Certification.*

(a) To be eligible, a registered nurse must:

(1) Currently be licensed and in good standing as a registered nurse (RN) through the Texas Board of Nurse Examiners;

(2) Have a minimum of two years experience as a registered nurse; and

(3) Have successfully completed an Office of the Attorney General (OAG) approved SANE training course and required clinical hours.

(b) Currency of practice certification will be awarded for:

(1) SANEs trained before September 30, 1998; and

(2) SANEs trained after October 1, 1998

(c) Eligibility requirements are set forth as follows
Figure: 1 TAC §62.26 (c)

(d) Fifty-six hours of didactic training must be completed within a three-month period and must include a pre and post training test. The didactic training must include the following topics:

(1) Historical perspectives, for a total of not less than 30 minutes, including the historical development of the sexual assault nurse examiner conceptual model;

(2) Definitions and facts of sexual assault, for a total of not less than one and one-half hours, including the following topics:

(A) Historical perspectives of sexual assault;

(B) Myths vs facts;

(C) Confidentiality;

(D) Value clarification;

(E) Ethics;

(F) Definition of sexual assault; and

(G) Socialization issues.

(3) Role and responsibility of a SANE, for a total of not less than one and one-half hours, including the following topics:

(A) Perception of health care workers;

(B) Timely medical/forensic examination with complete evidence collection;

(C) Avoidance of further trauma to the survivor;

(D) Compassionate and sensitive care giving;

(E) Referrals for follow up care and counseling; and

(F) Expert witness testimony.

(4) Orientation to sexual assault issues, for a total of not less than one and one-half hours, including the following topics:

(A) Profile of sexual assault survivors with case studies on:

(i) Stranger assault;

(ii) Acquaintance assault; and

(iii) Partner/spouse assault.

(B) Profile of sexual assault offenders:

(i) Anger;

(ii) Power; and

(iii) Sadism.

(5) Symptomology of survivors and crisis intervention skills, for a total of not less than one and one-half hours, including the following topics:

(A) Rape Trauma Syndrome:

(i) Acute; and

(ii) Long range symptoms;

(B) Working with significant others;

(C) Orientation to a crisis;

(D) Communication skills/active listening skills; and

(E) Appropriate and inappropriate responses.

(6) Needs of special populations, for a total of not less than two hours, including the following topics for both the differently-abled and the elderly:

(A) Sexually assaulted males;

(B) Persons sexually assaulted by their partners;

(C) Persons from different cultures; and

(D) Persons with different religious beliefs.

(7) Vicarious victimization, for a total of not less than one hour, that includes:

(A) Secondary victimization of SANEs;

(B) Stress and burnout of SANEs;

(C) Community resources for RNs;

(D) Responsibility and limitations;

(E) Local community attitudes; and

(F) Client's needs vs care giver's needs.

(8) Identification of the advanced practice skills necessary to complete the sexual assault examination, for a total of not less than one hour, including the following topics:

(A) History of encounter from survivor;

(B) Head-to-toe examination for trauma identification;

(C) Detailed genital examination for trauma identification; and

(D) Evidence collection.

(9) History-taking skills, for a total of not less than four and one-half hours, including the following topics:

(A) Purpose of obtaining a medical history;

(B) Behavioral observation and interpretation of verbal and nonverbal communication of the survivor;

(C) Initial reactions of survivor;

(D) Interview location;

(E) Establishing rapport with survivor;

(F) Empathy for survivor;

(G) Importance of verbatim history; and

(H) Non-leading interview technique.

(10) Components of head-to-toe physical assessment for injury identification, for a total of not less than one and one-half hours, including the following topics:

(A) Primary assessment;

(B) Secondary assessment;

- (C) Injury documentation/photo documentation; and
 - (D) Evaluation for physician consultation.
- (11) Orientation to the adult female and male genital anatomy and developmental stages, for a total of not less than one and one-half hours, including the following topics:
- (A) Female and male genitalia; and
 - (B) Tanner Stages of Development.
- (12) Detailed genital examination for injury identification, for a total of not less than two hours, including the following topics:
- (A) Visualization techniques;
 - (i) Positioning;
 - (ii) Inspection;
 - (iii) Separation;
 - (iv) Traction; and
 - (v) Knee/chest.
 - (B) Visualization adjuncts;
 - (i) Foley catheter;
 - (ii) Vaginal speculum;
 - (iii) Toluidine blue dye; and
 - (iv) Colposcope.
 - (C) Injury documentation/photo documentation.
- (13) Sexual assault examination/forensic documentation forms, for a total of not less than one and one-half hours, including the following topics:
- (A) Anatomical drawing documentation;
 - (B) Documentation of examination impression;
 - (C) Restriction of forensic form access; and
 - (D) Medical records.
- (14) Laws specific to sexual assault and evidence collection, for a total of not less than one hour, including the following topics:
- (A) Texas Penal Code;
 - (B) Texas Family Code;
 - (C) Laws protecting sexual assault survivors; and
 - (D) Chapter 56, Code of Criminal of Procedure.
- (15) Steps of evidence collection, for a total of not less than four hours, including the following topics:
- (A) Specimens obtained, based on gender and orifice penetrated;
 - (B) Specimen collection, preparation and packaging;
 - (i) Clothing evidence;
 - (ii) Hair evidence;
 - (iii) Bitemark evidence;
 - (iv) Fingernail debris collection;
 - (v) Debris collection;
 - (vi) Swabs and smears (oral, vaginal, penile, rectal, and other dried fluids);
 - (vii) Whole blood specimens;
 - (viii) Saliva specimens; and
 - (ix) Blood/urine toxicology studies.
- (C) Documentation of evidence collection; and
- (D) Chain-of-custody/ release of evidence.
- (16) Medical treatment for the adult sexual assault survivor, for a total of not less than one hour, including the following topics:
- (A) Sexually transmitted disease (STD) concerns and prophylactic medication based on Center for Disease Control (CDC) guidelines; and
 - (B) Pregnancy exposure.
- (17) Local social services network, for a total of not less than 30 minutes, including referral resources available to survivors.
- (18) Child sexual assault, for a total of not less than one hour, including the following topics:
- (A) Orientation to the sexual abuse of children;
 - (B) Profile of survivors with case studies;
 - (C) Children at risk; and
 - (D) Indicators of sexual assault:
 - (i) Behavioral indicators;
 - (ii) Physical indicators; and
 - (iii) Sexual language.
- (19) Profile of offender, for a total of not less than one and one-half hours, including the following topics:
- (A) Typology; and
 - (B) Thinking errors.
- (20) Methods used to abuse children, for a total of not less than 30 minutes, including the following topics:
- (A) Conditioning/grooming; and
 - (B) Engagement phases.
- (21) Crisis intervention for children, for a total of not less than 30 minutes, including the following topics:
- (A) Communication skills/active listening skills; and
 - (B) Appropriate and inappropriate responses.
- (22) Growth and development stages, for a total of not less than one hour, including the following topics:
- (A) Erickson's stages of development;
 - (B) Freud's stages of development; and
 - (C) Piaget's stages of development.
- (23) History-taking skills used with children, for a total of not less than one and one-quarter hours, including the following topics:
- (A) History-taking techniques/communication skills for the non-leading process; and

(B) Key history-taking techniques.

(24) Various examination positions for children, for a total of not less than one hour, including the following topics:

(A) Multi-method approach for positioning the pre-pubescent child:

(i) Supine;

(I) Inspection;

(II) Separation; and

(III) Traction.

(ii) Knee/chest.

(B) Examination positions in correlation with Tanner Stages.

(25) Interpretation of prepubescent genital findings in children, for a total of not less than two and one-half hours, including the topic of variations of prepubescent genitalia.

(26) Evaluation of hymenal variations and identification of trauma, for a total of not less than one and one-half hours, including the following topics:

(A) Types of hymens;

(B) Variations regarding hymens; and

(C) Hymenal injuries.

(27) Evaluation of anal abnormalities in children, for a total of not less than one and one-half hours, including the following topics:

(A) Anal dilatation; and

(B) Anal injuries.

(28) Evaluation of male sexual genitalia, for a total of not less than one hour, including the following topics:

(A) Penis;

(B) Scrotum; and

(C) Injury identification.

(29) Various stages of genital healing, for a total of not less than one hour, including the following topics:

(A) Superficial regeneration; and

(B) Deep injury repair.

(30) Medical treatment/forensic implications of sexually transmitted diseases in children, for a total of not less than one and one-half hours, including the following topics:

(A) CDC recommendations;

(B) History/Symptomology;

(C) Cultures; and

(D) Chain-of-custody.

(31) Benefit of multi-disciplinary approach for child sexual assault cases, for a total of not less than one hour, including the following topics:

(A) Child advocacy;

(B) Goals and mission; and

(C) Case review process.

(32) Colposcopic examinations of children, for a total of not less than one hour, including the following topics:

(A) Orientation of colposcope and other magnifying equipment; and

(B) Various photo documentation capabilities.

(33) Laws specific to the reporting of child sexual abuse, for a total of not less than one hour, including the following topics:

(A) Texas Penal Code; and

(B) Texas Family Code.

(34) Expert witness testimony, for a total of not less than three hours, including the following topics:

(A) Personal presentation;

(B) Roles and responsibilities;

(i) trial; and

(ii) preparation;

(C) Factual vs expert witness testimony;

(D) Rules of testimony; and

(E) Diagramming technique.

(35) Criminal trial procedure, for a total of not less than one-half hour, including the following topics:

(A) Courtroom procedure; and

(B) Role of defense and prosecution.

(36) Testimony techniques, for a total of not less than four and one-half hours, including the topic of role-play in a courtroom setting.

§62.27. *Clinical Hours.*

(a) The type of clinical hours will vary depending on the type of certification for which the registered nurse applies. RNs must complete classroom training before beginning their clinical hours. Clinical hours must be completed within eight months after completing the classroom hours.

(b) Persons unable to meet clinical hours required in 62.27(a) may request, in writing, a waiver from the Director of Sexual Assault Prevention and Crisis Services (SAPCS) Division, OAG.

(c) For the purpose of sexual assault examinations and clinical hours, adults and children are defined from a developmental perspective:

(1) Adult A female who has begun menses, and/or a male who has attained stage three of the Tanner Classification of Sexual Maturity; and

(2) Child A female who is pre-menarcheal and/or a male pre-stage three of the Tanner Classification of Sexual Maturity.

(d) An RN must complete a clinical experience of:

(1) Twenty-four hours performing adult genital inspection and speculum examinations with preceptorship of a registered nurse, nurse practitioner or physician;

(2) Twenty hours performing well-child exams with preceptorship of a registered nurse, nurse practitioner or pediatrician, with a focus on child development; and

(3) Perform interdependently within the preceptorship of a credentialed SANE or physician with documentation of preceptor approval:

(A) Six sexual assault examinations using a collection kit (estimated time 17 hours) on adults;

(B) Ten sexual assault examinations (estimated time 15 hours) on children; and

(C) Sixteen hours observing criminal trial proceedings.

(e) Documentation of the completed clinical hours must be dated and signed by a supervising individual.

§62.29. Continuing Education/Skill Maintenance.

(a) Continuing education acquired by SANEs who have qualified for currency of practice certification must be directly related to the medical and emotional issues of sexual assault survivors. Information provided during the initial 56-hour training does not count as continuing education.

(b) Continuing education hours that must be completed within a two-year cycle are:

(1) Certified Adult SANE - Eight hours of education regarding the adult sexual assault survivor, and a minimum of eight evidence collection kits on adult survivors; and

(2) Certified Pedi SANE -Sixteen hours of education regarding the child sexual assault survivor, eight hours of which must be demonstrated through a case/slides/peer review mechanism, and a minimum of 10 examinations on the child survivor, and

(3) Certification for both Adult and Pedi SANE - four hours of education regarding the adult sexual assault survivor, and a minimum of eight evidence collection kits on adult survivors along with sixteen hours of education regarding the child sexual assault survivor, eight hours of which must be demonstrated through a case/slides/peer review mechanism, and a minimum of 10 examinations on the child survivor.

Figure: 1 TAC §62.29(3)

(c) Accepted continuing education training is any training that is sponsored by the OAG, the Texas Association Against Sexual Assault (TAASA), the National Coalition Against Sexual Assault (NCASA), institutions of higher education (forensic or sensitivity courses), the International Association of Forensic Nurses (IAFN), the American Professional Society on the Abuse of Children (APSAC), or is delivered by a local sexual assault program that is funded by the OAG. RNs must receive certificates of attendance that include dates of attendance, hours accrued, name of sponsor, and their name. Certificates of attendance must be submitted to the OAG. Credit will not be given for continuing education hours if proof of attendance is not received.

§62.30. Appeals.

(a) The Certification Appeals Committee is appointed for a two-year period by the Director, Sexual Assault Prevention and Crisis Services Division, OAG, and will be made up of two OAG staff members and three certified SANEs in current practice in the state of Texas. The committee will meet as needed. The SAPCS Division, Director of Certification will facilitate the appeals committee.

(b) A person appealing revocation of certification must submit, in writing, and submit to the SAPCS Division Director:

- (1) Reasons for requesting an appeal;
- (2) Extenuating circumstances; and

(3) Justification for appeal.

(c) The certification appeals committee must:

(1) Notify the applicant, in writing, of the hearing date, twenty calendar days prior to the certification appeal hearing;

(2) Review the original application;

(3) Review the appeal letter;

(4) Request any additional information as needed;

(5) Hold a certification appeal hearing in Travis County, Texas; and

(6) Meet as a group to finalize the decision and inform the applicant, in writing, within 30 days of the hearing.

§62.31. Revocation of Certification.

The Currency of Practice certification may be revoked if the SAPCS Division of the OAG receives written complaints and/or documentation concerning:

(1) RN's inability to maintain documentation of established criteria for certification;

(2) Falsification of documentation;

(3) Violation of patient confidentiality;

(4) Random chart review demonstrating deviation from the OAG evidence collection protocol and/or local policy;

(5) Felony conviction; or

(6) Misdemeanor conviction for perjury or sex offense.

§62.32. Appeals Process for Revocation of Certification.

(a) The revocation appeals committee and the certification appeals committee are the same committee. The revocations committee must receive written complaints and/or reports documenting policy violations.

(b) A person appealing revocation of certification must submit, in writing, and submit to the SAPCS Division Director:

(1) Reason an appeal is requested;

(2) Extenuating circumstances; and

(3) Justification for appeal.

(c) The revocation appeals committee must:

(1) Notify the SANE, in writing, of the hearing date, 20 calendar days prior to the revocation appeal hearing;

(2) Review information supporting the allegations against the SANE;

(3) Review the revocation appeal documentation;

(4) Request any additional information as needed;

(5) Hold a certification appeal hearing in Travis County, Texas; and

(6) Meet as a group to finalize the decision and inform the applicant, in writing, within 30 days of the hearing.

(d) The revocation of certification committee shall determine appeals and shall render decisions disposing of appeals of revocation of certification by ordering one of the following in each appeal process:

(1) Revocation of certification; or

(2) Granted the appeal.

(e) An RN whose certification is revoked may reapply two years from the original application date.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810212

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Effective date: October 1, 1998

Proposal publication date: May 1, 1998

For further information, please call: (512) 475-4499



Part IV. Office of the Secretary of State

Chapter 91. Texas Register

Subchapter B. Electronic Filing Procedures

1 TAC §91.63

The Office of the Secretary of State adopts an amendment to §91.63, concerning Submission forms. The amendment adds a new TR-1 submission form for publishing notice of administrative rules review under the General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature.

The new sections are adopted without change to the proposal as published in the May 22, 1998, *Texas Register*(23 TexReg 5381).

The amendment complements new sections §§91.131, 91.133, 91.135, and 91.137, concerning procedures for publishing notice of administrative rules review under Section 167.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Government Code, §2002.017 which authorizes the Secretary of State to adopt rules to ensure the effective administration of the Texas Register, including the format of documents required to be filed for publication.

The General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature, is implemented by the proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 1998.

TRD-9810116

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: July 14, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 463-5562



Subchapter D. Administrative Rules Review

1 TAC §§91.131, 91.133, 91.135, 91.137

The Office of the Secretary of State adopts new §§91.131, 91.133, 91.135, and 91.137, concerning procedures for publishing notice of administrative rules review under the General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature.

The new sections are adopted without change to the proposal as published in the May 22, 1998, *Texas Register*(23 TexReg 5382).

The new sections establish a "Rules Review" section in the *Texas Register*. The Rules Review section will contain notices of agencies' plans to review rules and the notices that specify which chapters of existing rules are proposed for review or readoption under Section 167. The Rules Review section will contain no rule text. A new "Date of Review" will be added to each chapter in the Texas Administrative Code after an agency readopts chapters under these procedures. A new TR-1 submission for agencies to use in filing notices under these procedures is adopted under §91.63 of this title, relating to submission forms.

The Texas Workers' Compensation Commission commented on §§91.135 and 91.137, and recommended that paragraph (b)(3) in both sections be revised to define the scope of public comment during the rule review process. The Commenter said: "As proposed, this paragraph seems to require the invitation of comments on any aspect of the rule being reviewed. The rule review process as set out in Section 167 of the General Appropriations Act appears to envision a review limited to whether the reasons for adopting or readopting the rule continues to exist. To better reflect this legislative intent and avoid the imposition of a requirement which is not in Section 167, it is suggested that paragraph (b)(3) of the proposed rule be revised to read: 'a request for comments from any interested person regarding whether the reason for adoption or readoption of the chapter continues to exist...'" The commenter noted that Section 167 does not specify a requirement that public comments be summarized. "Summarizing extensive public comments on all aspects of the rule being reviewed does not limit the public comment in any way....Summarizing extensive public comment could create a great workload for some agencies...." The Workers' Compensation Commission recommended that §91.137(b)(3) be revised to read: "a summary of public comments regarding whether or not the reason for adopting or readopting the rule continues to exist...."

The Office of the Secretary of State disagrees that §§91.135 and 91.137 will prohibit a state agency from limiting the scope of its invitation for comments and its summary of comments. These rules make no determination concerning the "legislative intent" suggested by the commenter. The proposed preamble to these rules (23 TexReg 5282) specified that "Section 167 provides no new rulemaking authority to the Secretary of State to interpret or implement the law." These rules are adopted as a procedure for agencies to follow to comply with notice requirements in Section 167. It is the responsibility of each agency to determine the scope and content of its notices. This is specified in paragraph (b)(4) in §§91.135 and 91.137, which reads, "any other statement that an agency determines is required by law or explains the agency's intentions." If an agency determines that Section 167 means that public

comments shall be limited in scope, these rules permit an agency to make that declaration.

The new sections are adopted under the Texas Government Code §2002.017 and §2002.055, which authorize the Secretary of State to adopt rules to ensure the effective administration of the Texas Register and the Texas Administrative Code, including the format of documents required to be filed for publication.

The General Appropriations Act, House Bill 1, Article IX, Section 167, passed by the 75th Texas Legislature, is implemented by the proposal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 1998.

TRD-9810117

Clark Kent Ervin

Assistant Secretary of State

Office of the Secretary of State

Effective date: July 14, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 463-5562

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 7. Pesticides

Subchapter C. Licensing

4 TAC §7.22

The Texas Department of Agriculture (the department) adopts an amendment to §7.22, concerning the licensing of pesticide applicators, without changes to the proposal published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3974). The department adopts the amendment to §7.22 to allow governmental employees to qualify for the department's pesticide applicator certification through an exempt testing fee program. The amendment exempts from payment of testing fees certain employees of political subdivisions of the state of Texas or of a federal agency operating in Texas who utilize the license in the course of their employment. The exemption will allow for more accurate and efficient service from governmental employees who work with pesticide products during their employment.

No comments were received on the proposal.

The amendment is adopted under the Texas Agriculture Code, §76.106, which provides the department with the authority to classify licenses, establish testing requirements and fix and collect a fee for testing in each license category.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 24, 1998.

TRD-9810101

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: July 14, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 463-7541

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 61. School Districts

The Texas Education Agency (TEA) adopts the repeal of §§61.11-61.14 and new §61.1033, concerning standards for the adequacy of school facilities, without changes to the proposed text published in the March 27, 1998, issue of the *Texas Register* (23 TexReg 3151). The sections include requirements related to space, educational adequacy, and construction quality.

Texas Education Code (TEC), §42.352, as added by Senate Bill 1, 74th Texas Legislature, 1995, directed the State Board of Education to establish standards for the adequacy of school facilities that included requirements relating to space, educational adequacy, and construction quality. TEC, §46.008, as added by House Bill 4, 75th Texas Legislature, 1997, directs the commissioner of education to establish rules relative to school facilities standards that include those same requirements related to space, educational adequacy, and construction quality. School facilities that are constructed after September 1, 1998, must meet these standards to be financed with state or local funds. Due to the conflicting statutory authority and the fact that TEC, §46.008, was the latest action taken by the Texas Legislature regarding school facility standards, the TEA legal counsel recommends that 19 Texas Administrative Code (TAC) Chapter 61, Subchapter B, School Facilities Standards, be adopted for repeal, and that new 19 TAC §61.1033 be adopted containing the same language as in 19 TAC Chapter 61, Subchapter B. The effective date of the adopted repeals will be coordinated with the effective date of the new section concerning school facility standards so that there will be no overlap of rules.

The following comment was received regarding adoption of the new section.

Comment. One individual commented on current rules for school facilities standards, which were adopted for repeal. The individual recommended modification of the rules to increase the square footage per student for science classroom and laboratory space at the middle and high school levels. The individual's recommendation also contained an effective class size limit.

Agency Response. The agency has considered this comment and plans to propose an amendment to this commissioner's rule at a later date after collecting full public comments on the change in square footage per student. This action is taken to provide timely compliance with a statutory requirement to adopt new rules by September 1, 1998. The agency does not plan to propose class size limits for the areas suggested by the individual, since such limits appear to be beyond the authority of the commissioner in establishing standards for school facilities.

Subchapter B. School Facilities Standards

19 TAC §§61.11-61.14

The repeals are adopted under Texas Education Code, §46.008, as added by House Bill 4, 75th Texas Legislature, 1997, which authorizes the commissioner of education to establish standards for the adequacy of school facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810228

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: September 1, 1998

Proposal publication date: March 27, 1998

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



Subchapter CC. Commissioner's Rules Concerning School Facilities

19 TAC §61.1033

The new section is adopted under Texas Education Code, §46.008, as added by House Bill 4, 75th Texas Legislature, 1997, which authorizes the commissioner of education to establish standards for the adequacy of school facilities.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810229

Criss Cloudt

Associate Commissioner, Policy Planning and Research
Texas Education Agency

Effective date: September 1, 1998

Proposal publication date: March 27, 1998

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



TITLE 22. EXAMINING BOARDS

Part VI. Texas Board of Professional Engineers

Chapter 131. Practice and Procedure

Subchapter A. Bylaws and Definitions

22 TAC §131.18

The Texas Board of Professional Engineers adopts an amendment to §131.18, concerning bylaws and definitions, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3991).

The amendment is being adopted to clarify that a resident of Texas may be someone who is practicing engineering in Texas exclusively on a Texas facility owned by that person's employer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810259

John R. Speed, P.E.

Executive Director
Texas Board of Professional Engineers

Effective date: July 19, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 440-7723



Subchapter B. Application for License

22 TAC §131.52

The Texas Board of Professional Engineers adopts an amendment to §131.52, concerning application for license, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3991).

The amendment is being adopted to consolidate all the engineering branches recognized by the board in one rule and denote software engineering as a new branch designation.

Comments were received regarding adoption of the amendment.

Seven individuals provided only favorable comments; four raised concerns. Among the concerns discussed were the lack of ethics education and design education within some academic programs leading to a software engineering career. Also discussed was the relationship of engineering academic accreditation to computer science academic accreditation. The board also discussed the "body of knowledge" within which software engineering is founded. It was the board's consensus that the issues raised were identical to issues addressed during the individual evaluation of any applicant under the existing licensing process. Therefore, the rule as proposed appeared to be adequate to provide proper protection to the public during the licensing process.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810260

John R. Speed, P.E.

Executive Director
Texas Board of Professional Engineers

Effective date: July 19, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 440-7723

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Subchapter F. Examinations

22 TAC §131.101

The Texas Board of Professional Engineers adopts an amendment to §131.101, concerning examinations, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3992).

The amendment is being adopted to establish a waiver from the Fundamentals of Engineering examination for individuals who meet certain educational requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810261

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: July 19, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 440-7723

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Subchapter G. Board Review of Application

22 TAC §131.114, §131.116

The Texas Board of Professional Engineers adopts amendments to §131.114 and §131.116, concerning board review of application, without changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3992).

The amendments are being adopted to require that an applicant will be scheduled to appear before the full board for an interview instead of appearing before the licensing committee and to remove the branch designation listed in §131.116 as the branch designations are being consolidated in §131.52 which is being adopted in this issue of the *Texas Register*.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810262

John R. Speed, P.E.

Executive Director

Texas Board of Professional Engineers

Effective date: July 19, 1998

Proposal publication date: April 24, 1998

For further information, please call: (512) 440-7723

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Subchapter I. Professional Conduct and Ethics

22 TAC §131.155

The Texas Board of Professional Engineers adopts an amendment to §131.155, concerning professional conduct and ethics, with changes to the proposed text as published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 3993).

The amendment is being adopted to define inappropriate behaviors and clarify an engineer's conduct with regard to the personal reputation and retaliation under engineer's responsibility to the profession.

Subsection (b)(4) is adopted with changes to further clarify that misrepresentation in billing must be intentional.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the Texas Board of Professional Engineers with the authority to promulgate rules in accordance with Senate Bill 623.

§131.155. *Engineers' Responsibility to the Profession.*

(a) (No change.)

(b) The engineer shall:

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

(4) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party.

(c) The engineer shall not:

(1) (No change.)

(2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(4)-(7) (No change.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810263

John R. Speed, P.E.

Executive Director

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 169. Zoonosis Control

Subchapter A. Rabies Control and Eradication

25 TAC §§169.21-169.24, 169.26-169.31, 169.33-169.34

The Texas Department of Health (department) adopts amendments to §§169.21-169.24, §§169.26-169.31, and §§169.33-169.34, concerning rabies control. Sections 169.22, 169.26-169.27, and 169.33 are adopted with changes to the proposed text as published in the January 30, 1998, issue of the *Texas Register* (23 TexReg 712). Sections 169.21, 169.23-169.24, 169.28-169.31, and 169.34 are adopted without changes to the proposed text and therefore these sections will not be republished.

Specifically, the amendments define assistance and therapy dogs; add requirements for humane and sanitary conditions of animal quarantine facilities; clarify time requirements for rabies quarantine and vaccination; specify requirements for quarantine facilities to prevent rabies transmission; remove requirements for isolation of dogs and cats that enter Texas; define sections of the brain that must be submitted for rabies testing; and remove dogs, cats, and wolf-dog hybrids from the statewide rabies quarantine.

The department made minor changes due to staff comments to clarify the intent and improve the accuracy of two sections.

Change: Concerning §169.27(f), the phrase "or suitably confined" was added in order to give the local rabies control authority an option other than quarantine for dealing with animals, such as livestock, that are involved in a bite incident.

Change: Section 169.33 was modified to clarify that rabies submission forms need to be placed on top of the Styrofoam container if the container is shipped inside a cardboard box.

The following comments were received concerning the proposed sections. Following each comment is the department's response and any resulting change(s).

Comment: Concerning §169.22, 249 commenters recommended deleting the definition of "animal shelter" because they feared outside groups would use it in an attempt to close down individuals providing animal rescue and shelter in their homes.

Response: The department agrees with the recommendation because the same definition for "animal shelter" is already provided under Texas Health and Safety Code §823.001. The definition "animal shelter" is being deleted from §169.22.

Comment: Concerning §169.26, 249 commenters recommended deleting the phrase "or sheltering" from the section title because they feared outside groups would use it in an attempt to close down individuals providing animal rescue and shelter in their homes.

Response: The department agrees with the recommendation because the phrase was only added to provide clarification as to which section on housing and sanitation standards must be met by animal shelters as mandated under Texas Health and Safety Code §823.003. The phrase "or sheltering" is being deleted from the section title of §169.26.

Comment: Concerning §169.26, one commenter recommended adding "garbage" to the mechanisms for removing animal excreta from a housing facility to make it possible for animal shelters in homes to meet the standards.

Response: The department agrees and has added the text "or garbage" to §169.26(a)(4).

Comment: Concerning §169.26, one commenter recommended that providing clean, dry bedding material be included as an alternative to providing auxiliary heat when temperatures drop below 50 degrees Fahrenheit to make it possible for animal shelters in homes to meet the standards.

Response: The department agrees with providing this alternative mechanism for providing adequate protection from the elements to animals in shelters when temperatures drop below 50 degrees Fahrenheit and has added the phrase "or clean, dry bedding" and the sentence "If bedding material is used, larger quantities should be used as temperatures drop." to §169.26(8).

Comment: Concerning §169.26(9), one commenter recommended that fans or air conditioning only be required for indoor facilities, not outdoor facilities.

Response: The department agrees with this clarification and has modified the text in §169.26(9) to require use of fans or air conditioning "in indoor facilities" specifically.

The following associations commented on each section as follows:

Commenters generally opposed to §169.22 as proposed were Alaskan Malamute Rescue of North Texas, Inc., Responsible Pet Owners Alliance, Inc., Highland Lakes Basset Hound Association, North Texas Boston Terrier Club, Inc., Pets USA, Siegreich Danes, North Texas Boston Terrier Rescue, Goldust Labrador Retrievers, Greyhound Rescue Society of Texas, Inc., Coalition of Responsible Animal Owners of Texas, Worldtravel Partners, German Shepherd Dog Club of America, San Antonio Area Ferret Enthusiasts, Fila Brasileiro Club of America, The Cat Fancier's Association, Inc., Holidaywag Pet Resort, The O'Hara Group, Animal Trustees of Austin, Inc., Irish Setter Club of San Antonio, National Saluki Rescue Network, North Texas Basset Hound Rescue, Inc. Irish Setter Club of Greater Dallas, The Animal Council, German Shepherd Rescue, Greyhound Pets of America, Doberman Rescue of North Texas, Inc., Central Texas S.P.C.A., American Dog Owners Association, Inc., and American Kennel Club.

Commenters generally opposed to §169.26 as proposed were Alaskan Malamute Rescue of North Texas, Inc., Responsible Pet Owners Alliance, Inc., Highland Lakes Basset Hound Association, North Texas Boston Terrier Club, Inc., Pets USA, Siegreich Danes, North Texas Boston Terrier Rescue, Goldust Labrador Retrievers, Greyhound Rescue Society of Texas, Inc., Coalition of Responsible Animal Owners of Texas, Worldtravel Partners, German Shepherd Dog Club of America, San Antonio Area Ferret Enthusiasts, Fila Brasileiro Club of America, The Cat Fancier's Association, Inc., Holidaywag Pet Resort, The O'Hara Group, Animal Trustees of Austin, Inc., Irish Setter Club

of San Antonio, National Saluki Rescue Network, North Texas Basset Hound Rescue, Inc., Irish Setter Club of Greater Dallas, The Animal Council, German Shepherd Rescue, Greyhound Pets of America, Doberman Rescue of North Texas, Inc., Central Texas S.P.C.A., American Dog Owners Association, Inc., and American Kennel Club. All commentors were not against the rules in their entirety, however, they expressed concerns, asked questions and suggested recommendations for change.

The amendments are adopted under the Texas Health and Safety Code, Chapter 826 "Rabies," §826.011 which provides the Texas Board of Health (board) with the authority to administer the rabies control program and adopt rules necessary to effectively administer this program; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§169.22. *Definitions.*

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

- (1) Animal—Any mammal, domesticated or wild.
- (2) Assistance dog - A dog that is specially trained or equipped to help a person with a physical challenge and that:
 - (A) is used by a person with a physical challenge who has satisfactorily completed a specific course of training in the use of the dog; and
 - (B) has been trained by an organization generally recognized by agencies involved in the rehabilitation of persons with a physical challenge as reputable and competent to provide dogs with training of this type.
- (3) Cat - Any *Felis catus*.
- (4) Currently vaccinated - Vaccinated and satisfying the following criteria.
 - (A) The animal must have been vaccinated against rabies as prescribed by the United States Department of Agriculture (USDA).
 - (B) At least 30 days have elapsed since the initial vaccination.
 - (C) Not more than 12 months have elapsed since the most recent vaccination.
- (5) Custodian—A person or agency which feeds, shelters, harbors, has possession or control, or has the responsibility to control an animal.
- (6) Department—The Texas Department of Health (TDH).
- (7) Dog—Any *Canis familiaris*, including hybrids.
- (8) Domestic animal—Any animal normally adapted to live in intimate association with humans or for the advantage of humans.
- (9) Domestic dog—Any *Canis familiaris*, excluding hybrids.
- (10) Domestic ferret—Any *Mustela putorius furo*.
- (11) High risk animals—Those animals which have a high probability of transmitting rabies; they include skunks, bats, species of foxes indigenous to North America, coyotes, and raccoons.

- (12) Housing facility—Any room, building, or area used to contain a primary enclosure or enclosures.
- (13) Humanely killed—To cause the death of an animal by a method which:
 - (A) rapidly produces unconsciousness and death without visible evidence of pain or distress; or
 - (B) utilizes anesthesia produced by an agent which causes painless loss of consciousness, and death following such loss of consciousness.
- (14) Hybrid—Any offspring of two animals of different species.
- (15) Impoundment - The collecting and confining of an animal because of a state or local ordinance.
- (16) Isolation—The separation of an animal exposed or potentially exposed to rabies.
- (17) Local health authority—The officer designated by the municipal or county governing body under Texas Civil Statutes, Article 4477-6a, §2.02.
- (18) Local rabies control authority—The officer designated by the municipal or county governing body under the Texas Health and Safety Code, Chapter 826.
- (19) Low risk animals—Those which have a low probability of transmitting rabies; they include all animals of the orders Marsupialia, Insectivora, Rodentia, Lagomorpha, and Xenarthra.
- (20) Observation period - The time following a bite incident during which the biting animal's health status must be monitored. The observation period for domestic dogs, cats, and domestic ferrets (only) is 10 days (240 hours); the observation period for other animals, not including those defined as high risk or low risk, is 30 days.
- (21) Police dog—Domestic dog that is owned or employed by a governmental law enforcement agency.
- (22) Primary enclosure—Any structure used to immediately restrict an animal or animals to a limited amount of space, such as a room, pen, run, cage, compartment, or hutch.
- (23) Public health region—A contiguous group of Texas counties, so designated by the board.
- (24) Quarantine facility—A structure where animals are held for rabies observation.
- (25) Quarantine period—That portion of the observation period during which a biting animal is physically confined for observation as provided for in §169.27 of this title (relating to Quarantine Method and Testing).
- (26) Sanitize—To make physically clean and to destroy disease-producing agents.
- (27) Therapy dog - A dog that helps a person with a diagnosed emotional disorder for whom a letter has been issued by a physician stating that the removal of the animal would be detrimental to the person's emotional health.
- (28) Unowned animal—Any animal for which an owner has not been identified.
- (29) Vaccinated—Properly injected by a licensed veterinarian with a rabies vaccine licensed for use in that species by the United States Department of Agriculture.

(30) Zoonosis Control Division (ZCD)—The division within the Texas Department of Health to which the responsibility for implementing these rules is assigned.

(31) Zoonosis control representative—Any person employed by the ZCD.

§169.26. *Facilities for the Quarantining of Animals.*

(a) Generally.

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

(4) Waste disposal. Provision shall be made for the removal and disposal of animal and food wastes, bedding, dead animals, and debris. Disposal facilities shall be so provided and operated as to minimize vermin infestations, odors, and disease hazards. A suitable method shall be provided to rapidly and safely remove water and other liquid waste from housing facilities. Housing facilities should be designed to have animal excreta removed through sanitary sewers, septic systems, or garbage. All closed drainage systems should be equipped with traps, vents, and acceptable drain covers to exclude rodents and prevent any backup of sewer gas and odors into the facility.

(5)-(6) (No change.)

(7) Records. Records shall be kept on each animal processed through the housing facility. At a minimum, the records shall document the animal's description, impoundment date, disposition date, and method of disposition. Records shall be available for inspection by the department.

(8) Heating. Adequate shelter shall be provided to protect animals from any form of cold or inclement weather and direct effects of wind, rain, or snow. Auxiliary heat or clean, dry bedding material shall be provided any time the ambient temperature falls below 50 degrees Fahrenheit (10 degrees Celsius) for more than four consecutive hours when animals are present. If bedding material is used, larger quantities should be used as temperatures drop.

(9) Cooling and Ventilation. Adequate shelter shall be provided to protect animals from any form of overheating and direct rays of the sun. Facilities shall be provided with fresh air either by means of windows, doors, vents, fans, or air conditioning and shall be ventilated so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as fans or air conditioning, shall be provided in indoor facilities when the ambient temperature is 85 degrees Fahrenheit (29.5 degrees Celsius) or higher.

(10) Lighting. Housing facilities shall have ample light of sufficient intensity to permit routine inspection and cleaning. Primary enclosures shall be situated to protect the animals from excessive illumination.

(11) Construction. Housing facilities must be constructed in such a manner that they will protect the animal and not create a health risk or public nuisance. The building surfaces shall be constructed and maintained so that they are impervious to moisture and may be readily sanitized. Floors shall be made of durable, nonabsorbent material.

(12) Primary enclosures. Primary enclosures shall:

- (A) be structurally sound and maintained in good repair;
- (B) provide convenient access to clean food and water;
- (C) enable the animal to remain dry and clean;

(D) be constructed and maintained so that they are impervious to moisture and may be readily sanitized;

(E) be constructed so as to protect the animal's feet and legs from injury; and

(F) provide sufficient space to allow each animal to turn around fully, stand, sit, and lie in a comfortable normal position.

(b) Feeding.

(1) Dogs and cats shall be fed at least once a day except as directed by a licensed veterinarian. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition and size of the dog or cat.

(2) Domestic ferrets shall have 24-hour access to food. The food shall be free from contamination, wholesome, palatable, and of sufficient quality and nutritive value to meet the normal daily requirements for the condition, size, and age of the domestic ferret.

(3) Food receptacles shall be accessible to all dogs, cats, and domestic ferrets and shall be located so as to minimize contamination by excreta. Food pans or bowls shall be durable and kept clean and sanitary. Disposable food receptacles may be used but must be discarded after each feeding or for domestic ferrets, after 24 hours of use. Self feeders may be used for feeding dry pet foods and shall be kept clean and sanitary.

(c) Watering. If potable water is not accessible to dogs and cats at all times, it shall be offered to them at least twice daily for periods of not less than one hour, except as directed by a licensed veterinarian. Domestic ferrets shall have potable water accessible at all times, provided in drinking bottles of appropriate size to maintain a fresh supply. Water receptacles shall be kept clean and sanitary.

(d) Sanitation.

(1) Cleaning of primary enclosures. Excreta shall be removed from primary enclosures as often as necessary to prevent contamination of the inhabitants, but not less than daily.

(2) Sanitation of primary enclosures. Cages, rooms, and pens shall be maintained in a sanitary condition.

(3) Building and premises. Building and premises shall be kept clean.

(e) Pest Control. A regular program for the control of insects, ectoparasites, and other pests shall be established and maintained.

§169.27. *Quarantine Method and Testing.*

(a) When a domestic dog, cat, or domestic ferret which has bitten a human has been identified, the owner or custodian will be required to place the animal in quarantine until the end of the 10-day observation period. Unvaccinated animals should not be vaccinated against rabies during the observation period; however, animals may be treated for unrelated medical problems diagnosed by a veterinarian. The observation period will begin at the time of the bite incident. If the animal becomes ill during the observation period, the local rabies control authority must be notified by the person having possession of the animal. The animal must be placed in a department licensed facility specified by the local rabies control authority and observed at least twice daily. However, the local rabies control authority may allow the animal to be placed in a veterinary clinic. As an alternative, the local rabies control authority may allow home quarantine if the following criteria can be met.

(1) A secure enclosure approved by the local rabies control authority must be used to prevent escape.

(2) The animal has been vaccinated against rabies within the last 12 months. If an unvaccinated animal is not over four months of age at the time of the bite, it may be allowed home quarantine.

(3) The local rabies control authority or a licensed veterinarian must observe the animal at least on the first and last days of the quarantine period.

(4) The animal was not a stray (as defined in the Texas Health and Safety Code, §826.002) at the time of the bite.

(b) A domestic animal which has bitten a human and has been designated by the local rabies control authority as unclaimed may be humanely killed in such a manner that the brain is not mutilated. A suitable specimen (head with brain intact or brain) shall be submitted to a department certified laboratory for rabies diagnosis as specified in subsection (h) of this section.

(c) If the biting animal is a high risk animal, it shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(d) If the biting animal is a low risk animal, neither quarantine nor rabies testing will be required unless the local rabies control authority has cause to believe the biting animal is rabid, in which case it should be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(e) The local rabies control authority may require an animal which has inflicted multiple bite wounds, punctures, or lacerations to a person to be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(f) If the biting animal is not included in subsection (a), (b), (c), (d), or (e) of this section, the biting animal will be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section or the local rabies control authority may require the animal to be quarantined or suitably confined for the 30-day observation period as an alternate method to killing and testing.

(g) Any animal required to be quarantined under this section, which cannot be maintained in a secure quarantine, shall be humanely killed and a suitable specimen submitted for rabies testing as specified in subsection (h) of this section.

(h) All laboratory specimens referred to in subsections (b) - (g) of this section shall be submitted in accordance with §169.33 of this title (relating to Submission of Specimens for Laboratory Examination).

(i) At the discretion of the local rabies control authority, currently vaccinated assistance, therapy, and police dogs may not be required to be placed in quarantine during the observation period.

§169.33. Submission of Specimens for Laboratory Examination.

Preparation of specimens either for shipment or for personal delivery for rabies diagnosis shall include the following.

(1) (No change.)

(2) The head of the suspect animal shall be separated from the body immediately after death by a qualified person. Only the head shall be submitted with the exception that whole bats may be submitted. If only the brain is submitted rather than the entire head, parts of the cerebellum, hippocampus, and brain stem must be included. Specimens which do not include at least two of these three

areas of the brain will be considered unsatisfactory due to a lack of sufficient material.

(3) The head shall be immediately chilled to between 45 degrees Fahrenheit and 32 degrees Fahrenheit either in a refrigerator or by packing for shipping with sufficient amounts of refrigerants in the container. The head should not be frozen.

(4) If specimens are shipped, two containers shall be used for packing.

(A) The immediate (inner) container. Only one head shall be placed in each immediate container which shall be double plastic bags. Attach the owner's name or an identification number to each double-sealed plastic bag. Adhesive tape is useful. Do not use masking tape.

(B) The shipping (outer) container.

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

(iv) A completed Texas Department of Health Form G-9, Rabies Submission Form, which is available at the department's Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, is required for each head submitted. Each form must contain the same identification information as located on the specimen bag as stated in subparagraph (4)(A) of this section. Submission form(s) shall be placed in a waterproof bag on top of the Styrofoam container inside the cardboard box. If a combination of a Styrofoam container and cardboard box is not used, the form(s) shall be placed on top of the packing material inside the outer container.

(v) Labeling on the outside of the shipping container shall be legible and include:

(I) name, address, and telephone number of the appropriate laboratory (listed in paragraph (6) of this section);

(II)-(III) (No change.)

(5) (No change.)

(6) The certified laboratories in Texas are:

(A) Austin - Bureau of Laboratories, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone the rabies shipment notification hotline at 1-800-252-8163, or the local telephone at: (512) 458-7598, (512) 458-7515, or (512) 458-7318 (after hours).

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Steeg

General Counsel

Texas Department of Health

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 3. Income Assistance Services

The Texas Department of Human Services (DHS) adopts amendments to §3.704, §3.705, and §3.902 in its Income Assistance Services chapter. The amendments to §3.704 and §3.902 are adopted with changes to the proposed text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5385). The amendment to §3.705 is adopted without changes to the proposed text and will not be republished.

The justification for the amendments is to comply with an agency initiative and the Program Simplification Workgroup on the simplification of certain income and resources in the Temporary Assistance for Needy Families (TANF) and Medical programs.

The amendments will function by ensuring that TANF policies will be made compatible with the current Food Stamp policies.

The department received no comments regarding adoption of the amendments, but has initiated minor editorial changes to §3.704(a) by making "Service" plural, and to §3.902(a)(8) by changing the phrase "as specified in subsection (b)(2)" to "as specified in subsection (b)(3)."

Subchapter G. Resources

40 TAC §3.704, §3.705

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendments implement the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

§3.704. *Types of Resources.*

(a) Temporary Assistance for Needy Families (TANF) — Countable Resources. The Texas Department of Human Services (DHS) counts the following resources in TANF:

(1) Individual retirement accounts (IRAs). DHS counts IRAs as resources, even if there is a penalty for early withdrawal. DHS deducts the early withdrawal penalty and counts the remainder as a resource;

(2) Keogh Plans. DHS counts Keogh Plans as resources, even if there is a penalty for early withdrawal, and counts the remainder as a resource. DHS does not count Keogh Plans as resources if there is a contractual withdrawal agreement among other people who are not household members who share the same fund. DHS considers this an inaccessible resource;

(3) Liquid resources. DHS counts liquid resources which are readily negotiable unless they are excluded in subsection (b)(9) of this section. Examples include cash, checking or savings accounts, savings certificates, stocks or bonds;

(4) Nonliquid resources. DHS counts nonliquid resources such as personal property, licensed and unlicensed vehicles, buildings, land, and any other property not specifically exempt; and

(5) Real property. DHS counts the value of real property unless otherwise exempt.

(b) Temporary Assistance for Needy Families (TANF) — Excludable Resources. DHS excludes the following resources in TANF:

(1) Burial plot. DHS exempts all burial plots owned by household members.

(2) Crime victim payments. DHS exempts payments received from crime victims compensation programs.

(3) Disability payments. DHS exempts disability payments resulting from Agent Orange Settlement Agreements or the Radiation Exposure Compensation Act.

(4) Earned income tax credit (EITC). DHS exempts EITC payments as follows:

(A) for applicants, EITC payments are exempt for the month the payment is received and for the following months; and

(B) for ongoing recipients, EITC payments are exempt the month of receipt and the following 11 months.

(5) Homestead. DHS exempts the usual residence and surrounding property which is not separated by property owned by others.

(A) The exemption remains in effect if the surrounding property is separated from the home by public right of way, such as roads.

(B) The homestead exemption applies to only one house on the property.

(C) The home and surrounding property remain exempt when temporarily unoccupied for reasons of employment, training for future employment, illness, casualty, or natural disaster and the household intends to return.

(D) DHS counts the proceeds from the sale of a homestead as an available resource.

(6) Inaccessible resources. DHS exempts cash values of resources that are not legally available to the household.

(7) Income-producing property. DHS exempts personal possessions retained for business purposes and those necessary for the maintenance of vehicles exempted as income-producing property or necessary for transporting a physically disabled household member as an available resource.

(8) Life insurance. DHS exempts the cash value of life insurance policies.

(9) Liquid resources. DHS excludes liquid resources resulting from earned income of a child as specified in Human Resources Code §31.0031, for clients who are not members of the State Welfare Reform Control Group described in §3.6004 of this title (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031, Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility).

(10) Lump sum payments. DHS counts income tax refunds as resources as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv)(E) effective on August 1, 1996, and the Social

Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

(11) Prepaid burial insurance. DHS exempts one prepaid burial insurance policy, prepaid funeral plan, or prepaid funeral agreement with a cash value of \$1,500 or less for each member of the certified group.

(12) Personal possessions. DHS exempts personal possessions such as clothing, jewelry, furniture, livestock, and farm equipment, if used to meet personal needs essential for daily living.

(13) Reimbursements. DHS counts reimbursements as a resource in the month after receipt, but exempts reimbursements for repairing or replacing a lost or damaged resource which would not otherwise affect eligibility if the applicant uses the reimbursement for the intended purpose.

(14) Resources of an alien's sponsor. DHS determines the sponsor's countable resources in the same manner as the applicant's. DHS reduces the total value of the sponsor's resources by \$1,500 and considers the remainder available to the alien.

(15) Resources exempted by federal law. DHS exempts government payments by the Individual and Family Grant Program or the Small Business Administration provided to rebuild a home or replace personal possessions damaged in a disaster, if the household is subject to legal sanction if the funds are not used as intended. DHS exempts payments made under the following Acts:

(A) Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241);

(B) Sac and Fox Indian Claims Agreement;

(C) Grand River Band of Ottawa Indians;

(D) Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians received according to the Maine Indian Claims Settlement Act of 1980;

(E) Confederated Tribes and Bands of the Yakima Indian National and the Apache Tribe of the Mescalero Reservation received from the Indian Claims Commission;

(F) Seneca Nation Settlement Act of 1990 (Public Law 101-503);

(G) DHS exempts payments from Indian lands held jointly with the tribe or land that can be sold only with approval of the Bureau of Indian Affairs;

(H) Navajo or Hopi Tribes (Public Law 93-531);

(I) DHS exempts reimbursements from the Uniform Relocation Assistance and Real Properties Acquisition Policy Act of 1970; and

(J) DHS exempts payments or allowances made under any federal law for the purpose of energy assistance.

(16) Retirement accounts. DHS exempts money in retirement, vested retirements, and 401K accounts, even if it is accessible with a penalty.

(17) Vehicles used for transportation.

(A) For clients who are members of the State Welfare Reform Control Group described in §3.6004 of this title, (relating to Applicability of Aid to Families with Dependent Children (AFDC) Policies Resulting from Human Resources Code §31.0031,

Dependent Child's Income; Human Resources Code §31.012, Mandatory Work or Participation in Employment Activities Through the Job Opportunities and Basic Skills Training Program; Human Resources Code §31.014, Two-Parent Families; and Human Resources Code §31.032, Investigation and Determination of Eligibility), DHS exempts the value of one vehicle owned and used by the certified group for transportation if the equity is less than \$1,500. If the equity exceeds \$1,500, DHS counts the excess as a resource. DHS counts the equity of all other vehicles.

(B) For all other TANF clients, DHS exempts licensed vehicles as specified in Human Resources Code §31.032(d)(2).

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

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For further information, please call: (512) 438-3765



Subchapter I. Income

40 TAC §3.902

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public and financial assistance programs.

The amendment implements the Human Resources Code, §§22.001- 22.030 and §§31.001-31.0325.

§3.902. *Types of Income.*

(a) Temporary Assistance for Needy Families (TANF) — Countable Income. The Texas Department of Human Services (DHS) counts the following as income:

(1) (No change.)

(2) cash gifts and contributions. DHS counts these as income, unless they are made by a private, nonprofit organization on the basis of need and total \$300 or less per household in a federal fiscal quarter;

(3)-(7) (No change.)

(8) disqualified legal parent. DHS counts the income of a legal parent disqualified for noncompliance with social security number requirements, third party resource requirements, intentional program violations, child support requirements, employment services requirements or failure to report temporary absence of a child using regular budgeting policy and allowing an exclusion for diverted income only as specified in subsection (b)(3) of this section. DHS counts the income of a parent(s) disqualified because of alien status as specified in 45 Code of Federal Regulation (CFR) §233.50(c) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, citizenship requirements as specified in §3.603(a) of this title (relating to Disqualification because Verification of Citizenship Is Pending), or exhaustion of

time limits as specified in §3.501(b)(3) of this title (relating to Aid to Families with Dependent Children (AFDC) and Food Stamp Household Determination). The income of such a parent is counted as specified in 45 CFR §233.20(a)(3)(B)(vi) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

- (9) dividends;
- (10) government-sponsored programs;
- (11) interest, dividends, royalties;
- (12) (No change.)
- (13) noneducational grants;

(14) Nonrecurring Lump Sum Payments. DHS counts lump sum payments as income as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(ii)(F) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, except when shortening the period of ineligibility. For this procedure DHS shortens the ineligibility period only if:

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

- (15)-(16) (No change.)
- (17) pensions;
- (18) retirement, survivors and disability income (RSDI);
- (19) reimbursement. DHS counts reimbursements as income unless the reimbursement is irregular and unpredictable or the reimbursement is for a special item not included in DHS's standard of need;
- (20) retirement benefits;
- (21) royalties;

(22) self-employment income. DHS counts self-employment income according to requirements in 45 Code of Federal Regulations §233.20(a)(6)(v)(B) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(23) stepparents. DHS counts stepparents' income according to requirements in 45 Code of Federal Regulations §233.20(a)(3)(xiv) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, except for stepparent budgeting as stipulated in the Omnibus Budget Reconciliation Act of 1993;

(24) trust funds. DHS counts as income trust withdrawals or dividends which could be received by the applicant;

(25) unemployment compensation;

(26) veterans' benefits. DHS counts veterans' benefits as income but exempts benefits that meet a special need not included in DHS's standard of need;

(27) wages, salaries, and commissions received in cash or in kind. DHS exempts wages, salaries, and commissions received under the work subsidy component of the Job Opportunities and Basic Skills Training (JOBS) program, as specified in §3.7102 of this title (relating to Income and Resources from Work Subsidy); and

(28) worker's compensation. DHS exempts any amount of the benefits that is for payment of medical expenses incurred before Medicaid eligibility began if the client uses the benefit to pay these expenses.

(b) Temporary Assistance for Needy Families (TANF) — Excludable Income. DHS excludes the following as income:

(1) children's earned income. DHS exempts this income if the child is a full-time student as defined by the school or a part-time student working less than 30 hours a week. There is no limit on the number of hours a full-time student can work;

(2) disability payments. DHS exempts disability payments resulting from Agent Orange Settlement Agreements or the Radiation Exposure Compensation Act;

(3) diverted income. DHS diverts income for all persons allowed in 45 Code of Federal Regulations §233.20(a)(3)(ii)(C) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(4) Domestic Volunteer Service Act. DHS exempts payments received by volunteers for services performed in programs stipulated in the Domestic Volunteer Service Act of 1973, Title II (Public Law 93-113). DHS exempts payments made to applicants serving as VISTA volunteers under Title I;

(5) earned income tax credits. DHS exempts this income in the 185%, 100%, and recognizable needs tests;

(6) educational assistance. DHS exempts general education assistance payments as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(iv) and §233.20(a)(4)(ii)(d) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. DHS also exempts remaining amounts of educational assistance pursuant to 45 Code of Federal Regulations §233.20(a)(3)(vii) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(7) energy assistance. DHS exempts home energy assistance as stipulated in 45 Code of Federal Regulations §233.53(a)-(c) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(8) food stamp value;

(9) foster care payments;

(10) government housing assistance. DHS exempts government rent or housing subsidies as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(xii) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(11) in-kind income. DHS exempts the value of unearned in-kind assistance;

(12) job training allowances. DHS exempts payments from other agencies that do not duplicate assistance provided under the TANF needs standard and all JTPA payments except on-the-job training (OJT) payments funded under Title II, Section 204 #5 of the JTPA. OJT payments funded under Title II, Section 204 of the JTPA are treated as earned income;

(13) job training payments. DHS exempts any portion that is earmarked as a reimbursement for training-related expenses;

(14) native and Indian claims. DHS exempts payments made under the Alaska Native Claims Settlement Act (Public Law 92-203, as amended by Public Law 100-241), Seneca Nation Settlement Act of 1990 (Public Law 101-503), and funds distributed or held in trust by the Indian Claims Commission for members of Indian tribes under Public Laws 92-254; 94- 540; 94-114, §6; 95-433; 96-420; 98-64, §2; and 93-134, §7 (as amended by Public Law 97.458, §4);

(15) noneducational loans;

(16) nutrition program assistance. DHS exempts the value of supplemental food assistance under the Child Nutrition Act of 1966 and special food services programs for children under the National School Lunch Act. DHS exempts benefits received under the Older Americans Act of 1965, Title VII, Nutrition Program for the Elderly;

(17) relocation assistance benefits. DHS exempts benefits received under the Uniform Relocation Assistance and Real Property Acquisition Act, Title II;

(18) SSI as stipulated in 45 Code of Federal Regulations §233.20(a)(3)(x) effective on August 1, 1996, and the Social Security Act as amended by Title I of Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

(19) third-party funds. DHS exempts money received and used for care and maintenance of a third-party beneficiary who is not a household member; and

(20) vendor payments. DHS does not count payments made directly to the applicant's creditor or person providing the service if the person or organization making the payments is outside the household.

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

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3765



Part XIX. Texas Department of Protective and Regulatory Services

Chapter 700. Child Protective Services

Subchapter D. School Investigations

40 TAC §§700.401-700.413

The Texas Department of Protective and Regulatory Services (TDPRS) adopts new §§700.401-700.413, in its Child Protective Services chapter. New §§700.402-700.404, 700.408, 700.409, and 700.411 are adopted with changes to the proposed text published in the April 10, 1998, issue of the *Texas Register* (23

TexReg 3668). New §§700.401, 700.405, 700.406, 700.407, 700.410, 700.412, and 700.413 are adopted without changes to the proposed text and will not be republished.

The justification for the sections is to implement §18 of House Bill 1826, which requires TDPRS to establish rules to implement §261.406 of the Texas Family Code, regarding investigations in schools. The rules define abuse and neglect of children by school personnel or volunteers at the child's school in public or private schools and describe procedures for its report, investigation, and review by Child Protective Services. The rules are adopted in new Subchapter D, School Investigations.

The sections will function by informing reporters of abuse or neglect, school-related entities, and the public of the definitions and procedures that TDPRS will use to receive and act on reports of abuse or neglect in school settings.

During the public comment period, TDPRS received comments from Advocacy, Inc. A summary of the comments and TDPRS's responses follow:

Comments concerning §700.402, Definitions:

1) One commenter suggested that the definition of "moved" be revised to delete the phrase "alleged perpetrator or."

Response: TDPRS agrees and has made the change.

2) One commenter raised questions about possible confusion concerning the roles of Child Protective Services and Licensing staff when an abuse or neglect report in a school setting involves only children in facilities regulated by TDPRS. The Licensing Division of TDPRS conducts investigations in school settings involving only children in facilities regulated by TDPRS under policies previously established by that division.

Response: TDPRS agrees and has added an exclusion for school settings involving only children in facilities regulated by TDPRS.

Comments concerning §700.404, Criteria for Accepting Reports and Conducting School Investigations:

1) One commenter stated that the word "only" in subsection (a) should be deleted because the use of the word is exclusionary.

Response: TDPRS agrees and has deleted the word.

2) One commenter stated that the word "same" should be added to subsection (a)(6) to indicate that the allegations must be investigated unless they are the same as ones previously investigated.

Response: TDPRS agrees and has added the word.

Comments concerning §700.408, Conducting the School Investigation:

1) One commenter requested that in subsection (a), the word "may" be changed to "shall," to indicate that the investigative steps are required unless good cause existed not to take the step.

Response: TDPRS agrees and has changed the word. The commenter also agreed to the addition of qualifying phrases in (a)(1) and (a)(4) since good cause may exist not to take these steps.

2) One commenter stated that subsection (a)(3) should be amended to indicate that a child's guardian would need to be interviewed when they have collateral information.

Response: TDPRS agrees and has revised the subsection.

Comment concerning §700.411, Notification to School Officials of Findings in a School Investigation: Commenters stated that the report of the investigation needs to be provided to the superintendent of schools, unless that person is the alleged perpetrator, because that person is instrumental in protecting children in the school.

Response: TDPRS is unable to provide the report to the superintendent because the Legislature specifically listed persons to be notified and the list did not include the superintendent.

Other comments: One commenter recommended that TDPRS establish a Memorandum of Understanding (MOU) with the Texas Education Agency (TEA) to insure their knowledge, cooperation, and to fill any gaps in the system. Issues that could be included in the MOU are what corrective action is taken by schools when abuse or neglect is found, and how to ensure that child victims are protected by the school during the investigation. The commenter indicated that they would be willing to work with both agencies in drafting a MOU which could speak to the need for corrective action following the outcome of the investigation performed by TDPRS. The commenter indicated that if TEA is unwilling to participate in such a venture, legislative action may well be warranted and would likely be supported by them.

Response: TDPRS's Child Protective Services is currently contacting TEA officials to determine if they would be interested in establishing such a MOU.

In addition to changes resulting from public comments, TDPRS is adopting the following changes for clarification. In §700.403(b)(3), the word "a" is changed to "the." In §700.408(b), TDPRS has corrected the citation to §411.114. In §700.409(a), TDPRS has added a reference to the law concerning interference with the investigation. In §700.411(a), TDPRS has changed the term "supervisor" to "Texas Department of Protective and Regulatory Services" since the case may need to be reviewed by the program director prior to providing a report of the investigation to TEA, the State Board for Educator Certification, and others as required by law. In §700.411(a)(3), TDPRS has made a revision to indicate that the report will be provided to the president of the local school board or local governing body for the school, not to each member of those boards.

The new sections are adopted under the Human Resources Code, Title 2, Subtitle D, Chapter 40, which provides the department with the authority to propose and adopt rules to comply with state law and implement departmental programs; and under the Texas Family Code, Chapters 261 and 264, which authorizes the department to provide services to alleviate the effects of child abuse and neglect.

The new sections implement the Human Resources Code, Chapter 40, and the Texas Family Code, Chapters 261 and 264.

§700.402. *Definitions.*

The terms used in this subchapter shall have the meanings assigned to those terms in Texas Family Code, Chapter 261, and in Subchapter E of of this chapter, unless the context clearly indicates otherwise or the term is otherwise defined below:

(1) Alleged perpetrator - A person who is alleged or suspected of being responsible for the abuse or neglect of a child.

(2) Child - A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

(3) CPS - Child Protective Services, a program within the Texas Department of Protective and Regulatory Services.

(4) Designated perpetrator - A person who has been determined by a preponderance of evidence to have been responsible for abuse or neglect of a child in a school setting.

(5) Designated victim - A child who has been determined, based on a preponderance of the evidence, to have been abused or neglected in a school setting.

(6) Moved - A finding that CPS was not able to finish the investigation of an allegation of abuse or neglect against school personnel or volunteers in a school setting because the alleged victim moved and could not be located.

(7) Preponderance of evidence - Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

(8) Reason-to-believe - A finding that an allegation of abuse or neglect against school personnel or volunteers in a school setting is supported by a preponderance of the evidence.

(9) Reporter - An individual who, on his own initiative, makes an unsolicited report to the Texas Department of Protective and Regulatory Services (TDPRS) or to a duly constituted law enforcement agency, alleging the abuse or neglect of a child. If more than one individual makes an unsolicited report alleging abuse or neglect of the same child, all such individuals shall have the designation of reporter.

(10) Ruled-out - A finding by a preponderance of the evidence that an allegation of abuse or neglect did not occur or was not committed by the alleged perpetrator.

(11) School personnel and volunteers - Persons providing services or caring for children at a public or private school under the jurisdiction of the Texas Education Agency (TEA) who have access to children in a school setting, or persons in a private school setting who have responsibility for the care, custody, or control of children in a school setting, including school employees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.

(12) School setting - The physical location of a child's school, or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services, and excluding school settings involving only children in facilities of the Texas Department of Mental Health and Mental Retardation (MHMR) when the facility contracts with the local school district to provide educational services, and excluding school settings involving only children in facilities regulated by the Texas Department of Protective and Regulatory Services.

(13) Unable to determine - A finding that an allegation of abuse or neglect can neither be supported nor ruled-out by a preponderance of the available evidence.

§700.403. *Definition of Child Abuse and Neglect in School Investigations.*

(a) For purposes of an investigation in a school setting, the terms abuse and neglect shall have the meaning assigned to those terms in the Texas Family Code, §261.001 (1) and (4), as those terms

are further defined in §700.501 of this title (relating to Terminology Used in Statutory Definitions of Child Abuse and Neglect and Person Responsible for a Child's Care, Custody, or Welfare), unless the definition is clearly inapplicable to reports of abuse or neglect in school settings.

(b) Abuse and neglect in this context do not include:

(1) use of restraints or seclusion that do not meet the statutory definitions of child abuse or neglect;

(2) actions that school personnel or volunteers at the child's school reasonably believe to be immediately necessary to avoid imminent harm to self or other individuals, if the actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. The actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, such as use of restraints or seclusion as a substitute for lack of staff; or

(3) reasonable physical discipline. Reasonable physical discipline is appropriate to the child's age and development and the reason for which the discipline is being administered and is without physical injuries that result in substantial harm or without genuine threat of substantial harm from physical injury to the child.

§700.404. Criteria for Accepting Reports and Conducting School Investigations.

(a) A report of alleged abuse or neglect occurring in a school setting will be assigned for investigation by Child Protective Services (CPS) if the following criteria are met:

(1) the allegations must meet the definitions of abuse or neglect contained in §700.403 of this title (relating to Definition of Child Abuse or Neglect in School Investigations);

(2) the alleged perpetrator must be a person meeting the definition of school personnel or volunteers at the child's school;

(3) the alleged victim must be a child or must have been a child at the time that the alleged abuse or neglect occurred;

(4) the alleged abuse or neglect must have happened in a school setting;

(5) the alleged abuse or neglect must have occurred during the current school year or there must be a likelihood that sufficient evidence can still be obtained to establish whether or not abuse or neglect occurred in a school setting; and

(6) the same allegations involving the school setting must not have already been investigated by the Texas Department of Protective and Regulatory Services.

(b) A report of alleged abuse and neglect which does not meet the criteria for investigation specified in this section shall be referred to an appropriate law enforcement entity or other investigating agency in accordance with Texas Family Code, §261.105.

(c) When a report is not accepted for investigation, CPS must notify the reporter verbally or in writing as to the reason the report will not be investigated and that the reporter may discuss concerns about the decision with the supervisor.

§700.408. Conducting the School Investigation.

(a) An investigation conducted under this subchapter shall include the following investigative steps, unless the allegations of child abuse and neglect can be clearly confirmed or ruled-out without recourse to one or more of these steps:

(1) obtain a full statement of the allegation from the reporter, as appropriate to the case.

(2) interview or examine each alleged victim, as appropriate in the case.

(3) interview any other witnesses or persons who may have collateral information, including the child's parents or guardian.

(4) interview the alleged perpetrator, when available.

(5) obtain photographs, school records, or other pertinent physical evidence, if relevant to the investigation.

(6) request that a parent of an alleged victim obtain a medical, psychological, or psychiatric examination of the child and that the records of such examination be provided to the Child Protective Services (CPS) investigator, if necessary, to properly investigate the allegations in the case.

(7) request that the alleged perpetrator submit to a medical, psychological, or psychiatric examination and that the records of such examination be provided to the CPS investigator, if necessary, to properly investigate the allegations in the case.

(8) cooperate with law enforcement in the event that law enforcement is conducting a joint investigation regarding the allegations.

(b) CPS will conduct a criminal history background check on the alleged perpetrator in accordance with Texas Government Code, §411.114, and §700.520 of this title (relating to Criminal Records Checks).

(c) The CPS investigator must complete the investigation, reach a disposition as to each allegation made in the report, and submit the investigation report and findings to a supervisor for approval within 30 days after initiating the investigation, unless an extension of time is approved by the worker's supervisor due to extenuating circumstances. The CPS supervisor must approve the investigation or return it to the investigator for further action, within ten days of receiving the investigative report. If the tenth day falls on a weekend or state holiday, the supervisor has until the next working day to complete the required review.

(d) Notwithstanding any other provision in this section, an investigation may be closed administratively at any point during the investigation, if it becomes apparent after initiating the investigation that the allegations made in the report do not, in fact, meet one or more of the criteria for investigation specified in §700.404 of this title (relating to Criteria for Accepting Reports and Conducting School Investigations). If a case is closed administratively, all allegations in the case are given the disposition of "administrative closure."

§700.409. Conducting Interviews or Examinations.

(a) School officials or other persons related to the school setting may not interfere with an investigation of a report of child abuse or neglect conducted by the Texas Department of Protective and Regulatory Services, pursuant to Texas Family Code §261.303, Interference with Investigation: Court Order. Interviews and examinations in a school investigation may take place on or off the school premises, as deemed appropriate by the Child Protective Services (CPS) investigator, provided the investigator notifies the school principal (or that individual's supervisor in the event that the principal is the alleged perpetrator) prior to conducting an interview or examination on school premises. CPS may request that school personnel or volunteers not be present during the interview or examination of an alleged victim, an alleged perpetrator, an adult or

child witness, or any other person who may have information relevant to the investigation if the investigator determines that:

(1) the presence of school personnel or volunteers would compromise the integrity of the investigation; or

(2) a better interview or examination of the child would result without school personnel or volunteers being present.

(b) The initial investigation interview of a child alleged to have been physically or sexually abused must be videotaped or audiotaped by CPS unless good cause exists not to do so, as specified in §700.522 of this title (relating to Audiotaping or Videotaping Interviews with Alleged Victims).

(c) The CPS investigator must comply with the requirements in §700.508(b) of this title (relating to Interviews with Parents or Other Alleged Perpetrators).

§700.411. *Notification to School Officials of Findings in a School Investigation.*

(a) After the Texas Department of Protective and Regulatory Services has closed an investigation in a public or private school under the jurisdiction of the Texas Education Agency (TEA), Child Protective Services (CPS) is statutorily required to provide a report of the investigation, redacted to remove the identity of the reporter, to the following:

(1) TEA (Division of Continuing Education, Services to Children, Youth and Families Unit);

(2) State Board for Educator Certification;

(3) president of the local school board or local governing body for the school; and

(4) the school principal, unless the principal is the alleged perpetrator.

(b) If the overall investigation disposition is "reason-to-believe," the report must include information about the designated perpetrator's right to an administrative review of the investigation findings (ARIF). The report must also state that CPS will notify the above entities in the event that the dispositions are changed as a result of an ARIF.

(c) When the overall disposition in an investigation is "reason-to-believe" and the school is a private school not under the jurisdiction of TEA, CPS does not automatically release the results of the investigation to the entities listed in subsection (a) of this section, but must follow the provisions in Subchapter F of Chapter 700 of this title (relating to Release Hearings) prior to releasing the results of the investigation to persons having control over the designated perpetrator's access to children. When the overall disposition in an investigation is other than "reason-to-believe," CPS may release the findings to the appropriate school officials when the investigation is complete.

(d) Notwithstanding any other provision in this section, notice need not be provided to a school official if a report of abuse or neglect is closed administratively prior to notification to any school official that a report was received by the Texas Department of Protective and Regulatory Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9810244

C. Ed Davis

Deputy Director, Legal Services

Texas Department of Protective and Regulatory Services

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Part XX. Texas Workforce Commission

Chapter 800. General Administration

40 TAC §800.61

The Texas Workforce Commission (Commission) adopts new §800.61 relating to the Welfare to Work (WtW) allocation rule, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4890). The rules will not be republished here.

The purpose of new §800.61 is to provide the allocation formula for the WtW program.

Under the WtW formula grant, Texas will allocate 85% of its funding from DOL to the boards. If a local workforce development area does not have a certified board, the funds for that area will be allocated to the private industry council (PIC) for that area. Federal law requires that the allocation of funds to boards be based on a formula that allocates at least half of the funds based on the relative percentage of the local workforce development area's residents who are poor, such as the number of poor individuals living in the area in excess of 7.5 percent of the total population of the area. Not more than half of the funds may be distributed based on one or both of two additional factors: (1) the number of adults in the local workforce development area receiving TANF for 30 months or more (long-term TANF factor), and/or (2) the number of unemployed individuals in the local workforce development area (unemployment factor).

The rule for WtW is consistent with the general workforce development statutes and rules that establish local control and authority under workforce development boards. Boards have the jurisdiction and the authority to develop local policy, to determine which segments of the eligible population to target, to determine service delivery practices and procedures, to establish the services and activities available in each local workforce development area, to demonstrate collaboration with other local partners, and to provide in-kind matching funds for the program. The activities and services are to be delivered consistent with the federal and state regulations, these rules, and any implementation policies and procedures.

No comments were received on the proposed rules.

The new rule is adopted under Texas Labor Code §301.061 that provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Texas Workforce Commission programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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J. Randel (Jerry) Hill
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For further information, please call: (512) 463-8812

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40 TAC §800.62

The Texas Workforce Commission (Commission) adopts new §800.62, concerning School-to-Careers, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4891). Section 800.62 will not be republished.

The purpose of the new §800.62, School-to-Careers, is to set out the method of allocating funds to local partnerships for the state's School-to-Careers activities, which are funded by the School-to-Work Opportunities Act as codified at 20 U.S.C.A. §6141 *et seq.*

The adopted rule is based on a five-year period for implementation of the state's School-to-Careers activities, which began March 1, 1997, in accordance with the federal grant awarded to the state by the U.S. Department of Education. The rule is adopted based on the presumption of continued federal funding in accordance with the state's application for an implementation grant as approved by the U.S. Department of Education, U.S. Department of Labor and the National School-to-Work Office. For the need-based method of allocation, the Commission anticipates using student population information from the following sources: the Texas Education Agency for grades kindergarten - 12, the Texas Higher Education Coordinating Board for community and technical college enrollment of students ages 15-25, and the Texas Workforce Commission JTPA Title II-C Youth Training Program for youths ages 16-21. From the total amount of funds awarded to the state, the state's share for conducting School-to-Careers activities shall be no more than thirty percent in the first year of the grant; twenty percent in the second year; and ten percent in the third, fourth, and fifth years. State administrative costs shall be limited to an amount not to exceed ten percent of each year's total grant award. Competitive subgrants were awarded to local partnerships for the first year of the implementation grant in accordance with the state's application to the U.S. Department of Education. For the continuation of the implementation grant, a need-based formula will be used to allocate funds among local workforce development areas throughout the state in accordance with Texas Labor Code, §302.062.

Some commenters were for the rule, and others had concerns and questions about the rule as proposed, and suggested changes. The Commission received comments on the rule from the following.

- a Texas State Senator;
- the Houston Galveston Area Council;
- the Gulf Coast Workforce Development Board;
- the West Central Texas Workforce Development Board, School-to-Work Committee; and
- the West Central Texas Workforce Development Board.

Following each comment or group of related comments is the Commission's response.

Comment: Two commenters support the proposed rule and assert the formula will provide more equitable services for students in Texas.

Response: The Commission appreciates the commenters' expressions of support.

Comment: One commenter compares the allocation for two areas based on the rule and states one area has almost twice the number of school districts with which to work, three times the number of counties, twice as many square miles to cover, almost twice as many students, and six times the percent of poverty, yet the other area is allocated almost twenty percent more funding. The commenter requests the rationale for allocation of funds.

Response: In the first year of the School-to-Careers grant, funding for local partnerships was based on a Request for Proposals, which emphasized developing the structure for School-to-Careers activities. Funds were awarded primarily on the basis of the quality of the proposals. The rule proposes allocation of funds based on student population in the second year of the grant in order to implement most effectively the service structure developed in the first year. However, in order not to penalize any area in the transition from structure emphasis to service emphasis, a portion of the state's share of the second year grant is provided to ensure that no area receives less in the second year than their allocation in the first year. It is this additional funding from the state's share of the grant that results in the greater amount of funding for the smaller area addressed in the comment. The allocation formula does not address size of an area because there is not a direct correlation on a statewide basis between size of an area and service provision. Also, activities provided under this grant are available to any interested student, with parental consent, and do not target low-income students or areas.

Comment: One commenter agrees that population should be one factor in the allocation of funds but asserts that this single factor does not adequately address the diversity of Texas or the quality of local systems. The commenter believes the intent of School-to-Careers funding is to build a statewide system of local partnerships dedicated to ensuring lifelong learning opportunities for interested youth in high-skill, high-wage careers. The commenter also believes that implementation funds are not intended for direct individual student benefits but to develop local partnerships and systems. The commenter suggests factors in the funding allocation should include: 1) the number of school districts and postsecondary institutions; 2) the number of local partnerships proportionate to population density; and 3) challenges resulting from: limited availability of mentoring, internship, and apprenticeship opportunities; lack of transportation and other services; and limited availability of community and employer resources, both financial and human. The commenter further asserts that implementation of a statewide system requires the participation and involvement of all interested communities, not just the large metropolitan areas, and that the time and effort to engage all partners (students, parents, employer, labor and educators), whether in small communities or large cities, is equal. The commenter states that adequate funds are needed to build sustainable quality systems in every community that will continue to thrive when federal funds are no longer available.

Response: The Commission concurs with the goal of a statewide system of local partnerships including any interested

community and any interested partner. Although the Commission understands that time and effort are involved in working with each entity, there are notable differences in the number of school districts and postsecondary institutions in various areas of the state in relation to factors relevant to School-to-Careers issues. The time and effort required to establish appropriate activities in one large and complex educational institution may be as much or more than required for a multitude of institutions in another area. The funds provided in the first year of the grant were for the purpose of establishing linkages among the entities involved in School-to-Careers activities. The number of entities contributing to the partnership was, therefore, a more significant factor in the first year. Funding for the second year of the grant is expected to result in an increase in voluntary, parental-approved, participation of students; therefore, the student population will have a greater impact in the second year. The challenges listed in the comment are factors to be considered in the local partnership's implementation plan, but they cannot be equitably enumerated on a statewide basis.

Comments regarding §800.62(d) are as follows.

Comment: One commenter does not agree that the number of students in an area corresponds to need and asserts that the formula does not account for the demographics of the students, income level of the area, dropout rates, or other factors. The commenter recommends that TWC develop an alternate formula that addresses student need, if that is the true intent and allocation basis.

Response: The Commission understands that students have diverse needs based on demographics, income levels, etc. However, the Commission disagrees with including these factors because the School-to-Careers activities are available to all students who are interested in participating (with parental consent). The state's implementation plan does not target specific sub-populations such as economically disadvantaged or educationally disadvantaged. Separate funds have been set aside in the federal School-to-Work Opportunities Act of 1994 that target economically depressed areas, and the local partnerships may apply directly to the federal government for those funds.

Comment: One commenter does not agree with the general premise that funds should be allocated based on student population and references the federal legislation and the state application as indicating that School-to-Careers funds are to be used to build a system rather than serve individual students. The commenter asserts that the funding allocation methodology should be based on system components rather than students, *i.e.*, the number of school districts or chambers of commerce rather than the number of students. The commenter recommends development of an alternate formula based on system-building factors rather than service to individual students.

Response: Allocation of funds for the first year of the School-to-Careers grant emphasized the development of processes and procedures for implementation of the School-to-Careers activities. The funding increase in the second year of the grant is expected to result in expanded services for participating schools, building on the first year's development. Therefore, the Commission disagrees with changing the allocation method because it considers student population the most appropriate basis for distribution of funds to accomplish the service implementation.

Comment: One commenter notes that the rule does not identify the methodology or percentage of funds reduced as a result of not demonstrating or maintaining satisfactory progress and

suggests this should be more clearly defined. The commenter further notes there is no indication of how funds withheld from areas would be used and recommends establishing a limit and/or range of funds that could be withheld for nonperformance. The commenter recommends a provision that up to twenty percent of an area's funds could be withheld for nonperformance and that these funds be used to provide incentives to local areas with exemplary performance. The commenter recommends that the Commission not take action on the proposed rule until a methodology and percentage of funds is identified for nonperforming programs.

Response: The Commission appreciates the commenter's recommendations for amount of reduction and use of withheld funds; however, the Commission disagrees with setting aside up to 20% of an area's funds because there are considerable differences in plans and setting a fixed amount may not adequately address the various situations that may arise. For that reason, the Commission declines to specify the amount of potential reductions. "Satisfactory progress" refers to progress related to the previous year's grant. A satisfactory level of progress may be delayed but later attained, in which case the allocated funds would then be released to the respective partnership.

Comment: One commenter references the terms "satisfactory progress" and "overall quality" and notes that these terms are not defined in the rule. The commenter asserts that if these are factors in allocating funds, there must be clear definitions and that the Commission needs to define both terms clearly and provide an opportunity for review and comment by local boards on the proposed definitions. The commenter notes that TWC has issued no policy and/or guidance on performance or progress indicators and recommends that the Commission not take action on the proposed rule until further definition is provided of the terms "satisfactory progress" and "overall quality".

Response: These are not factors in determining the specific amount of funds to allocate; rather, they relate to requirements for a partnership to receive the full amount of funds allocated. The overall quality refers to the plan submitted in the previous year, which was evaluated based on criteria in the planning guidelines. Satisfactory progress must necessarily be determined on an individual partnership basis because the activities planned in the various local areas are different and the contract implementation dates are different. The Texas Council on Workforce and Economic Competitiveness is in the process of developing an evaluation instrument for the state's School-to-Careers activities. As such, the Commission disagrees with adding definitions as requested.

The new sections are adopted under Texas Labor Code, Title 4, particularly, §§301.061 and 302.001 which provide the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of the programs administered by the Commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 813. Food Stamp Employment and Training

Subchapter A. General Provisions

40 TAC §813.1, §813.2

The Texas Workforce Commission (Commission) adopts the repeal of §813.1 and §813.2 and adopts new §813.1 and §813.2 relating to the Food Stamp Employment and Training Program, without changes to the rules as proposed in the May 15, 1998 issue, of the *Texas Register* (23 TexReg 4893). The rules will be republished here.

New subchapter A is added regarding general provisions.

The purpose of new §813.1 is to explain the expenditure of Food Stamp Employment and Training Program funds.

The purpose of new §813.2 is to set forth the allowable activities for the Food Stamp Employment and Training Program.

The new rules ensure that allowable workforce development services are available to able-bodied food stamp recipients, ages eighteen to fifty, without dependents (ABAWDs). The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 requires ABAWDs to work or participate in specific activities. Food stamp benefits will be limited to three months out of thirty-six months if participants fail to comply with these requirements. Federal guidelines mandate that at least 80% of the federal Food Stamp Employment and Training funds be used to assist ABAWDs to meet these requirements. Allowable activities for this population include training funded by the Trade Adjustment Act of 1974 (TAA), Job Training Partnership Act (JTPA), workfare, and state training and education programs at least twenty hours per week.

No comments were received on the proposed rules.

The repeals are adopted under the authority of Texas Labor Code, Chapter 301, which provides the Commission the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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The new rules are adopted under the authority of Texas Labor Code, Chapter 301, which provides the Commission the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Commission programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 837. Apprenticeship Training

Subchapter A. General Purpose and Definitions

40 TAC §837.1, §837.2

The Texas Workforce Commission adopts new §§837.1, 837.2, 837.21, 837.22, 837.41-837.44, 837.61-837.65, 837.81-837.85, 837.100, 837.101, and 837.121-837.125, concerning the operation of the Apprenticeship Training program. Sections 837.2, 837.21, 837.41, 837.61, 837.64, 837.65, and 837.82 are adopted with non-substantive changes to the proposed text as published in the April 17, 1998 issue of the *Texas Register* (23 Tex Reg 3813). Sections 837.1, 837.22, 837.42-837.44, 837.62, 837.63, 837.81, 837.83-837.85, 837.100, 837.101, and 837.121-837.125 are adopted without changes and will not be republished.

The purpose of these rules is to implement the provisions of Texas Education Code, Chapter 133, related to state-funded apprenticeship training programs. Such programs fall under the authority of the Commission pursuant to Texas Labor Code, §302.021, related to Consolidation of Workforce Development Programs. These rules may be cited as the Apprenticeship Training Rules.

New Subchapter A concerns the General Purpose and Definitions. New §837.2, concerning Definitions, has been changed to clarify the name of the Bureau of Apprenticeship and Training, to clarify the elements of an apprenticeship agreement, and to clarify the definition of a local education agency.

New Subchapter B concerns the Registration Requirements for apprenticeship training. The title of Subchapter B has been changed to clarify that the listed requirements are for registration purposes. New §837.21, concerning Registration with the Bureau of Apprenticeship and Training, has been changed to clarify that such registration requirements are to qualify for funding.

New Subchapter C concerns the Funding Notice and Application Process. New §837.41, concerning Notice of Available Funds, has been changed to clarify the role of local education agencies.

New Subchapter D concerns the Funding Qualifications. New §837.61, concerning Eligible Applicants, has been changed to conform to the definition of a local education agency. New §837.64, concerning Funding Qualifications for a Related Instruction (Apprentice) Class, has been changed to clarify the

method of prescribing due dates to report contact hours. New §837.65, concerning Qualifications for Funding a Supplementary Instruction (Journeyman) Class, has been changed to delete redundant language.

New Subchapter E concerns the Use of Funds and Account Maintenance. New §837.82, concerning Cost Categories, has been changed to provide a more detailed explanation of administrative costs.

New Subchapter F concerns Compliance Monitoring.

New Subchapter G concerns Reporting Requirements.

The following comments were received from the Texas State Director, United States Department of Labor, Bureau of Apprenticeship and Training. Following the comments are the Commission's responses.

Comment: The commenter requested that §837.2 concerning Definitions should include the full name of the Bureau of Apprenticeship and Training.

Response: All instances of the use of Bureau of Apprenticeship and Training have been revised to show the complete name.

Comment: The commenter had a concern with §837.2, Definitions, which defined a local education agency as a sponsor. The commenter requested substituting the phrase "fiscal agent." The commenter also requested deletion of the words "operating an apprenticeship program" in the description of the role of a local education agency. The commenter requested that the source of funds be indicated.

Response: The definition of local education agency has been reworded to clarify the role of such entities, and to indicate that as fiscal agents for the apprenticeship program they will dispense funds pursuant to Texas Education Code, Chapter 133.

Comment: The commenter requested that the rule at §837.21, concerning Registration with the Bureau of Apprenticeship and Training, state that such registration is to qualify for funding. The commenter also questioned the use of the phrase "to obtain acceptance and recording of such program," and asked that it be deleted.

Response: The rule has been expanded to indicate that registration is to qualify for funding. The phrase "to obtain acceptance and recording of such program" is taken directly from the federal regulations for apprenticeship programs at 29 Code of Federal Regulations §29.2(l) and §29.2(m). The Commission believes it provides a more complete description of the purpose for registration and will leave such language unchanged.

Comment: The commenter had a concern with the role of local education agencies as described in §837.41, Notice of Available Funds, and requested that the word "sponsor" be removed and replaced with the phrase "provide related instruction to registered."

Response: The Commission has changed the description of the role for a local education agency in distributing apprenticeship training funds to apprenticeship training programs, by adding the recommended phrase.

In response to internal comments the Commission has revised §837.2 concerning Definitions to clarify the elements of an apprenticeship agreement, has changed the title of Subchap-

ter B concerning Registration Requirements to clarify that the listed requirements are for registration purposes, has changed §837.64 concerning Funding Qualifications for a Related Instruction (Apprentice) Class to clarify the method of prescribing due dates to report contact hours, has changed §837.65 concerning Qualifications for Funding a Supplementary Instruction (Journeyman) Class to delete redundant language, and has changed §837.82 concerning Cost Categories to provide a more detailed explanation of administrative costs.

The new rules are adopted under Texas Labor Code, Section 301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

§837.2. Definitions.

In addition to the definitions relating to apprenticeship training found in Texas Education Code, §133.001, and in 29 C.F.R. §29.2, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrator's Guide for Apprenticeship Training Programs – An informational supplement to the Apprenticeship Training Rules, referred to in this chapter as "the Administrator's Guide." The Administrator's Guide is issued annually by the Texas Workforce Commission and provides relevant dates and sample application forms with instructions useful in planning and submitting an application for Apprenticeship Training Program funding. The Administrator's Guide may be obtained from the Texas Workforce Commission, Apprenticeship Training, 101 East 15th Street, Austin, Texas 78778-0001.

(2) Apprentice – A full-time paid worker, at least 16 years of age except where a higher minimum age standard is otherwise fixed by law, who is employed to learn a skilled trade under standards of apprenticeship established by the Bureau of Apprenticeship and Training of the U.S. Department of Labor.

(3) Apprenticeship agreement – A written agreement between an apprentice and either an employer or an apprenticeship committee acting as agent for employer(s), which contains the terms and conditions of the employment and training of the apprentice. The elements of an apprenticeship agreement are set forth at 29 C.F.R. §29.6.

(4) Apprenticeship committee – An autonomous local group consisting of members appointed by one or more employers of apprentices, or by one or more bargaining agents representing members of an apprenticeable trade, or a combination of the above. An apprenticeship committee is designated for each apprenticeship training program to establish instruction standards and goals for a particular craft or crafts, interview and select applicants, and monitor the program and apprentices as described in Texas Education Code, §133.003.

(5) Apprenticeship training program – A training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in a trade that has been certified as an apprenticeable occupation by the Bureau of Apprenticeship and Training of the U.S. Department of Labor. The program is a structured system of training designed to prepare individuals for occupations in skilled trades and crafts by combining training under the supervision of experienced journeymen with job-related classroom instruction.

(6) Bureau of Apprenticeship and Training – The U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training.

(7) Commission – The Texas Workforce Commission.

(8) Federal Regulations – The U.S. Department of Labor standards for the registration of apprenticeship programs found in 29 C.F.R. Part 29.

(9) Local Education Agency - For purposes of this Chapter 837, a public school district or state post- secondary institution, that provides funding under Chapter 133, Texas Education Code, for an apprenticeship training program pursuant to a contract with an apprenticeship committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810181

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: July 16,1998

Proposal publication date: April 17, 1998

For further information, please call: (512) 463-8812



Subchapter B. Federal Requirements

40 TAC §837.21, §837.22

The new rules are adopted under Texas Labor Code, Section 301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

§837.21. *Registration with the Bureau of Apprenticeship and Training.*

(a) To qualify for funding, all apprenticeship training programs must be registered with the Bureau of Apprenticeship and Training to obtain acceptance and recording of such program as meeting the basic standards and requirements defined in 29 C.F.R. Part 29. Approval of an apprenticeship training program is evidenced by a Certificate of Registration issued by the Bureau of Apprenticeship and Training.

(b) All apprenticeship agreements must be registered with the Bureau of Apprenticeship and Training to obtain acceptance and recording of such agreement as evidence of the participation of the apprentice in a particular registered apprenticeship program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810182

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



Subchapter C. Funding Notice and Application Process

40 TAC §§837.41–837.44

The new rules are adopted under Texas Labor Code, Section 301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

§837.41. *Notice of Available Funds.*

(a) The Commission, upon the recommendation of the Texas Council on Workforce and Economic Competitiveness, shall provide annual notice, through publication in the Texas Register , to all potential program sponsors of funds available to support apprenticeship training programs for the prospective fiscal year. The Apprenticeship Training Program's fiscal year starts on September 1 and ends on August 31 of each year.

(b) The notice shall also include the annual funding formula for the prospective fiscal year, consisting of the contact-hour rate, the percentage of funds available for new programs or established programs not currently receiving funds, and any funds set aside for other funding purposes.

(c) The contact-hour rate is the method used to distribute apprenticeship training funds to local education agencies that provide related instruction to registered apprenticeship training programs. The contact-hour rate is determined by the statewide total number of contact hours of apprenticeship training instruction classes divided into the amount of available funds.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810183

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



Subchapter D. Funding Qualifications

40 TAC §§837.61–837.65

The new rules are adopted under Texas Labor Code, § 301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

§837.61. *Eligible Applicants.*

(a) Entities eligible to apply to the Commission for apprenticeship training funding are public school districts and state post-secondary institutions.

(b) Approved local education agencies shall be the fiscal agents for the funds and are subject to the audit procedures described in Texas Education Code, §133.005. Approved local education agencies shall subcontract with the local apprenticeship committee of a registered apprenticeship training program to fund job-related classroom instruction.

§837.64. *Funding Qualifications for a Related Instruction (Apprentice) Class.*

The following additional eligibility requirements must be met for an apprenticeship training program to qualify for the funding of a related instruction (apprenticeship) class:

(1) Each apprentice of the specific occupation of the program must:

(A) be a full-time employee in the private sector in Texas;

(B) be registered with the Bureau of Apprenticeship and Training on or before September 1 of the applicable program year;

(C) receive related instruction concurrently with on-the-job training; and

(D) be physically present on the official third class meeting, or both the second and fourth class meetings, as evidenced by the physical presence of the authorized local education agency administrator.

(2) Each job-related instruction class for the applicable program year must begin on or after September 1, conduct the fourth class meeting no later than the first Saturday in October, and end on or before August 31.

(3) Only registered apprentices are allowed to attend a related (apprentice) instruction class. The class will be disallowed for funding for the entire year if anyone else attends the class. The local education agency will reimburse the Commission for any disallowed funding.

(4) The number of approved related instruction hours per class per year must be certified by the Bureau of Apprenticeship and Training.

(5) The number of estimated contact hours and the number of actual contact hours of the apprenticeship training instruction classes must be submitted by the local education agency and received by the Commission on or before the respective due dates as annually prescribed by the Commission.

§837.65. Qualifications for Funding a Supplementary Instruction (Journeyman) Class.

Supplementary instruction classes will be funded if eligible and if funds are available after final allocations to related instruction classes. The following eligibility requirements must be met for an apprenticeship training program to qualify for the funding of a supplementary instruction (journeyman) class:

(1) Each supplementary instruction class shall be for skill upgrading directly related to the trade of the sponsoring organization/association with tasks or skills performed at the journeymen level; not to exceed forty-eight hours of instruction.

(2) Each supplementary instruction class shall maintain an accurate attendance roster listing every person who attends the class and their attendance.

(3) Only journeymen who are employed in Texas by members of the support organization/association are allowed to attend supplementary instruction classes. The class will be disallowed for funding if anyone else attends the class.

(4) For additional background and information on supplementary instruction classes, see the Administrator's Guide.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810184

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



Subchapter E. Use of Funds and Account Maintenance

40 TAC §§837.81–837.85

The new rules are adopted under Texas Labor Code, Section 301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

§837.82. Cost Categories.

Costs are divided into two main categories, administrative and instructional.

(1) Administrative. Costs that are allowable, necessary and reasonably incurred by the local education agency to properly administer and manage the funds, such as salaries for local education agency supervisors and administrative supplies. Administrative costs may not exceed 15% of the total contract.

(2) Instructional. Costs that are allowable, necessary and reasonable for the apprenticeship training program to properly conduct the job-related instruction class, such as instructors' salaries and instructional supplies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810185

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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For further information, please call: (512) 463-8812



Subchapter F. Compliance Monitoring

40 TAC §837.100, §837.101

The new rules are adopted under Texas Labor Code, §301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810186

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission
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For further information, please call: (512) 463-8812



Subchapter G. Reporting Requirements

40 TAC §§837.121–837.125

The new rules are adopted under Texas Labor Code, Section 301.061 which provides the Texas Workforce Commission with the authority to adopt such rules as it deems necessary for the effective administration of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 26, 1998.

TRD-9810187

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

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Proposal publication date: April 17, 1998

For further information, please call: (512) 463-8812



Chapter 839. Welfare to Work

40 TAC §§839.1–839.3

The Texas Workforce Commission (Commission) adopts new §§839.1-839.3 relating to the Welfare to Work (WtW) program, without changes to the proposed text as published in the May 15, 1998, issue of the *Texas Register* (23 TexReg 4893). The rules will not be republished here.

The purpose of new §§839.1 and §839.2 is to stipulate the requirement for local entities to comply with the federal WtW program statutes and regulations and the state WtW plan.

The purpose of new §839.3 is to provide the conditions under which the Commission will reimburse funds.

Adoption of these new rules govern the requirements for local workforce development boards (boards), private industry councils (PICs), or other approved entities administering the WtW program to be in compliance with federal statute and regulations. The Balanced Budget Act of 1997 authorized the U.S. Department of Labor (DOL) to provide WtW formula grants to states and local communities to create additional job opportunities for hard-to-employ recipients of Temporary Assistance for Needy Families (TANF). These grants will provide many welfare recipients with job placement services, transitional employment, and other support services that they need to make the successful progression into long-term unsubsidized employment. The Texas WtW plan is an addendum to the state's TANF plan.

Under the WtW formula grant, Texas will allocate 85% of its funding from DOL to the boards. If a local workforce development area does not have a certified board, the funds for that area will be allocated to the PIC for that area. Federal law requires that the allocation of funds to boards be based on a formula that allocates at least half of the funds based

on the relative percentage of the local workforce development area's residents who are poor, such as the number of poor individuals living in the area in excess of 7.5 percent of the total population of the area. Not more than half of the funds may be distributed based on one or both of two additional factors: (1) the number of adults in the local workforce development area receiving TANF for 30 months or more (long-term TANF factor), and/or (2) the number of unemployed individuals in the local workforce development area (unemployment factor).

The rules for WtW are consistent with the general state's workforce development statutes and rules that establish local control and authority under workforce development boards. Boards have the jurisdiction and the authority to develop local policy, to determine which segments of the eligible population to target, to determine service delivery practices and procedures, to establish the services and activities available in each local workforce development area, to demonstrate collaboration with other local partners, and to provide in-kind matching funds for the program. The activities and services are to be delivered consistent with the federal and state regulations, these rules, and any implementation policies and procedures.

No comments were received on the proposed rules.

The rules are adopted under Texas Labor Code §301.061 which provides the Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 25, 1998.

TRD-9810129

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Effective date: July 15,1998

Proposal publication date: May 15, 1998

For further information, please call: (512) 463-8812



TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Subchapter A. Organization and Responsibilities

43 TAC §1.1, §1.2

The Texas Department of Transportation adopts amendments to §1.1 and §1.2, concerning organization and responsibilities. Sections 1.1 and 1.2 are adopted without changes to the proposed text as published in the April 17, 1998, issue of the *Texas Register* (23 TexReg 3819) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Transportation Code, §201.102 requires the commission to develop policies that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the department.

The amendments to §1.1 and §1.2 are adopted to reflect recently enacted legislation affecting the responsibilities of the commission and the department and to clarify the respective roles of the commission and the executive director in determining the organizational structure of the department and ensure that those roles are consistent with the commission's and the commissioner of transportation's statutory responsibilities concerning department organization.

COMMENTS

No comments were received on the amendments.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of work of the Texas Department of Transportation, and more specifically, §201.102, which requires the commission to develop policies

that clearly separate the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on June 29, 1998.

TRD-9810237

Bob Jackson

Acting General Counsel

Texas Department of Transportation

Effective date: July 19, 1998

Proposal publication date: April 17, 1998

For further information, please call: (512) 463-8630



TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

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 Act, the Government Code, Chapters 2001 and 2002, 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.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

ADOPTED ACTIONS

The Commissioner of Insurance, at a public hearing under Docket Number 2355 held at 10:00 a.m., June 18, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted an amendment proposed by the Texas Insurance Organization (TIO) to the Texas Automobile Rules and Rating Manual (the Manual), Rule 74, to clarify rating procedures for policies insuring certain youthful operators. TIO's petition (Reference Number A-0298-07) was published in the May 15, 1998 issue of the Texas Register (23 TexReg 4925).

Manual Rule 74.A.3. currently classifies as 2D or 2DF an unmarried female under age 21 only if there is no male operator under 25 years of age. The amendment deletes the condition, "and there is no male operator under 25 years of age."

This order is based upon the rationale set forth in TIO's petition as follows:

There is presently an inconsistency in Rule 74 regarding the rating of vehicles when there are "youthful operators." The inconsistency arises in the application of Section C.5.b., which requires that, the company charge the highest rate equal to the number of autos that are principally operated by youthful operators. It has been the case until recently that a class 2.A. or 2.C. (both male) has always been at higher rates than class 2.D. (female). However, in recent years and in some territories the 2.D. class rate is higher than the 2.A. or 2.C. class.

Under §A.3. of Rule 74 the 2.D. class can only be assigned if there is no male operator under 25 years of age.

To illustrate the problem by example: assume an insuring situation where there are two parents, a son age 16 and a daughter age 17 with two autos in territory 01. The children use the mother's car when using a vehicle. Section C.5.b. requires that the highest rate equal to the number of autos principally operated by youthful operators be used. In this example it would be the 2.D. class. However, the 2.D. class could not be assigned because of §A.3.

By eliminating the condition "and there is no male operator under 25 years of age" this conflict can be resolved.

The amendment as adopted by the Commissioner of Insurance is shown in an exhibit on file with the Chief Clerk under Reference Number A-0298-07, which is incorporated by reference into Commissioner's Order Number 98-0737.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendment is adopted to become effective on September 1, 1998.

This agency hereby certifies that the amendment as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9810140

Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: June 25, 1998



The Commissioner of Insurance, at a public hearing under Docket Number 2357 held at 10:00 a.m., June 18, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1997 and 1998 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0598-11-I) was published in the May 15, 1998 issue of the *Texas Register* (23 TexReg 4926).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability,

and other relevant loss factors for the 1997 and 1998 model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0598-11-I, which is incorporated by reference into Commissioner's Order Number 98-0738.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on September 1, 1998.

This agency hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9810139
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 25, 1998



The Commissioner of Insurance, at a public hearing under Docket Number 2358 held at 10:00 a.m., June 18, 1998 in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by Staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1998 and 1999 model

Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0598-12-I) was published in the May 15, 1998 issue of the *Texas Register* (23 TexReg 4926).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the 1998 and 1999 model years of the listed vehicles.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0598-12-I, which is incorporated by reference into Commissioner's Order Number 98-0739.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted to become effective on September 1, 1998.

This agency hereby certifies that the amendments as adopted have been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

TRD-9810138
Lynda H. Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 25, 1998



== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Review

Texas Real Estate Commission

Title 22, Part XXIII

The Texas Real Estate Commission proposes to review all sections in Chapter 533 in accordance with the Appropriations Act of 1997, House Bill 1, Article IX, §167. The commission will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reason for adopting each of the sections within this chapter continues to exist.

Any questions pertaining to this notice of intention to review should be directed to Mark A. Moseley, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or e-mail to general.counsel@trec.state.tx.us.

- §533.1. Definitions
- §533.2. Object of Rules
- §533.3. Scope of Rules
- §533.4. Filing of Documents
- §533.5. Computation of Time
- §533.6. Motions for Postponement, Continuance, Withdrawal or Dismissal
- §533.7. Conduct and Decorum
- §533.8. Petition for Declaratory Rulings
- §533.9. Request for Advisory Opinions
- §533.10. Adoption of Rules: Notice of Intent to Adopt Rules
- §533.11. Adoption of Rules: Request for Comments; Hearing; Explanation of Commission Action
- §533.12. Adoption of Rules: Emergency Rules
- §533.13. Adoption of Rules: Petition for Adoption of Rules
- §533.14. Adoption of Rules: Informal Consultations
- §533.15. Contested Case: Disapproval of an Application for a License
- §533.16. Contested Case: Suspension and Revocation of a License

- §533.17. Contested Case: Notice of Hearing
 - §533.18. Contested Case: Presiding Officer
 - §533.19. Contested Case: Limitations on Number of Witnesses
 - §533.20. Contested Case: Right to Counsel; Right to Participate
 - §533.21. Contested Case: Persons Designated Presiding Officer; Ex Parte Consultations
 - §533.22. Contested Case: Subpoenas; Depositions
 - §533.23. Contested Case: Testimony
 - §533.24. Contested Case: Rules of Evidence
 - §533.25. Contested Case: The Record
 - §533.26. Contested Case: Informal Disposition
 - §533.27. Contested Case: Final Decisions and Orders
 - §533.28. Contested Case: Finality of Decisions for the Purpose of Appeal
 - §533.29. Contested Case: Prerequisite to Judicial Review; Motions for Rehearing, Modification of Order, or Probation.
 - §533.30. Contested Case: Judicial Review
- TRD-9810337
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Filed: June 30, 1998



Adopted Rule Review

Texas Rehabilitation Commission

Title 40, Part II

The Texas Rehabilitation Commission adopts the following sections from Chapters 106, Contract Administration, Subchapter C, Acquisition of Administrative Goods and Services, Subchapter D, Debarment and 117, Special Rules and Policies, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167. These sections were

proposed for review in the May 29, 1998, issue of the *Texas Register* (23 TexReg 5742). The sections were proposed with no changes.

- 106.38
- 106.39
- 106.40
- 106.41
- 106.42
- 106.43
- 106.44

117.6

No comments were received regarding the proposed review.

The Commission's reason for adopting these sections continues to exist.

TRD-9810255

Charles Schiesser

Chief of Staff

Texas Rehabilitation Commission

Filed: June 29, 1998

TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure: 1 TAC <*>62.26 (c)

	Classroom	Clinical	Continuing Education within 2 Year Time Frame	Validation of Cu Practice
SANes trained BEFORE 1998 & in current practice				
Adult	**40 Hours	*	**8 Hours	*8 evidence colle on adult survivor 2 years
Pedi	**40 Hours	*	**16 Hours	*10 examinations survivors in past
Both	**40 Hours	*	**16 Hours	*Adult & Pedi Vi requirements
<p>* Letter verifying & outlining the component signed by a supervisor or medical director to validate info must be provided. ** If certificates were not issued at the time classroom training was completed, a notarized letter from the supervisor or a letter from the trainer must be submitted.</p>				

	Classroom	Clinical	Continuing Education
SANes trained AFTER October 1, 1998			
Adult	56 Hours	66 Hours	None required at time of initial certification (but mus continuing education and skill maintenance as outline
Pedi	56 Hours	96 Hours	None required at time of initial certification.
Both	56 Hours	96 Hours	None required at time of initial certification.

Figure: 1 TAC <*>60.29 (3)

	Continuing Education Within 2 Year Time Frame	Validation of Current Practice
Adult	**8 Hours	*8 evidence collection kits on adult survivors in past 2 years
Pedi	**16 Hours	*10 examinations on Pedi survivors in past 2 years
Both	**20 Hours <ul style="list-style-type: none"> • 16 Hours - Pedi • 4 Hours - Adult 	*8 evidence collection kits on adult survivors in past 2 years *10 examinations on Pedi survivors in past 2 years
<p>* Letter verifying and outlining the component signed by a supervisor or medical director to validate information must be provided ** Certificate of completion must be provided.</p>		

Figure for 40 TAC 725.1810(d)

Number of children receiving care	Maximum amount of penalty
20 or less	\$20
21-40	\$30
41-60	\$40
61-80	\$50
81-100	\$75
More than 100	\$100

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Wednesday, July 8, 1998, 2:00 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

By Teleconference Quality Review Committee

EMERGENCY AGENDA:

- A. Consideration of a report from the quality review oversight board
- B. Consideration of a request for enrollment
- C. Consideration of amendments to the quality review rules
- D. Consideration of comments made by reviewed firms.

Reason for emergency: This meeting is scheduled as a teleconference because budget restrictions in the Appropriations Act which limit the Board's authority to reimburse the travel expenses of Committee Members make it difficult or impossible for a quorum of the committee members to convene in one location. However, immediate action on the agenda items is necessary to manage the Board's Quality Review program.

Contact: Amanda G. Birrell, 333 Guadalupe Tower III, Suite 900, Austin, Texas 78701-3900, 512/305-7848.

Filed: June 26, 1998, 11:09 a.m.

TRD-9810179

◆ ◆ ◆

State Office of Administrative Hearings

Monday, July 6, 1998, 1:30 p.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-0484-Petitions of Central Telephone Company of Texas and United Telephone Company of Texas doing business as Sprint to recover lost revenues and cost of implementing expanded local calling service pursuant to PUC Substantive Rule 23.49(c)(12) (PUC Docket No. 17809).

Contact: William G. Newchurch, 300 West 15th Street, Suite, 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: June 26, 1998, 8:58 a.m.

TRD-9810169

◆ ◆ ◆

Thursday, July 9, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-1251-Application of West Texas Utilities Company for authority to reconcile fuel costs (PUC Docket No. 18607).

Contact: William G. Newchurch, 300 West 15th Street, Suite, 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: June 29, 1998, 3:53 p.m.

TRD-9810282



Wednesday, August 19, 1998, 9:00 a.m.

1700 North Congress Avenue

Austin

Utility Division

AGENDA:

SOAH Docket No. 473-98-0266-(PUC Docket No. 18513) Application of Southwestern Bell Telephone Company to recover lost revenues and cost of implementing expanded service.

Contact: William G. Newchurch, 300 West 15th Street, Suite, 502, Austin, Texas 78701-1649, 512/936-0728.

Filed: June 30, 1998, 10:02 a.m.

TRD-9810306



Texas Department of Agriculture

Tuesday, July 14, 1998, 10:00 a.m.

8918 Tesoro Drive, Suite 120

San Antonio

AGENDA:

Administrative hearing to review alleged violation of Texas Department of Agriculture Code Annotated §§103.001-.015 (Vernon Supp. 1998) by Siwash Farms, Inc., as petitioned by Marcel B. Grothues.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: June 30, 1998, 11:58 a.m.

TRD-9810314



Tuesday, July 14, 1998, 11:00 a.m.

8918 Tesoro Drive, Suite 120

San Antonio

AGENDA:

Administrative hearing to review alleged violation of Texas Department of Agriculture Code Annotated §§103.001-.015 (Vernon Supp. 1998) by Produce International, Inc., as petitioned by Cin's Produce.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: June 30, 1998, 11:58 a.m.

TRD-9810315



Texas Commission on Alcohol and Drug Abuse

Friday, July 10, 1998, 10:00 a.m.

9001 North IH-35, Suite 105, Room MR-3, Whitney Jordan Plaza

Austin

Regional Advisory Consortium (RAC), Region 7

AGENDA:

call to order; welcome and introduction of guests; approval of minutes; old business: thanks, RAC newsletter, RAC comments on strategic plan, letter of support for Treatment Outcomes and Performance Pilot Study (TOPPS), and legislative packet; new business: prevention resource centers and prevention and NorthStar project; public comment; and adjournment.

Contact: Albert Ruiz, 9001 North IH-35, Austin, Texas 78753-5233, 512/349-6607 or 800/832-9623, Ext. 6607.

Filed: June 29, 1998, 2:07 p.m.

TRD-9810278



Texas Council on Alzheimer's Disease and Related Disorders

Thursday, July 9, 1998, 9:30 a.m.

Board Conference Room One, American Heart Association, 1700 Rutherford Lane

Austin

AGENDA:

The council will discuss and possibly act on: approval of the minutes of the last meeting; introduction of members; election of a new chairperson; Department of Human Services' (DHS) pilot project; Texas Council on Alcohol and Drug Abuse (TCADA) Memorandum of Understanding; governor's conference on aging; research updates; Alzheimer's annual report/newsletter; strategic planning for the future; update on appointment terms for members; other business not requiring action; and public comment.

To request an accommodation under the ADA, please contact Suzzana C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Anne Williamson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7324.

Filed: June 26, 1998, 2:08 p.m.

TRD-9810204



Texas Association of Counties, County Government Risk Management Pool

Thursday, July 2, 1998, 9:00 a.m.

1204 San Antonio

Austin

Board of Trustees

AGENDA:

1. ADD: Correction of Part VI of Public Officials Liability Coverage Document to employ term, "WRONGFUL ACT"

Contact: James W. Jean, 1204 San Antonio, Austin, Texas 78701, 512/478-8753.

Filed: June 26, 1998, 2:03 p.m.

TRD-9810202



State Board of Barber Examiners

Monday, July 6, 1998, 2:30 p.m.

333 Guadalupe, Tower 2, Fourth Floor, Room #400

Austin

Board of Directors

AGENDA:

Open Session Barber Inspectors' Conference

1. Discussion and possible action concerning inspectors' interpretation and enforcement of the statutes and regulations of the Texas State Board of Barber Examiners.

2. Discussion and possible action concerning inspectors' interpretation and enforcement of Texas Department of Health regulations governing sanitary conditions of barber shops, specialty shops, and barber schools.

3. Discussion and possible action concerning the creation of a licensed barber annual continuing education program in Texas.

Contact: Will K. Brown, 333 Guadalupe, Austin, Texas 78701, 512/305-8475.

Filed: June 26, 1998, 7:52 a.m.

TRD-9810166



Texas Board of Chiropractic Examiners

Thursday, July 9, 1998, 9:00 a.m.

333 Guadalupe, Tower II, Suite 825

Austin

Licensure and Educational Standards Committee

AGENDA:

The Committee will meet on Thursday, July 9, 1998, at 9:00 a.m. to consider, discuss, take any appropriate action/or approve: B.E. Review of licensees who passed June 4, 1998, jurisprudence examination. 2. Review of additional information on lapsed licenses: Peggy Brando Jmail, D.C., Larry A. Ward, D.C., David D. Clements, D.C., J. Coy dean, D.C., Randy Kenneth Holman, D.C., Douglas Kendall, D.C., Christa I. Haneka, D.C., Milton T. Morter, Jr., D.C. 3. Request for review of Georgia rules for reciprocity: David Bradley, D.C. 4. Change of renewal notices from 90 days prior to the 45 days prior to renewal date. 5. Cancellation of licenses for non-renewal. 6. Board's responsibility for licensees with expired licenses of 10 to 11 months (letters to licensees 30 days prior to cancellation).

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6709.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810191



Thursday, July 9, 1998, 9:00 a.m.

333 Guadalupe, Tower II, Suite 825

Austin

Technical Standards Committee

AGENDA:

The Committee will meet on Thursday, July 9, 1998, at 9:00 a.m. to consider, discuss, take any appropriate action/or approve : D.1. Scope of Practice: Ordering of myclogram by D.C., 2. Use of vapocollants: (Fluori-Methane and Ethyl Chloride) by chiropractors. 3. MUA's within scope of practice: William W. Summers; D.C. 4. Needle acupuncture.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6709.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810192



Thursday, July 9, 1998, 10:00 a.m.

333 Guadalupe, Tower II, Suite 825

Austin

Enforcement Committee

AGENDA:

The Committee will meet on Thursday, July 9, 1998, at 10:00 a.m. to consider, discuss, take any appropriate action/or approve: A.1. Administrative fines as penalties. 2. Review of Policies and Procedure Manual concerning the retention of information files on licensees and the expunction of files on licensees including complaints adverse reports and other investigative information on licensees. 3. Acceptance of unsigned complaints and Worker's Compensation cases.

Contact: John Zavala, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6708.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810193



Thursday, July 9, 1998, 10:00 a.m.

333 Guadalupe, Tower II, Suite 825

Austin

Rules Committee

AGENDA:

The Committee will meet on Thursday, July 9, 1998, at 10:00 a.m. to consider, discuss, take any appropriate action/or approve:

1. Adoption of amendments to:

a. Rule 78.1, Chiropractic Radiologic Technologists,

b. Rule 75.1, Grossly Unprofessional Conduct,

c. Rule 73.4, Inactive Status

d. Rules 73.2, 73.3, 73.5, Deadline for Continuing Education

2. Adoption of new rules:

a. Rule 75.2, Proper diligence and efficient practice of chiropractic

b. Rule 78.2, Definitions

3. Plan of review, Chapter 71, proposed amendments.

4. Position Statement: Unlicensed practice of chiropractic

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6709.
Filed: June 26, 1998, 1:28 p.m.

TRD-9810194



Thursday, July 9, 1998, 11:00 a.m.

333 Guadalupe, Tower II, Suite 825

Austin

Executive Committee

AGENDA:

The Executive Committee of the Texas Board of Chiropractic Examiners will meet on Thursday, July 9, 1998, at 11:00 a.m.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6709.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810195



Thursday, July 9, 1998, 1:30 p.m.

333 Guadalupe, Tower II, Suite 825

Austin

Board

AGENDA:

The Board will consider and act, if necessary, on matters within the jurisdiction of the agency which are listed in the complete agenda, as follows: Approval of minutes of last meeting. President's report. Report of Executive Director, Report of the Executive Director on administration, budget, internal policy and procedure, personnel and general information on licensees, A. Enforcement Committee: 1. Administrative fines and penalties. 2. Review of Policy and Procedure Manual concerning the retention of information files on licensees and the expunction of files on licenses including complaints, adverse reports and other investigative information on licensees. 3. Acceptance of undersigned complaints and Workers's Compensation cases. B. Licensure and Educational Standards Committee: 1. Review of licensees who passed June 4, 1998, jurisprudence examination 2. Review of additional information on lapsed licensees: Peggy Brando Jamail, D.C., Larry A. Ward, D.C., David D. Clements, D.C. Larin Perkins, D.C., J. Coy Dean, D.C. Randy Kenneth Holman, D.C., Douglas Kendall, D.C., Christa I. Haneke, D.C., D. C. Milton T. Morter, Jr. D. C. 3. Request for review of Georgia rules for reciprocity: David Bradley, D.C. 4. Change of renewal notices from 90 days prior to 45 days prior to renewal date. 5. Cancellation of licenses for non-renewal. 6. Board's responsibility for licensees with expired licenses of 10 to 11 months (letters to licensees 30 days prior to cancellation). C. Executive Committee D. Technical Standards Committee: 1. Scope of practice: Ordering mycogram by D.C. 2. Use of vapocoolants (Fluori-Methan and Ethyl Chloride) by chiropractor. 3. MUA's with scope of practice: William W. Summers, D.C. 4. Needle acupuncture. E. Rules Committee: 1. Adoption of amendments to: a. rule 78.1, Chiropractic Radiologic Technologists, b. Rule 75.1, Grossly Unprofessional Conduct, c. Rule 73.4, Inactive Status, d. Rules 73.2, 73.3, 73.5, Deadline for Continuing Education 2. Adoption of new rules: a. Rule 75.2, Proper diligence and efficient practice of chiropractic; b. Rule 78.2, Definitions 3. Plan of review, Chapter 71, proposed amendments 4. Position Statement: Unlicensed practice of chiropractic. Open forum

for licensees or the general public to address the Board. Items to be discussed for future agenda. The Board may meet from time to time in Executive Session with respect to the above items authorized by The Texas Open Meeting Act, Chapter 551, of the Government Code, Adjournment.

Contact: Joyce Kershner, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6709.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810196



Council on Competitive Government

Wednesday, July 8, 1998, 9:30 a.m.

Capitol Extension Building, Room E2.002

Austin

Council

AGENDA:

1. call to order; 2. approval of the June 25, 1998 minutes; 3., discussion of statutes and rules applicable to the Council's organization, programs and duties; 4. open discussion; 5. set date and time for next work group meeting 6. adjournment.

Contact: Judy Ponder, 1711 San Jacinto Boulevard, Austin, Texas 78701, 512/463-3960.

Filed: June 25, 1998, 4:57 p.m.

TRD-9810160



Credit Union Department

Thursday, July 16, 1998, 2:00 p.m.

914 East Anderson Lane

Austin

Legislative Advisory Committee for the Credit Union Commission

AGENDA:

To Invite: Public input for future consideration. To Receive: Minutes of April 16, 1998 meeting; To Consider: Taking formal action to Recommend that the Credit Union Commission Approve for Publication and Comment the Reoption of the Rules Pursuant to II.B. 1, Article IX, §167: (1) §97.101- Meetings, (2) §97.102- Delegation of Duties, (3) §97.105- Frequency of Examination, (4) §97.114- Charges for Public Records; Establishing date for the next Committee Meeting; To Conduct: Discussion of the Mandated Study (75th Leg. R.S., Ch. 338, 1997 Tex. Sess. Law. Serv. 1450) of State Laws Governing Financial Institutions; Discussion of Potential Credit Union Legislation that May Be Considered by the 76th Legislature, Including the Commission's Recommended Changes to the Finance Code; Discussion of the Need for a Rule to Require Credit Unions to Implement Credit Card Security Procedures; Discussion of the Need for Rules to Address Member Business Loans and Indirect Lending.

In the event the Commission does not finish deliberation of an item on the first day for which it was posted, the Commission might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72

hours prior to the designated time set for the meeting by contacting Carol Shaner at (512) 837-9236.

Contact: Carol Shaner, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: June 30, 1998, 4:32 p.m.

TRD-9810346



Friday, July 17, 1998, 10:00 a.m.

Credit Union Department Building, 914 East Anderson Lane
Austin

Credit Union Commission

AGENDA:

To Invite: Public input for future consideration. To Receive: Minutes of April 17, 1998 meeting; To Consider: Taking formal action to Ratify the Department's Strategic Plan for Fiscal Years 1999-2003; Taking formal action to Adopt Amendments to §91.209 Concerning Reports and Charges for Late Filing; Taking formal action to Approve the Department's Legislative Appropriation Request (LAR) for 2000-01 Biennial Appropriation Cycle; Taking formal action to Approve Resolution of Appreciation for TSGCU Liquidating Agent Jim Ratzman; taking formal action to establish October 16, 1998 as the tentative date for the next Commission meeting; To Conduct: Discussion of the Credit Union Preparation for the Year 2000; Discussion of the Credit Union Home Equity Lending; An executive session to review credit unions receiving special supervision and related concerns; and administrative sanctions; and administrative sanctions; and to discuss personnel issues- remuneration of the Deputy Commission.

In the event the Commission does not finish deliberation of an item on the first day for which it was posted, the Commission might recess the meeting until the following day at the time and place announced at the time of recess.

Persons with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. Request for special accommodations must be made 72 hours prior to the designated time set for the meeting by contacting Carol Shaner at (512) 837-9236.

Contact: Carol Shaner, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: June 30, 1998, 4:51 p.m.

TRD-9810350



Texas Department of Criminal Justice

Tuesday, July 7, 1998, 2:00 p.m.

Price Daniel, Jr., Building, 5th Floor Conference Room 209, West 14th Street

Austin

Support Operations Committee

AGENDA:

I. call to order

II. approval of May 11, 1998, Support Operations Committee minutes

III. briefing on recommendations of state audit

IV. discussion on the precertification of powledge unit records conversion building for building for possible private industry enhancement program

V. briefing on data services and TCI Review of the JD Edwards Software System

VI. update on development of cost accounting system

VII. update on TDCJ land sales

VIII. public comment

IX. adjourn

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, 512/475-3250.

Filed: June 29, 1998, 3:53 p.m.

TRD-9810283



Thursday, July 9, 1998, 1:30 p.m.

1100 Congress Avenue, Capitol Extension Auditorium, E1.004

Austin

Judicial Advisory Council

AGENDA:

Field Services Committee

I. minority issues committee introductions

II. field services review summary report for FY 1996-1997

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Austin, Texas 78711, 512/305-9323.

Filed: June 30, 1998, 8:45 a.m.

TRD-9810299



Thursday, July 9, 1998, 2:00 p.m.

1100 Congress Avenue, Capitol Extension Auditorium, E1.004

Austin

Judicial Advisory Council

AGENDA:

Program Services Committee

I. substance abuse standards

II. TAIP Funding recommendations

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required

to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Austin, Texas 78711, 512/305-9323.

Filed: June 30, 1998, 8:45 a.m.

TRD-9810300



Thursday, July 9, 1998, 3:00 p.m.

1100 Congress Avenue, Capitol Extension Auditorium, E1.004

Austin

Judicial Advisory Council

AGENDA:

Legislative Committee

I. budget

II. proposed legislation

A. SJ/CSCD Joint committee Legislative Recommendations

B. PSI Legislative Recommendations

C. Absconder Issues-Due Diligence

D. Attempt at taking Officer's weapon

E. JAC Proposal

F. Review of Prior JAC Recommendations

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Austin, Texas 78711, 512/305-9323.

Filed: June 30, 1998, 8:46 a.m.

TRD-9810301



Friday, July 10, 1998, 9:00 a.m.

1100 Congress Avenue, Capitol Extension Auditorium, E1.004

Austin

Judicial Advisory Council

AGENDA:

I. greeting

II. introduction of guests/staff

III. approval of minutes

IV. resolutions for Ray Speece and Nancy Bartlett

V. board liaison

VI. redefining probation

VII. substance abuse treatment

VIII. state jail division

IX. field finance committee report

X. probation advisory committee report

XI. felony cohort

XII. committee reports

A. field services

B. program services

C. legislative

XIII. division director's update

XIV. council members issues

XV. next meeting

XVI. adjournment

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Austin, Texas 78711, 512/305-9323.

Filed: June 30, 1998, 8:49 a.m.

TRD-9810302



Texas Education Agency

Thursday, July 9, 1998, 10:00 a.m., or upon adjournment of the joint meeting of the Committees on Instruction and School finance/Permanent School Fund (PSF) which convenes at 10:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-100

State Board of Education (SBOE) Committee on School Finance/Permanent School Fund (PSF)

REVISED AGENDA:

The agenda has been revised by the deletion of an action item entitled, "Proposed amendment to Chapter E of the Investment Procedures Manual of the PSF relating to asset allocation rebalancing procedures." There are no other changes to the agenda as originally posted and as follows; Public testimony; Discussion of Proclamation 1998 of the SBOE; Proposed amendment to 19 TAC §66.107, Local Accountability; Braille materials for the visually impaired; Large type materials for the visually impaired; Allocation of funds for the purchase and distribution of instructional materials; Proposed new 19 TAC §109.25, State Compensatory Education Program Reporting and Auditing System; Review of annual audit plan of the School Financial Audits Division for 1998-99; School finance and appropriations update; Review of the annual administrative and program strategic budget for the 1998-99 fiscal year and discussion of 2000-01 legislative appropriations request; Proposed amendments to 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund; Discussion of 19 TAC §33.45, Proxy Voting Policy (relating to the Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund); Approval of extension of contract with the PSF's master trust custodian and securities lending agent, Citibank, and issuance of a request for proposal; Action to require divestiture of investments in the Walt Disney Company by the PSF; Presentation by Harbor Capital Management, Inc. on the investment management services provided to the PSF; Review of PSF securities transactions and the investment portfolio; Ratification of the purchases and sales to

the investment portfolio of the PSF for the months of April and May 1998; Report of the PSF executive administrator; Presentation of an audit of the financial statements of the PSF relating to the standards of performance for the high yield fixed income portfolio; Approval of additional funds to the international equity portfolio of the PSF.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.

Filed: July 1, 1998, 12:00 p.m.

TRD-9810420



Friday, July 10, 1998, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, Room 1-104

State Board of Education

REVISED AGENDA:

The agenda has been revised by the deletion of an action item entitled, "Proposed amendment to Chapter E of the Investment Procedures Manual of the PSF relating to asset allocation rebalancing procedures." There are no other changes to the agenda as originally posted and as follows; Invocation; Pledge of Allegiance; Roll call; Approval of May 8, 1998, SBOE Minutes; Public testimony; Heroes for Children- SBOE districts 10, 11, 12, 13, 14, and 15; Resolutions of the SBOE; Proposed amendment to 19 TAC §157.41 Certification Criteria for Independent Hearing Examiners; Review the proposed amendments to 19 TAC Chapter 230, Subchapter U, Assignment of Public School Personnel; Review the proposed new 19 TAC Chapter 232, Subchapter M, Types and Classes of Certificates Issued, and Subchapter R, Certificate Renewal and continuing Professional Education Requirements; Update on approved open-enrollment charter schools and request for approval of charter amendments; Recommendation for an appointment to the Lackland Independent School District board of trustees; Recommendation for appointments to the Randolph Field Independent School District board of trustees; Ongoing communications activities — Heroes for Children; Proposed amendment to 19 TAC §66.107, Local Accountability; Braille materials for the visually impaired; Large type materials for the visually impaired; Allocation of funds for the purchase and distribution of instructional materials; Proposed new 19 TAC §109.25, State Compensatory Education Program Reporting and Auditing System; Proposed amendments to 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund; Approval of Extension of contract with the PSF's master trust custodian and securities lending agent, Citibank, and issuance of a request for proposal; Action to require divestiture of investments in the Walt Disney Company by the PSF; Ratification of the purchases and sales to the investment portfolio of the PSF for the months of April and May 1998; Proposed amendment to Chapter F of the Investment Procedures Manual of the PSF relating to the standards of performance for the high yield fixed income portfolio; Approval of additional funds to the international equity portfolio of the PSF; Information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.

Filed: July 1, 1998, 12:00 p.m.

TRD-9810421



Wednesday, July 22, 1998, 8:30 a.m.

Red Lion Hotel, 6121 IH35 North, Lone Star 1-3

Austin

Continuing Advisory Committee (CAC) for Special Education

AGENDA:

On Wednesday, July 22, 1998, beginning at 8:30 a.m., the CAC will hear welcoming remarks and approve the minutes from the April 29, 1998 meeting. The CAC will hear a report from the CAC Reading subcommittee; a presentation on the status of the Reading Study; and a review of *Dyslexia and Related Disorders: An Overview of State Requirements*. Beginning at 1:00 p.m., the CAC will chart their activities for Fiscal Year 1998-1999. Beginning at 3:30 p.m., the CAC will view the Corrective Action Plan video *Aiming High and Targeting Excellence*. The CAC will receive a status report on the Office of Special Education Programs (OSEP) Corrective Action Plan. The CAC will hear closing remarks and adjourn.

Contact: Rex Shipp, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9414.

Filed: July 1, 1998, 10:04 a.m.

TRD-9810387



Texas Ethics Commission

Friday, July 10, 1998, 9:30 a.m.

Capitol Extension, Room E. 1.010

Austin

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the June 12, 1998, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of campaign finance reports and personal financial statements; discussion and possible action in response to Advisory Opinion Request No. 439; adjourn.

Contact: Tom Harrison, Sam Houston Building, 10th Floor, 201 East 14th Street, Austin, Texas 78701, 512/463-5800.

Filed: July 1, 1998, 12:07 p.m.

TRD-9810442



State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Saturday, July 18, 1998, 9:00 a.m.

Exchange Building, First Floor Breakroom, 8407 Wall Street

Austin

Examination Subcommittee

AGENDA:

The subcommittee chairperson will introduce guests and elicit comments and the subcommittee will discuss and possibly act on: conditions for a temporary training permit after failure of examination; revisions to correspondence sent to examinees; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6784.

Filed: June 29, 1998, 11:45 a.m.

TRD-9810256



Saturday, July 18, 1998, 10:00 a.m.

Exchange Building, First Floor Breakroom, 8407 Wall Street

Austin

Examination Subcommittee

AGENDA:

The subcommittee chairperson will introduce guests and elicit comments and the subcommittee will discuss and possibly act on: proposed amendment to rule (22 TAC §141.16(b) concerning guidelines for a 30-day trial period; conditions for a temporary training permit after failure of examination; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6784.

Filed: June 29, 1998, 11:45 a.m.

TRD-9810257



Saturday, July 18, 1998, 11:00 a.m.

Exchange Building, First Floor Breakroom, 8407 Wall Street

Austin

Examination Subcommittee

AGENDA:

The subcommittee chairperson will introduce guests and elicit comments and the subcommittee will discuss and possibly act on: complaints (FD 96-0024; FD 96-0025; FD 96-0026; FD 98-0006; FD 98-0007; FD 98-0011; FD 98-0013; FD 98-0016; FD 98-0017; FD 98-0018; FD 98-0019; FD 98-0020; and FD 98-0021; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6784.

Filed: June 29, 1998, 11:45 a.m.

TRD-9810258



General Land Office

Tuesday, July 7, 1998, 3:00 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Suite 831

Austin

Veterans Land Board

AGENDA:

Approval of previous board meeting minutes; consideration of selecting October 27, 1998 for the next forfeited land sale; consideration of ordering for sale the accounts for the October 27, 1998 forfeited land sale; consideration and approval of extending the special interest rate of 3% and 4% in the Tex-Trax II Program for six months; staff reports.

Contact: Linda K. Fisher, 1700 North Congress, Austin, Texas 78701, Room 836, 512/463-5016.

Filed: June 26, 1998, 4:48 p.m.

TRD-9810221



Texas Geographic Information Council (TGIC)

Wednesday, July 22, 1998, 2:00 p.m.

Teachers Retirement System Building, Room 420 E, 1000 Red River Street (SW Corner of 11th and Red River)

Austin

AGENDA:

I. Call to Order

• Member Round Table Introductions

II. Updates

• DIR

-TGIC Web Site

-Metadata Initiative

• TMROS

-Federal Geographic Data Committee — June Meeting

-NASA Grant Application

-StratMap Status

-GIS Forum

• TGIC Manager's Committee

-GIS Implementation Plan

III. Business Items

• GIS Implementation Plan Framework Outline

• Discussion of developing a policy for the role of the vendor community

IV. Public Testimony

V. Open Discussion

VI. Break

VII. Presentation/Demonstration (to be determined)

VIII. Adjourn

Contact: Martha Zottarelli, 300 West Fifteenth Street, Suite 1300, Austin, Texas 78701, (512) 475-2153.

Filed: July 1, 1998, 11:35 a.m.

TRD-9810416



Texas Health Care Information Council

Tuesday, July 7, 1998, 1:00 p.m.

Brown Heatley Building, Room 3501, 4900 North Lamar Boulevard
Austin

Quality Methods and Consumer Education Technical Advisory Committee

AGENDA:

The Committee will convene in open session, deliberate, and possibly take formal action on the following items: minutes of June 2, 1998; staff presentation regarding implementation of consumer education plan; and, relationship between THCIC Board/Staff and TAC members.

Contact: Jim Loyd, 4900 North Lamar, Room 3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.

Filed: June 24, 1998, 3:50 p.m.

TRD-9810112



Texas Department of Health

Saturday, July 11, 1998, 8:15 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Medical Committee

AGENDA:

The committee will introduce guests; and will discuss and possibly act on: mammography (recommendation regarding equivalent training for mammography for the applicant); recommendation for final adoption of proposed rule regarding mammography (25 TAC §289.230) as published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 4184); discussion of the practice of orthodontists making radiographs of hands; update on training requirements and policies for nuclear medicine; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6688.

Filed: July 1, 1998, 10:47 a.m.

TRD-9810400



Saturday, July 11, 1998, 9:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Laser Committee

AGENDA:

The committee will introduce guests; and will discuss and possibly act on: recommendation for proposal of new rules regulating lasers to be proposed in 25 TAC, Chapter 289; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6688.

Filed: July 1, 1998, 10:47 a.m.

TRD-9810401



Saturday, July 11, 1998, Noon

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Executive Committee

AGENDA:

The committee will introduce guests; and will discuss and possibly act on: recommendation for proposal of a Memorandum of Understanding regarding regulatory jurisdiction between the Texas Department of Health and the Texas Natural Resource Conservation Commission (25 TAC §238.101); recommendation for proposal of Memorandum of Understanding regarding uranium between the Texas Department of Health, The Texas Natural Resource Conservation Commission, and the Railroad Commission of Texas (25 TAC §289.102); discussion of the Rocketdyne Worker Health Study and Federal Guidance Report No. 13 and proposal for adoption of comments by the Texas Radiation Advisory Board to the Environmental Protection Agency; recommendation for proposal of rule by reference by the Texas Natural Resource Conservation Commission of (National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart R concerning national emissions standards for radon emissions from Phosphogypsum stacks); and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6688.

Filed: July 1, 1998, 10:47 a.m.

TRD-9810402



Saturday, July 11, 1998, 12:30 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board Waste and Industrial Committee

AGENDA:

The committee will introduce guests; and will discuss and possibly act on: recommendation for final adoption of Texas Natural Resource Conservation Commission rules (30 TAC, Chapter 39 regarding public notices; 30 TAC Chapter 305 regarding additional requirements for radioactive material licensees; and 30 TAC Chapter 336 regarding radioactive substance rules); items for discussion not requiring action; and public comment.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6688.

Filed: July 1, 1998, 10:47 a.m.

TRD-9810403



Saturday, July 11, 1998, 1:15 p.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Radiation Advisory Board

AGENDA:

The board will introduce guests; and will discuss and possibly act on: approval of the minutes of the last meeting; update on the Sunset Commission report; presentation on the Waste Isolation Pilot Plant (WIPP); Waste and Industrial Committee (recommendation for final adoption of Texas Natural Resource Conservation Commission rules (30 TAC, Chapter 39 regarding public notices; 30 TAC Chapter 305 regarding additional requirements for radioactive material licensees; and amendments to 30 TAC Chapter 336 of proposed rule regarding radioactive substance); Medical Committee (review of equivalent training in mammography; recommendation for final adoption of proposed rule regarding mammography (25 TAC §289.230) as published in the May 1, 1998 issue of the *Texas Register* (23 TexReg 4184); discussion of the practice of orthodontists making radiographs of hands; and update on training requirements and policies for nuclear medicine); Laser Committee (recommendation for proposal of new rules regulating lasers in 25 TAC, Chapter 289; Executive Committee (recommendation for proposal of Memorandum of Understanding regarding regulatory jurisdiction between the Texas Department of Health and the Texas Natural Resource Conservation Commission (25 TAC §238.101); recommendation for proposal of Memorandum of understanding regarding uranium between the Texas Department of Health, The Texas Natural Resource Conservation Commission, and the Railroad Commission of Texas (25 TAC §289.102); discussion of the Rocketdyne Worker Health Study and Federal Guidance Report No. 13 and proposal for adoption of comments by the Texas Radiation Advisory Board to the Environmental Protection Agency; recommendation for proposal of rule by reference by the Texas Natural Resource Conservation Commission of (National Emission Standards for Hazardous Air Pollutants, 40 CFR Part 61, Subpart R concerning national emissions standards for radon emissions from Phosphogypsum stacks); program reports (Texas Department of Health, Bureau of Radiation Control; Texas Natural Resource Conservation Commission; Railroad Commission of Texas; and the Texas Low-Level Radioactive Waste Disposal Authority); discussion items not requiring action; public comment; and the setting of the next meeting dates for the board.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Margaret Henderson, 1100 West 49th Street, Austin, Texas, 78756, (512) 834-6688.

Filed: July 1, 1998, 10:47 a.m.

TRD-9810404



Wednesday, July 15, 1998, 3:00 p.m.

Tower Building, Room T-407, Texas Department of Health, 1100 West 49th Street

Austin

Animal Friendly Advisory Committee

AGENDA:

The committee will discuss and possibly act on: purpose of the committee; introductions; designation of presiding officer and assistant presiding officer; stagger terms of office; meeting protocol; marketing strategy for animal friendly licence plates; sharing of information regarding similar programs in other states and local programs within Texas. The committee will continue with a working lunch at noon to discuss guidelines for expenditure of funds in the animal friendly account. The committee will then discuss and possibly act on: public comments; announcements; and setting the date for the next advisory committee meeting.

Contact: Jeanne M. Lain, 1100 West 49th Street, Austin, Texas, 78756, (512) 458-7255.

Filed: July 1, 1998, 10:47 a.m.

TRD-9810405



Wednesday, July 15, 1998, 6:00 p.m.

Ma Ferguson's Restaurant, 6000 Middle Fiskville Road

Austin

Strategic Planning Steering Committee

AGENDA:

The committee will discuss and possibly act on: review of planning meetings since May 14, 1998; and an overview of planning activities for July 16, 1998.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd 512/458-7484 or Rick Danko 512/458-7261, 1100 West 49th Street, Austin, Texas, 78756.

Filed: June 26, 1998, 2:08 p.m.

TRD-9810205



Thursday, July 16, 1998, 8:00 a.m.

Moreton Building, Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Strategic Planning Steering Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the May 14, 1998, meeting; input received from Texas Department of Health (TDH) employees on future strategic directions and implications for the 2001-2005 strategic plan; presentation of community asset mapping of TDH; and committee members' strategic direction interviews with statewide partners.

To request ADA accommodation, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd 512/458-7484 or Rick Danko 512/458-7261, 1100 West 49th Street, Austin, Texas, 78756.

Filed: June 26, 1998, 2:08 p.m.

TRD-9810206

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Health Professions Council

Monday, June 29, 1998, 1:00 p.m.

333 Guadalupe Street, Suite 2-225

Austin

Council

EMERGENCY MEETING AGENDA:

1. call to order
2. roll call and introductions
3. new business
- 3.1. approval of IT position
4. comments from audience
5. adjourn

Reason for emergency: required formal action to approve information technology position.

Contact: Jane McFarland, 33 Guadalupe Street, Suite 2-220, Austin, Texas 78701, 512/305-8550.

Filed: June 26, 1998, 3:27 p.m.

TRD-9810213

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Texas Higher Education Coordinating Board

Wednesday, July 8, 1998, 1:00 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.102

Austin

Advisory Committee on Faculty Workload Goals

AGENDA:

Finalize report to the Commissioner of Higher Education

Contact: Paul Meyer, P.O. Box 12788, Capitol Station, Austin, Texas 78711, (512) 483-6226.

Filed: June 30, 1998, 1:34 p.m.

TRD-9810320

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Thursday, July 16, 1998, 8:30 a.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Committee of the Whole

AGENDA:

Consideration of major policy issues on Agenda Item IX-B: Consideration of recommendations for the states financial aid programs; and Agenda III-H: Consideration of proposing amendments to the rules on distance learning (Chapter 5, Subchapter H).

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:41 a.m.

TRD-9810370

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Thursday, July 16, 1998, 9:45 a.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Committee of the Whole

AGENDA:

Commissioner's report and recommendations based on review of agency.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:42 a.m.

TRD-9810371

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Thursday, July 16, 1998, 10:15 a.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Community and Technical Colleges Committee

AGENDA:

Consideration of matters relating to community and technical colleges.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:42 a.m.

TRD-9810372

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Thursday, July 16, 1998, 11:00 a.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Universities Committee

AGENDA:

Consideration of matters relating to universities.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:43 a.m.

TRD-9810373

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Thursday, July 16, 1998, 11:45 a.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Educator Preparation Improvement Committee

AGENDA:

Report by the Committee on Educator Preparation Improvement.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.
Filed: July 1, 1998, 9:45 a.m.

TRD-9810374

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Thursday, July 16, 1998, 12:00 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.102

Austin

Board

AGENDA:

The Board will meet in executive session to discuss pending or contemplated litigation.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:45 a.m.

TRD-9810375

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Thursday, July 16, 1998, 1:00 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Special Committee on Higher Education Needs in Southern Dallas County

AGENDA:

Consideration of the report and recommendations of the Special Committee on Higher Education Needs in Southern Dallas County.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:49 a.m.

TRD-9810376

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Thursday, July 16, 1998, 1:45 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Health Affairs Committee

AGENDA:

Consideration of matters relating to health affairs.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:50 a.m.

TRD-9810377

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Thursday, July 16, 1998, 2:15 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Campus Planning Committee

AGENDA:

Consideration of matters relating to campus planning.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:50 a.m.

TRD-9810378

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Thursday, July 16, 1998, 3:00 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Access and Equity Committee

AGENDA:

Report on steps to carry out House Bill 2146, 75th Legislature, requiring the Coordinating board to complete a study of the effects of the Hopwood decision and institutional actions on minority participation in higher education and make recommendations to the Legislature; and Report on Coordinating Board support for Texas Minority Doctoral Incentive Program participants participating in the Southern Regional Education Board's Doctoral Scholars Program.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:51 a.m.

TRD-9810379

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Thursday, July 16, 1998, 3:15 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Student Service Committee

AGENDA:

Consideration of adopting rules for the common admission application (Section 5.11) (second consideration); and Consideration of recommendations for states financial aid programs.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:51 a.m.

TRD-9810380

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Thursday, July 16, 1998, 3:30 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Administration and Financial Planning Committee

AGENDA:

Consideration of matters relating to administration and financial planning.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.
Filed: July 1, 1998, 9:52 a.m.

TRD-9810381



Thursday, July 16, 1998, 4:15 p.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Research Committee

AGENDA:

Consideration of adopting a report on the 1998 Research Assessment Program.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:52 a.m.

TRD-9810382



Friday, July 17, 1998, 8:30 a.m.

7700 Chevy Chase Drive, Chevy Chase Office Complex, Building One, Room 1.100

Austin

Coordinating Board

AGENDA:

Approval of minutes on April 24, 1998, meeting; consideration of matters relating to the Committee on Community and Technical Colleges; the Committee on Universities; the Committee on Educator Preparation Improvement; the Committee on Higher Education Needs in Southern Dallas County; the Committee on Health Affairs; the Committee on Campus Planning; the Committee on Access and Equity; the Committee on Study Services; the Committee on Administration and Financial Planning; the Committee on Research; Consideration of matters relating to Board Operations and Legislative Agenda; and Reports to the Board.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: July 1, 1998, 9:49 a.m.

TRD-9810383



Texas Department of Housing and Community Affairs

Thursday, July 16, 1998, 10:00 a.m.

State Capitol Extension, 1100 North Congress Avenue, Room E2.030

Austin

Intergovernmental Task Force on Housing Investment

AGENDA:

The Intergovernmental Task Force on Housing Investment will meet to consider and act upon the following:

Approve minutes of June 2, 1998 Meeting, Receive Public Comment, Determine next meeting date.

Contact: L.P. Manley, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, (512) 475-3934.

Filed: July 1, 1998, 9:56 a.m.

TRD-9810384



Texas Commission on Human Rights

Thursday July 9, 1998, 9:00 a.m.

Texas Commission on Human Rights' Offices, 6330 Highway 290 East, Third Floor Conference Room

Austin

AGENDA:

Executive Session/Commissioner Panels Pursuant Tex. Gov't. Code §551.071; Vote on Item(s) Covered in Executive Session as Necessary or Required; Welcoming of Guests; Minutes; Administrative Reports; Prioritization of Task Forces and Projects; Administrative Directives Related to Certain Commission Policies and Other Commission Policies for Consideration; Executive Director's Evaluation; Strategic Plan and Budget Structure; Sunset Advisory Commission's Review for TCHR; EEOC and HUD Funding for Fiscal Year 1999; Commission's Annual EEO Law Conference; Resource Participation for Senate Interim Commission on Affirmative Action; Analysis of Commission's ADR Program; Human Resource Task Force; HUD NOFA concerning Fair Housing Service Center Grant for East Texas; EEO Riders; EEO Compliance Training; Commissioner Correspondence; Commissioner Issues; Unfinished Business. All Items on the Agenda May be Subject to a Vote, if Appropriate.

Contact: William M. Hale, P.O. Box 13493, Austin, Texas 78711, (512) 437-3450.

Filed: July 1, 1998, 10:24 a.m.

TRD-9810398



Texas Department of Insurance

Tuesday, July 14, 1998, 9:00 a.m.

William P. Hobby Building, 333 Guadalupe Street, Room 102

Austin

Firework's Advisory Committee, State Fire Marshal's Office

AGENDA:

I. review, discussion, and possible action regarding minutes from the previous meeting.

II. discussion and possible action regarding rule amendments, new sections, or repeals, proposed by Commissioner of Insurance in accordance with Article 5.43-4, Sec 5B of the Texas Insurance code, to 28 TAC Chapter 34, Subchapter H, concerning the storage and Sale Fireworks.

III. Discussion and possible action regarding rule amendments, new sections, or repeals, proposed by the public, to 28 TAC Chapter 34, Subchapter H, concerning the Storage and Sale of Fireworks.

IV. Discussion and possible action regarding the Fiscal Note and Public Benefit/Cost Note, for any action taken in the previous agenda items.

V. New matters from the public, not included in preceding agenda items which may be discussed in future meetings date.

VI. discussion and possible action on future meeting dates.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: June 25, 1998, 11:06 a.m.

TRD-9810134



Monday, August 3, 1998, 9:00 a.m.

1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454-98-1112.C — To consider whether disciplinary action should be taken against RICHARD ALAN SMITH, San Antonio, Texas, who holds a Group I Insurance Agent's License and Local Recording Agent's license issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: July 1, 1998, 10:23 a.m.

TRD-9810393



Wednesday, August 5, 1998, 9:00 a.m.

1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454-98-0851.C — To consider whether disciplinary action should be taken against JAY TOM HOLSTEIN, Fort Stockton, Texas, who holds a Group I Legal Reserve Agent's License and a Local Recording Agent's license issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: July 1, 1998, 10:23 a.m.

TRD-9810394



Thursday, August 6, 1998, 9:00 a.m.

1700 North Congress Avenue, Suite 1100

Austin

AGENDA:

Docket No. 454-98-0940.C — To consider whether disciplinary action should be taken against GARY RUSSEL JOHNSON, Dalhart, Texas, who holds a Group I Life, Health, Accident and HMO Agent's License issued by the Texas Department of Insurance. (Reset from 7/1/98).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: July 1, 1998, 10:23 a.m.

TRD-9810395



Texas Department of Licensing and Regulation

Wednesday, July 8, 1998, 1:30 p.m. (Rescheduled from May 13, 1998)

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Air Conditioning

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against the Respondent, Gary R. Schmitt, for performing air conditioning and/or refrigeration contracting without obtaining the required license in violation Tex. Rev. Civ. Stat. Ann. Art. 8861, §3B, pursuant to Tex. Rev. Civ. Stat. Ann. Articles 8861 and 9100, the Tex. Gov't. code cha 2001 and 16 Tex. Admin. Code ch 60.

Contact: Rick Wootton, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810189



Tuesday, August 4, 1998, 9:30 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division, Auctioneers

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible revocation of license of the Auctioneer, Larry William Dunn, for the following violation: the Texas Commission of Licensing and Regulation issued a Final Order, In the Matter of Larry William Dunn, Docket No. ACR199600673C, assessing: an administrative penalty of \$3,000; reimbursement to the Texas Auctioneer Education and Recovery Fund in the amount of \$20,000.00 plus 8% interest; payment of \$612.20 plus 8% interest each to John e. Prothro, Jr., Thomas Prothro, Jennifer Prothro and Karen Prothro Puckett; and a one year license suspension, probated for one year under the condition that Mr. Dunn report his auctioneering activity to the Department on a regular basis. The Respondent has failed to comply with the order adopted by the Commissioner by failing to pay the \$3,000 administrative penalty, failing to reimburse the fund as agreed, and failing to pay all Claimants, in violation of Tex.Rev.Civ.Stat.Ann. art 9100 §5C,7 and 9, pursuant to Tex.Gov't.Code Ann. §§2001.0001-2001.902, Tex.Rev.Civ. Stat.Ann. arts 9100, §§1-19; and 16 Tex.Admin. Code §sch. 60.1-60.95.

Contact: Jackie Sager, 920 Colorado, E.O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

Filed: July 1, 1998, 12:00 p.m.

TRD-9810419



Texas Life, Accident, Health and Hospital Service Insurance Guaranty Association

Monday, July 6, 1998, 9:30 a.m.

301 Congress, Suite 500, Board Room

Austin
Assessment Committee

AGENDA:

Consideration and possible action on: 1) approval of minutes; 2) various assessment issues; 3) 1998 assessment; and, 4) next meeting.

Contact: C. S. LaShelle, 301 Congress, #500, Austin, Texas 78701, 512/499-0004.

Filed: June 26, 1998, 1:38 p.m.

TRD-9810198



Texas State Board of Examiners of Marriage and Family Therapists

Sunday, July 19, 1998, 1:00 p.m.

LaFitte Room, Crown Plaza-St. Anthony Hotel, 300 East Travis Street

San Antonio

Application Review Committee

AGENDA:

The committee will discuss and possibly act on: inactive status request (Robert Berg; Susan Chambers; Marilyn Clark; Pamela Dunagan; Louis Endris; Mary Florschuetz; Darci Hubbard; Judy Moore; Valentine Reed; Kenneth Rider; and Nancy Thornton request to be exempt from examination for licensure from S.A. Thompson; request to allow home study/video continuing education courses taken, including ethics, to be used for renewal of licensure as a marriage and family therapists by Johnnie Human; request to allow hours accrued for credit before a temporary license was issued for Carole Jean Ward; other business not requiring committee action; and assignment of future agenda items.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6657.

Filed: June 26, 1998, 2:08 p.m.

TRD-9810207



Sunday, July 19, 1998, 2:00 p.m.

LaFitte Room, Crown Plaza-St. Anthony Hotel, 300 East Travis Street

San Antonio

Rule Change Committee

AGENDA:

The committee will discuss and possibly act on: comments to proposed amendments (22 TAC §§801.2, 801.19, 801.20, 801.143, 801.144, 801.203, 801.204, 801.263-801.266, and 801.268) published in the June 5, 1998, issue of the Texas Register (23 TexReg 5926); recommendation for adoption of amendments (22 TAC §§801.2, 801.19, 801.20, 801.143, 801.144, 801.203, 801.204, 801.263-801.266, and 801.268) other business not requiring committee action; and assignment of future agenda items.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6657.

Filed: June 26, 1998, 2:08 p.m.

TRD-9810208



Sunday, July 19, 1998, 3:00 p.m.

LaFitte Room, Crown Plaza-St. Anthony Hotel, 300 East Travis Street

San Antonio

Ethics Committee

AGENDA:

The committee will discuss and possibly act on: complaints (MFT 97-17; MFT 97-18; MFT 97-19; MFT 97-23; MFT 97-29; MFT 97-31; MFT 98-03; MFT 98-06; MFT 98-09; MFT 98-13; MFT 98-24; MFT 98-30; MFT 98-33; MFT 98-34; MFT 98-35; MFT 98-36 and MFT 98-37); other business not requiring committee action; and assignment of future agenda items.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6657.

Filed: June 26, 1998, 2:09 p.m.

TRD-9810209



Monday, July 20, 1998, 8:30 a.m.

LaFitte Room, Crown Plaza-St. Anthony Hotel, 300 East Travis Street

San Antonio

Board

AGENDA:

The board chairperson will introduce guests and entertain public comment and the board will discuss and possibly act on: approval of the minutes of the April 20, 1998, meeting; Application Committee report (inactive status requests for Robert Berg; Susan Chambers, Marilyn Clark; Pamela Dumagan; Lois Endris; Mary Florschuetz; Darci Hubbard; Judy Moore; Valentine Reed; Kenneth Rider; and Nancy Thornton); request for exemption from examination from S.A.Thompson; request for acceptance of home study/video continuing education courses, including ethics, for renewal of license by Johnnie Human; and a request for acceptance of hours accrued for credit before a temporary license was issued by Carole Ward); Ethics committee report (status on complaints (MFT 97-17; MFT 97-18; MFT 97-19; MFT 97-23; MFT 97-29; MFT 97-31; MFT 98-03; MFT 98-06; MFT 98-09; MFT 98-13; MFT 98-24; MFT 98-30; MFT 98-33; MFT 98-34; MFT 98-35; MFT 98-36 and MFT 98-37) rule change committee report (status of proposed amendments (22 TAC §§801.2, 801.19, 801.20, 801.143, 801.144, 801.203, 801.204, 801.263-801.266, and 801.268); comments concerning proposed amendments (22 TAC §§801.2, 801.19, 801.20, 801.143, 801.144,

801.203, 801.204, 801.263–801.266, and 801.268 published in the June 5, 1998, issue of the Texas register (23 TexReg 5926); adoption of amendment (22 TAC §§801.2, 801.19, 801.20, 801.143, 801.144, 801.203, 801.204, 801.263–801.266, and 801.268); a request to allow home study/video ethics continuing education credit for licensed marriage and family therapists by Bert Rodriguez; licensure status of Thelma Duffey; board chair's report; report of the executive director; and other business not requiring board action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458–7627 or TDD at 512/458–7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834–6657.

Filed: June 26, 1998, 2:09 p.m.

TRD-9810210



Texas Natural Resource Conservation Commission

Wednesday, July 1, 1998, 9:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

EMERGENCY MEETING AGENDA:

This item is an emergency posting and must be considered by the commission because of an imminent threat to public health and safety created by recent failure of pump motors on the Bastrop West Water Company well.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.

Filed: June 30, 1998, 2:19 p.m.

TRD-9810332



Friday, July 3, 1998, 8:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

This meeting is a work session for discussion between commissioners and staff. No public testimony or comment will be accepted except by invitation of the commission.

The commission will consider approving the following matters on the agenda: Consideration issues relating to the policy and planning functions of the agency and associated organizational restructuring.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239–3317.

Filed: June 30, 1998, 3:27 p.m.

TRD-9810151



Thursday, July 16, 1998, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before a state office of administrative hearing judge on a change of water rates effective February 1, 1998 for its' service re located in Navarro County, Texas. Ratepayers of Navarro Water Supply Corporation have filed a petition appealing the rate change to the Texas Natural Resource Conservation Commission under §13.043(b)(1) of the Texas Water Code.

This matter has been designated as SOAH Docket No. 582–98–1168.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.

Filed: June 30, 1998, 2:19 p.m.

TRD-9810327



Tuesday, July 28, 1998, 10:00 a.m.

1700 North Congress Avenue, 11th Floor, Suite 1100, Stephen F. Austin Building

Austin

AGENDA:

For a hearing before a state office of administrative hearing judge on a change of sewer rates filed by Richard Wagner dba Wagner Services with the Texas Natural Resource Conservation Commission (Commission) effective January 23, 1998. The proposed change in sewer rates affect the following subdivisions or systems in Montgomery County known as Clearwater Cove, Clearwater Point Subdivision, Hard Times Boating Club and Shiloh Marina. Because of the number of protests, §13.187(b) of the Texas Water Code required the Commission to hold a hearing on the rate increase. The matter has been designated as SOAH Docket No. 582–98–0855.

This matter has been designated as SOAH Docket No. 582–98–1168.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711–3025, (512) 475–3445.

Filed: June 30, 1998, 2:20 p.m.

TRD-9810328



Thursday, July 30, 1998, 7:00 p.m.

London School Cafeteria, W.O. Weber (FM43) at County Road 33

Corpus Christi

AGENDA:

for an informal public meeting concerning an application by the City of Corpus Christi to the Texas Natural Resource Conservation Commission for proposed permit No. MSW2269 to construct and operate a Type I. municipal solid waste landfill. The proposed site contains about 2,268.07 acres of land and, if approved, will receive initially approximately 500,000 tons of municipal solid waste per year and eventually will receive approximately 1,000,000 tons of municipal solid waste per year. the proposed facility will be located in Nueces County, approximately 4 miles southeast of the center of the Town of Petronila and 14 miles southwest of the City Hall of the City of Corpus Christi, in the southwest quadrant of the intersection of FM 2444 and County Road 20.

Contact: Annie Tyrone, P.O. Box 13087, Austin, Texas 78711–3087, 800/687–4040.

Filed: June 24, 1998, 4:01 p.m.

TRD-9810114



Wednesday, August 26, 1998, 9:30 a.m.

Building E, Room 201S, TNRCC Park 35 Office Complex, 12118 North Interstate 35

Austin

AGENDA:

Docket Number 98-0338-DIS; Harris County Municipal Utility District No. 115; Petition submitted by Fred Haas, Steve Scott and Marlane Scott for dissolution of Harris County Municipal Utility District No. 115. The Petitioners own 111.3493 acres of the district's 155.6 total acres. The petition states that dissolution is desirable as the district: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the petition for dissolution, (2) is financially dormant, and (3) has no outstanding indeed indebtedness.

Contact: Cindy Cartwright, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161.

Filed: June 26, 1998, 9:19 a.m.

TRD-9810171



Board of Nurse Examiners

Thursday-Friday, July 16-17, 1998, 8:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

AGENDA:

The Board of Nurse Examiners will discuss and possibly act on: approval of the minutes from the May board meeting; consider operations including financial statements and LAR; and consider a proposal for a distance education initiative from the University of Texas HSC at San Antonio. The Board will receive information from various board and advisory committees, and hold an open forum from 1:30-2:00 p.m. on July 16, 1998 to allow interested parties an opportunity to address the board. The board will consider an possibly act on a proposed amendment to rule 221.7, consider 1999 dates for informal conferences and hear a presentation from Dr. Michael Lauderdale with the UT School of Social Work on July 16. The Board will consider Agreed Orders for Risha C. Banks, TX #616266; Stephanie Lynn Craig, TX #616165; Aladrian A. Dejohnette, Texas #527237; Elizabeth Leah Golden, TX #563961; Kimberly A. Ingram, TX #619614; Dianne L. Lett, TX #220649; Janet A. Noble, TX #242267; William T. Stewart, TX #253260; Wanda L. Sykes, TX #257298; and Jan Watkins, TX #578610. The board will meet in executive session the afternoon of July 16 and again the morning of July 17 pursuant to §551.074 to discuss personnel matters.

Contact: Erlene Fisher, Box 430, Austin, Texas 78767, 512/305-6811. Filed: June 26, 1998, 10:21 a.m.

TRD-9810178



Texas Council on Offenders with Mental Impairments

Wednesday, July 15, 1998, 8:30 a.m.

8610 Shoal Creek Boulevard, Second Floor, Room 7S202

Austin

Executive Committee

AGENDA:

- I. Call to Order/Roll Call
- II. Public Comments
- III. Approval of Minutes
- IV. LAR Request
- V. Exceptional Funding Request
- VI. Draft Council Agenda

Adjournment

Contact: Marcia L. Powders, 8610 Shoal Creek Boulevard, Austin, Texas 78753, (512) 406-5406.

Filed: June 30, 1998, 4:35 p.m.

TRD-9810347



Texas Optometry Board

Thursday-Friday, July 8-9, 1998, 10:00 a.m. July 8, and 8:30 a.m. July 9, 1998

333 Guadalupe Street, Suite 2040 on July 9, Suite 1-1264 on July 10.

Austin

AGENDA:

At 10:00 a.m. in July 9, and at 1:00 p.m., the Investigation-Enforcement Committee will hold informal conferences with licensees. At 3:00 p.m., the Rules Committee will meet. On the following morning, beginning at 8:30 a.m., the Continuing Education Committee will meet; at 8:45 the Administrative/Licensing Committee will meet, the Managed Care Committee at 9:00, with the Investigation-Enforcement Subcommittees meeting at 9:15. Upon conclusion of the committee meetings, a regular Board meeting will be held to discuss and approve Minutes of April 16-17, 1998; discussion and possible action on final adoption of Rules under Chapters 271, 273, 279 and 280; discuss and take possible action regarding attendance at CLEAR annual Conference, rehabilitative Optometry, correspondence regarding scope of practice and denial of insurance payments; Legislative Appropriations Request, Interpretation of §6.01 of the Texas Optometry Act, and discuss and take action regarding committee reports regarding settlement agreements as a result of informal conferences held, approval or disapproval of proposed rules relating to §§5.11 and 5.15, rehabilitative optometry, standard of care, definition of surgery within scope of practice, definitions regarding adverse actions for reporting purposes and Rule amendment 277.1 regarding complaint procedures; consider reports of legal counsel, executive director, committee chairpersons; consider reports regarding fiscal matters, internal annual report, Strategic Plan, Health Professions council, IAB Annual Meeting in Orlando FL., and Governor's Conference for Board Members. Executive Session to be held in compliance with 551.071 of the Government Code to discuss with Board Attorney contemplated and pending litigation and matters referred to Attorney General; consideration and possible vote on matters discussed in Executive Session.

Contact: Lois Ewald, 333 Guadalupe, Suite 2-420, Austin, Texas 78701, (512) 305-8500.

Filed: June 30, 1998, 4:32 p.m.

TRD-9810345



Texas State Board of Examiners of Perfusionists

Wednesday, July 8, 1998, 10:30 a.m.

Exchange Building, Suite S-402, Texas Department of Health, 8407 Wall Street

Austin

AGENDA:

The chairman will introduce guest and the board will discuss and possibly act on: approval of the minutes of the February 4, 1998, meeting; comments received concerning the proposed rule amendment to 22 TAC §761.2(s)(C), concerning fees, as published in the May 8, 1998, issue of the Texas Register (23 TexReg 4506); possible adoption of the rule amendment concerning fees (22 TAC §761.2(s)(2) (C)); report from the American Board of Cardiovascular Perfusionists concerning audit of documented clinical perfusion cases; chairman's report; executive secretary's report; report by the division director of the Professional Licensing and Certification Division; other business not requiring action; and the setting of the next meeting date for the board.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of the Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6751.

Filed: June 26, 1998, 2:08 p.m.

TRD-9810203



Texas State Board of Plumbing Examiners

Wednesday, July 8, 1998, 9:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

July 8, 1998, 9:00 a.m.-call to order and roll call.

Consideration of Minutes of May 21, 1998 enforcement committee meetings for adoption as recorded.

review of citation lists and possible action.

review of applicants with past criminal convictions and possible action.

consideration of an possible action on cities with more than 5,000 inhabitants that have no licensed plumbing inspectors.

complaint cases for review:

The following cases will be reviewed by and possibly acted upon the Committee as time allows. Time may not allow for all cases listed to be reviewed:

Cases #s-98002631, 98002331, 98000531, 98002351, 98002361, 98000821, 98003181, 9800091, 97-0772, 96-0273, 96-0421, 97-0440, 97-0590, 97-0182, 97-0802, 97-0639, 97-0634, 97-0127.

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, 512/458-2145, Ext. 233.

Filed: June 26, 1998, 3:06 p.m.

TRD-9810211

Texas State Board of Examiners of Psychologists

Thursday-Friday, July 30-31, 1998, 8:30 a.m.

333 Guadalupe, Suite 2-400A

Austin

AGENDA:

The Board will meet to consider public comments, minutes of the last meeting; legal matters; planning for future meetings; a report from the Board liaison to the Psychological Associate Advisory Committee; and reports from the chair of the Board, the Executive Director, the General Counsel and the following committees; Applications, Budget, Complaint and Enforcement, Continuing Education, Evaluation, Oral Examination, Personnel, Public Information, Rules and Written Examinations. The Board will consider dismissals of allegations for ratification, agreed orders, proposed and adopted rules and a rule review of various Board rules. The Board will hold an executive session to seek legal advice. The Board will hold an election of officers for Fiscal Year 1999.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, 512/305-7700.

Filed: June 26, 1998, 1:58 p.m.

TRD-9810201



Texas Department of Public Safety

Thursday, July 9, 1998, 3:00 p.m.

Building E. 6100 Guadalupe Boulevard

Austin

Governor's Division of Emergency Management Drought Response and Monitoring Committee

AGENDA:

Welcome and introductions

Technical Assistance and Planning Subcommittee Report

Drought and Water Supply Monitoring Subcommittee Report

Action Items: Review of last meeting minutes and On-Going Strategies

Other Issues and Concerns

Adjournment

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print, or Braille, are requested to contact Juan Perales at 512/424-2452 three work days prior to the meeting so that appropriate arrangements can be made.

Contact: Juan Perales, 5805 North Lamar Boulevard, Austin, Texas 78773-0220, 512/424-2452.

Filed: June 29, 1998, 11:07 a.m.

TRD-9810250



Public Utility Commission of Texas

Wednesday-Friday, July 8-10, 1998, 9:30 a.m. each day.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Docket Nos. 19000, 18190, and 17775; Project Nos. 18702, 18515, and 18516; Docket Nos. 19206, 19258, 19277, 19278, 19300, 19342, 19353, 17678, and 19184, 19185, and 19194; Project Nos. 18008, 18431, 19467, 18438, 16899, 16900, 16901, 17264, and 119133; PUC Comments to the FCC Notice of Proposed Rulemaking (CC Docket No. 98-67 FCC 98-90) regarding telecommunications relay services; Federal Telecommunications Act of 1996 and other actions taken by the Federal Communications Commission; Activities in local telephone markets, including but not limited to correspondence and implementation of interconnection agreements approved by the Commission pursuant to PURA and FTA; Project No. 18000, Informal Dispute Resolution; Docket Nos. 17751, 16705, 17899, 18290, 19265, 17285, 19270, 18810, and 19181; Project Nos. 19529 and 19106; Docket Nos. 19469, 19371, Project Nos. 18703, 14789, Electric industry restructuring, electric utility reliability, and customer service; Project Nos. 17709, 19513, 19514, 19515, 19516, and 19517; Customer service issues, including but not limited to correspondence and complaint issues; 1998 Operating Budget, Agency Business Plan, project assignments, correspondence, staff reports, agency administrative issues, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7007.

Filed: June 30, 1998, 2:19 p.m.

TRD-9810336



Thursday-Friday, July 9-10, 1998, 9:30 a.m. each day.

1701 North Congress Avenue

Austin

REVISED AGENDA:

In addition to the previously submitted open meeting agenda, please add the following items for discussion, consideration, and possible action regarding: docket No. 192780, application of Houston Lighting and Power Company for Approval of Preliminary Integrated Resource Plan; Project No. 18515, Compliance Proceeding for Implementation of the Texas High Cost Universal Service Plan; Docket No. 17000, application of Southwestern Bell Telephone Company for Approval of IntraLATA Equal Access Implementation Plan Pursuant to PUC Subst. R. 23.103.

Contact: Diane Prior, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7007.

Filed: July 1, 1998, 12:01 p.m.

TRD-9810422



Monday, July 13, 1998, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

There will be an Open Meeting for discussion, consideration, and possible action regarding: Project No. 17549, Code of Conduct for Electric Utilities and Their Affiliates. (Public Hearing pursuant to Administrative Procedure Act, Tex. Gov't. Code 2001.029).

Contact: Suzanne Bertin, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7244.

Filed: June 30, 1998, 2:19 p.m.

TRD-9810326



State Office of Risk Management

Wednesday, July 8, 1998, 1:00 p.m.

Capitol Extension, room E1.010

Austin

Risk Management Board

AGENDA:

1. Call to order;
2. Discussion, consideration and possible action on proposed workers' compensation claims cost allocation rule:

Chapter 251 — Workers' Compensation Claims Cost Allocation

Rule 251.500 — Definitions

Rule 251.501 — Determination of Allocation Participants

Rule 251.502 — Allocation Calculation

Rule 251.503 — Quarterly Reports

Rule 251.504 — Interagency Contracts

Rule 251.505 — Reimbursements to the Claims Fund by State Agencies

Rule 251.506 — Retention of Savings by State Agencies

3. Report from staff on status of Invitation for bid for cost containment services;
4. Report from staff on legal representation issues;
5. Discussion, consideration and possible action on approval of process for review of SORM rules pursuant to General Appropriations Act, Article IX, section 167;

6. Discussion, consideration and possible action on approval for Request for Information related to provision of legal services to the State Office of Risk Management;

7. Executive Session: Pursuant to §551.074, Government Code, to discuss matters relating to and to receive advice from counsel concerning privileged attorney-client communications, settlement offers, and/or contemplated and pending litigation. Also pursuant to §551.075, Government Code, to receive information from and to question Action on matters considered in executive session;

8. Action on matters considered in executive session;

9. Public Comment;

10. Confirmation of future public meeting dates

11. Adjournment

Contact: Albert Betts, Jr., P.O. Box 13777, Austin, Texas 78711, (512) 936-1481.

Filed: July 1, 1998, 12:00 p.m.

TRD-9810418

◆ ◆ ◆
School Land Board

Tuesday, July 7, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831
Austin

AGENDA:

Approval of previous board meeting minutes; pooling applications: Brookeland (Austin Chalk, 8800), Jasper Co.; Gomez Field, Pecos Co.; Wildcat Field, Knox Co.; Matagorda Island Blk, 582-S, Matagorda Co.; direct land sales, Bexar county; consideration and approval of tracts, terms and conditions for a September 1, 1998 special oil and gas lease sale; update from staff regarding the publication in the Texas Register of certain proposed amendments to the School Land Board administrative rules, 31 Texas Administrative Code, Chapters 151 and 153. Staff will request authorization to publish in the Texas Register (1) the conclusion, from the legislatively mandated review and reconsideration of the rules, that the need for such rules continues to exist and (2) a proposed repeal of the current Chapters 151 and 153 and a current proposed adoption of a new Chapter 151 which consolidates rules formerly separated into Chapters 151 and 153; Request from staff regarding the review and reconsideration of General Land office administrative rules, 31 Texas Administrative Code, Chapter 154 (Land Sales, Acquisitions, and Trades) and Chapter 155 (Land Resources). Staff seeks authorization to file the plan for conducting a review of Chapter 155 in FY 1999 and Chapter 154 in FY —2001 with the Texas Register and other appropriate parties; Coastal public lands — commercial leasing applications and renewals, Brazos River, Brazoria Co.; Colorado River, Matagorda Co.; Caney Creek, Matagorda Co.; San Bernard River, Brazoria Co.; easement applications, renewals, amendments, assignments, San Bernard River, Brazoria Co.; Arroyo Colorado, Cameron Co.; West Bay, Galveston Co.; Turtle Bay, Matagorda Co.; Colorado River Matagorda Co.; Corpus Christi Bay, Aransas Co.; structure (cabin) permit terminations, requests renewals and amendments; Laguna Madre, Kleberg Co.; West Bay, Brazoria Co.; Laguna Madre, Kenedy Co.; Laguna Madre, Kleberg Co.; Laguna Madre, Kenedy Co.; Closes Session and Open Session — consideration and approval of tracts, terms, and conditions for a Special Sealed Bid Land Sale to be held August 18, 1998; Closed Session — status report and review of contract negotiations for sale of Paseo del Este, 4300 +/- acres, El Paso County; Closed Session and Open Session — consideration and approval of settlement agreements with certain defendants in State v. Ashton, Cause #478,687, Travis County; Closed Session and Open Sessions — status report on State of Texas et al v. Amoco Production Company, et al, Cause #95-08680, 345th Judicial District Court, Travis Co.; Texas; Closed and Open Sessions — pending or contemplated litigation; and/or settlement offers.

Contact: Linda K. fisher, 1700 North Congress Avenue, Room 836,
Austin, Texas 78701, (512) 463-5016.
Filed: June 29, 1998, 11:51 a.m.

TRD-9810265

◆ ◆ ◆
Special Board of Review

Monday, July 6, 1998, 5:30 p.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 118

Austin

AGENDA:

I. Call to Order; II. Chairman's Remarks; III. Public Testimony; IV. Discussion of and Action on, proposed "Triangle Square Development Plan" and/or amendments thereto, or proposed alternatives thereto, including zoning and subdivision issues; V. Adjournment

The Board May Take Agenda Items Out of Order at Its Discretion

Contact: Ken Mills, 1700 North Congress Avenue, Room 626, Austin,
Texas 78701, (512) 305-9108.

Filed: June 26, 1998, 1:28 p.m.

TRD-9810190

◆ ◆ ◆
Stephen F. Austin State University

Thursday, July 2, 1998, 10:00 a.m.

1936 North Street, Austin Building, Room 306

Nacogdoches

Board of Regents; Finance Committee

AGENDA:

- I. Classified Employee Pay Plan Policy
- II. Resolution Authorizing Sale of Revenue Bonds
- III. Perkins Loan- Servicing Contract
- IV. Credit Card Merchant Services
- V. University Insurance Program
- VI. Construction Bids- Miller Science Building

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-
6078, (409) 468-2201.

Filed: June 24, 1998, 4:16 p.m.

TRD-9810115

◆ ◆ ◆
Telecommunications Infrastructure Fund Board

Thursday, July 9, 1998, 2:00 p.m.

1102 North Avenue N

Clifton

AGENDA:

I. The Board Members will tour the Clifton ISD High School to view their Internet Connectivity Project funded by TIF.

Contact: Dawn Efaw, 1000 Red River, Suite E208 Austin, Texas
78701, (512) 344-4314.

Filed: June 30, 1998, 2:11 p.m.

TRD-9810322

◆ ◆ ◆
Friday, July 10, 1998, 8:30 a.m.

1102 North Avenue N

Clifton

Finance and Audit Committee

AGENDA:

The Finance and Audit Committee of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

- I. Call Committee Meeting to Order Open Meeting / Quorum Call — Roger Benavides, Chair
- II. Minutes from Prior Meeting
- III. Contract Services- Grant Monitoring
- IV. Financial Report / Operating Budget
- V. Summary of Site Visits
- VI. Future Agenda Items
- VII. Adjourn Committee Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208 Austin, Texas 78701, (512) 344-4314.

Filed: June 30, 1998, 2:11 p.m.

TRD-9810323



Friday, July 10, 1998, 9:30 a.m.

1102 North Avenue N

Clifton

Libraries and Telemedicine Committee

AGENDA:

The Libraries and Telemedicine Committee of the Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

- I. Call Committee Meeting to Order Open Meeting / Quorum Call — John Collins, Chair
- II. Minutes from Prior Meeting
- III. Reports from Advisory Committees
- IV. Community Network Conference Summary
- V. Future Agenda Items
- VI. Adjourn Committee Meeting

Contact: Dawn Efaw, 1000 Red River, Suite E208 Austin, Texas 78701, (512) 344-4314.

Filed: June 30, 1998, 2:11 p.m.

TRD-9810324



Friday, July 10, 1998, 10:00 a.m.

1102 North Avenue N

Clifton

AGENDA:

The Telecommunications Infrastructure Fund Board will convene in open session to deliberate and possibly take formal action on the following items:

- I. Call Committee Meeting to Order Open Meeting / Quorum Call — Bill Mitchell, Chair
- II. Opening Remarks- Senator Sibley and Representative Wohlgemuth (Tentative)
- III. Minutes from Prior Meetings

IV. GSC/TEA Memorandum of Understanding

V. Board Committee Reports

- Finance and Audit Committee — Roger Benavides, Chair
- Libraries and Telemedicine Committee — John Collins, Chair
- Curriculum, Training and Evaluation Committee — Joe Randolph, Chair

VI. Agency Working Group Updates

- State Agencies Working Group — Sandy Kress, Board Member, Arnold Viramontes, Executive Directors
- Education Working Group — Hal Guthrie, Board Member, Kay Karr, Board Member, Gary Grogran, Director of Programs
- Training Working Group — Joe Randolph, Board Member, Gary Grogran, Director of Programs

VII. Public Information and Media Relations Report — Clint Formby, Board Member

VIII. Reaffirmation of TIF's Representative to the Western Governor's University

- Report from Dr. Hal Guthrie on the June 12, 1998 meeting in Denver, Colorado

IX. Executive Director's Report

- Administration
- Programs

(a) Discovery Grants

(b) Telemedicine Grants

(c) Public School Grants- Technology Advancement/Distance Learning

X. Chairman of the Board Report

XI. Public Testimony

XII. Resolutions

- Adam Castro
- Clifton ISD

XIII. Future Agenda Items

XIV. Adjourn Opem Meeting

The Board may go into Executive Session on any agenda item if authorized by the Open Meetings Law, Government Code Chapter 551.

Contact: Dawn Efaw, 1000 Red River, Suite E208 Austin, Texas 78701, (512) 344-4314.

Filed: June 30, 1998, 2:11 p.m.

TRD-9810325



Texas Title Insurance Guaranty Association

Tuesday, July 14, 1998, 10:00 a.m.

333 Guadalupe Street, Commissioner's Conference Room 1264, Texas Department of Insurance, 12th Floor, Hobby I Building

Austin

Board of Directors

AGENDA:

- I. Call Meeting to Order
- II. Approval of Minutes of April 14, 1998 Board of Directors Meeting
- III. Financial Report — Marvin Coffman
- IV. Title Examiner's Report — Ethel Benedict
- V. Conservator's Report — Neal Rockhold
- VI. Counsel's Report — Burnie Burner
- VII. Discussion and Possible Action Regarding the Return of Assessment Funds Received Upon Closing of the Title USA Estate
- VIII. Discussion and Possible Action Regarding the Listing or Sale of Association Real Property
- IX. Set Date and Time for Next Meeting (October 13, 1998)
- X. Adjourn

Contact: Burnie Burner, 301 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 474-1587.
 Filed: June 28, 1998, 12:26 p.m.

TRD-9810273



Trinity Higher Education Facilities Corporation

Wednesday, July 8, 1998, 12:30 p.m.

2612 Washington Avenue

Waco

Board of Directors

AGENDA:

Filed with the Secretary of State.

Contact: Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (254) 753-0913.
 Filed: July 1, 1998, 12:06 p.m.

TRD-9810441



Texas Department of Transportation

Thursday, July 9, 1998, 9:30 a.m.

200 East Riverside, Room 101

Austin

Motor Vehicle Board

REVISED AGENDA:

Call to order; roll call. Approval of Minutes of Motor Vehicle Board meeting on May 14, 1998. Argument on Proposal for Decision Upon Remand by Board. Argument on Proposals for Decision. Consideration of Default Proposals for Decision. Agreed Orders. Orders of Dismissal- Enforcement. Orders of Dismissal-Licensing. Public Hearing and consideration of proposed amendments to Motor Vehicle board Rule of Practice and Procedure 107.8. Other: a. Request for Formal Opinion from Board. b. Appeal of Interlocutory Cease and Desist Order, Docket No. 980012LIC; c. Appeal of Interlocutory Cease and Desist Order, Docket No. 980013LIC; d. Consideration of 1999 Board Meeting Schedule; e. Review of Litigation Status Report; f. Review of Consumer Complaint Recap Report including decisions made by examiners, division

director and Board members; g. Enforcement Status Report; h. Division Operations Status Report; i. Executive Session pursuant to §551.071, Gov't. Code, consultation with and advice from legal counsel concerning pending/contemplated litigation, settlement offers and negotiations; j. Executive Session pursuant to §551.074, Gov't Code, Discussion of the appointment, employment, evaluation, reassignment, duties, discipline and dismissal of division personnel. Adjournment.

Contact: Brett Bray, 150 East Riverside, Second Floor, Austin, Texas 78704, (512) 416-4800.

Filed: June 25, 1998, 10:12 a.m.

TRD-9810132



The University of Texas System

Monday, July 6, 1998, 1:00 p.m.

201 West 7th Street, Ninth Floor, Ashbel Smith Hall, Regents' Conference Room

Austin

Board of Regents' Committee on Telecommunications and Minorities and Women

AGENDA:

The Committee on Telecommunications and Minorities and Women will meet to focus on the advancement of minorities and women and to consider various aspects of the UT System information technology initiatives.

Contact: Francie A. Frederick, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: July 1, 1998, 12:01 p.m.

TRD-9810423



Tuesday, July 7, 1998, 9:30 a.m.

201 West 7th Street, Ninth Floor, Ashbel Smith Hall, Regents' Conference Room

Austin

Board of Regents' Facilities Planning and Construction Committee

AGENDA:

The Facilities Planning and Construction Committee on will meet in Open Session to consider status of campus master plan, updates on UT Tyler Longview real estate, U.T San Antonio Downtown Phase III Project, campus-by-campus design and construction, and the agenda items proposed for the August meeting of the Board of Regents.

Upon adjournment, the Committee will reconvene in a Briefing Session as permitted by law.

Contact: Francie A. Frederick, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: July 1, 1998, 12:01 p.m.

TRD-9810424



Tuesday, July 7, 1998, 1:00 p.m.

201 West 7th Street, 9th Floor, Ashbel Smith Hall, Regents' Conference Room

Austin

Board of Regents' Academic Affairs

AGENDA:

The Committee will meet in open session to consider major institutional goals and objectives, review of agenda items from July Coordinating Board and August Board of Regents' meetings, and reorganization of the Office of Academic Affairs.

Contact: Francie A. Frederick, 201 West Seventh Street, Austin, Texas 78701-2981, 512/499-4402.

Filed: July 1, 1998, 12:09 p.m.

TRD-9810443



Texas Workers' Compensation Commission

Thursday, July 2, 1998, 9:30 a.m.

4000 South IH35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order
2. Recognition of agency awards
3. Approval of minutes for the public meeting of May 28, 1998
4. Discussion and possible action on adoption of amendment to rule: rule 166.4
5. Discussion and possible action on withdrawal proposal published in the February 27, 1998, Texas Register and proposal of amendments to rules and new rules: rule 130.101-130.112 (new)
6. Discussion and possible action on rulemaking petition of Jack Latson regarding Rule 124.7-Initial Payment of Temporary Income Benefits
7. Discussion and Possible Action on Approval of Process for rule Review, Criteria for Rule Review, and Rule Review Plan Pursuant to General Appropriations Act, Article IX, Section 167.
8. Discussion and Possible Action to determine and certify that Venture Stores, Incorporated, a voluntarily withdrawn former certified self-insurer, is an "impaired employer"
9. Discussion and Possible Action relating to and regarding a determination of how payment of benefits and administration claims of Venture Stores, Incorporated as an impaired employer is to be made, including whether such should be made through the Texas Certified Self-Insurer Guaranty Association.
10. Discussion and Possible Action relating to and regarding the duties and responsibilities of Self-Insurance Regulation, including any appropriate delegation of authority to the Director and/or Acting Director of Self-Insurance regulation for matters relating to Venture Stores, Incorporated as an impaired employer and/or certified self-insurer and/or former certified self-insurer.
11. Discuss and Possible Action relating to and regarding the duties and responsibilities of Texas Certified Self-Insurer Guaranty Association for matters relating to Venture Store, Incorporated as an impaired employer and/or certified self-insurer and/or former certified self-insurer.

12. Discussion and Possible Action regarding duties, responsibilities and/or actions of TWCC and/or TCSIGA and/or Director and/or Acting Director of Self-Insurance Regulation Relating to Venture Stores, Inc.

13. Executive Session

14. Action on Matters considered in Executive Session

15. General Reports, Discussion and Possible Action on issues relating to Commission activities.

16. Confirmation of Future Public Meeting Dates.

17. Adjournment.

Contact: Virginia A. May, 4000 South IH-35, Austin, Texas 78704.

Filed: June 26, 1998, 4:26 p.m.

TRD-9810220



Texas Workforce Commission

Thursday, July 2, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street,

Austin

AGENDA:

Approval of prior meeting notes; public comment; general discussion and staff report concerning the employment service and related functions at the Texas Workforce Commission; discussion, consideration and possible action: (1) on acceptance of donations of child care matching funds; (2) on the adoption of the communities in schools rules (Chapter 827); (3) on proposed amendments to unemployment insurance rules concerning signatures on reports on forms (40 TAC §815.8); (4) on proposed amendments to the unemployment insurance rules concerning technical corrections (40 TAC, Chapter 815); (5) on the withdrawal of the emergency food stamp employment and training rules; (6) relating to House Bill 2777 and the development and implementation of a plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Service Agencies and TWC; (7) concerning the food stamp employment and training program; (8) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Board for Certification; (9) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; and (10) regarding approval of Local Workforce board or Private Industry Council Nominees; staff report and discussion-update on activities relating to: Administration Division, Finance Division, Information Systems Division, Unemployment Insurance Division, Welfare Reform Division and Workforce Division; Executive Session pursuant to: Government Code, §551.074 to discuss the duties and responsibilities of the executive staff and other personnel; Government Code, §551.071(1) concerning the pending or contemplated litigation of the Texas AFL0CIO v. TWC; TSEU/CWA Local 6184, AFL-CIO v. TWC; TSEU/CWA Local 6186, AFL-CIO, Lucinda Robles, and Maria Rousett v. TWC et al; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); Gene E. Merchant et al v. TWC; and Cynthia Harris v. TEC; Government Code, §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act; Actions, if any, resulting from executive session; consideration, discussion,

question, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases if any; (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 26.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: June 24, 1998, 3:51 p.m.

TRD-9810113



Tuesday, July 7, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street,

Austin

AGENDA:

Approval of prior meeting dates May 6, 1998, public comment; consideration and action on tax liability cases listed on Texas Workforce Commission Docket 27, general discussion and staff report concerning the employment service and related functions at the Texas Workforce Commission; discussion, consideration and possible action: (1) on acceptance of donations of child care matching funds; (2) on the adoption of the communities in schools rules (Chapter 827); (3) on proposed amendments to unemployment insurance rules concerning signatures on reports on forms (40 TAC §815.8); (4) on proposed amendments to the unemployment insurance rules concerning technical corrections (40 TAC, Chapter 815); (5) on the withdrawal of the emergency food stamp employment and training rules; (6) on the proposed Food stamp, Employment and training rules (Chapter 813); (7) relating to House Bill 2777 and the development and implementation of a plan for the integration of services and functions relating to eligibility determination and service delivery by Health and Human Service Agencies and TWC; (8) concerning the food stamp employment and training program; (9) regarding potential and pending applications for certification and recommendations to the Governor of Local Workforce Development Board for Certification; (10) regarding recommendations to TCWEC and status of strategic and operational plans submitted by Local Workforce Development Boards; and (11) regarding approval of Local Workforce board or Private Industry Council Nominees; staff report and discussion-update on activities relating to: Administration Division, Finance Division, Information Systems Division, Unemployment Insurance Division, Welfare Reform Division and Workforce Division; Executive Session pursuant to: Government Code, §551.074 to discuss the duties and responsibilities of the executive staff and other personnel; Government Code, §551.071(1) concerning the pending or contemplated litigation of the Texas AFL0CIO v. TWC; TSEU/CWA Local 6184, AFL-CIO v. TWC; TSEU/CWA Local 6186, AFL-CIO, Lucinda Robles, and Maria Roussett v. TWC et al; Midfirst Bank v. Reliance Health Care et al (Enforcement of Oklahoma Judgment); Gene E. Merchant et al v. TWC; and Cynthia Harris v. TEC; Government Code, §551.071(2) concerning all matters identified in this agenda where the Commissioners seek the advice of their attorney as Privileged Communications under the Texas Disciplinary Rule of Professional Conduct of the State Bar of Texas and to discuss the Open Meetings Act and the Administrative Procedure Act; Actions, if any, resulting from executive session; consideration, discussion, question, and possible action on: (1) whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases if any; (2) higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 27.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: June 29, 1998, 1:59 p.m.

TRD-9810277



Tuesday, July 7, 1998, 9:00 a.m.

Room 644, TWC Building, 101 East 15th Street,

Austin

REVISED AGENDA:

To add Unemployment Insurance Docket 27A.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: June 29, 1998, 3:53 p.m.

TRD-9810284



Regional Meetings

Meetings filed June 24, 1998

Bexar-Medina-Atascosa, WCID #1, Board of Directors met at 226 Highway 132, Natalia, June 29, 1998, at 8:30 a.m. Information may be obtained from John W. Ward, III, 226 Highway 132, Natalia, Texas 78059, 830/665-2132. TRD-9810105.

Lavaca Regional Water Planning Group, Region P met at 7059 State Highway 111 East, Edna, June 30, 1998, at 9:00 a.m. Information may be obtained from Emmett Gloyna, 7059 State Highway 111 East, Edna, Texas 512/782-5229. TRD-9810106.

Sabine River Authority, Board met at Fredonia Hotel, 200 Fredonia Street, Nacogdoches, June 30, 1998, at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Organge, Texas 77630, 409/746-3200. TRD-9810103.

Meetings filed June 25, 1998

Bluebonnet Trails Community MHMR Center, Board of Trustees, met at 555A Round Rock West, Round Rock, July 2, 1998 at 4:00 p.m. Information may be obtained from Vicky Collins, 444A Round Rock West, Round Rock, Texas 78681, (512) 244-8335. TRD-9810136.

Canadian River Municipal Water Authority, Board, met at Headquarters Building, Sanford Dam, Sanford, July 8, 1998 at 11:00 a.m. Information may be obtained from John Williams, P.O. Box 99, Sanford, Texas 79078, (806) 865-3325. TRD-9810119.

Central Texas Water Supply Corporation, Negotiating Committee, met at Stephen F. Austin Building, Corner 17th and Congress Avenue, Austin, met at June 30, 1998 at 10:00 a.m. Information may be obtained from Delores Hamilton, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, (254) 698-2779. TRD-9810130.

Creedmoor MAHA WSC, Monthly Board meeting, was held at 1699 Laws road, Mustang Ridge, July 1, 1998 at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 78610, (512) 243-2113. TRD-9810125.

Dallas Central Appraisal District, Board of Directors, met at 2949 North Stemmons Freeway, Second Floor Community Room, July 1, 1998 at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9810118.

East Texas Council of Governments, CEO Board of Directors, met at 1306 Houston Street, Kilgore, July 1, 1998 at 11:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9810152.

East Texas Council of Governments, Executive Committee, met at 3800 Stone Road, Kilgore, July 2, 1998 at 12:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9801045.

Evergreen Underground Water Conservation District, Board of Directors, met at 1306 Brown, Jourdanton, June 30, 1998 at 10:00 a.m. Information may be obtained from EUWCS, P.O. Box 155, Jourdanton, Texas 78026, (830) 769-3740. TRD-9810122.

Mills County Appraisal District, Appraisal Review Board, met at Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, June 29, 1998 at 9:00 a.m. Information may be obtained from Bill Presley, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9810124.

Panhandle Information Network, Board of Directors, met at 1601 South Cleveland, Golden Spread A Room, Amarillo, July 1, 1998 at 1:30 p.m. Information may be obtained from Dr. LaVelle Mills, P.O. Box 30698, Amarillo, Texas 79120, (806) 379-7644, Extension 16. TRD-9810123.

Shackelford Water Supply Corporation, Director's Meeting, met at Ft. Griffin Restaurant-Highway 180 West, Albany July 1, 1998, at Noon. Information may be obtained from Gaynell Perkins, Box 11, Albany, Texas 76430, 940/345-6868 or 915/762-2575. TRD-9810135.

South Texas Development Council, Board of Directors, met at Commissioner's Courtroom, Courthouse Annex, Zapata, July 2, 1998 at 11:00 a.m. Information may be obtained from Julie Saldana, (956) 722-3995. TRD-9810149.

STED Corporation, Board of Trustees, met at Commissioners Courtroom, Courthouse Annex, Zapata, July 2, 1998 at 10:00 a.m. Information may be obtained from Robert Mendiola, (956) 722-3995. TRD-9810150.

Texas Community Centers Managed Care, Inc. Board of Directors, met at 7685 Northcross Drive, Austin, July 1, 1998 at 10:00 a.m. Information may be obtained from Fred Bradley, (512) 794-9268. TRD-9810126.

Texas Community Centers Managed Care, Inc. Board of Directors, met at 7685 Northcross Drive, Austin, July 2, 1998 at 9:30 a.m. Information may be obtained from Fred Bradley, (512) 794-9268. TRD-9810127.

Wood County Appraisal District, Appraisal Review Board, met at 210 Clark Street, Quitman, June 29 and July 1, 1998 at 8:45 a.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9810144.

Meetings filed June 26, 1998

Atascosa County Appraisal District, Board of Directors, met at Fourth and Avenue J, Poteet, June 30, 1998 at 1:30 p.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139. TRD-9810223.

Barton Springs/Edwards Aquifer Conservation District, Work Session, met at 1124A Regal Row, Austin, July 2, 1998 at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441. TRD-9810167.

Bexar Appraisal District, Appraisal Review Board, met at 535 South Main Street, San Antonio, July 2, 1998 at 9:00 a.m. Information may be obtained from Ann Elizondo, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9810180.

Edwards Aquifer Authority, Research and Technology Committee, met at 1615 North St. Mary's Street, San Antonio, July 1, 1998 at 9:30 a.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9810222.

Edwards Aquifer Authority, Legal Committee, met at 1615 North St. Mary's Street, San Antonio, July 2, 1998 at 10:00 a.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, (210) 222-2204. TRD-9810188.

Gonzalez County Appraisal District, Appraisal Review Board, met at 928 St. Paul Street, Gonzales, July 2, 1998 at 9:00 a.m. Information may be obtained from Lona Haile, or Glenda Strackbein, 928 St. Paul, Gonzales, Texas, 78629, (830) 672-2879. TRD-9810170.

Hays County Appraisal District, Board of Directors, met at 21001 North IH35, Kyle, July 2, 1998 at 3:30 p.m. Information may be obtained from Pete T. Islas, (512) 268-2522, 21001 North IH35, Kyle, Texas 78640. TRD-9810197.

Lamar County Appraisal District, Appraisal Review Board, met at 521 Bonham Street, Paris, July 1, 1998 at 1:00 p.m. Information may be obtained from Cathy Jackson, P.O. Box 400, Paris, Texas 75461, (903) 785-7822. TRD-9810168.

Rockwall County Central Appraisal District, Appraisal Review Board, met at 106 North San Jacinto, Rockwall, July 1, 1998 at 8:30 a.m. Information may be obtained from Ray E. Helm, (972) 771-2034, 106 North San Jacinto, Rockwall, Texas 75087. TRD-9810199.

San Patricio Appraisal District, Board of Directors, met at 1146 East Market, Sinton, July 9, 1998 at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387. TRD-9810200.

Wise County Appraisal District, Appraisal Review Board, met at 206 South State, Decatur, July 9, 1998 at 8:30 a.m. Information may be obtained from Freddie Triplett, (940) 627-3081. TRD-9810173.

Meetings filed June 29, 1998

Brazos River Authority, Joint meeting of Water Utilization Committee and Administration and Audit Committee met at 4400 Cobbs Drive, Waco, July 6, 1998 at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (254) 776-1441. TRD-9810291.

Brazos River Authority, Board of Directors, met at 4400 Cobbs Drive, Waco, July 6, 1998 at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (254) 776-1441. TRD-9810292.

Central Texas Water Supply Corporation, Negotiating Committee met at Stephen F. Austin Building, Corner, 17th and Congress, Austin, June 30, 1998, at 10:00 a.m. Information may be obtained from R. David Cole, 4020 Lake Cliff Drive, Harker Heights, Texas 76548, 254/698-2779. TRD-9810274.

Dewitt County Appraisal District, Appraisal Review Board, met at 103 Bailey Street, Cuero, July 7, 9, and will also meet on the 16, 1998 at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9810251.

Edwards Central Appraisal District, met at 106 North Austin, County Annex Building, Rocksprings, July 2, 1998 at 9:30 a.m. Information

may be obtained from Wiley Rudasill, P.O. Box 858, Rocksprings, Texas 78880, (830) 683-4189. TRD-9810227.

Hill Country Community MHMR Center, Board of Trustees, met at 1801 Dutton Drive, Suite D, San Marcos, July 7, 1998 at 11:00 a.m. Information may be obtained from Janis Beck, 1901 Dutton Drive, Suite D, San Marcos, Texas 78666, (512) 558-2019. TRD-9810245.

Hood County Appraisal District, Appraisal Review Board, met at 1902 West Pearl Street, District Office, Granbury, June 30, July 1-2, 1998, at 9:00 a.m. Information may be obtained from Jeffrey D. Law, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9810120.

Lavaca County Central Appraisal District, Appraisal Review Board, met at 113 North Main Street, Hallettsville, July 11, 1998 at 8:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9810225.

Lavaca County Central Appraisal District, Board of Directors, met at 113 North Main Street, Hallettsville, July 13, 1998 at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9810226.

Millersview-Doole Water Supply Corporation, Board of Directors met at One Block West of FM Highway 765 and FM Highway 2134 at Corporation's Office, Millersview, July 6, 1998, at 8:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box 130, Millersview, Texas 76862-0130, 915/483-5438. TRD-9810279.

Stephens County Rural WSC, Board, met at 206 FM 3099, Breckenridge, July 2, 1998 at 6:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (254) 559-6180. TRD-9810252.

Tarrant Appraisal District, Appraisal Review Board, met at 2329 Gravel Road, Fort Worth, July 1, 2, 6, 7, 8, 9, 10, and will meet 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30 and 31 at 8:00 a.m. each day. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9810246.

Wheeler County Appraisal Board of Directors, met at 117 East Texas, Courthouse Square, Wheeler, July 8, 1998 at 8:00 a.m. Information may be obtained from Larry Schoenhals, P.O. Box 1200, Wheeler, Texas 79096, (806) 826-5900. TRD-9810253.

Meetings filed June 30, 1998

Austin Transportation Study, Policy Advisory Committee Public Involvement Process Subcommittee, met at Municipal Annex Building, 301 West Second Street, First Floor Large Conference Room (140), Austin, July 7, 1998 at 5:30 p.m. Information may be obtained from Michael Aulick, 301 West 2nd Street, Austin, Texas 78701, (512) 449-2275. TRD-9810339.

Brazos Valley Council of Governments, Regional 911 Advisory Committee, met at 1706 East 29th Street, Bryan, July 7, 1998 at 10:00 a.m. Information may be obtained from Anita Pitt, P.O. Drawer 4128, Bryan, Texas 77805, (409) 775-4244. TRD-9810344.

Brazos Valley Council of Governments, Brazos Valley Regional Advisory on Aging, met at 1706 East 29th Street, Bryan, July 7, 1998 at 2:30 p.m. Information may be obtained from Anita Pitt, P.O. Drawer 4128, Bryan, Texas 77805, (409) 775-4244. TRD-9810334.

Burnet Central Appraisal District, Appraisal Review Board, met at 223 South Pierce, Burnet, July 7, 1998 at 8:30 a.m. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet, Texas, 78611, (512) 756-7873. TRD-9810313.

Burnet Central Appraisal District, Appraisal Review Board, met at 223 South Pierce, Burnet, July 8 and 9, 1998 at 8:30 a.m. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet, Texas, 78611, (512) 756-7873. TRD-9810312.

Denton Central Appraisal District, Appraisal Review Board, will meet at 3911 Morse Street, Denton, July 15, 1998 at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, (940)566-0904. TRD-9810319.

Denton Central Appraisal District, Appraisal Review Board, will meet at 3911 Morse Street, Denton, July 17, 1998 at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, (940) 566-0904. TRD-9810318.

Elm Creek WSC, Board, will meet at 508 Avenue E, Moody, July 13, 1998, at 7:00 p.m. Information may be obtained from Kimber Brown, P.O. box 538, Moody, Texas 76557, (254) 863-3838. TRD-9810317.

Gonzales County Appraisal District, Appraisal Review Board, will meet at 928 St. Paul Street, Gonzales, July 7, 1998 at 9:00 a.m. Information may be obtained from Lona Haile, or Glenda Strackbein, 928 St. Paul Street, Gonzales, Texas 78629, (830)672-2879 or fax; (830)672-8345. TRD-9810340.

Gonzales County Appraisal District, Appraisal Review Board, will meet at 928 St. Paul Street, Gonzales, July 9, 1998 at 9:00 a.m. Information may be obtained from Lona Haile, or Glenda Strackbein, 928 St. Paul Street, Gonzales, Texas 78629, (830) 672-2879 or fax; (830) 672-8345. TRD-9810341.

Gonzales County Appraisal District, Appraisal Review Board, will meet at 928 St. Paul Street, Gonzales, July 13, 1998 at 9:00 a.m. Information may be obtained from Lona Haile, or Glenda Strackbein, 928 St. Paul Street, Gonzales, Texas 78629, (830) 672-2879 or fax; (830) 672-8345. TRD-9810342.

Gonzales County Appraisal District, Appraisal Review Board, will meet at 928 St. Paul Street, Gonzales, July 14, 1998 at 9:00 a.m. Information may be obtained from Lona Haile, or Glenda Strackbein, 928 St. Paul Street, Gonzales, Texas 78629, (830) 672-2879 or fax; (830) 672-8345. TRD-9810343.

Grayson Appraisal District, Appraisal Review Board, met at 205 North Travis, Sherman, July 7, 1998 at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9810295.

Grayson Appraisal District, Appraisal Review Board, met at 205 North Travis, Sherman, July 9, 1998 at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9810296.

Grayson Appraisal District, Appraisal Review Board, met at 205 North Travis, Sherman, July 10, 1998 at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9810297.

Grayson Appraisal District, Appraisal Review Board, met at 205 North Travis, Sherman, July 16, 1998 at 8:15 a.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9810298.

Gregg Appraisal District, Appraisal Review Board, met at 1333 East Harrison Road, Longview, July 7, 8, 9, 10, 14, 15, 20, 1998 at 9:00 a.m. Information may be obtained from Marvin F. Hahn, Jr., 1333 East Harrison Road, (FM 1845), Longview, Texas 75604-5537, (903) 238-8823. TRD-9810333.

Hunt County Appraisal District, Appraisal Review Board, met at 4801 King Street, Greenville, July 13–15 and 20, 1998, 8:45 a.m. July 13–15 and 1:00 p.m. July 20. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454–3510. TRD-9810311.

Jasper County Appraisal District, Appraisal Review Board, met at 137 North Main Street, Jasper, July 8–10, and 21, 1998, at 9:00 a.m. Information may be obtained from David W. Luther, 137 North Main Street, Jasper, Texas 75951, (409) 384–2544. TRD-9810305.

Lavaca Regional Water Planning Group (Region P), met at 4631 FM 3131, Edna, Texas July 9, 1998 at 1:30 p.m. Information may be obtained from Emmett Gloyna, (512) 782–5229. TRD-9810349.

Permian Basin Regional Planning Commission, Board of Directors, met at 2910 La Force Boulevard, Midland, July 8, 1998 at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563–1061. TRD-9810352.

Permian Basin Regional Planning Commission, Policy Advisory Committee of the MORTS, will meet at 2910 La Force Boulevard, Midland, July 16, 1998 at 8:30 a.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563–1061. TRD-9810351.

Upshur County Appraisal District, Appraisal Review Board, met at 1711 Latch Road, Gilmer, July 7, 1998 at 8:00 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644–0280, (903) 843–3041. TRD-9810309.

West Central Texas Council of Governments, Tech Prep Advisory Committee, met at 809 North Judge Ely, Abilene, July 9, 1998 at 10:30 a.m. Information may be obtained from Tina Melendez, P.O. Box 3195, Abilene, Texas 79604, (915) 672–8544. TRD-9810335.

Wise County Appraisal District, Appraisal Review Board, will meet at 206 South State, Decatur, July 14, 1998 at 8:30 a.m. Information may be obtained from Freddie Triplett, (940) 627–3081. TRD-9810294.

Wood County Appraisal District, Appraisal Review Board, met at 210 Clark Street, Quitman, July 7, 8, 9, and 10, 1998 at 8:45 a.m. Information may be obtained from Lois McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783–0518. (903) 763–1891. TRD-9810348.

Meetings filed July 1, 1998

Bosque Higher Education Authority, Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 10:30 a.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810433.

Brazos Higher Education Authority, Inc. Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 10:00 a.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810431.

Brazos Education Assistance, Inc., Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 10:45 a.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810434.

Brazos Higher Education Service Corporation, Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 12:15 p.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810440.

Brazos Student Finance Corporation, Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 10:15 a.m. Information

may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810432.

Brazos Valley Council of Governments, Board of Directors, met at 1706 East 29th Street, Bryan, July 8, 1998 at 1:30 p.m. Information may be obtained from Nelda Thompson, P.O. Drawer 4128, Bryan, Texas 77805–4128, (409) 775–4244, ext. 102. TRD-9810369.

Cass County Appraisal District, Appraisal Review Board, met at 502 North Main Street, Linden, July 6, 1998 at 8:30 a.m. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, (903) 756–7545. TRD-9810429.

Cass County Appraisal District, Appraisal Review Board, met at 502 North Main Street, Linden, July 8–11, 1998 at 9:00 a.m. Tuesday and Wednesday, 5:30 p.m. Thursday, and 10:00 a.m. Saturday. Information may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 75563, (903) 756–7545. TRD-9810430.

Colorado County General Appraisal District, Appraisal Review Board, met at 400 Spring Street, Columbus, July 24, 1998 at 3:00 p.m. Information may be obtained from William T. Youens, Jr. (409) 732–8222. TRD-9810385.

Edwards Aquifer Authority, Executive Committee, met at 1615 North St. Mary's Street, San Antonio, July 6, 1998 at Noon. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, 78212, (210) 222–2204. TRD-9810368.

Falls County Appraisal District, Appraisal Review Board, will meet at Intersection of Highway 6 and 7, Falls County Courthouse, First Floor, Marlin, July 13, 1998, 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661–0430. TRD-9810407.

Falls County Appraisal District, Appraisal Review Board, will meet at Intersection of Highway 6 and 7, Falls County Courthouse, Marlin, July 14, 1998, 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661–0430. TRD-9810406.

Grayson Appraisal District, Board of Directors, will meet at 205 North Travis, Sherman, July 15, 1998 at 4:00 p.m. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893–9673. TRD-9810399.

Nueces Higher Education Authority, Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 11:45 a.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810438.

Pecos Student Finance Authority, Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 11:00 a.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810435.

Pecos Higher Education Authority Inc., Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 11:15 a.m. Information may be obtained from Murray Watson, Jr. 2600 Washington Avenue, Waco, Texas 76710, 752–0913. TRD-9810436.

Sabine Higher Education Authority, Inc., Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at Noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (254) 753–0913. TRD-9810439.

Trinity Higher Education Authority, Inc., Board of Directors, met at 2612 Washington Avenue, Waco, July 8, 1998 at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (254) 753–0913. TRD-9810437

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 Commission on Alcohol and Drug Abuse

Correction of Error

The Texas Commission on Alcohol and Drug Abuse proposed new 40 TAC §§143.1, 143.2, 143.11–143.18, and 143.21–143.24, and proposed amendments to 40 TAC §§144.14, 144.21, 144.313, and 144.322. The rules appeared in the June 12, 1998, issue of the *Texas Register*.

On page 6162, Chapter 143, there should be no subchapter heading.

On page 6166, §144.21, Subchapter A, is entitled “General Provisions” not “Definitions.”

On page 6167, §144.21, the definition of intervention (number 27) is new and the entire definition should have been underlined.

On page 6170, §144.313 and §144.322, Subchapter D, is entitled “Organizational”, not “Organization.”

On page 6172, §144.414, subsection (e), is new wording and should have been underlined rather than struck through.

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were received for the following project(s) during the period of June 22, 1998, through June 29, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Texas Department of Transportation; Location: Along Interstate 10 where it crosses the Sabine River in Orange County, Texas and Calcasieu Parish, Louisiana; Project Number 98-0288-F1; Description of Proposed Action: The applicant proposes to reconstruct and widen a portion of the roadway, straighten several curves, replace the bridge over Old River Bayou, and extend the culvert under Little Caney Creek. The impact to wetlands and waters

of the United States is 1.54 acres of temporary disturbance and 4.16 acres of permanent disturbance. As mitigation for the impacts to the forested wetlands at the site, the applicant is proposing to withdraw 30 credits, or 30 acres, from the Blue Elbow Mitigation Bank; Type of Application: U.S.C.O.E. permit application number 21253, §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Goodrich Petroleum Corporation; Location: In State Tract 295, Galveston Bay, Chambers County, Texas; Project Number 98-0289-F1; Description of Proposed Action: The applicant is requesting an Oil Field Development Permit to drill and maintain multiple well locations in State Tract 295, for the purpose of oil and gas production. The permitted work would include the installation of well guards, production platforms, flow lines, and a shell or gravel pad; Type of Application: U.S.C.O.E. permit application number 21325 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Sea Ranch Boca Chica Ferry; Location: Along the South Jetty, Back Bay, adjacent to Brazos Santiago Pass, on Brazos Island, Cameron County, Texas; Project Number 98-0296-F1; Description of Proposed Action: The applicant proposes to construct an 8-foot by 16-foot walkway with an 8-foot by 16-foot terminal structure. The purpose of the project is to provide safe loading and off loading of ferry passengers to and from Boca Chica at the northern end of Brazos Island; Type of Application: U.S.C.O.E. permit application number 21302 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

TRD-9810386

Garry Mauro

Chairman, Coastal Coordination Council

Coastal Coordination Council

Filed:

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Comptroller of Public Accounts

Notice of Withdrawal of Request for Proposals

Pursuant to Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts determined on June 30, 1998, that it is in the best interest of the state to withdraw the Request for Proposals for consultant services to assist the Comptroller with records administration services in connection with the state's prepaid higher education tuition program. Comptroller will provide notice of any reissuance of the RFP.

The anticipated schedule for the RFP was included in the Notice of Request for Proposals published in the July 3, 1998, issue of the *Texas Register* (23TexReg7103).

TRD-9810413

Walter Muse

Legal Counsel

Comptroller of Public Accounts

Filed: July 1, 1998

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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 Articles 1D.003, 1D.005 and 1D.009, Title 79, Revised Civil Statutes of Texas, as amended (Articles 5069-1D.003, 1D.005, and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/06/98 - 07/12/98 is 18% for Consumer ¹/Agricultural/Commercial ²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 07/06/98 - 07/12/98 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009³ for the period of 07/01/98 - 07/31/98 is 18% for Consumer/Agricultural/Commercial/credit thru \$250,000.

The monthly ceiling as prescribed by Art. 1D.005 and 1D.009 for the period of 07/01/98 - 07/31/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

³For variable rate commercial transactions only.

TRD-9810338

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: June 30, 1998

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Texas Department of Criminal Justice

Notices to Bidders

The Texas Department of Criminal Justice invites bids for remodeling the Death House located within the Huntsville Unit (otherwise known as the Walls Unit) in Huntsville, Texas.

The successful bidder will be required to meet the following requirements and submit evidence within five days after notification from the owner:

a) Contractor must have a minimum of five consecutive years of experience as a General Contractor and provide references for at least three projects that have been completed of a dollar value and complexity equal to or greater than the proposed project.

b) Contractor must be bondable and insurable at the levels required.

The project consists of remodeling the Death House located within the Huntsville Unit (otherwise known as the Walls Unit) for the Texas Department of Criminal Justice at Huntsville, Texas as shown in the contract documents (prepared in-house). The remodeling consists of partial demolition of the roof structure and concrete walls and cell fronts. New CMU walls, dry wall ceilings, dry wall furring, hollow metal doors, frames and windows, ceiling and wall insulation, painting builder's hardware, electrical, air conditioning, plumbing and new floors are to be installed or altered. Exterior work includes new concrete stoops, minor chain link fence work, canopy above stoop, concrete ramps and walks, ADA compliant parking spaces, concrete curbs, ramp signs, paving, paving paint work, application of new ADA compliant hand rail to existing hand rail at front of unit and all other appurtenant work required for a complete job.

All bids must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Performance and Payment Bonds in the amount of 100% of the contract amount will be required upon award of a contract. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

Bid documents can be obtained from: In-House Design - Acquisition Department, Facilities Division - TDCJ, P.O. Box 4011, Huntsville, Texas 77342-4011, Attention: John Montgomery, Phone: (409) 294-6944, Fax: (409) 294-6947.

A Pre-Bid conference will be held at 9am on July 21, 1998, at the Walls Unit. Attendance is mandatory. Bids will be publicly opened at 2pm on August 11, 1998, in the Blue Room at the Facilities Division located in the warehouse building of the TDCJ Administrative Complex (former Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas.

The Texas Department of Criminal Justice requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUB's) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9810415

Carl Reynolds

General Counsel

Texas Department of Criminal Justice

Filed: July 1, 1998

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The Texas Youth Commission, by and through its construction project manager, the Texas Department of Criminal Justice invites bids for construction of the McClennan County State Juvenile Correctional Facility. The Juvenile Correctional Facility, will be in the City of Mart, McClennan County Texas. The project will involve the construction of a facility to house 330 youths. The project will consist of various single story buildings located on an approximately 30 acre compound. The work includes: civil, architectural, mechanical, electrical, plumbing, security electronics, food service, structural concrete and steel, and pre-engineered metal buildings as further

shown on the Contract Documents prepared by HKS, Inc. The work will be awarded under one lump sum contract. The successful bidder will be required to meet the following Contractor qualifications and submit evidence of same to Owner within five days after receiving notice of intent to award from the Owner:

- (1) Contractor must have worked in his trade for at least five years;
- (2) Contractor must have completed at least three projects of a dollar volume equal to or greater than the job being bid;
- (3) Contractor must be bondable as provided in the General and Special Conditions;
- (4) Contractor must be insurable as provided in the General and Special Conditions;
- (5) Contractor must provide references from at least three similar jobs.

All Bid Proposals must be accompanied by a Bid Bond in the amount of 5.0% of greatest amount bid. Bid Documents can be purchased from the Architect/Engineer at a cost of \$200 (non-refundable) per set, including mailing/delivery costs, or they may be viewed at various plan rooms as listed in the Information to Bidders. Payment checks for documents should be made payable to the Architect/Engineer: HKS Inc., 1919 McKinney Avenue, Dallas, Texas 75201-1753, Attention: Paul Liptak, Phone: (214) 969-3272, Fax: (214) 969-3397.

A Pre-Bid conference and Site Visit will be held on July 15, 1998, at 10:00 am in the City Council Chambers of the Mart City Hall in Mart Texas. Attendance of prime bidders is mandatory. The Pre-Bid conference will adjourn and reconvene at the construction site.

Bids will be publicly opened and read at 2:00 pm on August 4, 1998, in the large Conference Room at the Engineering Directorate offices located in the warehouse building of the TDCJ Administrative Complex (formerly Brown Oil Tool) on Spur 59 off of Highway 75 North, Huntsville, Texas. The Owner reserves the right to reject any or all bids, and to waive any informality or irregularity.

The Texas Youth Commission requires the Contractor to make a good faith effort to include Historically Underutilized Businesses (HUBs) in at least 26.1% of the total value of this construction contract award. Attention is called to the fact that not less than the minimum wage rates prescribed in the Special Conditions must be paid on these projects.

TRD-9810414
Carl Reynolds
General Counsel
Texas Department of Criminal Justice
Filed: July 1, 1998

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Deep East Texas Council of Governments

Request for Qualificaitons

The East Texas Regional Water Planning Group (RWPA "I") invites all qualified parties to submit a statement of qualifications for preparing a Scope of Work, Budget for Water Plan, and Grant Application for East Texas Regional Water Planning Group (RWPA "I"), as defined by 31 TAC Chapters 355, 357 and 358, to implement state and regional water planning aspects of Senate Bill 1, 75th Legislative Session (SB1).

Background:

Senate Bill 1, 7th Legislature, made significant changes in the manner in which state water planning si to be conducted. Notably, Senate Bill 1 shifts the emphasis of state water planning from a centralized approach to a regional planning approach. As part of that process, the Texas Water Development Board (TWDB) has designated 16 regional planning areas and has appointed the initial members of regional planning groups. Each region is to prepare a consensus based regional water management plan and submit that plan to the TWDB by September 1, 2000. TWDB will then assemble those regional water management plans into a State Water Plan to be submitted to the Texas Legislature.

Region I included all or portions of Anderson, Angelina, Cherokee, Hardin, Henderson, Houston, Jasper, Jefferson, Nacogdoches, Newton, Orange, Panola, Polk, Rusk, Sabine, San Augustine, Shelby, Smith, Trinity and Tyler Counties.

Under the direction of the East Texas Regional Water Planning Group (RWPA "I") and the Deep East Texas Council of Governments, the consultant shall develop a Scope of Work, Budget for the Water Plan, and Application for Grant. The consultant shall include local and regional concerns contained in the Region I Scope of Work. The Region I draft Scope of Work may be obtained from the office of Deep East Texas Council of Governments, attention Andy Phillips, Regional Planner.

In addition, the consultant shall finalize a scope of work that adequately addresses all tasks in 31 TAC §357.7 and contains the elements for a scope of work as defined in 31 TAC §357.6(3), i.e. the description of tasks, responsible parties, schedule, and description of deliverables.

In addition to the technical role, a consultant shall assist in the preparation of applications for financial assistance, design and implementation of public involvement activities, including conducting public meetings, reviewing and responding to public comments, and developing educational materials on regional water planning issues for presentation to both technical and non-technical audiences in the region.

Consultants submitting qualifications should be familiar with the rules for state and regional water planning and regional water planning grant assistance adopted by TWDB on February 19, 1998 (31 TAC, Chapter 355, Subchapter C, Regional Water Planning Grant Rules; and 31 TAC, Chapter 358, State Water Planning Guideline Rules). These rules contain procedures governing applications for financial assistance related to the development or revision of regional water management plans, and guidelines for the development of the state water plan. Particularly, the rules contain specific time frames and requirements for making application for state financial assistance for the development of the scope of work and budget for the development of the regional water management plan, as well as deadlines for the submittal of the scope of work and regional water management plan. The schedule for completion and delivery of work products for the Region I RWPG shall reflect these publication deadlines.

Additional Information:

The purpose of this request for statement of qualification is to permit the evaluation of the consultant's proposed approach for the preparation of the Region I scope of work and related services, and the relative professional and technical qualifications of respondents.

The narrative portion of the response should be no more than 10 pages in length, including cover letter, but excluding resumes of project team members, which may not exceed two pages per team member. In addition, please provide a two page executive summary

of the narrative response to be distributed to all the members on the Region I WPG. Responses should address the following:

1. Provide a proposed approach for preparation of the Region I scope of work and related services, including a general discussion of project tasks, schedules, levels of effort and deliverables.

2. A list of no more than 10 projects similar to the scope of work listed herein, with descriptions of the projects, members of the project teams, time schedule, and contact persons who are able to verify the information presented. All projects must have been completed within the past ten (10) years, with at least three (3) within the last five (5) years.

Project descriptions must demonstrate the following recent work experience:

regional water planning for various size regions in Texas;

interactions with diverse interest groups and stakeholders participating in regional water planning;

facilitating consensus-building and conflict resolution among stakeholders with diverse and potential conflicting interests;

working with the TWDB in reviewing population forecasts and developing and gaining acceptance of alternative forecasts as necessary;

familiarity with data and information available from the TWDB and other sources;

familiarity with TWDB's planning grant administration and invoicing requirements;

knowledge of statutory and regulatory policies affecting water supply, water quality, water conservation, and drought management issues for both surface and ground water; and

experience with environmental issues and analyses related to water supply development.

3. Your firm's resources and capabilities: including location, size, staffing and length of local office's existence in Texas;

4. Any planned subcontractor or joint venture arrangement for the project. Information requested in Items 1 and 2 will be submitted for joint venture partner(s);

5. The capability of your firm to commit necessary resources to the project in order to meet the project schedule; and

6. Any information you would like the Technical Review Committee to be aware of which you feel might have a bearing on your firm's qualification to perform on the project.

The selection of the successful firm(s) shall be accomplished by a committee appointed by the East Texas Regional Water Planning Group (RWPA "I"). Based on the number of responses received and the Committee's review, the East Texas Regional Water Planning Group (RWPA "I") may request formal presentations from a short list of selected firms for the projects.

Schedule:

June 29, 1998-Approve, advertise and mail notices as required for Requests for Statement of Qualifications.

June 29, 1998-Advertise Requests for Statement of Qualifications

July 13, 1998-Statement of Qualifications Due

July 17, 1998-DETCOG staff reviews Statement of Qualifications and selects consultant to assist DETCOG staff in preparing Scope of

Work, Budget for Water Plan, and Grant Application for East Texas Regional Water Planning Group.

July 22, 1998-Scope of Work, Budget for Water Plan, and Grant application due for review by Region I WPG.

July 31, 1998-Application submitted to the TWDB.

Acknowledgments:

The submittal either as part of the Statement of Qualifications or the cover letter shall provide the following acknowledgments:

Acknowledgment that, if requested, you will prepare and make a presentation if selected to a short list.

Acknowledgment that, if selected, the key individuals of the proposed team will not be changed without the written approval of the Deep East Texas Council of Governments.

Acknowledgment that, if selected, you will conform to TWDB rules and requirements for grant funding and invoicing; and

Acknowledgment or disclosure of any real, or potential situation that could be perceived as a conflict of interest on the part of any owner or employee of your firm, joint venture or subconsultant with any individual, group, corporation, or political subdivision represented on the Region I Regional Water Planning Group. In those instances where a potential or perceived conflict of interest may exist, define the actions that will be taken to avoid a real conflict of interest.

The deadline for responses to this request is **5:00pm, Monday, July 13, 1998**. Each proposal and a copy of the executive summary shall be submitted to the Deep East Texas Council of Governments at the following address: Deep East Texas Council of Governments, Andy Phillips, Regional Planner, 274 East Lamar Street, Jasper, Texas 75951 or call (409) 384-5704; Fax (409) 384-5390.

TRD-9810280

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: June 29, 1998



Texas Education Agency

Correction of Errors

The Texas Education Agency adopted amendments to 19 TAC §§74.11-74.13. The rules appeared in the May 29, 1997, issue of the *Texas Register*, (23 TexReg 5675).

On page 5684, §74.13(a)(2), there is a comma and a period. The comma should be deleted.

The Texas Education Agency filed an open meeting notice regarding the Policy Committee on Public Education Information. The notice was published in the June 12, 1998, issue of the *Texas Register* (23 TexReg 6319).

On page 6319, the room number "1-014" should read "1-104".

The Texas Education Agency filed an open meeting notice regarding a Public Meeting with Textbook Publishers on Proclamation 1998. The notice was published in the Friday, June 12, 1998, issue of the *Texas Register* (23 TexReg 6319).

On page 6319 the errors appeared as follows: 1) under the street location, the room number "1-014" should read "1-111"; 2) the first sentence in the agenda that reads "on Thursday, June," should read "on Thursday, June 18,;" 3) within the middle of the agenda

paragraph, the sentence "a maximum costs to the state per student for adopted instructional materials in each"; 4) Four lines from the bottom of the agenda, the language "Additional, publishers will be invited" should read "Additionally, publishers will be invited"; and 5) under additional information, the street address "1700 Congress Avenue" should read "1701 Congress Avenue".

The Texas Education Agency filed miscellaneous document titled Request for Applications Concerning Adult Education Special Projects and Gateway Grants. The document was published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6623).

On page 6623, at the end of the paragraph regarding statewide capacity building projects, the term "S. Congress" should read "U.S. Congress".



Employees Retirement System of Texas

Consultant Contract Award

This award for consulting services is being filed pursuant to the provisions of the Government Code, §2254.024, subsection (a)(6). The consultant will provide benefit communication services on programs administered by the Employees Retirement System of Texas. The consultant is N. J. Robnett, Jr., 4611 Pinehurst Drive South, Austin, Texas 78747. The total cost for the contract is \$40,800, and the term of the contract is September 1, 1998 through August 31, 1999.

TRD-9810155

Sheila W. Beckett

Executive Director

Employees Retirement System of Texas

Filed: June 25, 1998



Request for Proposals-HealthSelect of Texas

In accordance with §4 of Article 3.50-2, Texas Insurance Code, as amended, the Board of Trustees of the Employees Retirement System of Texas (ERS) is soliciting proposals from qualified insurance companies, third party administrators (TPAs), and health maintenance organizations (HMOs) to provide administrative, network management and utilization review services for HealthSelect of Texas (HealthSelect) under the Texas Employees Uniform Group Insurance Program (UGIP) for Fiscal Years 2000 through 2005, beginning September 1, 1999 and ending August 31, 2005. Vendors wishing to respond to the RFP must have a financial net worth of \$25 million.

The RFP will be available upon written request from the ERS during the week of July 6 - 10, 1998. There will be a bidders' conference on July 27, 1998, in the ERS auditorium. The deadline for submission of proposals is 5:00 p.m. on August 27, 1998.

The ERS is the administrator of the UGIP which covers over 500,000 State of Texas and higher education employees, retirees, and dependents. The ERS is responsible for the administration of health coverage for UGIP participants throughout Texas.

HealthSelect is a self-funded, managed care, point-of-service (POS) plan currently administered by Blue Cross Blue Shield of Texas, Inc. The number of employees and retirees participating in HealthSelect is approximately 138,000.

The ERS reserves the right to reject any and all proposals and call for new proposals, if such action is deemed by the ERS to be in the

best interests of the UGIP. The ERS is under no legal requirement to execute a contract on the basis of this notice.

The ERS will base its evaluation and selection of one vendor for HealthSelect on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with the RFP, provider network, managed care network quality, administrative capability, health care management incentive, financial strength and stability, administrative fee, references, previous operational experience, prior experience contracting with the ERS, and site visits.

The RFP does not commit the ERS to pay any cost incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interests of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP, contact James W. Sarver, Assistant Director, Benefit Contracts, Employees Retirement System of Texas, 18th and Brazos, Post Office Box 13207, Austin, Texas 78711-3207.

TRD-9810214

Paula A. Jones

Acting Director, Legal Services

Employees Retirement System of Texas

Filed: June 26, 1998



Request for Proposals-HealthSelect Plus

In accordance with §4 of Article 3.50-2, Texas Insurance Code, as amended, the Board of Trustees of the Employees Retirement System of Texas (ERS) is soliciting proposals from qualified insurance companies, third party administrators (TPAs), and health maintenance organizations (HMOs) to provide administrative, network management and utilization review services for HealthSelect Plus under the Texas Employees Uniform Group Insurance Program (UGIP) for Fiscal Years 2000 through 2005, beginning September 1, 1999 and ending August 31, 2005. Vendors wishing to respond to the RFP must have a financial net worth of \$5 million.

The RFP will be available upon written request from the ERS during the week of July 6 -10, 1998. There will be a bidders' conference on July 27, 1998, in the ERS auditorium. The deadline for submission of proposals is 5:00 p.m. on August 27, 1998.

The ERS is the administrator of the UGIP which covers over 500,000 State of Texas and higher education employees, retirees, and dependents. The ERS is responsible for the administration of health coverage for UGIP participants throughout Texas.

HealthSelect Plus is a self-funded, HMO-type plan currently administered by HMO Blue, an affiliate of Blue Cross and Blue Shield of Texas, Inc. The number of employees and retirees participating in HealthSelect Plus is approximately 17,000.

The ERS reserves the right to reject any and all proposals and call for new proposals if such action is deemed by ERS to be in the best interests of the UGIP. The ERS is under no legal requirement to execute a contract on the basis of this notice.

The ERS will base its evaluation and selection of one vendor for HealthSelect Plus on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with the RFP, provider network, network quality, administrative

capability, health care management incentive, financial strength and stability, administrative fee, references, previous operational experience, prior experience contracting with the ERS, and site visits.

The RFP does not commit the ERS to pay any cost incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interests of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP, contact James W. Sarver, Assistant Director, Benefit Contracts, Employees Retirement System of Texas, 18th and Brazos, Post Office Box 13207, Austin, Texas 78711-3207.

TRD-9810215

Paula A. Jones

Acting Director, Legal Services

Employees Retirement System of Texas

Filed: June 26, 1998



Request for Proposals-Prescription Drug Program for Health-Select of Texas

In accordance with §4 of Article 3.50-2, Texas Insurance Code, as amended, the Board of Trustees of the Employees Retirement System of Texas (ERS) is soliciting proposals from Pharmacy Benefit Managers (PBMs) to provide certain pharmacy benefit management services for the Prescription Drug Program (PDP) for HealthSelect of Texas (HealthSelect) under the Texas Employees Uniform Group Insurance Program (UGIP) for Fiscal Years 2000 through 2002, beginning September 1, 1999 and ending August 31, 2002. Vendors wishing to respond to the RFP must have a financial net worth of \$5 million.

The RFP will be available upon written request from the ERS during the week of July 6 - 10, 1998. There will be a bidders' conference on July 27, 1998, in the ERS auditorium. The deadline for submission of proposals is 5:00 p.m. on August 27, 1998.

The ERS is the administrator of the UGIP which covers over 500,000 State of Texas and higher education employees, retirees, and dependents. The ERS is responsible for the administration of health coverage for UGIP participants throughout Texas.

HealthSelect is a self-funded, managed care, point-of-service (POS) plan currently administered by Blue Cross Blue Shield of Texas, Inc. Effective September 1, 1999, the HealthSelect PDP will be administered by a PBM. The number of employees and retirees participating in HealthSelect is approximately 138,000.

The ERS reserves the right to reject any and all proposals and call for new proposals if such action is deemed by the ERS to be in the best interests of the UGIP. The ERS is under no legal requirement to execute a contract on the basis of this notice.

The ERS will base its evaluation and selection of one vendor for the PDP on factors including, but not limited to, the following, which are not necessarily listed in order of priority: compliance with the RFP, pharmacy network, administrative capability, administrative fee, mail service reimbursement, formulary rebates, references, previous operational experience, prior experience contracting with ERS, and site visits.

The RFP does not commit the ERS to pay any cost incurred prior to execution of a contract. Issuance of this material in no way obligates the ERS to award a contract or to pay any costs incurred in the preparation of a response. The ERS specifically reserves the right to vary all provisions set forth at any time prior to execution of a contract where the ERS deems it to be in the best interests of the State of Texas.

For further information regarding this notice, or to obtain copies of the RFP, contact James W. Sarver, Assistant Director, Benefit Contracts, Employees Retirement System of Texas, 18th and Brazos, Post Office Box 13207, Austin, Texas 78711-3207.

TRD-9810216

Paula A. Jones

Acting Director, Legal Services

Employees Retirement System of Texas

Filed: June 26, 1998



General Services Commission

Notice of Contract Award

In accordance with Chapter 2254, Subchapter B of the Texas Government Code, The General Services Commission, State Energy Conservation Office (SECO) publishes this notice of contract award under the School Energy Management Program.

Description of Service. The contractors will include the services of the sustainability consultant as additional services in the A&E agreement. Emphasize sustainability in the development of this project at the beginning of the design process. Install the instrumentation needed to measure and verify energy performance through the energy management control system. Monitor energy performance after occupancy and make any necessary adjustments to keep the building on target. Foster participation of building users. Facilitate commissioning of the building. Develop and implement methods to promote sustainable technology transfer.

Reports and Deliverables. All reports and any deliverables associated with these contracts shall be filed with the General Services Commission, State Energy Conservation Office prior to June 1, 2000.

Name of Contractors and Contract Periods. Contractors are Austin Independent School District, 1111 West 6th Street, Austin, Texas 78703 (contract amount \$200,000); McKinney Independent School District, #1 Duval Street, McKinney, Texas 75069 (contract amount \$200,000). Effective date of both contracts will be from June 1, 1998 through June 1, 2000.

TRD-9810359

Judy Ponder

General Counsel

General Services Commission

Filed: July 1, 1998



Notices of Request for Offers

Notice is hereby given to all interested parties that pursuant to V.T.C.A., Government Code, Title 10, Subtitle D, Chapter 2166, §2166.052, the General Services Commission (the "Commission"), on behalf of the Department of Public Safety, is soliciting proposals for the potential purchase of raw land in a western segment of El Paso, Texas of at least 2 acres or a minimum of 87,120 square feet of contiguous land. The Commission will evaluate the proposals in

accordance with the criteria outlined in a Request for Offers. The Request for Offers (**RFO Number 99-405-002**) containing all the requirements necessary for an appropriate response may be obtained on and after July 7, 1998 from Facilities Planning at (512) 475-3498.

All responses must be received in a sealed envelope no later than 3:00 p.m. Central Standard Time, on August 7, 1998, at the following address: General Services Commission, Central Services Building, Room 180, RFO Number 99-405-002, 1711 San Jacinto, P. O. Box 13047, Austin, Texas 78711-3047.

Notice is hereby given to all interested parties that pursuant to V.T.C.A., Government Code, Title 10, Subtitle D, Chapter 2166, §2166.052, the General Services Commission (the "Commission"), on behalf of the Department of Public Safety, is soliciting proposals for the potential purchase of raw land in the Eastland, Texas area of at least 1.5 acres or a minimum of 65,340 square feet of contiguous land. The Commission will evaluate the proposals in accordance with the criteria outlined in a Request for Offers. The Request for Offers (**RFO Number 99-405-003**) containing all the requirements necessary for an appropriate response may be obtained on and after July 7, 1998 from Facilities Planning at (512) 475-3498.

All responses must be received in a sealed envelope no later than 3:00 p.m. Central Standard Time, on August 7, 1998, at the following address: General Services Commission; Central Services Building, Room 180, RFO Number 99-405-003, 1711 San Jacinto, P. O. Box 13047, Austin, Texas 78711-3047

Notice is hereby given to all interested parties that pursuant to V.T.C.A., Government Code, Title 10, Subtitle D, Chapter 2166, §2166.052, the General Services Commission (the "Commission"), on behalf of the Department of Public Safety, is soliciting proposals for the potential purchase of raw land in the Alpine, Texas area of at least 1.5 acres or a minimum of 65,340 square feet of contiguous land. The Commission will evaluate the proposals in accordance with the criteria outlined in a Request for Offers. The Request for Offers (**RFO Number 99-405-004**) containing all the requirements necessary for an appropriate response may be obtained on and after July 7, 1998 from Facilities Planning at (512) 475-3498.

All responses must be received in a sealed envelope no later than 3:00 p.m. Central Standard Time, on August 7, 1998, at the following address: General Services Commission, Central Services Building, Room 180, RFO Number 99-405-004, 1711 San Jacinto, P. O. Box 13047 Austin, Texas 78711-3047

TRD-9810357
Judy Ponder
General Counsel
General Services Commission
Filed: July 1, 1998



Notice of Request for Proposal for Consultant Services Contract

In accordance with the provisions of Texas Government Code, Chapter 2254, Subchapter B, the General Services Commission hereby publishes this notice of request for proposals from human resource consultant firms qualified to assist the Telecommunication Services Division to: (1) Develop a creative information technology recruitment system to enable the division to keep pace with the highly competitive telecommunications marketplace; (2) Develop a performance management system that can be employed to ensure there exists a method to clearly define roles and responsibilities, monitor performance and ensure that an accountability system is

defined, implemented and adhered to; (3) Develop an ongoing program to enhance the leadership, coaching and supervisory skills of the division's technical management staff; (4) Assist the division's efforts to develop a specific action plan resulting from the analysis of an internal employee survey; and to develop a program to achieve the same on an annual basis.

Basis of Award: (1) The relative thoroughness, professional quality and merit of the proposer's plan to provide the consulting services sought in the RFP; (2) The overall qualifications, abilities, and experience of the proposer to provide the consulting services sought in the RFP. Qualifications include, but are not limited to experience and/or expertise in human resources, state government, high tech industry, organization alignment, management information systems and recruiting. Particular attention will be focused on proposer's client references and experience; (3) The qualifications and experience of the proposer's personnel who will be assigned to the project, and the adequacy of the proposed staffing plan to complete the service sought in a timely fashion; (4) Reasonableness of the proposed compensation for the services sought.

Copies of the RFP: To receive a copy of the request for proposals, please contact: Mr. John Shackelford, Project Support, Telecommunications Services Division, General Services Commission, P.O. Box 13047, 1711 San Jacinto, Room 143, Austin, Texas 78711.

Closing Date for Receipt of Proposal: The proposal must be submitted and time stamped at the Bid Tabulation, General Services Commission, Central Services Building, Room 180, P.O. Box 13047, 1711 Jacinto Blvd., Austin, Texas 78711, before 3:00 p.m., Central Standard Time, July 24, 1998. Responses received after that time will not be accepted.

TRD-9810360
Judy Ponder
General Counsel
General Services Commission
Filed: July 1, 1998



Office of the Governor

Request for Applications-Combating Underage Drinking

The Criminal Justice Division of the Governor's Office is soliciting applications for projects to prevent minors from purchasing and consuming alcohol. Following are the purposes, goals, program requirements, and procedures for submitting applications for funding. Complete guidelines for Combating Underage Drinking are available in the application kit.

Goal: The purpose of the program is to strictly enforce state law regarding underage purchase and consumption of alcohol, discourage the sale of alcohol to minors, and to raise public awareness of alcohol's harmful effects of minors. Minors are defined as individuals under 21 years of age.

Program Design: Applications must detail a comprehensive approach to addressing the underage drinking problem and describe how grant funds will be used to contribute to the implementation of that comprehensive approach. This approach must include prevention strategies, intervention strategies, and law enforcement actions; such a way that youths are confronted with anti-drinking policies and messages throughout their time as a youth. For example, within a given community grant funds could be used to create or expand a task force of state and local law enforcement and prosecutorial agencies to target establishments suspected of a pattern of violations of state

laws; to share records among agencies; to inform both establishments and minors of the consequences of illegal sales and purchases; and to prosecute those who illegally sell and purchase alcoholic beverages. Grant funds may also support prevention of the purchase and consumption of alcoholic beverages by minors. For example, funds may be used to promote a strong and consistent message concerning the consequences of underage drinking—from parents, schools, communities of faith, law enforcement agencies, civic organizations, the insurance industry, and the business community. Prevention models such as Project SAVE, a program designed to make teenagers aware of consequences of underage drinking, could also be supported with grant funds. Another example of a model project in the community includes the activities of community coalitions such as Texans Standing Tall. This initiative identifies problems related to access and availability of liquor to minors. Grant funds may also be used to increase public awareness of new zero tolerance laws as part of a comprehensive plan to promote a policy that every offense has a direct consequence and penalty. As a part of a comprehensive community plan, law enforcement officials and community groups should work with vendors regarding liquor law enforcement issues, such as false identification, refusing a sale, sale to intoxicated persons, and loitering around retail establishments. Again, there should be a comprehensive and balanced approach involving both enforcement and prevention.

Coordination: Grant applications must describe how the program will be coordinated with existing programs and policies, with particular attention to documenting that grant funds will be used to create new programs or expand existing ones.

Evaluation: Grant applications must include measurable goals with baseline data (data for the year before the grant). Actual results for each goal will be compared with baseline data. Grantees must report twice yearly to the Criminal Justice Division (CJD) on progress report forms provided by CJD.

Eligible Applicants: Cities and counties are eligible to apply. Applicants may provide services directly or under contract with other cities, counties, school districts, and private non-profit organizations.

Amount of Each Grant: Grantees may apply for a minimum grant of \$50,000 and a maximum of \$200,000 per year to implement a comprehensive program to combat underage drinking, including prevention strategies and enforcement of liquor laws. In selecting applications for grant awards, the Criminal Justice Division will try to balance funding between urban/rural areas, subject to the quality of applications received and the results of competitive scoring.

Grant Period: Grant-funded projects must begin on September 1, 1998. Grants shall be awarded for a project period of twelve months, from September 1, 1998 through August 31, 1999.

Matching Funds: There is no match requirement for this program.

Non-Supplanting Requirement: Federal funds shall not be used to supplant state or local funds and shall only be used to start new programs or expand existing ones.

Construction Costs: Land acquisition and construction are ineligible.

Continuation Funding Policy: Grants may be awarded for a period of one year. Applicants may apply for continuation funding in subsequent years, subject to availability of federal funds. There is no limit on years of funding.

Reports: Grantees must submit semi- and annual progress reports and quarterly financial expenditure reports. CJD will supply necessary forms and instructions following grant awards. Failure to submit

reports on time will result in a financial hold on grant funds until the reports are submitted.

Deadline for Submission: Applications must be received at the Governor's Criminal Justice Division no later than 5:00pm on August 5, 1998, attention Grant Administration. The mailing address is Box 12428, Austin, Texas 78711. The street address is 1100 San Jacinto, Austin, Texas 78701.

Texas Review and Comment System: A copy of each grant application must be submitted to the appropriate regional council of governments (COG) for TRACS review. The applicant is responsible for this submission and for submitting a copy of the TRACS review letter to CJD.

Selection Process: Applications will be scored competitively, using the scoring instrument included in the application kit. All funding decisions related to CJD grants are fully within the discretion of the Governor of his designee. CJD informs the applicant of this decision through either a Statement of Grant Award or a denial letter. Applicants must not make any assumptions regarding funding decisions until they have received official written notification of award or denial that is signed by either the Governor or the executive director of the Criminal Justice Division.

For Further Information: Call Glenn Brooks, Director of Justice Programs, Criminal Justice Division, at (512) 463-1944 or Jim Kester at (512) 463-1916.

TRD-9810141

Pete Wassdorf

Deputy General Counsel

Office of the Governor

Filed: June 25, 1998



Texas Department of Health

Correction of Errors

The Texas Department of Health adopted the repeal of 25 TAC §289.116 and new §289.227. The rules appeared in the April 3, 1998, issue of the *Texas Register*, (22 TexReg 3456).

On page 3470, §289.227(d)(89) and (90), the definitions were joined into one. There should be two separate entries for "(89) Primary protective barrier-..." and "(90) Protective apron-..."

On page 3472, §289.227(e)(5)(A), the reference in this subparagraph is incorrect. Instead of "...with subsection (cc)(3)..." it should read "...with subsection (cc)(2)..."

On page 3475, §289.227(o)(7)(D), the last sentence contained an incorrect symbol in front of 10%. The last sentence should read "to within ±10% of the indicated setting."

On page 3476, §289.227(q)(3)(A), the last sentence contains an incorrect symbol in front of 10%. The last sentence should read "...shall be ±10% of..."

On page 3476, §289.227(q)(3)(C), there is an extra period at the end of this subparagraph which should be deleted.

On page 3476, §289.227(q)(3)(D), the last sentence contains an incorrect symbol in front of 10%. The last sentence should read "...within ±10% of ..."

On page 3476, §289.227(q)(5)(A), the last sentence contains an incorrect symbol in front of 10%. The last sentence should read "...shall be ±10% of the ..."

On page 3476, §289.227(q)(5)(C), the second sentence contains an incorrect symbol in from of 10%. The second sentence should read "... to within $\pm 10\%$ of the..."

On page 3476, §289.227(r)(1)(C)(ii), in the first sentence there should be a space between the unit of measure and the word "shall". The first sentence should read "...than 300 cm² shall..."

On page 3477, §289.227(r)(3)(A)(i), in the second sentence there should be a space between the unit of measure and the word "coulomb". The second sentence should read, "...excess of 2.58x 10⁻³ coulomb..."

On page 3477, §289.227(r)(3)(A)(i)(II), in the second sentence there should be a space between the unit of measure and the acronym "C/kg/min". The second sentence should read "...excess of 1.29 x 10⁻³C/kg/min (5 R/min)..."

On page 3477, §289.227(r)(3)(A)(iii)(II), in the first sentence there should be a space between the unit of measure and the acronym "C/kg/min". The first sentence should read "...excess of 1.29 x 10⁻³ C/kg/min (5 R/min)..."

On page 3478, §289.227(r)(3)(B)(ii)(II), in the first sentence there should be a space between the unit of measure and the acronym "C/kg/min". The first sentence should read "...excess of 5.16 x 10⁻³ C/kg/min (20 R/min)..."

On page 3480, §289.227(s)(6), there is a substitution of two for numerical "2" in the second sentence in front of the measurement of milliroentgens. The second sentence should read "...shall not exceed a rate of 2 milliroentgens per hour..."

On page 3480, §289.227(t)(1)(C), the ending bracket following exposure in the second sentence should be removed.

On page 3481, §289.227(v)(1)(E)(iii), there is an incorrect symbol in front of number "1" in the first sentence. The first sentence should read "... shall not exceed ± 1 mm..."

On page 3482, §289.227(w)(7), the word "and" following (e)(5) should be deleted. It should read "...with subsection (e)(5) of this section;"

On page 3484 and 3485, §289.227(y)(1)(A), the number "2" in cm² in the second and third sentence should have been superscripted. The second sentence should state "... but not exceeding, 100 cm² at the positions specified." Third sentence should state "...100cm²"

On page 3489, §289.227(aa)(1)(B), the word "form" should be "from" and the sentence should read "...differs from the total prescribed..."

On page 3491, §289.227(cc)(3)(P), there is an incorrect reference listed. It should read "...with §289.202(b) of this title; and"

On page 3491, §289.227(cc)(3)(Q), there is an incorrect reference listed. It should read "...with §289.202(aa) of this title."



Notice of Amendment to License of Waste Control Specialists

Notice is hereby given by the Texas Department of Health (department), Bureau of Radiation Control, that it has amended Radioactive Material License No. L04971 issued to Waste Control Specialists, LLC (WCS) located in Andrews County, Texas one mile North of State Highway 176, 250 feet East of the Texas/New Mexico State Line; 30 miles West of Andrews, Texas.

The issuance of amendment number three results in the following changes to the license: (1) modifies condition 22.D to include stabilization with solidification as a process and adds solid as a form

of waste that may be treated by the procedure; (2) modifies condition 22.D to include a provision that specifically references and authorizes a procedure for treatment of cesium-137-contaminated electric arc furnace dust; (3) modifies condition 23.D to include a provision for financial assurance specifically for cesium-137-contaminated electric arc furnace dust; (4) modifies condition 24-A by adding a provision that authorizes the treatment of radioactive waste meeting the criteria of low specific activity group I radioactive material as specified in Title 49 of the Code of Federal Regulations, §173.403 in the stabilization building; (5) modifies condition 29 by adding a part that authorizes the opening of containers of radioactive waste meeting the criteria of low specific activity group I radioactive material, as specified in Title 49 of the Code of Federal Regulations, §173.403 in a PermaCon, the stabilization building, or the container storage building; and (6) modifies condition 34 by adding the reference to the procedure for treatment of cesium-137-contaminated electric arc furnace dust.

The department has determined that the amendment of the license, Title 25 of the Texas Administrative Code (TAC) Chapter 289, *Texas Regulations for Control of Radiation* (TRCR), and the documentation submitted by the licensee provide reasonable assurance that the licensee's radioactive waste facility is sited, designed, operated, and will be decommissioned and closed in accordance with the requirements of the TRCR; the amendment of the license will not be inimical to the health and safety of the public or the environment; and the activity represented by the amendment of the license will not have a significant effect on the human environment.

This notice affords the opportunity for a public hearing upon written request within 30 days of the date of publication of this notice by a person affected as required by Texas Health and Safety Code §401.114 and as set out in TRCR, §13.5. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to a 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.

A person affected may request a hearing by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 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 this 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. Should no request for a public hearing be timely filed, the agency action will be final.

A public hearing, if requested, shall be conducted in accordance with the provisions of Texas Health and Safety Code §401.114, the Administrative Procedure Act (Chapter 2001, Texas Government Code), the formal hearing procedures of the Texas Department of Health (25 TAC §1.21. et seq.) and the TRCR.

A copy of the license amendment and all material submitted is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, 8407 Wall Street, Austin, Texas. Information relative to the amendment may be obtained by writing Mr. Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189.

TRD-9810175
Susan K. Steeg



Notice of Extended Deadline for Notice of Request for Proposals for Projects to Provide Abstinence Education

Introduction

The Texas Department of Health (department), Abstinence Education Program, announces an extended deadline for the submission of a Request for Proposals (RFP) for the Title V Abstinence Education Grant funding for Federal Fiscal Year 1998-1999. The Notice of the RFP was previously published in the April 24, 1998, issue of the *Texas Register* (23 TexReg 4129), and was released on April 29, 1998. Proposals will be awarded on a competitive basis.

Purpose

The purpose of the funding is to provide abstinence education information to children, adolescents, and parents across the state and for programs to promote abstinence from sexual activity with a focus on those groups which are most likely to bear children out-of-wedlock.

Eligible Applicants

Eligible applicants include current department abstinence education contractors, nonprofit/for-profit organizations, private/public organizations, governmental entities (including city, county, and state), institutions of higher learning, independent school districts, faith-based organizations, and current department contractors.

Availability of Funds

Between two and three million dollars will be available to fund new abstinence education contractors. The funds were appropriated through federal welfare reform legislation, the Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104-193), to be administered through Title V of the Social Security Act, the Maternal and Child Health Block Grant. Congress appropriated \$50 million per year beginning October 1, 1997, to conduct abstinence education nationwide. Texas is eligible to receive up to \$4,922,091 per year in federal funds, contingent on a state match of \$3,691,568. Applicants must provide the match. The required match is at a rate of three dollars for every four dollars in federal abstinence funds. Applicants must clearly specify what local match dollars will be provided as part of their proposal in order to be considered.

Project and Budget Periods

Contracts will be funded for twelve months beginning October 1, 1998, and ending September 30, 1999. There is no set cap on individual budgets.

General Purpose and Program Goals

The federal legislation states that the purpose of the allotment is to "enable the State to provide abstinence education, and at the option of the State, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups which are most likely to bear children out-of-wedlock."

The term "abstinence education," as defined by §912 of the federal legislation, means an educational or motivation program which: (1) has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity; (2) teaches abstinence from sexual activity outside marriage as the expected standard for all school age children; (3) teaches that abstinence

from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems; (4) teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity; (5) teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects; (6) teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society; (7) teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and (8) teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Note: By federal law, funds may not be used for family planning services.

Review and Award Criteria

Each application will first be screened for completeness and timeliness. **This means the proposal must include a response to every item on every form and all required forms must be included.** Proposals which are deemed incomplete or arrive after the deadline will not be reviewed. Proposals will be reviewed by a team of reviewers. The proposals will be evaluated using the criteria and review process described in the RFP.

Deadline

Time is extended in order to comply with Senate Bill 1380 as required by the 75th Legislature. Proposals prepared according to instructions in the RFP package must now be received by the department by 5:00 p.m., Central Daylight Saving Time, on July 24, 1998.

To Obtain a Copy of the RFP

Contact Shelley Bjorkman, Coordinator, Abstinence Education Program, at (512) 458-7321 or you may pick up a copy at the Texas Department of Health, Associateship for Health Care Delivery, Room M-362, 1100 West 49th Street, Austin, Texas 78756. You may also obtain a copy from the Abstinence Education Web site: http://www.tdh.state.tx.us/abstain/ab_home.htm.

TRD-9810412

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: July 1, 1998



Notice of Intent to Revoke Certificates of Registration

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed complaints against the following registrants: J. E. Miller, D.P.M., San Antonio, R07630; Billy M. Winkles, D.C., Wharton, R07894; RGV Center, Incorporated, Edinburg, R21608; Pham Chiropractic, Arlington, R22337; Oscar C. Oandasan, M.D., P.A., Lake Jackson, R20123; Office Imaging, Dallas, R22554; Carson Laser, Incorporated, Winchester, Indiana, Z01151; Austin Center for Outpatient Surgery, Austin, Z01164.

The department intends to revoke the certificates of registration; order the registrants to cease and desist use of radiation machine(s); order the registrants to divest themselves of such equipment; and order the registrants to present evidence satisfactory to the bureau that they have complied with the orders and the provisions of the Texas Health

and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of each complaint, the department will not issue an order.

This notice affords the opportunity to the registrants for a hearing to show cause why the certificates of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fee is not paid, the certificates of registration will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9810174
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 26, 1998



Notice of Intent to Revoke the Radioactive Material License of Houston Woodtech

Pursuant to *Texas Regulations for Control of Radiation*, Part 13, (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following licensee: Houston Woodtech, Houston, G01657.

The department intends to revoke the radioactive material license; order the licensee to cease and desist use of such radioactive material; order the licensee to divest himself of the radioactive material; and order the licensee to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Texas Health and Safety Code, Chapter 401. If the fee is paid within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the licensee for a hearing to show cause why the radioactive material license should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed, or if the fee is not paid, the radioactive material license will be revoked at the end of the 30-day period of notice. A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9810176
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: June 26, 1998



Notice of Revocation of Certificates of Registration

The Texas Department of Health (department), having duly filed complaints pursuant to *Texas Regulations for Control of Radiation*, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: Montana Medical Clinic, El Paso, R06784, June 24, 1998; Bryan Institute, Arlington, R13540, June 24, 1998; Cecil Paul Smith, D.C., Dallas, R20719, June 24, 1998; Robert G. Williams, D.D.S., Dallas, R21389, June 24, 1998; East Texas Biomedical, Gun Barrel City, R21422, June 24, 1998; Advanced Imaging Technologies, Inc., Austin, R21886, June 24, 1998; Trans-America Nuclear Imaging, Fort Worth, R22055, June 24, 1998; North Texas Laser Center Limited, Dallas, Z01128, June 24, 1998; Beacon Eye Institute, Houston, Z01134, June 24, 1998.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-9810408
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 1, 1998



Health and Human Services Commission

Public Notices

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 98-04, Amendment Number 543.

The amendment provides a supplemental payment to nursing facilities for services to children who qualify for the Texas Index for Level of Effort (TILE) heavy-care case mix classification and require daily care of a tracheostomy. The amendment is effective January 1, 1998.

If additional information is needed, please contact Pam McDonald, Texas Department of Human Services, at (512) 538-4086.

TRD-9810165
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services
Filed: June 26, 1998



The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 99-09, Amendment Number 548.

The amendment provides accelerated Medicaid coverage for children ages six (6) and older born after September 30, 1983. The amendment is effective July 1, 1998.

If additional information is needed, please contact Kay Priest, Texas Department of Human Services, (512) 438-3426.

TRD-9810361
Marina S. Henderson
Executive Deputy Commissioner
Health and Human Services
Filed: July 1, 1998



Houston-Galveston Area Council

Request for Proposals

The Houston-Galveston Area Council (H-GAC) is seeking the services of a qualified consultant to assist in the development and update of the financial plan element of the Metropolitan Transportation Plan. The objective of the study is to provide an updated analysis of the long-range financial outlook for the regional transportation system. The study area includes the following counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Walker. A detailed scope of work will be furnished upon request.

Proposals must be received no later than 12:00 noon, Monday, July 20, 1998, at the H-GAC office located at 3555 Timmons Lane, Houston, Texas. Send proposals to the attention of Mark Matteson, Senior Transportation Planner, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227. For additional information, call (713) 627-3200.

TRD-9810104

Alan Clark

MPO Director

Houston-Galveston Area Council

Filed: June 24, 1998

Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission to Texas for THE MOUNTBATTEN SURETY COMPANY, INC., a foreign property and casualty company. The home office is located in Bala Cynwyd, Pennsylvania.

Application to change the name of LOYALTY LIFE INSURANCE COMPANY to FIRST HEALTH LIFE & HEALTH INSURANCE COMPANY, a domestic life company. The home office is located in Dallas, Texas.

Application for admission to Texas for PHARMACISTS MUTUAL INSURANCE COMPANY, a foreign property and casualty company. The home office is located in Algona, Iowa.

Application for admission to Texas for THE PHARMACISTS LIFE INSURANCE COMPANY, a foreign life company. The home office is located in Algona, Iowa.

Application to change the name of PRINCIPAL MUTUAL LIFE INSURANCE COMPANY to PRINCIPAL LIFE INSURANCE COMPANY, a foreign life company. The home office is located in Des Moines, Iowa.

Application to change the name of ANTHEM HEALTH PLAN OF TEXAS, INC. to AMERIHEALTH HMO OF NORTH TEXAS, INC., a domestic HMO. The home office is located in Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-9810426

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 1, 1998

Notice of Public Hearings

The Commissioner of Insurance will hold a public hearing under Docket Number 2368, on August 18, 1998, at 9:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St. Austin, Texas concerning 28 TAC §5.4603 relating to the approval of forms to be used for Windstorm Inspectors for compliance with applicable building code requirements in the plan of operation for the Texas Windstorm Insurance Association (TWIA).

The proposed amendments and the statutory authority for the proposed amendments, was published in the June 26, 1998 issue of the *Texas Register* (23 TexReg 6689-6691).

TRD-9810427

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 1, 1998

The Commissioner of Insurance will hold a public hearing under Docket Number on August 18, 1998, at 9:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St. Austin, Texas concerning 28 TAC §5.4604 relating to the approval of appointment of licensed professional engineers as Windstorm Inspectors for the Texas Windstorm Insurance Association (TWIA).

The proposed amendments and the statutory authority for the proposed amendments, was published in the June 26, 1998 issue of the *Texas Register* (23 TexReg 6691-6695).

TRD-9810428

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: July 1, 1998

Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration:

Application for incorporation in Texas of The INTEQ Group, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9810107

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: June 24, 1998

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration:

Application for incorporation in Texas of TrailBlazer Health Enterprises, LLC, a domestic third party administrator. The home office is Richardson, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-9810425
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: July 1, 1998

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Texas Natural Resource Conservation Commission

Correction of Errors

The Texas Natural Resource Conservation Commission adopted repeals published in the July 3, 1998 issue of the *Texas Register*, (23 TexReg 7003).

Due to an inadvertent filing error by Texas Natural Resource Conservation Commission, §§330.825-220.830 were published as repealed. However, the commission did not adopt the repeal of these sections. Therefore, these sections are not repealed and they will remain in Chapter 330.

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Extension of Comment Period

In the July 3, 1998 issue of the *Texas Register*, the Texas Natural Resource Conservation Commission (TNRCC) published a notice of availability of a draft regulatory guidance document entitled *Implementing Texas Water Quality Certification Rules*. The notice stated that the public comment period would run for 45 days, and that all comments must be received by August 18, 1998. The commission has extended the deadline for receipt of written comments for an additional 15 days.

The document is designed to provide assistance, information, and clarity in the state 401 certification review of Section 404 permit applications. It is available for review and comment for 60 days. All comments must be received by September 2, 1998. Please address written comments to: Carol Kim, Water Policy and Regulations Division, TNRCC, MC-204, P.O. Box 13087, Austin, TX 78711-3087. Comments may also be faxed to 512-239-6195.

Copies of the draft regulatory guidance document can be downloaded from the TNRCC website at <http://www.tnrcc.state.tx.us>. For further information please contact Carol Kim at (512) 239-3670 or by email at ckim@tnrcc.state.tx.us.

TRD-9810362
Kevin McCalla
Director, Legal Services
Texas Natural Resource Conservation Commission
Filed: July 1, 1998

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Default Orders. The TNRCC Staff proposes Default Orders when the Staff has sent an Executive Director's Preliminary Report and Petition (EDPRP) to an entity outlining the alleged violations; the

proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPR. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the TNRCC pursuant to the Texas Water Code, §7.075, this notice of the proposed orders and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 8, 1998**. The TNRCC will consider any written comments received and the TNRCC may withdraw or withhold approval of a Default Order if a comment discloses facts or considerations that indicate that the proposed Default Order is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's jurisdiction, or the TNRCC's orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed Default Order is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed Default Orders is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these Default Orders should be sent to the attorney designated for each Default Order at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 8, 1998**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the Default Orders and/or the comment procedure at the listed phone numbers; however, comments on the Default Orders should be submitted to the TNRCC in **writing**.

(1)COMPANY: Peter Nguyen; DOCKET NUMBER: 97-1186-PST-E; ENFORCEMENT ID NUMBER: 12046; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: underground storage tanks; RULES VIOLATED: 30 TAC §115.241 and Texas Health and Safety Code, §382.085(b) by failing to install an approved Stage II vapor recovery system certified to reduce the emissions of volatile organic compounds to the atmosphere by at least 95%; PENALTY: \$15,625; STAFF ATTORNEY: Robin Houston, Litigation Support Division, MC 175, (512) 239-0682; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(2)COMPANY: Scott Evans d.b.a. Auto Sales Connection; DOCKET NUMBER: 98-0239-AIR-E; ENFORCEMENT ID NUMBER: 11583; LOCATION: Dallas, Texas; TYPE OF FACILITY: used car dealership; RULES VIOLATED: 30 TAC §114.1(c)(1) and (2) and Texas Health and Safety Code, §382.085(b) by offering for sale a 1985 Dodge Ram 150 Royal SE Pickup Truck, Texas License Plate GL1-489, VIN-1B7HD14T6FS708669, with emission control systems that were tampered with, inoperable, and/or missing and 30 TAC §114.1(c)(3) and Texas Health and Safety Code, §382.085(b) by failing to post a notice of the prohibition of the sale of a tampered vehicle at the Facility; PENALTY: \$500; STAFF ATTORNEY: Bill Jang, Litigation Support Division, MC 175, (512) 239-2269; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

TRD-9810397
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: July 1, 1998

Notices of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC or commission) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to Texas Water Code (the Code), §7.075, which requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **August 9, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by **5:00 p.m. on August 9, 1998**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Artrox, Incorporated dba Country Boy Store #1; DOCKET NUMBER: 98-0160-AIR-E; IDENTIFIER: Account Number EE-0967-M; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience store; RULE VIOLATED: 30 TAC §114.100(a) and the THSC, §382.085(b), by supplying, selling, or dispensing gasoline for use as motor vehicle fuel which failed to have a minimum oxygen content of 2.7% by weight; PENALTY: \$600; ENFORCEMENT COORDINATOR: Stacey Young, (512) 239-1899; REGIONAL OFFICE: 7500 Viscount Boulevard, Suite 147, El Paso, Texas 79925-5633, (915) 778-9634.

(2)COMPANY: The City of Grapeland; DOCKET NUMBER: 97-1171-MWD-E; IDENTIFIER: Permit Number 10181-002; LOCATION: Grapeland, Houston County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 10181-002 and the Code, §26.121, by failing to comply with the daily average total suspended solids effluent limit of 90 milligrams per liter; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Merrilee Mears, (512) 239-4490; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(3)COMPANY: Cogen Lyondell, Incorporated; DOCKET NUMBER: 97-1123-IWD-E; IDENTIFIER: Permit Number 02845; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Permit Number 02845 and the Code, §26.121, by exceeding the permit limit for the daily average copper concentration; PENALTY: \$56,250; ENFORCEMENT COORDINATOR: Craig Carson, (512) 239-2175; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4)COMPANY: Formosa Plastics Corporation, Texas; DOCKET NUMBER: 98-0119-AIR-E; IDENTIFIER: Account Number CB-0038-Q; LOCATION: Point Comfort, Calhoun County, Texas; TYPE OF FACILITY: petrochemical and plastics plant; RULE VIOLATED: 30 TAC §101.6(a)(2)(E) and the THSC, §382.085(b), by failing to include the estimated quantity of vinyl chloride monomer (VCM) released during the upset that occurred on October 29, 1997, within 24 hours of its discovery; and 30 TAC §101.20(2), Permit Number 7699, and the THSC, §382.085(b), by failing to vent 763 pounds of VCM to a control device; PENALTY: \$10,225; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

(5)COMPANY: James Traweek dba Jam-Dot Dairy; DOCKET NUMBER: 97-1014-AGR-E; IDENTIFIER: Permit Number 03217; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: dairy; RULE VIOLATED: 30 TAC §321.31 and the Code, §26.121, by allowing unauthorized discharges of wastewater from Retention Control Structure Number 2 and from some of the unprotected confinement areas; and 30 TAC §321.36(b)(3) and Permit Number 03217, by failing to submit certification by a Texas registered professional engineer; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Claudia Chaffin, (512) 239-4717; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(6)COMPANY: Maverick County Airport Water Works; DOCKET NUMBER: 97-0888-PWS-E; IDENTIFIER: Public Water Supply Number 1620003; LOCATION: Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: public drinking water supply; RULE VIOLATED: 30 TAC §290.42(d)(7)(F), by failing to continuously apply coagulants to the water; 30 TAC §290.46(e)(2) and (7), by failing to ensure that the surface water treatment plant has a certified Grade C surface water operator and by failing to provide the chlorination facilities with adequate ventilation; 30 TAC §290.42(d)(5) and (12), by failing to provide flow metering devices and by failing to identify by various colors of paint or labeling the influent, effluent, waste, and backwash lines; 30 TAC §290.42(e)(4)(D), by failing to provide chlorine scales that are in working condition; and 30 TAC §290.42(c)(3), by failing to equip the overflow pipe on the elevated storage tank with a hinged flap valve; PENALTY: \$10,500; ENFORCEMENT COORDINATOR: Terry Thompson, (512) 239-6095; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(7)COMPANY: Mobil Oil Corporation; DOCKET NUMBER: 97-0827-AIR-E; IDENTIFIER: Account Number JE-0067-I; LOCATION: Beaumont, Jefferson County, Texas; TYPE OF FACILITY: petroleum refinery plant; RULE VIOLATED: 30 TAC §112.3 and the Act, §382.085(b), by allowing emissions of sulfur dioxide to exceed a net ground level concentration of 0.32 parts per million by volume averaged over any 30-minute period; PENALTY: \$9,600; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(8)COMPANY: Oliver Sales Company; DOCKET NUMBER: 98-0242-AIR-E; IDENTIFIER: Account Number DB-4692-E; LOCATION: Dallas, Dallas County, Texas; TYPE OF FACILITY: specialty chemical manufacturing, blending, and repackaging; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by constructing and operating the facility without satisfying the conditions for a permit exemption or obtaining a permit; PENALTY: \$2,880; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(9)COMPANY: Sabine Valley Regional Mental Health and Mental Retardation Center; DOCKET NUMBER: 98-0029-MWD-E; IDENTIFIER: Permit Number 11316-001; LOCATION: Marshall, Harrison County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 11316-001 and the Code, §26.121, by failing to comply with the total suspended solids daily average concentration permit limit of 20 milligrams per liter (mpl), the individual grab sample permit limit of 65 mpl, the daily average loading permit limit of 0.8 pounds per day, and the chlorine residual maximum permit limit of four mpl; PENALTY: \$3,750; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(10)COMPANY: Ronnie Smith dba Smith's Diamond C Ranch; DOCKET NUMBER: 98-0061-MLM-E; IDENTIFIER: Account EF-0109-J; LOCATION: Stephenville, Erath County, Texas; TYPE OF FACILITY: cattle farm; RULE VIOLATED: 30 TAC §111.201, §335.5, the Code, §26.121, and the Act, §382.085(b), by allowing outdoor burning of copper wire, brush, lumber, tires, and trash; PENALTY: \$1,000; ENFORCEMENT COORDINATOR: Adele Noel, (512) 239-1045; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010-6499, (817) 469-6750.

(11)COMPANY: TDI-Halter, Incorporated; DOCKET NUMBER: 97-0600-AIR-E; IDENTIFIER: Account Numbers JE-0444-A, JE-0500-P, JE-0277-S, and OC-0031-M; LOCATION: Port Arthur and near Sabine Pass, Jefferson County, Texas and Orange, Orange County, Texas; TYPE OF FACILITY: marine vessel manufacturing and repair plants; RULE VIOLATED: 30 TAC §115.421(a)(9)(A)(iii) and the Act, §382.085(b), by allowing the daily-weighted-average volatile organic compounds (VOC) content of coatings to exceed 3.5 pounds per gallon of coating; 30 TAC §115.426(a)(1)(B) and the Act, §382.085(b), by failing to maintain records of the quantity and type of each coating and solvent used; 30 TAC §116.116(b) and the Act, §382.085(b), by using GTA 415 thinner at hourly and annual rates greater than those represented in the application for Permit Number 24263; 30 TAC §116.115(a), Permit Numbers 24263 and 26378, and the Act, §382.085(b), by failing to maintain daily records of the hours of coating and abrasive cleaning operations at each emission point, by failing to maintain records with the daily-weighted-average VOC content of applied coatings, by failing to maintain monthly records of the year-to-date usage of coating, thinner, and blast media on a calendar year basis, and by failing to properly calculate year-to-date emissions in tons per year of VOC, hourly emissions in pounds per hour of VOC, total suspended particulate, and particulate less than ten microns in diameter; and 30 TAC §116.115(a), Permit Number 9522, and the Act, §382.085(b), by failing to place a barrier of equal height to the wing walls of the dry dock across the west end of the dry dock while abrasive blasting was being conducted, by exceeding the maximum number of blast nozzles allowed to be in use at any one time above the wing wall on the dry dock, by exceeding the hourly usage rate for abrasive blasting media, and by failing to clean spills of coating materials, thinners, and solvents as soon as possible; PENALTY: \$85,750; ENFORCEMENT COORDINATOR: Lawrence King, (512) 239-1405; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(12)COMPANY: United States Army Corps of Engineers; DOCKET NUMBER: 98-0127-MWD-E; IDENTIFIER: Permit Number 12093-001; LOCATION: Jasper, Jasper County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: Permit Number 12093-001 and the Code, §26.121, by exceeding the daily average total suspended solids limit of 20 milligrams per liter; and the Code, §§5.102, 5.103, 5.105, 5.120, §§26.0291(b) and (c), §26.040, §26.135(h), and §26.358, by failing to pay wastewater inspection fees,

water quality assessment fees, and underground storage tank fees; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 898-3838.

(13)COMPANY: Valero Refining Company; DOCKET NUMBER: 97-1033-AIR-E; IDENTIFIER: Account Number NE-0112-G; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.20(3), 116.115, 101.6, Permit Number 20740, Prevention of Significant Deterioration Permit Number PSD-TX-324M7, and the Act, §382.085(b), by failing to report and provide a record of five-minute average concentrations of volatile organic compounds in excess of 7,621 parts per million (ppm) while marine loading emissions were being vented and by failing to determine calculated emissions of benzene, methyl tertiary butyl ether, and tertiary amyl methyl ether prior to uncontrolled loading operations; 30 TAC §115.322(b)(4), Permit Number 8373, and the Act, §382.085(b), by failing to equip each open-ended line or valve with a cap, blind flange, plug, or second valve which is to remain closed except during sampling; and 30 TAC §112.31 and the Act, §382.085(b), by emitting concentrations of hydrogen sulfide greater than the 0.08 ppm standard averaged over a 30-minute period; PENALTY: \$50,000; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (512) 980-3100.

TRD-9810303
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 30, 1998

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The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Texas Water Code (TWC), §7.075. Section 7.075 requires that before the TNRCC may approve these AOs, the TNRCC shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* not later than the 30th day before the date on which the public comment period closes, which in this case is **August 8, 1998**. Section 7.075 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withdraw or hold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the TNRCC's Orders and permits issued pursuant to the TNRCC's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on August 8, 1998**. Written comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The TNRCC attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs should be submitted to the TNRCC in **writing**.

(1)COMPANY: Newton County; DOCKET NUMBER: 97-0806-MSW-E; ENFORCEMENT ID NUMBER: 11793; LOCATION: Newton, Newton County, Texas; TYPE OF FACILITY: municipal solid waste landfill; RULES VIOLATED: 30 TAC §330.254(a)(1) and Permit MSW-325 by failing to prevent soil erosion on the landfill final cover and failing to maintain a 24-inch soil thickness on the landfill cap, in violation of post closure care requirement; 30 TAC §330.22 and Permit MSW-325 by failing to properly store waste and allowing waste to spill over onto the ground, which led to exposure and decomposition of putrescible waste, which posed a nuisance and danger to human health and the environment; 30 TAC §330.5(d) and Permit MSW-325 by engaging in prohibited open burning of waste without authorization; PENALTY: \$33,906; STAFF ATTORNEY: Tracy Harrison, Litigation Support Division, MC 175, (512) 239-1736; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703, (409) 898-3838.

(2)COMPANY: Wiergate Forest Products, Incorporated; DOCKET NUMBER: 97-1172-AIR-E; TNRCC ID NUMBER: NC-0008-B; LOCATION: Wiergate, Newton County, Texas; TYPE OF FACILITY: sawmill; RULES VIOLATED: 30 TAC §116.11(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a) by failing to obtain permit authorization before commencing construction and operation of a boiler, two kilns, and a new horizontal resaw; 30 TAC §101.20(1), 40 CFR §60.48c(a), and Texas Health and Safety Code, §382.085(b) by failing to submit notification of the date that construction commenced on the new boiler, the anticipated startup date of the new boiler, and the actual startup date of the new boiler; PENALTY: \$13,750; STAFF ATTORNEY: Paul C. Sarahan, Litigation Support Division, MC 175, (512) 239-3424; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1892, (409) 892-2119.

TRD-9810396

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: July 1, 1998



Proposal to Modify Opacity Recertification Requirements

In April 1998, the United States Environmental Protection Agency (EPA) and the Environmental Council of the States (ECOS) signed the Joint EPA/State Agreement to Pursue Regulatory Innovation. This agreement is a result of 1-1/2 years of negotiations between states and EPA to develop guiding principles and a defined process for the implementation of innovative ideas while protecting the environment at or above current levels.

The following is a summary of the draft proposal that the Texas Natural Resource Conservation Commission (TNRCC or commission) intends to submit to EPA Region 6. To request a copy of the draft proposal or to submit comments, please contact Trace Finley, Executive Director's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, MC 109, Austin, Texas 78711-3087. The draft proposal is also available on the agency's website at www.tnrcc.state.tx.us. The TNRCC intends to submit this proposal to EPA Region 6 on July 31, 1998.

Draft Proposal. The TNRCC proposes that EPA consider and make changes to 40 Code of Federal Regulations (CFR) Part 60, Appendix A, Method 9 - VISUAL DETERMINATION OF THE OPACITY OF EMISSIONS FROM STATIONARY SOURCES to allow the TNRCC to develop recertification requirements for all opacity readers in Texas, including regulators, the regulated community, environmental groups,

and consultants. Specifically, in the following paragraph, the TNRCC proposes that the last sentence be deleted and replaced as noted:

3. Qualifications and Testing.

3.1 Certification Requirements. To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15 percent opacity on any one reading and an average error not to exceed 7.5 percent opacity in each category. Candidates shall be tested according to the procedures described in §3.2. Smoke generators used pursuant to §3.2 shall be equipped with a smoke meter which meets the requirements in §3.3. **(Deleted Requirement): The certification shall be valid for a period of 6 months, at which time the qualification procedure must be repeated by any observer in order to retain certification.** *(Replacement Requirement): Each state shall develop requirements for the time period in which certification is valid based on individual state experience and conditions that are unique to that state.*

The requirement for recertification pulls limited field resources away from their primary responsibility of ensuring compliance with environmental laws. By allowing the TNRCC to develop requirements for the frequency of recertification that best fit Texas, more resources could be dedicated to inspections and compliance assistance activities.

Justification. The TNRCC conducts the vast majority of inspections in the state and is uniquely qualified to develop its own requirements for the frequency of recertification.

The TNRCC Field Operations Division invests 1,500 staff hours per year to keep approximately 100 investigators certified for visual determination of opacity. This equates to almost a full day per investigator per certification or 200 staff days out of every year that could be used for inspections or compliance assistance activities.

Opacity violations are not the problem they used to be in the 1970's and 80's. Of the 539 formal enforcement orders issued by the commission since November 1996, five, or less than 1.0% were the result of an opacity reading by a certified inspector. The TNRCC believes that such frequent recertification is having little effect on overall compliance rates. By reducing the time required for staff to spend in opacity training, available inspection days would increase and the TNRCC will be better positioned to detect violations of environmental laws and ensure that companies come into compliance.

TRD-9810310

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: June 30, 1998



Provisionally-Issued Temporary Permits to Appropriate State Water Listed below are permits issued during the period of June 30, 1998

Application Number TA-7953 by Union Pacific Resources Co. for diversion of 4 acre-feet in a 1-year period for mining (oil & gas well drilling) use. Water may be diverted from the Little Brazos River, Brazos River Basin, approximately 22 miles southwest of Franklin, Robertson County, Texas.

Application Number TA-7954 by Simon Traylor & Sons, Inc. for diversion of 1 acre-foot in a 1-year period for industrial (roadway construction) use. Water may be diverted from Rock Creek, Sulphur

River Basin, approximately 1 mile southeast of Sulphur Springs, Hopkins County, Texas at the crossing of FARM-TO-MARKET ROAD 1870 and Rock Creek.

Application Number TA-7955 by Texas Utilities Pipeline Service for diversion of 1 acre-foot in a 6-month period for industrial (hydrostatic testing) use. Water may be diverted from North Side Canal approximately 14 miles southeast of Wichita Falls and Deer Creek approximately 17 miles southeast of Wichita Falls, Wichita County, Texas, Red River Basin near FARM-TO-MARKET ROAD 1206.

Application Number TA-7956 by Frank A Mutz Jr. for diversion of 10 acre-feet in a 1-year period for irrigation (irrigate coastal field) use. Water may be diverted from Cibolo Creek, San Antonio River Basin, approximately 13 miles north of Karnes City, Karnes County, Texas and approximately 1 mile north of the crossing of FARM-TO-MARKET ROAD 887 and Cibolo Creek.

Application Number TA-7957 by Smith & Company for diversion of 1 acre-foot in a 1-year period for industrial (roadway construction) use. Water may be diverted from Woods Creek, Neches River basin, approximately 19 miles east of Livingston, Polk County, Texas at the crossing of US 190 and Woods Creek.

Application Number TA-7958 by Smith & Company for diversion of 1 acre-foot in a 1-year period for industrial (roadway construction) use. Water may be diverted from Big Sandy Creek, Neches River Basin, approximately 12 miles northeast of Livingston, Polk County, Texas at the crossing of FARM-TO-MARKET ROAD 942 and Big Sandy Creek.

Application Number TA-7959 by Pogo Producing Company for diversion of 2 acre-feet in a 6 month period for mining (oil & gas well drilling) use. Water may be diverted from the Salt Fork Brazos River, Brazos River Basin, approximately 11 miles northeast of Post, Garza County, Texas, diversion is from an excavation in the river bed.

Application Number TA-7960 by Atkins & Fly, Inc. for diversion of 2 acre-feet in a 1 year period for industrial (roadway construction) use. Water may be diverted from the Aransas River, San Antonio-Nueces Coastal Basin, approximately 13 miles southwest of Refugio, Refugio County, Texas and 4 miles west of US Hwy. 77.

Application Number TA-7961 by NorAm Gas Transmission Co. for diversion of 1 acre-foot in a 6-month period for industrial (hydrostatic testing) use. Water may be diverted from Hatley Creek, Sabine River Basin, approximately 24 miles southwest of Marshall, Harrison County, Texas, at the crossing of the pipeline easement and Hatley Creek.

Application Number TA-7962 by NorAm Gas Transmission Co. for diversion of 2 acre-feet in a 6-month period for industrial (hydrostatic testing) use. Water may be diverted from the Sabine River, Sabine River Basin, approximately 6 miles east of Carthage, Panola County, Texas, at the crossing of the pipeline easement and the Sabine River.

Application Number TA-7963 by T.J. Lambrecht Construction for diversion of 10 acre-feet in a 6 month period for industrial (landfill closure construction) use. Water may be diverted from the West Fork Trinity River, Trinity River Basin, approximately 13 miles east of Fort Worth, Tarrant County, Texas and 1000 feet West of the crossing of FARM-TO-MARKET ROAD 157 and the West Fork Trinity River.

Application Number TA-7964 by T.L. James & Company, Inc. for diversion of 8 acre-feet in a 1 year period for industrial (roadway construction) use. Water may be diverted from 4 diversion points in Madison County, Texas. DP #1 the Navasota River at the crossing of OSR (Old San Antonio Road), DP #3 West Caney Creek at the

crossing of FARM-TO-MARKET ROAD 1452, DP #4 a stock tank on an unnamed tributary of West Caney Creek near FARM-TO-MARKET ROAD 1452, tributaries of the Navasota River, tributary of the Brazos River, Brazos River Basin. DP #2 FARM-TO-MARKET ROAD 1452 at the crossing of Iron Creek, tributary of Bedias Creek, tributary of the Trinity River, Trinity River Basin.

Application Number TA-7966 by Pumpco, Inc. for diversion of 1 acre-foot in a 6-month period for industrial (hydrostatic testing) use. Water may be diverted from Wallace Creek, Colorado River Basin, approximately 9 miles southwest of San Saba, San Saba County, Texas at the crossing of County Road 228 and Wallace Creek.

Application Number TA-7967 by Crown Exploration for diversion of 1 acre-foot in a 6-month period for mining (oil & gas well drilling) use. Water may be diverted from the West Fork Trinity River, Trinity River Basin, approximately 14 miles northwest of Jacksboro, Jack County, Texas near the crossing of Squaw Mountain Road and the West Fork Trinity River.

Application Number TA-7968 for diversion of 1 acre-foot in a 6-month period for industrial (roadway construction) use. Water may be diverted from an unnamed tributary of the Guadalupe River, Guadalupe River Basin, approximately 12 miles northwest of New Braunfels, Comal County, Texas below Canyon Dam near Overlook Park Road.

Application Number TA-7969 by A.K. Gillis & Sons, Inc. for diversion of 10 acre-feet in a 1-year period for industrial (roadway construction) use. Water may be diverted from Desert Creek, Trinity River Basin, approximately 20 miles southeast of Sherman, Grayson County, Texas at near State Hwy. 160.

Application Number TA-7970 by Cox Paving Company for diversion of 10 acre-feet in a 6-month period for industrial (roadway construction) use. Water may be diverted from the Frio River, Nueces River Basin, approximately 1 mile east of Leakey, Real County, Texas at the crossing of FARM-TO-MARKET ROAD 337 and the Frio River.

Application Number TA-7971 by Estate of E.R. Sitton for diversion of 10 acre-feet in a 1-year period for irrigation (irrigate truck crops) use. Water may be diverted from an unnamed tributary of Cypress Creek (known as Cougar Branch), San Jacinto River Basin, approximately 23.5 miles north of Houston, Harris County, Texas near FARM-TO-MARKET ROAD 1960 at Pine Grove.

Application Number TA-7972 by Overland Corporation for diversion of 10 acre-feet in a 1-year period for industrial (roadway construction) use. Water may be diverted from the Rio Grande 88 miles south of Alpine, Brewster County, Texas, near Route 16 in Big Bend National Park.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be canceled without notice and hearing. No further diversions may be made pending a full hearing

as provided in §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-3300.

TRD-9810366

Eugenia K. Brumm, Ph.D.

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: July 1, 1998



North Texas Tollway Authority

Request for Qualifications-Architectural and Architectural Engineering Design Services

The following request for qualifications for providing professional architectural and architectural engineering design services is filed under the provisions of Texas Government Code, Chapter 2254, Subchapter A.

The North Texas Tollway Authority (the "NTTA") is soliciting statements of interest and qualifications for professional architectural and architectural engineering design services for preparation of final architectural renderings, detailed designs, plans, and specifications for administration and roadway maintenance operations buildings, service facilities, maintenance yard, and shop.

Proposed fees or budgets shall not be submitted with any initial response or other communication of a firm. An architectural/architectural engineering qualification packet is being prepared for the services and will be issued to each firm filing a written notice that it desires to respond and which requests the packet which will be available July 8, 1998. All requests for qualification packets must be received by 5:00 p.m. CDST and no qualification packets will be issued after July 31, 1998.

When a firm responds by filing its qualifications, it shall include a statement regarding the affirmative action program of the firm and shall include a statement that the responding architectural/architectural engineering firm has familiarized itself with the NTTA Historically Underutilized Business Policy and will conform with that policy.

Qualifications filed will be reviewed by a staff consulting selection committee to identify those most qualified and experienced respondents who may be interviewed by the committee for capabilities best suited to this assignment. The final selection will be made following completion of the interviews and negotiation of a satisfactory fee.

Questions concerning this assignment shall be directed to Mark Bouma, Project Engineer, North Texas Tollway Authority, (972) 522-6200.

TRD-9810254

James W. Griffin

Engineering Advisor

North Texas Tollway Authority

Filed: June 29, 1998



Public Utility Commission of Texas

Notice of Applications for Amendment to Service Provider Certificate of Operating Authority

On June 24, 1998, Action Telcom Company, filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60009. The Applicant intends to change its name only from Action Telcom, Company, to GST Action Telecom, Inc., as a result of a merger consummated June 3, 1997.

The Application: Application of Action Telcom Company, for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19454.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 15, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19454.

TRD-9810217

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: June 26, 1998



On June 25, 1998, CapRock Communications Corp., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60077. Applicant intends to amend its SPCOA to reflect a series of pro forma transactions whereby the Applicant will become a wholly-owned subsidiary of a newly created holding company, IWL Holdings Corp.

The Application: Application of CapRock Communications Corp. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19499.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 15, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19499.

TRD-9810289

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: June 29, 1998



On June 23, 1998, Tele-One Communications, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60126. Applicant intends to expand its geographic area to include the geographic areas of Texas currently served by GTE Southwest, Inc., and United Telephone Company of Texas, Inc.

The Application: Application of Tele-One Communications, Inc., for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19528.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 15, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19528.

TRD-9810219
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 1998

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On June 25, 1998, Fort Bend Long Distance Company filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60179. Applicant intends to change its name only from Fort Bend Long Distance Company to Fort Bend Communications.

The Application: Application of Fort Bend Long Distance Company for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19533.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326 no later than July 15, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19533.

TRD-9810290
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1998

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Notice of Application for Temporary Waiver of Requirements Under P.U.C. Substantive Rules §§23.11(c), (d), (k) and §23.12(b)

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 9, 1998, for temporary waiver of the requirements under P.U.C. Substantive Rules §§23.11(c), 23.11(d), 23.11(k), and §23.12(b).

Project Title and Number: Application of Pedernales Electric Cooperative, Inc. for Temporary Waiver of Requirements Under P.U.C. Substantive Rules §23.11(c), (d), (k), and §23.12(b). Project Number 19471.

The Application: In Project Number 19471, Pedernales Electric Cooperative, Inc. (Pedernales) filed an application for waiver of the requirements of P.U.C. Substantive Rules §23.11(c) Relationships with affiliates; §23.11(d) Payments, compensation and other expenditures; §23.11(k) Annual earnings report; and §23.12(b) Financial and op-

erating reports. Pedernales states it is its intent to comply with the reporting requirements by July 31, 1998.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Customer Protection at (512) 936-7120 on or before July 17, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810161
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 25, 1998

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Notices of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for DeSoto Independent School District (ISD) in DeSoto, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for DeSoto ISD in DeSoto, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19525.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for DeSoto ISD in DeSoto, Texas. PLEXAR- Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Dallas exchange, and the geographic market for this specific PLEXAR-Custom service is the Dallas LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810218
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 26, 1998

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for City of Harlingen in Harlingen, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for City of Harlingen in Harlingen, Texas Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19535.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for City of Harlingen in Harlingen, Texas. PLEXAR-Custom service

is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Harlingen exchange, and the geographic market for this specific PLEXAR-Custom service is the Brownsville LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810354
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 1998



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for an addition to the existing PLEXAR-Custom service for NationsBanc Services, Inc.

Tariff Title and Number: Southwestern Bell Telephone Company Notice of Intent to File an Application for an Addition to the Existing PLEXAR-Custom Service for NationsBanc Services, Inc. Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19537.

The Application: Southwestern Bell Telephone Company is requesting approval for an addition to the existing PLEXAR-Custom service for NationsBanc Services, Inc. PLEXAR- Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Corpus Christi exchange, and the geographic market for this specific PLEXAR-Custom service is the Corpus Christi LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9810355
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 1998



Notices of Petitions for Rulemaking

The Public Utility Commission of Texas (commission) received a petition for rulemaking, filed in Project Number 19087, from Enron Energy Services, et. al. ("Enron"). The petition was filed June 19, 1998 in the current commission project, *Rulemaking to Address Green Pricing Tariffs for Electric Utilities*. The petition requests that the commission adopt a substantive rule that would require electric utilities to file "Buy-Through Green Pricing" tariffs or contracts whereby a customer could select a provider of renewable energy resources to supply all or a portion of their electric service. Under Enron's proposed rule, customers would reach an agreement with a third-party provider with respect to the price of the renewable energy supply. The utility would then purchase the energy and

deliver it to the customer. The utility would be allowed to charge the customer its reasonable transmission, distribution, and utility overhead. This rule is necessary, petitioners argue, because customers currently have no option to choose to be provided with electricity generated by renewable resources. Additionally, the proposed rule "allows utilities and their customers to benefit from the competition to provide generating resources at the wholesale level."

Comments on the petition may be filed not later than 3:00 p.m., July 31, 1998. Persons who are interested in obtaining a copy of the petition for rulemaking may do so by contacting the commission's Central Records Office, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 19087 - Enron Energy Services, et. al. Petition for Rulemaking.

TRD-9810285
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1998



The Public Utility Commission of Texas (commission) received a petition for rulemaking, filed in Project Number 19087, from Public Citizen, et. al. The petition was filed June 19, 1998 in the current commission project, *Rulemaking to Address Green Pricing Tariffs for Electric Utilities*. The petition requests that the commission adopt a substantive rule under which an electric utility would be required to file and make available educational and disclosure materials regarding renewable energy. Petitioners assert that the proposed rule will "educate utility customers as to why they may wish to take all or part of their electric service under a tariff that allows the customers to buy energy generated by renewable resources." This rule is necessary, petitioners argue, because customers may be in a better position than utilities to make judgments about the benefits and costs of generating renewable energy resources. Thus, petitioners argue, the proposed rule would provide customers with "accurate, effective, comparable information to use to decide whether to purchase electricity that is generated by renewable resources."

Comments on the petition may be filed not later than 3:00 p.m., July 31, 1998. Persons who are interested in obtaining a copy of the petition for rulemaking may do so by contacting the commission's Central Records Office, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. All inquiries and comments concerning this petition for rulemaking should refer to Project Number 19087 - Public Citizen, et. al. Petition for Rulemaking.

TRD-9810286
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1998



Public Notices of Interconnection Agreements

On June 18, 1998, Texas Teleconnect and GTE Southwest, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint

application has been designated Docket Number 19498. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19498. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 23, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19498.

TRD-9810287
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: June 29, 1998

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On June 24, 1998, Southwestern Bell Telephone Company and Quick Tel, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19530. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19530. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by July 28, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of

Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19530.

TRD-9810288
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: June 29, 1998

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Request for Proposals for Consulting Services to Provide Support in the Implementation of the Windows NT Local Area Network

A Request for Proposals will be issued pursuant to the Texas Utilities Code §14.001, which authorizes the Public Utility Commission of Texas to do anything that is necessary and convenient to exercise its power and jurisdiction to regulate and supervise the public utilities within its jurisdiction, and the General Appropriations Act, Article IX, §43, §131 and §188, which require state agencies to develop a plan and to resolve infrastructure and technology problems associated with conversion to the Year 2000. Furthermore, pursuant to Chapter 2254 of the Texas Government Code, the Public Utility Commission has determined that the selection of a consultant to assist in implementation of the migration project shall be made through a competitive bidding process.

Request for Proposals for Consulting Services to Provide Support in the Implementation of the Windows NT Local Area Network. Previously, Digicon Technologies, Inc., provided the Public Utility Commission with an assessment of the agency's needs, regarding labor and technology, to accomplish a migration from a Novell computer operating environment to a Windows NT computer operating environment. Pursuant to its agreement, Digicon Technologies provided a written report to the agency intended to estimate the number of labor hours, and level of technical expertise required by personnel, to accomplish each task in the proposed migration project. Digicon's estimate has been considered by the agency in preparation of the RFP; however, Digicon did not assist in the preparation of the RFP.

Eligible Proposers. The Public Utility Commission is requesting proposals from entities with experience in systems integration and support. Entities that meet the definition of a historically underutilized business (HUB), as defined in Chapter 2161, Texas Government Code, §2161.100, are encouraged to submit a proposal.

Project Description. The selected contractor will be responsible for providing and executing a migration plan from Novell Netware v4.1 to Microsoft NT v4.0. This plan will include a complete analysis and design of network servers configuration that can bring redundancy and fault-tolerance to the entire system. The contractor will be responsible for recommending, installing and configuring the hardware.

Selection Criteria. A proposal will be selected based on the ability of the proposer to provide the best value in carrying out requirements identified in the RFP. Evaluation criteria will include, but is not limited to, evidence of ability to manage project; experience of the organization; qualifications of assigned personnel; evidence of successful projects of similar nature; the clarity of the description of details for carrying out project; the total estimated fee; and whether the proposed project time lines are logical and appropriate.

A complete description of selection criteria is set forth in the RFP. Proposers will be notified in writing of the selection.

Requesting the Proposal. A complete copy of the RFP for Consulting Services to provide Support in the Implementation of the Windows NT Local Area Network may be obtained by writing Susan K. Durso, Administrative Counsel, Room 7-170F, Public Utility Commission, William B. Travis Building, 1701 N. Congress Ave., Austin, TX, 78701, or email durso@puc.state.tx.us, or calling (512) 936-7146. The RFP will be available July 10, 1998, and will be mailed on that date to all parties who have requested a copy and to a list of prospective bidders prepared by PUCT staff.

Bidders' conference. A bidders' conference will be held at the Public Utility Commission on July 20, 1998, to answer all written questions received by the commission by July 17, 1998. Details about the conference will be included in the RFP.

For Further Information. For clarifying information about the RFP, contact Sarut Panjavan, Information Systems and Services, Public Utility Commission, P.O. Box 13326, Austin, TX 78711-3326, Fax (512) 936-7098 or email spanjava@puc.state.tx.us.

Deadline for Receipt of Proposals. Proposals must be received no later than five o'clock p.m. on Monday, August 10, 1998, in Administrative Services, Room 7-160, Public Utility Commission of Texas, William B. Travis Building, 1701 N. Congress Ave., Austin, TX, 78701. Proposals received in Administrative Services after five o'clock p.m. on Monday, August 10, 1998, will not be considered. Proposals may be received in Administrative Services between eight o'clock a.m. and five o'clock p.m., Monday through Friday. Regardless of the method of submission of the proposal, the commission will rely solely on the time/date stamp of Administrative Services in establishing the time and date of receipt.

TRD-9810353
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 1998

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Southwest Texas State University, San Marcos, Texas, 78666-4616, received May 21, 1998, application for grant assistance in the amount of \$35,726 from the Research and Planning Fund.

City of McAllen Public Utilities Board, P.O. Box 220, 1300 Houston, McAllen, Texas, 78505-0220, received April 29, 1998, application for grant assistance in the amount of \$30,000 from the Research and Planning Fund.

Upper Guadalupe River Authority, 125 Lehmann Drive, Suite 100, Kerrville, Texas, 78028, received May 26, 1998, application for grant assistance in the amount of \$20,000 from the Research and Planning Fund.

High Plains Underground Water Conservation District No. 1, 2930 Avenue Q, Lubbock, Texas, 79405, received May 18, 1998, application for grant assistance in the amount of \$20,000 from the Research and Planning Fund.

Harris County, 9900 Northwest Freeway, Suite 103, Houston, Texas, 77092, received June 22, 1998, application for grant assistance in the amount of \$635,670 from the Research and Planning Fund.

City of Dallas, 1500 Marilla Street, Dallas, Texas, 75201, received June 22, 1998, application for grant assistance in the amount of \$225,000 from the Research and Planning Fund.

City of Grand Prairie, 206 West Church Street, P.O. Box 534045, Grand Prairie, Texas, 75053-4045, received June 22, 1998, application for grant assistance in the amount of \$287,500 from the Research and Planning Fund.

City of Denton, 221 North Elm Street, Denton, Texas, 76201, received June 19, 1998, application for grant assistance in the amount of \$147,605 from the Research and Planning Fund.

Hansford Soil and Water Conservation District, 909 West 9th Avenue, Spearman, Texas, 79081-3417, received June 16, 1997, application for grant assistance in the amount of \$11,829 from the Agricultural Conservation Grants to Districts Program.

Midland Soil and Water Conservation District, 1219 South Fairgrounds Road, Suite B, Midland, Texas, 79701, received March 17, 1997, application for grant assistance in the amount of \$5,922 from the Agricultural Conservation Grants to Districts Program.

Lower Valley Water District, 10005 Alameda, Suite P, El Paso, Texas 79927, received June 2, 1998, application for Cultural Resource Management funding for Phase II in an amount not to exceed \$88,000 from the Colonia Plumbing Loan Program.

Additional information concerning this matter may be obtained from Craig D. Pedersen, Executive Administrator, P.O. Box 13231, Austin, Texas, 78711.

TRD-9810367

Gail L. Allan

Director of Project-Related Legal Services

Texas Water Development Board

Filed: July 1, 1998



Texas Workers' Compensation Commission

Correction of Errors

The Texas Workers' Compensation Commission adopted amendments to 28 TAC §133.206. The rules appeared in the June 19, 1998, issue of the *Texas Register*, (23 TexReg 6446).

On page 6454, right column, first paragraph, last line, the word "differences" should be "difference".

On page 6456, left column, first partial paragraph, third line, the word "by" should be inserted between the words "received" and "the".

On page 6456, left column, second full paragraph, fourth line, and on the same page, right column, second paragraph, third line, the word "commenter" should be "commenters".

On page 6458, left column, third full paragraph, ninth line, the word "area" should be "areas".

On page 6458, left column, third full paragraph, seventeenth line, the word "patient" should be "patient's".

On page 6459, right column, last partial paragraph, first line, the fourth word should be "preoperative".

On page 6462, right column, last partial paragraph, second line, the second "have" should be deleted.

On page 6462, right column, last partial paragraph, twelfth line, the word "day" should be "days".

On page 6463, right column, first partial paragraph, second line, the word "for" should be deleted.

On page 6464, left column, first full paragraph, ninth line, the word "to" should be inserted between the words "is" and "ensure".

On page 6464, left column, third full paragraph, fourth line, the word "nonconcurrence" should be "nonconcurrences".

On page 6464, right column, sixth full paragraph, third line, the word "both" should be deleted.

On page 6465, left column, first partial paragraph, last line, the word "preformed" should be "performed".

On page 6465, left column, first full paragraph, sixth line, the word "are" should be "is".

On page 6465, right column, first full paragraph, third from the last line should read "in violation of the Medical Practice Act and expressed concern for".

On page 6466, right column, first partial paragraph, third from the last line, the word "and" should be inserted at the end of the line.

On page 6466, right column, last paragraph, eleventh line, the comma at the end of the line should be deleted.

On page 6466, right column, last paragraph, fifteenth line, the comma after the word "doctors" should be deleted.

On page 6466, right column, last paragraph, seventeenth line should begin "a third, a fourth, or more surgeries."

On page 6466, right column, last paragraph, third from the last line, the comma after the word "to" should be moved to after the word "Additionally".

On page 6467, left column, last partial paragraph, second line, there should be a comma after the word "appointment".

On page 6467, right column, second full paragraph, eleventh line, the word "employees" should be "employee's".

On page 6467, right column, fourth full paragraph, fifth line, the word "requires" should be "require".

