

# TEXAS REGISTER

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How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 TexReg 3."

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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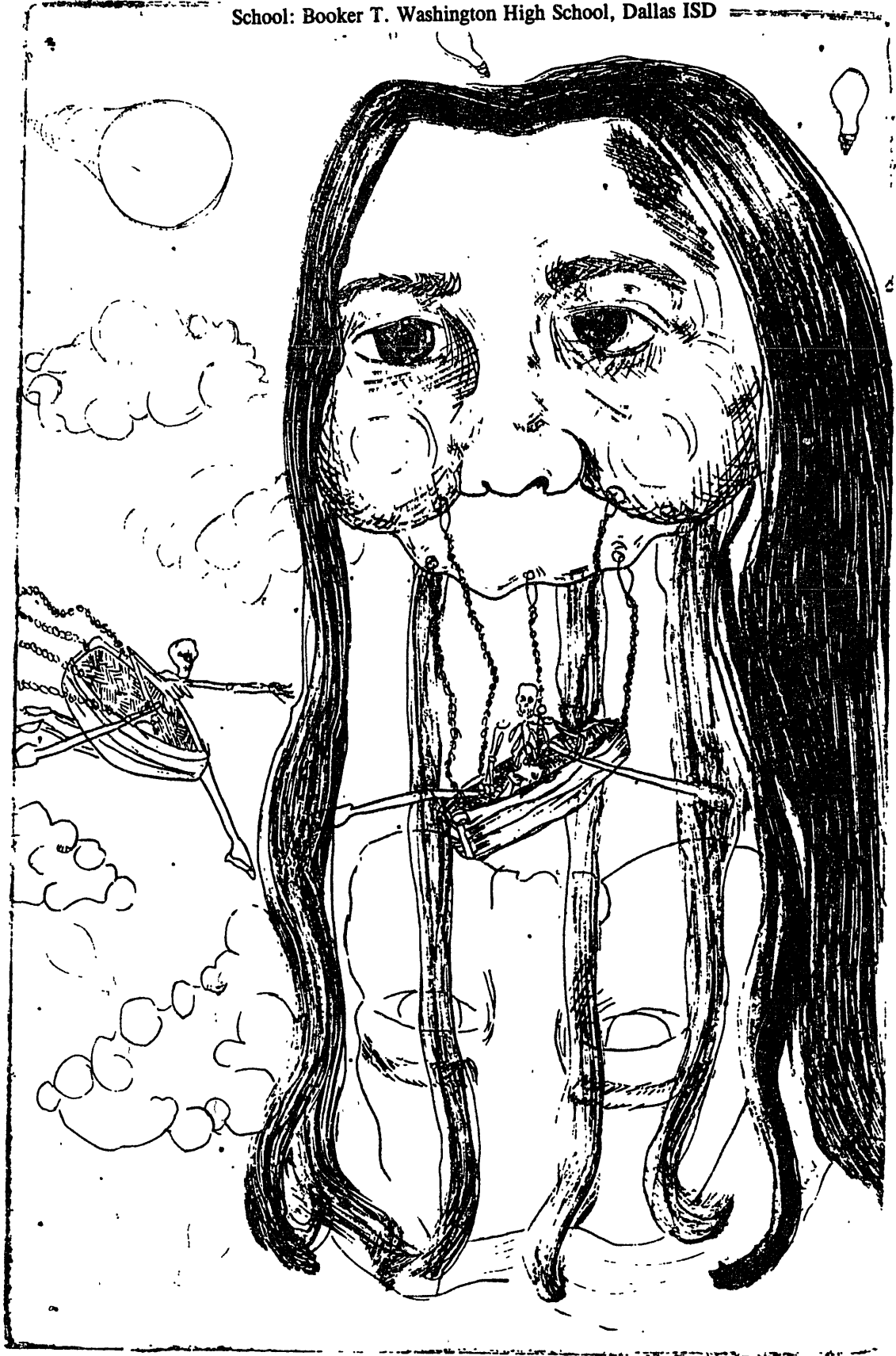
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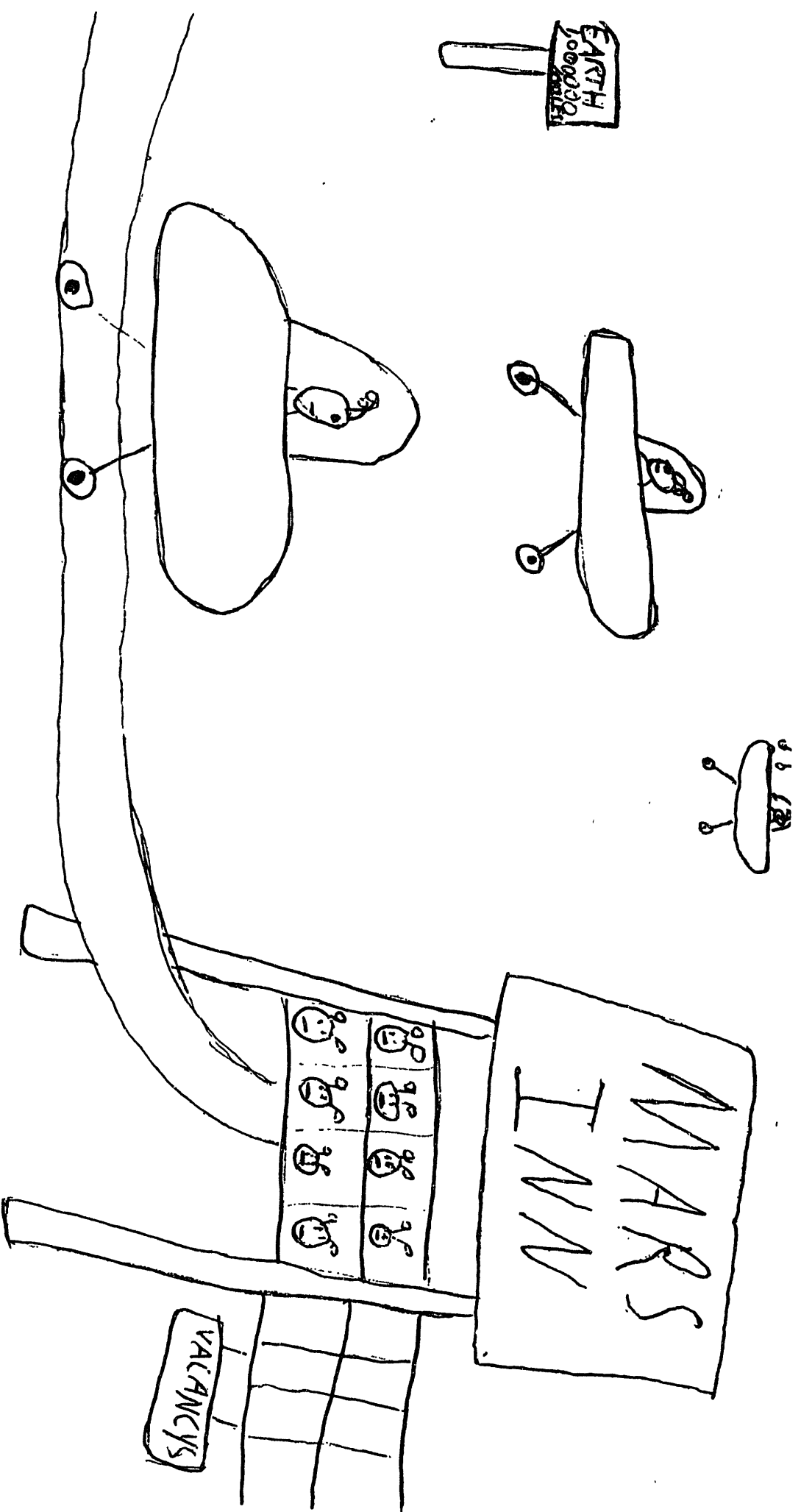
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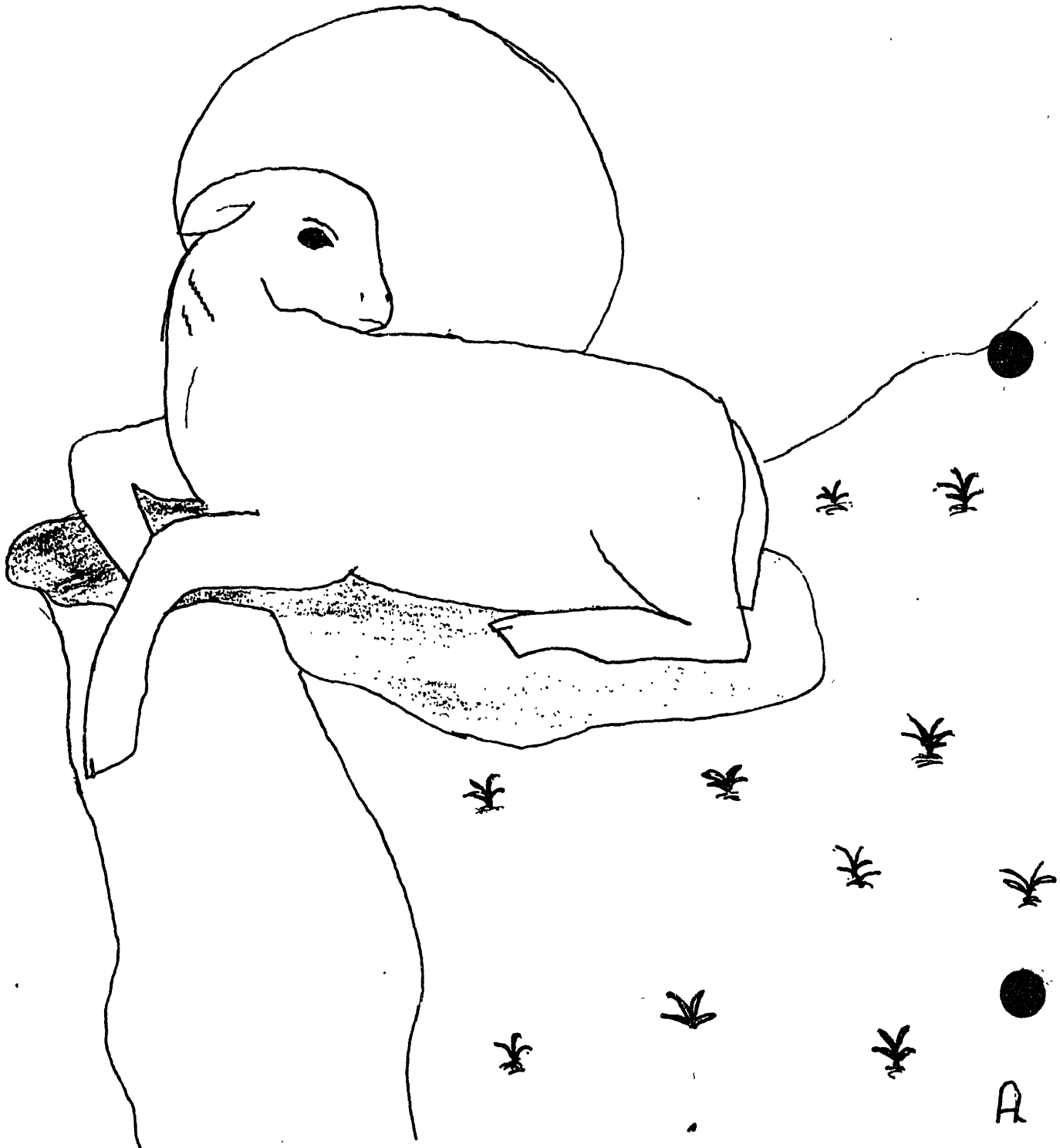


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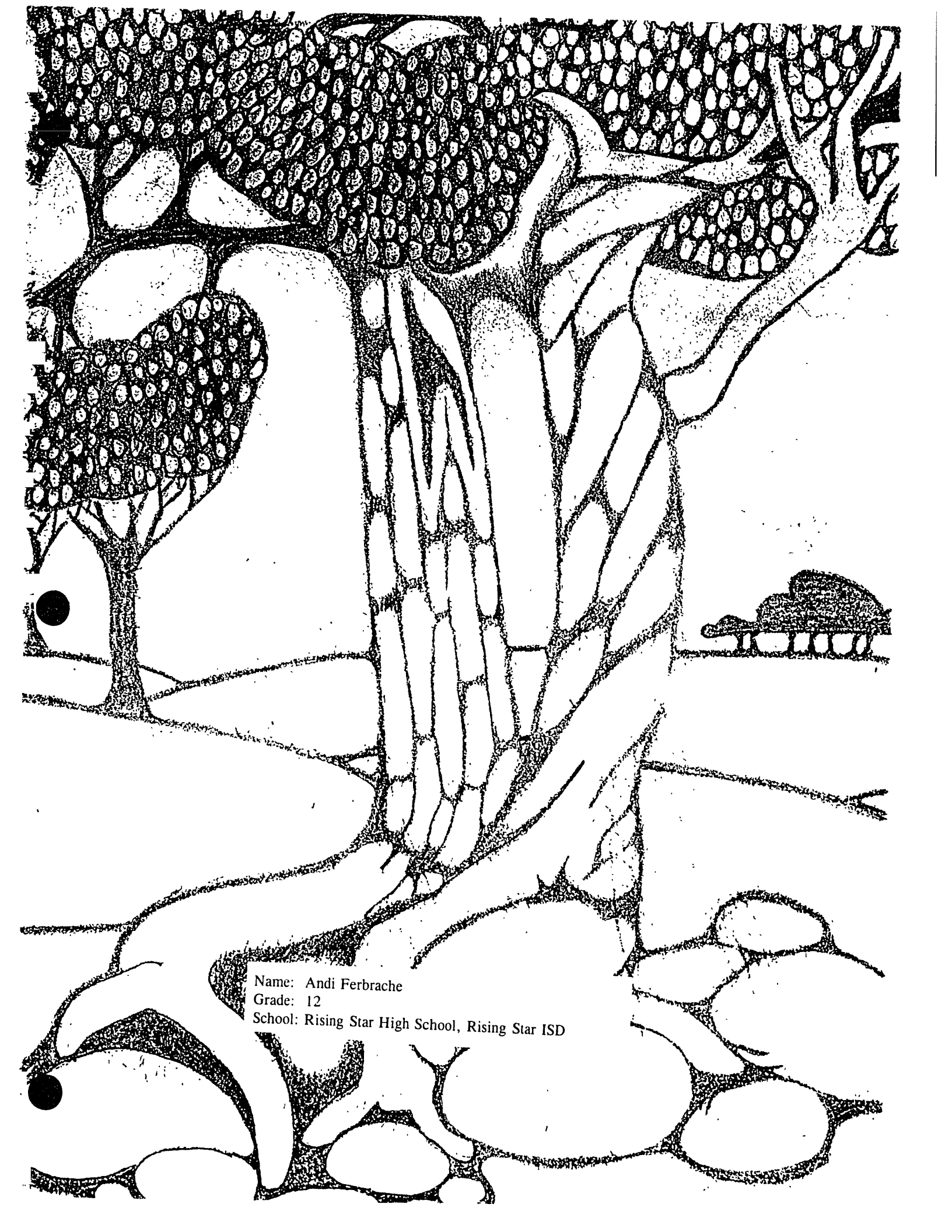
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# THE GOVERNOR

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.

## Appointments Made February 23, 1995

To be a member of the Texas Parks and Wildlife Commission for a term to expire January 31, 1997: Lee M. Bass of Fort Worth. Mr. Bass will be replacing Ygnacio D. Garza of Brownsville. Mr. Garza will continue to serve on the commission.

## Appointments Made February 27, 1995

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 1999: Susan Howard, 31945 Burnt Cedar, Fair Oaks Ranch, Texas 78006. Ms. Howard will be filling the unexpired term of William P. Hobby of Houston who resigned.

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 2001: Lee Marshall Bass, 820 Rivercrest Road, Fort Worth, Texas 76107. Mr. Bass is being reappointed.

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 2001: Richard W. Heath, 4707 Park Lane, Dallas, Texas 75220. Mr. Heath will be replacing John W. Kelsey of Houston whose term expired.

To be a member of the Texas Parks and Wildlife Commission for a term to expire February 1, 2001: Nolan Ryan, P.O. Box 670, Alvin, Texas 77512. Mr. Ryan will be replacing George C. (Tim) Hixon of San Antonio whose term expired.

To be director of the Office of State-Federal Relations for a term at the pleasure of the Governor: Laurie M. Rich, 5836 Royal Lane, Dallas, Texas 75230. Ms. Rich will be replacing Jane Hickie of Austin whose term expired.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502518

George W. Bush  
Governor of Texas





Name: Raymond M. Beltran, Jr.  
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# PROPOSED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### Part VIII. Texas Racing Commission

#### Chapter 305. Licenses for Pari-mutuel Racing

##### Subchapter B. Individual Li- censes

##### Specific Licensees

###### • 16 TAC §305.42

The Texas Racing Commission proposes an amendment to §305.42, concerning owner's licenses. The amendment requires the owner of a race animal to be licensed before the owner may enter the animal in a pari-mutuel race in this state. The amendment is technical in nature in that it reflects current licensing requirements contained in another commission rule.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest integrity. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §7.02, which authorize the commission to adopt rules specifying the qualifications and experience for occupational licenses.

The proposed amendment implements Texas Civil Statutes, Article 179e.

###### §305.42. Owners.

(a) Except as otherwise provided by this subsection, the owner of a [each] horse or greyhound, as listed on the animal's registration paper, must obtain an owner's license before the horse or greyhound may be entered in a race. An owner may enter a horse or greyhound in a stakes race without first obtaining a license, but must obtain a license before the horse or greyhound may start in the stakes race. [The owner of each horse or greyhound entered in a stakes race must obtain an owner's license before the time designated by the stewards or racing judges.] A person may not be licensed as an owner if the person is not the owner of record of a properly registered race animal which the person intends to race in Texas [and which is in the care of a trainer licensed by the commission].

(b)-(e) (No change.)

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502466 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

###### • 16 TAC §305.44

The Texas Racing Commission proposes an amendment to §305.44, concerning trainer's licenses. The amendment requires the trainer of a race animal to be licensed before the trainer may enter the animal in a pari-mutuel race in this state. The amendment is technical in nature in that it reflects current licensing requirements contained in another commission rule.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal

implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will be of the highest integrity. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §7.02, which authorize the commission to adopt rules specifying the qualifications and experience for occupational licenses.

The proposed amendment implements Texas Civil Statutes, Article 179e.

###### §305.44. Trainer or Assistant Trainer.

(a) Except as otherwise provided by this subsection, a trainer must obtain a trainer's license before the trainer may enter a horse or greyhound in a race. A trainer may enter a horse or greyhound in a stakes race without first obtaining a license, but must obtain a license before the horse or greyhound may start in the stakes race. Except as otherwise provided by this section, to be licensed by the commission as a trainer, a person must:

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

(b)-(e) (No change.)

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502467 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
Chapter 309. Operation of Racetracks

Subchapter B. Horse Race-tracks

Facilities for Employees

• 16 TAC §309.184

The Texas Racing Commission proposes an amendment to §309.184, concerning keeping pets on the grounds of a pari-mutuel racetrack. The amendment restricts to dogs the requirements relating to vaccinations and running at large.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will attract high quality trainers and horses currently running in other states. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.184. *Pets.* If an association permits a licensee to keep a dog [pet] on association grounds, the association shall ensure that:

(1) the dog [pet] is confined and prevented from going at large on association grounds; and

(2) the dog [pet] is annually vaccinated against rabies.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502468 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
Subchapter C. Greyhound Racetracks

Operations

• 16 TAC §309.355

The Texas Racing Commission proposes an amendment to §309.355, concerning the grading system for greyhounds. The amendment permits a greyhound racetrack to conduct up to four mixed grade races each week.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the racing secretary will have increased flexibility in writing races and will be better able to use the greyhounds available on the grounds. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§309.355. *Grading System.*

(a)-(k) (No change.)

(l) The racing secretary may schedule only four [two] mixed grade races each week. A mixed grade race must be designated by the letter "T" in the racing program.

(m)-(p) (No change.)

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502469 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
Chapter 311. Conduct and Duties of Individual Licensees

Subchapter B. Specific Licenses

General Provisions

• 16 TAC §311.159

The Texas Racing Commission proposes an amendment to §311.159, concerning conduct in the stable area. The amendment restricts to dogs the requirements relating to vaccinations and running at large.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will attract high quality trainers and horses currently running in other states. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§311.159. *Conduct In Stable Area.*

(a) (No change.)

(b) An individual licensee may not possess, keep, or maintain a dog [pet] in the stable area of an association's grounds unless:

(1) the dog [pet] is confined and prevented from going at large on association grounds; and

(2) the dog [pet] is annually vaccinated against rabies.

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

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502470

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
**Chapter 313. Officials and  
Rules of Horse Racing**  
**Subchapter B. Entries, Declara-  
tions, and Allowances**  
**Entries**

• 16 TAC §313.103

The Texas Racing Commission proposes an amendment to §313.103, concerning eligibility requirements. The amendment deletes redundant references to licensing requirements and clarifies the need for registration papers to be on file for eligibility to start in a race.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racing will attract high quality trainers and horses currently running in other states. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

*§313.103. Eligibility Requirements.*

(a) To be entered in a race, a horse must:

(1) (No change.)

(2) be properly tattooed and the horse's registration certificate showing the tattoo number of the horse must be on file with the racing secretary before scratch time for the race, unless the stewards authorize the certificate to be filed at a later time;

(3) be in the care of a licensed trainer and owned by a licensed owner, except that the owner and trainer of a horse entered in a stakes race must be licensed before the horse may start in that race;]

(2)[(4)] be eligible to enter the race under the conditions of the race;

(3)[(5)] be present on association grounds not later than the time prescribed by the commission veterinarian; and

(4)[(6)] have two published workouts and be approved by a licensed starter for proficiency in the starting gate, if the horse is to start for the first time.

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

(h) To be eligible to start in a race, a horse must be properly tattooed and the horse's registration certificate showing the tattoo number of the horse must be on file with the racing secretary before scratch time for the race, unless the stewards authorize the certificate to be filed at a later time.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502471

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
**Declarations and Scratch Pro-  
cedure**

• 16 TAC §313.132

The Texas Racing Commission proposes an amendment to §313.132, concerning scratch time. The amendment deletes the requirement that a racetrack have a scratch time.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that pari-mutuel racetracks will have sufficient time to prepare accurate programs. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

*§313.132. Scratch Time.*

(a) An association may [shall] designate a "scratch time" for each race day.

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

(e) An association may elect to have no scratch time and not allow also eligibles. All scratches would be off the program with the prior approval of the stewards.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502472

Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
**Chapter 319. Veterinary  
Practices and Drug Testing**  
**Subchapter B. Treatment of  
Horses**

• 16 TAC §319.102

The Texas Racing Commission proposes an amendment to §319.102, concerning the veterinarian's list. The amendment permits a horse that is on the veterinarian's list to be entered into a race provided the horse is scheduled to be removed from the list by the day of the race.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more horses will be available for racing at racetracks with 96- or 72-hour entry rules. 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 on or before April 7, 1995, to Paula Cochran

Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act and §6.06 which authorizes the commission to adopt rules relating to all aspects of the operation of pari-mutuel racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

### §319.102. Veterinarian's List.

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

(e) A horse on the veterinarian's list may be entered into a race if the horse is scheduled to be removed from the list by the day of the race.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-8502473 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

## Chapter 321. Pari-mutuel Wagering

### Subchapter A. Regulation and Totalisator Operations

#### Mutuel Tickets

##### • 16 TAC §321.32

The Texas Racing Commission proposes an amendment to §321.32, concerning the expiration date of mutuel tickets. The amendment states that a mutuel ticket expires on the 60th day after the end of the calendar year in which the ticket was purchased.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the procedure for cashing outstanding tickets and forwarding the remainder to the state will be more efficient and effective. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering.

The proposed amendment implements Texas Civil Statutes, Article 179e.

### §321.32. Expiration Date.

(a) A mutuel ticket expires on the 60th day after the last day of the calendar year [and may not be cashed 60 days after the last day of the race meeting] in which the ticket was purchased.

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

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502474 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

## Subchapter C. Simulcast Wagering

### General Provisions

#### • 16 TAC §321.204

The Texas Racing Commission proposes an amendment to §321.204, concerning approval of wagering on simulcast races. The amendment makes all graded races and stakes races with purses of \$50,000 or more races of national or historic interest for purposes of incoming simulcasts.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the finest races will be available in this state for pari-mutuel wagering. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Rac-

ing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering; and §11.011, which authorizes the commission to adopt rules to implement simulcasting.

The proposed amendment implements Texas Civil Statutes, Article 179e.

### §321.204. Approval of Wagering on Simulcast Races.

(a)-(f) (No change.)

(g) All graded races and stakes races with a purse of \$50,000 or more shall be considered of national or historic interest.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502475 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

#### • 16 TAC §321.207

The Texas Racing Commission proposes an amendment to §321.207, concerning the duties of the sending racetrack. The amendment permits a sending racetrack to transmit wagering information via a dial-up telephone line rather than a dedicated circuit provided the executive secretary has approved.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that simulcasting may be conducted in situations where a dedicated circuit is impractical. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for con-



ducting racing with wagering and for administering the Texas Racing Act; §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering; and §11.011, which authorizes the commission to adopt rules to implement simulcasting.

The proposed amendment implements Texas Civil Statutes, Article 179e.

*§321.207. Duties of Sending Racetrack.*

(a)-(f) (No change.)

(g) With the prior approval of the executive secretary, a sending racetrack may transmit and receive wagering information via a dial-up telephone line.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502476 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
• 16 TAC §321.208

The Texas Racing Commission proposes an amendment to §321.208, concerning emergency procedures. The amendment permits a racetrack receiving a simulcast race to offer advance wagering on the race without receiving audio or video signals provided the advance wagering ceases two hours before the race and the executive secretary has approved.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that advance wagering on simulcast races will be facilitated. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering; and

§11.011, which authorizes the commission to adopt rules to implement simulcasting.

The proposed amendment implements Texas Civil Statutes, Article 179e.

*§321.208. Emergency Procedures.*

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

(e) With the prior approval of the executive secretary, a receiving association may offer advance wagering on simulcast signals without the necessity of audio and video signals being received. Advance wagering must cease two hours prior to the sending racetrack's first race.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502477 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
Common Pool Wagering

• 16 TAC §321.276

The Texas Racing Commission proposes an amendment to §321.276, concerning manually merging common pools. The amendment permits a manual merge to be accomplished if approved by other mutual officials in the absence of the presiding steward or racing judge.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that manual merges will be available more often, there facilitating the commingling of pools. 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 on or before April 7, 1995, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §11.01, which authorizes the commission to adopt rules regulating pari-mutuel wagering; and

§11.011, which authorizes the commission to adopt rules to implement simulcasting.

The proposed amendment implements Texas Civil Statutes, Article 179e.

*§321.276. Manual Merge.*

(a) (No change.)

(b) To merge the pools manually, the receiving location's pari-mutuel representative shall notify the sending racetrack via teletype of the total amount in the pool, the total dollars on winning wagers, and the total dollars on the losing wagers in the pool. The stewards or racing judges at the sending racetrack and the presiding steward or racing judge, or the highest ranking mutual official if the steward or judge is not on the grounds, at the receiving location shall be notified when the procedure is complete, for purposes of declaring the race official.

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

Issued in Austin, Texas, on February 22, 1995.

TRD-9502478 Paula Cochran Carter  
General Counsel  
Texas Racing Commission

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 794-8461

◆ ◆ ◆  
TITLE 22. EXAMINING  
BOARDS

Part XXI. Texas State  
Board of Examiners of  
Psychologists

Chapter 463. Applications

• 22 TAC §463.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.5, concerning application file requirements. The amendment is being proposed in order to clarify the requirements for a certified psychologist, to add the requirement for a passport picture for applications for the Oral Exam, and to include that applicants for licensure, as well as certification, will have their license held in abeyance until final determination if a complaint has been filed against them.

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

Ms. Forkner also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rules

applicable to all applicants and to ensure that the requirements are stipulated for all levels of applications so that the rules are easier to follow and understand. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

**§463.5. Application File Requirements.** An application file must be complete and contain whatever information or examination results the Board requires. An incomplete application remains in the active file for 90 days, at the end of which time, if still incomplete, it is void. If certification or licensure is sought again, a new application and filing fee must be submitted. An applicant cannot have two types of applications for certification or licensure pending before the Board.

(1) A completed application for [certification as a psychologist or] licensure as a psychological associate includes:

(A)-(F) (No change.)

(2) A completed application for certification as a psychologist includes:

(A) An application and required fee(s).

(B) Two current passport pictures of the applicant.

(C) Official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed.

(D) Three acceptable reference letters from three different psychologists, two of whom are licensed. An applicant whose file contains any negative reference letters will be asked to provide a written explanation and/or meet with the Board prior to final approval of the application file.

(E) Supportive documentation and other materials the Board may

deem necessary, including the names of all jurisdictions where the applicant currently holds a certificate or license to practice psychology.

(3)[(2)] A completed application for the Oral Exam includes an application, current passport picture of the applicant and required fee.

(4)[(3)] A completed application for licensure as a psychologist includes:

(A) an application and required fee;

(B) documentation indicating passage of the Examination for the Professional Practice of Psychology, the Board's Jurisprudence Examination, and the Board's Oral Exam;

(C) documentation of two years of supervised experience from a licensed psychologist which satisfies the requirements of the Board;

(D) a written explanation and/or meeting with the Board, prior to final approval, if the application file contains any negative reference letters;

(E) supportive documentation and other materials the Board may deem necessary.

(5)[(4)] A completed application for certification and licensure by reciprocity as a psychologist includes:

(A) an application, required fee and two current passport size pictures of the applicant;

(B) official transcripts sent directly to the Board's office from all colleges/universities where post-baccalaureate course work was completed;

(C) if providing psychological services in Texas before receiving license, must be employed in an exempt agency, or must have a provisional license, or must be supervised by a licensed psychologist in an acceptable setting which is appropriate for the education/experience background of the applicant;

(D) documentation that applicant is currently licensed and has been in good standing in one jurisdiction for the five years immediately preceding filing application in Texas;

(E) proof that applicant is the identical person to whom the original license was issued;

(F) documentation that there is no pending action against the applicant's license in any jurisdiction;

(G) a sworn statement that applicant has never had any professional license suspended, revoked, cancelled, or otherwise restricted;

(H) three professional reference letters from three separate psychologists, two of whom are licensed, each of whom must attest without reservation to the applicant's professional competence, ethics, and current fitness to practice. An applicant whose file contains any negative reference letters will be asked to provide a written explanation and/or to meet with the Board prior to final approval of the application file;

(I) if licensed in a foreign country, proof that the requirements of Board Rule 463.17 of this title (relating to Foreign Graduates) have been satisfied.

(6)[(5)] For any applicant who has a complaint filed against the applicant, any final decision on the application will be held in abeyance until the Board has made a final determination on the complaint filed. The applicant will be permitted to take all required exams as scheduled but will not be certified or licensed until approved by the Board.

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

Issued in Austin, Texas, on February 28, 1995.

TRD-9502580

Rebecca E. Forkner  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: April 7, 1995

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

◆ ◆ ◆  
• 22 TAC §463.6

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.6, concerning experience. The amendment is being proposed in order to reflect the allowance of interrupted supervised experience for good cause and to ensure that experience received from those under an Agreed Board Order shall not qualify as supervised experience for licensure purposes regardless of the setting.

Rebecca E. Forkner, executive director, has determined that for the first five-year period the rule is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the rule.

Ms. Forkner also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to permit otherwise qualified supervisees to count interrupted supervision experience for good cause and will prohibit a supervisee from obtaining supervisory experience from a psychologist under an Agreed Board Order, thereby ensuring that the general public receive quality psychological services at the earliest possible date. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

*§463.6. Experience.* Supervision may be obtained only in a full-time or half-time setting.

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

(5) When supervised experience is interrupted, the Board may waive in accordance with established Board policy, upon a showing of good cause by the supervisee, the requirement that the supervised experience be completed in consecutive months.

(6)[(5)] A rotating internship organized within a doctoral program is considered to be one placement.

(7)[(6)] The experience requirement must be obtained after official enrollment in a doctoral program.

(8)[(7)] At least one year of experience must be received after the doctoral degree is officially conferred.

(9)[(8)] All supervised experience must be received from a psychologist licensed at the time supervision is received.

(10)[(9)] The supervising psychologist must be trained in the area of supervision provided to the supervisee.

(11)[(10)] No experience which is obtained from a psychologist who is related within the second degree of affinity or within the second degree by consanguinity to the person may be considered for licensure as a psychologist or licensure as a psychological associate.

(12)[(11)] For applications for licensure as a psychologist received after August 31, 1995, one year of experience must be an internship certified by the Director of Internship Training and must be satisfied by either:

(A) the successful completion of an internship program accredited by the American Psychological Association;

(B) the successful completion of an organized internship meeting the following criteria.

(i) An organized training program, in contrast to supervised experience or on-the-job training, is designed to provide the intern with a planned, programmed sequence of training experiences. The primary focus and purpose is assuring breadth and quality of training.

(ii) The internship agency had a clearly designated staff psychologist who was responsible for the integrity and quality of the training program and who was actively licensed/certified by the State Board of Examiners in Psychology and present at the training facility for a minimum of 20 hours a week.

(iii) The internship agency had two or more full-time equivalent psychologists on the staff as primary supervisors, at least one of whom was actively licensed as a psychologist by the State Board of Examiners in Psychology.

(iv) Internship supervision was provided by a staff member of the internship agency or by an affiliate of that agency who carried clinical responsibility for the cases being supervised. At least half of the internship supervision was provided by one or more psychologists.

(v) The internship provided training in a range of assessment and intervention activities conducted directly with patients/clients.

(vi) At least 25% of trainee's time was in direct patient/client contact (minimum 375 hours).

(vii) The internship included a minimum of two hours per week (regardless of whether the internship was completed in one year or two) of regularly scheduled formal, face-to-face individual supervision. There must also have been at least two additional hours per week in learning activities such as: case conferences involving a case in which the intern was actively involved; seminars dealing with psychology issues; co-therapy with a staff person including discussion; group supervision; additional individual supervision.

(viii) Training was post-clerkship, post-practicum and post-internship level.

(ix) The internship agency had a minimum of two full-time equivalent interns at the internship level of training during applicant's training period.

(x) The internship level psychology trainees have titles such as "intern", "resident", "fellow", or other designation of trainee status.

(xi) The internship agency had a written statement or brochure which described the goals and content of the internship, stated clear expectations for quantity and quality of trainee's work and was made available to prospective interns.

(xii) A year of full-time supervised experience is defined as a minimum of 35 hours per week employment/experience in not less than 12 consecutive calendar months in not more than two placements. A year of half-time supervised experience is defined as a minimum of 20 hours per week employment/experience in not less than 24 consecutive calendar months in not more than two placements. One calendar year from the beginning of ten consecutive calendar months of employment/experience in a school district constitutes one year of supervised experience.

(xiii) Consortia may be created if they follow the guidelines of the current American psychological Association Committee on Accreditation Handbook; or

(C) for School Psychologist trainees, the successful completion of an organized pre-doctoral internship program in a school district meeting the following criteria.

(i) The internship experience shall be provided at or near the end of the formal training period.

(ii) The internship experience shall occur on a full-time basis over a period of one academic year, or on a half-time basis over a period of two consecutive academic years.

(iii) The internship experience shall be consistent with a written plan and shall meet the specific training objectives of the program.

(iv) The internship experience shall occur in a setting appropriate to the specific training objectives of the program.

(v) At least 600 clock hours of the internship experience shall occur in a school setting and shall provide a balanced exposure to regular and special educational programs.

(vi) The internship experience shall be provided appropriate recognition through the awarding of academic credit.

(vii) The internship experience shall occur under conditions of appropriate supervision. Field-based internship supervisors shall hold a valid credential as a school psychologist for that portion of the internship that is in a school setting. That portion of the internship which appropriately may be in a non-school setting shall require supervision by an appropriately credentialed psychologist.

(viii) Field-based internship supervisors shall be responsible for no more than two interns at any given time. University internship supervisors shall be responsible for no more than 12 interns at any given time.

(ix) Field based internship supervisors shall provide at least two hours per week of direct supervision for each intern. University internship supervisors shall maintain an ongoing relationship with field-based internship supervisors and shall provide at least one field-based contact per semester with each intern.

(x) The internship placement agency shall provide appropriate support for the internship experience which shall include:

(I) a written contractual agreement specifying the period of appointment and the terms of compensation;

(II) A schedule of appointments consistent with that of agency school psychologists (e.g. calendar, participation in in-service meetings, etc.);

(III) provision for participation in continuing professional development activities;

(IV) expense reimbursement consistent with policies pertaining to agency school psychologists;

(V) an appropriate work environment including adequate supplies, materials, secretarial services, and office space;

(VI) release time for internship supervisors; and

(VII) a commitment to the internship as a training experience.

(xi) The internship experience shall be systematically evaluated in a manner consistent with the specific training objectives of the program.

(xii) The internship experience shall be conducted in a manner consistent with the current legal-ethical standards of the profession.

(xiii) The internship agency will have a minimum of two full-time equivalent interns at the internship level during the applicant's training period.

(xiv) The internship agency will have the availability of at least two full-time equivalent psychologists as primary supervisors, at least one of whom is employed full time at the agency and is a school psychologist.

(xv) Consortia may be created to meet the criteria in this section.

(D) Individuals enrolled in an Industrial/Organizational doctoral degree program are exempt from this paragraph [(11)] of this section.

(13)[(12)] All applicants obtaining experience for the purpose of certification and licensure must adhere to the Board's supervision guidelines currently in effect in Board Rule 465.18 regardless of setting.

(14)[(13)] Persons under supervision for the purpose of meeting the criteria guidelines for defining supervised experience in an organized health service training program (see §469.2 of this title (relating to Criteria for Health Service Provider in Psychology)) must adhere to paragraph (12)(A) or (B) [(11)] of this section, relating to experience. Those individuals who have not been trained under paragraph (12)(A) or (B) [(11)] of this section, are not eligible to represent themselves as Health Service Providers. Those trained under paragraph (12) (C) [(11)] of this section must practice only school psychology.

(15)[(14)] Experience received from a psychologist while the psychologist is practicing subject to [who is simultaneous under] an Agreed Board Order or Board Order [of the Board] shall [does] not, under any circumstances, qualify as supervised assistance for licensure purposes regardless of the setting in which it was received [for licensure consideration, regardless of setting]. Psychologists who become subject to an Agreed Board Order or Board Order shall [The psychologist must] inform all supervisees of the Agreed Board Order or Board Order and assist all [his/her] supervisees in finding appropriate alternate supervision.

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

Issued in Austin, Texas, on February 28, 1995.

TRD-9502581

Rebecca E. Forkner  
Executive Director  
Texas State Board of  
Examiners of  
Psychologists

Earliest possible date of adoption: April 7, 1995

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

## Chapter 465. Rules of Practice

### • 22 TAC §465.22

The Texas State Board of Examiners of Psychologists proposes new §465. 22, concerning psychological records. The new rule is being proposed as the Board is replacing its record maintenance requirements with a rule which more accurately reflects the Board's requirements and professional standards.

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

Ms. Forkner also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to inform certificands/licensees, as well as the consuming public, of the time limits required for record maintenance. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Janice C. Alvarez, Texas State Board of Examiners of Psychologists, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

#### §465.22. Psychological Records.

##### (a) General requirements.

(1) All individuals licensed and/or certified by the Board shall maintain accurate, current, and pertinent records of all psychological services rendered.

(2) All records shall be sufficient to permit planning for continuity in the event that another care provider takes over delivery of services to a patient or client, for any reason including the death, disability, or retirement of the licensee or certificand.

(3) All records shall be maintained in sufficient detail to permit adequate regulatory and administrative review of psychological service delivery.

(4) Records shall be maintained and stored in a way that permits review and duplication.

(5) All individuals licensed and/or certified by the Board shall ade-

quately identify all impressions and tentative conclusions contained in any record.

(6) All individuals licensed and/or certified by this Board shall inform their patient/clients of the nature and extent of their record keeping procedures; including but not limited to a statement on the limitations of the confidentiality of the records.

(b) Content of Records.

(1) For purposes of this Rule, psychological records include any information that can be used to document the delivery, progress, or results of any psychological services; including, but not limited to:

(A) identifying data;

(B) dates of services;

(C) types of services;

(D) fees and fee schedules;

(E) any assessment, plan for intervention, consultation, handwritten notes, summary reports and/or testing reports and relevant supporting data; and

(F) any and all release forms obtained from the client; patient or any third party pertaining to the services in question.

(2) Records may contain information beyond the minimum items enumerated in §465.2(b)(1) of this title (relating to Rules); however, all such records are subject to all requirements imposed by this rule and any other applicable Board rule or state or federal law for records relating to psychological services.

(3) Records include information stored in a computer or computer data base.

(c) Maintenance and Control of Records.

(1) All individuals licensed and/or certified by the Board shall maintain a system that protects the confidentiality of records. This includes all steps necessary to establish and maintain the confidentiality of information arising from the individual's own delivery of psychological services, or the services provided by others working under the supervision of the individual.

(2) All individuals licensed and/or certified by the Board shall have ultimate responsibility for the content of their records and the records of those under their supervision including, where necessary, the design and implementation of record keeping procedures, as well as any

monitoring necessary to ensure that all record keeping procedures are observed.

(3) All individuals licensed and/or certified by the Board shall take all reasonable efforts to protect against the misuse of any record.

(4) All individuals licensed and/or certified by the Board shall maintain control over the records of any individual to whom they provide psychological services to the extent necessary to ensure that this Board rule and all applicable state and federal laws are observed.

(5) In situations where it becomes impossible for the licensee and/or certificand to maintain control over such records, the licensee and/or certificand shall make all necessary arrangements for transfer to another individual subject to the requirements of this Board rule. It is the responsibility of the licensee and/or certificand to implement a system so that former and current client/patient records can be obtained by other mental health professionals where appropriate.

(6) Where an individual licensed and/or certified by the Board is providing psychological services as an employee of an agency, all patient or client files remain the property of the employing agency upon termination of the employment of the individual with the employing agency.

(d) Access to Records.

(1) Records shall be organized in a manner that facilitates their use by all authorized persons. All record entries shall be legible. All records are to be completed in a timely manner.

(2) Records may be maintained in a variety of media, but their utility, confidentiality and durability must be maintained.

(3) An individual licensed and/or certified by this Board shall release information about a patient or client only upon written authorization by the patient, client, or appropriate legal guardian; pursuant to a proper court order, or as required by applicable state or federal law.

(4) An individual licensed and/or certified by this Board may impose a reasonable fee for review and reproduction of records. However, no individual shall withhold records because the client and/or patient has not paid for prior services.

(5) Raw data and protocols belong to the psychologist. Raw data and protocols are not a matter of public record. Raw data and protocols shall be made available only to another qualified and licensed psychologist and only upon receipt of proper written authorization from the patient/client or other individual legally autho-

rized to release psychological records on behalf of a patient or client.

(6) Individuals licensed and/or certified by this Board shall cooperate in the continuity of care of clients by providing appropriate information to succeeding licensed professionals. All such information is subject to the applicable Board rules and state and federal laws concerning confidentiality of psychological records.

(7) For any situation in which a psychologist is temporarily or permanently removed from the practice of psychology in Texas, it is the responsibility of the psychologist to implement a system so that former and current client/patient records may be obtained by mental health professionals.

(e) Retention of Records.

(1) All individuals licensed and/or certified by this Board shall be aware of relevant, federal, state, and local laws and regulations governing record retention. Where applicable, state and federal laws and regulations supersede the requirements of these rules.

(2) In the absence of specific other laws and regulations as specified in paragraph (1) of this subsection supra, complete records shall be maintained for a minimum of ten years after the last contact with the client. If the client is a minor, the record period is extended until ten years after the age of majority.

(3) All records, active and inactive, shall be maintained safely, with properly limited access, and from which timely retrieval is possible.

(f) Outdated Records.

(1) All individuals licensed and/or certified by this Board shall be attentive to situations in which record information has become outdated, and may therefore be invalid, particularly in circumstances where disclosure might cause adverse effects. All such individuals shall ensure that when disclosing such information that its outdated nature and limited utility are noted using professional judgment and in compliance with all applicable laws.

(2) Any disposal of records shall be done in an appropriate manner that ensures nondisclosure (or preserves confidentiality) of any affected party as required by the rules of this Board and all applicable law.

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

Issued in Austin, Texas, on February 22, 1995.

Earliest possible date of adoption: April 7, 1995

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

## Part XXVI. Texas Board of Licensure for Professional Medical Physicists

### Chapter 601. Medical Physicists

The Texas Board of Licensure for Professional Medical Physicists (board) with the approval of the Texas Department of Health (department) proposes amendments to §§601.1-601.6, 601.8, 601.10, §601.13-601.17; repeal of §601. 7; and new §601.7, concerning professional and medically physicists. The amendments include purpose and scope; definitions; the board's operation; fees; exemptions; application procedures; licensure by examination; license issuance and license holder requirements; petition for adoption of rules; code of ethics; criminal background; violations, complaints, and subsequent actions; and surrender of license. The repeal of existing §601.7 concerns licensure without examination. The new §601.7 concern reciprocity which was previously included in the section proposed for repeal.

The amendments will insure that the wording in the rules is parallel with the Act, increase fees, allow an applicant to submit sworn evidence of a degree if a transcript is not issued, add an open book examination for all applicants, allow the board to disapprove an application if the applicant does not make a passing score of 80% on the open book examination, allow the board to disapprove an application if an applicant lacks necessary skills and abilities in the specialty area requested, and require an applicant with a foreign degree to have an evaluation and translation of the degree. The new section will cover an administrative procedure for licensure by reciprocity. The section proposed for repeal covered reciprocity and licensure without examination, an application procedure which expired on August 31, 1994.

Bernie Underwood, C.P.A., Chief of Staff Services, Health Care Quality and Standards, has determined that for the first five-year period the sections will be in effect the fiscal implications for state government are anticipated to be negligible. The cost and process of administering the program have not changed; however the number of applicants has decreased dramatically since the opportunity for licensure without examination ended on September 1, 1994. In order to generate revenues to cover the cost of the program, the fees must be increased. There will be no fiscal implications for local government as a

result of enforcing or administering the sections as proposed.

Ms. Underwood also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of enforcing the sections as proposed will continue to ensure the protection of the health, safety and welfare of the citizens of Texas from the harmful effects of excessive radiation and from the public threat if medical physics is practiced by incompetent persons. The proposed fee increases will assure that fees are set in sufficient amounts to cover the cost of regulation and enforcement. The anticipated cost to individuals who are required to comply with the sections as proposed will be: an increase of \$25 in the fee for each additional specialty on the initial application; an increase \$50 in the renewal fee for the initial specialty; an increase of \$25 in the renewal fee for each additional specialty; and an increase of \$10 in the replacement fee. There is no anticipated cost or effect on small businesses. There will be no anticipated effect in local employment.

Comments on the proposal may be submitted to Jeanette Hilsabeck, Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6655. Public comments will be accepted for 30 days after publication of the sections in the *Texas Register*.

#### • 22 TAC §§601.1-601.6, 601.8, 601.10, 601.13-601.17

The amendments and new section are proposed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, §11, which require the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Department of Health, that are reasonably necessary for the proper performance of its duties under the Act.

These sections implement the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n.

#### §601.1. Purpose and Scope.

##### (a) Purpose.

(1) These sections in this chapter are intended to implement the provisions of the Texas Medical Physics Practice [Physicists] Act (Act), Texas Civil Statutes, Article 4512n, concerning the regulation and licensure of medical physicists, in that:

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

(2) (No change.)

(b) (No change.)

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

Examination—The licensure test which consists of an open book examination for all specialties on Texas radiation control rules and one of the specialty

examinations described in §601.8(d) of this title (relating to Licensure by Examination).

#### §601.3. The Board's Operation.

(a) (No change.)

(b) Officers.

(1) Presiding officer.

(A) (No change.)

(B) The chair shall officiate at all board meetings at which he or she is in attendance and perform all duties prescribed by this chapter or the Texas Medical Physics Practice [Physicists] Act (Act).

(2) (No change.)

(c)-(l) (No change.)

§601.4. Fees. The purpose of this section is to set out the fees for licensure as a medical physicist prescribed by the Texas Board of Licensure for Professional Medical Physicists (board).

(1) The schedule of fees for licensure as a medical physicist is as follows:

(A) application processing and initial licensing fee:

(i) (No change.)

(ii) additional specialties on initial application—\$50 [\$25] each;

(iii)-(iv) (No change.)

(B) renewal fee:

(i) first specialty—\$125 [\$75]; and

(ii) additional specialties—\$50 [\$25] each;

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

(E) license and/or identification card replacement fee—\$20 [\$10]; and

(F) (No change.)

(2) The schedule of fees for a temporary license as a medical physicist is as follows:

(A) application processing and initial temporary license fee:

(i) (No change.)

(ii) additional specialties on initial application—\$50 [\$25] each; and

(iii) (No change.)

(B) temporary license renewal fee:

(i) first specialty—\$125 [\$75]; and

(ii) (No change.)

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

(E) temporary license replacement fee—\$20 [\$10].

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

#### §601.5. Exemptions.

(a) The purpose of this section is to set out who is exempt from the Act and who must be licensed under the Texas Medical Physics Practice [Physicists] Act (Act).

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

#### §601.6. Application Procedures.

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

(c) Required application materials.

(1) (No change.)

(2) Required documentation. Applicants for a license must submit:

[A] if applying under §601.7(a) or (b) of this title (relating to Licensure Without Examination), a notarized copy of a current Texas voter registration card or a notarized copy of a current Texas driver's license;]

(A)[B] evidence of relevant work experience, including a description of the responsibilities and duties performed;

(B)[C] an official transcript from a college or university granting the applicant's degree or certificate of completion of a training course or if a college or university does not issue an official transcript, the board may accept another form of official documentation or sworn evidence of the degree or successful completion of courses;

(C)[D] a statement of the medical physics specialty for which the application is submitted;

(D)[E] three current professional references as follows:

(i) two medical physicists. If the applicant is applying for one specialty, both physicists must be practicing in that specialty area. If the applicant is applying for two or more specialties, one

physicist must be practicing in one of those specialties and the other physicist must be practicing in another one of the specialties for which the applicant is making application;

(ii) one licensed physician practicing and certified in at least one of the specialties for which the applicant is making application; however, if the applicant is applying for a license in the specialty area of medical health physics, the physician may be practicing and certified in diagnostic radiology, radiation oncology, or nuclear medicine; and

(iii) if applying for a temporary license, post-secondary academic references may be substituted; [and]

(E)[F] a fee as prescribed by the board; and [.]

(F) the successfully completed, current open book examination portion of the board's examination. The applicant is responsible for verifying that he or she has taken and submitted the most current version of the open book examination.

(d) Consideration of application. This subsection is intended to address the applications procedures required by the Texas Medical Physics Practice [Physicists] Act (Act), §14(c)-(f) and §17(a) and (b).

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

(4) If an applicant has not completed a specialty [an] examination accepted by the board under this chapter, the executive secretary, with direction from the chair, shall forward a summary of the application and a recommendation for action to the appropriate committee of the board for review and recommendation.

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

(e) Disapproved applications.

(1) The appropriate committee of the board shall propose disapproval and the board shall disapprove the application if the person:

(A) (No change.)

(B) has failed to pass the open book portion of the examination with a passing score of 80% [prescribed examination, if applicable];

(C) has failed to pass an accepted specialty examination described in §601.8(d) of this title (relating to Licensure By Examination);

(D)[C] has deliberately presented false information to the board to verify the applicant's qualifications;

(E)[D] has obtained or renewed a license by means of fraud, misrepresentation, or omission of material facts;

(F)[E] has made application for or held a license issued by the licensing authority of another state, territory, or jurisdiction that was denied, suspended, or revoked by that licensing authority;

(G)[F] has been convicted of a felony or of a misdemeanor that involved moral turpitude or that directly relates to a person's duties and responsibilities as a licensed medical physicist; [or]

(H)[G] has otherwise violated this Act, a lawful order or rule of the board, or the board's code of ethics; or

(I) lacks the necessary skills, abilities and professional ethics to engage in the practice of medical physics in the specialty area requested.

(2) An applicant whose application has been formally denied under paragraph (1)(F)-(H) [(E)-(G)] of this subsection shall be permitted to reapply after a period of not less than one year from the date of the disapproval and shall submit with the reapplication, proof satisfactory to the board, of compliance with all rules of the board and the provisions of the Act in effect at the time of reapplication.

§601.7. Reciprocity. The board may issue an annual license to a person who holds a license to practice medical or radiological physics in another state, territory, or jurisdiction that has requirements for the licensing of medical or radiological physicists that are substantially the same as the requirements of the Texas Medical Physics Practice Act (Act).

#### §601.8. Licensure By Examination.

(a) Eligibility. To be eligible to take a specialty [an] examination for an annual license for a professional medical physicist, a person must:

(1) have an earned master's or doctoral degree from an accredited college or university;

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

(C) not meeting the requirements of subparagraph (A) or (B) of this paragraph, but where the board considers and approves the degree as signifying successful [the] completion of courses acceptable to the board in physics, medical physics, biophysics, radiological physics, medical health physics, or nuclear engineering;

(2) (No change.)

(3) submit a completed application as required by the Texas Medical Physics Practice [Physicists] Act (Act), §14.

(b) (No change.)

(c) Foreign academic credit. Degrees and course work received at foreign universities shall be acceptable only if such course work could be counted as transfer credit by accredited universities as reported by the American Association of Collegiate Registrars and Admissions Officers. An applicant having a foreign degree(s) must furnish at the applicant's own expense an evaluation of the foreign degree(s) from a commercial evaluation service. The degree evaluation must be sent directly to the board by the evaluation service. An applicant must submit with the application complete, certified copies or documented proof of the degree(s) awarded (masters or doctorate) and the date it was awarded. Documents written in languages other than English shall be accompanied by a certified English translation.

(d) Approved specialty examination.

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

(e)-(h) (No change.)

#### §601.10. License Issuance and License Holder Requirements.

(a) The Texas Board of Licensure for Professional Medical Physicists (board) may issue a license to an eligible applicant if the applicant passes the examination, if required, and meets all other license requirements under the Texas Medical Physics Practice [Physicists] Act (Act) and this chapter.

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

#### §601.13. Petition for Adoption of Rules.

(a) (No change.)

(b) Submission of the petition.

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

(4) The petition shall be mailed or delivered to the Texas [State] Board of

Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756.

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

#### §601.14. Code of Ethics.

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

(h) A licensed medical physicist shall report alleged violations of the Texas Medical Physics Practice [Physicists] Act (Act) or this chapter to the Texas Board of Licensure for Professional Medical Physicist's (board) executive secretary.

(i)-(n) (No change.)

#### §601.15. Criminal Background.

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

(c) The following felonies and misdemeanors directly relate to a license of a medical physicist because these criminal offenses indicate an inability or a tendency to be unable to properly engage in the practice of medical physics:

(1) a conviction under the Texas Medical Physics Practice [Physicists] Act (Act), §23;

(2)-(9) (No change.)

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

#### §601.16. Violations, Complaints, and Subsequent Actions.

(a) Purpose. The purpose of this section is to establish standards relating to:

(1) offenses which are a Class B misdemeanor under the Texas Medical Physics Practice [Physicists] Act (Act);

(2)-(5) (No change.)

(b)-(i) (No change.)

#### §601.17. Surrender of License.

(a) (No change.)

(b) Acceptance by the board.

(1) (No change.)

(2) Surrender of a license without acceptance thereof by the board shall not deprive the board of jurisdiction over the licensee under the Texas Medical Physics Practice [Physicists] Act (Act) or this chapter.

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

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

Issued in Austin, Texas, on February 27, 1995.

TRD-9502453

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: April 7, 1995

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

### • 22 TAC §601.7

(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 Board of Licensure for Professional Medical Physicists or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n, §11, which require the Texas Board of Licensure for Professional Medical Physicists to adopt rules, with the approval of the Texas Department of Health, that are reasonably necessary for the proper performance of its duties under the Act.

The section implements the Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n.

#### §601.7. Licensure Without Examination.

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

Issued in Austin, Texas, on February 27, 1995.

TRD-9502452

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: April 7, 1995

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

## Part XXVIII. Executive Council of Physical Therapy and Occupational Therapy Examiners

### Chapter 651. Fees

#### • 22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes new §651.2, concerning Physical Therapy Board Fees. This new section sets fees for services provided by the Texas State Board of Physical Therapy Examiners.

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



government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be provision of better physical therapy licensing services. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Nina Hurter, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The new section is proposed under the Texas Civil Statutes, Article 4512a-1, which provide the council with the authority to promulgate rules.

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

#### §651.2. Physical Therapy Board Fees.

- (a) Examination.
  - (1) Physical therapist-\$185;
  - (2) Physical therapist assistant-\$185.
- (b) Application.
  - (1) Physical therapist-\$150;
  - (2) Physical therapist assistant-\$100.
- (c) License.
  - (1) Temporary license.
    - (A) Physical therapist-\$60;
    - (B) Physical therapist assistant-\$40.
  - (2) Provisional.
    - (A) Physical therapist-\$80;
    - (B) Physical therapist assistant-\$75.
- (d) Renewal.
  - (1) Physical therapist-\$200 (two-year);
  - (2) Physical therapist assistant-\$150 (two-year.)
- (e) Duplicate License.
  - (1) Physical therapist-\$25;
  - (2) Physical therapist assistant-\$25.
- (f) Transfer.
  - (1) Physical therapist-\$40;
  - (2) Physical therapist assistant-\$40.

#### (g) Registration of Facilities.

- (1) First facility-\$300;
- (2) Additional site-\$100.

#### (h) Renewal of Facility Registration.

- (1) First facility-\$300;
- (2) Additional site-\$100.

#### (i) Duplicate Facility Registration Certificate-\$25.

#### (j) Approval of Continuing Education Program for CBU Credit-\$40 per program.

#### (k) Fees for Applicants Who Fail the Examination-Each time an applicant retakes the examination the examination fee must be paid again.

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

Issued in Austin, Texas, on February 28, 1995.

TRD-9502528

John P. Maline  
Executive Director  
Executive Council of  
Physical Therapy and  
Occupational Therapy  
Examiners

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 443-8202

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 1. Texas Board of Health

##### Public Health Promotion

The Texas Department of Health proposes the repeal of existing §1.104 and proposes new §1.104, concerning signs on the prohibition of the sale, or provision of tobacco products to a minor under 18 years of age. The new signs say that the sale or provision of tobacco products to a minor under 18 years of age is prohibited by law, and that upon conviction a maximum fine of up to \$500 may be imposed. The existing signs specify that the maximum fine is \$200 for violation. This change is necessitated by the legislative change in the definition of a Class C misdemeanor. The new sign also provides a toll free hot line where individuals can acquire more information. In addition to these changes, the new signs have been enlarged and changed in color and design.

The proposed new section will comply with the requirements of Health and Safety Code, §161.082, which requires the board to deter-

mine by rule the design and size of signs on the prohibition of the sale or provision of tobacco products to a minor under 18 years of age, and on request to provide the sign without charge to any person who sells cigarette products.

Philip Huang, M.D., Bureau Chief, Bureau of Chronic Disease Prevention and Control, has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing or administering the section. The cost to the department will be approximately \$10,000 annually, initially for printing of new signs and increased use of the toll free number. There will be no cost to local government. There may be a very minimal cost to a small business which is a distributor or retailer if it decides to make their own signs.

Dr. Huang also has determined that for the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the general public will be more aware of the prohibition in Texas Health and Safety Code, §161.081, on the sale or provision of tobacco products to a minor under 18 years of age and of the criminal penalty for violation of the law. There will be no economic costs to individuals who are required to comply with the section as proposed. There will be no impact on local employment.

Written comments on the proposal may be submitted to Dr. Philip Huang, Texas Department of Health, Office of Smoking and Health, 1100 West 49th Street, Austin, Texas 78758-3199. Comments will be accepted for 30 days after the proposal is published in the *Texas Register*.

#### • 25 TAC §1.104

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

The repeal is are proposed under the Health and Safety Code, §161.082, which provides the Texas Board of Health with authority to adopt rules concerning the design and size of signs on the prohibition of the sale or provision of tobacco products to a minor under 18 years of age; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

The rule affects Health and Safety Code, Chapter 161, Subchapter H, "Sale of Cigarettes or Tobacco Products to Minors."

#### §1.104. Signs Covering the Prohibition of the Sale or Provision of Tobacco Products to a Minor Under 18 Years of Age.

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

Issued in Austin, Texas, on February 27, 1995.

Susan K. Steeg  
General Counsel, Office of  
the General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: April 7, 1995

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

The new section is proposed under the Health and Safety Code, §161.082, which provides the Texas Board of Health with authority to adopt rules concerning the design and size of signs on the prohibition of the sale or provision of tobacco products to a minor under 18 years of age; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

The rule affects Health and Safety Code, Chapter 161, Subchapter H, "Sale of Cigarettes or Tobacco Products to Minors."

*§1.104. Signs Covering the Prohibition of the Sale or Provision of Tobacco Products to a Minor Under 18 Years of Age.*

(a) The Health and Safety Code, §161.081, requires that each person who sells tobacco products at retail or by vending machine shall post a sign in a location that is conspicuous to all employees and customers and that is close to the place at which the tobacco products may be purchased. Section 161.081 also requires the Board of Health to determine the design and size of the sign. To implement this provision, the Board of Health has approved a sign to be placed on vending machines and a sign to be placed close to a cash register or check-out stand. The design and minimum size of each sign are as follows.

(1) The minimum size of the sign to be posted close to the cash register or check-out stand shall be 8 1/2 by 11 inches. The sign shall be printed black on goldenrod colored paper or stock. The design of the sign, including wording and minimum print size, shall be as shown in the replica published as follows.  
FIGURE 1: 25 TAC §1.104(a)(1)

(2) The minimum size of the sign to be posted close to the vending machine shall be three by seven inches. The sign shall be printed black on goldenrod colored paper or stock. The design of the sign, including wording and minimum print size, shall be as shown in the replica published as follows.  
FIGURE 2: 25 TAC §1.104(a)(2)

(b) The department on request shall provide the sign without charge to any person who sells tobacco products. The department will provide the sign without charge to

distributors or wholesale dealers of tobacco products in this state for distribution to persons who sell tobacco products.

(c) Requests for signs shall be made to the Texas Department of Health, Literature and Forms Division, Warehouse Facility, 1100 West 49th Street, Austin, Texas 78756-3199. A requester shall indicate the warehouse stock number, (#4-171 for vending machine signs, #4-171A for vending machine signs in Spanish, #4-172 for cash register or check-out area signs, and #4-172A for cash register or check-out area signs in Spanish), the number of signs desired, and the person and address to whom the signs are to be mailed.

(d) Retailers and wholesalers may develop their own signs provided they meet the minimum size specifications and the designs (including wording and minimum print size) for the signs as described in subsection (a) of this section. A wholesaler or retailer may submit a sample of its proposed sign for review to the department's Office of Smoking and Health, 1100 West 49th Street, Austin, Texas, 78756.

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

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Susan K. Steeg  
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For further information, please call: (512) 458-7236

**Chapter 37. Maternal and  
Child Health Services  
Surveillance and Control of  
Birth Defects**

• 25 TAC §37.307

The Texas Department of Health (department) proposes new §37.307, concerning a Scientific Advisory Committee on Birth Defects in Texas. The new section is necessary to implement Health and Safety Code, Chapter 87, Birth Defects, §87.006, which requires the department to establish a scientific advisory committee on birth defects in Texas. Section 37.307 defines the committee's purposes, composition, meeting procedures and reporting responsibilities.

Dr. Mark Canfield, Ph.D. of the Birth Defects Monitoring Division has determined that for the first five-year period the proposed section is in effect there will be fiscal implications as a result of enforcing the rule. There will be a net cost to state government of \$50,000.

There will be no fiscal implications to local government as a result of enforcing this rule.

Dr. Canfield 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 the section will be that better information and advice will be available to the department, the Texas Board of Health and the Texas Legislature on the issues relating to birth defects in general and to implementing the birth defects registry in particular. 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, and no effect on local employment.

Written comments may be submitted to Dr. Mark Canfield, Birth Defects Registry, 1100 West 49th Street, Austin, Texas 78756 (512) 458-7236. Comments on the proposed section will be accepted for 30 days following publication in the *Texas Register*.

The new section is proposed under the Texas Health and Safety Code, §11.016, which allows the board to establish Advisory Committees; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

The Health and Safety Code, §11.016 is affected by the new section.

*§37.307. Scientific Advisory Committee on Birth Defects in Texas.*

(a) The committee. The Scientific Advisory Committee on Birth Defects in Texas shall be appointed under and governed by this section.

(1) The name of the committee shall be the Scientific Advisory Committee on Birth Defects in Texas.

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the board in the area of implementing an effective birth defects registry and related research, referral, and educational activities.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to implementing an effective birth defects registry and related research, referral, and educational activities.

(2) The committee shall:

(A) provide practical and scientific advice to the Texas Department of

Health (department) in implementing an effective birth defects registry and related research through:

(i) referral and educational activities; and

(ii) review and advise the department on all proposed projects and programs prior to and during implementation;

(B) monitor the birth defects registry and related programs; and

(C) make recommendations to the department or the legislature, as appropriate.

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By March 1, 1999, the board will initiate and complete review of the committee whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 11 members.

(1) The composition of the committee shall include scientific experts in the field of birth defects, genetics, epidemiology, and medicine.

(A) At least one member shall be from the general public.

(B) If the board implements a pilot birth defects registry in selected regions of the state, membership of the scientific advisory committee must include persons who work or live in the areas where the pilot birth defects registry activity is implemented.

(2) The members of the committee shall be appointed by the commissioner.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of a substantially equivalent number of members will expire January 1 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of department staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The

presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as neces-

sary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each March. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

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

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Susan K. Steeg  
General Counsel  
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For further information, please call: (512) 458-7236

## Chapter 38. Chronically Ill and Disabled Children's Services Program

### • 25 TAC §38.3

The Texas Department of Health (department) proposes an amendment to §38.3 concerning eligibility for the Chronically Ill and Disabled Children's Services Program (CIDC). Currently, applicants who appear to be financially eligible for Medicaid and who meet all CIDC requirements are given temporary eligibility for 60 days. The proposed amendment changes applicants' eligibility from "temporary" to "provisional" and reduces the eligibility period from 60 days to 30 days, with an additional 30 days of provisional eligibility under unusual circumstances. The amendment also allows the department to make CIDC eligibility retroactive, based on the date of the CIDC application, if a determination of eligibility by Medicaid has been submitted within the specified time period. The proposed amendment also requires that a client must seek and provide a Medically Needy Program (MNP) eligibility determination along with the initial Medicaid determination. The proposed amendment authorizes the department to establish criteria by which CIDC may require the family to reapply periodically for the MNP and/or the Supplemental Security Income Program (SSI) and to participate, if eligible, in those programs in order to maintain CIDC eligibility.

Anthony D. Lane, Chief of Staff Services, Health Care Delivery Associateship, Texas Department of Health, has determined that for the first five-year period the rule is in effect, the fiscal implications resulting from administering this rule will result in savings to

the State of up to \$1.4 million for the first year (FY1995) and up to \$4.0 million per year for FY1996-1999, depending on implementation decisions made by the Board of Health.

These potential savings in State general revenue funds were calculated by identifying the costs shifted from the Chronically Ill and Disabled Children's (CIDC) program to the Medicaid funded Medically Needy Program (MNP) and the Early and Periodic Screening, Diagnosis, and Treatment/Comprehensive Care Program (EPSDT/CCP).

CIDC savings would be offset somewhat by additional costs to the MNP. Most services for those CIDC clients participating in MNP would now be paid for by the MNP or by the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Comprehensive Care Program (CCP). Net savings to the department are still expected to occur because the CIDC program pays for services with 100% general revenue funds; but MNP and CCP will pay only the Medicaid state general revenue portion (about 37%), and the Federal Medical Assistance Percentage (FMAP) will pay the remainder.

For example, the potential net savings to the department for clients with CIDC expenditures over \$2,000 per year are calculated as follows: the total FY95 CIDC cost decrease of \$2.2M, less state funds of \$0.8M required by the Medicaid MNP (the 37% of \$2.2 million which the MNP must now spend in general revenue on these clients), equals a total potential savings for the department of \$1.4M. That \$1.4 million (the "federal match") would then be paid with federal funds. For FY96 and thereafter the state savings will be \$6.5M directly from CIDC, less state funds of \$2.5M required by Medicaid MNP, equals \$4.0M. These savings may vary due to the differences in services covered and reimbursement rates utilized between the Medicaid programs and the CIDC program and because the range of savings is dependent upon the number of clients deemed eligible for coverage by the MNP.

Among current CIDC clients for whom case expenditures exceed \$2,000 per year, as many as 686 clients may be eligible for the MNP. Requiring MNP participation for those clients who are determined to be eligible for the MNP would generate maximum savings to CIDC of \$2.2 million in FY1995 (or \$1.4 million for the State since savings from CIDC are reduced by expenditures in MNP--as published under figures in this issue of the Texas Register) and up to \$6.5 million per year for CIDC in FY1996-1999 (up to \$4.0 million for the State). If MNP participation is required beginning at a case expenditure level of \$5,000 or more per year, up to 342 current CIDC clients may be eligible, with savings to CIDC of up to \$1.7 million in FY95 and \$5.1 million per year in FY96-99. If MNP participation is required beginning at an expenditure level of \$10,000 or more per case per year, 185 current clients may be eligible, with anticipated savings to CIDC of up to \$1.3 million in FY95 and \$4.0 million per year in FY96-99. At \$20,000 per case per year, an estimated 92 clients may be eligible for the MNP, with an anticipated savings of up to \$0.9 million in FY95 and \$2.7 million per year in FY96-99. At an expenditure level of greater than \$50,000

per case per year, required participation of 28 clients in MNP, if eligible, would generate savings in the CIDC program of up to \$0.5 million in FY95 and \$1.4 million per year in FY96-99. Finally, if the proposed amendment is implemented by the board at an expenditure level of more than \$100,000 per case per year, required MNP participation by the 11 current CIDC clients affected, if eligible, would result in savings to CIDC of up to \$0.2 million in FY95 and \$0.6 million per year in FY96-99.

The chart depicts the six levels of potential CIDC and State savings presented by the proposed rule change.

#### FIGURE 1: 25 TAC §38.3, PREAMBLE

Maximum savings to CIDC will be realized when the greatest number of eligible clients are required to participate in the MNP; i.e., as many as 686 clients at an expenditure level of more than \$2,000 per case per year. At each higher expenditure level, fewer clients will be affected; and projected savings to the CIDC program will decrease.

The actual CIDC cost reduction for each client will depend upon the financial status of each client's family as determined monthly by the Medically Needy Program (MNP), the client's financial status as determined by the Supplemental Security Income Program (SSI), and the severity of the client's condition. Maximum cost reductions in the CIDC program can be realized only if all cases predicted to be eligible are deemed eligible for MNP and/or SSI.

There are no anticipated fiscal implications for local governments.

Mr. Lane has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to limit the program expenditures to the level appropriated by the Legislature. There is no effect on small businesses to comply with the rule as proposed. There are no anticipated economic costs to individuals who are required to comply with the proposed sections. There is no anticipated impact on local employment.

Oral and written comments on the proposed amendment may be submitted to Susan C. Penfield, M.D., Director, Children's Health Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7111, Ext. 3104. Public comments will be accepted for 30 days after the publication of the section in the *Texas Register*.

The amendment is proposed under Health and Safety Code, §35.005(a)(1), which requires the Board of Health (board) to define medical, financial, and other criteria for eligibility to receive services; and under Health and Safety Code, §12.001(b), which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The amendment will affect Health and Safety Code, Chapter 35.

**§38.3. Eligibility for Client Services.** In order for an individual to be eligible for the Chronically Ill and Disabled Children's Ser-

vices (CIDC) Program, the individual must meet the medical, financial, and other criteria in this section.

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

(3) Financial criteria. Financial need is established on the basis of household income and assets which are legally available to the family.

(A) Household income.

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

(v) Applicants who appear to be financially eligible for Medicaid and meet all other CIDC Program requirements will be given provisional [temporary] eligibility for 30 [60] days. During that time the applicant must apply for Medicaid, including the Medically Needy Program, and notify the CIDC Program of Medicaid's determination, including the Medically Needy Program determination. Once a Medicaid determination has been received within the time frame specified by the CIDC Program, CIDC eligibility may be made retroactive according to criteria set by CIDC. If the applicant fails to follow through with the Medicaid application, eligibility will automatically expire at the end of the 30 [60] days. Claims for services provided within the 30-day period will not be paid if no Medicaid determination is received in the time period specified by the program. Claims for services provided within the 30-day period will not be paid if no Medicaid determination is received in the time period specified by the program. Under unusual circumstances, the program may grant a 30-day extension of provisional eligibility.

(vi) CIDC may set a level of CIDC expenditure or projected CIDC expenditure for an individual client beyond which the client may be required to apply periodically for the Medically Needy Program and, if eligible, to participate in that program in order to retain CIDC eligibility for further financial benefit from CIDC. CIDC may, based upon criteria set by CIDC, require a client to apply for the supplemental Security Income Program (SSI); and, if eligible, participate in that program in order to retain CIDC eligibility for further financial benefit from CIDC. The level of expenditure or expected expenditure must be approved by the board. The following annual expenditure levels may be used for these requirements:

FIGURE 2: 25 TAC §38.3(3)(A)(vi)

(B) (No change.)

(4)-(9) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 27, 1995.

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Susan K. Steeg  
General Counsel, Office of  
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Texas Department of  
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For further information, please call: (512) 458-7236

## Chapter 143. Medical Radiologic Technologists

• 25 TAC §§143.2, 143.4, 143.9, 143.11, 143.15

The Texas Department of Health (department) proposes amendments §§143.2, 143.4, 143.11 and 143.15; repeal of existing §143.9; and new §143.9 concerning definitions, fees, standards for the approval of curricula and instructors for medical radiologic technology, continuing education, and alternate eligibility.

The definitions will be updated to reflect the changes in the professional education accreditation agencies. The fee increases will assure that collections will cover the cost of administering and enforcing the program. The amendments to the section on continuing education will clarify terminology and allow the department to simplify the reporting of continuing education for technologists who are currently registered with the American Registry of Radiologic Technologists. The amendments to alternate eligibility set out a limit of three examination attempts and will limit the eligibility period to three years. The repeal allows for the adoption of the new section. The new section includes strengthened and clarified requirements for limited medical radiologic technology programs and instructors to assure that limited education programs and instructors will properly and thoroughly train technologists to perform limited medical radiologic procedures competently and safely.

Bernie Underwood, C.P.A., chief of staff services, Health Care Quality and Standards, has determined that for the first five years the sections will be in effect, there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government will be an estimated additional cost of \$19,400 the first year, based upon staff needed to effect the changes and to respond to inquiries regarding the changes. The new administrative procedures are projected to reduce the costs of enforcement and administration of the continuing education functions by \$2,800 per year beginning with the second year the sections are in effect. Finally, fee adjustments are estimated to increase revenues by \$59,020 per year, which will cover the cost of administering the program. The cost has increased during the seven year period since 1988 when the existing fee schedule was adopted. There are no fiscal implications for local government as a result of administering the sections as proposed.

Ms. Underwood also has determined that for each year of the first five years the sections as proposed are in effect, the public benefits anticipated as a result of the sections as proposed will be to assure that the regulation of medical radiologic technologists continues to identify competent technologists which should result in the protection of the public from the harmful effects of excessive radiation and that fees are set in sufficient amounts to cover the cost of regulation and enforcement. There may be economic costs to small and large businesses which employ radiologic technologists if the businesses pay the certification fees for employees. The cost to businesses which operate limited curriculum education programs is expected to be an estimated additional cost of \$500 per year to meet the minimum standards. The anticipated economic cost to individuals who are required to comply with the sections proposed will be the fee amendments as set out in §143.4 relating to fees. No effect on local employment is anticipated.

Comments on the proposal may be submitted to Donna Hardin, Program Director, Medical Radiologic Technologist Certification Program, Professional Licensing and Certification Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6617. The amendments and new section are proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e) which provide the Texas Board of Health with the authority to adopt rules necessary to implement the Act and the Texas Health and Safety Code §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health and the commissioner of health.

The amendments, new section affect the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m.

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

[CAHEA-Committee on Allied Health Education and Accreditation of the American Medical Association.]

[Independent sponsor—An individual or group of individuals that offers or intends to offer a course of study in medical radiologic technology provided however that the individual or group is not employed in the capacity of instructor by a sponsoring institution.]

JRCENMT—The Joint Review Committee on Education in Nuclear Medicine Technology and its successor organizations.

JRCERT—The Joint Review Committee on Education in Radiologic Technology and its successor organizations.

Radiologic procedure—Any procedure or article intended for use in the diagnosis of disease or other medical or dental conditions in humans (including diagnostic

x-rays or nuclear medicine procedures) or the cure, mitigation, treatment, or prevention of disease in humans that achieves its intended purpose through the emission of ionizing radiation.

**§143.4. Fees.**

(a) (No change.)

(b) The schedule of fees [for general or limited certification as a medical radiologic technologist] is as follows:

[(1) application processing fee—\$20];

(1)[(2)] certification fee—\$75 [\$30 (prorated at \$2.50 per month)];

(2)[(3)] biennial certificate renewal fee—\$40 [\$30];

(3)[(4)] one to 90-day late renewal fee—\$25 (plus all unpaid renewal fees when the certificate is renewed within 90 days of expiration);

(4)[(5)] 91-day to one year late renewal fee—\$50 (plus all unpaid renewal fees when the certificate is renewed more than 90 days after expiration but not more than one year after expiration); [and]

(5) [(6)] certificate and/or identification card replacement or duplicate fee—\$20; [\$10.]

(6) general certificate to limited certificate conversion fee—\$20;

[(c) The schedule of fees for a temporary certificate, general or limited, as a medical radiologic technologist is as follows:]

(7)[(1)] combination application processing and temporary certificate fee—\$25; [and]

(8)[(2)] temporary certificate and/or identification card replacement or duplicate fee—\$20; [\$10.]

[(d) The schedule of examination fees is as follows.]

(9)[(1)] The general examination fee—\$25; [is \$25.]

(10) alternate eligibility fee—\$150;

[(2) The limited examinations fees are by category as follows:]

(11)[(A)] dental examination fee—\$25 (which shall be paid directly to Dental Assisting National Board (DANB));

(12)[(B)] chiropractic examination fee—\$25; [and]

(13)[(C)] skull, chest, spine, extremities or podiatric examination fee—\$25 for the first examination and \$20 for each additional examination taken on the same day; [.]

[(3) If American Registry of Radiologic Technologists (ARRT), Nuclear Medicine Technology Certification Board (NMTCB), or American Chiropractic Registry of Radiologic Technologists (ARCRT) has approved a person as exam eligible, that person shall be considered an examinee of that agency or organization and shall not be required to pay an examination fee to the department.]

(14)[(e) The fees for] upgrade of [upgrading] a temporary certificate to a renewable certificate, limited or general—\$42 (prorated at \$3.50 per month); [.] will be \$30 (prorated at \$2.50 per month).]

(15)[(f) The] limited instructor approval fee—\$50; [will be \$15.]

(16)[(g) The] limited curriculum application fee—\$750; [approval fees are as follows:]

[(1) institutional or independent sponsor—\$100 per year per course of study; and]

(17)[(2)] site visit fee— [(if required)—a fee equal to the round trip travel expenses including meals and lodging of the inspection committee members, not to exceed] \$1,000; [.]

(18) annual limited instructor renewal fee—\$50;

(19) annual limited curriculum renewal fee—\$250; and

(20) program director change fee—\$20.

**§143.9. Standards for the Approval of Curricula and Instructors.**

(a) Purpose. The purpose of this section is to establish the minimum standards for approval of curricula, programs, and instructors to train individuals to perform radiologic procedures and to qualify for the general or limited certificates, or both. All curricula and programs shall primarily provide educational and training opportunities for the student(s) rather than primarily provide service to the sponsor or its patients or clients.

(b) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by JRCERT or JRCENMT.

(c) Limited certificate programs. All curricula and programs to train individuals to perform limited radiologic procedures must either:

(1) be accredited by JRCERT to offer a limited curriculum in radiologic technology, the Commission on Dental Accreditation of the American Dental Association or the Chiropractic Council on Education; or

(2) be approved by the department, with the advice of the Program and Instructor Approval Committee of the advisory board, and be offered within the geographic limits of the State of Texas.

(d) Application procedures for limited certificate programs. An application shall be submitted to the department at least 90 days prior to the proposed starting date of the program to be offered. Official application forms are available from the department and must be completed and signed by the program director who must be an instructor approved under this section. The program director shall be an active participant in the application process.

(1) All official application forms must be notarized and shall be accompanied by the application fee in accordance with §143.4 of this title (relating to Fees).

(2) An original and five copies of the entire application and supporting documentation must be submitted in three-ring binders with all pages clearly legible and consecutively numbered. Each application binder must contain a table of contents and must be divided with tabs identified to correspond with the items listed in this section. If any item is inapplicable, a page shall be included behind the tab for that item with a statement explaining the inapplicability.

(3) Narrative materials must be typed, double-spaced, and clearly legible. The narrative shall not exceed 100 pages. Exhibits should be representative samples of documents, course outlines and syllabi rather than the entire master plan.

(4) All signatures on the official forms and supporting documentation must be originals. Photocopied signatures will not be accepted.

(5) A notice will be mailed to the applicant informing the applicant of the completeness or deficiencies within 21 days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the proposed program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice which provisionally approves, approves or proposes denial of the application is 120 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of fees, as set out in §143.6(f)(2) and (3) of this title (relating to Application Requirements and Procedures).

(6) If the application is amended, revised or supplemented the applicant shall submit an original and five copies of a transmittal letter plus an original and five copies of the revision or supplement. If information is to be revised, a complete new page must be submitted with

the changed item or information clearly marked on six copies.

(7) The application shall include:

(A) the full and correct name of the program;

(B) the name of the program director who meets the minimum qualifications as set out in subsection (i) of this section;

(C) the anticipated dates of the program;

(D) the daily hours of the program;

(E) the location, mailing address, phone and facsimile numbers of the program;

(F) a list of instructors approved under this section and the names of any person(s) responsible for the conduct of the program including management and administrative personnel. The list must indicate what courses each instructor will teach or instruct and the area(s) of responsibility for non-instructional staff;

(G) a letter from the Radiation Safety Officer (RSO) which includes an acknowledgement of the appointment as RSO for the program with information concerning the qualifications, the mailing address and daytime phone number of the RSO;

(H) clearly defined and written policies regarding admissions, withdrawals, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, academic credit, graduation requirements, due process and appeal mechanisms which shall be provided to all prospective students prior to enrollment;

(I) a letter from a practitioner who is knowledgeable in radiation safety and protection which includes an acknowledgement of the appointment as the medical advisor. The medical advisor shall work in consultation with the program director in developing program goals and objectives and in implementing and assuring standards for achievement;

(J) an agreement that the program will comply with the TRCR including, but not limited to, providing personnel monitoring devices for each student

upon enrollment and through graduation, withdrawal or dismissal. The program director is responsible for demonstrating compliance to the department;

(K) the correct number of students to be enrolled in each cycle of the program, and if more than one cycle will be offered concurrently, the maximum number of students to be enrolled at any one time.

(L) the type of curriculum according to the limited categories in accordance with §143.7(f) of this title (relating to Types of Certificates and Applicant Eligibility). Each application must be accompanied by an outline of the curriculum and course content which clearly indicates that students must complete a structured curriculum in proper sequence according to subsection (f) of this section; and

(M) a letter or other documentation from the Texas Education Agency, Proprietary Schools Section (or its successor organization), indicating that the proposed program has complied with or been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175.

(e) Admission requirements. The requirements for admission to the program shall include the minimum eligibility requirements for certification in accordance with §143.7(d) (1-3) of this title.

(f) Curricula requirements. Each student must successfully complete a curriculum of not less than 16 weeks and not more than 32 weeks which meets or exceeds the following requirements:

(1) at least 132 clock hours of live, inter-active classroom instruction in the categories of skull, chest, extremities, spine, dental, or chiropractic. Not less than 72 clock hours of classroom instruction is required for the podiatric category. The required clock hours of classroom instruction need not be repeated if two or more categories of curriculum are completed simultaneously or to add a category to a temporary limited or limited certificate provided; however, a person who received a limited certificate on the basis of at least one year of experience performing radiologic procedures before September 1, 1987, must complete the required clock hours of basic theory/classroom instruction in order to add a category to the temporary limited or limited certificate. The following subject areas and minimum number of hours (in parentheses) must be included in all programs and must be directed by an instructor approved under this section. A program which exceeds the required curriculum shall comply with 19 Texas Administrative Code,

Chapter 175. The clock hours and sequencing shall be:

- (A) medical terminology (6);
- (B) medical ethics and law (6);
- (C) radiation protection for the patient, self and others (40);
- (D) radiographic equipment including safety standards, operation and maintenance (15);
- (E) image production and evaluation (35);
- (F) applied human anatomy and radiologic procedures (20); and
- (G) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid (10); and

(2) a clinical practicum for each category of limited curriculum is required. The practicum shall include clinical instruction under the instruction and direction of an instructor approved under this section and clinical experience under the instruction or direction of a practitioner or MRT in accordance with the following chart:

**FIGURE 1: 25 TAC §143.9(f)(2)**

(A) the clinical instruction shall be concurrent with the classroom instruction and shall not begin before the classroom instruction has begun. Classroom instruction and clinical instruction must be completed before the clinical experience begins;

(B) the clinical experience shall commence immediately following the clinical instruction and be completed within 180 days of the starting date of the clinical experience;

(C) for each category, the clinical experience must include a minimum of 15 radiologic procedures correctly and independently performed. Only one student shall receive credit for any one radiologic procedure performed. The 15 skull procedures shall include at least one view of the posterior/anterior skull, anterior/posterior skull, lateral skull, occipital skull, paranasal sinuses and the facial bones. At least two procedures must be of the mandible; and

(D) written documentation certified by the program director shall be provided to each student within 14 days of

completion of the clinical practicum. Students who successfully complete the clinical practicum may be required to submit such documentation to the department if applying for a temporary limited certificate with an expected graduation statement, as set out in §143.6(c)(2)(B)(ii) of this title.

(g) Clinical facilities. Clinical facilities shall provide students with an ample variety and volume of limited radiologic procedures for competency achievement. A list of clinical facilities and letters of agreement from clinical facilities signed by the program director and the chief executive officer(s) of each facility shall be submitted with the application. The agreement for each facility shall include:

(1) a provision limiting the number of students at each facility at any one time to the lesser of the number of supervising MRTs or the number of radiation producing machines;

(2) an acknowledgement that the students shall not perform procedures utilizing contrast media, mammography, computerized tomography, fluoroscopy, nuclear medicine, radiation therapy or other procedures beyond the limited curriculum;

(3) the number and types (name brands, manufacture dates and model numbers) of radiologic equipment to be utilized in the limited curriculum;

(4) a copy of the current registration(s) for the radiologic equipment from the Texas Department of Health, Bureau of Radiation Control;

(5) the number and location(s) of examination rooms available;

(6) the names of the MRTs who will supervise students;

(7) the name of the RSO and a notarized copy of the most recent report from a licensed medical physicist; and

(8) whether or not the clinical facility is accredited by the JCAHO or certified to participate in the federal Medicare program, and if required, is licensed by the appropriate statutory authority. For example, if the facility is an ambulatory surgical center, licensure by the department is required.

(h) General agreements. In making application to the department, the program shall agree in writing to:

(1) provide a ratio of not more than one student to one full-time MRT engaged in the supervision of the students in the clinical environment;

(2) provide a maximum student-teacher ratio for the classroom instruction of 25 to 1;

(3) prohibit any students from being assigned to any situation where they

would be required to apply radiation to a human being while not under the instruction or direction of a practitioner;

(4) prohibit intentional exposure to human beings from any source of radiation except for medically prescribed diagnostic purposes;

(5) collect no fees and not operate or advertise the program until the department has granted provisional approval;

(6) provide appropriate facilities, sufficient volume of procedures, and a variety of diagnostic radiologic procedures. Facilities, agencies, or organizations utilized in the program shall be accredited or certified and licensed by the appropriate agencies. Equipment and radioactive materials utilized in the program shall be used only in facilities registered or licensed by the Texas Department of Health, Bureau of Radiation Control;

(7) keep an accurate record of each student's attendance and participation, evaluation instruments and grades, clinical experience including radiation exposure history, and subjects completed for not less than five years from the last date of the student's attendance. Such records shall be made available to students, graduates, examining boards, regulatory agencies, and other appropriate organizations, if requested;

(8) issue to each student, upon successful completion of the program, a written statement in the form of a diploma or certificate of completion, which shall include the program's name, the student's name, the date of completion, the categories of instruction, and the signatures of the program director and medical advisor;

(9) permit site visits and complaint investigations by departmental representatives to determine compliance and conformance with the provisions of this section;

(10) understand and recognize that the graduates' success rate on the prescribed examination for all categories of limited curriculum will be monitored by the department and used as a criteria for rescinding approval. The department may rescind approval if examination passing rates fall below 75% or in accordance with §143.14 of this title (relating to Violations and Subsequent Actions); and

(11) remit to the department appropriate fees for the application, instructor approval and site visits in accordance with §143.4 of this title.

(i) Program approval.

(1) Provisional approval. After the department determines that the application is complete, provisional approval may be granted. The program shall be notified in writing by the department. The effective



date of the letter of provisional approval shall be the date the letter is issued. Provisional approval shall expire 120 days after the date the letter is issued or upon full approval of the program, whichever occurs first.

(2) Site visit.

(A) One or more site visits shall be necessary before full approval may be granted.

(B) Submission of a site visit fee is required in accordance with §143.4 of this title within 30 days of the initial site visit.

(C) The program shall be notified in writing of the report of the site visit team.

(D) The program director will be given 30 days to comment in writing on the report of the site visit team and to correct factual errors.

(E) The department may extend the provisional approval for up to 120 days if it is determined during the site visit that the program is making sufficient progress towards compliance with this section.

(F) A site visit may be performed by the department at any time to determine the program's status.

(3) Full approval. After a site visit has been made and if the department determines that the program is in compliance with this section and conducts the program in accordance with the application submitted, a letter of full approval shall be issued. The approval shall be for one year and shall be renewed in accordance with subsection (q) of this section.

(4) Denial of program approval.

(A) If the application is incomplete or not submitted as set out in this section or if the site visit findings indicate that the program is not in compliance with this section and/or is not conducted in accordance with the application submitted, the department shall propose denial of the application.

(B) The program shall be notified within 42 days of the status of the application, including the deficiencies noted.

(C) If approval is proposed to be denied, the program director shall be notified in writing of the proposed denial and shall be given an opportunity to request

a formal hearing within ten days of the receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title (relating to Texas Board of Health). If no hearing is requested by the deadline, the right to a hearing is waived and the proposed action shall be taken.

(j) Program director for limited curriculum program. A person who will serve as program director in limited curriculum programs shall:

(1) be approved as a limited instructor under this section;

(2) be responsible for the administration of the program and shall be the primary contact person when communicating with the department;

(3) be responsible for the curriculum, the organization and scheduling of classes and clinical practicum, the administration, periodic review, continued development, and general effectiveness of the program. The program director shall be responsible for evaluating and assuring clinical education effectiveness through a schedule of regular visits to the clinical facilities. These responsibilities shall not be adversely affected by educationally unrelated functions;

(4) be responsible for the maintenance and availability of facilities and records; and

(5) maintain current knowledge of imaging techniques and educational methodology through continuing professional development.

(k) Instructors for limited certificate programs.

(1) All persons who plan to or who provide instruction and training in the limited certificate programs shall:

(A) submit a completed application form prescribed by the department within ten calendar days of employment as a limited curriculum instructor or program director;

(B) submit with the application form the prescribed application fee in accordance with §143.4 of this title; and

(C) document the appropriate instructor qualifications in accordance with subsection (l) of this section.

(2) Guest lecturers who are not employees of the program are not required to apply for instructor approval. Guest lecturers shall be licensed or certified in the medical field in which they are lecturing. A guest lecturer may not lecture for more than

12 clock hours during each cycle of a program.

(3) Within 21 days of receipt of the application in the department, a notice will be mailed to an applicant informing the applicant of the completeness or deficiency of the application. The time of receipt of the last item necessary to complete the application to the date of issuance of a written notice approving or denying the application is 42 days. In the event these time periods are exceeded, the applicant has the right to request reimbursement of the fee paid as set out in §143.6(f)(2) and (3) of this title.

(4) The department shall issue a letter of approval to a person who has complied with this subsection. The approval shall be for one year and shall be renewed in accordance with subsection (r) of this section.

(5) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within 10 days of the applicant's receipt of the written notice from the department. The formal hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title. If no hearing is requested by the deadline, the right to a hearing is waived and the proposed action shall be taken.

(l) Instructor qualifications for limited certificate programs. An instructor shall:

(1) have the equivalent of at least two years of full-time experience teaching during the seven years immediately preceding application for instructor approval. The subjects taught must match the subjects to be taught in the limited certificate curriculum. Teaching experience in a program which has not been approved by the department or by an accrediting agency as described in subsections (b) or (c) of this section will not be considered as qualifying experience. The department may consider and determine as acceptable other appropriate professional experience, teaching experience or education for which college credit was earned by the applicant;

(2) also be:

(A) a currently certified MRT who is also currently credentialed as a radiographer by the ARRT and who has the equivalent of three years of full-time professional experience as a radiographer;

(B) a currently certified MRT who has the equivalent of five years of full-time professional experience as a radiographer; or

(C) a practitioner who is in good standing with all appropriate regula-

tory agencies including, but not limited to, the department, the BCE, the BDE, the BME, or the BPE, the Texas Department of Human Services, the United States Department of Health and Human Services, and who has the equivalent of three years of full time professional experience as a practitioner; and

(3) meet the standards required by the program.

(m) Amendments or changes. Changes in curriculum, program director, instructors, and location of a program shall not be implemented until the department has received notification of the proposed changes. The applicant shall submit an original and five copies of the proposed changes. The department may determine that the proposed changes needs clarification or that the proposed change(s) does not comply with this section.

(n) Additional programs or branches. A new application must be submitted for each location. A program which acquires additional classroom facilities for instructional services within a one mile radius of the main campus and is dependent on the main campus for administration, supervision, fiscal control, or student services is exempt from this subsection.

(o) Change of ownership.

(1) A person who purchases a program or to whom ownership of a program is transferred shall comply with all the requirements for securing an original approval. The new owner shall be responsible for all refund liabilities.

(2) The department shall be notified in writing within 10 days of a change in ownership. The notification shall include a copy of the sales contract(s), bill(s) of sale, deed(s), and all other instruments necessary to transfer ownership.

(p) Revocation of approval for programs and instructors.

(1) Approval of a program or an instructor may be proposed for rescision by the department, if the program or instructor violates the Act or this Chapter or any applicable rule for proprietary schools as set out in 19 Texas Administrative Code, Chapter 175, or this section.

(2) If program approval is proposed to be rescinded, the program director shall be notified in writing of the proposed rescision and shall be given an opportunity to request a formal hearing within 10 days of the receipt of the written notice from the department.

(3) If instructor approval is proposed for rescision, the instructor shall be notified in writing of the proposed rescision and shall be given an opportunity to request a formal hearing within 10 days of the

receipt of the written notice from the department.

(4) The hearing shall be conducted according to the department's formal hearing procedures in Chapter 1 of this title. If no hearing is requested by the deadline, the right to hearing is waived and the proposed action shall be taken.

(q) Renewal of limited curriculum program approval. Program approval shall be renewed annually. A complete application for renewal of program approval shall consist of the following:

(1) the renewal fee specified in §143.4 of this section;

(2) the completed renewal application form; and

(3) any other revisions or evidence of which the program has promised to provide or has been notified in writing to provide to the department to bring the program's application for approval to a current and accurate status.

(r) Renewal of limited instructor approval. Instructor approval shall be renewed annually. A complete application for renewal of instructor approval shall consist of the following:

(1) the renewal fee specified in §143.4 of this section;

(2) the completed renewal application form; and

(3) any other revisions or evidence of which the instructor has promised to provide to the department to bring the instructor's application for approval to a current and accurate status.

(s) Implementation dates. For programs which are already approved at the time of adoption of this section, compliance with subsections (d), (f), (j) and (k) shall be achieved by January 1, 1996. For all other subsections compliance must be achieved upon the effective date of this section.

#### §143.11. Continuing Education Requirements.

(a) (No change.)

(b) General. Continuing education requirements for recertification shall be fulfilled during each biennial renewal period beginning on the first day of the month following each MRT's or LMRT's birth month and ending on the last day of each MRT's or LMRT's birth month two years hence.

(1) (No change.)

(2) An MRT must complete 24 contact hours of continuing education acceptable to the department during each biennial renewal period. [A contact hour shall

be defined as 50 minutes of attendance and participation.]

(3) An LMRT must complete 12 contact hours of continuing education acceptable to the department during each biennial renewal period. [A contact hour shall be defined as 50 minutes of attendance and participation.] The continuing education activities must be general radiation health and safety topics or related [germane] to the categories of limited certificate held.

(4) Each MRT or LMRT shall be notified of the continuing education requirements with the first biennial renewal certificate [notice] sent by the department.

(5)-(7) (No change.)

(8) An MRT who holds a current and active annual credential card issued by the ARRT indicating that the MRT is in good standing and not on probation satisfies the continuing education requirement for renewal provided the hours accepted by the ARRT meet the requirements set out in subsection (c) of this section. The department may review documentation of the continuing education activities in accordance with subsection (f)(1) of this section.

(9) A contact hour shall be defined as 50 minutes of attendance and participation. One-half contact hour shall be defined as 30 minutes of attendance and participation during a 30 minute period.

(10)[(8)] Persons who hold temporary certificates, either general or limited, are not subject to these continuing education requirements.

(c) (No change.)

(d) Types of acceptable continuing education. Continuing education shall be acceptable if the experience or activity is at least 30 consecutive minutes in length and:

(1) (No change.)

(2) is offered for continuing education credit by an institution accredited by the JRCERT, JRCENMT, [Committee on Allied Health Education and Accreditation (CAHEA) or] the Commission on Dental Accreditation of the American Dental Association or the Council on Chiropractic Education (CCE) and is directly or indirectly related to the disciplines of radiologic technology; or

(3) is an educational activity which meets the following criteria:

(A) the content meets the requirements set out in subsection

(c) of this section [applies directly or indirectly to the disciplines of radiologic technology or is specific to the category of

the limited certificate held by the LMRT]; and

(B) (No change.)

(e) Additional acceptable activities. The additional activities for which continuing education credit will be awarded are as follows:

(1) (No change.)

(2) attendance and participation in tumor conferences, in] service education and training offered or sponsored by Joint Commission on Accreditation of Healthcare Organizations (JCAHO)-accredited or Medicare certified hospitals, provided the education/training is properly documented and is related to the profession of radiologic technology;

(3) teaching in a program described in subsection (d) of this section with a limit of [which shall be limited to] one contact hour of credit for each hour of instruction per topic item once during the continuing education period for up to a total of five hours. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic; or

(4) developing and publishing a manuscript of at least 1,000 words in length related to radiologic technology with a limit of [which shall be limited to] five contact hours of credit during a continuing education period. Upon audit by the department the MRT must submit a letter from the publisher indicating acceptance of the manuscript for publication or a copy of the published work. The date of publication will determine the continuing education period for which credit will be granted. Credit may be granted in direct, indirect or non-ionizing radiation based on the topic.

(f) Reporting of continuing education. Each MRT or LMRT is responsible for and shall complete and file with the department at the time of renewal or to be considered for renewal when in an extension, a continuing education report form approved by the department listing the title, date and number of hours for each activity for which credit is claimed. In the alternative, a technologist may request an exemption as set out in subsection (j) of this section or may submit a copy of the technologist's current and active annual ARRT credential card indicating that the technologist is in good standing and not on probation with a signed statement that the technologist completed during the renewal period at least 12 clock hours of continuing education directly related to the performance of a procedure utilizing ionizing radiation for medical purposes.

(1) Following each renewal month or at other times determined by the department, the department will select

a random sample [from the list] of technologists [renewing that month] to verify compliance with the continuing education requirements. The technologists selected in the random sample shall submit within 30 days following notification from the department:

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

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

(g) Determination of contact hour credits. The department shall credit continuing education experiences and activities as follows.

(1) (No change.)

(2) Activities or experiences as set out in subsection (d)(2) and (3) of this section shall be credited on a one-for-one basis with one contact hour credit for each contact hour of attendance and participation. Credit will be accepted only in whole hour or half-hour increments. Minutes in excess of whole or half-hour increments shall not be aggregated for additional credit.

(h) Activities unacceptable as continuing education. The department shall not grant credit for:

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

(5) verifiable independent study activities as set out in subsection (b) (6) of this section which exceed 50% of the clock hour requirements [as set out in subsection (b)(2) and (3) of this section];

(6) learning activities indirectly related to radiologic technology as set out in subsection (c)(3) of this section which exceed 50% of the contact hour requirement [as set out in subsection (c)(3) of this section];

(7) learning activities which are related to non-ionizing forms of radiation as set out in subsection (c)(2) of this section which exceed [in excess of the] 50% of the contact hour requirements [as set out in subsection (b)(2) and (3) of this section];

(8) any activities or experiences which do not meet the criteria set out in subsection (b), (c), (d) or (e) of this section;

(9)-(11) (No change.)

(i) Failure to complete the required continuing education.

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

(4) The person may renew late under §143.10(f) of this title after all the continuing education requirements have been met. A person who renews late is not eligible for a 120-day extension.

(j) -(k) (No change.)

(l) Record keeping. An MRT or LMRT shall be responsible for keeping,

for a period of not less than two years, accurate and complete documentation or other records of continuing education reported to the department. An MRT or LMRT shall submit documentation of attendance and participation in continuing education activities upon written request by the department.

§143.15. Alternate Eligibility Requirements.

(a) This section applies to individuals applying for general certification who have not met the requirements set out in §143.7 of this title (relating to Types of Certificates and Applicant Eligibility) but who have completed education, training and clinical experience which is equivalent to that of a JRCERT- [CAHEA-] accredited educational program in radiography.

(b) An applicant who meets the alternate eligibility requirements is eligible to be examined for the general certificate. An applicant will be allowed three attempts to pass the certification examination. The three attempts must be made within a three year period of time. When either three unsuccessful attempts have been made or three years have expired, the individual is no longer considered eligible under this section. Upon the applicant's successful completion of the examination, the department shall issue an approval letter for the general certificate.

(c) In addition to meeting the minimum eligibility requirements set out in §143.7(c) (1)-(5) of this title (relating to Types of Certificates and Applicant Eligibility), an individual must submit the following items to be considered eligible for the general examination:

(1) a satisfactorily completed application on the forms prescribed by the department;

(2) official transcripts or other certified documents which indicate successful completion of coursework specified in subsection (d)[(c)] of this section which are accompanied by a list which has been typed or legibly printed in English identifying each transcript or document, the sponsor or sponsoring institution for each course, workshop, symposium or seminar, and the inclusive dates of each learning activity;

(3) proof of successful completion, within the eight year period prior to application to the department, of supervised clinical practice experience in radiologic technology as specified in subsection (e)[(d)] of this section; [and]

(4) a complete resume which has been typed or legibly printed in English of all education, training, and work experience in the field of radiologic technology giving specific dates, locations, names and qualifications of supervisors and instructors; and

(5) certified copies of course catalogs and other documentation as may be required by the department to determine an applicant's eligibility under this section. Documents printed in a foreign language must be accompanied by an English translation.

(d)[(c)] The required coursework must consist of instructor-directed learning activities or classroom instruction in the following subject areas for not less than the number of clock-hours specified:

(1) principles of radiation biology and radiation protection-40 hours;

(2) human anatomy and physiology-45 hours;

(3) radiographic procedures and principles of radiographic exposure-60 hours;

(4) radiographic film processing-5 hours; and

(5) introduction to radiography, medical ethics and law, medical terminology, methods of patient care and management essential to radiologic procedures, imaging equipment, evaluation of radiographs, radiation physics, radiographic pathology, introduction to quality in medical imaging, and an introduction to computer literacy as it applies to the medical radiologic technologist-150 hours, total. All subjects must be covered.

(e)[(d)] The required supervised clinical experience in medical radiologic technology shall consist of at least 2,000 clock-hours. Written verification of the experience must be provided on the forms prescribed by the department and must be signed by a physician and a supervising radiologic technologist who is either an ARRT registered technologist or certified by the department as a medical radiologic technologist. The experience must include the following:

(1) a sufficient and well-balanced variety of radiographic examinations and equipment;

(2) integration of the clinical experience with the coursework set out in subsection (d)[(c)] of this section;

(3) laboratory practicum for student demonstration and practice of essential skills, principles and procedures of image quality, image evaluation, quality assurance, and radiation safety and protection; and

(4) periodic evaluation of the student or trainee's knowledge, problem solving skills, and clinical competencies which shall include, but not be limited to, the following areas listed in subparagraphs (A)-(O) of this paragraph. Upon

completion of the 2,000 hours of clinical experience the student or trainee shall be able to:

(A) use oral and written medical communication;

(B) demonstrate knowledge of human structure, function and pathology;

(C) anticipate and provide basic patient care and comfort;

(D) apply principles of body mechanics;

(E) perform basic mathematical functions;

(F) operate radiographic imaging equipment and accessory devices in a safe and appropriate manner;

(G) position patients and radiographic imaging equipment to perform radiographic examination procedures;

(H) modify standard procedures to accommodate for patient condition and other variables of medical significance;

(I) process radiographs;

(J) determine exposure factors to obtain diagnostic quality radiographs with minimum radiation exposure and adapt exposure factors for various patient conditions, equipment, accessories, and contrast media to maintain appropriate radiographic quality;

(K) practice radiation protection for the patient, self, and others;

(L) recognize emergency patient conditions and initiate first aid and basic life-support procedures;

(M) evaluate radiographic images for appropriate positioning and image quality;

(N) evaluate the performance of radiographic equipment, know the safe limits of operation, report malfunctions to the proper authority, and demonstrate knowledge and skills relating to quality assurance; and

(O) exercise independent judgment and discretion in the technical performance of medical radiologic procedures.

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

Issued in Austin, Texas, on February 28, 1995.

TRD-9502611

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: April 7, 1995

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

### Chapter 143. Medical Radiologic Technologists

#### • 25 TAC §143.9

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

The repeal is proposed under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health with the authority to adopt rules necessary to implement the Act and the Texas Health and Safety Code, §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, Texas Department of Health and the commissioner of health.

The repeal affects the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m.

*§143.9. Standards for Approval of Curricula and Instructors.*

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

Issued in Austin, Texas, on February 28, 1995.

TRD-9502612

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: April 7, 1995

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

# TITLE 28. INSURANCE

## Part I. Texas Department of Insurance

### Chapter 1. General Administration

#### Subchapter J. Administrative Penalty Guidelines

##### • 28 TAC §§1.1101-1.1107

The Texas Department of Insurance proposes new §§1.1101-1.1107, concerning the recommendation and assessment of monetary administrative penalties. The new sections are necessary and essential for a fair, orderly, efficient and integral process by which the department considers, recommends and assesses the imposition of monetary penalties for violations of law or regulation for which payment of a penalty is an appropriate alternative to other legal action. The commissioner of insurance has considerable latitude to impose sanctions for violations of the Insurance Code or regulations of the department. Such sanctions include cancellation, revocation or suspension of licenses, permits or certificates of authority; orders to cease and desist from specified activities; restitution to individuals or entities harmed by the illegal acts; and monetary penalties. As permitted by the Insurance Code, more than one of these sanctions may be imposed for a single violation. The commissioner of insurance has determined that the best interests of the insurance consuming public, the insurers operating in the State, and the State of Texas would be served by the promulgation and adoption of penalty guidelines. The penalty guidelines in the proposed sections are intended only as guidelines and not as setting mandatory penalty amounts, so that the commissioner may consider any other matters that justice may require, as provided in the Code. The guidelines are intended to provide direction to the department and to the State Office of Administrative Hearings within the context of recommended and actual administrative penalties. They also are intended to provide notice to licensees and the general public about the types of violations the department believes warrant imposition of substantial penalties, as well as to create and maintain confidence in the integrity of the process by which monetary administrative penalties are recommended and assessed. Proposed new §1.1101 provides a statement of the purpose of the new sections. Proposed new §1.1102 sets out the scope and applicability of the proposed new sections. Proposed new §1.1103 sets out the statutory basis for imposition of penalties, explains the methodology employed in the development of the guidelines and their general application. Proposed new §1.1104 identifies violations by type. Proposed new §1.1105 sets out aggravating factors in consideration of penalty amounts. Proposed new §1.1106 sets out mitigating factors in consideration of penalty amounts. Proposed new §1.1107 sets out other factors to be considered and provides for penalties outside the parameters of the guidelines if the interest of justice so requires.

Mary F. Keller, senior associate commissioner for the legal and compliance division,

has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Ms. Keller also has determined that there will be no effect on local employment or the local economy. To the extent that the sections are statutorily derived, the enforcement and administration of the sections are revenue neutral. Any revenue impact associated with the application of the sections is the direct result of statutory provisions for the imposition of monetary penalties, not the promulgation and adoption of these sections.

Ms. Keller 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 more fair, orderly, efficient and integral regulation of insurance licensees through the use of publicly disseminated, easy-to-understand penalty guidelines utilized in the process of considering, recommending and assessing monetary administrative penalties. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Mary Keller, Senior Associate Commissioner, Legal and Compliance, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104. A request for public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The new sections are proposed under authority derived from provisions of the Insurance Code, Articles 1.10, 1.10E, and 1.03A. Article 1.10, §7(a)(3) provides that the commissioner can direct the holder or possessor of an authorization to do the business of insurance to pay an administrative penalty in accordance with Article 1.10E in lieu of having such authorization revoked or canceled. Article 1.10E provides that upon a determination that a violation has occurred, the department may issue to the commissioner a report stating the facts upon which the determination is based and a recommendation for imposition of a penalty including a recommendation on the amount of such penalty. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the department.

The proposed new sections affect regulation pursuant to the following statutes: Insurance Code, Article 1.10 and the Insurance Code, Article 1.10E.

##### §1.1101. Purpose.

(a) The purpose of this subchapter is to set guidelines for the determination of certain penalties to be assessed against licensees of the Texas Department of Insurance.

(b) The guidelines set out in this subchapter provide direction to both the

Texas Department of Insurance and the State Office of Administrative Hearings for setting recommended and actual monetary administrative penalties.

(c) The guidelines set out in this subchapter provide notice to both the licensees of the Department and the general public about the types of violations the Department believes warrant imposition of penalties.

##### §1.1102. Scope and Applicability.

(a) Generally. The monetary penalty guideline provisions of this subchapter apply to all persons licensed by and/or subject to the regulatory authority of the Texas Department of Insurance, except as provided in subsection (b) of this section.

(b) Exceptions. The tier grouping provisions of §1.1104 of this subchapter and/or other monetary penalty guideline provisions of this subchapter do not apply to any violation of a cease-and-desist order, or to any activity constituting the unauthorized business of insurance, for the reasons specified in paragraphs (1) and (2) of this subsection.

(1) The Insurance Code, Article 1.10A, §4(d)(1) sets the amount of penalty for violation of a cease-and-desist order at \$25,000 per violation.

(2) The Insurance Code, Article 1.14-1, §3(d) sets the penalty for engaging in unauthorized insurance at a maximum of \$10,000 per act of violation and for each day of violation.

(c) Guidelines are not Limiting Factors. The penalty guidelines set forth in this subchapter apply only to monetary penalties, the assessment of which does not preclude the additional imposition of any other penalty permitted under authority of the Insurance Code. The guidelines are intended to provide an integral means by which monetary administrative penalties are considered, recommended and assessed. They are not intended to and do not constrain or limit the commissioner with respect to penalty amounts, so that the commissioner may consider any other matters that justice may require, as provided in the Code.

##### §1.1103. Imposition of Penalty and Amounts.

(a) Statutory Provisions. The Insurance Code, Article 1.10E, §3(a) provides that the monetary amount of an administrative penalty may range to a maximum of \$25,000 per violation. Although the commissioner retains the discretion to assess any penalty within such statutory range, the guidelines set out in this subchapter relating to penalty assessment will be considered by the commissioner in actual assessment of

penalty amounts. The guidelines are founded upon the statutory requirement that the Department consider the elements, factors and characteristics set out in Article 1.10E, §3(b), as reproduced in paragraphs (1)-(7) of this subsection as follows:

- (1) Seriousness of the Violations;
- (2) Economic Harm Caused by the Violations;
- (3) History of Previous Violations;
- (4) Amount Necessary to Deter Future Violations;
- (5) Efforts to Correct the Violations;
- (5) Whether the Violations were Intentional; and
- (7) Other Matters that Justice May Require.

(b) Methodology. The methodology employed in constructing the penalty guidelines set out in this subchapter is set out in paragraphs (1)-(3) of this subsection.

(1) Tiers. The commissioner, using the statutory guidelines of Article 1.10E, primarily the "seriousness of the violations" guideline, has identified certain types of violations that warrant maximum penalties, and others that warrant less than maximum penalties. Those violations are identified by type and grouped in one of three tiers of violations having overlapping ranges for penalty dollar amount, as set out in §1.1104 of this title (relating to Identification of Violations by Type).

(2) Aggravating and Mitigating Factors. The commissioner also has identified certain factors which aggravate or mitigate the seriousness of particular violations and which ought to be considered in setting a penalty amount within a particular range. These factors are derived from the statutory guidelines relating to economic harm caused, history of previous violations, efforts to correct the violations, and whether the violations were intentional. Such factors are set out in detail in §1.1105 of this title (relating to Aggravating Factors in Consideration of Penalty Amount) and §1.1106 of this title (relating to Mitigating Factors in Consideration of Penalty Amount).

(3) Other factors. Within the guideline parameters, the commissioner also reserves the authority granted under law to consider particular characteristics of the licensee in determining the amount necessary to deter future violations. The commissioner also may consider other matters as justice may require in setting penalty amounts within or outside the guideline parameters.

(c) Application. In applying the monetary administrative penalty guidelines

to particular instances, the essential procedure is to identify the violation by nature and character, the tier with which it is associated, any aggravating and/or mitigating factors which should be considered, and any necessary licensee-specific characteristics to be considered in determining an amount necessary to deter future violations, with a subsequent recommendation to the commissioner for official action.

#### §1.1104. Identification of Violations by Type.

(a) Generally. The violations to which this subchapter applies are generally identified by type, and are grouped into three tiers, as set out in subsections (b)-(d) of this section. The tiers are set out in descending order of determined severity, with overlapping ranges for penalty dollar amount. Tier 1 violations are the most serious of the types that are classified for purposes of this subchapter, and warrant the assessment of a per-violation penalty between \$15,000 and \$25,000. Tier 2 violations warrant assessment of a mid-range per-violation penalty between \$5,000 and \$20,000. Tier 3 violations warrant assessment of a low-range per-violation penalty between \$1,000 and \$7,500. Within each tier, violations are identified by type. For some of the violation types, the violations are further defined by illustrations. The inclusion of illustrative examples is for purposes of elucidation only. This section does not, and is not intended to, identify all possible violation types, nor all specific examples of a particular violation type. The absence of any violation type or specific instance of a violation from this section shall in no way be construed to indicate that such type or instance is not subject to the provisions of this subchapter.

(b) Tier 1 Violations. Violations in Tier 1, warranting a per-violation penalty between \$15,000 and \$25,000, are set out in paragraphs (1)-(6) of this subsection.

(1) Unlawful Discrimination. An example of unlawful discrimination is the use of prohibited underwriting guidelines.

(2) Misrepresentation of policy benefits. An example of this type of violation includes misrepresenting the benefits of a health insurance policy.

(3) Violations involving senior citizens. An example of this type of violation includes an activity targeting or primarily affecting senior citizens, such as misrepresentations in the sale of Medicare supplement policies.

(4) Breach of fiduciary duty. An example of this type of violation includes the instance of an HMO officer violating the duty imposed by the Insurance Code, Article 20A.08.

(5) Financial transactions by or with officers, directors and/or certain shareholders which are prohibited by law. An example of this type of violation includes the transacting of activities prohibited under the Insurance Code, Article 1.29.

(6) Representation of an insurance product as something other than insurance. An example of this violation includes a representation in the sale of life insurance that what is being sold or offered is something other than life insurance or that it possesses qualities which it does not have.

(c) Tier 2 Violations. Violations in Tier 2, warranting a per-violation penalty between \$5,000 and \$20,000, are set out in paragraphs (1)-(12) of this subsection.

(1) General misrepresentations. Examples of this type of violation include the failure to make required disclosures and the misrepresentation of a financing agreement.

(2) An unfair claims settlement practice. Examples of this type of violation include violations identified in the Insurance Code, Article 21.21-2, or in 28 TAC §21.203 of this title (relating to Prohibited Practices).

(3) Failure to timely refund money owed to an insured as required by the Insurance Code. An example of this type of violation includes the failure by a premium finance company to refund money to an insured as required by the Insurance Code, Article 24.17(g).

(4) Failure to obtain prior department approval in writing on any matter for which approval would have not been granted had it been sought. An example of this type of violation includes the failure to submit a policy form or advertising piece prior to use when approval is required and would not have been granted had the item been submitted for approval.

(5) Removal of books and records without prior written approval.

(6) Failure to obtain required prior written approval for activities requiring such approval under the Insurance Code, Article 21.49-1, the Insurance Holding Company System Regulatory Act. An example of this type of violation includes the payment of a dividend without prior approval.

(7) Late filing of a tax return.

(8) Failure to timely provide or upon request to provide information the department requires in order to complete reporting required of it. Examples of this type of violation include the failure to file unit statistical data reports required by Article 5.58; the failure to file premium and loss reports under Article 5.01; or the failure to

file quarterly liability insurance closed claim reports required by Article 1.24B.

(9) Failure to report. Examples of this type of violation include the failure to report changes of address or additional business addresses, or with respect to filing requirements that are ongoing, the failure to make a required filing before the next filing of that type is due.

(10) Second or subsequent failure to timely respond in writing to a department inquiry.

(11) Second or subsequent occurrence of late filing. Examples of this type of violation include the second or subsequent occurrence of a late filing of an annual statement by a licensee required to file such statements, an annual operations report by a licensee required to file such reports, or any other time-sensitive report.

(12) Any pattern of activity beyond a first or second violation indicating continued, ongoing or repeated commission of any Tier 3 Violations set out in subsection (d) of this section.

(d) Tier 3 Violations. Violations in Tier 3, warranting a per-violation penalty between \$1,000 and \$7,500, are set out in paragraphs (1)-(10) of this subsection.

(1) Failure to obtain prior department approval in writing on any matter for which approval would have been granted had it been sought. An example of this type of violation includes the failure to submit a policy form or advertising piece prior to use when approval is required and would have been granted had the item been submitted for approval.

(2) First failure to respond in writing to a department inquiry. An example of this type of violation includes a first failure to respond to a request for information pursuant to the Insurance Code, Article 1.24.

(3) Failure to provide required notice to an insured or beneficiary. An example of this type of violation includes the failure to provide required notice of judgment, or of termination of policies or agency contracts.

(4) First occurrence of late filing. Examples of this type of violation include the first occurrence of a late filing of an annual statement or other time-sensitive report.

(5) Unlawful payments. Examples of this type of violation include the payment of rebates by premium finance companies or unlawful commission splitting by agents.

(6) Failure to maintain an office. An example of this type of violation includes the failure of an agent to maintain a

physical address in violation of Article 21.14.

(7) Failure of a carrier to use only appointed agents for placement of insurance business.

(8) Failure to provide statutorily or regulatorily required departmental notice prior to taking certain actions. An example of this type of violation includes the failure to provide notice to the department prior to redemption of a statutory deposit required by the Insurance Code.

(9) Failure or refusal to pay examination fees.

(10) Failure of any licensee to comply with all license-related requirements applicable to such licensee. Examples of this type of violation include the failure by a premium finance company to obtain an agreement from a county mutual company before funding, as provided in the Insurance Code, Article 24.22; the taking of incomplete agreements as addressed in Article 24.19; the failure of a third-party-administrator to comply with requirements for written agreements in Article 21.07-6; the failure of an agent or adjuster to complete continuing education requirements of the Insurance Code, Articles 21.07-1, 21.07-3, 21.07-4 or 21.14.

*§1.1105. Aggravating Factors in Consideration of Penalty Amount.* The factors set out in paragraphs (1)-(6) of this section will be considered in connection with assessment of monetary administrative penalties for violations identified in this subchapter.

(1) The violation continues after the Department has provided notice of the violation.

(2) The licensee or other violating entity has a history or an established pattern of committing the identified violation or other violations.

(3) In circumstances indicating restitution, less than full restitution is made.

(4) The violation was intentional or committed with reckless disregard for the interests of consumers.

(5) A large number of consumers have been adversely affected by the violation.

(6) If the violation is late reporting, the report or other required filing is more than 30 calendar days late.

*§1.1106. Mitigating Factors in Consideration of Penalty Amount.* The factors set out in paragraphs (1)-(8) of this section will be considered in connection with assessment of monetary administrative penalties for violations identified in this subchapter.

(1) The licensee or other violating entity brings its violation to the attention of the Department.

(2) The licensee or other violating entity ceases the illegal activity voluntarily before notice by the Department.

(3) The licensee or other violating entity ceases the illegal activity voluntarily immediately upon notice by the Department.

(4) In instances indicating restitution, full restitution has been made.

(5) The violation resulted in no consumer harm.

(6) The violation resulted in no regulatory harm.

(7) The violation is unintentional and the licensee or other violating entity has instituted policies to prevent the violation from recurring.

(8) The licensee has no history or established pattern of violations.

*§1.1107. Other Factors in the Penalty Assessment Process.*

(a) Amount necessary to deter future violations. The commissioner, in assessing a penalty in an amount necessary to deter the licensee from committing future violations, may consider the licensee's assets and the amount of Texas net written premium, in addition to the factors identified in §1.1105 of this title (relating to Aggravating Factors in Consideration of Penalty Amount) and §1.1106 of this title (relating to Mitigating Factors in Consideration of Penalty Amount).

(b) Other factors as justice may require. The commissioner also may consider any other factors necessary to impose a just penalty and may assess a penalty outside the parameters set in these guidelines, if justice so requires.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502622

Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-6327

**TITLE 37. PUBLIC SAFETY AND CORRECTIONS**

**Part IX. Commission on Jail Standards**

**Chapter 253. Definitions**

**• 37 TAC §253.1**

The Commission on Jail Standards proposes an amendment to §253.1, concerning Definitions to add a definition for Sheriff/Operator and to clarify the definition of guard station.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide clear definitions of terms used in minimum jail standards. 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 Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

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

**Guard Station**—A designated space from which a corrections officer [guard] performs his/her functions.

**Sheriff/Operator**—County sheriff, jail administrator, or a person authorized to act with their authority.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502500 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

**Chapter 259. New Construction Rules**

The Commission on Jail Standards proposes amendment to §§259.129, 259.324, and 259.424, concerning New Construction Rules to change the term medical services plan to make it consistent with other sections of standards.

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

Mr. Crump 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 provide consistent language in standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**New Jail Design, Construction and Furnishing Requirements**

**• 37 TAC §259.129**

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§259.129. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502492 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

**New Medium-Risk Design, Construction and Furnishing Requirements**

**• 37 TAC §259.324**

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§259.324. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502493 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

**New Low-Risk Design, Construction and Furnishing Requirements**

**• 37 TAC §259.424**

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§259.424. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

This agency hereby certifies that the proposal has been reviewed by legal counsel and



found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502494

Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

## Temporary Housing

- 37 TAC §§259.502, 259.518, 259.602, 259.618

The Commission on Jail Standards proposes amendments to §§259.502, 259.518, 259.602, and 259.618, concerning New Construction Rules to change the terms medical to health and separation to segregation.

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

Mr. Crump 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 provide clear, consistent terminology in standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendments are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute affected by these rules is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§259.502. Classification.* Inmates housed in tents shall be classified as low-risk as required by Chapter 271 of this title (relating to Classification and Segregation [Separation] of Inmates) or assigned to the specific correctional programs.

*§259.518. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

*§259.602. Classification and Segregation [Separation].* Facilities shall provide separate cells and day rooms of capacities for inmates to provide adequate segregation [separation] of different classifications of male and female inmates as required by Chapter 271 of this title (relating to Classification and Segregation [Separation] of Inmates). Temporary buildings may house high, medium and low-risk inmates.

*§259.618. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502502

Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

## Chapter 260. County Correctional Centers

### CCC Design, Construction and Furnishing Requirements

- 37 TAC §260.125

The Commission on Jail Standards proposes an amendment to §260.125, concerning County Correctional Centers to change the term medical services plan to make it consistent with other sections of standards.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide consistent language in standards. 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 Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and

procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§260.125. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502503

Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

## Chapter 261. Existing Construction Rules

The Commission on Jail Standards proposes amendments to §261.129 and §261.323, concerning Existing Construction Rules to change the term medical services plan to make it consistent with other sections of standards.

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

Mr. Crump 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 provide consistent language in standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

### Existing Jail Design, Construction and Furnishing Requirements

- 37 TAC §261.129

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules, and procedures establishing minimum standards

for the construction, equipment, maintenance and operation of county jails.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§261.129. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502491 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

Existing Low-Risk Design,  
Construction and Furnishing  
Requirements

• 37 TAC §261.323

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules, and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§261.323. Medical Space and Equipment.* Adequate space for first aid equipment shall be provided. Space and equipment for medical examination, treatment, and convalescent care shall be provided or provisions contained in the health [medical] services plan. Adequate, secure storage for medical supplies and drugs shall be provided.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502514 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

Chapter 265. Admission

• 37 TAC §265.2, §265.3

The Commission on Jail Standards proposes amendments to §265.2 and §265.3, concerning Admission to change the term jail to facility.

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

Mr. Crump 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 provide consistent language in standards. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendments are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statute affected by these rules is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§265.2. Search.*

(a) (No change.)

(b) When facility [jail] personnel reasonably believe it to be necessary, inmates should undergo a thorough strip search for weapons and contraband which may pose a threat to the security or safety of the facility. The strip search shall be conducted by corrections officer(s) of the same gender in a reasonable and dignified manner and place.

*§265.3. Observation During Holding.* Inmates confined in a holding cell or detoxification cell shall be observed by facility [jail] personnel at intervals not to exceed 30 minutes.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502504 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

Chapter 269. Records and  
Procedures

• 37 TAC §269.3

The Commission on Jail Standards proposes new §269.3, concerning Records and Procedures to add a weapons/ammunition procedure for county jail facilities.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure weapons are not introduced into the security perimeter of facilities. 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 Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new section is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§269.3. Weapons/Ammunition Procedure.* Weapons shall not be permitted beyond the security perimeter. Ammunition should not be permitted beyond the security perimeter. Each facility shall have and implement a written policy available for commission review regarding ammunition.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502505 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

**Chapter 277. Clothing,  
Personal Hygiene, and  
Bedding**

• 37 TAC §277.1, §277.8

The Commission on Jail Standards proposes amendments to §277.1 and §277.8, concerning Clothing, Personal Hygiene, and Bedding to revise the time at which inmates are issued facility clothing following admission into county jails.

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

Mr. Crump 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 establish a reasonable time to issue clothing to newly admitted inmates in jails. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendments are proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statute affected by these rules is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§277.1. Inmate Clothing.* Standard facility clothing shall be issued to all inmates held over 72 [48] hours.

*§277.8. Bedding and Linens.* A standard issue of bedding and linens to each inmate to be detained overnight shall include, but shall not be limited to, the following clean, safe, and serviceable items:

- (1) one [clean, safe, serviceable] mattress;
- (2) one [clean] sheet or [clean] mattress cover;
- (3) one [clean] towel;
- (4) one [clean] blanket, or more depending upon climatic conditions.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502495  
Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

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**Chapter 281. Food Service**

• 37 TAC §281.3

The Commission on Jail Standards proposes an amendment to §281.3, concerning Food Service to stipulate who can approve written menus.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide approved menus in compliance with nationally recognized allowances for good nutrition. 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 Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§281.3. Balanced Diet.* Except in emergency situations, meals shall be served in accordance with a written menu approved and reviewed annually for compliance with nationally recognized allowances for basic nutrition by a qualified individual [dietitian].

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502496  
Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

**Chapter 291. Services and  
Activities**

• 37 TAC §291.4

The Commission on Jail Standards proposes an amendment to §291.4, concerning Services and Activities to establish equal amount of visitation time for pretrial detainees and convicted persons.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to permit an equal amount of inmate access to the public during visitation. 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 Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

*§291.4. Inmate Visitation Plan.* Each facility shall have and implement a written plan, approved by the commission, governing inmate visitation. The plan shall:

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

[(3) provide that pretrial detainees be permitted more generous visitation than convicted persons;]

[(3)][(4)] provide for reasonable attorney/client visitation;

[(4)][(5)] provide procedures for the selection of visitors, including inmates' minor children. Accompaniment by parent, guardian, or legal counsel may be required;

[(5)][(6)] define procedures where contact visitation is permitted;

[(6)][(7)] contain procedures for emergency visitation.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502498  
Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

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Chapter 297. Compliance and Enforcement

• 37 TAC §297.4

The Commission on Jail Standards proposes an amendment to §297.4, concerning Compliance and Enforcement to delete the requirement that the signature of the executive director and inspector be on certificates of compliance.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide a more efficient procedure of providing certificates of compliance. 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 Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to revise, amend, or change rules and procedures if necessary.

The statute affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

**§297.4. Certification.** Upon completion of the regular or special commission inspections, those facilities [jails] which meet minimum jail standards shall be issued a certificate of compliance [signed by the executive director and inspector]. The certificate of compliance shall be deemed in force until the next regular or special commission inspection of the facility.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502499 Jack E. Crump  
Executive Director  
Commission on Jail  
Standards

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-5505

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 7. Bridge Division

Drainage Facilities

• 43 TAC §7.31

*(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of 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 §7.31, concerning drainage channels. This section is no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 15, Transportation Planning and Programming, as new §§15.50-15.54 concerning federal, state and local participation, in an amended form.

Robert L. Wilson, Director of the Design Division, has determined that for the first five years the repeal is in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Wilson also has determined that for each year of the first five years the repeal is in effect, the public benefits anticipated as a result of enforcing the repeal will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. 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.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 1:30 p.m. on March 22, 1995, in Room 101, Building 200, 200 East Riverside Drive, 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 person 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 where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any

suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue 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 of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design 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 April 7, 1995.

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

§7.31. Drainage Channels.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502563 Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-8630

◆ ◆ ◆  
Chapter 11. Design

The Texas Department of Transportation proposes the repeal of §11.41, concerning responsibilities of local governmental units in construction and §11.71, concerning control of Access on freeway mainlanes. These sections are no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 15, Transportation Planning and Programming, as new §§15.50-15.54 concerning federal, state and local participation, in an amended form.

Robert L. Wilson, Director of the Design Division, has determined that for the first five years the repeals are in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Wilson has certified that there will be no significant impact on local economies or over-

all employment as a result of enforcing or administering the repeals.

Mr. Wilson also has determined that for each year of the first five years the repeals are in effect, the public benefits anticipated as a result of enforcing the repeals will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 1:30 p.m. on March 22, 1995, in Room 101, Building 200, 200 East Riverside Drive, 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 person 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 where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue 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 of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design 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 April 7, 1995.

### Local Governmental Units

#### • 43 TAC §11.41

*(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 repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

#### *§11.41. Responsibilities of Local Governmental Units In Construction.*

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502564 Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-8630

### Freeway Mainlanes

#### • 43 TAC §11.71

*(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 repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

#### *§11.71. Control of Access on Freeway Mainlanes.*

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502565 Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-8630

## Chapter 15. Transportation Planning and Programming

### Transportation Planning

#### • 43 TAC §15.3

*(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 §15.3, concerning federal aid urban system. This section is no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 15, Transportation Planning and Programming, as new §§15.50-15.54, concerning federal, state and local participation, in an amended form.

Robert L. Wilson, Director of the Design Division, has determined that for the first five years the repeal is in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Wilson has also determined that for each year of the first five years the repeal is in effect, the public benefits anticipated as a result of enforcing the repeal will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. 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.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 1:30 p.m. on March 22, 1995, in Room 101, Building 200, 200 East Riverside Drive, 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 person 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 where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue 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 of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design 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 April 7, 1995.

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

### §15.3. Federal Aid Urban System.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502566

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call (512) 463-8630

## Federal, State, and Local Participation

### • 43 TAC §§15.50-15.54, 15.60

The Texas Department of Transportation proposes new §§15.50-15.54, concerning federal, state and local participation and §15.60, concerning state park roads. The new sections replace the existing §7.31, concerning drainage channels, §11.41, concerning responsibilities of local governmental units in construction, §11.71, concerning control of Access on freeway mainlanes, §15.3, concerning federal aid urban system, and §§19.1, 19.11, 19.21, and 19.31, concerning secondary roads which are simultaneously being proposed for repeal. These new sections are necessary to update the applicable rules to carry out the provisions of state and federal laws and regulations pertaining to funding of construction projects, to define and establish participation ratios of governmental units in the development of construction projects to be used as the basis of agreement between the department and the local unit of government to increase the department's assistance to the local unit of government in the development of certain projects by increasing

state participation in procurement of right of way on existing farm to market roads to expedite the accomplishment of needed safety improvements and make consistent participation with that of other state road systems for right of way; reconstruction and restoration of urban streets; and engineering and construction costs associated with upgrading bridge structures off the state highway system for needed safety improvements and to upgrade to current design standards.

New §15.50 describes federal, state and local financing arrangements to provide for the construction, maintenance, and operation of the transportation system. New §15.51 furnishes definitions. New §15.52 defines the responsibilities of local governments for preliminary engineering and construction engineering expenses associated with the development of construction projects; establishes the amount of the state, local and federal participation in preliminary and construction engineering expenses; and specifies the requirement of an agreement between the department and the local unit of government when the local unit of government is responsible for providing funds for a proposed project.

New §15.53 describes the conditions under which state, federal, and local financing of transportation project construction costs are to be shared in a construction project and establishes the amount of the state, local and federal participation in construction expenses; specifies that the local unit of government shall be responsible for the total cost of non-federal-aid eligible construction in federal-aid contracts off the state highway system; specifies the requirement of an agreement with the local unit of government outlining construction responsibilities; establishes the criteria for the department to provide for sidewalk construction on the designated state highway system, establishes the criteria for construction of frontage roads and the construction costs responsibilities; and describes the responsibilities of the department and local unit of government in the construction of a drainage system within the state highway right-of-way and their respective costs responsibilities.

New §15.54 specifies the federal, state and local cost participation ratios for the various types of projects on the state highway system in the form of a chart which includes increased state participation with local units of government in right of way procurement for certain projects on the existing farm to market road system with the state bearing 90% of costs, original state participation with local units of government for certain reconstruction and restoration projects on urban streets with the state bearing 100% of the project engineering and construction cost, and enhanced state participation with local units of government in the upgrading of bridge structures off the state highway system with 10% state funds or one-half of the local units of governments current participation in engineering and construction costs.

New §15.60 defines park roads on the state designated system and establishes criteria for development of new park roads on the state designated system; and describes the responsibilities of the Department for design,

construction and maintenance of public roads within a state park.

Robert L. Wilson, director of the design division, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect is an estimated additional cost of \$24 million dollars per year for procurement of right of way, reconstruction and restoration of urban streets, and upgrading bridge structures. The effect on local government for the first five-year period the sections will be in effect is an estimated reduction in cost of 4.3 million per year for procurement of right of way and upgrading bridge structures.

Mr. Wilson 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.

Mr. Wilson also has determined that for each year of the first five years the sections are in effect, the public benefits anticipated as a result of enforcing the new sections will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the new sections as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. The public hearing will be held at 1:30 p.m. on March 22, 1995, in Room 101, Building 200, 200 East Riverside Drive, 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 person 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 where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue 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 of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design 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 April 7, 1995.

The new sections are proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The new sections do not affect other statutes, articles, or codes.

*§15.50. Purpose.* This undesignated head describes federal, state, and local responsibilities for cost participation in the construction of the state highway system.

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

**Added capacity**—An increase in the carrying capacity of a segment of the state highway system, including the addition of new travel lanes (other than high occupancy vehicle lanes or auxiliary lanes).

**Congestion Mitigation and Air Quality Improvement Program (CMAQ)**—A federal program, established and administered in accordance with 23 United States Code §104 and federal regulations, which provides federal funds for a project in a non-attainment area that contributes to the attainment of a natural ambient air quality standard or will have certified benefits to air quality.

**Construction engineering cost/expenses**—Engineering or project administration costs and expenses identified with a construction project after contract letting.

**Construction cost**—Costs associated with the work required to construct a project in accordance with approved plans and specifications, including the furnishing of all labor, materials, equipment, and other incidentals necessary for the successful completion of the project, and the carrying out of all duties and obligations imposed by the plans and specifications.

**Farm and Ranch to Market (FM/RM) System Route**—A system of roads designated by the commission under Texas Civil Statutes, Articles 6665, 6670, and 6673c.

**Federal funds**—Monies provided from federal agencies as match financing for expenditure on state and local transportation projects developed and approved in

accordance with federal law and regulations.

**Interstate Maintenance Program (IM)**—A federal program which provides federal funding to reconstruct, rehabilitate, or maintain a portion of the Interstate Highway System; criteria for eligible projects in this program are set forth in federal law and regulations.

**Local funds**—Monies provided by local units of government to participate in costs associated with project development.

**Local unit of government**—Any county, city, or other political subdivision of this state that has the authority to finance the construction, maintenance, or operation of a segment of the state highway system.

**Matching funds/participation ratio**—Those portions of funds required or chargeable for the contribution toward a project's cost by a government entity.

**Metropolitan planning organization (MPO)**—An organization designated in certain urbanized areas to carry out the transportation planning process as required by 23 United States Code §134.

**National Highway System (NHS)**—A part of the National Intermodal Transportation System consisting of the National System of Interstate and Defense Highways and those principal arterial roads which are essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings as designated by the United States Congress by criteria set forth in federal law.

**National System of Interstate and Defense Highways (Interstate Highway System)**—A system of roads and bridges that constitute a part of the National Highway System designated by the United States Congress as essential for interstate and regional commerce and travel, national defense, intermodal transfer facilities, and international commerce and border crossings.

**New construction**

(I) Activities authorized for the completion of the originally designated Interstate Highway System.

**New route**—Activities related to an existing roadway or new location not previously designated on the state highway system.

**Off-State Highway System Bridge Program**—A federally mandated program by which federal funds are made available on a discretionary basis to replace or rehabilitate bridges under the jurisdiction of a local government and not on the state highway system, administered in accordance with criteria set forth under federal law and regulations and state law, safety standards, design standards, and construction standards.

**Off-state highway system routes**—Those routes not designated on the

state highway system which are the responsibility of local units of government.

**Off-State Highway System Safety Program**—A federally mandated program by which federal funds are made available to local units of government for safety improvements in accordance with criteria set forth under federal law and regulations.

**On-State Highway System Bridge Program**—A federally mandated program by which federal funds are made available on a discretionary basis to replace or rehabilitate the state's bridges in accordance with criteria set forth under federal law and regulations.

**On-State Highway System Safety Program**—A federally mandated program by which federal funds are made available to states for safety improvements in accordance with criteria set forth under federal law and regulations.

**Principal Arterial Street System (PASS) Program**—A commission approved program to improve urban arterial streets designated on this system to relieve major traffic corridors and enhance total system operations in urban areas over 200,000 in population.

**Preliminary engineering cost/expenses**—Those engineering or project administration costs or expenses identified prior to the construction of a project.

**Reconstruction**—The primary activities involving the rebuilding of a segment of the state highway system along existing routes as well as those associated with the acquisition of rights of way where necessary to upgrade to current standards.

**Rehabilitation**—The primary activities to restore, or re-establish in good condition, a segment of the state highway system (not including the construction of additional travel lanes, other than high occupancy vehicle lanes or auxiliary lanes).

**Right of way costs**—Costs attributable to the purchase of land or an interest in land (including access rights to abutting properties and usually including eligible utility relocation/adjustment costs).

**Right of way procurement**—That process identified with the acquisition of real property, access rights, mineral rights, and easements permitted in accordance with state law for the construction of approved projects.

**State funds**—Those monies received by the state, other than federal funds, to be expended for the improvement of the state highway system.

**State highway system**—The system of highways in the state included in a comprehensive plan prepared by the department's executive director under the direction and with the approval of the commission in accordance with Texas Civil Statutes, Article 6674b.

**State highway system routes**—Those state numbered routes designated as a part of the state highway system.

State Park Road Program—A state program by which state funds are utilized to construct roads to public parks administered by the Texas Parks and Wildlife Department or other qualified state agencies.

Surface Transportation Program (STP)—A federal-aid program where states may obligate federal match funds to projects related to certain public roads, in accordance with the criteria established in federal law and federal regulations.

Transportation Enhancement Program—A federally mandated program identified in §11.200 et seq of this title (relating to Statewide Transportation Enhancement Program), providing federal funding for activities that enhance the intermodal transportation systems and facilities within the state for the enjoyment of the users of those systems.

Transportation Improvement Program (TIP)—A transportation program cooperatively developed with metropolitan planning organizations which includes improvement projects proposed for federal funding in accordance with the criteria set forth in federal law and federal regulations.

Urban Road System—A commission designated system of routes that consist of the continuation of Farm to Market Roads in urban areas over 200,000 in population.

United States (US) System Route—Those routes designated on the state highway system as U.S. highways subject to eligibility for federal-aid funds as set forth in federal law and regulations.

Urban Streets Program—A state program of projects on certain urban streets developed and constructed in accordance with state law, and safety, design, and construction standards.

Urbanized area—As defined in 23 United States Code §101, an area with a population of 50,000 or more designated by the United States Bureau of Census, within boundaries to be fixed by responsible state and local officials in cooperation with each other, and subject to the approval of the United States Secretary of Transportation.

Utility relocation/adjustment costs—Costs of work related to the adjustment, relocation, and removal of utility facilities on a segment of the state highway system accomplished in accordance with §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and §§21.31-21.55 of this title (relating to Utility Accommodation).

#### *§15.52. Preliminary and Construction Engineering Expenses.*

(a) Purpose. This section defines the responsibility of local governments for preliminary engineering and construction engineering expenses associated with the development of projects for the construction and reconstruction of a segment of the state highway system.

(b) Funding. Preliminary and construction engineering expenses may be funded by the commission at the entire expense of the state, with local participation, and/or with federal participation, as shown in Appendix A of §15.54 of this title (relating to Construction Cost Participation), and in accordance with criteria set forth by federal law and regulations.

(c) Agreement. If the local unit of government is responsible for providing funds for a proposed project, an agreement between the department and the local unit of government shall be executed with the following provisions.

(1) The local unit of government, if owner of the site, will permit the department or its contracted consultant and the department's contractor access to perform all engineering, surveying, and construction activities required to execute the work.

(2) The local unit of government will provide all necessary right of way and utility adjustments, whether publicly or privately owned, in accordance with Appendix A of §15.54 of this title (relating to Construction Cost Participation). Existing utilities will be adjusted with respect to location and type of installation in accordance with the requirements of the department as specified in §21.21 of this title (relating to State Participation in Relocation, Adjustment, and/or Removal) and §§21.31-21.55 of this title (relating to Utility Accommodation).

(3) The local unit of government will pay its part of the actual construction cost of the project, including preliminary engineering and construction engineering as shown in Appendix A of §15.54 of this title (relating to Construction Cost Participation), plus that portion of the cost of the project not reimbursable by the Federal Highway Administration. This amount shall include compensation to the state for work performed under this agreement based upon direct labor, equipment, material, and other direct expenditures, and indirect costs at the rates in effect for the fiscal years during which the work is accomplished. The indirect cost rate will be based on the department's indirect cost recovery plan.

(4) Following execution of the agreement, the local unit of government will pay its obligatory portion of the estimated cost of preliminary engineering for the construction project plus the estimated indirect costs to the department for performance of that service. Prior to the department's scheduled date for the contract letting, the local unit of government will remit to the department an amount equal to the remainder of the local unit of government's obligatory participation in the project including indirect costs on that remaining participation. If, at any time dur-

ing plan development or construction of the project, it is found that the amount received is insufficient to pay the local unit of government's obligation, then the department shall immediately notify the local unit of government which shall promptly transmit the required amount to the department. After the project is completed, the actual cost will be determined by the department, based on its standard accounting procedures, and any excess funds paid by the local unit of government shall be returned.

(5) If, after execution of the agreement, the local unit of government elects to terminate the project, the local unit of government shall be responsible for those expenses incurred by the state which are attributable to the project.

(6) As part of preliminary and construction engineering, the department will prepare or provide for the construction plans, advertise for bids, and let the construction contract, or otherwise provide for the construction, and will supervise the construction as required by the plans. It is mutually agreed that as the project is developed to the construction stage, both parties shall approve the plans by signature.

(7) In the event the terms of the agreement are in conflict with the provisions of any other existing agreements between the local unit of government and the department, the latest agreement shall take precedence over the other agreements.

(8) Upon completion of the project, maintenance of the facility shall be as outlined in an approved maintenance agreement.

(9) The local unit of government must acknowledge that while not an agent, servant, nor employee of the state, it is responsible for its own acts and deeds and for those of its agents or employees during the performance of the work authorized in the contract.

#### *§15.53. Construction.*

(a) Purpose. This section describes the conditions under which state, federal, and local financing of transportation project construction costs are to be shared in implementing improvements to the state highway system. As described in Appendix A of §15.54 of this title (relating to Construction Cost Participation), construction costs may be funded by the commission at the entire expense of the state, with local participation, and/or with federal participation, and in accordance with criteria set forth by federal law and regulations.

(b) Funding. The local unit of government shall be responsible for providing matching funds as identified in Appendix A of §15.54 of this title (relating to Construction Cost Participation), and for the total



cost of all non federal-aid construction included in federal-aid contracts off the state highway system.

(c) Agreement. The department will enter into an agreement with the local unit of government outlining construction responsibilities when the local unit of government is responsible for a portion of the funding.

(d) Local obligations. The local unit of government usually discharges its obligations through inclusion of such work in the state's contract with participation in costs established by agreement.

(e) Sidewalks. The department will also provide for sidewalk construction on the designated state highway system routes:

(1) when replacing existing sidewalk;

(2) where highway construction severs an existing sidewalk system, the state will make connections within highway right of way to restore sidewalk system continuity;

(3) all sidewalk construction will be accomplished accordance with the requirements of the Americans with Disabilities Act; and

(4) where pedestrian traffic is causing or is expected to cause a safety conflict, sidewalks may be provided by the state.

(f) Control of access on freeway mainlanes.

(1) For facilities with full control of access, such as interstate highways or freeways developed by commission designation pursuant to Texas Civil Statutes, Articles 6674w et seq, access to the main travel lanes is fully controlled through designation, purchase of access rights, or provision of frontage roads.

(2) The department includes frontage roads in the planning stage of highways with full access control when:

(A) it is necessary to unlandlock the remainder of a parcel of land which has a value equal to or nearly equal to the cost of the frontage road;

(B) the appraised damages, resulting from the absence of frontage roads at the time of planning, would exceed the cost of the frontage roads; or

(C) it is necessary to restore circulation of local traffic due to local roads or streets being severed or seriously impaired by the construction of the controlled access highway, and an economic analysis shows the benefits derived more than offset

the costs of constructing and maintaining the frontage roads.

(3) In those instances where requests for additional frontage roads are received during or subsequent to the planning stage or after the freeway has been constructed, they may be considered and placed in order of priority of highway needs.

(A) When right of way and utility adjustment costs are shared with a local government on a standard participation basis applicable to the highway designation, the department may assume 100% responsibility for additional frontage road construction:

(i) on relatively short sections of frontage roads where through lane traffic is experiencing high accident rates due to local access and where such construction can be expected to substantially improve safety; or

(ii) in heavily traveled urban corridors where gaps occur in the existing frontage systems and closing these frontage road gaps will restore system continuity and provide a cost-effective method of enhancing traffic operations in the corridor.

(B) The department may assist a requesting local government in the construction of additional frontage roads:

(i) where a usable section of frontage road that will be of benefit to the traveling public is to be developed (usable section being defined as an addition or extension from a cross road separation to cross road separation or connecting to a public roadway or major traffic generator);

(ii) where such frontage road construction is judged to not adversely impact existing traffic operations or safety;

(iii) where the department is responsible for design and construction of the added frontage roads; or

(iv) except as provided in subparagraph (E) of this paragraph, when the requesting local government furnishes 100% of needed right of way and utility adjustment costs and 50% of the cost of construction, including preliminary and construction engineering.

(C) The department may approve additional frontage road construction, which is 100% funded by the requesting local government, as follows:

(i) if the frontage road construction primarily provides new or improved access to abutting property and does not necessarily provide a usable section as defined in subparagraph (B)(i) of this paragraph (this type of additions would provide

limited benefits to the general traveling public); and

(ii) except as provided in subparagraph (E) of this paragraph, where the department is responsible for design and construction and the requesting local government is responsible for 100% construction, right of way and utility adjustment costs including preliminary and construction engineering.

(D) Where right of way costs are 100% the responsibility of the requesting local unit of government, the costs of relocation assistance benefits will also be 100% the responsibility of the local unit of government; however, the department shall handle all relocation actions exclusive of monetary payments to insure compliance with departmental policies and procedures.

(E) The department may waive any one or more of the cost conditions stated in subparagraphs (B)(iv) and (C)(ii) of this paragraph, provided that the waiver is first approved by written order of the commission. In approving a waiver, the commission will base its decision on consideration of the population level, bonded indebtedness, tax base, and tax rate of the local government involved.

(4) For additional frontage roads requested subsequent to the planning stage or after the freeway has been constructed, control of access as originally conceived for the facility may be modified to allow access to the proposed frontage road only to the extent as may be permitted by safety considerations and in keeping with departmental policies and procedures. The sale or disposal of access rights shall be accomplished in accordance with §§21.101-21.104 of this title (relating to Disposal of Real Estate Interests).

(5) Access driveway facilities shall be for securing access to abutting property. Costs and provision thereof shall be in accordance with the criteria and responsibilities established in §§11.51-11.53 of this title (relating to Access Driveways to State Highways).

(g) Drainage Construction Costs.

(1) In general, it shall be the duty and responsibility of the department to construct, at its expense, a drainage system within state highway right of way, including outfalls, to accommodate the storm water which originates within and reaches state highway right of way from naturally contributing drainage areas.

(2) Where a drainage channel, manmade, natural, or a combination of both, is in existence prior to the acquisition of highway right of way, including right of way for widening the highway, it shall be

the duty and responsibility of the department to provide for the construction of the necessary structures and/or channels to adjust or relocate the existing drainage channel in such a manner that the operation of the drainage channel will not be injured. The construction expense required shall be considered a construction item. The acquisition of any land required to accomplish this work shall be considered a right of way item.

(3) Where an existing highway crosses an existing drainage channel, and a political unit or subdivision with statutory responsibility for drainage develops a drainage channel to improve its operation, both upstream and downstream from the highway, and after the department establishes that the drainage plan is logical and beneficial to the state highway system, and there is no storm water being diverted to the highway location from an area which, prior to the drainage plan, did not contribute to the channel upstream of the highway, and after construction on the drainage channel has begun or there is sufficient evidence to insure that the drainage plan will be implemented, the department, at its expense, shall adjust the structure and/or channels within the existing highway right of way as necessary to accommodate the approved drainage plan.

(4) Where a state highway is in existence, and there is a desire of others to cross the existing highway at a place where there is not an existing crossing for drainage, then those desiring to cross the highway must provide for the entire cost of the construction and maintenance of the facility which will serve their purpose while at the same time adequately serving the highway traffic. The design, construction, operation, and maintenance procedures for the facility within state highway right of way must be acceptable to the department.

(5) In the event the local unit of government involved expresses a desire to join the department in the drainage system in order to divert drainage into the system, the local unit of government shall pay for the entire cost of collecting and carrying the diverted water to the state's system and shall contribute its proportional share of the cost of the system and outfall based on the cubic feet per second of additional water diverted to it when compared to the total cubic feet per second of water to be carried by the system. The local unit of government requesting the drainage diversion shall indemnify the state against damages or claims for damages resulting from such diversion.

(h) Continuous and safety lighting systems and traffic signals. For the installation, maintenance, and operation of continuous and safety lighting systems and traffic signals, the local unit of government shall be responsible for providing matching funds as identified in Appendix A of §15.54 of

this title (relating to Construction Cost Participation). Such installation, maintenance, and operation shall be accomplished in accordance with §25.5 of this title (relating to Installation, Operation, and Maintenance of Traffic Signals) and §25.11 of this title (relating to Continuous and Safety Lighting Systems).

*§15.54. Construction Cost Participation.* From available funds to the department, federal, state, and local cost participation for the various designations and categories of highways will be as described in Appendix A.

Figure 1: 43 TAC §15.54

*§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) Commission-Texas Transportation Commission.

(2) Department-Texas Department of Transportation.

(3) State park-A park administered by the Texas Parks and Wildlife Department of other qualified state agency, and with title 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.

(b) Upon request by a state agency or county government, the department may construct and maintain a designated park road connecting a state park to a segment of the state highway system if:

(1) estimated traffic patterns justify the connection of such a facility;

(2) all necessary right-of-way is furnished at no cost to the department; and

(3) funds are available from a commission designated program.

(c) In accordance with Section 1.02, House Bill 9, 72nd legislature, First Called Session, for public roads located within a state park, the department will:

(1) coordinate with appropriate state agencies having jurisdiction over state park properties for the design, construction, and maintenance of subject roads;

(2) provide through memoranda of agreement with 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 the agreement as appropriate on a five year basis unless the 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 authority to adopt.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502567

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-0630

## Chapter 19. Secondary Roads Division

The Texas Department of Transportation proposes the repeal of §§19.1, 19.11, 19.21, and 19.31, concerning secondary roads. These sections are no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 15, Transportation Planning and Programming, as new §§15.50-15.54, concerning federal, state and local participation, and §15.60, concerning state park roads, in an amended form.

Robert L. Wilson, director of the design division, has determined that for the first five years the repeals are in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeals.

Mr. Wilson also has determined that for each year of the first five years the repeals are in effect, the public benefits anticipated as a result of enforcing the repeals will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 1:30 p.m. on March 22, 1995, in Room 101, Building 200, 200 East Riverside Drive, 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 person 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 nec-

essary 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 where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue 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 of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Robert L. Wilson, Director, Design 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 April 7, 1995.

## Farm and Ranch to Market Roads

### • 43 TAC §19.1

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

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

#### §19.1. Route Approval.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502568

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-8630

## Park Roads

### • 43 TAC §19.11

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

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

#### §19.11. Construction.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502569

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-8630

## Recreational Roads

### • 43 TAC §19.21

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

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the

authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

#### §19.21. Construction.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502570

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
Transportation

Earliest possible date of adoption: April 7, 1995

For further information, please call: (512) 463-8630

## Off System Road Program

### • 43 TAC §19.31

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

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

#### §19.31. Off System Projects.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502571

Diane L. Northam  
Legal Executive Assistant  
Texas Department of  
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Earliest possible date of adoption: April 7, 1995

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# WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Telephone

- 16 TAC §23.95

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §23.95, submitted by the Public Utility Commission of Texas, has been automatically withdrawn, effective February 28, 1995. The section as proposed appeared in the August 26, 1994, issue of the *Texas Register* (19 TexReg 6698).

TRD-9502633

#### Chapter 24. Policy Statements

##### Policy Concerning Conserva- tion and Renewable Energy Measures

- 16 TAC §24.1

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §24.1, submitted by the Public Utility Commission of Texas, has been automatically withdrawn, effective March 1, 1995. The section as proposed appeared in the August 30, 1994, issue of the *Texas Register* (19 TexReg 6820).

TRD-9502632

## TITLE 22. EXAMINING BOARDS

### Part IV. Texas Cosmetology Commission

#### Chapter 89. General Rules and Regulations

- 22 TAC §89.77

The Texas Cosmetology Commission has withdrawn from consideration for permanent adoption a proposed new §89.77, which appeared in the October 21, 1994, issue of the *Texas Register* (19 TexReg 8343). The effective date of this withdrawal is February 28, 1995.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502529

Dick G. Strader  
Executive Director  
Texas Cosmetology  
Commission

Effective date: February 28, 1995

For further information, please call: (512)  
454-4674

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 7. Corporate and Financial

##### Subchapter A. Examination and Corporate Custodian and Tax

- 28 TAC §7.86

The Texas Department of Insurance has withdrawn from consideration for permanent adoption a proposed new §7.86, which appeared in the October 7, 1994, issue of the *Texas Register* (19 TexReg 7993). The effective date of this withdrawal is March 1, 1995.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502620

Alicia M. Fachtel  
General Counsel and Chief  
Clerk  
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Effective date: March 1, 1995

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463-6327

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Grade: 10

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# 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 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 49. Low Income Housing Tax Credit Rules

##### • 10 TAC §49.15

The Texas Department of Housing and Community Affairs (the Department) Low Income Housing Tax Credit (LIHTC) Program adopts new §49.15, concerning low-income housing tax credits, without changes to the proposed text as published in the December 20, 1994, issue of the *Texas Register* (19 TexReg 10061).

At its meeting on November 10, 1994, the governing board (the "Board") of the Texas Department of Housing and Community Affairs (the "Department") adopted an amendment to the rules and modification of the Qualified Allocation Plan of the Low Income Housing Tax Credit ("LIHTC") Program. The adoption of the new section would allow the Department to allocate up to 45% of the state's 1995 per capita credits to 1994 applicants under the 1995A Qualified Allocation Plan.

As part of the rule making process, both the Department and the LIHTC Ad Hoc Committee held public hearings on the proposed rule change on January 11, 1995 and February 21, 1995, respectively. On February 23, 1995, the Board adopted the amendment without modification. Sections 49.1-49.15, which constitute the LIHTC rules and Qualified Allocation Plan 1995A, set forth the selection criteria and guidelines for the 1995A allocation of tax credits.

On December 20, 1994, the proposed LIHTC rules were published in the *Texas Register*, thereby commencing the required 30-day comment period. Said comment period ended on January 20, 1995.

During this period, the Department received comments both in writing and as a result of the January 11, 1995 public hearing. About 65% of the individuals offering comments expressed support for the proposed rule, while 35% were opposed or had reservations about the measure. Some of the legal issues raised by the commenters have been addressed be-

low by the Department in consultation with its tax credit counsel.

At the outset it may be helpful to distinguish between subsections (a)-(e) of the proposed §49.15 and subsection (f). The first five provisions are addressed to "forward commitments," pursuant to which the Department may obligate itself to make allocations of credit authority (either on a carryover or in-service basis) from a future year's credit ceiling.

Subsection (f) of the proposed §49.15 deals with a different matter. It would permit the Department to make allocations from its 1995 per capita tax credits to projects with respect to which applications were received and ranked in a prior year. These would be allocations made in 1995 pursuant to the Department's Qualified Allocation Plan in effect in 1995 (1995A), notwithstanding that the applications which may be awarded credits were actually received in 1994. It is the authority of subsection (f) which is the basis of the 1995A Qualified Allocation Plan.

Proposed Amendment is Retroactive—One of the commenters raised the question of whether an allocation pursuant to subsection (f) would be a "retroactive" commitment and, inferentially, whether the Department has authority under the Internal Revenue Code to allocate credits in this fashion.

Department's Response—With respect to retroactively, the Department wishes to emphasize that it proposes to make allocations in 1995 of 1995 per capita tax credits pursuant to a plan in 1995. Thus, there is nothing retroactive about the actions being taken.

As to legal authority generally, the Department does not believe that Section 42 of the Internal Revenue Code or the Regulations adopted pursuant thereto speak to the question of when applications must be sought or received by a housing credit agency. Section 42(m) of the Code requests that tax credit projects be selected in accordance with a qualified allocation plan which has been properly approved by the state and which incorporates certain selection criteria and preferences. The proposed §49.15(f) of the Rules requires that any projects receiving forward commitments have been ranked, that is evaluated, in accordance with the Department's qualified allocation plan. This plan has been prepared and adopted in accordance with the requirements of the Code and of Texas's administrative procedures statutes. Thus, the Department finds no reason that

the Code should be read as prohibiting allocations under the 1995A Qualified Allocation Plan to projects simply because they were evaluated in 1994.

Department's Discretion and Ranking of Projects—Several commenters also raised issues about the degree of discretion given to the Department in §49.15(f), as well as some of the other provisions of §49.15. Thus, concern is expressed as to whether the general terms and descriptions used in §49.15 would permit abuse of developer applicants when the authority is actually implemented. A question is raised, too, about how the concept of "ranking previously assigned" would be applied to the various different categories of projects established by the Department.

Department's Response—The language of proposed §49.15 is, in fact, drafted broadly. It was written in this fashion because it seemed that the authority provided would often be called upon to address unforeseen circumstances or cases. For example, if a particularly large volume of worthy projects appears within one or more categories at one time, the Department can choose to establish a pipeline of highly meritorious projects for the future. Thus, it will be up to the Department to specify the details of any particular action under the authority of §49.15, based upon the circumstances giving rise to the need for such action.

In addition to giving the Department latitude to deal with unforeseen circumstances, the broad drafting of §49.15 seems consistent with the overall structure of the Rules, in that the Rules set forth general requirements and the framework within which decisions are to be made, and anticipate that more specific documentation and information will be made available when actions are taken. Thus, the various ranking factors, criteria and procedures are spelled out generally in the Rules and further details are provided in the Department's application package. However, the discretion granted in §49.15 does not permit the Department to override federal requirements. Thus, the commenter who expressed concern that the 10% set-aside required under §42(h)(5) of the Code for nonprofits might be disregarded should be reassured.

The Proposed Amendment is Unfair—Several commenters noted that the proposed amendment is unfair because applicants had no prior knowledge of the possible changes in the rules and could not plan accordingly. Some further argued that adoption of the

amendment would mean awarding credits to projects that were not worthy of an allocation under the state's 1994 credit ceiling at the expense of better 1995 applications. One commenter, while supportive of the idea of carrying forward 1994 applications pursuant to a waiting list, opposed the amendment on the grounds that it is retroactive, the 45% target contemplated is too large, and that nonprofits would be the prime beneficiaries.

**Department's Response**—The Department recognizes the amount of time and resources expended by developers in submitting applications for tax credits. It is because of this awareness and the availability of many financially feasible and socially desirable projects that it elected to propose this measure to expedite the development of affordable housing in Texas, create jobs across the state and capture the efforts expended by both the staff and the development community.

It is clearly apparent that given the huge demand for tax credits, many worthy projects must go unfunded year after year. In light of this, the Department is committed to ensuring that whenever feasible, as many projects as possible be funded to expedite the development of affordable housing for low income Texans. In addition, most of the applicants that could benefit from this measure have been scored and underwritten under identical guidelines as projects that have received 1994 tax credits.

**Proposed Amendment Prefers Nonprofits**—Several commenters stated that the amendment would give undue preference to nonprofit applicants. One commenter specifically requested that the measure be dropped since it would unfairly trap a number of nonprofit applications seeking credits in the "other" set-aside because such applicants did not earn the nine points reserved for nonprofits seeking credits in the nonprofit set-aside.

Another commenter argued that the amendment promotes nonprofits at the expense of for profits, circumvents the self-limiting nature of the annual allocations, and is contrary to the intent of Congress.

**Department's Response**—The proposed amendment does not stipulate how the tax credits would be apportioned among the set-asides. It only states that "No more than 45% of the per capita component of the state housing credit ceiling" may be utilized pursuant to this rule. The Department's Board will make the final determination concerning the apportionment of the credits. The assumptions of many commenters that the proposed amendment would benefit only nonprofit applicants seems premature. As the Chairman of the Ad Hoc Committee noted at the January 11, 1995 public hearing, the credits would be distributed equitably.

With respect to nonprofit applicants seeking credits in the "other" set-aside, the 1994 rules clearly states that all nonprofit points accrue only to "nonprofit projects which are seeking credits from the nonprofit set-aside." Consequently, nonprofits applying in the "other" set-aside could not qualify for these points and should have no expectation to. The interpretation of this provision in 1994 is consistent with the Department's position in 1993 when

nonprofits accounted for 45% of the state's total allocation.

Regarding Congress' intent, the applicable code provision states that at least 10% of a state's housing credit ceiling shall be allocated to qualified nonprofit projects. Thus, Congress has provided wide discretion to the states in allocating the credits. Also, both Section 42 of the Internal Revenue Code of 1986, as amended, and related Treasury Regulations promulgated pursuant thereto, explicitly contemplate the possibility that a State may, in one year, make a commitment to allocate credits from a future year's ceiling. Thus, Section 42(h)(1)(C) and Treasury Regulations, Section 1.42-8(a)(2) specifically permit the allocation of credits in a future taxable year. The Department therefore believes that the basis for the amendment is clearly established in Federal Law.

The Department has also received comments from several applicants supporting the amendment and requesting the allocation of the bulk of the credits to the nonprofit set-aside.

**Staff Representations to Developers**—A commenter asked if the LIHTC staff promised 1995 tax credits to certain developers. If so, which properties were promised credits? If not, "Why were certain properties asked to achieve carryover status when they were not going to receive 1994 credits?"

**Department's Response**—No member of the tax credit staff promised credits to any developer or developers at any time. To insure that all of our 1994 credits were allocated, the Department required that all project owners who are in receipt of a commitment notice meet all carryover requirements by December 8, 1994. We further stipulated that an applicant that has received a conditional commitment must also meet carryover in order to qualify for 1994 credits. This action was taken as a back-up measure in case some project owners failed to meet carryover.

**Amendment Requires Governor's Approval**—Two commenters asked if the Department intends to get the Governor's approval prior to the allocation of these credits.

**Department's Response**—The Department recognizes that the proposed amendment amounts to a substantive change in the rules and will accordingly seek the Governor's approval.

**Proposed Amendment and the Qualified Allocation Plan**—One commenter argued that the amendment does not meet the requirements of a Qualified Allocation Plan, and hence cannot be the basis for an allocation of tax credits. He further argued that the amendment does not give the Department the ability to allocate 1995 tax credits to 1994 applications because Section (a) of the amendment states that "the Department may determine to issue reservations and commitments of tax credit authority with respect to projects from the state housing credit ceiling for the calendar year following the year of issuance (each a "forward commitment")." As a result of this language, he concluded, the Department could only issue forward commitments to 1995 applicants for 1996 tax credits.

One commenter also challenged the Department's authority to carry forward 1994 applications and award them credits based on previously assigned rankings pursuant to subsection (f) of the proposed rule, implying that the Department cannot assign ranking unless it disregards its set-aside categories. Another commenter asked why this paragraph was added to the subsequent publication of the rule on December 20, 1994.

**Department's Response**—The Department fully intends to allocate 1995 tax credits to 1994 applicants pursuant to the 1995A Qualified Allocation Plan and to subsequently adopt a 1995B Qualified Allocation Plan for the rest of the state's 1995 housing credit ceiling. Both Plans conform to the requirements of Section 42(m) of the Internal Revenue Code of 1986, as amended.

With respect to the Department's ability to issue forward commitments beginning in 1995 for 1996 credits, the Department agrees with the commenter's conclusions. However, the proposed amendment contemplated two distinct scenarios: a "binding forward commitment" and a "carryover forward." Because of time constraints, the Department could not issue binding commitments and instead elected to carry forward 1994 applicants on a waiting list. The objection raised by the commenter with respect to forward commitment is therefore moot because the Department does not contemplate issuing binding commitments in allocating credits under 1995A.

Regarding the assignment of rankings to projects in different set-asides, the Department finds no basis to support the premise that rankings can only be made without regard to set-asides. Although subsection (f) of the proposed rule provides broad discretion, the Department intends to award credits only to 1994 projects that have been carried forward based on previously assigned rankings.

On the addition of subsection (f) in the December 20, 1994 publication in the *Texas Register*, the Department admits that this portion of the rule was inadvertently left out of its November 25, 1994 submission to the *Texas Register*. However, subsection (f) was part of the amendment adopted by the Board on November 10, 1994.

The new section is adopted pursuant to the authority of the Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapters 725 and 141, and Texas Civil Statutes, Texas Government Code, Chapters 2001 and 2002.

The Internal Revenue Code of 1986, Section 42, as amended, provides for credits against federal income taxes for owners of qualified low income rental housing projects. That section provides for the allocation of the available tax credits by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Texas Department of Housing and Community Affairs was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, Section 42(m)(1), the Department developed a Qualified Allocation Plan which sets forth in Section 49.6 and §49.7 of this title (relating to Threshold Criteria; Evaluation



Factors; Selection Criteria; Final Rankings; Credit Amount; Tax Exempt Bond Financed Projects; and Compliance Monitoring).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued, in Austin, Texas, on March 1, 1995.

TRD-9502605

Henry Flores  
Executive Director  
Texas Department of  
Housing and  
Community Affairs

Effective date: March 22, 1995

Proposal publication date: December 20, 1994

For further information, please call: (512) 475-3340

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 9. Liquefied Petroleum Gas Division

##### Subchapter A. General Appli- cability and Requirements

###### • 16 TAC §9.6

The Railroad Commission of Texas adopts an amendment to §9.6, relating to examination and course of instruction, with changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9438).

The section lists examination general provisions and exemptions, discusses trainees, and explains fees, renewal of certified status, and when and where courses of instruction will occur. The proposed amendment would have changed the course of instruction from 40 hours to 120 hours. The adopted amendment changes the course of instruction from 40 hours to 64 hours.

Only one association commented: the Texas Propane Gas Association (TPGA) submitted comments in favor of the amendment, but later during the comment period submitted additional comments stating that although TPGA could not find any industry opposition to the proposed rule, it was concerned with the length and expense of the course, and asked what activities the expanded course would include. The commission agrees that the length and expense of the course may deter some people from attending, but disagrees that this is a reason not to adopt the amendment. Because the longer course will permit the attendees to participate in hands-on instruction, the additional time and expense should be offset by having more knowledgeable and skilled individuals responsible for Category E activities. Certainly a company could shift some of the cost away from itself by making its hiring of the applicable management personnel conditional upon

successful completion of all licensing requirements.

The commission received one comment in favor of the proposed amendment, and four comments against the amendment. One comment stated that a company would be burdened by an employee being gone for three weeks and then possibly not passing the examination. The comment also suggested that the commission wait to increase the course hours until some combination of written and videotaped instruction could be developed. The commission disagrees with the first comment as being a reason not to adopt the change, because an employer could shift some of the cost away from itself by making its hiring of new employees conditional upon successful completion of all licensing requirements. The commission disagrees with the second comment because written and videotaped instruction would not allow for the hands-on training on equipment and procedures that this category of license requires.

Another comment against the proposed amendment stated that better training is needed but that the commission should not increase the training time for the category of license that already has the most stringent requirements. The comment recommends that the commission conduct research to determine whether the licensees in this category are undertrained. The comment also suggests increasing the training for other categories of licenses. The commission agrees that other categories of licenses may need increased training, but the Category E license which would require the proposed 64-hour course is the license category which includes the most activities; this additional training time is necessary to ensure that licensees are thoroughly trained in the operation of equipment and procedures involved. In addition, changes to training requirements for other categories of license are beyond the scope of this rulemaking.

Two comments opposed the proposed amendment because it would restrict competition among smaller companies and would be burdensome to have the applicable individual absent for three weeks while attending the course. The commission disagrees that this licensing requirement is a restraint of trade because the commission is authorized by statute to implement rules establishing an initial course of instruction as well as rules requiring attendance at approved academic, trade, professional, or commission-sponsored seminars or other continuing education programs. Reasonable conditions for licensure are not restraints of trade.

The proposed amendment would have tripled the hours for the Category E course of instruction, from 40 hours to 120 hours. The adopted amendment changes the course of instruction to 64 hours, to be conducted over two weeks with 36 hours of training the first week and 28 hours of training the second week. This will allow attendees four hours of travel time on each Monday morning and conclude the class on Thursday of the second week, while still providing enough time for the addition of hands-on training on LP-gas equipment and procedures.

The new section is adopted under the Texas Natural Resources Code, §113.051, which

authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

#### §9.6. Examination and Course of Instruction.

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

(f) Course of instruction.

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

(3) The Category E course of instruction referenced in Table 1 of this subsection shall be held in Austin or any other facility of the Railroad Commission of Texas at times to be determined by the commission, and shall be a minimum of 64 hours of classroom instruction.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502623

Mary Ross McDonald  
Assistant Director, Legal  
Division, Gas  
Utilities/LP Gas  
Railroad Commission of  
Texas

Effective date: March 22, 1995

Proposal publication date: December 2, 1994

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

## Part III. Texas Alcoholic Beverage Commission

### Chapter 31. Administration

#### Administrative Functions of the Commission

##### • 16 TAC §31.1

The Texas Alcoholic Beverage Commission adopts an amendment to §31.1, concerning powers delegated to the administrator by the commission, without changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10169).

The amendment allows the administrator to designate persons to perform certain functions on his behalf.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Alcoholic Beverage Code, §5.31, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the code, and Texas Alcoholic Beverage Code, §5.12, which specifies that the commission shall by rule designate the duties of the administrator, assistant administrator and staff of the commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502519

Lou Bright  
General Counsel  
Texas Alcoholic Beverage  
Commission

Effective date: March 21, 1995

Proposal publication date: December 23, 1994

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

## Chapter 37. Legal

### Penalties

#### • 16 TAC §37.60

The Texas Alcoholic Beverage Commission adopts new §37.60, concerning methods for determining and imposing penalties on license and permit holders who are regulated by the Commission, with changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10169).

This rule is adopted to give license and permit holders notice of what may be asked as a penalty in administrative cases involving health, safety and welfare provisions as well as major regulatory provisions of the Texas Alcoholic Beverage Code or other applicable rules or laws. This rule also serves to give consistency to field staff in the settlement of cases in all areas of the state.

This rule allows for the agreed settlement of cases prior to an administrative hearing by providing suggested punishment ranges for specific violations.

The Mothers Against Drunk Driving submitted comments suggesting adjustments of several specific punishments. Generally, Mothers Against Drunk Driving asserted that offenses contrary to health, safety and welfare should carry greater punishments than regulatory violations, and that the former category of violations should in all cases carry cancellation of the license or permit as a possible sanction. The Texas Restaurant Association made comments to suggest the amendment of several specific punishments.

Subject to their earlier comments, the Mothers Against Drunk Driving were in favor of adoption of this rule. The Texas Restaurant Association was in favor of the adoption of this rule as amended.

No groups appeared in opposition to the rule.

New §37.60 is adopted under the Texas Alcoholic Beverage Code, Title 2, Chapter 5, §5.31, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the code, and Texas Alcoholic Beverage Code, Title 2, Chapter 6, §6.01, which sets out that a license or permit grants only a privilege and not a right and is subject to revocation or suspension if the holder is found to have

violated a provision of the code or a rule of the commission.

The penalty chart indicates the cross-reference to the statutory or administrative code sections for each penalty.

#### §37.60. Standard Penalty Chart.

(a) Agents, compliance officers or other specifically designated commission personnel may offer settlements to persons charged with violating the provisions of the Alcoholic Beverage Code or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart.  
Figure 1: 16 TAC §37.60(a)

(b) Each suspension of a permit or license shall run for consecutive days. An alcoholic beverage licensee or permittee penalized by the commission may pay a civil penalty in lieu of a suspension as provided by Alcoholic Beverage Code, §11.64, but no licensee or permittee may pay a civil penalty in lieu of a fraction of its suspension. In other words, any penalty assessed must be either a suspension or a civil penalty, but not a combination of both.

(c) A repeat violation by a licensee or permittee justifies the penalty for a second or third violation if it is a health, safety and welfare violation and occurs within 36 months of the first violation and if it is a major regulatory violation within 24 months of the first violation.

(d) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the permittee or licensee, as those terms are defined in the Texas Alcoholic Beverage Code, §1.04(11), has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a permittee or licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the permittee or licensee.

(e) The list of violations in the standard penalty chart is not an exclusive list of violations of the Texas Alcoholic Beverage Code or rules of the commission. The administrator or his designee is authorized to assess penalties for any violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by either the chief of enforcement or the director of compliance and licensing prior to its assessment.

(f) Any person responsible for assessing a penalty for a violation may devi-

ate from the standard penalty chart if mitigating circumstances are involved. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and be filed with the case report. Final approval shall be made by the administrator or his designee.

(g) The standard penalty chart does not bind a hearing examiner, the administrator, or his designee as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502520

Lou Bright  
General Counsel  
Texas Alcoholic Beverage  
Commission

Effective date: March 21, 1995

Proposal publication date: December 23, 1994

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

## TITLE 22. EXAMINING BOARDS

### Part IV. Texas Cosmetology Commission

#### Chapter 89. General Rules and Regulations

##### • 22 TAC §89.4, §89.5

The Texas Cosmetology Commission adopts an amendment to §89.4, concerning cosmetology instructor on duty; and new §89.5, concerning speciality instructor on duty, without changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 273).

The amendment and the new rule are being adopted to add requirements for manicure speciality instructor and facial speciality instructor, instructor/student ratio, and speciality instructors on duty.

These rules define the requirements for the speciality instructor on duty and instructor/student ratio.

No comments were received regarding adoption of the amendment and new rule.

The amendment and new section are adopted under Texas Civil Statutes, Article 8451a, §4(a), which provide the Texas Cosmetology Commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and welfare.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502530

Dick G. Strader  
Executive Director  
Texas Cosmetology  
Commission

Effective date: March 21, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 454-4674

◆ ◆ ◆  
• 22 TAC §89.15

The Texas Cosmetology Commission adopts an amendment to §89.15, concerning definition of license authorizations, with changes of the proposed text as published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 193).

The rule is being amended to ensure that all certificate holders and licensees comply with the requirements of the rules of the commission.

The rule defines the authorization of all cosmetology and specialty licenses.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, §4(a), which provide the Texas Cosmetology Commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and welfare.

§89.15. *Definition of License Authorizations.*

(a) **Cosmetology Instructor License.** A Cosmetology Instructor license authorizes the holder to instruct in any approved private cosmetology school, or program, and practice all phases of cosmetology in a beauty salon and any of the specialties in a licensed specialty salon. A current photograph approximately 1 1/2 inches by 1 1/2 inches of the licensee shall be attached to the front of the license.

(b) **Manicure Specialty Instructor License.** A Manicure Specialty Instructor license authorizes the holder to instruct manicuring in any approved private cosmetology school, or program, and practice all phases of manicuring in a beauty salon or a licensed specialty salon. A current photograph approximately 1 1/2 inches by 1 1/2 inches of the licensee shall be attached to the front of the license.

(c) **Facial Specialty Instructor License.** A Facial Specialty Instructor license authorizes the holder to instruct facials in any phase of an approved private cosmetol-

ogy school, or program, and practice all phases of the application of Facial cosmetics, manipulations, eye tabbing, arches, lash and brow tints, and the temporary removal of superfluous hair by the use of depilatory, mechanical tweezers, or wax in a beauty salon and in a licensed specialty salon. A current photograph approximately 1 1/2 inches by 1 1/2 inches of the licensee shall be attached to the front of the license.

(d) **Cosmetologist.** A cosmetologist (operator) license authorizes the holder to practice all phases of cosmetology in a beauty salon or any specialties in a specialty salon. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license.

(e) **Wig Specialist.** A wig specialist certificate authorizes the holder to practice wiggery, or perform eye tabbing in a beauty or specialty salon. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license.

(f) **Manicurist.** A manicurist license authorizes the holder to practice manicuring and pedicuring in a licensed beauty or specialty salon. A manicurist shall not treat or remove calluses, soft calluses, or ingrown nails. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license.

(g) **Shampoo-Conditioning Specialist.** A shampoo specialist certificate authorizes the holder to practice the art of shampooing, application of conditioners and rinses, scalp manipulation, and shampooing hair goods in a licensed beauty salon. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the certificate.

(h) **Facial Specialist.** A facial specialist license authorizes the holder to practice facial, application of facial cosmetics, manipulations, eye tabbing, arches, lash and brow tints, and the temporary removal of superfluous hair by the use of depilatory, mechanical tweezers, or wax in a licensed beauty or specialty salon. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license.

(i) **Hairweaving Specialist.** A hairweaving, specialist certificate authorizes the holder to practice the art of hairweaving in a licensed beauty or specialty salon. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the certificate. No other service may be performed. To do so will lead to revocation of a specialty certificate.

(j) **Temporary License.** A temporary license authorizes the holder of a valid license from another state or nation to prac-

tice cosmetology in the State of Texas for 60 days while waiting for reciprocity clearance or waiting to take the Commission examination. A temporary license is not renewable. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the license.

(k) **Student Permit.** A student permit authorizes the holder to practice cosmetology only in an approved school, and only after 10% of the required hours for graduation (150 hours for public school students) are accrued. A current photograph of the licensee approximately 1 1/2 inches by 1 1/2 inches shall be attached to the front of the permit.

(l) **Corporate License or Permit Application .**

(1) **General.** Each corporate applicant for any license or permit defined or listed in Texas Civil Statutes, Article 8451a, The Cosmetology Act, must certify, before the license or permit is issued, that its state franchise taxes are current. Corporations exempt from the payment of the franchise tax and out-of-state corporation must certify that they are exempt and specify the reason.

(2) A false statement regarding corporate franchise tax status will subject the corporation to suspension or cancellation of the license or permit.

(m) **Corporate Contractors Doing Business with the Cosmetology Commission .**

(1) **General.** Each corporate contractor doing business with the Cosmetology Commission must certify, before the contract is executed, that its franchise taxes are current. Corporations exempt from the payment of the franchise tax and out-of-state corporation must certify that they are exempt and specify the reason.

(2) **False Statements.** A false statement regarding corporate franchise tax status will be treated as a material breach of contract and may be grounds for its cancellation at the option of the State.

(n) **Exemption.** Persons licensed in this state to practice medicine, surgery, dentistry, podiatry, osteopathy, chiropractic, or nursing who practiced any phase of cosmetology as authorized in Texas Civil Statutes, Article 8451a, §39(2) (relating to Exemptions), may no longer continue this practice without a current license from the Texas Cosmetology Commission unless they are operating within the scope of their license.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502532

Dick G. Strader  
Executive Director  
Texas Cosmetology  
Commission

Effective date: March 21, 1995

Proposal publication date: January 13, 1995

For further information, please call: (512)  
454-4674

- ◆ ◆ ◆
- 22 TAC §§89.17, 89.20, 89.31,  
89.33, 89.35, 89.39, 89.53, 89.55,  
89.76

The Texas Cosmetology Commission adopts amendments to § 89.17, concerning instructor applicants; §89.20, concerning length of courses; §89.31, concerning examination; §89.33, concerning cosmetology instructor, manicure instructor, facial instructor exam; §89.35, concerning uniforms; §89.39 concerning new salon requirements; §89.53, concerning minimum requirements for both private and public cosmetology schools; §89.55, concerning refresher course; and §89.76, concerning minimum requirements for cosmetology school separate facility, without changes to the text as published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 193).

These rules are being amended to ensure that all certificate holders and licensees comply with the requirements of the rules of the commission.

These rules define the courses of study to become licensed and the process for obtaining facility licenses.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 8451a, §4(a), which provide the Texas Cosmetology Commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and welfare.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502533

Dick G. Strader  
Executive Director  
Texas Cosmetology  
Commission

Effective date: March 21, 1995

Proposal publication date: January 13, 1995

For further information, please call: (512)  
454-4674

- ◆ ◆ ◆
- 22 TAC §89.54

The Texas Cosmetology Commission adopts an amendment to §89.54, concerning independent contractor/booth rental license, with changes to the proposed text as published in the January 17, 1995, issue of the *Texas Register* (20 TexReg 273).

The rule is being amended to ensure that all independent contractors/booth renters comply with the requirements of the rules of the commission.

The rule defines the requirements for independent contractors/booth renters.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8451a, §4(a) which provide the Texas Cosmetology Commission with the authority to "issue rules consistent with this Act after a public hearing", to protect the public's health and welfare.

§89.54. *Independent Contractor/Booth Rental License* .

(a) To qualify as an independent contractor an applicant must make application for a booth rental salon license and have an area clearly defined that is their responsibility as far as sanitation is concerned.

(1) Independent contractor in a cosmetology salon requirements:

(A) one work station;

(B) one styling chair ;

(C) one wet disinfectant soaking container;

(D) one dry storage container for disinfected implements ;

(E) covered trash container .

(2) Independent contractor in a facial salon :

(A) one facial couch and facial chair;

(B) one wet disinfectant soaking container ;

(C) one dry storage container for disinfected implements ;

(D) one mirror, wall hung, or 1 hand held mirror ;

(E) covered trash can .

(3) Independent contractor in a manicure salon :

(A) one manicure table with light ;

(B) one manicure stool ;

(C) one professional type chair ;

(D) one wet disinfectant soaking container;

(E) one dry storage container for disinfected implements ;

(F) covered trash can.

(b) (No change.)

(c) To qualify as an independent contractor the following guidelines apply:

(1) Any person licensed by the Texas Cosmetology Commission, responsible for reporting their own taxes(IRS), social security taxes, unemployment taxes (TEC), or any other self employment taxes must obtain an independent contractor/booth rental license;

(2) the independent contractor has sufficient floor space and equipment within their jurisdiction to adequately carry out the duties of his/her license;

(3) independent contractors advertise only his/her own services, and/or has individual business cards;

(4) independent contractor must control his/her own business hours;

(5) independent contractors represent themselves to the public that they are independent contractors; and

(6) a written contract is in effect with the lessor and the lessor does not exercise any control over the independent contractor.

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

(f) Independent contractors must post in a location visible at all times the following information:

(1) Operator's name.

(2) Operator's license number.

(3) Hours of business.

(g) The lessor to an independent contractor must maintain a list of all renters that includes:

(1) Name of the renter.

(2) Cosmetology license number of the renter.

(3) Hours of business of the renter.

(h) The lessor must supply the inspector with a list of renters upon request. Failure to provide the list can result in a violation of such significance to require a hearing.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502531

Dick G. Strader  
Executive Director  
Texas Cosmetology  
Commission

Effective date: March 21, 1995

Proposal publication date: January 17, 1995

For further information, please call: (512) 454-4874

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 29. Purchased Health Services

##### Subchapter J. Ambulance Services

On behalf of the State Medicaid Director, the Texas Department of Health adopts the repeal of existing §29.901 and §29.902, and new §§29.901-29.903, concerning ambulance services for Medicaid clients without changes to the proposed text as published in the December 13, 1994, issue of the *Texas Register* (19 TexReg 9831).

The new sections clarify and streamline policies governing ambulance services for clients and providers.

The new sections define terms associated with the program, specify additional claim information requirements intended to support the determination of the appropriateness and medical necessity of ambulance transports, and clarify criteria for emergency and non-emergency ambulance transports.

A summary of the comments and the department's responses to the comments follows.

**Comment:** Concerning §29.901, one commenter requested a clarification of the method the department uses to determine the "nearest appropriate facility."

**Response:** The department's designee identifies the nearest appropriate facility by determining the nearest Medicaid-enrolled medical facility that is equipped to provide medical care for the illness or injury of the Medicaid client involved. It is the institution, equipment, personnel, capability to provide the services necessary to support the required medical care, and the distance to the facility that determine whether a facility is appropriate. Mileage determinations are based on The Official State Mileage Guide of the State of Texas.

**Comment:** Concerning §29.901, one commenter requested that the definition of the term "severely disabled" include a clarifi-

cation that the client must be "bed-confined at the time of transport."

**Response:** The intent of the department in requiring that the client's condition meets at least one of the defining criteria for "severely disabled" is to ensure that non-emergency transports are both appropriate and medically necessary. In effect, the condition of the Medicaid client is such that the use of any other method of transportation is contraindicated and, in the case of a client who is severely disabled, there is no other suitable transportation. The department is aware that the condition of the client may change at any time. Therefore, the department considers the criteria for a non-emergency transport to relate to the condition of the client at the time of the transport. However, to ensure the appropriateness and medical necessity of non-emergency transports, the department would also like to emphasize that the decision on whether a non-emergency transport is appropriate and medically necessary is based on the supporting documentation submitted by the ambulance provider with the claim for services. The department did not make a change as a result of the comment, however, the criteria will be monitored and future modifications will be considered if warranted.

**Comment:** Concerning §29.902(4), one commenter requested a clarification of the example "traffic patterns."

**Response:** "Traffic patterns" relate to the current traffic patterns affecting the ground transport of a client to the nearest appropriate facility.

**Comment:** Concerning §29.903(1), one commenter stated that the Client Acknowledgment Statement makes the provider of services responsible for services that were requested/ordered by an attending physician. It requires the provider and the Medicaid client to question the medical decision of the physician.

**Response:** The department disagrees with this comment. The Client Acknowledgment Statement is not specific to services delivered through the Ambulance Program. It is a universal statement applicable to all Medicaid-covered services and is intended to inform the client that the client may be liable for any service requests that are deemed not to be appropriate or medically necessary. The department's intent in having the ambulance provider obtain the signed statement for non-emergency transports is to assist the department in ensuring that the client is informed of his potential liability, and to assist the provider in determining when the provider may bill the client for a transport.

Comments were received from the Texas Ambulance Association and one ambulance provider. The commenters were in support of the new sections, however, both requested clarification of specific sections.

#### • 25 TAC §29.901, §29.902

The repeal is adopted under the Human Resources Code, §32.021, and Texas Civil Statutes, Article 4413 (502), §16, which provide 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 authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502617

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: April 1, 1995

Proposal publication date: December 13, 1994

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

#### • 25 TAC §§29.901-29.903

The new sections are adopted under the Human Resources Code, §32.021, and Texas Civil Statutes, Article 4413 (502), §16, which provide 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 authorized under Chapter 15, §1.07, Acts of the 72nd Legislature, First Called Session (1991).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502616

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: April 1, 1995

Proposal publication date: December 13, 1994

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

## Chapter 31. Special Supplemental Nutrition [Food] Program for Women, Infants, and Children (WIC)

#### • 25 TAC §31.2

The Texas Department of Health (department) adopts under federal mandate an amendment to §31.2, concerning the Special Supplemental Nutrition Program for Women, Infants and Children (WIC). Section 31.2 adopts by reference the Fiscal Year 1995 WIC State Plan of Operations.

The amendment to federal regulations in 7 Code of Federal Regulation (CFR), Part 246, require the United States Department of Agriculture (USDA) to approve an annual update of the WIC State Plan of Operations. The amendment covers the annual update for the fiscal year 1995, which was approved by the USDA effective October 1, 1994. The amendment covers the following policy changes as a result of changes to federal regulations in 7 CFR, Part 246, as amended by the Final Coordination Rule for the Special Supplemental Nutrition Program for Women, Infants, and Children, effective March 11, 1994. The first policy change, regarding adjunctive income eligibility, ensures that eligible WIC participants receive a full certification period as long as they remain adjunctively income eligible, or income eligible. The second policy change, concerning the definition of income, excludes additional sources of income, such as payments to various Indian tribes, and payments received through the Disaster Relief Act of 1974 and the Agent Orange Compensation Exclusion Act, for certification purposes when determining income eligibility. The third policy change, concerning the provision of information about food stamps, Aid to Families with Dependent Children (AFDC), Medicaid, Early and Periodic Screening, Diagnosis and Treatment (EPSDT), and child support enforcement information to WIC participants, adds a requirement that written information about the EPSDT program and Medicaid income limits for pregnant women, infants, and children up to five years of age must be provided on a least one occasion to each adult participant and to each applicant for the WIC program. The fourth policy change authorizes the state agency to decide whether, in the interest of program effectiveness and efficiency, to conduct reviews more frequently than once every two years.

The following additional policy changes were authorized by the "Healthy Meals for Healthy Americans Act of 1994" which amended the Child Nutrition Act of 1966 and reauthorized the WIC program. The revised policy regarding the definition of an "economic unit" for determination of income eligibility allows a pregnant woman to satisfy the standards by increasing the number of individuals in her family by one individual, if she is ineligible for participation in the program because her family is too small. The name of the WIC program has been changed from the Special Supplemental Food Program for Women, Infants and Children to the Special Supplemental Nutrition Program for Women, Infants and Children.

The following amendment is a result of the review by USDA of the 1995 WIC State Plan of Operations. Under the first policy change, food vouchers will no longer be mailed if, by doing so, the number of required nutrition contacts per certification period will not be met. Additionally, vouchers will be mailed only by first class mail and will be stamped "Do Not Forward" to ensure accountability. The second policy change requires local agency staff to inform proxies of procedures concerning redeeming food vouchers, the nutrition education aspects of the program, and their right to make a complaint when those proxies document their participation in the program on behalf of clients.

The amendments are adopted under federal mandate for the following reasons. Under federal and state enabling legislation (the Child Nutrition Act of 1966, Title 42, United States Code, §1786; and the Texas Omnibus Hunger Act of 1985, Acts 1985, 69th Legislature, Chapter 150, Title II), the WIC Program is 99% federally funded and governed by federal regulations. Funds are made available to the department by a federal grant. The federal statute (42 United States Code, §1786), federal regulations (7 CFR, Part 246), and the federal grant (Federal-State Special Supplemental Food Program Agreement) authorize the USDA to make the funds available to the department to administer the WIC Program in the State of Texas, provided that the department administers the program in accordance with the federal regulations.

The amendment is adopted under Health and Safety Code, §12.001(b), which provides the Texas Board of Health (board) with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

### §31.2. WIC State Plan of Operations.

(a) The Texas Department of Health (department) adopts by reference the publication titled "WIC State Plan of Operations", as amended in October, 1994. This plan has been developed by the department's WIC Program and approved by the United States Department of Agriculture.

(b) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's authority.

Issued in Austin, Texas, on February 27, 1995.

TRD-9502451 Susan Steeg  
General Counsel  
Texas Department of  
Health

Effective date: March 19, 1995

Proposal publication date: N/A

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

## Chapter 123. Respiratory Care Practitioner Certification

The Texas Department of Health (department) adopts the repeal of §123.3 and new §123.3, concerning the Respiratory Care Practitioners Advisory Committee. New §123.3 is adopted with changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10291). The repeal of §123.3 is adopted without changes and will not be re-published.

The new section covers the committee, applicable law, purpose, tasks, review and duration, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the

board, and reimbursement of members' expenses.

The repeal allows the adoption of the new section which implements Texas Civil Statutes, Article 6252-33, which requires the department to determine whether its committees should be continued, modified, consolidated with other committees, or abolished. The board has determined that the committee should continue. The new section establishes procedural requirements for the committee.

A summary of the comments received and the department's response to the comments follows:

**Comment:** Concerning the title of the section and references to the advisory committee throughout, a comment was received that "advisory board" should be replaced by "advisory committee."

**Response:** The department agrees and has changed the references throughout the section. The department has also added subsection (q) to reflect the clarification.

**Comment:** A commenter requested that the statutory authority for the establishment of the committee be clarified.

**Response:** The department agrees and has changed the wording in subsection (a)(2).

### • 25 TAC §123.3

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function; Health and Safety Code, §11.016 which allows the board to establish advisory committees; and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 27, 1995.

TRD-9502454 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: March 20, 1995

Proposal publication date: December 27, 1994

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

The new section is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function; Health and Safety Code, §11.016, which allows the board to establish advisory committees; and under Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

**§123.3. Respiratory Care Practitioners Advisory Committee.**

(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Respiratory Care Practitioners Advisory Committee (committee).

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Texas Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the board.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the certification of respiratory care practitioners.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By November 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed nine members appointed by the board. The composition of the committee shall include:

(1) three consumer representatives;

(2) one physician who is a qualified chest physician;

(3) one physician who is a qualified anesthesiologist;

(4) one physician who is a qualified expert in thoracic medicine; and

(5) three certified respiratory care practitioners.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1st of each even-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may refer its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(q) Any reference in this chapter to the Respiratory Care Practitioners Advisory Board shall mean Respiratory Care Practitioners Advisory Committee.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 27, 1995.

TRD-9502455 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: March 20, 1995

Proposal publication date: December 27, 1994

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

### Chapter 143. Medical Radiologic Technologist

The Texas Department of Health (department) adopts the repeal of §143.3 and new §143.3, concerning the Medical Radiologic Technologist Advisory Committee. The new §143.3 is adopted with changes to the proposed text as published in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10296). The repeal of existing §143.3 is adopted without changes and will not be republished.

The new section covers applicable law, purpose, tasks, review and duration, composition, terms of office, officers, meetings, attendance, staff, procedures, subcommittees, statements by members, reports to the board and reimbursement of members' expenses.

The repeal allows the adoption of the new section. The new section is a result of actions taken in accordance with Texas Civil Statutes, Article 6252-33, which required the department to determine whether its advisory

committees should be continued, modified, consolidated with other committees, or abolished. The committee's structure was revised to create a better balance between professional and public members and reduce the number of members from 12 to 9.

A summary of the comments received and the department's response to the comments follows.

Comment: Concerning the title of the section and references to the advisory committee throughout, a comment was received that "advisory board" should be replaced by "advisory committee."

Response: The department agrees and has changed the references throughout the section. A new subsection (q) was also added for clarification purposes.

Comment: A commenter requested that the statutory authority for the establishment of the committee be clarified.

Response: The department agrees and has changed the wording in subsection (a)(2).

#### • 25 TAC §143.3

The repeal is adopted under Texas Civil Statutes, Article 6252-33, which sets standards for the evaluation of advisory committees by the agencies for which they function; Health and Safety Code, §11.016 which allows the board to establish advisory committees; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502609 Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: March 22, 1995

Proposal publication date: December 27, 1994

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

#### • 25 TAC §143.3

The new section is adopted under Texas Civil Statutes, Article 6252-33, which set standards for the evaluation of advisory committees by the agencies for which they function; Health and Safety Code, §11.016, which allows the board to establish advisory committees; and the Health and Safety Code, §12.001, which provides the board with authority to adopt rules for the performance of every duty imposed by law upon the board, the department, and the commissioner of health.

§143.3. Medical Radiologic Technologist Advisory Committee.



(a) The committee. An advisory committee shall be appointed under and governed by this section.

(1) The name of the committee shall be the Medical Radiologic Technologist Advisory Committee.

(2) The committee is established under the Health and Safety Code, §11.016 which allows the Board of Health (board) to establish advisory committees.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to recommend rules and examinations for the approval of the board.

(d) Tasks.

(1) The committee shall advise the board concerning rules relating to the certification of medical radiologic technologists and limited medical radiologic technologists.

(2) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By November 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee or abolished. If the committee is not continued or consolidated, the committee will be abolished on that date.

(f) Composition. The committee shall be composed of nine members appointed by the board. The composition of the committee shall include:

(1) two consumers;

(2) one licensed physician who is a radiologist;

(3) one licensed medical physicist or a hospital administrator;

(4) three certified medical radiologic technologists;

(5) one certified medical radiologic technologist whose primary practice is in nuclear medicine technology; and

(6) one certified medical radiologic technologist whose primary practice is in radiation therapy.

(g) Terms of office. The term of office of each member shall be six years.

(1) Members shall be appointed for staggered terms so that the terms of three members will expire on January 1 of each even numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31st of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired portion of the term of the office of presiding officer.

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or at least three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the member's duties for a substantial part of the term for which the member is appointed because of illness or disability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote.

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The reports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official committee business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(q) Any references in this chapter to the Medical Radiologic Technologist Advisory Board shall mean Medical Radiologic Technologist Committee.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-8502610

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: March 22, 1995

Proposal publication date: December 27, 1994

For further information, please call: (512) 458-7238

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 7. Corporate and Financial Regulation

#### Subchapter M. Regulatory Fees • 28 TAC §7.1301

The Texas Department of Insurance adopts an amendment to §7.1301, concerning regulatory fees to be charged all authorized insurers writing classes of insurance in Texas, with changes to the proposed text as published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 211).

The amendment is necessary to implement House Bill 1461, 73rd Legislature, which amended Insurance Code, Article 4.07, to require that all authorized insurers writing classes of insurance in Texas be charged fees for the use of the state in an amount to be determined by the Texas Department of Insurance. The amendment also reflects the

updated title of the Texas Department of Insurance and corrects a typographical error in §7.1301(d)(13).

The amendment to §7.1301 will require all authorized insurers writing classes of insurance in Texas to pay fees for various filings in an amount to be determined by the Texas Department of Insurance. Those fees are set in §7.1301, and the amendment does not alter the amounts of the fees. The amendment makes all authorized insurers writing any class of insurance in Texas subject to certain filing fees, along with the classes already subject to the fees before the amendment was adopted. The authorized insurers which will now be subject to the fees are those classes of insurance in this state which are regulated by the Insurance Code, Chapters 1-3, 6-20, 20A, 22, and 23. The section is adopted with two nonsubstantive changes. Subsection (f)(3) was amended to also reflect the updated title of the Texas Department of Insurance, and subsection (d)(22) corrects a typographical error in the existing rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to the Insurance Code, Articles 1.03A and 4.07. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of duties and functions by the Department. Article 4.07 authorizes the Texas Department of Insurance to charge and receive fees for the use of the State by all authorized insurers writing classes of insurance in Texas.

The proposed rule affects Insurance Code, Article 4.07.

#### §7.1301. Regulatory Fees.

(a) Regulated entities subject to fees. The regulated entities subject to the fees imposed by this section shall include all authorized insurers writing any class of insurance in this state which are regulated by the Insurance Code, Chapters 1-3, 6-20, 20A, 22, and 23. For filings and other actions on and after September 1, 1987, the Texas Department of Insurance shall charge these entities fees in amounts in accordance with the provisions of this section.

(b) Fees for insurers with annual gross premium receipts less than \$450,000. As provided in the Insurance Code, Article 4.07, any insurer to which the Article applies and whose gross premium receipts are less than \$450,000 according to its annual statement for the preceding year ending December 31, shall be required to pay only one-half the amount of the fees required to be paid under subsection (d) or subsection (e) of this section. The fees will be collected at the higher rate unless the applicant can provide the Texas Department of Insurance with satisfactory documentation that gross premium receipts were less than \$450,000.

(c) (No change.)

(d) Fees for authorized insurers writing classes of insurance in this state

which are regulated by the Insurance Code, Chapters 1-3, 6-20, 20A, 22, and 23. For the following filings and actions, the fees shall be as follows.

(1) For classes of insurance for which statutory authority exists for collecting annual statement fees, the fee for filing annual statements shall be \$250 unless otherwise specified.

(2)-(12) (No change.)

(13) For filing a direct reinsurance agreement pursuant to the Insurance Code, Article 22.19, the fee shall be \$150.

(14)-(21) (No change.)

(22) For filing a statement pursuant to the Insurance Code, Article 21.49-1, §5, if the purchase price or consideration exceeds \$9,900,000, an additional \$250 for each \$10 million exceeding \$9,900,000 but not more than a \$5,000 total fee.

(23)-(25) (No change.)

(e) (No change.)

(f) Administrative procedures.

(1) When a reinsurance agreement or merger agreement is filed with the Texas Department of Insurance, as enumerated in subsection (d)(11)-(15) of this section, the ceding or merged company will be the company upon which the determination of the appropriate fee to be assessed will be based.

(2) The fee relating to reinsurance transactions entered into pursuant to the Insurance Code, Article 21.49-1, §4, and subsection (d)(24) of this section shall be determined using the ceding company as a basis for such fee.

(3) When an amendment to a reinsurance agreement between affiliated insurers is filed with the Texas Department of Insurance, as mentioned in paragraph (1) of this subsection, the ceding company will be the insurer upon which the determination of the appropriate fee to be charged will be based.

(4) An amendment to the charter would constitute any change in the original charter, including, but not limited to, name change, home office change, increase in capital, conversion, and increase in lines.

(5) The fee relating to affixing the official seal and certifying to the seal, shall be applied to all requests for certification, irrespective of requesting party.

(6) The fees for filing an acquisition statement pursuant to the Insurance Code, Article 21.49-1, §5, and subsection (d)(21) and (22) of this section shall apply to and be collected from the applicant whenever:

(A) the applicant is a regulated entity subject to this section; or

(B) the company being acquired is a regulated entity subject to this section.

(g) Fees pursuant to the Texas Health Maintenance Organization Act, §32. For the following filings and actions, the fees shall be as follows.

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

(3) For all examinations made on behalf of the State of Texas by the Texas Department of Insurance or under its authority, the fee shall be in such amounts as the commissioner shall certify to be just and reasonable.

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

(h)-(i) (No change.)

(j) Fees under the Insurance Code, Chapter 3. For the following filings and actions, the fees shall be as follows.

(1) For valuing policies of life insurance, and for each one million dollars of insurance or fraction thereof, \$10.

(2) For filing the annual statement, \$250.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502621 Alicia M. Fecthel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Effective date: March 22, 1995

Proposal publication date: January 13, 1995

For further information, please call: (512) 463-6327

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**TITLE 30. ENVIRONMENTAL QUALITY**  
**Part I. Texas Natural Resource Conservation Commission**

**Chapter 335. Industrial Solid Waste and Municipal Solid Hazardous Waste**

**Subchapter O. Land Disposal Restrictions**

• 30 TAC §335.431

The Texas Natural Resource Conservation Commission (TNRCC) adopts an amendment to §335.431, concerning land disposal restrictions, without changes to the proposed text as

published in the January 13, 1995, issue of the *Texas Register* (20 TexReg 212).

The adopted section adopts by reference certain federal regulations promulgated by the U.S. Environmental Protection Agency relating to hazardous waste land disposal restrictions, under Title 40 Code of Federal Regulations, Part 268. The revised rule includes a major improvement in the land disposal restrictions program that simplifies and provides consistency in these requirements through the promulgation of "universal" treatment standards; establish treatment standards for certain newly listed and identified hazardous wastes; prohibit injection into deep wells of high Total Organic Carbon ignitable wastes and Toxicity Characteristic organic pesticides, unless they are treated to meet applicable treatment standards or the deep well has received a no-migration variance; change requirements for land disposal of lab packs containing prohibited hazardous wastes; and simplify paperwork requirements. The adopted section also corrects a typographical error at subsection (d)(5).

The comment period on the proposal closed February 13, 1995. Written comments were received from the Texas Chemical Council and from the Eastman Chemical Company. The commenters were supportive of the rule as proposed. One commenter noted that, with regard to the cost of implementing the land disposal restrictions, the regulated community should realize an overall cost reduction due to the benefits inherent in the federal standards which are being adopted by reference. The staff agrees with this commenter and in fact, the preamble proposed rule noted that the costs required to comply with this section "...will be significantly offset by operation cost savings brought on by the new universal treatment standards."

The amendment is adopted under the Texas Water Code, §§5.103, 5.105, and 26.011, which provides the TNRCC the authority to adopt rules necessary to carry out its powers, duties, and policies and to protect water quality in the state. The amendment is also adopted under the Health and Safety Code, §361.024, which provide the TNRCC the authority to adopt rules necessary to manage solid waste.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502587 Kevin McCalla  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Effective date: March 22, 1995

Proposal publication date: January 13, 1995

For further information, please call: (512) 239-6087

## TITLE 34. PUBLIC FINANCE

### Part I. Comptroller of Public Accounts

#### Chapter 3. Tax Administration Subchapter O. State Sales And Use Tax

##### • 34 TAC §3.361

The Comptroller of Public Accounts adopts new §3.361, concerning administrative practice and procedure for denying, suspending, or revoking Texas Customs Broker's Licenses, with changes to the proposed text as published in the December 9, 1994, issue of the *Texas Register* (19 TexReg 9723).

Due to additions to Tax Code, Chapter 151, effective June 19, 1993, it has become necessary to promulgate rules of procedure specific to customs brokers. The rule discusses contested cases, notice, and appeals. The change appears in subsection (b)(3)(C) and clarifies the submission date for evidence to be used in administrative hearings.

No comments were received regarding adoption of the new section.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

The new section implements the Tax Code, §151.157.

*§3.361. Practice and Procedure for Texas Customs Broker's License Denial, Suspension, and Revocation.*

(a) Applicability of rules of practice and procedure. The following rules of practice and procedure contained in Part I, Chapter I, Subchapter A of this title (relating to Practice and Procedures) shall apply to hearings involving the denial, revocation, or suspension of a Texas Customs Broker's License: §§1.1, 1.2, 1.4, 1.8, 1.19, 1.21-1.27, 1.29-1.36, 1.38, 1.41, and 1.42. For information about licensing procedures and requirements, see §3.360 of this title (relating to Customs Brokers).

(b) Special rules governing hearings on the denial, revocation, or suspension of a Texas Customs Broker's License.

(1) Contested cases. A contested case is a proceeding in which the legal rights, duties, or privileges of an applicant or licensee are to be determined by the agency after an opportunity for adjudicative hearing. It includes a request for relief from actions initiated by the agency to deny, suspend, or revoke a Texas Customs Broker's License. Contested cases are within the jurisdiction of the administrative law judges.

(2) Initiation of an oral hearing.

(A) If the comptroller determines that an applicant is not eligible for a Texas Customs Broker's License, the applicant will be notified, in writing, by personal service, or by registered or certified mail, return receipt requested, that the application has been denied. The notice will state the reasons for the denial. The applicant may, within 15 days of the date of the notice of denial, make a written request for an oral hearing to contest the denial. If the applicant does not request a hearing within 15 days of the date of the notice of denial, the hearing is waived and a final decision will be issued.

(B) If the comptroller determines that a Texas Customs Broker's License should be suspended or revoked, the comptroller will notify the licensee, in writing, by personal service or by registered or certified mail, return receipt requested, that the license will be suspended or revoked and will state the reasons for the action. The licensee may, within 15 days of the date of the notice of suspension or revocation, make a written request for an oral hearing to contest the action. If the licensee does not request a hearing within 15 days of the date of the notice of suspension or revocation, the hearing is waived and a final decision will be issued.

(3) Content of request for an oral hearing.

(A) A request for an oral hearing must contain the reasons the applicant or licensee disagrees with the action of the agency. The applicant or licensee must list and number the factual and legal grounds why the action of the agency should be reversed. Legal authority must be cited if the applicant or licensee disagrees with the agency's interpretation of the law.

(B) Evidence regarding issues raised in the request for hearing may be obtained through:

(i) a preliminary conference; and

(ii) discovery.

(C) Time limits on discovery or preliminary conferences will be set by the assigned administrative law judge if the parties cannot reach agreement. Evidence that a licensee or applicant will rely upon must be submitted to the assigned administrative law judge and hearings attorney at least ten days prior to the hearing date.

(D) A request for hearing may be amended up to ten days prior to the time that the hearing date is set, and not later, unless by permission of the assigned administrative law judge, and unless all evidence upon which the applicant or licensee

intends to rely and that was not previously filed is filed with the amended request for hearing.

(4) Extensions of time.

(A) A motion for extension of the due date for submitting a request for hearing on the denial of an application or on the proposed suspension or revocation of a license may be granted in case of emergency or extraordinary circumstances. A motion for extension will not be routinely granted and each request will be closely scrutinized to ensure that the applicant or licensee has made every effort to comply with the original deadline. A motion filed after the expiration of the original due date will not be considered. A motion must be directed to the chief administrative law judge or his designee, who will grant or deny the motion.

(B) A motion for an extension of any other deadline will not be granted unless good cause is established and the need for the extension is not due to the moving party's neglect, indifference, or lack of diligence. A motion must be made in writing at least seven days prior to the deadline. In the event of an emergency, a motion may be accepted if it is postmarked, sent by facsimile transmission, or deposited with a private mail or courier service, postage or delivery charges paid, not later than the date of the original deadline.

(5) Motion to dismiss; request for extended hearing.

(A) The agency may move to dismiss the hearing on the ground that the request for hearing was not timely filed or failed to state a claim upon which relief could be granted as required by paragraph (b)(3) of this subsection.

(B) An applicant or licensee who believes it will require more than two hours for a hearing must file a written request for an extended hearing at the time the request for hearing is filed, and state the reasons why more time will be required; however, any party may later request an extended hearing for good cause shown.

(6) Notice of setting. Upon receipt of a timely and sufficient request for hearing, the assigned administrative law judge will send a notice to the parties giving:

(A) the date, time, place, and nature of the oral hearing;

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

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

(D) upon request, briefing and evidentiary prefilings dates, and other appropriate orders.

(7) Administrative law judge to hear case. Hearings will be conducted by an assigned administrative law judge who has authority to examine witnesses, to rule on motions, and to rule upon the admissibility of evidence. The administrative law judge has the authority to continue or recess any hearing, to control the record, and to propose decisions to the comptroller. If for any reason the assigned administrative law judge cannot continue on a contested case, another administrative law judge will become familiar with the record and perform any functions remaining to be performed without the necessity of repeating any previous proceedings in the case.

(8) Filing of documents. All documents submitted after the notice of setting has been issued must be filed with the assigned administrative law judge with a copy to each party. In addition to any other order by the assigned administrative law judge, the time limit for filing documents with the administrative law judge and an opposing party shall be not later than ten days prior to the hearing.

(9) Continuances (postponement of hearing). A motion for continuance of a contested case set for oral hearing must be in writing and filed with the assigned administrative law judge at least seven days prior to the date that the matter is to be heard. If an emergency occurs less than seven days prior to the hearing date, a motion for continuance may be filed. The motion must show that there is good cause for the continuance and that the need is not caused by neglect, indifference, or lack of diligence. A copy of the motion must be served upon all other parties of record at the time of filing.

(10) Comptroller's decision. The proposed decision of the assigned administrative law judge must be approved by the Comptroller of Public Accounts before it is given effect. The comptroller's decision will be sent to the applicant or licensee and any authorized representative. The decision is final 20 days from the date mailed, unless a motion for rehearing is filed at or before midnight of the 20th day. If the motion for rehearing is granted, the decision is vacated pending a subsequent decision upon rehearing. If the motion for rehearing is overruled, whether by order or operation of law, the decision is final on the date the motion is overruled. A final decision of the comptroller to deny, suspend, or revoke a Texas Customs Broker's License is subject to judi-

cial review by trial de novo in the district courts of Travis County.

(11) Joint hearings. An applicant, licensee, or the agency may file a written motion to have two or more cases involving only that applicant or licensee joined for purposes of hearing; or the assigned administrative law judge, acting independently, may join two or more such cases.

(12) Dismissal of case.

(A) If a motion to dismiss is filed upon agreement between the applicant or licensee and the agency, or upon the applicant's or licensee's decision to abandon the case, a decision will be issued that conforms with such disposition.

(B) The agency may move to dismiss a case based upon agreement reached between the applicant or licensee and the agency, for failure to state a claim upon which relief can be granted as required by paragraph (3) of this subsection, or for want of prosecution. The motion must be served on the applicant or licensee and its authorized representative at its last address of record. If there is no reply from the applicant or licensee to the agency's motion to dismiss within 15 days, a decision will be issued denying the relief sought by the applicant or licensee.

(C) All motions to dismiss that are based upon a representation that both parties have agreed to dismiss a contested case on the basis that all issues have been settled shall be in writing and signed by both parties or their authorized representatives.

(13) Burden of proof. In all contested cases the agency has the burden of proving a prima facie case; the burden of proof then shifts to the applicant or licensee, with the standard of proof being by a preponderance of the evidence.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502619

Martin Cherry  
Chief, General Law  
Comptroller of Public  
Accounts

Effective date: March 22, 1995

Proposal publication date: December 9, 1994

For further information, please call: (512) 463-4028

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services Chapter 90. Nursing Facilities and Related Institutions

The Texas Department of Human Services (DHS) adopts the repeal of §§90.1, 90.18-90.21, 90.41, 90.61-90.73, 90.161-90.174, 90.231, 90.232, 90.234-90.236, 90.238, and 90.261; adopts amendments to §§90.2, 90.3, 90.11-90.17, 90.191, 90.192, 90.214-90.217, 90.233, 90.237, 90.262, 90.263, and 90.281-90.286; and adopts new §§90.18-90.20, 90.60, 90.70, 90.80, 90.232, and 90.234-90.236, in its Chapter 90, Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition (ICF-MR/RC) (formerly Nursing Facilities and Related Institutions). The amendments to §§90.3, 90.12, 90.13, 90.16, 90.17, 90.191, 90.192, 90.215, 90.217, 90.233, 90.237, 90.262, 90.263, 90.281, 90.282, 90.285, and 90.286, and new §§90.19, 90.20, 90.60, 90.70, 90.80, 90.234, and 90.236 are adopted with changes to the proposed text published in the October 7, 1994, issue of the *Texas Register* (19 TexReg 8007). The repeal of §§90.1, 90.18-90.21, 90.41, 90.61-90.73, 90.161-90.174, 90.231, 90.232, 90.234-90.236, 90.238, and 90.261, the amendments to §§90.2, 90.11, 90.14, 90.15, 90.214, 90.216, 90.283, and 90.284, and new §§90.18, 90.232, and 90.235 are adopted without changes and will not be republished.

DHS withdrew from consideration for permanent adoption its proposed repeal of §§90.92-90.105 and new §90.90, which were also proposed in the October 7, 1994, issue of the *Texas Register* (19 TexReg 8007) effective October 21, 1994. DHS subsequently proposed amendments to §§90.92 and 90.102 in the October 28, 1994, issue of the *Texas Register* (19 TexReg 8602). These amendments are adopted in this issue of the *Texas Register*.

The justification for the repeals, amendments, and new sections is to delete nursing facility licensure standards from Chapter 90. DHS has combined the nursing facility licensure standards from old Chapter 90, Nursing Facilities and Related Institutions, with the Medicaid nursing facility certification requirements in DHS's Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification. Removing the nursing facility licensure standards from Chapter 90 leaves in that chapter licensure standards addressing only facilities serving persons with mental retardation and related conditions. Those standards have been revised to reflect changes in the nursing facility licensure standards to keep the processes similar. Additionally, editorial and organizational changes have been made.

The repeals, amendments, and new sections will function by making a separate chapter of rules applicable to licensure of ICF-MR/RC facilities.

No comments were received regarding the proposal; however, DHS is adopting the rules with changes as follows: Section 90.3-Edits in definitions of "resident" and "standards". Section 90.12-Deletion of specific requirements of local fire authority. Sections 90.13, 90.16, and 90.17-Changes necessary to track DHS's Nursing Facility Requirements for Licensure and Medicaid Certification (NFR/LMC). Section 90.19-Edits in subsection (c). Section 90.20-Edits in subsection (f). Section 90.60-Edits in subsections (a)(4) and (5) and (c)(8) and (9). Section 90.70-Changes necessary to track DHS's NFR/LMC. Section 90.80-Deletion of "health department" from subsection (b)(1) and edits in (b)(3)(H). Section 90.191-Edits in subsection (f)(1). Section 90.192-Deletion of language in subsection (e) concerning DHS's inspection summary. Section 90.215-Changes necessary to track DHS's NFR/LMC. Section 90.217-Edits in subsection (b). Section 90.233 and §90.234-Changes necessary to track DHS's NFR/LMC. Section 90.236 and §90.237-Edits in subsection (c) of each section. Section 90.262-Edits in subsection (b). Section 90.263-Edits in subsection (e). Section 90.281-Correction of Health and Safety Code reference. Section 90.282-Adds "plan of care" and "respite care". Section 90.285 and §90.286-Changes "institution" to "facility".

### Subchapter A. Introduction

#### • 40 TAC §90.1

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502589 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: May 1, 1995

Proposal publication date: October 7, 1994

For further information, please call: (512) 450-3765

#### • 40 TAC §90.2, §90.3

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code,

Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.3. Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. Individual subchapters may have definitions which are specific to the subchapter.

**Facility**—A facility serving persons with mental retardation or related conditions licensed under this chapter as described in §90.2 of this title (relating to Scope) and required to be licensed under the Health and Safety Code, Chapter 242.

**Incident**—An unusual or abnormal event or occurrence in, at, or affecting the facility and/or the residents of the facility.

**Manager**—A person having a contractual relationship to provide management services to a facility.

**Person**—An individual, firm, partnership, corporation, association, or joint stock company, and any legal successor of those entities.

**Person with a disclosable interest**—Any person who owns 5.0% interest in any corporation, partnership, or other business entity that is required to be licensed under Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

**Resident**—An individual who resides in a facility.

**Standards**—The minimum conditions, requirements, and criteria with which a facility will have to comply to be licensed under this chapter.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### Subchapter B. Application Procedures

#### • 40 TAC §§90.11-90.20

The amendments and new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments and new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

#### *§90.12. Building Approval.*

(a) Local fire authority. All applications for licensure must include the written approval of the local fire authority having jurisdiction that the facility and its operation meet local fire ordinances.

(b) Local health authority. The following procedures allow the local health authority to provide recommendations to DHS concerning licensure of a facility.

(1) New facility. The sponsor of a new facility under construction or a previously unlicensed facility must provide to DHS a copy of a dated written notice to the local health authority that construction or modification has been or will be completed by a specific date. The sponsor must also provide a copy of a dated written notice of the approval for occupancy by the local fire marshal or local building code authority, if applicable. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations.

(2) Increase in capacity. The license holder must request an application for increase in capacity from DHS. DHS provides the license holder with the application form, and DHS notifies the local fire marshal and the local health authority of the request. The license holder must arrange for the inspection of the facility by the local fire marshal. Upon completion of the inspection, the license holder must notify the local health authority and DHS in writing if the facility meets local code requirements. DHS approves the application only if the facility is found to be in compliance with the standards. Approval to occupy the increased capacity may be granted by DHS prior to the issuance of the license covering the increased capacity after inspection by DHS if standards are met.

(3) Change of ownership. The applicant for a change of ownership license must provide to DHS a copy of a letter

notifying the local health authority of the request for a change of ownership.

(4) **Renewal.** DHS sends the local health authority a copy of DHS's license renewal notice specifying the expiration date of the facility's current license. The local health authority may provide recommendations to DHS regarding the status of compliance with local codes, ordinances, or regulations. The local authority may also recommend that a state license be issued or denied; however, the final decision on licensure status remains with DHS.

(5) **Inspection and plan review.** An applicant for licensure who has an existing building must submit either a plan for review and approval or request a feasibility inspection to be performed by DHS to determine construction or renovation requirements. The fees for inspection and plan reviews must be in accordance with §90.19 of this title (relating to License Fees).

#### §90.13. Applicant Disclosure Requirements.

(a) **Scope of section.** No person may apply for a license, change of ownership, increase in capacity, or renewal of a license to operate or maintain a facility without making a disclosure of information as required in this section.

(b) **Disclosure form.** All applications must be made on forms prescribed by and available from the Texas Department of Human Services (DHS). Each application must be completed in accordance with DHS instructions, signed, and notarized.

(c) **General information required.** An applicant must file with DHS an application which contains:

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

(5) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds must be disclosed to DHS;

(6) (No change.)

(7) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership.

(d) **Disclosure requirements.** Applicants must disclose the following information for the two-year period preceding the application date, concerning the applicant, persons with a disclosable interest, officers, affiliates, and manager, without regard to

whether the data required relates to current or previous events:

(1) denial or revocation of a license to operate a nursing facility, facility serving persons with mental retardation or related conditions, personal care facility, or similar facility in any state;

(2) federal or state long term care facility sanctions or penalties;

(3) (No change.)

(4) unsatisfied final judgments;

(5) operation of a facility that has been decertified in any state under Medicare or Medicaid;

(6) debarment, exclusion, or contract cancellation in any state from Medicare or Medicaid;

(7) eviction involving any property or space used as a facility in any state;

(8) orders from any court restraining or enjoining the applicant, manager, or any person with a controlling interest from operating a facility in any state; or

(9) any of the adverse actions referenced in this subsection taken against the applicant by all relevant licensing and certification agencies in all other states in which the applicant owns, operates, or manages nursing facilities, facilities serving persons with mental retardation or related conditions, personal care facilities, or similar facilities in any state. The applicant must obtain letters or other documentation from those agencies attesting to the adverse actions or the absence of any such adverse actions.

(e) **Required ownership and management information for the past two years.**

(1) Each applicant for a license to operate a facility must disclose to DHS the name and business address of:

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

(2) If any person described in this section has served or currently serves as an administrator, general partner, limited partner, trustee or trust applicant, sole proprietor, or any applicant or licensee who is a sole proprietorship, executor, or corporate officer or director of or has held a beneficial ownership interest of 5.0% or more in any other long term care facility, the applicant must disclose to DHS the relationship, including the name and current or last address of the facility and the date the relationship commenced and, if applicable, the date it was terminated.

(3) If the applicant or licensee is a subsidiary of another organization, the information must include the names and addresses of the parent organization and the

names and addresses of the officers and directors of the parent organization.

(4) If the facility is operated by, or proposed to be operated under, a management contract, the names and addresses of any person or organization, or both, having an ownership interest of 5.0% or more in the management company must be disclosed to DHS.

(5) The information required by this section must be provided to DHS upon initial application for licensure, and changes in the information must be provided to DHS on an annual basis, except that a licensee must notify DHS within 30 days of any change of the facility's manager or management services.

(f) **Exemptions.** The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity except for provisions that require disclosure relating to the manager of the facility.

#### §90.16. Change of Ownership.

(a) (No change.)

(b) To avoid a gap in the license because of a change in ownership of the facility, the prospective purchaser must submit to DHS a complete application for a license under §90.11 of this title (relating to Criteria for Licensing) at least 30 days before the anticipated date of sale or other transfer for ownership. The applicant must meet all requirements for a license. If the applicant has filed a timely and sufficient application for a license and otherwise meets all requirements for a license, DHS will issue the applicant a license effective on the date of transfer of ownership. DHS considers an individual has filed a timely and sufficient application for a license if the individual submits:

(1) a complete application to DHS, and DHS receives the complete application at least 30 days before the anticipated date of sale or other transfer of ownership;

(2) an incomplete application to DHS with a letter explaining the circumstances which prevented the inclusion of the missing information, and DHS receives the incomplete application and letter at least 30 days before the anticipated date of sale or other transfer of ownership;

(3) a complete application to DHS, DHS receives the application during the 30-day period ending on the anticipated date of sale or other transfer of ownership, and the individual pays a fine under the administrative penalties described in §90.236(h)(H) of this title (relating to Administrative Penalties); or

(4) an application to DHS, DHS receives the application by the date of sale or other transfer of ownership, and the individual proves to DHS's satisfaction that the health and safety of the facility residents required an emergency change of ownership.

(5) If the application is post-marked by the filing deadline, the application will be considered to be timely filed if received in the Licensing Section of the state office of Long Term Care-Regulatory, Texas Department of Human Services, within 15 days of the postmark.

**§90.17. Criteria for Denying a License or Renewal of a License.**

(a) The Texas Department of Human Services (DHS) may deny an initial license or refuse to renew a license if an applicant, manager, or affiliate:

(1) substantially fails to comply with the requirements described in §90.42 of this title (relating to Standards for Facilities Serving Persons with Mental Retardation or Related Conditions), including, but not limited to:

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

(2)-(4) (No change.)

(5) fails to pay the following fees, taxes and assessments when due:

(A) licensing fees as described in §90.19 of this title (relating to License Fees);

(B) reimbursement of emergency assistance funds within one year from the date on which the funds were received by the trustee in accordance with the provisions of §90.263(e) of this title (relating to Involuntary Appointment of a Trustee);

(C) administrative penalties within 60 days of the order assessing the penalties in accordance with §90.236 of this title (relating to Administrative Penalties); or

(D) (No change.)

(6) discloses any of the following actions within the two-year period preceding the application:

(A) (No change.)

(B) federal or state long term care facility sanctions or penalties, including, but not limited to, vendor holds, monetary penalties, downgrading the status of a facility license, proposals to decertify, di-

rected plans of correction, or the denial of payment for new Medicaid admissions;

(C)-(F) (No change.)

(b)-(e) (No change.)

(f) DHS will not approve as meeting licensing standards new beds or the expansion of a facility serving persons with mental retardation or related conditions that participates in the medical assistance program under Title XIX of the Social Security Act, as provided by the Health and Safety Code, §222.042, unless:

(1) the new beds or the expansion was included in the plan approved by the Health and Human Services Commission in accordance with Health and Safety Code, §533.061; and

(2) (No change.)

(g) If DHS denies a license or refuses to issue a renewal of a license, the applicant or licensee may request an administrative hearing. Administrative hearings will be held in accordance with DHS's formal hearing procedures under §§79.1601-79.1614 of this title (relating to Formal Hearings) and the Administrative Procedures Act (APA), Title 10 of the Texas Government Code, §§2001.051 et seq.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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◆ ◆ ◆  
• 40 TAC §§90.18-90.21

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services. The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

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◆ ◆ ◆  
Subchapter C. Standards for  
Licensure

• 40 TAC §90.41

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

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◆ ◆ ◆  
Subchapter D. General Re-  
quirements for Facility Con-  
struction

• 40 TAC §§90.60, 90.70, 90.80

The new sections are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys



from the Texas Department of Health to the Texas Department of Human Services.

The new sections implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.60. Plans, Approvals, and Construction Procedures.*

(a) Submittal of preliminary plans.

(1) When construction is contemplated for new buildings, additions, conversion of buildings not licensed by the Texas Department of Human Services (DHS) (including formerly licensed facilities), or remodeling of existing licensed facilities, one copy of the preliminary proposed plans must be submitted to DHS (Architectural Section) for review prior to the preparation of working drawings. For additions, an overall plan similar to that described in §90.80(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction) must be included.

(2) Fees for plan reviews will be required in accordance with §90.70 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) The project will be considered abandoned and the plans will be destroyed if final plans are not submitted to DHS within 24 months from the submittal date of the preliminary plans for review and approval.

(4) The plans must be drawn to scale and must indicate the usage of all spaces, sizes of areas and rooms, and the type and location of fixed equipment. New construction or additions must include a site plan showing all pertinent conditions including grades and all structures on the site. Written approval of the local building department and the local fire marshal must be submitted.

(5) A general description of the surrounding area and vicinity including, but not limited to, commercial, residential, rural, and shopping areas, and available transportation must be furnished for new locations.

(b) Submittal of final plans.

(1) Before construction is begun, one copy of working drawings and specifications (contract documents) in sufficient detail to interpret compliance with these standards and assure proper construction must be submitted to DHS for review within 60 days of receipt of such documents and required plan review fee. These documents must be prepared according to accepted architectural practice and must include general construction, special conditions, schedules, and any other pertinent information that DHS may require. In addition,

two extra copies of the floor plan (only) must be submitted with the complete set.

(2) The project will be considered abandoned and the plans destroyed if the project is not under construction and continuing progress shown 12 months from the date of the final review of the plans. Resubmittal of plans and full plan review fee will again be required if, after the abandonment period, the project will be constructed. Fees will be as required in accordance with §90.70 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

(3) Final copies of plans must have (in the reproduction process by which plans are reproduced) a title block showing name of facility, person or organization preparing the sheet, sheet numbers, facility address, and drawing date. Certain parts of final plans, designs, and specifications must bear the seal of a registered professional engineer approved by the State Board of Registration for Professional Engineers to operate in Texas. These certain parts include sheets and sections covering structural, electrical, mechanical, and sanitary engineering. Contract documents for additions and remodeling and for the construction of an entirely new facility must be prepared by an architect licensed by the Texas State Board of Architectural Examiners. Drawings must bear the seal of the architect.

(4) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be to scale such as 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(5) Plans and specifications for conversions or remodeling must be complete for all parts and features involved.

(6) It is the sponsor's responsibility to employ qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that conformance with standards cannot be reasonably assured or determined, a revised set of documents for review may be requested. For additions and remodeling to existing licensed facilities, construction must not be started until the final contract documents are reviewed and approved in writing by DHS within 60 days of receipt of final drawings and required plan review fee.

(7) The review of plans and specifications by DHS is based on general utility, minimum licensing standards, and conformance with the Life Safety Code, and is not to be construed as all-inclusive ap-

proval of the structural, electrical, or mechanical components.

(c) Contract documents.

(1) Site plan documents must include grade contours; streets (with names); north arrow; fire hydrants; fire lanes; utilities, public or private; fences; unusual site conditions, such as ditches, low water levels, other buildings on-site; and indications of buildings five feet or less beyond site property lines.

(2) Foundation plan documents must include general foundation design and details.

(3) Floor plan documents must include room names, numbers, and usages; doors (numbered) including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; and kitchen basic layout; and identification of all smoke barrier walls (outside wall to outside wall) or fire walls.

(4) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet; submit two reduced plans for file record. See §90.80(c)(3) of this title (relating to Construction and Initial Survey of Completed Construction).

(5) Schedules must include door materials, widths, types; window materials, sizes, types; room finishes; and special hardware.

(6) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, and gas piping, and interior elevations where needed for special conditions.

(7) Details must include wall sections as needed (especially for special conditions); cabinet and built-in work, basic design only; cross sections through buildings as needed; and miscellaneous details and enlargements as needed.

(8) Building structure documents must include structural framing layout and details (primarily for column, beam, joist, and structural frame building); roof framing layout (when this cannot be adequately shown on cross section); cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design, also calculated design loads.

(9) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system (exit signs

and emergency egress lighting); emergency electrical provisions (such as generators and panels); fire alarm and similar systems (such as control panel, devices, and alarms); sizes and details sufficient to assure safe and properly operating systems; and a staff communication system.

(10) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(11) Heating, ventilation, and air-conditioning (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(12) Sprinkler system documents must include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; electrical devices interconnected to the alarm system.

(13) Other layouts, plans, or details as may be necessary for a clear understanding of the design and scope of the project; including plans covering private water or sewer systems must be reviewed by the local health or wastewater authority having jurisdiction. If no local authority, then the plans will be reviewed by DHS.

(14) Specifications must include installation techniques, quality standards and/or manufacturers, references to specific codes and standards, design criteria, special equipment, hardware, painting, and any others as needed to amplify drawings and notes.

*§90.70. Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services.*

(a) Under Texas Civil Statutes, Article 4413(502) historical note (Vernon Supplement 1994) (Act of August 9, 1991, 72nd Legislature, First Called Session, Chapter 15, §1.11, 1991 Texas General Laws 298), the Texas Department of Human Services (DHS) has the authority to charge fees for providing services described in this section. Pursuant to this authority, DHS establishes the fees, as shown in the fee schedule in subsection (j) of this section, to cover plan review services, construction inspection services, and feasibility inspection services. The fees are designed

not to exceed the costs to DHS to provide these services.

(b) When DHS finds in a licensed facility a violation of standards and when plans are submitted for the purpose of showing how the violation will be corrected, there will be no fee for such plan review. There will similarly be no fee for a construction visit made pursuant to a plan review.

(c) The plan review fees shown in the fee schedule in subsection (j) of this section cover the review of plans in all the stages of development.

(d) In determining the cost of additions or remodeling, only the direct construction costs need to be considered, that is, construction contract amount plus any add-on costs by contractor or owner during construction. Costs do not include land acquisition, architectural/engineering fees, financing, legal fees, fund raising fees, furnishings, or movable equipment.

(e) Remodeling is the construction, removal, or relocation of walls and partitions; the construction of foundations, floors, or ceiling-roof assemblies; the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems); or the conversion of space in a facility to a different use.

(f) General maintenance and repairs of existing material and equipment, repainting, applications of new floor, wall, or ceiling finishes, or similar projects are not included as remodeling, unless as a part of new construction. DHS must be provided flame spread documentation for new materials applied as finishes.

(g) Fees are due for payment as follows:

(1) when plan development has reached the preliminary plan stage and preliminary plans are submitted for review, 30% of the plan review fee must accompany the plans. Before final plans are reviewed, the full fee, if preliminary plans were not submitted, or the balance of the plan review fee must be paid;

(2) construction inspection fees for new facilities and for additions or remodeling of existing licensed facilities are due for payment before the facility is licensed or otherwise accepted by DHS under licensure; and

(3) feasibility inspection fees are due for payment prior to the inspection being made.

(h) Payment of fees must be by check or money order made payable to the Texas Department of Human Services. All fees are nonrefundable except as provided by Texas Government Code, Chapter 2005.

(i) If the facility or institution requests construction inspections beyond those called for in the schedule, the appropriate additional fees must be submitted. If DHS elects to make additional construction inspections, there will be no charge for these inspections.

(j) The fee schedule is as follows:  
*Figure 1: 40 TAC §90.70(j)*

*§90.80. Construction and Initial Survey of Completed Construction.*

(a) Construction phase.

(1) The Texas Department of Human Services (DHS) must be notified in writing of construction start.

(2) All construction must be done in accordance with the completed plans and specifications as submitted for review and as modified in accordance with review requirements. Any deviations therefrom must have prior DHS approval. Revised drawings may be required if the change is significant.

(3) A preliminary stage construction inspection is required for most construction work unless otherwise instructed by DHS. A minimum of three weeks notification prior to applying interior wall and ceiling surfaces (except for smoke barrier wall surfaces which must be completed) must be given so that the inspector may schedule the preliminary visit.

(b) Initial survey of completed construction.

(1) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection (initial survey) of the facility is required to be performed by DHS (architectural section) prior to admitting residents. A minimum of three weeks advance notice is needed. The completed construction must have the written approval of the local authorities having jurisdiction, including the fire marshal, and building inspector.

(2) After the completed construction has been surveyed by a representative of the architectural section of DHS and found acceptable, this information will be conveyed to the licensing officer as part of the information needed to issue a license to the facility. In the case of additions or remodeling of existing facilities, a revision or modification to an existing license may be necessary. Note that the building, grades, drives, parking and grounds must be essentially 100% complete at the time of this initial survey visit for occupancy approval and licensing, including basic furnishings and operational needs.

(3) The following documents must be available to DHS's architectural

inspecting surveyor at the time of the survey of the completed building:

(A) written approval of local authorities as called for in paragraph (1) of this subsection;

(B) written certification of the fire alarm system by the installing agent (Form FML-009 of the Texas State Fire Marshal);

(C) documentation of materials used in the building which are required to have a specific limited fire or flame spread rating, including, but not limited to, special wall finishes or floor coverings, flame retardant curtains (including cubicle curtains), and rated ceilings. This must include a signed letter from the installer verifying that the material installed is the same material named in the laboratory test document;

(D) approval of the completed sprinkler system installation by the Texas Department of Insurance or the designing engineer. A copy of the material list and test certification must be available;

(E) service contracts for maintenance and testing of systems, including, but not limited to, alarm systems and sprinkler systems;

(F) a copy of gas test results of the facility's gas lines from the meter;

(G) a written statement from an architect/engineer stating that, to the best of his/her knowledge, the building was constructed in accordance with the approved drawings; and

(H) any other such documentation as needed.

(c) Non-approval of new construction.

(1) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, he may recommend to DHS that the facility not yet be licensed and approved for occupancy. Such basic items may include the following:

(A) substantial changes made during construction which were not submitted to DHS for review and which may require revised as-built drawings to cover the changes. This may include architectural, structural, mechanical, and electrical items (reference subsection (a)(2) of this section);

(B) construction which does not meet minimum code or licensure standards for basic requirements such as corridor widths being less than eight feet clear width, ceilings installed at less than the minimum seven feet six inches height, resident bedroom dimensions less than required width, and other such features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(C) no written approval by local authorities;

(D) fire protection systems not completely installed or not functioning properly including, but not limited to, fire alarm systems, emergency power and lighting, and sprinkler systems;

(E) required exits are not all usable according to Life Safety Code requirements;

(F) telephone not installed or not properly working;

(G) sufficient basic furnishings, essential appliances and equipment are not installed or not functioning; and

(H) any other basic operational or safety feature which the surveyor, as the authority having jurisdiction, encounters which in his/her judgment would preclude safe and normal occupancy by residents on that day.

(2) If the surveyor encounters deficiencies that do not affect the health and safety of the residents, licensure may be recommended based on an approved written plan of correction by the facility's administrator.

(3) Copies of reduced size floor plan (on an 8 1/2 inch by 11 inch sheet) must be submitted in duplicate to DHS for record/file use and for such uses by the facility as evacuation planning and fire alarm zone identification. The plan must contain basic legible information such as overall dimensions, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

(d) Feasibility inspections. A feasibility inspection may be requested on any existing structure that is proposed to be converted to a facility. This inspection must be requested through DHS. A fee will be charged as required by §90.70 of this title (relating to Fees for Plan Reviews, Construction Inspection Services, and Feasibility Inspection Services).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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#### Subchapter D. Facility Construction

#### Construction Standards for Additions, Remodeling, and New Nursing Facilities

#### • 40 TAC §§90.61-90.73

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Nancy Murphy  
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For further information, please call: (512) 450-3765

#### • 40 TAC §§90.92, §90.102

The Texas Department of Human Services (DHS) adopts amendments to §90.92 and §90.102, concerning introduction, application, and general requirements for facilities serving persons with mental retardation or related conditions; and plumbing (all facilities), in its Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition rule chapter (formerly Nursing Facilities

and Related Institutions), with changes to the proposed text as published in the October 28, 1994, issue of the *Texas Register* (19 TexReg 8602).

The justification for the amendment to §90.92 is to state that Intermediate Care Facilities for the Mentally Retarded with 16 beds or fewer must meet the evacuation requirement for their designated rating under the National Fire Protection Association. The justification for the amendment to §90.102 is to update references to the Texas Natural Resource Conservation Commission.

The amendments will function by updating rule language in these sections.

No comments were received regarding adoption of the amendments; however, DHS is adopting §§90.92(b)(2) and 90.102 with editorial changes.

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.92. Introduction, Application, and General Requirements for Facilities Serving Persons with Mental Retardation or Related Conditions.*

(a) (No change.)

(b) Purpose.

(1) (No change.)

(2) The method of determining the evacuation capability of residents under NFPA 101, Chapter 21, is by rating each resident and each staff member to determine an evacuation difficulty score (E-score). If the E-score is 1.5 or less, the evacuation capability of the facility is prompt, greater than 1.5 to five is slow, greater than five is impractical. The worksheets to be completed are located in NFPA 101, 1985 Edition, Appendix F. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) with 16 beds or less must meet the evacuation requirement for their designated Chapter 21 rating. The ratings and their requirements follow:

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

(3) (No change.)

(c)-(f) (No change.)

*§90.102. Plumbing (All Facilities).*

(a) The water supply must be of safe, sanitary quality, suitable for use, and

adequate in quantity and pressure. The water must be obtained from a water supply system; the location, construction, and operation of which are approved by the Texas Natural Resources Conservation Commission (TNRCC).

(b) Sewage must be discharged into a state-approved sewerage system or septic system; otherwise, the sewage must be collected, treated, and disposed of in a manner which is approved by TNRCC.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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◆ ◆ ◆  
**Subchapter E. Medication  
Aides**

◆ ◆ ◆  
**• 40 TAC §§90.161-90.174**

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**Subchapter F. Inspections, Surveys, and Visits**

**• 40 TAC §90.191, §90.192**

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.191. Procedural Requirements.*

(a) (No change.)

(b) An inspection may be conducted by an individual qualified surveyor or by a team, of which one member is a qualified surveyor.

(c) To determine standard compliance which cannot be verified during regular working hours, night or weekend inspections may be conducted to cover specific segments of operation and will be completed with the least possible interference to staff and residents.

(d) Generally, all inspections, surveys, complaint investigations and other visits, whether routine or non-routine, made for the purpose of determining the appropriateness of resident care and day-to-day operations of a facility will be unannounced; any exceptions must be justified.

(e) Certain visits may be announced, including, but not limited to, consultation visits to determine how a physical plant may be expanded or upgraded and visits to determine the progress of physical plant construction or repairs, equipment installation or repairs, or systems installation or repairs, or conditions when certain emergencies arise, such as fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.

(f) Persons authorized to receive advance information on unannounced inspections include:

(1) citizen advocates invited to attend inspections, as described in subsection (g) of this section;

(2) representatives of the Texas Department on Aging serving as ombudsmen or authorized to attend or participate in inspections;

(3) representatives of the United States Department of Health and Human Services whose programs relate to the Medicare/Medicaid Long Term Care Program; and

(4) representatives of DHS whose programs relate to the Medicare/Medicaid long term care program.

(g) DHS will conduct at least two unannounced inspections each licensing period for each institution licensed under Health and Safety Code, Chapter 242, except as provided for in this subsection.

(1) A sufficient number of inspections will be conducted between the hours of 5:00 p.m. and 8:00 a.m. In randomly selected institutions, a cursory after-hours inspection will be conducted to verify staffing, assurance of emergency egress, resident care, medication security, food service or nourishments, sanitation, and other items as deemed appropriate. To the greatest extent feasible, any disruption of the residents will be minimal.

(2) For at least two unannounced inspections each licensing period, DHS will invite to the inspections at least one person as a citizen advocate from the American Association of Retired Persons, the Texas Senior Citizen Association, the Texas Retired Federal Employees, the Texas Department on Aging Certified Long Term Care Ombudsman, or any other statewide organization for the elderly. DHS will provide to these organizations basic licensing information and requirements for the organizations' dissemination to their members whom they engage to attend the inspections. Advocates participating in the inspections must follow all DHS protocols. Advocates must provide their own transportation. The schedule of inspections in this category will be arranged confidentially in advance with the organizations. Participation by the advocates is not a condition precedent to conducting the inspection.

(h) The facility must make all of its books, records, and other documents maintained by or on behalf of a facility accessible to DHS upon request.

(1) DHS is authorized to photocopy documents, photograph residents, and use any other available recording devices to preserve all relevant evidence of conditions found during an inspection, survey, or investigation that DHS reasonably believes threaten the health and safety of a resident.

(2) Examples of records and documents which may be requested and photocopied or otherwise reproduced are resident medical records, including nursing notes, pharmacy records medication records, and physician's orders.

(3) When the facility is requested to furnish the copies, the facility may charge DHS at a rate not to exceed the rate charged by DHS for copies. The procedure of copying is the responsibility of the administrator or his designee. If copying requires the records be removed from the

facility, a representative of the facility is expected to accompany the records and assure their order and preservation.

(4) DHS protects the copies for privacy and confidentiality in accordance with recognized standards of medical records practice, applicable state laws, and DHS policy.

(i) DHS will provide for a special team to conduct validation surveys or verify findings of previous licensure surveys.

(1) At DHS's discretion, based on record review, random sample, or any other determination, DHS may assign a team to conduct a validation survey. DHS may use the information to verify previous determinations or identify training needs to assure consistency in deficiencies cited and in punitive actions recommended throughout the state.

(2) Facilities are required to correct any additional deficiencies cited by the validation team but are not subject to any new or additional punitive action.

#### *§90.192. Determinations and Actions Pursuant to Inspections.*

(a) The Texas Department of Human Services (DHS) will determine if a facility meets the licensing rules, including both physical plant and facility operation requirements.

(b) (No change.)

(c) Violations found during complaint investigations will be furnished in writing and discussed with the facility management at the exit conference. The source of the complaint will not be revealed.

(d) At the conclusion of an inspection or survey, the violations will be discussed in an exit conference with the facility's management. A written list of the violations will be left with the facility at the time of the exit conference; any additional violation that may be determined during review of field notes or preparation of the official final list (when the official final list was not issued at the exit conference) will be communicated to the facility in writing within ten working days of the exit conference, and the facility will have ten working days to reply before the additional violation is made a part of the permanent record. Copies of any narratives or similar papers written to further describe the conditions will be furnished to the facility.

(e) A clear and concise summary in nontechnical language of each licensure inspection, and/or complaint investigation will be provided by DHS at the time the report of contact or similar document is provided.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel

and found to be a valid exercise of the agency's legal authority.

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### ◆ ◆ ◆ Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and In- vestigations

#### ◆ ◆ ◆ • 40 TAC §§90.214-90.217

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

#### *§90.215. Investigations of Incidents and Complaints.*

(a) In accordance with the memorandum of understanding between the Texas Department of Human Services (DHS) and the Texas Department of Protective and Regulatory Services (relating to Memorandum of Understanding Concerning Protective Services for the Elderly), DHS receives and investigates reports of abuse, neglect, and exploitation of persons who are elderly and persons with disabilities or other residents living in facilities licensed under this chapter. In investigating allegations of abuse and neglect of children residing in facilities, the definitions of "abuse," "neglect," and "person responsible for a child's care, custody, or welfare" are those found in the Texas Family Code, §34.012.

(b) DHS will investigate complaints of abuse, neglect, or exploitation when the act occurs in the facility, when such licensed facility is responsible for the supervision of the resident at the time the act occurs, or when the alleged perpetrator is affiliated with the facility. Complaints of abuse, neglect, or exploitation not meeting this criteria will be referred to the Texas

Department of Protective and Regulatory Services.

(c) The primary purpose of an investigation is the protection of the resident. If, before the completion of an investigation, DHS determines that the immediate removal of the resident is necessary to protect the resident from further abuse or neglect, DHS will petition a court to allow the immediate removal of the resident from the facility.

(d) (No change.)

(e) Investigations of reports do not preclude actions under the provisions of Subchapter H of this chapter (relating to Enforcement).

(f)-(g) (No change.)

*§90.217. Reporting of Resident Death Information.*

(a) All licensed facilities must submit to the Texas Department of Human Services (DHS) a report of deaths of any persons residing in the facility and those persons transferred from the facilities to a hospital who expire within 24 hours after transfer.

(b) The facility must submit to DHS a standard DHS form within ten workdays after the last day of the month in which a resident death occurs. The form must include:

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

(c) These reports are confidential under the Health and Safety Code, §242.134; however, licensed facilities must make available historical statistics provided to them by DHS, if requested by the applicants for admission or their representative.

(d) DHS produces statistical information of official causes of death to determine patterns and trends of incidents of death and makes this information available to the public upon request.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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**Subchapter H. Enforcement**

- 40 TAC §§90.231, 90.232, 90.234-90.236, 90.238

The repeals are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The repeals implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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- 40 TAC §§90.232-90.237

The new sections and amendment are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The new sections and amendment implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.233. Revocation.*

(a) The Department of Human Services (DHS) may revoke a facility's license when the facility's violation of the licensure rules jeopardizes the health and safety of residents.

(b) In addition, DHS may revoke a license if the license holder:

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

(c) Revocation of a license may occur simultaneously with any other enforcement provision available to DHS.

(d) The facility will be notified by certified mail of DHS's intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The facility has an opportunity to show compliance with all requirements of law for the retention of the license as provided in §90.18 of this title (relating to Informal Reconsideration). If the facility requests an informal reconsideration, DHS will give the license holder a written affirmation or reversal of the proposed action.

(e) The facility will be notified by certified mail of DHS's intent to revoke the license, including the facts or conduct alleged to warrant the revocation. The facility has 15 days from receipt of the certified mail notice to request a hearing in accordance §§79.1601-79.1614 of this title (relating to Formal Hearings). The revocation will take effect when the deadline for appeal of the revocation passes, unless the facility appeals the revocation. If the facility appeals the revocation, the status of the license holder is preserved until final disposition of the contested matter. Upon revocation, the license must be returned to DHS.

*§90.237. Open Hearing.*

(a) The Texas Department of Human Services (DHS) will hold an open hearing in a facility if DHS:

(1) has taken a punitive action against the facility in the preceding 12 months; or

(2) receives a complaint from an ombudsman, advocate, resident, or relative of a resident relating to a serious or potentially serious problem in the facility and DHS has reasonable cause to believe the complaint is valid.

(b) Only one hearing regarding a specific facility will be held each year unless DHS determines that, in the interest of resident health and safety, more should be held.

(c) Notice of the time, date, and place of the hearing will be mailed, not less than ten days prior to the hearing, to:

(1) the facility;

(2) the designated closest living relative or legal guardian of each resident; and

(3) appropriate state and federal agencies that work with the facility.

(d) The facility is responsible for furnishing DHS a listing of the name and current mailing address of each resident's designated closest living relative, legal guardian, or responsible party.

(e) DHS may exclude a facility's administrator and personnel from the hearing.

(f) DHS will notify, confidentially, the complainant of the results of the investigation which followed the complaint.

(g) DHS will notify the facility of any complaints received at the hearing and provide a summary of those complaints to the facility. In providing this information to the facility, the source of the complaints will not be identified.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 450-3765

## Subchapter I. Trustees for Facilities

### • 40 TAC §90.261

The repeal is adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The repeal implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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### • 40 TAC §90.262, §90.263

The amendments are adopted under the Health and Safety Code, Chapter 242, which

provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

### §90.262. Appointment of a Trustee by Agreement.

(a) A person holding a controlling interest in a facility may, at any time, request the Texas Department of Human Services (DHS) to assume the operation of the facility through the appointment of a trustee.

(b) If DHS believes that the appointment of a trustee is desirable, DHS may enter into an agreement with the person holding the controlling interest for the appointment of the trustee to take charge of the facility.

(c) Any agreement entered into under this section must:

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

(d) The agreement will terminate either at a time specified in the agreement or upon receipt of notice of intent to terminate sent by either party.

(e) If DHS determines that termination of the agreement by the person holding a controlling interest in the facility would not be in the best interest of the residents, DHS will petition a court for an involuntary appointment under the terms of §90.263 of this title (relating to Involuntary Appointment of a Trustee).

(f) The appointment of a trustee by agreement does not suspend the obligation of a facility to pay assessed civil money or administrative penalties.

### §90.263. Involuntary Appointment of a Trustee.

(a) The Texas Department of Human Services (DHS) may petition a court of competent jurisdiction for the involuntary appointment of a trustee to operate a facility if one or more of the following conditions exist:

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

(4) an emergency exists that presents an immediate threat to the health and safety of the residents; and/or

(5) (No change.)

(b) A trustee appointed under this section is entitled to a reasonable fee as determined by the court to be paid from the Nursing and Convalescent Home trust fund.

(c) The trustee may use the emergency assistance funds in the trust fund only to alleviate an immediate threat to the health and safety of the residents, through such disbursements as payments for food; medication; sanitation services; minor repairs; supplies necessary for personal hygiene; or services necessary for the personal care, health and safety of the residents.

(d) Before emergency assistance funds may be dispersed, a court order must be entered authorizing DHS to disburse emergency assistance funds to the facility.

(e) A facility that receives emergency assistance funds under this section must reimburse DHS for the amounts received not later than one year after the date on which the funds were received by the trustee. The owner of the facility at the time the trustee was appointed is responsible for the reimbursement and must pay interest from the date the funds were disbursed on the amount outstanding at a rate equal to the rate of interest determined under Texas Civil Statutes, Article 5069-1.05, to be applicable to judgments rendered during the month in which the money was disbursed to the facility. DHS will deposit the reimbursement and the interest received under this subsection to the credit of the Nursing and Convalescent Home Trust Fund.

(f) Any amount remaining due at the end of one year becomes delinquent and will be referred to the attorney general.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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## Subchapter J. Respite Care

### • 40 TAC §§90.281-90.286

The amendments are adopted under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes,

Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendments implement the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.281. Generally.* A facility licensed under this chapter may provide respite care for an elderly person or a person with a disability, according to a plan of care as provided under the Health and Safety Code, §§242.181-242.186.

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

**Handicapped person**—In this subchapter, the term "person with disabilities" is used in place of the term "handicapped person" as that term is used in Chapter 242 of the Health and Safety Code.

**Plan of care**—A written description of the medical care or the supervision and nonmedical care needed for an individual during respite care.

**Person with disabilities**—A person whose physical or mental functioning is impaired to the extent that the person needs medical attention, counseling, physical therapy, therapeutic or corrective equipment, or another person's attendance and supervision.

**Respite care**—The provision by a facility to an individual, for not more than two weeks for each stay in the facility, of room, board, and care at the level ordinarily provided for permanent residents.

*§90.285. Inspections.* The Texas Department of Human Services (DHS), at the time of a licensing inspection or at other times DHS determines necessary, inspects a facility's records of respite care services, physical accommodations available for respite care, and the plan of care records to ensure that the respite care services comply with the licensing standards of this chapter.

*§90.286. Suspension.*

(a) The Texas Department of Human Services (DHS) may require a facility to cease providing respite care if DHS determines that the respite care does not meet the standards required by this chapter and that the facility cannot comply with those standards in the respite care it provides.

(b) DHS may suspend the license of a facility that continues to provide respite care after receiving a written order from DHS to cease, as set out in §90.232 of this title (relating to License Suspension).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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# TABLES AND GRAPHICS

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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: 16 TAC §37.60(a)

HEALTH, SAFETY AND WELFARE VIOLATIONS

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Employing a minor to sell, serve, prepare or otherwise handle alcoholic beverages in violation of §106.09 or §61.71 (a)(12), Alcoholic Beverage Code.	5-7	10-12	30-Cancel
Permit a minor to possess or consume an alcoholic beverage in violation of §§106.04, 106.05 and 106.06, Alcoholic Beverage Code.	7-15	10-90 Per §106.13	60-Cancel
Sale of an alcoholic beverage to a minor in violation of §106.04, Alcoholic Beverage Code.	7-20	10-90 Per §106.13	60-Cancel
Conducting business in a manner as to allow a simple breach of the peace with no serious bodily injury or deadly weapon involved (as defined in the Texas Penal Code) in violation of §§22.12 and 28.11, Alcoholic Beverage Code.	10-15	15-20	30-Cancel
Conducting business in a manner as to allow an aggravated breach of the peace with a serious bodily injury or involving a deadly weapon (as defined in the Texas Penal Code) in violation of §§22.12, 28.11, 69.13 and 71.09, Alcoholic Beverage Code.	45-Cancel	60-Cancel	Cancel
Possession of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	21-Cancel	45-Cancel	Cancel
Possession of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code, or Title 16, §35.41(27), Texas Administrative Code.	10-21	21-45	45-Cancel
The sale or delivery or permitting the sale or delivery of narcotics by a licensee or permittee in violation of §104.01, Alcoholic Beverage Code and Title 16, §35.41(27), Texas Administrative Code.	Cancel		

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
The sale or delivery or permitting the sale or delivery of narcotics by an employee or agent of a licensee or permittee in violation of §104.01, Alcoholic Beverage Code or Title 16, §35.41(27), Texas Administrative Code.	30-Cancel	60-Cancel	Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the license or permit holder in violation of §104.01, Alcoholic Beverage Code.	15-20	25-30	30-Cancel
The sale, delivery or possession of any equipment used or designed for the administering of a narcotic by the employee of any license or permit holder in violation of §104.01, Alcoholic Beverage Code.	10-15	20-25	30-Cancel
The sale or service of an alcoholic beverage to an intoxicated person in violation of §§11.61(b)(14), 61.71(a)(6) or 101.63, Alcoholic Beverage Code.	7	10-15	25-Cancel
The license or permit holder or any employee being intoxicated on a licensed premise in violation of §11.61(b)(13) or §104.01, Alcoholic Beverage Code.	7	10-15	25-Cancel
Permitting public lewdness, sexual contact or obscene acts on a licensed premises in violation of §61.71(a)(11) or §104.01, Alcoholic Beverage Code and commission rule, §35.41(1) or the exposure of a person or permitting a person to expose his person in violation of §104.01(2), Alcoholic Beverage Code.	10	15-20	30-Cancel
Creating excessive noise or having unsanitary conditions at a licensed premises in violation of §101.62 or §11.61(b)(9), Alcoholic Beverage Code.	Warning-3	5-7	15-Cancel
Possession or display on the licensed premises of any graphic material that is immoral, indecent, lewd or profane in violation of §101.64, Alcoholic Beverage Code.	7	15-20	30-Cancel
Consumption or permitted consumption of an alcoholic beverage during prohibited hours on a licensed premises in violation of §61.71(a)(18) or §105.06, Alcoholic Beverage Code.	5	7-10	25-Cancel
Rudely displaying or permitting a person to rudely display a weapon in a retail establishment in violation of §104.01(3), Alcoholic Beverage Code.	7	20-30	60-Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
<p>The place and manner of operation of an establishment is such that it constitutes a violation of §§11.46 (a)(8), 11.61(b)(7), 61.42(a)(3) or 61.71(a)(17), Alcoholic Beverage Code by committing the below listed violations. Requires detail on offenses.</p> <p>Examples (not limited to the following offenses):            Possession of any gambling paraphernalia or device;            Gambling on a licensed premises;            Keeping a gambling place;            Bribery;            Prostitution;            Promotion of prostitution;            Employment harmful to a minor;            Misuse of food stamps;            Violation of city codes (relating to health, safety and welfare).</p>	15-Cancel		

### MAJOR REGULATORY VIOLATIONS

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Refusing to allow an inspection of a licensed premises or interfering with an inspection of a licensed premises in violation of §§32.17(a)(2), 61.71(a)(14), 61.74(a)(7) or 101.04, Alcoholic Beverage Code.	10 Employee	10-15	45-Cancel
	20 Permittee	25-30	45-Cancel
Operating an establishment as an illegal open saloon in violation of §32.17(a)(1) or §32.01(2), Alcoholic Beverage Code.	5	15-Cancel	Cancel
Sell, serve or deliver alcoholic beverages during prohibited hours in violation of §105.01, et seq, Alcoholic Beverage Code.	5	7-10	25-Cancel
Selling wine over 14% alcohol content during prohibited hours in violation of §24.07, Alcoholic Beverage Code.	3	5-10	10-25
Sale of alcoholic beverages while serving a suspension in violation of §§11.68, 61.71(a)(22) or 61.84, Alcoholic Beverage Code.	10	25-Cancel	Cancel
Subterfuge - Permitting another person to use a license or permit other than the one it is issued to in violation of §11.05 and §109.53, Alcoholic Beverage Code.	Cancel		
Possession of distilled spirits without local distributor stamps on the container in violation of §28.15 or §32.20, Alcoholic Beverage Code.	Warning-10	10-15	Cancel

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Possession of an empty distilled spirits container with the local distributor stamp not mutilated in violation of agency rule §41.72.	Warning-5	15-20	30-Cancel
Possession of any uninvoiced alcoholic beverages in violation of §28.06 and §32.08, Alcoholic Beverage Code and agency rule §41.50.	10 Employee 15 Permittee	15-20	30-Cancel
Knowingly possess uninvoiced alcoholic beverages in violation of §28.06, Alcoholic Beverage Code and agency rule §41.50 or refilling distilled spirits bottles in violation of §28.08, Alcoholic Beverage Code.	30-Cancel	Cancel	Cancel
Sale of any unauthorized alcoholic beverage in violation of §11.01, Alcoholic Beverage Code.	10	15-45	60-Cancel
Possession of any unauthorized alcoholic beverage by a licensee or permittee or his employee in violation of §§69.12 or 61.71(a)(9), Alcoholic Beverage Code.	3 Employee 5 Permittee/ Licensee	7-10 Employee 10-15 Permittee/ Licensee	15-25 Employee 25-30 Permittee/ Licensee
Consumption of or permitting consumption of an alcoholic beverage on the premises of any off-premise license or permit in violation of §§22.10, 22.11, 26.01 or 71.01, Alcoholic Beverage Code.	3 Employee 5 Permittee/ Licensee	7-10 Employee 10-15 Permittee/ Licensee	15-30 Employee 20-30 Permittee/ Licensee
Permitting an open container on the premises of any off-premise license or permit in violation of §§71.01 or 24.09, Alcoholic beverage Code.	3	7-10	15-30
Purchase of an alcoholic beverage from an unauthorized source in violation of §61.71(a)(19), 61.71(a)(20), 69.09 or 71.05, Alcoholic Beverage Code.	3	7-10	15-30
Sale of an alcoholic beverage by a retailer for the purpose of resale in violation of §71.05, Alcoholic Beverage Code.	5	10-15	15-30
Purchasing alcoholic beverages while on the "delinquent list" in violation of §102.32(d), Alcoholic Beverage Code.	5	10-15	15-30
Selling an alcoholic beverage away from a licensed premises.	7	10-15	15-45
Storage of alcoholic beverages off a licensed premises in violation of §69.10, Alcoholic Beverage Code.	5	10-15	20-30

DESCRIPTION	1st Violation	2nd Violation	3rd Violation
Making false or misleading statements in original or renewal applications or making false or misleading statements in documents submitted with or attached to applications for licenses or permits in violation of §§11.46(4), 61.71(a)(4) or 61.74(a)(11), Alcoholic Beverage Code.	Cancel		
Sale or delivery of alcoholic beverages to a non-licensed business in violation of manufacturing and wholesaler sections of the Alcoholic Beverage Code.	3	10-15	25-30
Sale to a permittee who is on the delinquent list, failure to timely collect credit payments, or failure to report credit law violations; Failure to notify the commission of a delinquent account in violation of §102.32, Alcoholic Beverage Code; Failure to report cash law violations or failure to sell beer for cash in violation of §102.31, Alcoholic Beverage Code.	Warning-5	10-15	25-30
Improper record keeping in violation of agency rules §§41.50, 41.51, 41.52 and §§32.03, 32.06, Alcoholic Beverage Code, including invoices, membership records, pool and replacement accounts.	Warning-3	3-5	5-7
Knowingly filed false report or record.	Cancel		
Knowingly failed to keep record or file return in manner required.	5-10	20-30	35-Cancel
Retail cash/credit laws violation of case or credit laws by retail licensee or permittee in violation of §§61.73, 102.31 or 102.32.	Warning-3	5-10	10-15

# **Sale of Cigarettes or Any Tobacco Products to Persons Under Age 18**

# **IS ILLEGAL**

**Sale or Provision of Tobacco Products to a Minor Under 18  
Years of Age is Prohibited by Law. Upon Conviction, a  
Maximum Fine of up to \$200\* May be Imposed.**

## **FOR INFORMATION CALL:**

# **1-800-345-8647**

**Approved by Texas Board of Health, TEXAS DEPARTMENT OF HEALTH  
Supported and funded by the Texas Cancer Council**

**\*Section 161.081 of the Texas Health and Safety Code imposes a Class C Misdemeanor, now punishable by a fine of up to \$500.**

FIGURE 2: 25 TAC 1.104(a)(2)

**Sale of Cigarettes or Any  
Tobacco Product To Persons  
Under Age 18  
IS ILLEGAL**

**Sale or Provision of Tobacco Products to a Minor Under 18 Years of Age is Prohibited by  
Law. Upon Conviction, a Maximum Fine of up to \$200\* May be Imposed.**

**FOR INFORMATION CALL:**

**1-800-345-8647**

**Approved by Texas Board of Health, TEXAS DEPARTMENT OF HEALTH  
Supported and Funded by the Texas Cancer Council**

**\*Section 161.081 of the Texas Health and Safety Code Imposes a Class C Misdemeanor, now punishable by a fine  
of up to \$500.**



**FIGURE 1: 25 TAC §38.3, PREAMBLE**

Savings Level	Cost Per Case	# Clients	Estimated FY96-99 Range of CIDC Cost Decrease Per Year (Millions)	Estimated FY96-99 Range of MNP Cost Increase Per Year (Millions)*	Estimated FY96-99 Range of State Net Cost Decrease Per Year (Millions)
1	> \$2,000	686	\$0 - \$6.5	\$0 - \$2.5	\$0 - \$4.0
2	> \$5,000	342	\$0 - \$5.1	\$0 - \$1.9	\$0 - \$3.2
3	> \$10,000	185	\$0 - \$4.0	\$0 - \$1.5	\$0 - \$2.5
4	> \$20,000	92	\$0 - \$2.7	\$0 - \$1.0	\$0 - \$1.7
5	> \$50,000	28	\$0 - \$1.4	\$0 - \$0.05	\$0 - \$0.9
6	> \$100,000	11	\$0 - \$0.6	\$0 - \$0.02	\$0 - \$0.4

\*General Revenue funds only--does not include Federal match.

**FIGURE 2: 25 TAC §38.3(3)(A)(vi)**

- Level 1 - \$ 2,000 per year
- Level 2 - \$ 5,000 per year
- Level 3 - \$ 10,000 per year
- Level 4 - \$ 20,000 per year
- Level 5 - \$ 50,000 per year
- Level 6 - \$100,000 per year

**FIGURE 1: 25 TAC §143.9(f)(2)**

<b>TYPE OF LIMITED CERTIFICATE</b>	<b>CLINICAL INSTRUCTION (# OF CLOCK HOURS)</b>	<b>CLINICAL EXPERIENCE (# OF CLOCK HOURS)</b>
Skull	50	100
Chest	6	100
Spine	25	100
Extremities	30	100
Dental	10	100
Chiropractic	60	100
Podiatric	4	50

Figure 1: 40 TAC 90.70(j)

I. Facility Plan Review: Facilities Serving Persons with Mental Retardation or Related Conditions (based on health care occupancy of the Life Safety Code, Chapter 12).

- A. New Facility
  - Single Story \$12 per bed (Minimum \$1,000)
  - Multiple Story \$15 per bed (Minimum \$1,500)
- B. Existing Licensed Facility
  - 1. Additions or remodeling of \$100,000 or more:
    - Single Story 1% of project cost, not to exceed \$2,000\*
    - Multiple Story 1% of project cost, not to exceed \$2,500\*
  - 2. Additions or remodeling:
    - \$25,000-\$99,999 \$200
    - under \$25,000 \$100

\* NOTE: If project cost is not available, the following construction cost figures will be utilized to calculate fee:

- Construction with bed addition: \$15,000 per bed
- Construction without bed addition: \$60 per gross square foot (single story wood frame)
- \$70 per gross square foot (non-combustible or multi-story)

II. Facility Plan Review: Facilities Serving Persons with Mental Retardation or Related Conditions (based on other than health care occupancy, Chapter 21 of the Life Safety Code).

- A. New Facility
  - 4 - 16 beds \$200
  - 17 beds and over \$10 per bed (Minimum \$350)
- B. Existing Licensed Facility
  - 1. Additions or remodeling of \$10,000 or more:
    - Single story 1% of project cost not to exceed \$1,000\*\*
    - Multiple story 1% of project cost not to exceed \$1,200\*\*
  - 2. Additions or remodeling under \$10,000: \$100

\*\* NOTE: If project cost is not available, the following construction cost figures will be utilized to calculate the fee:

- Construction with bed addition: \$5,000 per bed
- Construction without bed addition: \$35 per gross square foot

III. Inspections: All facilities.

- A. Construction
  - Preliminary inspections (each) \$5 per bed (Minimum \$150)
  - Final inspections (each) \$12 per bed (Minimum \$150)
- B. Feasibility
  - Each feasibility inspection and each subsequent visit including final survey prior to licensure \$10 per bed (Minimum \$250)

Appendix A -1

Figure 1 43 TAC §15.54

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Utilities
<p>◆ Project is on the Interstate Highway System</p> <p>- New Construction (I)</p> <p>- Added Capacity/Rehabilitation (NHS or STP)</p> <p>- Rehabilitation (IM)</p>	<p>90 % Federal 10 % State</p> <p>100 % State -or- 80 % Federal 20 % State</p> <p>100 % State -or- 90 % Federal 10 % State</p>	<p>90 % Federal 10 % State</p> <p>80 % Federal 20 % State</p> <p>90 % Federal 10 % State</p>	<p>100 % State</p> <p>100 % State (ROW) 80 % Federal (Util) 20 % State (Util)</p> <p>100 % State (ROW) 90 % Federal (Util) 10 % State (Util)</p>
<p>◆ Project is on the State Highway System (except Farm to Market System, Urban Road System, or PASS)</p>	<p>100 % State -or- 80 % Federal 20 % State #1</p>	<p>100 % State -or- 80 % Federal 20 % State #1</p>	<p>90 % State 10 % Local -or- 80 % Federal 10 % State #1 10 % Local</p>
<p>◆ Project is on the Urban Road (UR) System</p>	<p>100 % State -or- 80 % Federal #1 20 % State</p>	<p>100 % State -or- 80 % Federal #1 20 % State</p>	<p>100 % Local</p>

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Utilities
◆ Project is on the Principal Arterial Street System (PASS)(except for existing US, SH & FM system routes)	100% State -or- 80% Federal 20% State #1	100% State -or- 80% Federal 20% State #1	50% State 50% Local -or- 80% Federal 10% State #1 10% Local
◆ Project is not on the State Highway System and is not in the Urban Street Program	100% Local -or- 80% Federal 20% Local #1	80% Federal 20% Local #3	100% Local -or- 80% Federal 20% Local #1
◆ Project is not on the State Highway System and is: ● within urbanized area > 50,000 and ● in Urban Street Program	100% Local	80% State 20% Local #4	100% Local
◆ Project is on the FM system:  New Route Added Capacity/ Reconstruction	100% State  100% State -or- 80% Federal 20% State #2	100% State  100% State -or- 80% Federal 20% State #2	100% Local  90% State 10% Local -or- 80% Federal 10% State #2 10% Local
◆ State Park Road Program	100% State	100% State	100% State
◆ On-Designated State-System Bridge Program	100% State	80% Federal 20% State	100% State

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Utilities
◆ Off-Designated State-System Bridge Program	80 % Federal 10 % State 10 % Local	80 % Federal 10 % State 10 % Local	100 % Local
◆ On-Designated State-System Safety Program	100 % State	90 % Federal 10 % State	Follow appropriate policy for route designation.
◆ Off-Designated State-System Safety Program	90 % Federal 10 % Local -or- 100 % Local	90 % Federal 10 % Local	100 % Local
◆ All Transportation Enhancement Projects	80 % Federal 20 % Nominating Entity	80 % Federal 20 % Nominating Entity	80 % Federal 20 % Nominating Entity
◆ Traffic signal is: • on the State Highway System, and • population < 50,000 or Traffic signal is: • on a freeway, on the State Highway System	100 % State -or- 80 % Federal 20 % State -or- 90 % Federal 10 % State	100 % State -or- 80 % Federal 20 % State -or- 90 % Federal 10 % State	100 % State -or- 80 % Federal 20 % State -or- 90 % Federal 10 % State
◆ Traffic signal is: • on the State Highway System, and • population > 50,000 or Traffic signal is: • off the State Highway System	100 % Local -or- 80 % Federal 20 % Local -or- 90 % Federal 10 % Local	100 % Local -or- 80 % Federal 20 % Local -or- 90 % Federal 10 % Local	100 % Local -or- 80 % Federal 20 % Local -or- 90 % Federal 10 % Local

Condition	Preliminary Engineering	Construction Engineering and Construction Funds	Right of Way or Utilities
◆ Continuous Lighting Systems on the State Highway System	100 % State -or- 100 % Local	50 % State 50 % Local -or- 100 % State #5 -or- 100 % Local	50 % State 50 % Local -or- 100 % State #5 -or- 100 % Local
◆ Safety Lighting on the State Highway System	100 % State -or- 80 % Federal 20 % State	100 % State -or- 80 % Federal 20 % State	100 % State -or- 80 % Federal 20 % State

All participation ratios shown depict the maximum federal participation for eligible costs.

NOTES:

- #1 If the MPO (within an urbanized area > 200,000 population) elects to use Federal STP(MM) or CMAQ funds, or if the District, in cooperation with the MPO (not within urbanized area > 200,000 population), elects to use Federal STP(UM) Funds.
- #2 If the District elects to use STP(RM) Federal funds.
- #3 The cost for all new storm sewer, curb and gutter, driveways, and sidewalks is included as part of project.
- #4 The City will provide for storm sewers, curb and gutter, sidewalks, driveways, and environmental mitigation.
- #5 The local unit of government assumes the entire cost of the subsequent operation and maintenance.



Name: Kate Woods

Grade: 10

School: Booker T. Washington High School, Dallas ISD



# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department on Aging

Thursday, March 9, 1995, 9:30 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

Citizens Advisory Council

### AGENDA:

Consider and possibly act on: Call to order; minutes of December 8, 1994 joint meeting of CAC and Board on Aging; receive public testimony; report on state appropriations as it relates to advisory committees; select three nominees for CAC chair and vice-chair; method for inclusion of regions not represented on CAC; report from CAC members on advocacy efforts at all levels; report on February 5-7, 1995 Texas White House Conference on Aging (WHCOA); update on regional and national WHCOA; report on Texas Board on Aging actions; report on Texas Silver Haired Legislature activities; report on Texas Senior Advocacy Coalition activities; general announcements; and adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78701, (512) 444-2727.

Filed: March 1, 1995, 9:37 a.m.

TRD-9502607



## Texas Department of Agriculture

Thursday, March 9, 1995, 10:30 a.m.

Board Room, Texas Sheep and Goat Raisers, 233 West Twohig

San Angelo

Texas Sheep and Goat Commodity Board

### AGENDA:

Opening Remarks and welcome  
Review and approval on minutes of last meeting  
Review and approval of fiscal affairs  
Reports of officers and directors

Discussion and action: new business—review of telephone messages; review and possible amendment of the by-laws; review "hot spots" proposals

Unfinished business—review status on various projects; review reports from Gary Nunley on animal damage control

Scheduling of next meeting

Discussion: other business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: February 28, 1995, 2:58 p.m.

TRD-9502540



## Texas Commission on Alcohol and Drug Abuse

Thursday, March 9, 1995, 9:00 a.m.

710 Brazos, Perry Brooks Building Annex

Austin

Audit Committee

### AGENDA:

Call to order; approval of minutes from December 12, 1994 meeting; update on internal audit activities; update on auditing activities; other business; and adjourn.

Contact: Dwayne E. Adams, 710 Brazos, Austin, Texas 78701, (512) 867-8875.

Filed: February 28, 1995, 4:15 p.m.

TRD-9502543

Thursday, March 9, 1995, 4:00 p.m.

710 Brazos, Suite 800

Austin

Program Development and Initiatives Committee

### AGENDA:

Call to order; approval of minutes; approval of budget negotiations for the Winnsboro Substance Abuse Felony Punishment Facility (SAFP) Unit treatment vendor; approval of funds for American Institute for Learning training video for therapeutic community start-up; new business; old business; and adjourn.

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701, (512) 867-8137.

Filed: February 28, 1995, 4:15 p.m.

TRD-9502542

Friday, March 10, 1995, 8:30 a.m.

710 Brazos, Eighth Floor Conference Room  
Austin

Board of Commissioners

AGENDA:

Call to order; approval of January 24, 1995 and February 15, 1995 minutes; public comments; actions on policies and procedures; action on CORE initiative; action on funding decisions involving the Clover House and CLASS; action on appeal of decision to fund Phoenix House; executive session to discuss potential litigation issues and discuss personnel issues; reconvene and adjourn.

Contact: Otis E. Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720.

Filed: March 1, 1995, 3:16 p.m.

TRD-9502666

## The State Bar of Texas

Thursday-Friday, March 9-10, 1995, 9:30 a.m. and 8:30 a.m., respectively.

The Four Seasons Hotel, 1300 Lamar Whitney Room

Houston

Commission for Lawyer Discipline

AGENDA:

Call to order/introductions/review minutes of prior meetings/report of Chief Disciplinary Counsel on matters unresolved at prior meetings/review and discuss: statistical reports, Commission's compliance with provisions of rules, budget and operations of the General Counsel's Office, grievance committees, special counsel program, budget and operations of the Commission, mediation of disciplinary matters/presentations by trial staff on dockets/closed session to discuss: pending litigation and cases pending before evidentiary panels of grievance committees, special counsel assignments, personnel matters/public session to discuss: authorization for action on items discussed in closed session/discuss future meetings/discuss other matters as appropriately come before the Commission/receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: March 1, 1995, 4:14 p.m.

TRD-9502677

## Texas Committee on Purchase of Products and Services of Blind and Severely Disabled Persons

Friday, March 10, 1995, 9:00 a.m.

Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard, Auditorium

Austin

Committee

AGENDA:

Call to order and introduction of committee members and guests

Acceptance of minutes from the December 2, 1994 meeting

Public comment

Discussion and action on new services; renewal services; new products; and product changes and revisions

Discussion of Texas Industries for the Blind and Handicapped (TIBH) Quarterly Report to Texas Committee

Discussion of proposed legislative changes to State Use Program

Discussion and action on setting date, time and place of Texas Committee work session

Appointment of 1995 subcommittee members

Adjournment

Persons interested in the State Use Program may submit a written request before the meeting starts to comment publicly. Each person will be allowed a maximum of five minutes to speak. For further information, contact Fred Weber, Jr. at TIBH (512) 451-8145.

Contact: Hollis Pinyan, P.O. Box 12866, Austin, Texas 78711, (903) 561-8146.

Filed: February 28, 1995, 2:12 p.m.

TRD-9502534

## Canadian River Commission

Tuesday, April 18, 1995, 9:30 a.m.

4630 50th Street, Suite 600, TNRCC Regional Office

Lubbock

AGENDA:

1. Call to order; 2. Approval of agenda; 3. Approval of minutes of meeting held March 17, 1994; 4. Report of the chairman; 5. Report of the secretary; 6. Report of the treasurer; 7. Report of the Engineering Committee; 8. Report of the Legal Committee; 9. Reports of the states; 10. Reports of state and federal agencies; 11. Reports of Palo Duro Reservoir; 12. New business: a. Preparation of report of the Commission; b.

Meeting place in 1996; c. Other; 13. Adjournment.

Contact: Herman Settemeyer, 121000 Park 35 Circle, Austin, Texas 78753, (512) 239-4707.

Filed: March 1, 1995, 9:47 a.m.

TRD-9502615

## Texas Department of Commerce

Thursday, March 9, 1995, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building

Austin

Capital Certified Development Corporation, Board of Directors

AGENDA:

10:00 a.m.—Call meeting to order in open meeting; approval of minutes of December 8, 1994 meeting; 10:05 a.m.—Information item, welcoming remarks, management report; 10:20 a.m.—Action items: consider resignations, resolution to elect/replace directors and officers, depository resolution; modify CDC working titles; consider new members; 11:30 a.m.—Information items: treasurer's report, loan activity report, budget report, discuss management contract; 12:00 p.m.—Adjourn.

NOTICE: Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Irene Reyes at least two days before this meeting so that appropriate arrangements can be made. Please also contact Irene Reyes at (512) 936-0265 if you need assistance in having English translated into Spanish.

Contact: Colleen Rowland, 1700 North Congress Avenue, Second Floor, Austin, Texas 78701, (512) 936-0266.

Filed: February 28, 1995, 2:13 p.m.

TRD-9502536

## Texas Office for Prevention of Developmental Disabilities

Thursday, March 9, 1995, 10:00 a.m.

4900 North Lamar Boulevard, Room 1410, Brown-Heatly Building

Austin

Bicycle Helmet Coalition

AGENDA:

Call to order/introductions

Legislative status of Senate Bill 337 and House Bill 619

Bicycle safety grant  
City coalition/grant reports  
Safe Kids  
Other reports

Meeting schedule  
Adjournment

Contact: Jerry Ann Robinson, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: March 1, 1995, 8:47 a.m.

TRD-9502579

◆ ◆ ◆  
**Texas Education Agency**

Tuesday, March 7, 1995, 8:00 a.m.

Farm Credit Bank, 6210 U.S. Highway 290 East

Austin

Work Session for Essential Elements Agricultural Science and Technology Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Kirk Edney, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9687.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502555

Tuesday, March 7, 1995, 8:00 a.m.

Holiday Inn South, Gemini Room, 3401 South IH-35

Austin

Work Session for Essential Elements Health Science Technology Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Barbara Terrell, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9442.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502552

Tuesday, March 7, 1995, 8:00 a.m.

Quality Inn South, Meeting Suite, 2200 South IH-35

Austin

Work Session for Essential Elements Industrial Technology Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Richard Grimsley, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9474.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502551

Tuesday, March 7, 1995, 8:00 a.m.

Lake Austin Centre, Room 1.306, 3001 Lake Austin Boulevard

Austin

Work Session for Essential Elements Marketing Education Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Emmett Bary, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9443.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502550

Tuesday-Wednesday, March 7-8, 1995, 8:00 a.m.

3/7 Holiday Inn South, Pioneer Ten Room, 3401 South IH-35 (Tuesday); 3/8 Quality Inn South, Mesquite Room, 2200 South IH-35 (Wednesday)

Austin

Work Session for Essential Elements Science Clarification Team

AGENDA:

The following meeting is not subject to the Open Meeting Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Jim Collins, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9581.

Filed: February 28, 1995, 4:53 p.m.

TRD-9502558

Tuesday-Thursday, March 7-9, 1995, 8:00 a.m.

Southwest Educational Development Laboratory, Southeast Conference Room, Second Floor, 211 East Seventh Street

Austin

Work Session for Essential Elements Other Languages Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Ines Garcia, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9581.

Filed: February 28, 1995, 4:53 p.m.

TRD-9502561

Tuesday, March 7, 1995, 8:30 a.m.

Holiday Inn South, Friendship #7 Room, 3401 South IH-35

Austin

Work Session for Essential Elements Business Education Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future

meeting schedules, and identify issues to address.

Contact: Sally Wiedemann, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9443.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502553

Tuesday, March 7, 1995, 8:30 a.m.

Holiday Inn South, Apollo Room, 3401 South IH-35

Austin

Work Session for Essential Elements Reading/English Language Arts Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Sharon O'Neal, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9581.

Filed: February 28, 1995, 4:53 p.m.

TRD-9502559

Tuesday, March 7, 1995, 8:30 a.m.

Holiday Inn South, Mercury Room, 3401 South IH-35

Austin

Work Session for Essential Elements Trade and Industrial Education Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to be public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Ann Pennington, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9688.

Filed: February 28, 1995, 4:51 p.m.

TRD-9502549

Tuesday-Wednesday, March 7-8, 1995, 8:30 a.m.

3/7 Holiday Inn South, Executive Instruction Center, 3401 South IH-35 (Tuesday);

3/8 Quality Inn South, Cedar Room, 2200 South IH-35 (Wednesday)

Austin

Work Session for Essential Elements Fine Arts Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Jeanne Rollins, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9581.

Filed: February 28, 1995, 4:53 p.m.

TRD-9502560

Tuesday-Wednesday, March 7-8, 1995, 8:30 a.m.

Norris Conference Center, 10161 La Posada Drive

Austin

Work Session for Essential Elements Home Economics Education Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Judith Hetherly, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9454.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502556

Tuesday-Wednesday, March 7-8, 1995, 8:30 a.m.

3/7 Holiday Inn South, Junior Ballroom Room, 3401 South IH-35 (Tuesday); 3/8 Quality Inn South, Oak Room, 2200 South IH-35 (Wednesday)

Austin

Work Session for Essential Elements Mathematics Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy

to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Bill Hopkins, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9581.

Filed: February 28, 1995, 4:52 p.m.

TRD-9502554

Tuesday-Wednesday, March 7-8, 1995, 8:30 a.m.

3/7 Holiday Inn South, Voyager Room, 3401 South IH-35 (Tuesday); 3/8 Quality Inn South, Walnut Room, 2200 South IH-35 (Wednesday)

Austin

Work Session for Essential Elements Social Studies Clarification Team

AGENDA:

The following meeting is not subject to the Open Meetings Act; however, the Agency desires to publicize the event as a courtesy to the public and to allow for all interested parties to have opportunity to be informed of the meeting.

During the work session, the team will review current essential elements, plan future meeting schedules, and identify issues to address.

Contact: Dorris Boone, 1701 North Congress Avenue, Austin, Texas (512) 463-9581.

Filed: February 28, 1995, 4:53 p.m.

TRD-9502557

Wednesday, March 8, 1995, 3:15 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning Work Session

AGENDA:

This will be a work session on the State Board of Education Long-Range Plan for Public Education, 1995-1999.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: February 28, 1995, 1:20 p.m.

TRD-9502527

Thursday, March 9, 1995, 9:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

**AGENDA:**

Public testimony; address by Governor George W. Bush to the State Board of Education, this presentation is tentatively scheduled for 4:00 p.m.; Commissioner's overview of the March 1995 State Board of Education (SBOE) meeting; proposed amendments to 19 TAC §137.231, Requirements for the Alternative Certification of Teachers; request for confirmation of membership to the Texas Collaborative Transition Project Steering Committee; request for confirmation of membership to the Committee of Practitioners for Career and Technology Education; appointment of State Textbook Environmental Science Committee; proposed amendments to State Board of Education operating rules; update on legislative issues; and discussion of pending litigation, this discussion will be held in executive session in accordance with §551.071(1) (A), Texas Government Code, and will include a discussion of Edgewood ISD et al. v. Meno and related school finance litigation, Angel G. et al. v. Meno, et al.; T.E.A. et al v. Gary W. Leeper et ux., et al. relating to home schooling, Maxwell, et al. v. Pasadena ISD relating to Texas Assessment of Academic Skills (TAAS) testing, and potential litigation against the federal government regarding illegal immigrants. NOTE: The Committee of the Whole will meet in Room 1-103 to discuss pending litigation.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 1, 1995, 1:03 p.m.

TRD-9502642

**Thursday, March 9, 1995, 1:00 p.m.**

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Personnel

**AGENDA:**

Public testimony; adoption of passing standards for the Texas Academic Skills Program (TASP) Test; recommendation for trustee appointments to the Randolph Field Independent School District (ISD) Board of Trustees; recommendation for appointments to the Boys Ranch Independent School District Board of Trustees; request for approval of educator preparation programs for West Texas A&M University; status report on the accreditation, interventions, and sanctions of school districts; and update on legislative issues.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 1, 1995, 1:03 p.m.

TRD-9502643

**Thursday, March 9, 1995, 1:00 p.m.**

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on School Finance

**AGENDA:**

Public testimony; school finance update; proposed amendments to Proclamation 1994; report on status of back-ordered textbooks; revised per capita apportionment for the 1994-1995 school year, petition for adoption of a rule change to recognize service in an unapproved special education contract school for salary increment purposes; request for authorization to request federal funding for fiscal years 1995-1996; review of authorization to request federal funding for fiscal year 1995-1996; and update on legislative issues.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 1, 1995, 1:06 p.m.

TRD-9502645

**Thursday, March 9, 1995, 1:00 p.m.**

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Students

**AGENDA:**

Public testimony; election of chair; proposed amendments to 19 TAC §101.3, Testing Appropriate Students; proposed repeal and adoption of new 19 TAC §89.246, Memorandum of Understanding on Transition Planning for Students Receiving Special Education Services; discussion of issues relating to Disability Law; proposed amendments to 19 TAC §75.152, Advanced High School Program and §75.153, Academic Achievement Record (Transcript); discussion of measures for the proposed advanced high school program; discussion of revisions to the academic achievement record and graduation seals; proposed amendments to the University Interscholastic League (UIL) policies and 1994-1995 constitution and contest rules; proposed amendments to the UIL constitution and contest rules and UIL policies and procedures for 1995-1996; proposed amendments to Proclamation 1994; update of the essential elements clarification process; discussion of issues re-

garding credits for physical education; discussion of proposed new 19 TAC §75.175, Texas Academy of Leadership in the Humanities; discussion of the Consolidated State Plan under the Improving America's School's Act of 1994; and update on legislative issues.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 1, 1995, 1:04 p.m.

TRD-9502644

**Friday, March 10, 1995, 8:30 a.m.**

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

**AGENDA:**

Public testimony; 1995-1997 State Plan to reduce the dropout rate; adoption of the State Board of Education Long-Range Plan for Public Education, 1995-1999; status report of the State Board of Education Task Force on Adult Education and Literacy; Texas Teacher Preparation Study 1993-1994 interim report; expert speakers for future meetings of the Committee on Long-Range Planning; discussion of federal governmental relations activities; and update on legislative issues.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 1, 1995, 1:07 p.m.

TRD-9502646

**Friday, March 10, 1995, 8:30 a.m.**

Room 1-109, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund (PSF)

**AGENDA:**

Public testimony; proposed repeal and adoption of new 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines; approval of requests for proposals (RFPs) for external asset management in various asset classes; approval of an amendment to the consultant contract with Mercer Asset Planning, Inc., to include manager searches; recommended Permanent School Fund investment program for March and the funds available for the program; discussion on status of current custodial relationship with Bank of America; review of Permanent School Fund securities transaction and the investment portfolio; report of the PSF executive administrator; and update on legislative issues.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: March 1, 1995, 1:07 p.m.

TRD-9502647

Friday, March 10, 1995, 1:00 p.m.

Room 1-104, William B. Travis Building,  
1701 North Congress Avenue

Austin

State Board of Education (SBOE)

AGENDA:

Approval of minutes of February 1995 SBOE meetings; public testimony; resolutions of the SBOE; approval of consent agenda; 19 TAC §137.231, Requirements for the Alternative Certification of Teachers; membership of Texas Collaborative Transition Project Steering Committee; membership of Committee of Practitioners for Career and Technology Education; appointment of State Textbook Environmental Science Committee; amendments to SBOE operating rules; passing standards for Texas Academic Skills Program Test; trustee appointments to Randolph Field Independent School District (ISD) and Boys Ranch ISD; 19 TAC §101.3, Testing Appropriate Students; 19 TAC §89.246, Memorandum of Understanding on Transition Planning for Students Receiving Special Education Services; 19 TAC §75.152, Advanced High School Program and §75.153, Academic Achievement Record; amendments to University Interscholastic League (UIL) policies and 1994-1995 constitution/contest rules; proposed amendments to UIL policies and constitution and contest rules effective for 1995-1996 school year; proposed amendments to Proclamation 1994; status of back-ordered textbooks; revised per capita apportionment for 1994-1995 school year; petition for adoption of a rule change; authorization to request funding for fiscal years 1995-1996; 1995-1997 State Plan to reduce the dropout rate; adoption of SBOE Long-Range Plan for Public Education, 1995-1999; 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines; approval of requests for proposals for external asset management in various asset classes; approval of amendment to consultant contract with Mercer Asset Planning, Inc. to include manager searches; recommended Permanent School Fund investment program for March and funds available for the program; information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas (512) 463-9701.

Filed: March 1, 1995, 1:08 p.m.

TRD-9502648



## State Employee Charitable Campaign

Thursday, March 9, 1995, 4:00 p.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

State Policy Committee Meeting

AGENDA:

- I. Welcome and introductions
- II. Review/approve statewide federation applications
- III. State Campaign Manager report
  - A. Collaborative effort with UWT and ISA
  - B. Current proposed bills affecting SECC
  - C. Proposed changes in timeline
  - D. Cultivation calls
  - E. TWU update
- IV. Discussion/approval of State Campaign Manager budget
- V. Discussion and action of local campaign areas structure
- VI. Discussion and action of local campaign manager sharing state campaign manager costs
- VII. Discussion and action of local campaign manager of non-compliance issues
- VIII. Report of donor materials task force
  - A. Discussion and action of revised pledge form
- IX. Discussion and action of State Policy Committee membership
- X. Discussion and action of promotion and education task force
- XI. Set next meeting

Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas 78702, (512) 472-6267, Fax: (512) 482-8309.

Filed: March 2, 1995, 8:05 a.m.

TRD-9502690



## Texas General Land Office

Friday, March 10, 1995, 1:00 p.m.

Hollywood Marine, 55 Waugh Drive

Houston

Oil Spill Division (Oil Spill Commission)

AGENDA:

1. Call to order
2. Approval of minutes from July 25, 1994 meeting

3. Discussion of draft Oil Spill Commission report

4. Set next meeting

5. Adjourn

Contact: Gloria Sanchez, 1700 North Congress Avenue, Room 735, Austin, Texas 78701-1495, (512) 475-1473.

Filed: February 28, 1995, 4:13 p.m.

TRD-9502541



## Texas Department of Health

Tuesday, March 28, 1995, 1:30 p.m.

Room M-652, Texas Department of Health,  
1100 West 49th Street

Austin

Family Planning Regional Advisory Coordinating Committee

AGENDA:

The committee will discuss and possibly act on: approval of minutes from the December 14, 1994 meeting; Title V Future Project; methodology for reallocation of unexpended funds (Titles X/XX); and old/new business not requiring committee action.

Contact: Patti Patterson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. For ADA assistance, call Richard Butler (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 1, 1995, 8:47 a.m.

TRD-9502578



## Health and Human Services Commission

Thursday, March 9, 1995, 9:15 a.m.

701 West 51st Street, Winters Building

Austin

Medical Care Advisory Committee

AGENDA:

Opening comments; State Medicaid Director's comments; approval of minutes; Chapter 409, Subchapter B (contract appeals); revision to PRS Medicaid targeted case management; amendment to Medicaid nursing facility preadmission screening and annual resident review; federal enforcement rules for Medicaid nursing facilities; Medicaid waiver rules for deaf-blind individuals with multiple disabilities; proposed rules concerning utilization review process; Hearing Aid Program rules; OBRA 1993 changes to Medicaid disproportionate share; retroactive reimbursement for 1929(b); miscellaneous policy clarifications; Primary

Home Care Program; retroactive reimbursement; Day Activity and Health Services Program; technical rule changes; new rule concerning preadmission screening and annual resident review with repeal of existing rule; selective contracting-update; Community Care Workgroup Report; Hospital Payment Advisory Subcommittee; open discussion by members; next meeting/adjournment.

Contact: Geri Willems, 4807 Spicewood Springs Road, Building Four, Austin, Texas 78759, (512) 502-3256.

Filed: March 1, 1995, 8:43 a.m.

TRD-9502573

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**Texas Incentive and Productivity Commission**

Thursday, March 9, 1995, 10:00 a.m.

Clements Building, 15th and Lavaca, Fifth Floor, Committee Room #5

Austin

Revised Agenda

AGENDA:

Adding to Agenda Item III, "Consideration of employee suggestions for approval," Texas Natural Resource Conservation Commission, 582-0179, David Hastings

Contact: M. Elaine Powell, P.O. Box 12482, Austin, Texas 78711, (512) 475-2393.

Filed: March 1, 1995, 4:47 p.m.

TRD-9502685

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**Texas Department of Insurance**

Monday, March 6, 1995, 1:00 p.m.

State Office of Administrative Hearings, 500 West 15th, Suite 502

Austin

Emergency Meeting

AGENDA:

454-95-0216.C

To consider whether disciplinary action should be taken against Shine T. Philip, Sugarland, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Variable Contract Agent's License, and Local Recording Agent's License issued by the Texas Department of Insurance.

Reason for emergency: Inadvertently overlooked.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 1, 1995, 11:37 a.m.

TRD-9502640

Tuesday, March 7, 1995, 9:00 a.m.

State Office of Administrative Hearings, 500 West 15th Street, Suite 502

Austin

Emergency Meeting

AGENDA:

454-95-0182.C

To consider whether disciplinary action should be taken against Cathy M. Pearson, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, and Local Recording Agent's License issued by the Texas Department of Insurance.

Reason for emergency: Meeting erroneously overlooked.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 1, 1995, 9:51 a.m.

TRD-9502618

Monday, March 13, 1995, 9:00 a.m.

State Office of Administrative Hearings, 500 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0214.F

Application for approval of a proposed revision to the Texas Automobile Rules and Rating Manual pursuant to Texas Insurance Code, Annotated Article 5. 101, §3(g), filed by Allstate Indemnity Company.

Contact: Bernice Ross, 333 Guadalupe Street, Mail #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 1, 1995, 10:13 a.m.

TRD-9502626

Monday, March 13, 1995, 9:00 a.m.

State Office of Administrative Hearings, 500 West 15th Street, Suite 502

Austin

AGENDA:

454-94-1730.C

To consider whether disciplinary action should be taken against James Paul Almond, Pasadena, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance (continued from February 8, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 1, 1995, 10:13 a.m.

TRD-9502625

Tuesday, March 14, 1995, 9:00 a.m.

State Office of Administrative Hearings, 500 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0215.C

To consider disciplinary action against Edward Alexander Hackett.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 1, 1995, 10:13 a.m.

TRD-9502624

Friday, March 17, 1995, 9:00 a.m.

State Office of Administrative Hearings, 500 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0348.C

To consider whether disciplinary action should be taken against Juan Pedro Garcia, San Antonio, Texas, who holds 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: March 1, 1995, 11:21 a.m.

TRD-9502638

Friday, March 17, 1995, 10:00 a.m.

State Office of Administrative Hearings, 500 West 15th Street, Suite 502

Austin

AGENDA:

454-94-1085.C

To consider whether disciplinary action should be taken against Dan Robert Smith, Abilene, Texas, who holds a Group I Legal Reserve Life Insurance Agent's License and a Group II Insurance 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: March 1, 1995, 11:21 a.m.

TRD-9502639

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## Texas State Board of Medical Examiners

Thursday, March 2, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

AGENDA:

1:00 p.m.

Call to order

Roll call

Review of December 1994 SPEX statistics

Review of endorsement applicants to be considered for permanent licensure

Review of letters from Grenada, the Dominican Republic and Belgium regarding eligibility to practice in the country of graduation

Review of fellowship in Family Practice Medicine

1:30 p.m.

Review of licensure applicants referred to Reciprocity Committee by the executive director for determination of eligibility for licensure: Laura Langley, M.D., Elmer Lawrence Treat, M.D., Carey Allison, M.D.

2:30 p.m.

Review of licensure applicants referred to Reciprocity Committee by the executive director for determination of eligibility for licensure: Mark Richard Rose, M.D., Nahim Mohammad Pearose, M.D., Albert P. Fleury, M.D.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: March 1, 1995, 4:24 p.m.

TRD-9502679

Friday-Saturday, March 3-4, 1995, 1:00 p.m. and 8:30 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

AGENDA:

In addition to previously posted agenda, approval of an Agreed Board Order has been added.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: March 1, 1995, 4:57 p.m.

TRD-9502688

Friday-Saturday, March 3-4, 1995, 1:00 p.m. and 8:30 a.m., respectively.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

AGENDA:

In addition to previously posted agenda, approval of several Agreed Board Orders has been added, as well as approval of minutes from a meeting held since original posting of this agenda.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, (512) 834-4597.

Filed: March 1, 1995, 4:24 p.m.

TRD-9502680

## Texas Natural Resource Conservation Commission

Thursday, March 9, 1995, 9:00 a.m.

Best Western Inn, 3902 North Highway 35  
Fulton

Management Committee of the Corpus Christi Bay National Estuary Program

AGENDA:

I. Call to order/introduction/minutes

II. Program update

III. Discussion/approval of draft fiscal year 1996 work plan

IV. Report on all-conference workshop

V. Discussion/approval of program vision statement

VI. Additional items/adjourn

Contact: Richard Volk, Campus Box 290, 6400 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Filed: March 1, 1995, 4:51 p.m.

TRD-9502686

Wednesday, March 15, 1995, 9:00 a.m.

Balch Springs Community Center, 2919  
Balch Springs

Balch Springs

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Dallas County Water Control and Improvement District Number 6 for Proposed Permit Number 13738-01 to authorize a discharge of treated domestic

wastewater effluent at a volume not to exceed an average flow of 3,500,000 gallons per day from the D-6 Wastewater Treatment Plant. The wastewater treatment facility will serve the City of Balch Springs. The plant site is approximately 0.5 mile east and 0.2 mile south of the intersection of Beltline Road and Beckett Road in southeast Dallas County, Texas. TNRCC Docket Number 95-0295-MWD.

Contact: Leslie Craven, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 2:00 p.m.

TRD-9502650

Thursday, March 16, 1995, 10:00 a.m.

12118 North IH-35, Park 35 Complex,  
Building E, Room 254-S

Austin

Petroleum Storage Tank Advisory Committee

AGENDA:

(Thursday) March 16, 1995, at 10:00 a.m.

Call to order.

Approval of previous meeting minutes.

Discussion of strategy to privatize PST pollution liability insurance.

Discussion of items tabled from previous meetings.

Schedule future meetings.

Contact: Dwight C. Russell, P.E., 7801 North Lamar Boulevard, Suite D-77, Austin, Texas 78752, (512) 452-8834.

Filed: March 1, 1995, 10:13 a.m.

TRD-9502627

Tuesday, March 21, 1995, 10:00 a.m.

Erath County Courthouse Annex, Jury Pool Room, 112 College

Stephenville

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Steve Byl for an amendment to Permit Number 03316 to authorize an increase in the number of milking head from a maximum of 500 head to a maximum of 700 head. Washdown water, flushwater and stormwater are retained in two storage ponds. Wastewater from the ponds is disposed of by irrigation on agricultural land. Manure/solids is disposed of for beneficial use, as fertilizer on agricultural land. No discharge of pollutants into the waters of the State is authorized by this permit. The dairy is on the northeast side of FM Road 914, approximately 3.5 miles north of the Erath/Hamilton County line in Erath County, Texas. TNRCC Docket Number 95-0234-AGR.



Contact: Alexandre Bourgeois, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 2:02 p.m.

TRD-9502654

Thursday, March 23, 1995, 10:00 a.m.

Texas City/La Marque Chamber of Commerce, Chambers Conference Room, 8419 Emmett F. Lowry Expressway

Texas City

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by the City of La Marque for an amendment to Permit Number 10410-01 in order to combine treated effluent from two wastewater treatment plants (permitted under Permits Numbers 10410-01 and 10410-02) into one single outfall (permitted under Permit Number 10410-01). Permit Number 10410-01 currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 800,000 gallons per day. Permit Number 10410-02 currently authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2,000,000 gallons per day. The proposed single outfall (permitted under Permit Number 10410-01) would authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2,800,000 gallons per day. The proposed amendment will also enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment facility is at the intersection of Campbell and Sixth Street, approximately 1,300 feet southwest of the intersection of FM Road 519 and State Highway 3 in Galveston County, Texas. TNRCC Docket Number 95-0198-MWD.

Contact: Jim Bateman, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 2:02 p.m.

TRD-9502656

Thursday, March 30, 1995, 9:00 a.m.

Jacksboro City Hall, Council Chambers, 111 East Archer Street

Jacksboro

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by the City of Jacksboro for an amendment to Permit Number 10994-01 to authorize an increase in the discharge of treated domestic wastewater effluent from a volume not to exceed an average flow of 430,000 gallons per day to a volume not to exceed an average flow of 700,000 gallons per day. The proposed amendment would also authorize a variance

to the buffer zone requirements in accordance with 30 TAC §309.13(e)(1)(B). The proposed amendment would also enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The wastewater treatment facilities are approximately 1,500 feet north of U.S. Highway 281 and approximately 4,600 feet west of State Highway 148 in the City of Jacksboro in Jack County, Texas. TNRCC Docket Number 95-0324-MWD.

Contact: Tommy Broyles, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 2:01 p.m.

TRD-9502651

Thursday, March 30, 1995, 9:00 a.m.

City of Mont Belvieu City Hall, Council Chambers, Second Floor, 11607 Eagle Drive

Mont Belvieu

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Miles, Inc. for an amendment to Permit Number 01499 to authorize an increase in the discharge of treated process wastewater, treated sanitary wastewater, utility wastewater and stormwater from a volume not to exceed an average flow of 2,300,000 gallons per day to a volume not to exceed an average flow of 2,700,000 gallons per day via Outfall 001. The permit currently authorizes intermittent, flow variable discharges of stormwater via Outfalls 002, 003 and 004, which will remain the same. The applicant operates a facility which manufactures organic chemicals, plastics and inorganic chemicals. The plant site is east of Cedar Bayou, approximately 0.5 mile south of the intersection of FM Road 1405 (West Bay Road) and FM Road 565 northeast of the City of Baytown, Chambers County, Texas. TNRCC Docket Number 95-0194-IWD.

Contact: Nina Fantl, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 2:01 p.m.

TRD-9502652

Thursday, March 30, 1995, 10:00 a.m.

The Mae S. Bruce Library, 13302 Sixth Street

Santa Fe

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Chemical Process and Production, Inc. for Proposed Permit Number 03712 to authorize a discharge of process wastewater at a volume not to exceed an average flow of 1,000 gallons per day via Outfall 001 plus a flow variable dis-

charge of stormwater via Outfall 002. The applicant operates a custom hydrocarbon distilling plant. The plant site is at 15133 Linda Lane, approximately 0.25 mile west of the intersection of Linda Lane and Pearson Road west of and within the extra-territorial jurisdiction of the City of Santa Fe, Galveston County, Texas. TNRCC Docket Number 95-0323-IWD.

Contact: Alexandre Bourgeois, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 2:01 p.m.

TRD-9502653

Tuesday, April 4, 1995, 9:00 a.m.

Environmental Pollution Control, Auditorium, 7411 Park Place

Houston

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Harris County Municipal Utility District Number 360 for Proposed Permit Number 13753-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 800,000 gallons per day. The proposed permit also authorizes a variance to the buffer zone requirements in accordance with 30 TAC §309.13(e)(1)(B). The Harris County MUD Number 360 Wastewater Treatment Facilities are approximately 3,500 feet north of the intersection of Kluge Road and Huffmeister Road, 1,100 feet northwest of Kluge Road and approximately 4.0 miles north of the intersection of U.S. Highway 290 and Huffmeister Road in Harris County, Texas. TNRCC Docket Number 95-0348-MWD.

Contact: Mike Rogan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 3:17 p.m.

TRD-9502669

Wednesday, April 5, 1995, 9:00 a.m.

Environmental Pollution Control, Auditorium, 7411 Park Place

Houston

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Citgo Petroleum Corporation for Proposed Permit Number 03738 to authorize intermittent flow variable discharges of stormwater via Outfall 001. The proposed permit also authorizes intermittent flow variable discharges of stormwater and washwater via 002. The applicant operates its Houston Terminal, a bulk petroleum products facility. The plant site is at 12325 North Freeway, the southeast corner of IH-

45 and Greens Road, Harris County, Texas.  
TNRCC Docket Number 95-0353-IWD.

Contact: Mike Rogan, P.O. Box 13087,  
Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 3:18 p.m.

TRD-9502671

Wednesday, April 5, 1995, 1:00 p.m.

Environmental Pollution Control, Auditorium,  
7411 Park Place

Houston

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by John Ghodratollah Karbalai for renewal of Permit Number 12692-01 which authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day from the Lake Houston Storage Wastewater Treatment Facilities. The plant site is at 12110 Mount Houston Road, immediately southeast of the intersection of East Mount Houston Road and East Houston Road in Harris County, Texas. TNRCC Docket Number 95-0349-MWD.

Contact: Mike Rogan, P.O. Box 13087,  
Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 3:17 p.m.

TRD-9502670

Thursday, April 6, 1995, 10:30 a.m.

Colorado County Courthouse, County Courtroom On The Square

Columbus

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Colorado County for Proposed Permit Number 13740-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 50,000 gallons per day. The proposed permit also authorizes a variance to the buffer zone requirements in accordance with 30 TAC §309.13(e)(1)(B). The wastewater treatment facility will serve the Community of Alleyton in Colorado County. The plant site is 3.3 miles east of Columbus, Texas, and 1,000 feet south of Interstate Highway 10 on the Old Alleyton Road in Colorado County, Texas. TNRCC Docket Number 05-0322-MWD.

Contact: Sylvia McClellan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 1, 1995, 3:18 p.m.

TRD-9502672

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## Board of Nurse Examiners

Tuesday, March 14, 1995, 4:00 p.m.

9101 Burnet Road, Suite 104

Austin

Executive Committee

AGENDA:

Call to order

Roll call

Minutes of January 10, 1995 meeting

1. Old business

1.1 Plans for evaluation of the executive director and the Board

1.2 Review of organizational structure

2. New business

2.1 August retreat

Contact: Erlene Fisher, Box 140466,  
Austin, Texas 78714, (512) 835-8675.

Filed: March 1, 1995, 11:08 a.m.

TRD-9502636

Wednesday-Thursday, March 15-16,  
1995, 8:00 a.m.

1812 Centre Creek Drive, Room 203

Austin

Revised Agenda

AGENDA:

The Board of Nurse Examiners will consider requests for exceptions to Board Orders for Verna Ihejirikah, Texas #55148 and Glenda D. Hutto, Texas #539739; consider an agreed order for John Kenneth Rapasky, Texas #575394 and an ALJ proposal for decision for Frances Joann Stuart, Texas #586395.

Contact: Erlene Fisher, Box 140466,  
Austin, Texas 78714, (512) 835-8675.

Filed: March 1, 1995, 11:08 a.m.

TRD-9502635

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## Texas Board of Physical Therapy Examiners

Thursday, March 9, 1995, 10:00 a.m.

3001 South Lamar Boulevard, Suite 101

Austin

Revised Agenda

Board Meeting

AGENDA:

I. Public comment

II. Approval of minutes of December 6, 1994 Board meeting

III. Discussion and possible action on renumeration

IV. Review and possible final adoption of proposed rules

V. Committee reports

A. Education Committee

B. Rules Committee

C. Investigation Committee

D. Applications Review Committee

VI. PT coordinator's report

VII. Executive director's report

VIII. Presiding officer's report

A. Election of officers

IX. Adjournment

Contact: Gerard Swain, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704, (512) 443-8202.

Filed: February 28, 1995, 4:18 p.m.

TRD-9502547

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## Texas State Board of Plumbing Examiners

Monday, March 13, 1995, 9:30 a.m.

919 East 41st Street

Austin

Board

AGENDA:

9:30 a.m. Roll call; recognize visitors; approve minutes of January 9, 1995 Board meeting; committee reports: a. Continuing Education-approval of providers for fiscal year 1996; b. Examination; c. Field; d. Legislative; e. Medical Gas; f. Personnel; g. Water Supply Protection Specialist; Assistant Attorney General, a. Executive session-Best and Co. vs. TSEPE cause #9415720; b. Enforcement Committee, 1. Recommendation to the Board regarding currently incarcerated individuals and individuals with prior convictions; 2. Acceptance or rejection of agreed settlement, A. Steven Randall Waggoner J-29030, B. William Thomas Hughes M-16178; Field/Citation report; Examination report; hardship cases, a. Joseph M. Carter, J-28947, request to be allowed to take the Master plumber examination before May 15, 1995; b. M. Lee Hogan, unlicensed, request to be allowed to take the Journeyman plumber examination without proof of a high school diploma or GED; recognition of retirees; financial report; administrator's report; request for approval of staff travel; next regularly scheduled board meeting-Monday, May 8, 1995, 9:30 a.m.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145.

Filed: March 1, 1995, 3:38 p.m.

TRD-9502674

## Texas State Board of Podiatry Examiners

Thursday-Friday, March 2-3, 1995, 10:00 a.m. (Rescheduled from February 24, 1995.)

410 Governor's Row

Austin

Emergency Revised Agenda

AGENDA:

Thursday, March 2, 1995—Susan Dorn representing American Podiatric Medical Specialties Board; the Board will go into executive session for the proctors meeting on oral examinations. The executive session is held in accordance with Attorney General Opinion Number H-484.

Reason for emergency: Ms. Dorn just requested to be put on the agenda and the proctors need to meet to be briefed on the procedures for the examination.

Contact: Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

Filed: February 28, 1995, 11:05 p.m.

TRD-9502522

## Texas Department of Protective and Regulatory Services

Friday, March 10, 1995, 9:00 a.m.

701 West 51st, First Floor, East Tower, Public Hearing Room

Austin

Texas Board of Protective and Regulatory Services

AGENDA:

1. Approval of the minutes of January 13, 1995, February 10, 1995, and February 24-25, 1995.
2. Public testimony. Individuals testifying before the board must complete and submit a registration form no later than 8:45 a.m. The total time allowed for public testimony will not exceed one hour.
3. Chair's comments and announcements.
4. Comments and announcements from the board.
5. Acting executive director's report—comments and announcements.
6. Consideration and approval of rules regarding level of care standards.
7. Appointment

of members to the Strategic Directions Advisory Committee. 8. Consideration and approval of targeted case management rule revision. 9. Consideration and adoption of rules regarding EPSDT psycho-social treatment services in foster care settings. 10. Executive session. The board will meet in closed executive session beginning at 12:00 noon, to discuss individuals to fill the position of interim executive director. The board will convene in open session to select the interim executive director, as a result of discussion in executive session. 11. Consideration and approval of selection process for position of executive director. 12. Consideration and adoption of rules regarding the ombudsman services. 13. Update on legislative issues. 14. Ombudsman quarterly report. 15. Quarterly update on child and adult protection system. The meeting will adjourn no later than 5:00 p.m.

Contact: Michael Gee, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 450-3645.

Filed: March 1, 1995, 3:38 p.m.

TRD-9502673

## Public Utility Commission of Texas

Wednesday, March 8, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting at which the Commissioners will elect a Chairman pursuant to §5 of the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (Vernon Supplement 1994); consider Project Number 12141, hear public comment and consider for adoption policy statements for universal service and telecommunications infrastructure development; Project Number 13763, hear public comment and consider for adoption amendments to §23.11 and §23.12 concerning Earnings Reports; Project Number 13863, consider for publication and amendment to §23.56 concerning Statewide Dual-Party Relay Service; Docket Number 13734, application of Southwest Rural Electric Cooperative for expedited authority to change rates under Public Utility Commission Substantive Rule 23.23(c); and Docket Number 12852, inquiry into the reasonableness of the rates and services of Gulf States Utilities Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 28, 1995, 2:13 p.m.

TRD-9502535

Wednesday, March 8, 1995, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

Administrative

AGENDA:

There will be an administrative meeting for discussion, consideration, and possible action on report to the Legislature under §23.11(j) (Equal Opportunity Reports); ex parte letter to the FCC regarding CC Docket 91-281, Caller ID; comments to the FCC in the matter of amendment of policies and rules concerning operator service providers and call aggregators; report on legislative activity; interagency contract with Attorney General to provide legal services to prepare contract for telecommunications relay services; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 28, 1995, 4:16 p.m.

TRD-9502545

Friday, March 10, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A joint prehearing conference will be held at the above date and time in Docket Numbers 12065 and 13126—

Docket Number 12065—Complaint of Kenneth D. Williams against Houston Lighting and Power Company

Docket Number 13126—Inquiry of the General Counsel into the operation and management of the South Texas Nuclear Project.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 1, 1995, 3:16 p.m.

TRD-9502667

Thursday, May 11, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled in Docket Number 13896—application of Southwestern Public Service Company and Texas New Mexico Power Company for

sale of Texas New Mexico's Texas Panhandle Properties to Southwestern Public Service.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 28, 1995, 4:15 p.m.

TRD-9502544

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**Rio Grande Compact Commission**

Thursday, March 23, 1995, 9:00 a.m.

333 Santa Fe Avenue

Alamosa

AGENDA:

1. Call to order by the chairman; 2. Announcements; 3. Report of the secretary; 4. Report of the engineer advisors; 5. Report of the Commissioners: a. State of Colorado; b. State of New Mexico; c. State of Texas; 6. Report of federal agencies and other agencies: a. Bureau of Reclamation; b. International Boundary and Water Commission; c. Corps of Engineers; 7. Presentation of cost of operation for fiscal year 1994 (July 1, 1993 to June 30, 1994); 8. Presentation of the budget for fiscal year 1996 (July 1, 1995 to June 30, 1996); 9. Cooperative agreement with U.S. Geological Survey for secretarial services; 10. Approval of the minutes of the 74th Special Meeting; 11. Other business; 12. Approval of the letter to Governors of the signatory status; 13. Adjournment.

Contact: Herman Settemeyer, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-4707.

Filed: March 1, 1995, 9:46 a.m.

TRD-9502614

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**Teacher Retirement System of Texas**

Tuesday, March 14, 1995, Noon.

1000 Red River, Room 420E

Austin

Medical Board

AGENDA:

Discussion of 1) the files of members who are currently applying for disability retirement, and 2) the files of disability retirees who are due a re-examination report; and review of the disability forms currently being used.

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6479.

Filed: March 2, 1995, 9:43 a.m.

TRD-9502698

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**The Texas A&M University System, Board of Regents**

Friday, March 3, 1995, 10:00 a.m.

Board of Regents Meeting Room, MSC Annex, Clark Street, Texas A&M University College Station

Emergency Revised Agenda

Board of Regents

AGENDA:

Addition: Take action on whether to proceed with alternative dispute resolution with regard to claims arising from the development agreement between the Board of Regents of the Texas A&M University System and Tenneco Power Generation Company.

Reason for emergency: Action is required because of a reasonably unforeseeable situation relating to the need to notify the Legislature of the Board's decision by Friday, March 3, 1995, 5:00 p.m.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: March 1, 1995, 3:17 p.m.

TRD-9502668

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**University of Houston System**

Monday, March 6, 1995, 4:00 p.m.

Board Room, Administration Building, Victoria College, 2200 East Red River

Victoria

Board of Regents

AGENDA:

To discuss and/or act upon the following: executive session: purchase, exchange, lease or value of real property, negotiated contracts for prospective gifts or donations.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: March 1, 1995, 11:37 a.m.

TRD-9502641

**University Interscholastic League**

Thursday, March 2, 1995, 9:00 a.m.

Sheraton Hotel

Austin

Emergency Meeting

State Executive Committee

AGENDA:

AA-Alleged violation by Fort Worth Dunbar High School basketball team of §1230(c)(3), Total Number of Games.

Reason for emergency: Case must be heard March 2, 1995. Regional qualifying game 7:00 p.m., March 2, 1995. Eligibility must be determined.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: March 1, 1995, 4:52 p.m.

TRD-9502687

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**Regional Meetings**

Meetings Filed February 28, 1995

The Ark-Tex Council of Governments Ark-Tex Private Industry Council Executive and Planning Committees will meet at the Mt. Pleasant Chamber of Commerce, 1604 North Jefferson, Mt. Pleasant, March 7, 1995, at 10:30 a.m. Information may be obtained from Sandy Dean, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9502525.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Called Meeting) met at 1124A Regal Row, Austin, March 6, 1995, at 8:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9502521.

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, March 8, 1995, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9502539.

The Guadalupe-Blanco River Authority Long Range Planning Committee will meet at Wilson's Railway Station, 10 Wood Avenue, Woodsboro, March 8, 1995, at 10:00 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9502524.

## Meetings Filed March 1, 1995

**The Archer County Appraisal District Board of Directors** will meet at 101 South Center, Archer City, March 7, 1995, at 5:00 p.m. Information may be obtained from Edward H. Trigg, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172. TRD-9502676.

**The Cash Water Supply Corporation Board of Directors** met at the Corporation Office, FM 1564 at Highway 34, Greenville, March 6, 1995, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9502678.

**The Colorado River Municipal Water District (Revised Agenda.) Board of Directors** will meet at 400 East 24th Street, Big Spring, March 8, 1995, at 10:00 a.m. Information may be obtained from O. H. Ivie, Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9502574.

**The Deep East Texas County Commissioners and County Judges Association Membership** will meet at the Nacogdoches County Exposition Center, 3800 Northwest Stallings Drive, Nacogdoches, March 10, 1995, at 11:00 a.m. Information may be obtained from Bobby Smith, P.O. Box 1388, Onalaska, Texas 77369, (409) 646-5929. TRD-9502634.

**The Grand Parkway Association Board of Directors** will meet at 5757 Woodway, 140 East Wing, Houston, March 9, 1995, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9502637.

**The Gregg Appraisal District Board of Directors** will meet at 2010 Gilmer Road, Longview, March 7, 1995, at 11:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9502649.

**The Hood County Appraisal District Appraisal Review Board** will meet at 1902 West Pearl Street, District Office, Granbury, March 9, 1995, at 8:45 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9502604.

**The Leon County Central Appraisal District Board of Directors** met at 103 North Commerce, Corner of Highway 7 and 75, Leon County Central Appraisal District Office, Centerville, March 6, 1995, at 7:30 p.m. Information may be obtained from Larry Buchanan, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD-9502675.

**The Millersview-Doole Water Supply Corporation Board of Directors** will meet one block west of FM Highway 765 and FM Highway 2134, at Corporation's Office, Millersview, March 7, 1995, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9502659.

**The Millersview-Doole Water Supply Corporation Membership (Annual Meeting)** will meet at the Corporation's Business Office, one block west of FM 765 and FM 2134, Millersview, March 7, 1995, at 7:30 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9502658.

**The Permian Basin Regional Planning Commission Board of Directors** will meet at 2910 La Force Boulevard, Midland, March 8, 1995, at 1:30 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9502613.

**The Wood County Appraisal District Board of Directors** will meet at 217 North Main, Quitman, March 8, 1995, at 1:30 p.m. Information may be obtained from W.

Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9502628.

## Meetings Filed March 2, 1995

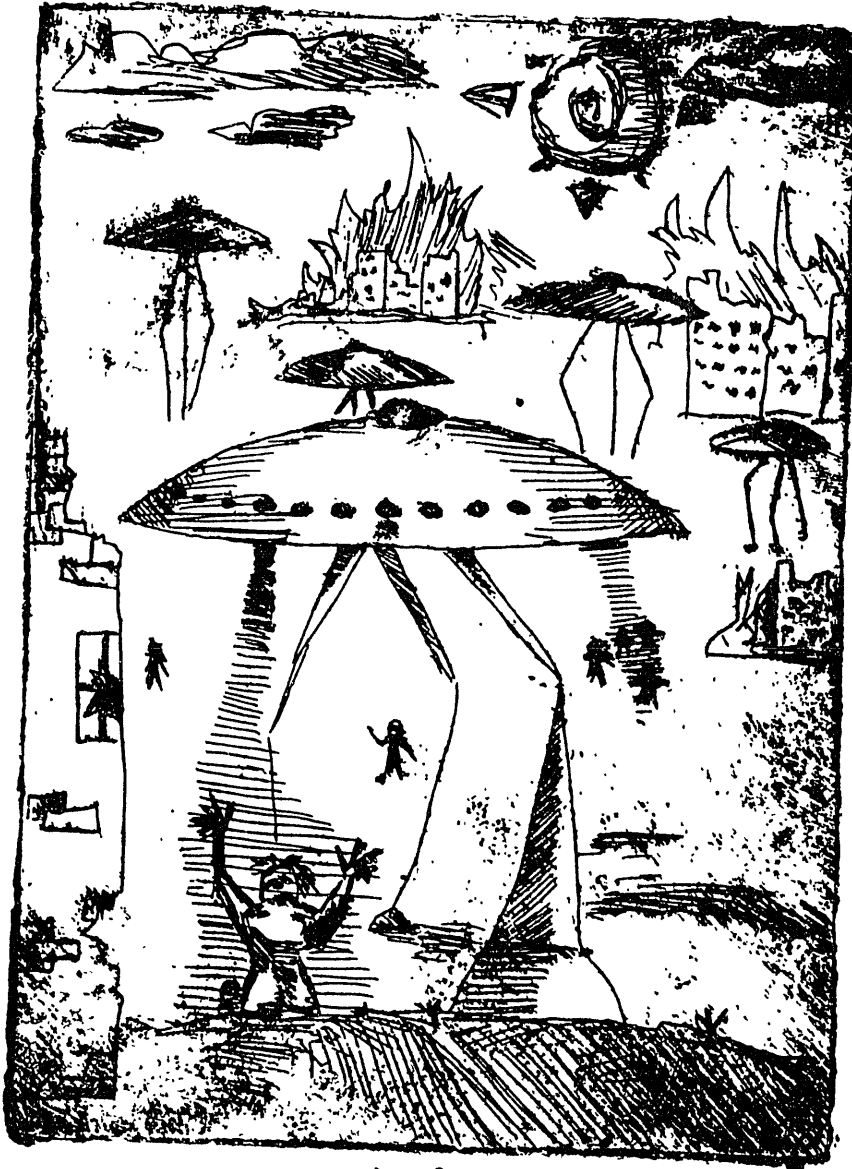
**The Aqua Water Supply Corporation (Revised Agenda.) Board of Directors** met at 305 Eskew, Aqua Headquarters, Bastrop, March 6, 1995, at 7:30 p.m. Information may be obtained from Adlinie Rathman, P.O. Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9502689.

**The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging** will meet at 1706 East 29th Street, Bryan, March 7, 1995, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9502695.

**The Jasper County Appraisal District Jasper County Appraisal Review Board** will meet at 137 North Main, Jasper, March 10, 1995, at 9:00 a.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, (409) 384-2544. TRD-9502693.

**The Johnson County Rural Water Supply Corporation Membership (Annual Meeting)** will meet at 1501 West Henderson, Cleburne, March 7, 1995, at 7:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9502699.

**The Johnson Rural Water Supply Corporation Board (Special Meeting)** will meet at 1501 West Henderson, Cleburne, March 7, 1995, immediately following annual meeting, estimated 8:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9502700.



A P

Tom Blackburn

Name: Tom Blackburn

Grade: 10

School: Booker T. Washington High School, Dallas ISD

# 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

### Statewide Advisory Council Meeting

The Statewide Advisory Council of the Texas Commission on Alcohol and Drug Abuse will meet Thursday, March 9, 1995, 8:30 a.m. to 5:00 p.m. and Friday, March 10, 1995, 8:15 a.m. to Noon. The meeting will be held at the Driskill Hotel, Sixth and Brazos, Austin, Texas.

Issued in Austin, Texas, on February 27, 1995.

TRD-9502432      Otle E. Williams  
Interim Executive Director  
Texas Commission on Alcohol and Drug  
Abuse

Filed: February 27, 1995

## Texas Education Agency

### Notice of Request for Information Concerning an Integrated Automated Financial Management System

Description. The Texas Education Agency is requesting information for the possible procurement of an integrated automated financial management system (FMS). The new FMS will replace existing systems for accounting, budgeting, and purchasing and require that current databases for those systems be converted to the structure of the new application software system. The new FMS must provide on-line interfaces to and from other enterprise systems such as the integrated funds management and budget preparation systems.

Further Information. To request a complete copy of the request for information, contact Clarence W. Coleman, Texas Education Agency, (512) 463-9680.

Deadline for Response. Responses to the request for information must be received by March 21, 1995, to be considered. Responses should be sent to: Clarence W. Coleman, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502562      Criss Cloutd  
Executive Associate Commissioner for  
Policy Planning and Information  
Management  
Texas Education Agency

Filed: February 28, 1995

## General Services Commission, State Energy Conservation Office

### Consultant Proposal Request Cancellation

The consultant proposal request that was published in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1577) has been cancelled. Subsequently, the pre-proposal conference scheduled for March 8, 1995 has been cancelled as well. Please contact Karen Raven at (512) 463-1890 for further questions.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502657      Sharon Y. Lowe  
Staff Attorney  
General Services Commission

Filed: March 1, 1995

## Texas Department of Health

### Notices of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered The Women's Hospital of Texas (doing business as Houston Imaging Center) of Houston to cease and desist performing mammographic examinations until all violations noted during a recent inspection have been corrected and the facility has been issued a mammographic certification in accordance with the Texas Regulations for Control of Radiation. The bureau determined the use of uncertified mammographic systems without a complete quality assurance program and adequate quality assurance testing according to Texas radiation regulations may subject patients to possible unnecessary radiation exposure, and constitutes an immediate threat to public health and safety, and the existence of an emergency.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502464      Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered AME Health Care Center (registrant-

R12472) of Austin to cease and desist using the Tingle x-ray unit (Model Number 325D, Serial Number 12689) located in the x-ray room to perform thoracic spine and lumbar spine x-ray procedures until entrance exposure limits for these procedures are within regulatory limits. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct the violations and the methods used to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502456 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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**Notice of Emergency Impoundment  
Order**

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Therapy and Diagnostics of Houston to immediately surrender to the bureau for impoundment all sources of radiation that were possessed under the company's certificate of registration-R12887. The registration was revoked by the bureau on July 15, 1994. The order was issued because the company's flagrant failure to comply with the Order of Revocation by not disabling or disposing of the x-ray equipment constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed and approved the actions taken to ensure compliance with the revocation order.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502462 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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**Notices of Intent to Revoke Certificates  
of Registration**

Pursuant to Texas Regulations for Control of Radiation (TRCR), 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: John Y. Robnett, D.D.S., Inc., Dallas, R10482; Carolyn K. Parker, D.D.S., Dallas, R14292; Michael V. Woolwine, D.D.S., Austin, R18422; Universal Diagnostic, LTD, Baytown, R18409, O'Quinn Veterinary Hospital, Pinehurst, R15429; Hollea White, D.M.D., Irving, R14376; Guy K. Rowland, D.V.M.

, Round Rock, R12658; B. E. Powell, M.D., P.A., Conroe, R10426; Juan M. Campos, M.D., McAllen, R19928; Colonies North Chiropractic Clinic, San Antonio, R20635; Diagnostic Consultants, Inc., Hurst, R20662; Technical Equipment Services, Inc., DFW Airport, R16234; Allen Higgs, Tempe, Arizona, R20691; Medical Systems, San Antonio, R18438.

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 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), 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, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502463 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 TAC §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: Rafael E. Lorenzana, D.D.S., Dallas, Certificate of Registration Number R15865.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of such radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

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), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the items in the complaint are not corrected, the certificate 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, Exchange



Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502461 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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**Notice of Rescission of Order**

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued December 12, 1994, to M. D. Building Corporation, 717 North Fourth Street, Longview, Texas 75601, holder of Certificate of Registration Number R21477.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, the Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502460 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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**Notices of Revocation of Certificates of Registration**

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: Manuel Fred Bubba Hirsch, D.D.S., Trinity, R03247, February 13, 1995; Tim Knutson, D.P.M., San Antonio, R10588, February 13, 1995; New Braunfels Chiropractic Associates, New Braunfels, R11229, February 13, 1995; Clear Lake Family Practice Clinic, P.A., Houston, R13402, February 13, 1995; Carlin M. Riggs, D.D.S., Brazoria, R13555, February 13, 1995; Drennan Chiropractic Clinic, Dallas, R18412, February 13, 1995; Parklen Animal Clinic, Stafford, R19804, February 13, 1995; Gulf South Lithotripsy, Inc., New Orleans, Louisiana, R20210, February 13, 1995; Godley Veterinary Clinic, Godley, R20456, February 13, 1995; Baker Veterinary Clinic, Waller, R20516, February 13, 1995; Micah Allen Wesson, D.C., Sherman, R20559, February 13, 1995; YLS Productions, Inc., Los Alamitos, California, Z00846, February 13, 1995; Bio-Rad Micromeasurements (Canada), Inc., Ottawa, Ontario, Canada, R18832, February 13, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502459 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: William Wright, D.D.S., Bedford, R14312, February 22, 1995; Provident Medical Center, Dallas, R15984, February 22, 1995; Kunkel Animal Clinic, Texarkana, R20590, February 22, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1995.

TRD-9502457 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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**Request for Proposals-Community Oriented Primary Care Program Bridge Grant**

**Introduction:** Public Health Region 2/3 is considering the development of one to eight Community Oriented Primary Care (COPC) Programs in the 49-county area of TDH Public Health Region 2/3 designed to bridge public health and community health services in various settings.

**Available funding:** Financial assistance in the amount of \$50,000 is available from Public Health Region 2/3 for piloting one to eight COPC Programs ranging between \$5,000 to \$50,000 depending on the number of proposals considered for funding.

**Goals:** The goals of the Public Health Region 2/3 COPC Program are to pilot innovative COPC variations of health care delivery models which: integrate community public health and primary care functions; have methods for community definition, characterization and involvement that is responsive to the community; have processes to identify community health problems that are to be impacted; have provisions to modify and customize community health care resources responding to identified community health problems; and have means/methods to measure, evaluate, and determine success in impacting identified community health problems.

Creative suggestions and innovative approaches to a health care delivery system that promotes accessible, comprehensive, coordinated and continuous care to community populations in a cost efficient manner are encouraged and welcomed.

**Timelines:** Any organization submitting a program proposal should contact Public Health Region 2/3 on or after March 1, 1995. Final proposals should be mailed or faxed by the close of business day on April 30, 1995. Award decisions will be made by June 1, 1995, by a panel. Awards will be granted July 1, 1995, and funds must be used within a 12-month period, ending June 30, 1996.

For additional information and/or an application packet, please contact: Jan L. Havins, Texas Department of Health, Public Health Region 2/3, 2561 Matlock Road, Arlington, Texas, 76015, (817) 460-3032, fax (817) 460-1558.

Issued in Austin, Texas, on February 27, 1995.

TRD-9502458 Susan K. Steag  
General Counsel  
Texas Department of Health

Filed: February 27, 1995

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**Texas Department of Human Services**  
**Public Notice**

The Texas Department of Human Services has published a report describing the actual expenditures of Title XX Social Services Block Grant funds for fiscal year 1994. Free copies of the report are available to the public.

**Contact Person:** To obtain a copy of this report, write Burton Raiford, Commissioner, Texas Department of Human Services, W-619, P.O. Box 149030, Austin, Texas 78714-9030.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502523 Nancy Murphy  
Section Manager for Media and Policy  
Services  
Texas Department of Human Services

Filed: February 28, 1995

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**Texas Natural Resource Conservation  
Commission**  
**Enforcement Orders**

An agreed enforcement order was entered regarding the City of Donna (Docket Number 95-0031-PWS-E, PWS Number 1080002, CCN Number 99028) on February 23, 1995, assessing \$4,000 in administrative penalties, with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Steve Shepherd, Staff Attorney, Texas Natural Resource Conservation Commission, (512) 239-6063.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502508 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 28, 1995

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An agreed enforcement order was entered regarding Harm Jongsma, Docket Number 94-0220-AGR-E, on February 17, 1995, assessing \$3,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding Plastics Recycling Corporation, Docket Number 94-0341-ISW-E (No Permit), on February 17, 1995, assessing \$3,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding Round Rock Independent School District, Docket Number 95-0240-PST-E/Enforce I.D. E10708 (TNRCC Facility I.D. 45847) on February 17, 1995, assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ray Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding Laidlaw Waste Systems, Inc., Docket Number 95-0241-MSW-E (MSW Permit Number 1614) on February 17, 1995, assessing \$10,560 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0668.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502506 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 28, 1995

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**Notice of Applications for Waste  
Disposal Permits**

Notices of applications for waste disposal permits were issued during the period of February 17-24, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper

publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

City of Angleton; the Oyster Creek Wastewater Treatment Facilities; the wastewater treatment facilities are adjacent to and south of County Road 609 (Old Highway 35), approximately 1 1/2 miles southwest of the intersection of State Highway 35 and State Highway 227 in Brazoria County, Texas; renewal; 10548-01.

City of Elkhart; the wastewater treatment facilities are approximately 1,000 feet west of Brown Street, 1,000 feet south of State Highway 294, and 0.25 mile southwest of the central business district of Elkhart in Anderson County, Texas; renewal; 10735-01.

Exxon Corporation doing business as Exxon Chemical Americas; at their petrochemical manufacturing plant; the plant site is at the intersection of Burleson Street and Wooster Cedar Bayou County Road in the City of Baytown, Harris County, Texas; renewal; 01215.

H. Muehlstein and Company, Inc.; a wholesale resins business; the plant site is in the City of Houston, Harris County, Texas; amendment; 02294.

James River Paper Company, Inc.; a plant that extrudes plastic film; the plant site is in the southwest quadrant of the FM 1006 intersection with Foreman Road, approximately one mile north of Cow Bayou and 1,000 feet south of Round Bunch Road, Orange County, Texas; amendment; 02858.

City of McAllen; the City of McAllen Number 3 Wastewater Treatment Facilities; are on Sprague Road approximately 1.5 miles southwest of the intersection of FM Road 2061 and State Highway 107 in Hidalgo County, Texas; amendment; 10633-04.

City of Newton; the wastewater treatment facilities; are north of Caney Creek, approximately 7,000 feet southeast of the intersection of McMahan Street and Davidson Road in the City of Newton in Newton County, Texas; renewal; 10233-03.

San Antonio Water System; the Salado Creek Wastewater Treatment Facilities; are on Blue Wing Road, approximately 1.5 miles south of the intersection of Southton Road and Blue Wing Road in Bexar County, Texas; amendment; 10137-008.

Sheridan Water Supply Corporation; the Sheridan Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 1,400 feet east-southeast of the intersection of U.S. Highway 90 Alternate and FM Road 2437 near the City of Sheridan, Colorado County, Texas; renewal; 13452-01.

City of Shiner; the wastewater treatment facilities; are approximately one mile southeast of the intersection of U.S. Highway 90A and State Highway 95 in the City of Shiner, in Lavaca County, Texas; renewal; 10280-01.

City of Texas City; the wastewater treatment facilities; are approximately one mile north of State Highway Loop 197 and four miles east of State Highway 146, in the northeast portion of the City of Texas City, in Galveston County, Texas; amendment; 10375-01.

Texas-New Mexico Power Company; the TNP One, a lignite fired Steam Electric Station; containing two generating units which is approximately one mile east of the Town of Hammond and approximately eight miles north (via State Highway 6) of the City of Calvert, Robertson County, Texas; renewal; 02877.

City of Troup; the wastewater treatment plant; is approximately 0.25 mile south of the Cherokee-Smith county line and 0.38 mile east of the State Highway 110 and south of the City of Troup in Cherokee County, Texas; amendment; 10304-01.

City of Woodville; the wastewater treatment facilities; are approximately 0.75 mile from the intersection of U.S. Highway 69 and U.S. Highway 190, adjacent to the south corporate limit of the City of Woodville in Tyler County, Texas; new; 10322-03.

Hoechst Celanese Chemical Group, Inc.-Clear Lake Plant; authorizes operation of an industrial solid waste storage and processing facility for the management of hazardous and Class I non-hazardous waste; the facility stores, processes and incinerates authorized wastes generated on-site from the manufacture of petrochemicals; the facility is located at 9502 Bayport Road on a 1,000-acre tract of land approximately three miles southwest of the intersection of State Highway 146 and Fairmont Parkway near LaPorte, Harris County, Texas; amendment; HW-50201; 45-day notice.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502509  
Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 28, 1995

### ◆ ◆ ◆ Notice of Contested Case Hearing

Pursuant to the provisions of 30 TAC §116.412, notice is hereby given that an Examiner for the Texas Natural Resource Conservation (TNRCC) will conduct a public hearing to consider whether the Executive Director's Emergency Executive Order to authorize the repair of a ruptured gas pipeline and the loading of coker naphtha at the company's marine dock at the facility located at 12000 Lawndale, Houston, Harris County, Texas facility of Lyondell-Citgo Refining Company Limited should be affirmed, modified or denied and set aside.

The public hearing in the Emergency order is scheduled for Thursday, March 9, 1995 at the TNRCC Park 35 Office Complex in Room 315H of Building A at 9:00 a.m. This hearing has been continued to Friday, March 17, 1995 at 9:00 a.m. in Room 315H in Building A, 12124 Park 35 Circle, Austin, Texas.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502511  
Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed February 28, 1995

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**Notice of Opportunity to Comment on  
Permitting Actions**

For the week ending February 24, 1995.

Approval of James A. Dyche doing business as Crest Water Company to purchase water systems and amend CCN Number 12037 in Johnson County, Texas (Application Number 30607-S, Diego Abrego).

USS-CHC Tubular Processing for a minor amendment to Permit Number 03540 to Outfalls 002 and 003 from its current permit. The permit currently authorizes the following discharges: treated domestic wastewater via Outfall 001 at a average flow not to exceed 6,000 gallons per day; and stormwater at an intermittent variable flow via Outfalls 005, 006, and 014, which will remain the same. The applicant operates a fabricating pipe products supply facility. The plant site is approximately four miles north of the City of Channelview in an area bounded by Sheldon Road and Highway 90, Harris County, Texas.

Village of Briarcliff for a minor amendment to Permit Number 13639-01 in order to add an additional subsurface drain field of 9,000 square feet as a reserve drain field. The existing permit authorizes the disposal of treated domestic wastewater effluent by subsurface drain fields. The disposal volume is not to exceed an average volume of 8,500 gallons per day. Application rates for the subsurface drain fields are not to exceed 0.214 gallons per day per square feet. No discharge of pollutants into waters in the state is authorized by this permit. The Village of Briarcliff wastewater treatment facility and subsurface disposal site are approximately 3.8 miles northeast of the intersection of State Highway 71 and FM Road 2322 and approximately 0.4 mile northeast of the intersection of FM Road 2322 and Cat Hollow Club Drive in Travis County, Texas.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502510 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 28, 1995

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**Provisionally-Issued Temporary Permits  
to Appropriate State Water**

Listed are permits issued during the period of February 17-24, 1995.

Application Number 7403 by Manchaca Industries, Inc. for diversion of two acre-feet of water in a one-year period for industrial use. Water may be diverted from FM 437 Crossing of Big Elm Creek, Approximately three miles northeast of Rogers, Bell County, Texas, Brazos River Basin.

Application Number 7402 by Madden Contracting Company, Inc. for diversion of one acre-feet of water in a one-year period for industrial use. Water may be diverted from the stream crossing at SH 149, approximately 48 miles northwest of Carthage, Panola County, Texas, Sabine River Basin.

Application Number 7399 by Texaco E&P, Inc. for diversion of four acre-feet of water in a one-year period for mining purposes. Water may be diverted at a diversion point west of Highway 79, approximately 18.5 miles northeast of Carthage, Panola County, Texas, Sabine River Basin.

Application Number 7398 by Justiss Oil Company, Inc. for diversion of four acre-feet of water in a two-month period for mining purposes. Water may be diverted from the Sabine River near Highway 2787, approximately 16 miles northeast of Center, Shelby County, Texas, Sabine River Basin.

Application Number 7404 by S.F.W. Construction, Inc., for diversion of one acre-foot of water in a one-year period for industrial purposes. Water may be diverted from the stream crossing near Blackberry Road, approximately five miles south of Belton, Bell County, Texas, Brazos River Basin.

Application Number 7381 by Wilfred E. Baker, Jr. for diversion of nine acre-feet of water in a one-year period for mining purposes. Water may be diverted from the Highway 16 crossing of the Medina River, approximately one mile north of Medina, Bandera County, Texas, San Antonio River Basin.

Application Number 7401 by Tom Thorp Transports, Inc. for diversion of ten acre-feet of water in a one-year period for mining purposes. Water may be diverted from the Middle Concho River, approximately 15 northwest of Mertzon, Irion County, Texas, Colorado River Basin.

Application Number 7400 by Tom Thorp Transports, Inc. for diversion of five acre-feet of water in a one-year period for mining purposes. Water may be diverted from near the FM 853 crossing of Rocky Creek, approximately 13 northwest of Mertzon, Irion County, Texas, Colorado River Basin.

Issued in Austin, Texas, on February 24, 1995.

TRD-9502507 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: February 28, 1995

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**North Central Texas Council of  
Governments**

**Request for Consultant Services**

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

NCTCOG intends to retain the services of consultants to conduct a Systemwide Boarding and Alighting Study for the Fort Worth Transportation Authority (the T). The consultant will survey all fixed- and flexible-route trips provided by the T. Trip specific, stop specific, and time-point specific data will be collected to analyze existing service and establish a more effective delivery of services.

**Contract Award Procedures**

The firm selected to perform this study will be recommended by a Project Review Committee (PRC). The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the

PRC's recommendations and, if found acceptable, will issue contract awards.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 1, Nondiscrimination in Federally Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

#### Due Date

Proposals must be submitted no later than 1:00 p.m., Central Standard Time, Tuesday, March 14, 1995, to Ken Cervenka, P.E., Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 695-9243.

Issued in Arlington, Texas on February 21, 1995.

TRD-9502350      Mike Eastland  
Executive Director  
North Central Texas Council of  
Governments

Filed: February 24, 1995

### Texas Parks and Wildlife Department Correction of Error

The Texas Parks and Wildlife Department proposed new §§65.38, 65.40, 65.42, 65.46, 65.48, 65.50, 65.52, 65.54, 65.56, 65.58, 65.60, 65.62, 65.64, and 65.66. The rules appeared in February 17, 1995, issue of the *Texas Register* (20 TexReg 1077).

Due to oversights on the agency's part, several errors were inadvertently included in the submission.

In proposed new §65.42(1)(B) (20 TexReg 1077), the reference to Val Verde County should have been deleted.

In proposed new §65.42(2)(C) (20 TexReg 1079), the sentence beginning "In Anderson, Angelina, Archer..." should have been designated as clause (i).

In the proposed amendment to §65.192(25)(E) (20 TexReg 1092), new paragraph (E) should have been indicated by boldface type.

### Public Utility Commission of Texas

#### Notices of Intent to File Pursuant to Public Utility Commission 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 Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Harris County, Houston, Texas.

Docket Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Harris County pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13967.

The Application. Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for Harris County. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502538      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 28, 1995

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract for Billing and Collection Services.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with Parkway Paging, Inc. Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Number 13972.

The Application. Southwestern Bell Telephone Company is requesting approval of Customer-Specific Contract for Billing and Collection Services with Parkway Paging, Inc. Billing and collection services are currently comprised of various services which enable customers to bill their respective end users their service charges. The geographic service market for this specific service is anywhere within the state of Texas where Parkway Paging, Inc. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502548      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 28, 1995

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract for Billing and Collection Services.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of a Customer-Specific Contract for Billing and Collection Services with Southwestern Bell Telecom Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Number 13973.

The Application. Southwestern Bell Telephone Company is requesting approval of Customer-Specific Contract for Billing and Collection Services with Southwestern Bell Telecom. Billing and collection services are currently comprised of various services which enable customers to bill their respective end users their service charges. The geographic service market for this specific service is anywhere within the state of Texas where Southwestern Bell Telecom provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502572      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: March 1, 1995

◆      ◆      ◆  
**Public Notice**

On February 24, 1995, Southwestern Bell Telephone Company filed notice to file a LRIC study pursuant to Substantive Rule §23.91 for the following basic network functions (BNF's): (1) Call Forwarding Variable per Line, (2) Call Waiting per Line and (3) Touch-tone per Line in Project Numbers 12475 and 12481, Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Studies Workplans Pursuant to Public Utility Commission Substantive Rule 23.91. Southwestern Bell Telephone Company expects to file these studies on March 8, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by April 24, 1995. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502537      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: February 28, 1995

◆      ◆      ◆  
**Texas Rehabilitation Commission  
Intent to Award Grant to the Children's  
Habilitation Center**

The Texas Rehabilitation Commission announces its intention to award a grant on behalf of the Texas Planning

Council for Developmental Disabilities to Children's Habilitation Center to continue support for the ABLE KIDS Assistive Technology Project. Children's Habilitation Center responded to an Open Request for Proposals posted in the *Texas Register* on October 4, 1991. Since June 1992, the ABLE KIDS project has provided training and technical assistance to professionals involved in Early Childhood Intervention (ECI) programs in Bexar and surrounding counties.

Description of Project. The ABLE KIDS Project will implement a statewide expansion of the original project activities which will lead to integration of assistive technology into ECI programs in underserved areas. In cooperation with 12 regional Education Service Centers, the project will provide training to ECI program staff, public school staff and parents. The project will provide introductory training through video tapes with accompanying instruction manuals. Team training will be provided on-site at Education Service Centers. Consultation and technical assistance related to equipment acquisition will be provided. The project will also address the ongoing technical assistance support needs of ECI programs as well as issues related to the legal and procedural aspects of obtaining assistive technology. Training will be provided in underserved areas including the Rio Grande Valley, the Panhandle, and West Texas.

Terms and Funding. This project will be funded for up to three years. The initial budget period will begin on June 1, 1995 and end May 31, 1996. The award is not to exceed \$107,300 in year one, \$114,500 in year two, and \$114,600 in year three. Funding is contingent on the availability of funds and satisfactory performance.

For information on any aspect of this announcement, contact: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502575      Charles Schlosser  
Associate Commissioner for the Office of  
the General Counsel  
Texas Rehabilitation Commission

Filed: March 1, 1995

◆      ◆      ◆  
**Intent to Award Grant to the Walsh  
Company**

The Texas Rehabilitation Commission announces its intention to award a grant on behalf of the Texas Planning Council for Developmental Disabilities to the Walsh Company, to continue support to the Program for the activity "Partners in Policymaking."

The Walsh Company, submitted a proposal in response to a Request for Proposals for Support for Training Activities reposted in the *Texas Register* on August 9, 1991 (16 TexReg 4376). That RFP invited proposals for a grant project that would provide support and assistance to the Program for coordination of the activity entitled "Partners in Policymaking." Pursuant to the aforementioned RFP, in August 1992, a replacement award was made to the Walsh Company due to an emergency. Another award was granted in July 1994. The Texas Planning Council for Developmental Disabilities intends to award a grant to the Walsh Company, to continue their support of the "Partners

in Policymaking" training activity because of their experience and contributions towards the success of that program.

**Description of Project.** The project will provide support and assistance to the Program for coordination of the activity entitled "Partners in Policymaking." The project will provide support functions related to training sessions and special assignments for people with developmental disabilities and their family members. The Program will maintain final authority for dates, content, and agendas of each event, determination of topics and presenters, and approval of all payments. The grantee will provide staff resources for support activities, such as acquiring meeting space and facilities, coordinating registration, coordinating equipment needs, processing timely reimbursements to participants, facilities, and presenters, and arranging travel and transportation for presenters and participants.

**Terms and Funding.** The project will be funded for three years. The initial budget period will be from July 1, 1995 to June 30, 1996. The award is not to exceed \$450,000 in year one, \$445,000 in year two, and \$454,000 in year three. Funding is contingent on the availability of funds and satisfactory performance.

For information on any aspect of this announcement, contact: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502576 Charles W. Schiesser  
Associate Commissioner for the Office of  
the General Counsel  
Texas Rehabilitation Commission

Filed: March 1, 1995

### Request for Proposals

The Texas Planning Council for Developmental Disabilities announces the availability of funds to be awarded by the Texas Rehabilitation Commission on its behalf to provide stipends to enable individuals with developmental disabilities and their family members to attend established in-state professional or informational con-

ferences, workshops and meetings in order to promote consumer empowerment and involvement in activities that enhance independence, productivity and community integration for people with developmental disabilities. Stipends recipients are limited to individuals who are not eligible for travel reimbursement from an organization of which they are an employee or member. It is expected that the sponsoring agency/organization share the direct financial support for participants in addition to the Council's stipends. These funds will be awarded by the Texas Rehabilitation Commission as the designated agency for the Texas Planning Council for Developmental Disabilities. Requests for funds must be made by the agency/organization sponsoring the event. Requests will be considered only for in-state events.

For the application materials that includes the full request for proposals, please submit a written request to: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399 (512) 483-4084. Deadline. Requests for funding must be submitted to the above address at least 120 days in advance of the starting date of the event for which stipends are requested.

Issued in Austin, Texas, on February 28, 1995.

TRD-9502577 Charles W. Schiesser  
Associate Commissioner for the Office of  
the General Counsel  
Texas Rehabilitation Commission

Filed: March 1, 1995

### Texas Water Development Board Correction of Error

The Texas Water Development Board proposed new §363.3, concerning Memorandum of Understanding between the Texas Water Development Board and the International Boundary and Water Commission. The rule appeared in the February 17, 1995, issue *Texas Register* (20 TexReg 1108).

Due to editing errors §363.3(p)(3) and (p)(4)(C)(ii) erroneously referenced TNRCC or the Texas Natural Resource Conservation Commission. These references should be changed to read TWC.

Name: Rebecca Perez  
Grade: 12  
School: Booker T. Washington High School, Dallas ISD



"Hand"

Rebecca Perez



# TAC Titles Affected

The following is a list of the administrative rules that were published in the February 3-28 1995 issues.

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