Texas Register

Volume 21, Number 45 June 18, 1996 ***Page 5495-5640***

This month's front cover artwork:

Artist: *Wendy Phan*

11th grade

Clear Creek High School, Clear Creek ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

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

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

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Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Office of the Attorney General

Request for Opinions

ID# 38763 Request from the Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891 concerning whether a justice court may issue a warrant for delinquent taxes in an amount greater than $5,000

ID# 38780 Request from Mr. Gilbert Kissling, Administrator, Texas State Board of Plumbing Examiners, P.O. Box 4200 Austin, Texas 78765-4200, concerning conflict between two amendments to Texas Civil Statutes, Article 6243.101, the Plumbing License Law, enacted by the 73rd Legislature

ID# 38803 Request from the Honorable Fred Hill Chair, Committee on Urban Affairs, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the cities of Lucas and Parker may discontinue water service to certain diannexed areas

ID# 38805 Request from the Honorable Delma Rios, Kleberg County Attorney, P.O. Box 1411, Kingsville, Texas 78364, concerning documentation required to justify a county auditor's car allowance

ID# 38806 Request from the Honorable Marcos Hernandez, Jr., Hays County Criminal District Attorney, 110 East Martin Luther King Drive, San Marcos, Texas 78666, concerning whether prior conviction of a felony disqualifies an individual from serving as a member of a school district board of trustees

ID# 38807 Requested by: The Honorable Shane Ann Green Brewster County Attorney P.O. Box 323 Alpine, Texas 79831 Re: Whether the "resign-to-run" provision of the Texas Constitution is applicable when an individual declares himself a "candidate" for an appointed position

TRD–9608245

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, aproposal 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 bythe use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle

4 TAC §35.4

The Texas Animal Health Commission proposes amendments to Chapter 35, Brucellosis, §35.4, concerning entry of cattle into Texas.

The proposed amendments are necessary to amend §35.4(a) to remove the entry permit on all cattle entering Texas from Mexico except those sexually intact cattle moving to a premise for post-entry testing. The "S" brand required on sexually intact cattle moving to a quarantined feedlot may be placed either prior to or upon arrival at the feedlot, and those cattle may be moved either to the feedlot or designated pen accompanied by a VS 1-27.

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

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to eliminate the entry permit on cattle for which no further action is required, and provide for "S" branding an animal at the market rather than before entry into the State. It also makes a provision for a designated pen to receive those cattle as well as a quarantined feedlot, and adds assurance they arrive by having them accompanied by a VS 1-27.

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

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, §161.081, which provides the Commission with the authority to promulgate rules regulating the movement of animals into the state, and §163.061, which provides the Commission with the authority to adopt rules relating to testing, vaccination, and movement of cattle into an area.

No other code or article is affected by these amendments.

§35.4. Entry and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. **Sexually intact** [All] cattle must obtain an "E" permit from the Texas Animal Health Commission prior to moving to a destination in Texas **other than direct to slaughter, quarantined feedlot or designated pens**. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to **or upon arrival at the quarantined feedlot or designated pen** [entry into the state].

(B) Spayed heifers shall be spade-branded prior to entry as specified in Section 35.1 of this chapter (relating to Definitions).

(3)-(5) (No change.)

(6) Testing requirements for sexually intact cattle **moving directly to** [entering for feeding in] a quarantined feedlot **or designated pen**. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to **or upon arrival at** [entry into] the **quarantined feedlot or designated pen** [state], and may move **to**[into] the **quarantined feedlot or designated pen** only in sealed trucks with a **VS 1-27** permit issued by **a representative of** TAHC or USDA personnel.

(7) (No change.)

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

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

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

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608095

Terry L. Beals, DVM

Executive Director

Texas Animal Health Commission

Proposed date of adoption: July 19, 1996

For further information, please call: (512) 719–0714

Chapter 41. Fever Ticks

4 TAC §41.1

The Texas Animal Health Commission proposes amendments to Chapter 41, Fever Ticks, §41.1, concerning Tick Eradication.

The proposed amendment is necessary by removing language which has allowed cattle to move from an infected or exposed premise on three dippings without scratching, and by adding language which will allow movement from the premise with two dippings and a clean scratch on the last dipping.

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

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to assure that ticks do not leave an infected or exposed premise due to lack of a clean scratch inspection, and to reduce dippings from three to two required for that movement.

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

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 167, which provides the Commission with the authority to adopt rules to eradicate ticks.

The amendment implements the Agriculture Code, §§167.003 and 167.029, which authorizes the Commission to adopt rules relating to eradicate ticks and to provide conditions for the handling and movement of livestock.

No other code or article is affected by these amendments.

§41.1. Tick Eradication

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

(e) Restrictions on movement of livestock.

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

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

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

(3) (No change.)

(f)-(o) (No change.)

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608096

Terry L. Beals, DVM

Executive Director

Texas Animal Health Commission

Proposed date of adoption: July 19, 1996

For further information, please call: (512) 719–0714

Chapter 43. Tuberculosis

Subchapter A. Cattle

4 TAC §43.1

The Texas Animal Health Commission proposes amendments to Chapter 43, Tuberculosis, §43.1, Cattle (All Dairy and Beef Animals), and Bison, by adding new language to subsection (n) concerning the handling of tuberculosis reactors, and subsection (o) concerning indemnification to cattle owners.

The proposed amendments are necessary in §43.1(n) to require branding on the left hip rather than the jaw, and in §43.1(o) to provide rules for the payment of indemnity for non-lesioned animals destroyed in compliance with the tuberculosis program or because of a test response.

Victor Gonzalez, Assistant Executive Director for Support Services, has determined that for the first five-year period the section is in effect there will be a $13,514.20 annual fiscal implication for state or local government as a result of enforcing or administering the section.

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to bring uniformity to identification of reactor cattle in line with federal requirements, and to provide compensation for cattle slaughtered because of tuberculosis testing, thus, assisting in the eradication of tuberculosis.

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

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapters 161 and 162 which provide the Commission with the authority to act to control and eradicate disease, and to prescribe the system of testing for bovine tuberculosis. The amendment implements the Agriculture Code, §§161.041, 161.046, and 162.003.

No other code or article is affected by these amendments.

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

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

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

(1) Issue a permit to ship reactor animals direct to slaughter. Reactor animals must be slaughtered within 15 days of classification;

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

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

(o) Indemnification to cattle owners. After said reactors are slaughtered, the owner shall submit to the Texas Animal Health Commission a written statement made by said establishment showing the amount of salvage paid for each animal. The Texas Animal Health Commission shall then submit to the comptroller's department a bill signed and sworn to by said owner in the amount not to exceed 1/3 of the appraised value to said reactors after deducting the amount of salvage received from same. In no case shall the Texas Animal Health Commission approve a bill for a greater amount than $70 in the indemnification of any purebred animal or a greater amount than $35 in the indemnification of a grade animal or any greater amount than is paid said owner by the Animal and Plant Health Inspection Service of the United States Department of Agriculture for the same animal. No owner shall receive indemnification for his tuberculin reactors unless such reactors have been approved and their value ascertained as provided in the law. No indemnity will be paid unless all the animals in the herd are tested. No owner shall receive indemnification for his tuberculosis reactors unless and until he complies with all provisions of the law and the rules and regulations of the Texas Animal Health Commission governing this subject. No indemnity will be paid on any animal slaughtered which is still in the suspect classification.

(1) Cattle that are slaughtered after September 1, 1995, in compliance with the tuberculosis program or as a result of a response on an official test can be indemnified as follows. Subject to the availability of funds, the Commission will pay the owner the unreimbursed amount determined by deducting the salvage value and the federal indemnity from the appraised value not to exceed:

(a) For each animal slaughtered with no gross lesions - $250.00;

(b) For each grade animal slaughtered with gross lesions - the lesser of 1/3 the appraised value or $35.00; and

(c) For each purebred animal slaughtered with gross lesions - the lesser of 1/3 appraised value or $70.00.

(2) The Commission may not pay indemnity that exceeds the amount paid by USDA for the same animal.

(3) All animals in the herd must be tested for indemnity to be paid.

(4) All provisions of the law and the regulations of the Commission must be complied with for indemnity to be paid.

(p)-(t) (No change.)

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608099
Terry L. Beals, DVM
Executive Director
Texas Animal Health Commission
Proposed date of adoption: July 19, 1996
For further information, please call: (512) 719–0714

Chapter 51. Interstate, Shows, and Fairs

4 TAC §51.6

The Texas Animal Health Commission proposes amendments to Chapter 51, Interstate, Shows, and Fairs, §51.6, concerning special requirements for entry of equine from the Georgia International Horse Park.

The new amendment establishes entry requirements for those equine attending the Georgia International Horse Park during the 1996 Summer Olympic Games, between July 1, 1996 and August 7, 1996, then entering Texas.

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

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to assure that equine which may have been exposed to piroplasmosis at the Olympic Games are quarantined and tested negative to prevent possible spread of the disease to Texas horses.

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

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with the authority to act to control any disease or agent of transmission of disease that affects horses. The amendment implements §161.061 that requires the Commission to establish a quarantine against a portion of another state where disease exists and §161.081 which authorizes the Commission to regulate the movement of animals into the State.

No other code or article is affected by these amendments.

§51.6. Interstate, Shows, and Fair. ***Special Requirements for Entry of Equine From The Georgia International Horse Park Equine which attended the Georgia International Horse Park during the 1996 Summer Olympic Games, between July 1, 1996 and August 7, 1996, may enter the state provided they:***

(a) Are accompanied by a prior entry permit issued by the Commission restricting them to the premise of destination; and,

(b) Have proof of a negative piroplasmosis test within 30 days prior to the issuance of the permit, or proof that test results are pending.

(c) Are negative to a complement fixation test for piroplasmosis 30 to 60 days after entering the state before the restriction may be released; and,

(d) Comply with all other equine entry requirements. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608093
Terry L. Beals, DVM
Executive Director
Texas Animal Health Commission
Proposed date of adoption: July 19, 1996
For further information, please call: (512) 719–0714

Chapter 57. Poultry

4 TAC §57.11

The Texas Animal Health Commission proposes amendments to Chapter 57, Poultry, §57.11, concerning interstate movement of poultry shipped into Texas.

The proposed amendment is necessary to eliminate the need for an Entry Permit to bring poultry into the State.

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

Robert L. Daniel, Director of Program Records, has determined that the public benefit anticipated is to offer less restrictions on poultry entering the State, since this permit being eliminated was deemed unnecessary in protecting the Texas industry from disease.

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

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

No other code or article is affected by these amendments.

§57.11. General Requirements.

(a)-(d) No Change.)

(e) Interstate Movement.

(1) Poultry shipped into the State of Texas shall be accompanied by **an,** [a permit and] official health certificate issued by an accredited veterinarian within ten (10) days prior to shipment. The health certificate shall state that the poultry have been inspected and are free of evidence of infectious or contagious disease; that the poultry have been vaccinated only with approved vaccines as defined in this regulation; and, that the poultry has not originated from an area that has had active Laryngotracheitis within the last 30 days. The certificate shall also state the poultry have passed a negative test for pullorum typhoid within thirty (30) days prior to shipment or that they originate from flocks which have met the pullorum-typhoid requirements of the Texas Pullorum-Typhoid Program and/or the National Poultry Improvement Plan. Baby poultry will be exempt from this section if from a NPIP, or equivalent, hatchery, and accompanied by NPIP Form 9-3, or APHIS Form 17-6.

(2) - (4) (No Change.)

(f)- (i) (No Change.)

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

Issued in Austin, Texas on May 22, 1996.

TRD-9608097
Terry L. Beals, DVM
Executive Director
Texas Animal Health Commission
Earliest possible date of adoption: July 20, 1996
For further information, please call: (512) 719–0721

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

16 TAC §3.9, §3.46

The Railroad Commission of Texas (commission) proposes to amend §3.9, relating to disposal wells, and §3.46, relating to fluid injection into productive reservoirs, to revise the provisions relating to area-of-review requirements and mechanical integrity testing. Proposed amendments also update the reference to the Texas Water Commission (now the Texas Natural Resource

Conservation Commission); substitute in the place of references to the Director of Underground Injection Control language allowing the commission to designate staff to handle certain responsibilities; delete the requirements that a verbal report of a leak in a well be confirmed in writing within five working days; and delete the requirements that 15 days advance written notice of intended transfer of a permit be provided.

The commission proposes to amend §3.9(a)(2) to change the name of the agency from which letters regarding endangerment of freshwater strata are obtained from the Texas Department of Water Resources to the Texas Natural Resource Conservation Commission.

The commission proposes to amend both §3.9 and §3.46 to delete all references to "Director" or the "Director of Underground Injection Control" because that position was eliminated in connection with a recent reorganization of the commission. In place of the term "Director" or "Director of Underground Injection Control," the commission proposes to substitute the words "commission or its delegate" or "commission's delegate" as appropriate.

The commission proposes to amend §§3.9(a)(4)(C)(i) and 3.46(c)(3)(A) to clarify that a hearing will be held upon protest of an application received within 15 days of receipt of the application or of publication, whichever is later.

The commission proposes to delete §3.9(a)(5)(B)(i) and §3.46(d)(2)(A). These provisions require 15 days advance written notice of permit transfer; however, this notification is unnecessary because the Commission tracks transfer of disposal and injection well permits through its P-4 compliance system.

The commission proposes to amend §3.9(a)(6) and §3.46(e) to expand the bases upon which a variance from the area-of-review requirements of each rule may be granted, to allow variances to be granted on an areal basis in addition to an individual well basis, and to require that additional notice of an application for an areal variance be given.

Specifically, the proposed amendments allow the commission or its delegate to grant a variance from the area-of-review requirements upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Factors that may be considered in granting such a variance include the area affected by pressure increases resulting from injection operations; the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Other compelling evidence might include information indicating the absence of groundwater and low risk of breakouts.

Except in the case of individual well variances sought on the basis of reservoir pressure increases, persons applying for an areal variance must publish notice of the application, in a form approved by the commission prior to publication, once in a newspaper of general circulation in the county or counties in which the variance would apply. Such notice must be at least three inches by five inches in size and must appear in a section of the newspaper containing state or local news items.

A copy of the application for an areal variance must also be provided to the manager of any underground water conservation district the boundaries of which are within the area where the variance would apply, city officials if the variance would apply wholly or partially within city limits, appropriate county officials, and such other persons as may be specified by the commission or its delegate.

If no protest from an affected person is received during the public comment period on an application for a variance, the application may be granted administratively. If a protest is received, or if the variance is denied administratively, the person or persons applying for the variance may request a hearing. A hearing on an application for a variance from the area-of-review requirements may also be held if the commission's delegate determines that a hearing would be in the public interest.

Proposed amendments to §3.9 and §3.46 also provide that an areal variance from the area-of-review requirements may be modified, terminated, or suspended after notice and opportunity for hearing is given to the affected operators. If a hearing on a proposed modification, termination, or suspension is held, any disposal or injection well permit applications filed after notice of the proposed modification, termination, or suspension is given and prior to the date of the final order must include the area-of-review information required in the absence of the areal variance.

The commission proposes to amend §3.9(a)(8)(A) and §3.46(g)(1) to include a definition of the term tubing. For purposes of §3.9 and §3.46, tubing refers to pipe through which injection may occur and that is neither wholly nor partially cemented in place. The commission also proposes deletion of obsolete language relating to wells drilled after the original effective date of §§3.9 and 3.46.

The commission proposes to amend §§3.9(a)(10)(D) and 3.46(i)(4) by deleting the requirement that verbal leak reports be confirmed in writing within five working days. This requirement is unnecessary because, upon receipt of a verbal leak report, the commission will document the report by sending a letter to the operator directing that the well be shut in until the leak is repaired.

The commission proposes to amend §3.9(a)(11)(A) and §3.46(j)(1) to require that the test pressure for wells where injection occurs down casing equal the maximum permitted injection pressure or 200 psig, whichever is greater.

The commission proposes to amend §3.9(a)(11)(C) and §3.46(j)(3) to delete the example of monitoring injection rate/injection pressure relationships as an alternative to tubing-casing annulus pressure monitoring. The commission also proposes to amend these provisions to require that, where tubing- casing annulus pressure monitoring is authorized as an alternative to 5-year pressure tests, the well must be pressure tested at least once every ten years after January 1, 1990.

The commission also proposes to amend §3.9(a)(11)(F) and §3.46(j)(6) to allow a reduction in the frequency of pressure tests required under existing permits. Where an existing permit requires pressure tests at six to 12 month intervals, the commission's delegate may, by letter of authorization, reduce

the frequency of required tests provided that a test is required at least once every three years.

The commission also notes that it is considering amending §3.9 and §3.46 to require that all pressure tests be run at the maximum authorized injection pressure, rather than the lesser of the maximum authorized injection pressure or 500 psi. The commission therefore requests comments on reasons for and reasons against amending the pressure test provisions of §3.9 and §3.46 to require that all pressure tests be run at the maximum authorized injection pressure.

The commission proposes to delete §3.9(a)(14) which specifies the effective date of the section. This provision is no longer necessary.

Rita E. Percival, planner for the Oil and Gas Division, has determined that for the first five-year period the proposed rule amendments will be in effect, there will be fiscal implications as a result of enforcing or administering them.

For each of the first three years the proposed amendments regarding area-of-review variances are in effect, there will be no fiscal impacts on state government because the cost of processing area-of-review variance requests will offset reduced costs of processing individual disposal or injection well permit applications. For the fourth and fifth years the area-of-review variance amendments are in effect, the costs of processing individual permit applications for disposal and injection wells located within an area where an area-of-review variance applies will decrease because the need for evaluating area-of-review information will have been eliminated. There will be no fiscal implications for local government as a result of adoption of the proposed area-of-review amendments. The cost of compliance with the proposed area-of-review amendments for small businesses as a result of enforcing or administering them are comparable to those costs to oil and gas operators shown under the Public Cost/Benefit section, below.

The effect of adoption of the proposed amendments regarding mechanical integrity testing on state government for each year of the first five years the amendments are in effect will be $9,250 per year for fiscal years 1997-2001. There will be no fiscal implications for local government as a result of adoption of the proposed amendments regarding mechanical integrity testing. The cost of compliance with the proposed amendments regarding mechanical integrity testing for small businesses as a result of enforcing or administering them are comparable to those costs to oil and gas operators shown under the Public Cost/Benefit section, below.

Terri Eaton, Assistant Director, Environmental Section, Office of General Counsel, has also determined that for each year of the first five years the amended area-of-review variance provisions of §3.9 and §3.46 are in effect, the public benefit will be a decrease in disposal and injection well permitting costs incurred by persons operating in areas in which an area-of-review variance applies. In addition, the public will benefit from a slight decrease in costs to the Railroad Commission of processing applications for permits for disposal and injection wells located in areas where area-of-review variances are in effect and from the resulting increase in the commission's ability to focus scarce resources on matters of greater environmental concern. For each year of the first five years the amendments requiring that mechanical integrity tests be run at least once every ten years on wells that receive tubing/casing annulus monitoring credit are in effect, the public benefit will be enhanced environmental protection through increased disposal and injection well monitoring requirements. Similarly, the public benefit from increased pressure test requirements for casing injection wells will be enhanced environmental protection through increased disposal and injection well monitoring requirements. For each year of the first five years the amendments allowing a reduction in mechanical integrity testing requirements by letter of authorization are in effect, the public will benefit from decreased regulatory costs incurred by some oil and gas operators in conducting unnecessary mechanical integrity tests. In addition, the public will benefit from decreased costs to the Railroad Commission in processing applications for permit amendments to decrease the required testing frequency and from the resulting increase in the commission's ability to focus scarce resources on matters of greater environmental concern.

The amendments regarding area-of-review variance procedures proposed by the commission do not impose any additional regulatory burdens on oil and gas operators and thus there will be no economic cost to operators as a result of adoption of such amendments. Such amendments will, however, give some operators the ability to reduce disposal and injection well permitting costs by obtaining a variance. The cost to an operator(s) of obtaining an areal area-of-review variance (which could affect application requirements for numerous injection and disposal wells) is estimated to be $3,000, including notification costs and costs associated with any hearing that might be held on an areal variance request. The estimated cost of obtaining an areal area- of-review variance does not include the cost of any study required to justify the variance. The costs of such studies are expected to be highly variable; the commission anticipates that the more costly studies will be funded through federal grant programs. An operator seeking a permit for a disposal or injection well located in an area in which a variance applies will experience an estimated reduction of $175 in permit application costs due to the reduction, or elimination, of the area-of-review requirements. Further, an operator seeking a permit for a disposal or injection well located in an area where a variance applies will avoid costs of corrective action on any inadequately plugged or completed well within the area-of-review; such corrective action would not be necessary in such a case because factors other than the plugging or completion of such well prevent migration of injection fluids into a zone containing fresh water. Such costs are estimated to be at least $500 for each well for which corrective action is required. Thus, operators, individually or as a group, can decide whether to seek an areal area-of-review variance by deciding whether cost savings associated with a variance outweigh the costs of obtaining a variance.

The amendments requiring that a mechanical integrity test be run on each disposal and injection well at least once every ten years are anticipated to require tests on 1,300 wells that would not otherwise be required to undergo mechanical integrity testing during a 10-year period. At $175 per test, the costs of such additional testing would be approximately $23,000 per year. No additional economic cost will be associated with the requirements relating to test pressure used on casing injection wells. The economic savings to an operator obtaining a reduction in

the required mechanical integrity test frequency by letter of authorization rather than permit amendment is estimated to be $500. Assuming that such letters of authorization will be issued for 600 wells for each of the first five years these amendments are in effect, the cost savings to operators would be $300,000 per year.

Public comment on the proposed amendments to §3.9 and §3.46 may be submitted to Richard Ginn, Deputy Assistant Director, Environmental Services, Railroad Commission of Texas, P.O. Box 12967, Austin, TX 78711-2967, by 5:00 p.m. on the 30th day following publication in the *Texas Register*. For additional information, call Terri Eaton at (512) 463-6977.

The amendments to §3.9 are proposed under Texas Water Code, Chapter 27, which authorizes the commission to adopt and enforce rules relating to oil and gas waste disposal wells and Texas Natural Resources Code: §81.052, which authorizes the commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the commission under §81.051; §85.042(b), which authorizes the commission to adopt and enforce rules for the prevention of operations in the field dangerous to life or property; and §91.101, which authorizes the commission to adopt rules for the prevention of pollution of surface or subsurface water associated with the disposal of oil and gas waste.

The amendments to §3.46 are proposed under Texas Water Code, Chapter 27, which authorizes the commission to adopt and enforce rules relating to injection wells and Texas Natural Resources Code: §81.052, which authorizes the commission to adopt all necessary rules for governing persons and their operations under the jurisdiction of the commission under §81.051; §85.042(b), which authorizes the commission to adopt and enforce rules for the prevention of actual waste of oil or operations in the field dangerous to life or property; §85.201, which authorizes the commission to make and enforce rules for the conservation of oil and gas and prevention of waste of oil and gas; §85.202, which authorizes the commission to adopt rules to prevent waste of oil and gas in producing operations and to require wells to be operated in a manner that will prevent injury to adjoining property; and §91.101, which authorizes the commission to adopt rules relating to the production of oil and gas wells and the handling of any material associated with any operation or activity regulated by the commission.

The following are the statutes, articles, or codes affected by the proposed amendments to §3.9 and §3.46: §3.9–Texas Water Code, Chapter 27; Texas Natural Resources Code, §§81.052, 85.042(b), and 91.101. §3.46–Texas Water Code, Chapter 27; Texas Natural Resources Code, §§81.052, 85.042(b), 85.201, 85.202, and 91.101.

§3.9. Disposal Wells.

(a) Any person who disposes of saltwater or other oil and gas waste by injection into a porous formation not productive of oil, gas, or geothermal resources shall be responsible for complying with this section, Texas Water Code, Chapter 27, and Title 3 of the Natural Resources Code.

(1) (No change.)

(2) Geological requirements. Before such formations are approved for disposal use, the applicant shall show that the formations are separated from freshwater formations by impervious beds which will give adequate protection to such freshwater formations. The applicant must submit a letter from the **Texas Natural Resource Conservation Commission** [Texas Department of Water Resources], Austin, Texas, stating that the use of such formation will not endanger the freshwater strata in that area and that the formations to be used for disposal are not freshwater-bearing.

(3) (No change.)

(4) Notice and opportunity for hearing.

(A) (No change.)

(B) In order to give notice to other local governments, interested, or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the well will be located in a form approved by the **commission or its delegate** [Director of Underground Injection Control (hereinafter "Director")]. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

(C) Protested applications:

(i) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, **whichever is later,** or if the **commission or its delegate** [Director] determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.

(ii) (No change.)

(D) If no protest from an affected person is received by the commission, the **commission's delegate** [Director] may administratively approve the application. If the **commission's delegate** [Director] denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(5) Subsequent commission action.

(A) (No change.)

(B) A disposal well permit may be transferred from one operator to another provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on commission records.

[(B) A disposal well permit may be transferred from one operator to another operator provided that:

(i) written notice of the intended permit transfer is submitted to the Director at least 15 days prior to the date the transfer is to take place; and

(ii) the Director does not notify the present permit holder of an objection to the transfer prior to the transfer date stated in the notification in clause (i) of this subparagraph.]

(6) Area of Review.

(A) Except as otherwise provided in this paragraph, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile

radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.

(B) The commission or its delegate may grant a variance from the area of review requirements of subparagraph (A) of this paragraph upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Such a variance may be granted for an area defined both vertically and laterally (such as a field) or for an individual well. An application for an areal variance need not be filed in conjunction with an individual permit application or application for permit amendment. Factors that may be considered by the commission or its delegate in granting a variance include:

***(i)* the area affected by pressure increases resulting from injection operations;**

***(ii)* the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or**

***(iii)* other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface.**

(C) Persons applying for a variance from the area of review requirements of subparagraph (A) of this paragraph on the basis of factors set out in subparagraph (B)(ii) or (iii) of this paragraph for an individual well shall provide notice of the application to those persons given notice under the provisions of paragraph (4)(A) of this subsection. The provisions of subparagraphs (C) and (D) of paragraph (4) shall apply in the case of an application for a variance from the area of review requirements for an individual well.

(D) Notice of an application for an areal variance from the area of review requirements under subparagraph (A) of this paragraph shall be given on or before the date the application is filed with the commission:

***(i)* by publication once in a newspaper having general circulation in each county, or portion thereof, where the variance would apply. Such notice shall be in a form approved by the commission or its delegate prior to publication and must be at least three inches by five inches in size. The notice shall state that protests to the application may be filed with the commission during the 15-day period following the date of publication. The notice shall appear in a section of the newspaper containing state or local news items;**

***(ii)* by mailing or delivering a copy of the application, along with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission, to the following:**

***(I)* the manager of each underground water conservation district(s) ien which the variance would apply, if any;**

***(II)* the city clerk or other appropriate official of each city in which the variance would apply, if any;**

***(III)* the county clerk of each county in which the variance would apply; and**

***(IV)* any other person or persons that the commission or its delegate determines should receive notice of the application.**

(E) If a protest to an application for an areal variance is made to the commission by an affected person, local government, underground water conservation district, or other state agency within 15 days of receipt of the application or of publication, whichever is later, or if the commission's delegate determines that a hearing on the application is in the public interest, then a hearing will be held on the application after the commission provides notice of the hearing to all local governments, underground water conservation districts, state agencies, or other persons, who express an interest, in writing, in the application. If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the application is denied administratively, the person(s) filing the application shall have a right to hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(F) An areal variance granted under the provisions of this paragraph may be modified, terminated, or suspended by the commission after notice and opportunity for hearing is provided to each person shown on commission records to operate an oil or gas lease in the area in which the proposed modification, termination, or suspension would apply. If a hearing on a proposal to modify, terminate, or suspend an areal variance is held, any applications filed subsequent to the date notice of such modification, termination, or suspension is given and prior to the date of the final order must include the area of review information required under subparagraph (A) of this paragraph.

[(6) Area of Review. The applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. Alternatively, if the applicant can show by computation that a lesser area will be affected by pressure increases, then the lesser area may be used in lieu of the 1/4 mile radius area of review. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.]

(7) (No change.)

(8) Special equipment.

(A) Tubing and packer. **Wells** [New wells] drilled or converted for disposal [after the effective date of this section] shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 100 feet above the top of the permitted interval. **For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.** [Existing disposal wells shall be so

equipped at the time of the first workover but no later than January 1, 1984.]

(B) (No change.)

(C) The **commission or its delegate** [Director] may grant an exception to any provision of this paragraph upon proof of good cause. If the **commission or its delegate** [Director] denies an exception, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(9) (No change.)

(10) Monitoring and reporting.

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

(D) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well. [The operator shall confirm this report in writing within five working days.]

(11) Testing.

(A) Before beginning disposal operations, the operator shall pressure-test the long string casing. The test pressure **for wells equipped to inject through tubing and packer** must equal the maximum authorized injection pressure or 500 psig, whichever is less, but must be at least 200 psig. **The test pressure for wells that are permitted for injection through casing must equal the maximum permitted injection pressure or 200 psig, whichever is greater.**

(B) Each disposal well shall be pressure-tested in the manner provided in subparagraph (A) of this paragraph at least once every five years to determine if there are leaks in the casing, tubing, or packer. The **commission's delegate** [Director] may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

(C) As an alternative to the testing required in subparagraph (B) of this paragraph, the tubing-casing annulus pressure may be monitored and included on the annual monitoring report required by paragraph (1) of this section, **with the authorization of the commission or its delegate and** provided that there is no indication of problems with the well. **Wells that are approved for tubing-casing annulus monitoring under this subparagraph shall be tested in the manner provided under subparagraph (A) of this paragraph at least once every ten years after January 1, 1990.** The **commission or its delegate** [Director] may grant an exception for viable alternative tests or surveys [such as monitoring of injection rate/injection pressure relationships].

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

(F) In the case of permits issued under this section prior to the effective date of this amendment which require pressure testing more frequently than once every five years, the commission's delegate may, by letter of authorization, reduce the required frequency of pressure tests, provided that such tests are required at least once every three years. The commission will consider the permit to have been amended to require pressure tests at the frequency specified in the letter of authorization.

(12)-(13) (No change.)

[(14) Effective date. This section shall take effect on April 1, 1982.]

§3.46. Fluid Injection into Productive Reservoirs.

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

(c) Notice and opportunity for hearing.

(1) (No change.)

(2) In order to give notice to other local governments, interested, or affected persons, notice of the application shall be published once by the applicant in a newspaper of general circulation for the county where the well will be located in a form approved by the **commission or its delegate** [Director of Underground Injection Control (hereinafter "Director")]. The applicant shall file with the commission in Austin proof of publication prior to the hearing or administrative approval.

(3) Protested applications:

(A) If a protest from an affected person or local government is made to the commission within 15 days of receipt of the application or of publication, **whichever is later,** or if the **commission or its delegate** [Director] determines that a hearing is in the public interest, then a hearing will be held on the application after the commission provides notice of hearing to all affected persons, local governments, or other persons, who express an interest, in writing, in the application.

(B) (No change.)

(4) If no protest from an affected person is received by the commission, the **commission's delegate** [Director] may administratively approve the application. If the **commission's delegate** [Director] denies administrative approval, the applicant shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(d) Subsequent commission action.

(1) (No change.)

(2) A disposal well permit may be transferred from one operator to another operator provided that the commission's delegate does not notify the present permit holder of an objection to the transfer prior to the date the lease is transferred on commission records.

[(2) A disposal well permit may be transferred from one operator to another provided that:

(A) written notice of the intended permit transfer is submitted to the Director at least 15 days prior to the date the transfer is to take place; and

(B) the Director does not notify the present permit holder of an objection to the transfer prior to the transfer date stated in the notification in clause (i) of this subparagraph.]

(e) Area of Review.

(1) Except as otherwise provided in this subsection, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. The applicant shall identify in the application any wells which appear

from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.

(2) The commission or its delegate may grant a variance from the area of review requirements of paragraph (1) of this subsection upon proof that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface. Such a variance may be granted for an area defined both vertically and laterally (such as a field) or for an individual well. An application for an areal variance need not be filed in conjunction with an individual permit application or application for permit amendment. Factors that may be considered by the commission or its delegate in granting a variance include:

(A) the area affected by pressure increases resulting from injection operations;

(B) the presence of local geological conditions that preclude movement of fluid that could endanger freshwater strata or the surface; or

(C) other compelling evidence that the variance will not result in a material increase in the risk of fluid movement into freshwater strata or to the surface.

(3)
Persons applying for a variance from the area of review requirements of paragraph (1) of this subsection on the basis of factors set out in paragraph (2)(B) or (C) of this subsection for an individual well shall provide notice of the application to those persons given notice under the provisions of subsection (c)(1) of this section. The provisions of subsection (c) of this section shall apply in the case of an application for a variance from the area of review requirements for an individual well.

(4) Notice of an application for an areal variance from the area of review requirements under paragraph (1) of this subsection shall be given on or before the date the application is filed with the commission:

(A) by publication once in a newspaper having general circulation in each county, or portion thereof, where the variance would apply. Such notice shall be in a form approved by the commission or its delegate prior to publication and must be at least three inches by five inches in size. The notice shall state that protests to the application may be filed with the commission during the 15-day period following the date of publication. The notice shall appear in a section of the newspaper containing state or local news items;

(B) by mailing or delivering a copy of the application, along with a statement that any protest to the application should be filed with the commission within 15 days of the date the application is filed with the commission, to the following:

***(i)* the manager of each underground water conservation district in which the variance would apply, if any;**

***(ii)* the city clerk or other appropriate official of each city in which the variance would apply, if any;**

***(iii)* the county clerk of each county in which the variance would apply; and**

***(iv)* any other person or persons that the commission or its delegate determines should receive notice of the application.**

(5) If a protest to an application for an areal variance is made to the commission by an affected person, local government, underground water conservation district, or other state agency within 15 days of receipt of the application or of publication, whichever is later, or if the commission's delegate determines that a hearing on the application is in the public interest, then a hearing will be held on the application after the commission provides notice of the hearing to all local governments, underground water conservation districts, state agencies, or other persons, who express an interest, in writing, in the application. If no protest from an affected person is received by the commission, the commission's delegate may administratively approve the application. If the application is denied administratively, the person(s) filing the application shall have a right to hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(6) An areal variance granted under the provisions of this subsection may be modified, terminated, or suspended by the commission after notice and opportunity for hearing is provided to each person shown on commission records to operate an oil or gas lease in the area in which the proposed modification, termination, or suspension would apply. If a hearing on a proposal to modify, terminate, or suspend an areal variance is held, any applications filed subsequent to the date notice of such modification, termination, or suspension is given and prior to the date of the final order must include the area of review information required under paragraph (1) of this subsection.

[(e) Area of Review. Except as otherwise provided in this subsection, the applicant shall review the data of public record for wells that penetrate the proposed disposal zone within a 1/4 mile radius of the proposed disposal well to determine if all abandoned wells have been plugged in a manner that will prevent the movement of fluids from the disposal zone into freshwater strata. Alternatively, if the applicant can show by computation that a lesser area will be affected by pressure increases, then the lesser area may be used in lieu of the 1/4 mile radius area of review. The applicant shall identify in the application any wells which appear from such review of public records to be unplugged or improperly plugged and any other unplugged or improperly plugged wells of which the applicant has actual knowledge.]

(f) (No change.)

(g) Special equipment.

(1) Tubing and packer. **Wells**[New wells] drilled or converted for injection [after the effective date of this section] shall be equipped with tubing set on a mechanical packer. Packers shall be set no higher than 200 feet below the known top of cement behind the long string casing but in no case higher than 150 feet below the base of usable quality water. **For purposes of this section, the term "tubing" refers to a string of pipe through which injection may occur and which is neither wholly nor partially cemented in place. A string of pipe that is wholly or partially cemented in place is considered casing for purposes of this section.**

(2) (No change.)

(3) Exceptions. The **commission or its delegate** [Director] may grant an exception to any provision of this paragraph upon proof of good cause. If the **commission or its delegate** [Director] denies an exception, the operator shall have a right to a hearing upon request. After hearing, the examiner shall recommend a final action by the commission.

(h) (No change.)

(i) Monitoring and reporting.

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

(4) The operator shall report to the appropriate District Office within 24 hours any significant pressure changes or other monitoring data indicating the presence of leaks in the well. [The operator shall confirm this report in writing within five working days.]

(j) Testing.

(1) Before beginning injection operations, the operator shall pressure-test the long string casing. The test pressure **for wells equipped to inject through tubing and packer** must equal the maximum authorized injection pressure or 500 psig, whichever is less, but must be at least 200 psig. **The test pressure for wells that are permitted for injection through casing must equal the maximum permitted injection pressure or 200 psig, whichever is greater.**

(2) Each injection well shall be pressure-tested in the manner provided in paragraph (1) of this subsection at least once every five years to determine if there are leaks in the casing, tubing, or packer. The **commission's delegate** [Director] may prescribe a schedule and mail notification to operators to allow for orderly and timely compliance with this requirement.

(3) As an alternative to the testing required in paragraph (2) of this subsection, the tubing-casing annulus pressure may be monitored and included on the annual monitoring report required by subsection (i) of this section, **with the authorization of the commission or its delegate and** provided that there is no indication of problems with the well. **Wells that are approved for tubing-casing annulus monitoring under this paragraph shall be tested in the manner provided under paragraph (2) of this subsection at least once every ten years after January 1, 1990.** The **commission or its delegate** [Director] may grant an exception for viable alternative tests or surveys [such as monitoring of injection rate/injection pressure relationships].

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

(6) In the case of permits issued under this section prior to the effective date of this amendment which require pressure testing more frequently than once every five years, the commission's delegate may, by letter of authorization, reduce the required frequency of pressure tests, provided that such tests are required at least once every three years. The commission will consider the permit to have been amended to require pressure tests at the frequency specified in the letter of authorization.

(k)-(n) (No change.)

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

Issued in Austin, Texas, on June 10, 1996.

TRD-9608105
Mary Ross McDonald
Assistant Director, Office of General Counsel, Gas Services Section
Railroad Commission of Texas
Earliest possible date of adoption: July 19, 1996
For further information, please call: (512) 463-7008

Part III. Texas Alcoholic Beverage Commission

Chapter 33. Licensing

Conflicts of Interest

16 TAC §33.41

The Texas Alcoholic Beverage Commission proposes new §33.41, concerning conflicts of interest between members of the alcoholic beverage industry. The rule is proposed to define the term "financial interest" as it appears in the Alcoholic Beverage Code, §102.06.

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

Mr. Bright also has determined that for the each year of the first five years the rule is effect the public benefit anticipated as a result of enforcing the rule will be that the rule provides greater specificity as to what conduct does, and does not, constitute an impermissible conflict of interest for members of the alcoholic beverage industry. Specifically, of the Alcoholic Beverage Code, §102.06 provides, in part, that holders of agent's or manufacturer's agent's permits may not be residentially domiciled with persons who have a financial interest in a package store or wine only package store. By defining what persons have a financial interest in the specified establishments, the members of the public and of the industry are better able to determine the parameters of the Alcoholic Beverage Code, §102.06. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. 13127, Austin, Texas 78711-3127.

The new rule is proposed under the authority of the Alcoholic Beverage Code, §5.31.

The Alcoholic Beverage Code, §102.06 is affected by the new rule.

§33.41. Financial Interest.

For the purposes of Alcoholic Beverage Code, §102.06, "a person who has a financial interest in a package store permit or wine only package store permit" shall mean one who holds an ownership interest in the business, or assets thereof, of a package store or wine only package store permittee.

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608040

Doyne Bailey

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 19, 1996

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

Chapter 35. Enforcement

Transportation of Liquor

16 TAC §35.5

The Texas Alcoholic Beverage Commission proposes new §35.5, concerning reporting requirements for holders of private carrier's permits under the Alcoholic Beverage Code, Chapters 41 and 42. The new rule is proposed to insure that the affected permittees maintain appropriate insurance and compliance with relevant safety laws.

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

Mr. Bright also has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of ennforcing the rule will serve to identify and sanction unsafe or uninsured motor carriers. There will be no effect on small businesses. There is no anticipated cost to persons who are required to comply with the rule as proposed.

Comments may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

The new rule is proposed under the authority of the Alcoholic Beverage Code, §5.31.

The Alcoholic Beverage Code, §§41.03, 41.04 and 42.03, is affected by the new rule.

§35.5. Private Carrier's Permit Safety Program.

(a) Each holder of a private carrier's permit shall carry at least $500,000 of liability insurance and file proof of insurance with the commission for each vehicle registered. Such insurance must be sufficient to pay, not more than the amount of the insurance, for each final judgment against the permit holder (combined single limit) for bodily injury to or death of an individual per occurrence, and loss or damage to property (excluding cargo) per occurrence, or both.

(b) Each holder of a private carrier's permit shall maintain proof of insurance in their permitted vehicles at all times. This proof shall be in the form prescribed by the commission and the Texas Department of Insurance in coordination with the Texas Department of Public Safety.

(1) No insurance policy or certificate of insurance will be accepted by the commission unless issued by an insurance or surety company licensed and authorized to do business in the State of Texas, in the form prescribed or approved by the Department of Insurance and signed or countersigned by an authorized agent of the insurance or surety company. The commission will accept a certificate of insurance issued by a surplus lines insurer that meets the requirements of Insurance Code, Article 1.14-2 and rules adopted by the Department of Insurance under that article.

(2) If the insurer or surety of a permittee subject to this rule becomes insolvent or becomes involved in a receivership or other insolvency proceeding, the permittee may apply for approval of a surety bond or insurance policy issued by another surety or insurer upon filing an affidavit with the commission. Such affidavit shall be executed by the permittee and show that:

(A) no accidents or claims have occurred during the insolvency of the insurance carrier or surety; and

(B) that all damages and claims have been satisfied; and

(C) the commission shall notify the Texas Department of Public Safety of each notice received under this subsection.

(c) Each holder of a private carrier's permit shall complete an affidavit stating that the permittee has knowledge of, and will conduct operations in accordance with, all federal and state safety regulations.

(d) The Department of Public Safety may request that the commission suspend or cancel a private carrier's permit if a permittee:

(1) has an unsatisfactory safety rating under 49 Code of Federal Regulations, Part 385; or

(2) has multiple violations of a provision of Texas Civil Statutes, Article 6675d, a rule adopted under that article or the Uniform Act Regulating Traffic on Highways (Texas Civil Statutes, Article 6701d). A request for suspension or revocation under this subsection shall be submitted in writing by the executive director of the Texas Department of Public Safety, and shall include appropriate documentation evidencing the violation. The commission or administrator may suspend or cancel an original or renewal permit in response to such a request, after notice and hearing under the Alcoholic Beverage Code and the rules of the commission, pursuant to Alcoholic Beverage Code, §111.61(b)(7).

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 7, 1996.

TRD-9608039

Doyne Bailey

Administrator

Texas Alcoholic Beverage Commission

Earliest possible date of adoption: July 19, 1996

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

Chapter 41. Auditing

Records and Reports by Licensees and Permittees

16 TAC §41.55

The Texas Alcoholic Beverage Commission proposes new §41.55, concerning assignments of brands of distilled spirits and wines. The proposed rule requires certain permittees to make reports to the commission concerning brands of distilled spirits and wine sold, and by whom said brands are or have been sold.

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

Mr. Bright also has determined that for the each year of the first five years the rule is effect the public benefit anticipated as a result of enforcing the rule will be that collection and maintenance of the information required by this rule will better enable the commission to satisfy its duty, imposed by Texas Alcoholic Beverage Code, §5.31, of inspecting, supervising and regulating every phase of the alcoholic beverage industry.

There will be some fiscal impact by this rule as proposed on small businesses and others required to comply with the rule in that it will be incumbent on such entities and persons to collect and transmit the requested data to the commission in compliance with the rule. The commission is unable to estimate this impact in either specific or general terms.

Comments on the proposal may be submitted to Lou Bright, General Counsel, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127.

The new rule is proposed under the authority of the Alcoholic Beverage Code, §5.31 and §5.32.

The Alcoholic Beverage Code, §5.31 is affected by the new rule.

§41.55. Brand Assignments.

(a) This rule applies to holders of a nonresident seller's permit, a distiller's and rectifier's permit, a winery permit, a wine bottler's permit, a wholesaler's permit, a general class B wholesaler's permit and a local class B wholesaler's permit. This rule does not apply to brands of wine that have less than 25,000 gallons of wine sold per calendar year or to malt beverages.

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

(1) Brand or brands, when applied to distilled spirits means:

(A) brand name;

(B) class; and

(C) type, exclusive of proof.

(2) Brand or brands, when applied to wine means:

(A) brand name;

(B) class; and

(C) type, exclusive of vintage.

(3) Permit number means the permit number issued by the agency under which the product is shipped into the state.

(c) On or before November 1, 1996, the following information shall be provided to the commission.

(1) Distiller's and rectifier's, winery and nonresident seller's permittees shall report:

(A) all brands sold within the State of Texas since September 1, 1986;

(B) the name, location and permit numbers of the wholesalers to whom said brands were sold; and

(C) the dates of each wholesaler who carried the above listed brands as a part of the wholesaler's product.

(2) Wholesaler's, general class B wholesaler's, local class B wholesaler's and wine bottler's shall report:

(A) all brands carried as part of the permittee's product line since September 1, 1986;

(B) the name, location and permit numbers of the suppliers of the brands listed above; and

(C) the dates during which the above listed brands were carried as part of the permittee's product line.

(d) Within ten days of the effective dates of the transfers listed in this subsection, the following information shall be provided to the commission.

(1) Distiller's and rectifier's, winery and nonresident seller's permittees shall report:

(A) all brands transferred from one wholesaler to another;

(B) the name, location and permit numbers of the wholesaler previously carrying the effected brand and the name, location and permit number of the wholesaler to whom the brand is transferred; and

(C) the reasons for the transfer.

(2) Wholesaler's, general class B wholesaler's, local class B wholesaler's and wine bottler's shall report:

(A) the name of all brands discontinued from the permittee's product line;

(B) the name, location and permit numbers of the supplier of the discontinued brand; and

(C) the reason the effected brand was discontinued.

(e) Ten days prior to the introduction of any new brand into the Texas market, all distiller's and rectifier's, winery and nonresident seller's permittees shall report to the commission:

(1) the name of the brand introduced; and

(2) the name, location and permit numbers of the wholesalers to whom such brand will be sold.

(f) The reports required by this rule shall be on forms required by the commission.

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608128
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Earliest possible date of adoption: July 19, 1996
For further information, please call: (512) 206-3204

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 12. Proprietary Schools

Subchapter A. Purpose and Authority

19 TAC §§12.21–12.24

The Texas Higher Education Coordinating Board proposes amendments to §12.21-§12.24 concerning Purpose and Authority. The purpose of the proposed amendments to Chapter 12, Subchapter A is to further ensure the quality and integrity of applied associate degree programs at proprietary institutions, facilitate the establishment and implementation of the institutional effectiveness review program for proprietary institutions, achieve consistency with revisions in the Texas Education Code, and to achieve greater uniformity in the administration and delivery of applied associate degree programs at Texas proprietary institutions. The proposed amendments will enhance the quality of proprietary degree programs and will help protect students enrolled in those programs if the institution closes.

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

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

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

There were no other sections or articles affected by these rules. Subchapter A. Purpose and Authority.

§12.21. Purpose.

It is the intent of the Legislature to encourage proprietary postsecondary institutions and to ensure the integrity of applied associate degrees **offered by proprietary institutions**.

(1) Proprietary schools, as defined in the Texas Education Code, **Section 132.001** [32.11], offering programs in which applied associate degrees are awarded, shall meet minimum **institutional and** educational program **quality** standards.

(2) Applied associate degrees offered by proprietary schools shall meet minimum **institutional and** educational program **quality** standards **established by the Board** [that are consistent with applied associate degrees conferred by public colleges].

§12.22. Authority.

[(a)] The Texas Education Code, **Section 132.063** [Chapters 32 & 61] **authorizes** [provides the authority to] the Texas Higher Education Coordinating Board to enforce minimum standards for the approval of programs of study leading to the award of the applied associate degree.

(1)-(2) No Change

(3) The Texas Higher Education Coordinating Board shall have jurisdiction over applied associate degree programs **offered by** [in] proprietary schools.

(4) The Texas Higher Education Coordinating Board shall charge fees for initial application, revision, **evaluation,** [and evaluation] **and reinstatement** of proprietary school applied associate degree programs. The Commissioner of Higher Education shall set these fees in an amount not to exceed the cost of initial program application review, program revision review, **review of petition for reinstatement of authorization to grant degrees,** and program evaluation of proprietary school associate degree programs including the cost of necessary consultants.

[(b) The Texas Education Code, Chapter 32, and rules promulgated by the State Board of Education provide the authority to the Texas Education Agency to enforce minimum standards for approval of proprietary schools.] 12.23. Degree Titles Authorized. Associate of Applied Science (A.A.S.), Associate of Applied Arts (A.A.A.), and Associate of Occupational Studies (A.O.S.) degrees **will be the only degrees authorized by the Texas Higher Education Coordinating Board.**.

[(1) A.A.S., A.A.A., and A.O.S. degrees will be the only degrees authorized by the Texas Higher Education Coordinating Board.]

[(2) Institutions may enroll students in A.A.S., A.A.A., and A.O.S. degrees under Texas Education Agency minimum standards until June 16, 1993, unless the approval is revoked by the Texas Education Agency. All students enrolled in such degree programs under Texas Education Agency minimum standards must complete all degree program requirements prior to December 15, 1995.]

[(3) Institutions which were approved to award the A.A.S., A.A.A., and/or the A.O.S. degrees by Texas Education Agency prior to September 1, 1989, may continue to enroll students in these degree programs only if such programs have met the minimum requirements of the Coordinating Board by June 16, 1993.]

[(4) Effective September 1, 1989, new A.A.S., A.A.A., and A.O.S. degree programs must meet the requirements of the Coordinating Board.]

§12.24. Definitions.

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

Appropriate credentials in counseling- Certification by the National Board for Certified Counselors or Texas licensure to practice counseling.

Appropriate training in counseling —An earned graduate degree in counseling, student personnel (with counseling emphasis), counseling psychology, or closely related field, from a regionally accredited college or university.

Associate of Occupational Studies -Refers specifically to the A.O.S. degree. The A.O.S. degree is approved according to the conditions of the Coordinating Board policy adopted on April 30, 1993: The State of Texas has four proprietary schools awarding the A.O.S. degree; Microcomputer Technology Institute, Universal Technical Institute, Southwest School of Electronics, and Western Technical Institute. The A.O.S. degree is awarded for the following fields: automotive mechanics, diesel mechanics, refrigeration, electronics, and business. Each of these four schools may continue to award the A.O.S. degree for those fields listed above and shall be restricted to those fields. Subspecialities within these fields and under the present titles may be offered and advertised upon providing prior notice to the Board. No new A.O.S. degree programs in other fields from these four schools or any other schools will be considered by the Board. Should any of these four schools choose to propose to offer degrees in other fields or should these four institutions open schools outside of the metropolitan locations in which they were operating as of April 29, 1993, they will be required to design programs which lead to the A.A.S. degree.

Basic Computer Instruction- Formal course work in the fundamentals of personal computer operation.

Change of ownership- Any change in control of a school or an agreement to transfer control of a school. The control of a school is considered to have changed:

(A) In the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) In the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) When the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

(D) A change of ownership and control does not include a transfer which occurs as a result of the retirement or death of the owner if transfer is to a member of the owner's family who has been directly and constantly involved in the management of the institution for a minimum of two years preceding the transfer. For the purposes of this section, a member of the owner's family is a parent, sibling, spouse or child; spouse's parent or sibling; or sibling's or child's spouse.

Cited- **Mention of or reference to an institution in a formal inquiry or negative action by an accreditor**

Developmental courses - **Courses designated as remedial or compensatory education courses. Credit earned in a developmental course is not applicable toward the applied associate degree. Also see remediation.**

Institution- See proprietary school.

Newly-enrolled student - **A person who has been admitted to a program of study for the first time.**

Owner- The proprietor of a school including an individual; a partnership including all full, silent, and limited partners; a corporation or corporations including directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares.

Person - Any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

Proprietary School-Any business enterprise operated for a profit, or on a nonprofit basis, **that** [which] maintains a place of business in the State of Texas or solicits business within the State of Texas, and **that is not specifically exempted by this chapter, and:** [which]

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course **or courses of instruction or** [of] study is available through classroom instruction or by correspondence or both to a person [or persons] for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement [except as excluded by The Texas Education Code, Section 32.12].

Prospective Student - **A person who expresses interest in a program of study and who is provided with written information about the institution or any of the institution's programs.**

Remediation—An activity designed to teach basic competency in such areas as reading, writing, oral communications, [and] arithmetic**, or other rudimentary subjects**. **Returning student - A person who is returning to a program of study following withdrawal or other absence of more than one academic semester or one academic quarter.**

Target market area- The local, regional, statewide, and/or national area from which the institution's students are drawn and in which employment opportunities have been identified for graduates of that institution's applied associate degree programs.

TEA- **The Texas Education Agency.**

Teach-out agreement - **A formal arrangement between a closed proprietary institution and another institution authorized by the Coordinating Board to grant the applied associate degree, which provides for student transfer, completion of degree requirements, and awarding degrees to students transferred from the closed proprietary school.**

Teach-out institution - **An institution that is authorized by the Coordinating Board to grant the applied associate degree and that has formally accepted the transfer of students from a proprietary school that has closed.**

Board - **The Texas Higher Education Coordinating 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 June 11, 1996

TRD-9608265

Kevin McCalla

Director, Legal Division

Texas Natural Resource Cnservation Commission

Proposed date of adoption: September 4, 1996

For further information, please call: (512) 239–1966

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TITLE 22. EXAMINING BOARDS

Part XX. Texas Board of Private Investigators & Private Security Agencies

Chapter 433. Handgun; Security Officer Commission

22 TAC 433.4

The Texas Board of Private Investigators & Private Security Agencies proposes the amendment of §433.4 concerning Application for a Security Officer Commission. The Board has determined that this amendment is necessary in order to comply with House Bill 713 of the 74th Texas Legislature. It eliminates the requirement that photographs of each applicant be submitted to the Board and requires that photographs be kept in the employee's personnel file instead.

Clema D. Sanders has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state and local government as a result of enforcing or administering the rule.

Ms. Sanders also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of amending the rule as proposed will be to ensure that recent photographs of the regulated population will be available to law enforcement agencies should the need arise. There will be no effect on small businesses. The anticipated economic cost to individuals who are required to comply with the rule as proposed will be none.

Comments on the proposal may be submitted to Clema D. Sanders, Texas Board of Private Investigators & Private Security Agencies, P.O. Box 13509, Austin, Texas 78711.

The amendment is proposed under Texas Government Code, Article 4413(29bb), §11.(a)(3) which provides the Texas Board of Private Investigators & Private Security Agencies with the authority "to promulgate all rules and regulations necessary in carrying out the provisions of this Act."

The following is the statute that is affected by this rule: Texas Civil Statutes, Article 4413(29bb), §433.4.

§433.4. Application for a Security Officer Commission

Applicant shall submit a completed application to the board for a security officer commission on a form provided by the board. To be complete, the application shall include:

(1)-(2) (no change.)

(3) [one color photograph affixed on the application that shows a facial likeness with the employee's name legibly printed on the back.] The employer shall retain **two** [one] color **photographs** [photograph], one inch by one inch and affix **one** to the **employee's** pocket card when received from the board **and shall retain the other photograph in the employee's personnel file for inspection by the board**; and

(4) (no change.)

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

Issued in Austin, Texas on June 3, 1996.

TRD-9607915

Clema D. Sanders

Executive Director

Texas Board of Private Investigators & Private Security Agencies

Earliest possible date of adoption: July 19, 1996

For further information, please call: (512) 463–5545

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Part XXXIV. Texas Board of Licensure for Professional Medical Physicists

Chapter 601. Medical Physicists

22 TAC §§601.2, 601.4, 601.8, 601.9, 601.19

The Texas Board of Licensure for Professional Medical Physicists (Board) with the approval of the Texas Department of Health (department) proposes amendments to §§601.2, 601.4, 601.8 and 601.9 and new §601.19 concerning licensed medical physicists and temporary licensed medical physicists. Specifically, the amendments add a definition for supervision; add a child support reinstatement fee; update and clarify existing language; and clarify temporary license renewals. New §601.19 establishes procedures for suspension and reinstatement of a license for failure to pay child support to implement House Bill 433, 74th Legislature, Chapter 751, §85.

Bernie Underwood, CPA, Chief of Staff Services, Associateship of Health Care Quality and Standards has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local governments 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 that these sections are in effect the public benefit anticipated as a result of enforcing or administering these sections will be to assure the appropriate regulation of medical physicists and continue to identify competent licensees. There will be no effect on small businesses. There is an anticipated economic cost of $50 to persons for reinstatement of a license suspended for failure to pay child support. There will be no impact on local employment.

Comments on the proposal may be submitted to Jeanette Hilsabeck, Executive Secretary, Texas Board of Licensure for Professional Medical Physicists, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6655. Comments will be

accepted for 30 days following publication of this proposal in the *Texas Register*.

The amendments and new section are proposed under Texas Civil Statutes, Article 4512n, §11, which requires 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 Texas Medical Physics Practice Act, Texas Civil Statutes, Article 4512n.

The amendments and new sections affect Texas Civil Statutes, Article 4512n.

§601.2. Definitions.

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

Supervision— To oversee the work of a medical physicist holding a temporary license in the performance of those duties defined as the practice of medical physics. For the purpose of fulfilling the work experience and examination requirement it is expected that the supervisor will accept responsibility for the work performed during this period.

§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)-(D) (No change.)

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

(F) examination fee - the fee for the specialty examination as set by contract with the examining body **; and** [.]

(G) child support reinstatement fee - $50.

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

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

(E) temporary license replacement fee - $20 **; and** [.]

(F) child support reinstatement fee - $50.

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

§§601.8 Licensure By Examination.

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

(1) (No change.)

(2) have demonstrated, to the Texas Board of Licensure for Professional Medical Physicists (board) satisfaction, the completion of at least two years of full-time work experience **;**[in the five years preceding the date of application (the date of receipt of the application for an annual license or for the upgrade of a temporary license to an annual license) in the medical physics specialty for which application is made; and]

(3) work experience in more than one specialty shall include six additional months of full-time equivalent work experience in each specialty; and

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

(b) Work experience. Full-time work experience shall be at least 32 hours per week in the specialty area. Part-time work experience may be aggregated in order to meet the minimum of 32 work hours per week. **All work experience must have been completed in the five years preceding the date of application (the date of receipt of the application for an annual license or for the upgrade of a temporary license to an annual license) in the medical physics specialty for which application is made.**

(c) (No change.)

(d) Approved specialty examination.

(1) An applicant under this section must successfully complete one of the following examinations in each specialty for which application is submitted:

(A) the examination in the specialty developed and **administered** [supervised] by **the** [this] board; **or**

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

(2) (No change.)

(e) Failure of **board** examination. If the applicant fails the **board** examination in a specialty area, the approval to take the **board** examination will be voided if the applicant does not take either or both of the next two **board** examinations and cannot document medical or physical reasons acceptable to the board for failure to take either of the next two **board** examinations. The applicant will be required to submit a new application for licensure before the applicant may take another examination.

(f) An applicant who fails three **board** examinations in a specialty area may not reapply for **an additional examination** [licensure] in the specialty area until the applicant has demonstrated, to the board's satisfaction, the completion of at least one additional year of full- time work experience after the third failed examination.

(1) (No change.)

(2) The applicant must hold a temporary license in the specialty area during the work experience if the experience is gained in this state.

(A) The applicant may be issued **up to two additional** [a] temporary **licenses** [license for a fifth or sixth year] only in order to gain the work experience required by this paragraph and to retake the examination once.

(B) The applicant must take and pass the next examination offered after completion of the additional work experience.

(C) Any temporary license issued **under this subsection** [for a fifth or sixth year] shall expire upon notification to the board that the applicant failed to **apply for or failed to** appear for the examination, [or] upon notification to the applicant of his or her failure of the examination, or upon the issuance of his or her annual license if the examination was passed, whichever occurs first.

(D)[(B)] An applicant who completes the work experience within the first **year the additional temporary license is**

issued under this subsection [four years of temporary licensure] and for whom an examination is given and results released during **that year** [the four years] is not entitled to any further temporary licenses in that specialty area.

(3) In order to obtain an annual license the applicant must [take and pass the next examination after completion of the additional work experience. The applicant must] reapply for licensure under subsection (a) of this section [in order to take the examination] **and must take and pass an examination as set out in subsection (d) of this section.**

(g) Upgrade. Following successful completion of a medical physics specialty examination **as set out in subsection (d) of this section** [prescribed by the board] and the relevant work experience, a temporary licensee may upgrade the temporary license to an annual license.

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

(h) (No change.)

§601.9. Temporary License.

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

(c) Each temporary license may be renewed annually up to three times [for a maximum of four years]. The **licenses** [four years] do not have to be **for** consecutive years.

(d) A subsequent renewal may be granted by the executive secretary if the licensee requests the renewal in writing prior to the expiration of the temporary license; and:

(1) provides satisfactory evidence to the board that the renewal applicant has applied for or has been scheduled for the same specialty area examination(s) for which renewal is requested. (The examination must occur during the period in which the renewal would be effective);

(2) provides satisfactory evidence to the board of continued efforts towards completion of an examination during the previous periods the licensee held a temporary license; and

(3) submits to the board the completed renewal form and the renewal fee.

(e) [(d)] The application for renewal of a temporary license shall include information regarding the experience in the medical physics specialty completed by the renewal applicant during the previous one-year period.

(f) [(e)] The work experience must be under the supervision of a medical physicist holding an annual license in the specialty area.

[(f) An applicant may not be approved for a temporary license in a specialty if the applicant has already held a temporary license in that specialty for a period of four years. The time period for which the applicant previously held a temporary license shall be counted towards the four year maximum.]

(g)-(h) (No change.)

§601.19. Suspension of License for Failure to Pay Child Support.

(a) On receipt of a final court or attorney general's order suspending a license due to failure to pay child support, the executive secretary shall immediately determine if the board has issued a license to the obligor named on the order, and, if a license has been issued:

(1) record the suspension of the license in the board's records;

(2) report the suspension as appropriate; and

(3) demand surrender of the suspended license.

(b) The board shall implement the terms of a final court or attorney general's order suspending a license without additional review or hearing. The board will provide notice as appropriate to the licensee or to others concerned with the license.

(c) The board may not modify, remand, reverse, vacate, or stay a court or attorney general's order suspending a license issued under the Family Code, Chapter 232 as added by Acts 1995, 74th Legislature Chapter 751, §85 (HB 433) and may not review, vacate, or reconsider the terms of an order.

(d) A licensee who is the subject of a final court or attorney general's order suspending his or her license is not entitled to a refund for any fee paid to the board.

(e) If a suspension overlaps a license renewal period, an individual with a license suspended under this section shall comply with the normal renewal procedures in the Act and this chapter; however, the license will not be renewed until subsections (g) and (h) of this section are met.

(f) An individual who continues to use the title "licensed medical physicist" or practice medical physics after the issuance of a court or attorney general's order suspending the license is liable for the same civil and criminal penalties provided for engaging in the prohibited activity without a license or while a license is suspended as any other license holder of the board.

(g) On receipt of a court or attorney general's order vacating or staying an order suspending a license, the executive secretary shall promptly issue the affected license to the individual if the individual is otherwise qualified for the license.

(h) The individual must pay a reinstatement fee set out at §601.4 of this title (relating to Fees) prior to issuance of the license under subsection (g) of this section.

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

Issued in Austin, Texas, on June 4, 1996.

TRD-9607903
Susan K. Steeg
General Counsel
Texas Board of Licensure for Professional Medical Physicists
Proposed date of adoption: July 19, 1996
For further information, please call: (512) 458–7236

Part XXXIV. Texas State Board of Examiner of Professional Counselors

Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (the board) proposes amendments to existing §§681.17, 681.51-681.52, 681.62-681.64, 681.81-681.84, 681.92, 681.94,

681.96, 681.111, 681.122-681.125, 681.127, 681.171-681.177, 681.178, 681.179, 681.192, 681.195, 681.198, concerning the regulation of professional counselors. Specifically the sections cover fees, application materials, academic requirements, academic course content, temporary licenses, post-graduate experience requirements, supervisor requirements, other conditions of supervision, examination and procedures, license issuance, license surrender, license renewal, inactive status, active military duty, continuing education and requirements, acceptable continuing education, continuing education program approval, pre-approved continuing education providers, unacceptable continuing education, disciplinary action, complaint procedures, and informal disposition. The amendments allow applicants to pay a one time license fee at the time of application; establish a fee for the extension of a temporary license; delete the regular license fee; allow the board to require complete application packets; require deficiencies be completed within 45 days; clarify that the board can accept official transcripts submitted by the applicant in an unopened envelope from a college or university; delete the requirements for references; add language to implement provisions of Texas Civil Statutes, Article 4512g, which becomes effective September 1, 1996; require applicants to be responsible for knowledge of academic content areas for the examination; allow staff to evaluate transcripts for the total number of hours rather than specific content areas; delete references from the requirement for a temporary license; allow for an extension of the temporary license upon expiration of the first temporary license; delete reference to graduate degrees that are not counseling or counseling related; clarify language concerning approved supervisors and supervisor requirements; clarify language relating to other conditions for supervised experience; clarify examination process; clarify procedures for applicants to follow after failing the examination; delete requirement for applicants to schedule and take an examination within 90 days following the date of failure; allow applicants to submit score report forms and license fees at the same time; clarify language relating to staggered renewal process; allow licensees to submit only new information with annual renewal; delete language requiring board to issue an annual renewal card; clarify language relating to late renewal of a license; require persons on inactive status to renew that status annually; establish procedures for returning to active status; establish an annual reporting period for continuing education; change the continuing education requirements from 60 clock hours in a three year reporting period to 12 clock hours per year; allow more continuing education programs to be acceptable; establish a pre-approved provider program; establish an audit system for reporting continuing education; require licensees to maintain continuing education documents of attendance for two years; allow board to notify licensees or applicants of the opportunity to retain legal counsel prior to institution of formal disciplinary proceedings; and allow 15 working days for licensees to respond to correspondence relating to complaints.

Kathy Craft, executive secretary of the board, has determined that for the first five-year period the sections are in effect, the fiscal implications for state government as a result of enforcing or administering the sections will be an estimated increase of $10,000 in revenue. There will be no effect on local governments.

Ms. Craft also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a decrease in the number of deficient applications, a decrease in the volume of paper received by the board office, faster processing time for applications; faster turnaround for persons passing the examination to receive his or her regular license; allow availability of more continuing education events; mailing and establish easier reporting procedures for continuing education. There will be no effect on large or small businesses created by enforcing the sections as proposed. There is no anticipated economic cost to persons who are required to comply with the sections as proposed and there will be no effect on local employment.

Written comments on the proposal may be submitted to Kathy Craft, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

Subchapter A. The Board

22 TAC §§681.17, 681.51-681.52, 681.62-681.64, 681.81-681.84, 681.92, 681.94, 681.96, 681.111, 681.122-681.125, 681.127, 681.171-681.177, 681.178, 681.179, 681.192, 681.195, 681.198

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.17. Fees.

(a) Fees are as follows:

(1) application and **license** [temporary license] fee-**$90** [60];

[(2) application and provisional license fee-$60;]

[(3) application fee for a regular license-$30;]

(2)[(4)] license examination fee-$110;

[(5) regular license fee-$48;]

(3) temporary license extension fee-$30;

(4)[(6)] annual renewal fee-$50;

(5)[(7)] late renewal fee (when renewed after expiration date but on or within 90 days of expiration)-$105;

(6)[(8)] license renewal penalty fee (must be paid along with renewal fee when license is renewed more than 90 days but within one year of the expiration date)-$110;

(7)[(9)] **annual** inactive status fee-**$25** [$75];

(8)[(10)] license certificate or renewal card duplication or replacement fee-$10;

(9)[(11)] returned check fee-$25; and

(10)[(12)] art therapy specialty designation application fee-$30 (in addition to any necessary application fees listed in paragraphs (1)-**(10)** [(11)] of this paragraph).

(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 June 6, 1996.

TRD-9608011
Tony Picchioni, Ph.D.
Chair
Texas State Board of Examiners of Professional Counselors
Proposed date of adoption: July 19, 1996
For further information, please call: (512) 458–7236

Subchapter D. Application Counselors

22 TAC §§681.51–681.52

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.51 General.

(a) **An applicant must submit a complete application packet and fee to the board. Complete applications packets will consist of the required application materials describe in §681.52 of this title (relating to Required Application Materials).** [Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Texas State Board of Examiners of Professional Counselors (board) forms.]

(b) **Incomplete application packets received by the board will be returned to the applicant without review. Fees associated with the application process are not refundable. Applicants may resubmit a complete application packet without additional fee within 45 days of the date of notice of non-acceptance of the original application.** [The board will send a notice to an applicant with an incomplete application. An application not completed within 30 days after the date of the board's notice may be voided; however, an applicant may request in writing that the application be kept active for an additional year. Following each additional year another annual notice will be sent to the applicant and the applicant may again request that the application be kept active for an additional one year. After an application is voided, an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.]

(c) Applicants submitting complete application packets, but which contain incomplete or unacceptable information will be notified of the specific deficiency in writing. A copy of each unacceptable document will be returned with this notice. Applicants will have 45 days from the date of the notice to resubmit corrected or replacement documents. Applications not corrected or completed within 45 days of notice of deficiencies will be void and application materials will be returned to the applicant. Fees associated with the application process are not refundable.

(d) After an application is voided, an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§681.52. Required Application Materials.

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

(e) Graduate transcripts. An applicant must have the official transcript(s) showing all relevant graduate work sent directly to the board from the school(s) where the applicant obtained the course work **or attached to the application in an unopened college or university envelope** .

[(f) References.]

[(1) An applicant for a regular license or a regular license with art therapy specialty designation must have board reference forms submitted by three persons who can attest to the applicant's character, counseling skills and professional standards of practice, including at least one licensed professional counselor. The remaining two references must be from persons licensed or certified in the counseling profession or a mental health related profession.]

[(2) An applicant for a temporary license must have board reference forms submitted by two persons who can attest to the applicant's character, counseling skills and professional standards of practice. These references may be from persons licensed or certified in the counseling or mental health related professions or may be faculty members involved in the graduate counseling preparation program of an accredited college or university.]

[(3) The references shall be persons who are not named elsewhere in the applicant's application and are not current members of the board.]

(f) [(g)] Provisional license based on endorsement. Applicants for a provisional license based on endorsement must submit:

(1) a general application form as set out in subsection (a) of this section and the provisional license fee;

(2) official documentation of licensure in another state or territory;

(3) official documentation that the applicant has passed a national examination relating to counseling or art therapy or an exam offered by another state or territory for licensure as a counselor or art therapist; and

(4) a letter of sponsorship from a person who holds a regular license in Texas to practice counseling.

(g) [(h)] Art therapy specialty designation.

(1) An applicant for a temporary or regular license with an art therapy specialty designation must submit evidence of the successful completion of the Certification Examination in Art Therapy of the Art Therapy Credentials Board.

(2) An applicant for a temporary license with an art therapy specialty designation must submit:

(A) proof of current registration with the American Art Therapy Association; and

(B) proof that the applicant limits his or her scope of practice to art therapy at the time of application.

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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Tony Picchioni, Ph.D.
Chair
Texas State Board of Examiners of Professional Counselors
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Subchapter E. Academic Requirements for Examination and Licensure

22 TAC §§681.62–681.64

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.62. General.

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

[(f) In the case of course work taken outside of a program of studies for which a degree was granted, no course in which the applicant received a grade below "B" or pass shall be counted toward meeting academic requirements for examination or licensure.]

[(g) In evaluating transcripts, the board shall consider a quarter hour of academic credit as two thirds of a semester hour.]

[(h) The board office will conduct a preliminary evaluation of course work only after a person submits an application form and application fee.]

§681.63 Academic Requirements.

(a) Persons applying for examinations and licensure must have:

(1) a graduate degree **in counseling or related field** on at least the master's level; and

(2) a planned graduate program in counseling **or related field** or its substantial equivalent of at least **48** [45] semester hours.

(b) The **48** [45] semester hours must be designed to train a person to provide direct services to assist individuals or groups in a professional counseling relationship using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(1) The **48** [45] semester hours may be course work that was part of the required graduate degree, or may be in addition to course work taken for the degree, or a combination of both.

(2) The **48** [45] hours must cover the course content described in §681.64 of this title (relating to Academic Course Content).

(c) (No change.)

(d) [For persons applying for a temporary license, a regular license, or a regular license with art therapy specialty designation, on or after September 1, 1996, a person must have a master's or doctorate degree in counseling or a related field and a 48 semester hour planned graduate program.] A person who holds a temporary license on September 1, 1996, may obtain a regular license after September 1, 1996, without having a master's or doctorate degree in counseling or a related field and a 48 semester hour planned graduate program but must meet the applicant qualifications for a regular license in effect when the person applied for the temporary license.

§681.64. Academic Course Content.

(a) An applicant **is responsible for demonstrating competency in** [must have course work in each of] the following specific areas **through successful completion of the examination once the 2000 hour supervised experience requirement has been met**:

(1) normal human growth and development - [any course which deals with] the process and stages of human intellectual, physical, social, and emotional development from prenatal origins through old age;

(2) abnormal human behavior - [any course which offers study in] the principles of understanding dysfunction in human behavior or social disorganization;

(3) appraisal or assessment techniques - [any course which deals with] the principles, concepts, and procedures of systematic appraisal or assessment of an individual's attitudes, aptitudes, achievements, interests, and personal characteristics, which may include the use of both non-testing approaches and test instruments;

(4) counseling theories - [any course which surveys] the major theories of professional counseling;

(5) counseling methods or techniques - **the** [any three courses in] methods or techniques used to provide counseling treatment intervention including:

(A) [one course in] counseling individuals; and

(B) [one course dealing with] the theory and types of groups, including dynamics and the methods of practice with groups;

(6) research - [any course in] the methods of research which may include the study of statistics or a thesis project in an area relevant to the practice of professional counseling;

(7) life style and career development - **the** [any course which deals primarily with areas such as] theories of vocational choice, career choice and life style, sources of occupational and educational information, and career decision-making processes;

(8) social, cultural, and family issues - **the** [any course which deals primarily in areas such as] studies of change, ethnic groups, gender studies, family systems, urban and rural societies, population patterns, cultural patterns, and differing life styles; and

(9) professional orientation - [any course which deals primarily with] the objectives of professional organizations, codes of

ethics, legal aspects of practice, standards of preparation, and the role identity of persons providing direct counseling treatment intervention.

(b) The remaining courses needed to meet the **48** [45] graduate-hour requirement shall be in areas directly supporting the development of an applicant's professional counseling skills such as practicum or internship credit and other courses related primarily to professional counseling. [Persons who apply on or after September 1, 1996, will be required to obtain 48 graduate semester hours and to have two courses in social, cultural and family issues, unless the person holds a temporary license on September 1, 1996.]

[(c) If an applicant completes a titled course which does not meet the entire content requirements of a course(s) named in subsections (a) and (b) of this section, the applicant may submit evidence to the Texas State Board of Examiners of Professional Counselors (board) that the required content was covered in portions of more than one course.]

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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Tony Picchioni, Ph.D.
Chair
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Subchapter F. Experience Requirements for Examination and Licensure

22 TAC §§681.81–681.84

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.81. Temporary License.

(a) The Texas State Board of Examiners of Professional Counselors (board) will issue a temporary license to an applicant who:

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

(3) has entered into a supervisory agreement with a supervisor meeting the requirements of §681.83 of this title (relating to Supervisor Requirements); **and**

[(4) has submitted references in accordance with §681.52(f) of this title (relating to Required Application Materials); and] **(4)**[(5)] has not failed any two successive board examinations.

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

(f) An LPC intern who does not obtain a regular license during the 30 months and does not fail the exam twice may apply for a **30 month extension of his or her temporary license by written request and payment of a fee. Only one extension will be issued to an LPC intern** [second temporary license. No more than two temporary licenses will be issued], which will be valid for 30 months or until the LPC intern fails the examination twice, whichever occurs first.

(g) An LPC intern who holds a temporary license may obtain a regular license by:

(1) submitting **an application for examination** [board forms updating the intern's file with regard to personal data, employment information, and felony or misdemeanor convictions, and which include statements set out in §681.52(a)(2)-(6) of this title (relating to Required Application Materials)];

(2) submitting a supervised experience documentation form documenting successful completion of 2000 hours of supervised experience in accordance with §681.52(c) of this title (relating to Required Application Materials); **and**

[(3) submitting three current references in accordance with §681.52(f) of this title (relating to Required Application Materials);]

(3)[(4)] successfully completing an examination for licensure in accordance with Subchapter G of this chapter (relating to Licensure Examinations).

§681.82 Experience Requirements (Internship).

(a) (No change.)

(b) **An applicant** [A person beginning an internship on or after January 2, 1992,] must complete the required 2,000 clock-hours of supervised experience in a time period of no fewer than 12 months**. If** [; or if] applying under the 24-month requirement, the **applicant** [person] must average at least 20 clock-hours per week of practice. These months shall not include excess practicum hours used as supervised experience hours.

(c) The internship must have been **after completion of a**:

(1) [after the completion of a] graduate degree in counseling or a related field; **and** [or]

(2) [after the completion of a graduate degree in any area and] a planned graduate program in counseling or its substantial equivalent of at least **48** [45] semester hours.

(d) The applicant who began to accumulate supervised experience on or after September 1, 1992, must have completed at least 45 graduate semester hours in counseling or a related field before beginning the supervised experience [in addition to the requirements in subsection (c) of this section].

(e) The experience must have consisted primarily of the provision of direct counseling services within a professional relationship to individuals or groups by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life. [For internships beginning on or after June 30, 1990, 1,000 hours of direct client counseling contact must be shown.]

(f) (No change.)

(g) The experience must have been under the **direction of a board approved** [direct supervision of a] supervisor [acceptable to the board].

(h) **The** [On a case-by-case basis, the] board may count **excess practicum** hours toward the experience requirements of this subchapter if:

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

§681.83 Supervisor Requirements.

(a) A supervisor acceptable to the Texas State Board of Examiners of Professional Counselors (board) must be one of the following:

(1) (No change.)

(2) a person licensed or certified by this state or any other state in a profession that provides counseling and with the academic training and experience to supervise the counseling services offered by the intern. In Texas this person must be a licensed psychologist, a licensed physician [with] board **certified in psychiatry** [certification as a psychiatrist], or a licensed master social worker with **advanced clinical practitioner designation** [a clinical social work specialty], or a licensed marriage and family therapist[. The person may be required to submit to the board proof of licensure and certification, official graduate transcripts, and other appropriate documentation]; or

(3) (No change.)

(b) A supervisor under subsection (a)(1) or (2) of this section must have met the following requirements.

(1) (No change.)

(2) **The supervisor** [A person who begins the supervision of an LPC intern on or after January 1, 1995,] shall meet the requirements stated in paragraph (1) of this subsection and must have successfully completed one of the following:

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

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

(c) (No change.)

§681.84 Other Conditions for Supervised Experience.

(a) **An LPC intern** [A person who has commenced and is in the process of completing the 24 months or 2,000 hours of supervised experience] may not practice within his or her own private independent practice of professional counseling**.** [as part of such] **Months** [months] or hours **of independent practice** [and] may not count [the months or hours spent in the person's private independent practice of professional counseling] as part of the supervised experience**. The** [; however, the] person may be employed in his or her supervisor's private practice of professional counseling **and the** [as part of such] months or hours **may be counted**.

(b) (No change.)

(c) A supervisor may not be in the employ of the LPC intern**. The** [; however, the] LPC intern may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(d) A supervisor may not be related within the second degree by affinity or within the third degree by consanguinity to **the** [his or her] LPC intern. [This subsection shall be effective for internships beginning on or after June 30, 1990.]

(e) An LPC intern may be employed on a salary basis or be a consultant or volunteer. [All supervisory settings must be structured with clearly defined job descriptions and lines of responsibility.]

(f) The full professional responsibility for the counseling activities of an LPC intern shall rest with the intern's **board approved** [official] supervisor.

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

[(3) A procedure for contacting the supervisor, or an alternate person, to assist in a crisis situation shall be established.]

[(g) All supervised experience must have been on a formal basis by contract or other specific arrangement prior to the period of supervision. Supervision arrangements must include all specific conditions agreed to by the supervisor and LPC intern.]

[(h) If an LPC intern enters into contracts with both a supervisor and an organization with which the supervisor is employed or affiliated, the contract between the organization and intern will clearly indicate where professional counseling treatment intervention will be performed, that no]

(3) No payment for services will be made directly by a client to the intern**.**[,]

(4) Client [clients] records are not the property of the counseling intern**.** [, that the full responsibility for the counseling activities of an intern shall rest with the intern's official supervisor[, that there are no financial arrangements with the intern that have been made that extend beyond the period of supervision, and all]

(5) All supervised experience shall be in accordance with this chapter.

(g)[(i)] A supervisor may not supervise more than eight **persons** [LPC interns] at one time.

[(j) An LPC intern may have no more than two supervisors unless approval is received for further supervisors. The intern must submit a notarized statement explaining the reasons for the change of supervisor.]

(h)[(k)] **All** [When the LPC intern is employed in the supervisor's private practice,] billing **documents** for **services provided by LPC interns** [the LPC intern's services] shall reflect that the LPC intern holds a temporary license [from the board] and is under supervision.

(i)[(l) **If** [At any time during the supervised experience and for any reason, if] a supervisor determines that the LPC intern may not have the counseling skills or competence to practice professional counseling under a regular license, the supervisor shall develop and implement a written plan for remediation of the LPC intern.

(j)[(m)] A supervisor whose license expires or is revoked or suspended is no longer a valid supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension will not count as acceptable hours.

(k)[(n)] Experience received under a supervisor who is a licensee [while the licensee is] subject to a board order shall not [under any circumstances,] qualify as supervised experience for licensure purposes [regardless of the setting in which it was received]. **Supervisors** [Licensees] who become subject to a board order shall inform all **LPC interns** [supervisees] of the board order and assist

the LPC interns [all 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.

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Tony Picchioni, Ph.D.
Chair
Texas State Board of Examiners of Professional Counselors
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Subchapter G. Licensure Examinations

22 TAC §§681.92, 681.94, 681.96

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.92. Applying for Licensure Examination.

(a) LPC interns must submit the following:

(1) an application for examination; and

(2) a supervised experience documentation form documenting successful completion of 2000 hours of supervised experience in accordance with 681.52(c) of this title (relating to Required Application Materials).

(b) Applicants for a regular license that do not hold a temporary license [(a) Before taking an examination, a person] must apply for licensure in accordance with §681.51 of this title (relating to **Application Procedures** [General]) and §681.52 of this title (relating to Required Application Materials). **(c)** The Texas State Board of Examiners of Professional Counselors (board) shall **provide written notification to applicants** [notify an applicant] whose application **for examination** has been approved [in writing and forward an approval confirmation form to each approved applicant as soon as the application for examination has been approved].

[(b) Approved applicants must take an examination within 90 days following notification of approval or must reapply for a later examination.]

§681.94. Failures.

(a) An applicant who fails the licensure examination may schedule a second examination by submitting a copy of a failing score report and a written request for the second examination. [The applicant must wait at least 14 days to reschedule the examination and must reschedule within 90 days.]

(b) (No change.)

(c) An applicant who fails any two successive examinations may not apply for a regular license until two years have elapsed from the date of the last examination or until the applicant has completed nine graduate semester-hours in the applicant's weakest portions of the examination. An application must be submitted in accordance with **§681.51 and §681.52** [Subchapter D] of this chapter (relating to Application Procedures).

(d) (No change.)

§681.96. Failure to Take Examination.

[(a)] An applicant may be excused from a scheduled examination for illness, death in the immediate family, disabling traffic accident, court appearance or jury duty, or military duty. Written verification and supporting documentation of the situation must be submitted to the testing company within 14 days of the original examination date. Documentation for medical absences must have the original signature of the medical practitioner. Stamped signatures will not be accepted.

[(b) The application of a person who fails to schedule and take an examination within 90 days following the date of the approval shall be voided and the applicant shall be so notified.]

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

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Subchapter H. Licensing

22 TAC §681.111

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.111. Issuance of Licenses.

(a) The Texas State Board of Examiners of Professional Counselors (board) will **issue a license** [send a licensure form] to each applicant who has satisfactorily fulfilled all requirements for licensure **including examination. Upon successful completion of the examination, an** [The] applicant must **submit a copy of the examination score report form** [complete the form and return it to the board office] with the licensure fee.

(b) **Upon receipt of the score report form** [Upon receiving the licensure form] and fee, the board shall issue a license indicating the license number.

(c) The board will replace a lost, damaged, or destroyed license certificate or renewal cards upon a written request from the licensee and payment of the license replacement fee. Requests must include a [notarized] statement detailing the loss or destruction of the licensee's original license or be accompanied by the damaged certificate.

(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.

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Subchapter I. Regular License Renewal and Inactive and Retirement Status

22 TAC §§681.122–681.125, 681.127

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.122. Staggered Renewals.

The Texas State Board of Examiners of Professional Counselors (board) shall use a staggered system for license renewals.

[(1)] The renewal date of a license shall be the last day of the licensee's birth month. **If the birth month occurs less than 120 days form the date the license is issued, the expiration date shall be the time period less the 120 days plus one year.**

[(2) Licensure fees will be prorated if the licensee's initial renewal date as determined by the board occurs less than 12 months after the original date of licensure.]

[(3) Prorated fees shall be rounded off to the nearest dollar.]

§681.123. License Renewal.

(a) (No change.)

(b) **Notice of license renewal** [A license renewal form] shall be furnished to licensees eligible for renewal. The **notice** [form] shall require the licensee to notify the board of any changes **to** [of] **information necessary to keep records current** [current addresses, telephone numbers, and such information as continuing education completed, and type of practice].

(c) The board shall not renew a license until it receives the [completed license renewal form and the] renewal fee[,] and the board form for reporting applicable continuing education requirements.

[(d) The board shall issue a renewal card to a licensee who has met all requirements for renewal. The licensee must display the renewal card in association with the license].

(d)[(e)] The license of a person who made a timely and sufficient request for renewal of his or her license does not expire until the application for renewal is finally determined by the board, or in case the application is denied or the terms of the new license limited, until the last day for seeking review of the board's order or a later date fixed by order of a reviewing court.

(e)[(f)] The board shall deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §681.192(c) of this title (relating to Disciplinary Action; Notices) is mailed by the board.

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

§681.124. Late Renewal.

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

(d) A person whose license was not renewed on or within 90 days of the expiration date may renew within one year of the expiration date by paying the appropriate renewal fee plus the license renewal penalty fee. Payment may be in the form of a [personal check,] certified check[,] or money order [which the person must submit with the required license renewal form].

(e) If a person did not have the required continuing education at the time of expiration of the license, the person shall file evidence of completion of the required continuing education before the license can be renewed.

(1) **A license is considered expired until all requirements for renewal are met.** [The continuing education may have been earned during the continuing education period or within the one-year period following expiration].

(2) **Evidence** [The evidence] of continuing education shall be the completed continuing education form and other documentation required by the board.

(3) The time period from expiration of the license until renewal of the license shall be subtracted from the next **one-year** [three-year] continuing-education reporting period.

(f) On or after one year from the expiration date, a person may no longer reinstate the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for license including passing the licensure examination.

§681.125. Inactice Status.

(a) A licensee may place his or her license on inactive status **for one year** by submitting a written request prior to the expiration of the license along with the inactive fee. Inactive status periods shall not be granted to persons whose licenses are not current and in good standing. **The licensee must renew the inactive status annually.** [Inactive status periods shall not exceed three years; however, consecutive inactive status periods may be approved by the board. An inactive status fee is required for each three-year period of inactive status].

(b) (No change.)

(c) [All fees are not applicable during the inactive status period.] A person may not act as a counselor, represent himself or herself as a counselor, or provide counseling treatment intervention during the inactive status period.

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

(f) A person must notify the board in writing to return to active status. Active status shall begin on the first day of the month following payment of applicable fees. [The license fee shall be prorated to the next renewal date in accordance with §681.123 of this title (relating to License Renewal).]

[(g) If continuing education requirements were not met prior to the time that a licensee went on inactive status or during the time the licensee is on inactive status, upon return to active status the hours that were remaining to complete the three-year continuing education requirement described in §681.172 of this title (relating to Deadlines) must be completed in a time period equal to the time that was remaining in the counselor's three-year cycle at the time that the person went into inactive status. Section 681.124(e) of this title (relating to Late Renewal) will be applicable at the end of this additional time period.]

(g) [(h)] **The** [Upon return to active status, the] person's next [three-year] continuing education cycle will begin **upon return to active status and end on the last day of the person's birth month** [on the first day of the month following the person's birth month; however, if subsection (g) of this section applies, the start date for the next three-year cycle will begin following the additional time period described in subsection (g) of this section].

§681.127. Active Military Duty.

If a licensee fails to renew his or her license because the licensee is called to or is on active duty with the armed forces of the United States serving outside of the State of Texas, the licensee or the licensee's authorized representative may request that the license be declared inactive or be renewed. A request for inactive status shall be made in writing to the Texas State Board of Examiners of Professional Counselors (board) prior to expiration of the license or within one year from the expiration date. This section is an exception to the requirement in §681.125 of this title (relating to Inactive Status) that the request be made prior to expiration of the license. A request for renewal may be made before or after the expiration date.

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

(4) An active duty licensee shall be allowed to renew under this section without submitting proof of continuing education hours if proof is required for renewal; however, the licensee must submit proof of completion of the required number of continuing education hours by the end of the following time period. [The time period shall start on the actual date of renewal of the license and be equal to the length of time the licensee was on active duty serving outside the State of Texas during the three-year continuing education period or following expiration of the license.] If the licensee fails to submit proof of completion of the required continuing education by the end of the time period, the board may suspend or revoke or deny renewal of the license.

(5)-(8) (No change.)

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

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Subchapter K. Continuing Education Requirements

22 TAC §§681.171–681.177, 681.179

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.171. Purpose.

The purpose of these sections is to establish the continuing education requirements for the renewal of a regular license or a regular license with art therapy specialty designation which a licensee must complete **annually** [every three years] toward furthering of professional development in professional counseling. These requirements are intended to maintain and improve the quality of professional services in counseling provided to the public and keep the licensee knowledgeable of current research, techniques, and practice, and provide other resources which will improve skill and competence in professional counseling.

§681.172. Deadlines.

[(a)] Continuing education requirements for renewal shall be fulfilled during **a twelve month period** [three-year periods] beginning on the first day of a licensee's renewal year and ending on the last day of the licensee's renewal year.

[(b) The initial three-year period for each licensee shall include the three-year period described in this section plus the period of time from the date of issuance of the licensee's first license to the first renewal date.]

§681.173. House of Requirements for Continuing Education.

A licensee must complete **12** [60] clock-hours of continuing education acceptable to the Texas State Board of Examiners of Professional Counselors (board) during each **12 month** [three-year] period as described in §681.172 of this title (relating to Deadlines). **At least three** [Six] hours of the **12** [60] hours must be directly related to counselor ethics **or legal issues**.

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

§681.174. Types of Acceptable Continuing Education.

(a) Continuing education undertaken by a licensee shall be acceptable if the experience falls in one or more of the following categories:

(1) (No change.)

(2) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) which are designed to increase professional knowledge related to the practice of professional counseling**;** [and which are conducted by persons who:]

[(A) are other state-licensed, state-certified, or state-registered professionals whose licensure, certification, or registry law or rules requires a minimum of a master's degree as a prerequisite for the license, certificate, or registration;]

[(B) are registered nurses holding at least a baccalaureate degree; or]

[(C) in states outside of Texas where state licensure, state certification, or a state registry does not exist, have completed a graduate degree in counseling or a related field and hold certification or registry by their respective professional associations if such certification or registry exists;]

(3)-(5) (No change.)

(6) participation or teaching in programs directly related to counseling (e.g., institutes, seminars, workshops, or conferences) which are approved or offered by**:**

(A) an accredited college or university**;** [or by]

(B) a nationally recognized professional organization in the mental health field or its state or local equivalent organization**; or**

(C) a state or federal governmental agency. [The board shall maintain and make available on request a listing of acceptable professional organizations; or]

(7) completion of an independent study program directly related to counseling and approved or offered by a nationally recognized professional organization in the mental health field or its state equivalent or approved or offered by an accredited college or university**; or**

(8) participation in those sections of programs (e.g., institutes, seminars, workshops, and conferences) offered by persons approved by the board as continuing education providers.

[(b) The requirements set out in subsection (a)(2) of this section apply to programs which occur after April 1, 1994 and were not approved by the board office prior to that date. Programs which occur before April 1, 1994 or which were approved by the board office prior to that date, will be processed in accordance with the rules in effect prior to April 1, 1994.]

§681.175. Procedures for Approval of Programs.

Individuals and organizations may initiate requests **to the** [for] Texas State Board of Examiners of Professional Counselors (board) **for** approval and hour credits of specific programs for continuing education credit either before or after these programs occur. Approval shall be given only for the specific program described in the request.

(1) Each **approved provider or** licensee is responsible for providing the information necessary for the board to make a determination of the applicability of the program to the continuing education requirements **upon request by the board**.

(2) Sponsors may initiate [their own] requests and shall, when approval is obtained in advance, announce prior to the commencement of the continuing education activity, the number of hours approved and the content of the continuing education activity as submitted and pre-approved by the board. [When approval is requested by a sponsor,] **The** [the] sponsor shall provide each participant with written documentation of **attendance** [participation] which **includes the** [shall set forth that] participant's name, the number of approved continuing education hours, the title and date(s) of the program as approved by the board, and the signature of the sponsor.

*§681.176. **Pre-Approved Providers** [Criteria for Approval of Continuing Education Activities].*

(a) Continuing education providers may apply for provider pre-approval to provide continuing education on forms provided by the board. Board approval of provider applications will be determined by review of the application and determination of applicants' ability to comply with board rules. Board pre-approvals are effective for twelve months from the date of board approval. New applications must be submitted to the board annually.

(1) Pre-approved providers of continuing education must comply with board requirements as set out in §681.174 of this title (relating to Types of Acceptable Continuing Education and §681.177 of this title (relating to Determination of Clock-hour Credits).

(2) Pre-approved providers of continuing education must maintain records of all continuing education activities for a period of five years including:

(A) resumes of all presenters;

(B) complete course descriptions and objectives;

(C) teaching methods employed;

(D) attendance sheets for each course;

(E) sample certificates of attendance; and

(F) evaluation documents from each participant for the specific experience.

(3) Failure to comply with board record keeping requirements or failure to comply with requirements of instructor or course qualifications is a violation of board rules and may result in termination of approval status or denial of renewal of pre-approved provider agreement. No documentation of continuing education is to be submitted to the board without written request.

(4) Pre-approved providers are subject to audit of all continuing education records upon written request by the board. Upon receipt of written notice of audit the provider will submit all requested records of continuing education to the board within ten working days. Failure to provide documentation as requested or submission of fraudulent documents will be a violation of board rules and may result in termination of approval status.

(5) Upon receipt and audit of documents submitted by the provider, the board will notify the provider of the results of the audit. The board may inform the provider of any corrective action deemed necessary to ensure future compliance with board rules, termination of current approval or deny future applications based on a finding of non-compliance with this chapter. [Each continuing education experience submitted by a licensee or sponsor will be evaluated on the basis of the following criteria.]

[(1) Attendance at programs shall be in accordance with §681.174(1) and (2) of this title (relating to Types of Acceptable Continuing Education) and shall consider the following:]

[(A) relevance of the subject matter to increase or support the development of skill and competence in counseling or in areas of studies or disciplines related to counseling;]

[(B) objectives of specific information and skill to be learned;]

[(C) subject matter, educational methods, materials, and facilities utilized including the frequency and duration of sessions, and the adequacy to implement learner objectives; and]

[(D) sponsorship and leadership of programs including the name of the sponsoring individual(s) or organization(s), pro-

gram leaders if different from sponsors, and contact person if different from the preceding.]

[(2) Teaching in approved programs shall be in accordance with §681.174(a)(3) of this title. Documentation from sponsor(s) including an evaluative statement of performance is required.

[(3) Completion of academic work shall be in accordance with §681.174(a)(4) of this title. Official graduate transcripts from accredited school showing completion of graduate hours in appropriate areas for which the licensee received at least a grade of "B" is required.]

§681.177. Determination of Clock-hour Credits.

The Texas State Board of Examiners of Professional Counselors (board) shall credit continuing education experiences as follows.

(1) Parts of programs which meet the criteria of §681.173 of this title (relating to Hour Requirements for Continuing Education) [and §681.176 of this title (relating to Criteria for Approval of Continuing Education Activities)] shall be credited on a one-for-one basis with one clock-hour of credit for each clock-hour spent in the continuing education activity.

(2) Teaching in programs which meet the board's criteria as set out in §681.174 of this title (relating to Types of Acceptable Continuing Education) shall be credited on the basis of one clock-hour of credit for one clock-hour taught plus two clock-hours credit for preparation for each hour actually taught. No more than **12 hours** [two-thirds] of the **12 month** [three-year] continuing education requirements can be credited under this option **. Credit** [, and credit] may be granted for the same presentation **only once during a 12-month period** [or program not more than twice during any three-year cycle. The remaining one-third of the continuing education requirement in each three-year cycle must be obtained under another of the available options in accordance with paragraphs (1) or (3) of this subsection].

(3) Completion of academic work at an institution which meets the accreditation standards acceptable to the board shall be credited on the basis of 15 clock-hours of credit for each semester hour, 10 clock-hours of credit for each quarter hour completed and for which a **passing** grade [of "B" or above] was received [as evidenced on an official graduate transcript].

(4) **No** [Effective September 1, 1993, no] more than **four** [20] clock-hours of the **12** [60] clock-hours [three-year] continuing education requirement, can be obtained through case supervision, management, and consultation programs set out in §681.174(5) of this title.

(5) No more than **three** [12] clock-hours of the **12** [60] clock-hours required can be obtained through independent study.

§681.178. Reporting of Continuing Education.

The requirements for reporting continuing education shall be as follows.

(1) A **licensee shall report all** [licensee's] continuing education **participation on** [documentation shall be filed with] a form provided by the Texas State Board of Examiners of Professional Counselors (board) which the licensee shall complete **and** [or] sign. **No individual documents of participation in continuing education are to be submitted to the board unless requested in writing.**

(2) **The board will monitor a licensee's compliance with continuing education requirements by the use of random audit. Licensee's will be notified in writing if they have been selected for a continuing education document audit. Individual supporting documents of participation in continuing education activities are not to be submitted to the board unless a written Notice of Audit is received informing the licensee that he or she has been randomly selected for a document audit. Upon receipt of a Notice of Audit the licensee will be required to submit all appropriate documentation to substantiate compliance with the board's continuing education requirements within 15 working days of receipt of notice.** [A licensee shall submit the required report only at the time of renewal the first or second year of the three-year continuing education cycle. A licensee may submit the required report at any time during the third year of the three-year continuing education cycle provided, however, continuing education must be reported and approved prior to renewal at the end of the three-year cycle or §681.124(e) of this title (relating to Late Renewal) will apply. Each licensee is responsible for ensuring that the board receives timely notice of the licensee's completion of any continuing education activity.]

(3) **The board shall notify the licensee of the results of the audit in writing.** [Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows]:

(4) The licensee is responsible for maintaining continuing education records for a period of two years.

(5) An audit shall be automatic for a licensee who was determined to be non-compliant the immediately preceding audit.

(6) Appropriate continuing education supporting documentation includes:

(A) for a program attended, **certificate of attendance** [signed certification by a program leader or instructor of the licensee's participation in the program by certificate, letter or letterhead of the sponsoring agency, or official continuing education validation form of the sponsoring agency];

(B) (No change.)

(C) for completion of academic work from accredited schools, **evidence of course credit** [an official graduate transcript showing course credit with at least a "B" or pass grade sent directly to the board from the school(s) where the coursework was obtained]; or

(D) for official auditing of a graduate level course at a regionally accredited academic institution, a letter from the academic institution or professor which includes the actual number of clock-hours attended.

(7) Failure to provide documentation as requested by the board or providing fraudulent documentation is a violation of board rules and may result in disciplinary action including revocation of license.

§681.179. Activities Unacceptable as Continuing Education.

The Texas State Board of Examiners of Professional Counselors (board) will not give continuing education credit to any counselor for:

(1)-(5) (No change.)

(6) any continuing education activity completed before or after the **12 month** [three-year] period for which the continuing education credit is submitted except as allowed in §681.124(e) of this title (relating to Late Renewal).

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Subchapter L. Complaints and Violations

22 TAC §§681.192, 681.195, 681.198

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas Sate Board of Examiners of Professional Counselors with the authority to revise rules that are necessary to administer the Licensed Professional Counselor Act.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.192. Disciplinary Action; Notices.

(a) (No change.)

(b) Prior to institution of formal proceedings to revoke, or suspend a license, the board shall give written notice to the licensee by personal service or certified mail, return receipt requested, of the facts or conduct alleged to warrant revocation or suspension[;] **. The notice shall inform the licensee or applicant of the opportunity to retain legal representation. The** [and the] licensee or applicant shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) If denial, revocation, or suspension of a license is proposed, the board shall give written notice by certified mail, return receipt requested; regular mail; or personal delivery of the basis for the proposal and that the licensee or applicant must request, in writing, a formal hearing within **15 working** [10] days of receipt of the notice, or the right to a hearing shall be waived and the license shall be denied, revoked, or suspended.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth **working** day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt.

(e)-(f) (No change.)

§681.195. Complaint Procedures.

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

(e) Prior to or during an investigation, the executive secretary or his or her designee shall request a notarized response from the licensee or person against whom an alleged violation has been filed and gather information required by the complaints committee of the board. **The licensee or person against whom an alleged violation has been filed must respond within 15 working days to the executive secretary's request.**

§681.198. Informal Disposition.

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

(d) The executive secretary shall decide upon the time, date and place of the **informal** settlement conference, and provide written notice to the licensee or applicant of the same. Notice shall be provided no less than **15 working** [10] days prior to the date of the **informal settlement** conference by certified mail, return receipt requested to the last known address of the licensee or applicant or by personal delivery. The 15 **working** [10] days shall begin on the date of mailing or **personal** delivery. The licensee or applicant may waive the **15-day** [10-day] notice requirement.

(e)-(p) (No change.)

(q) The licensee or applicant may either accept or reject at the **informal settlement** conference the settlement recommendations. If the recommendations are accepted, an agreed settlement order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law. The licensee or applicant shall execute the order and return the signed order to the board office within 10 **working** days of his or her receipt of the order. If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 404. Protection of Clients and Staff

Subchapter E. Rights of Persons Receiving Mental Health Services

25 TAC §§404.153, 404.166-.169

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes an amendment to §404.153 and new §§404.166-404.169, relating to rights of persons receiving mental health services. Existing §404.167, and §404.168 are contemporaneously proposed for repeal in this issue of the *Texas Register.*

The proposed amendment to §404.153 would add definitions for the following terms: "aversive conditioning," "behavior interven-

tions," "informed consent," and "highly restrictive interventions." Proposed new §404.166 and §404.167 would include procedures which must be followed when the rights of individuals receiving mental health services are limited as part of a non-emergency and emergency behavioral interventions. Proposed new§404.168 and §404.169 reiterate with minimal modification the reference and distribution sections which are proposed for repeal.

Don Green, chief financial officer, has determined that for each year of the first five years the sections as proposed will be in effect, there will be no additional fiscal cost to state or local government or small businesses as a result of administering the rules as proposed. There will be no significant local economic impact. There is no anticipated cost to individuals required to comply with the proposed new sections.

Karen Hale, assistant commissioner, 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 articulation of procedures which must be followed when the rights of individuals are limited.

Comments on the proposed may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication. A public hearing will be held in the auditorium of TDMHMR Central Office, 909 West 45th Street, Austin, Texas, on Tuesday, July 9, 1996, at 1:30 p.m. Persons requiring an interpreter for the hearing impaired should notify Laura Thomas, Office of Policy Development, within 72 hours prior to the hearing.

The amendment and new sections are proposed under Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under Texas Health and Safety Code, §577.010, which authorizes the board to adopt rules and standards necessary to ensure the proper care and treatment of patients in psychiatric hospitals.

The amendment and new sections affect §572.001 and §572.002, Texas Health and Safety Code; and Texas Health and Safety Code, §572.0025..

§404.153. Definitions.

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

Aversive conditioning - A highly restrictive behavior intervention designed to eliminate undesirable behavior patterns through learned associations with unpleasant stimuli or tasks.

Behavior interventions- Interventions to increase socially adaptive behavior and to modify maladaptive or problem behaviors and replace them with behaviors and skills that are adaptive and socially productive. Also referred to as "behavior management," "behavior training," "behavior therapy," and related terms.

Ethics Committee - A Texas Board of MHMR-approved body composed of clinicians, consumers, family members, and outside experts convened for the purpose of reviewing and resolving issues surrounding clinical care and treatment.

Informed consent - The knowing written consent of an individual or the individual's legally authorized representative, so situated as to be able to exercise free power of choice without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion. The basic elements of information necessary for informed consent include all of the following presented in language or format easily understood by the individual:

(A) a thorough explanation of the procedures to be followed and their purposes, including identification of any experimental procedures;

(B) a description of any attendant discomforts and reasonably expected risks;

(C) a description of any reasonably expected benefits;

(D) a disclosure of any appropriate alternative procedures as well as their reasonably expected risks and benefits, including those that might result if no procedure is utilized;

(E) an offer to answer any questions about the procedures; and

(F) an instruction that the individual can withdraw consent and stop participating in the program or activity at any time without prejudice to the individual. Withdrawal of consent may be in any form, including noncompliance, active resistance, or a verbal or other expression of unwillingness to continue participating in any aspect of the program.

Highly restrictive interventions - Any intervention (e.g., aversive conditioning) that poses potentially increased physical, emotional, or psychological intrusion to the individual upon whom it is imposed.

§404.166. Restriction of Rights as Part of Non-Emergency Behavioral Interventions.

(a) Patients rights are guaranteed under the provisions of this subchapter. Although under special circumstances set out in this subchapter, certain rights can be limited without informed consent, it is usually mandatory and always preferable to obtain informed consent when limitation of rights is contemplated.

(b) Except as otherwise noted in this subchapter, written informed consent must be obtained a right guaranteed by law or department rule is limited.

(1) The patient or legally authorized representative gives informed consent. Written informed consent is obtained from the:

(A) adult individual, if legally competent and deemed to be capable of understanding the required elements which constitute informed consent;

(B) guardian of the person of the adult individual if there has been a determination of mental incompetence by a court; or

(C) parent or managing conservator of a minor under the age of 16.

(2) Informed consent must be documented. Written informed consent is evidenced by a completed copy of the department's form for "Consent to Behavior Intervention," referenced as Exhibit D. Psychiatric hospitals and CSUs may use a different form provided

that it includes all of the information included on the "Consent to Behavior Intervention" form.

(3) Informed consent may be withdrawn at any time. If informed consent is withdrawn, the program must be discontinued immediately, and the treatment team must meet within three working days to modify the individual's treatment plan. Withdrawal of consent may be in any form including, but not limited to, passive noncompliance, active resistance, or a verbal expression of unwillingness to continue participating in any aspect of the program.

(4) The limitation of the right or rights must be reviewed by the physician as appropriate but must occur at least on a monthly basis, unless otherwise specified.

(5) Informed consent must be renewed. Written informed consent must be reviewed and renewed every six months.

(c) Any limitation on rights is included as a part of the individual's comprehensive treatment plan. The treatment plan also includes a program that emphasizes positive approaches and uses positive behavioral interventions.

(d) Limitations on rights are not used:

(1) in retribution, as punishment, or as a means of controlling an individual by eliciting fear;

(2) for the convenience of staff or as a consequence of insufficient staff;

(3) as a substitute for a comprehensive treatment plan; or

(4) in the absence of positive behavioral interventions.

(e) Limitations on rights do not:

(1) deprive an individual of a basic human need (e.g., a bed at night, food, personal clothing, etc.) or the essentials of a normal hospital environment; or

(2) alter the texture of a food item or use techniques that could result in failure to provide a nutritiously adequate diet. Foods used as edible reinforcers within a behavior intervention program are evaluated by the treatment team, including a qualified dietitian and physician, with consideration of the individual's nutritional status, needs, and preferences.

(f) Additional approval required. Written informed consent must be obtained for behavior intervention programs using highly restrictive interventions. Additionally, the use of any procedures or programs employing aversive techniques, such as, but not limited to, faradic stimulation, require the unanimous documented written approval of the medical director of the facility, the CEO, and the Ethics Committee.

§404.167. Restriction of Rights as Part of Emergency Behavioral Interventions: Restraint and Seclusion.

Restraint and seclusion shall be initiated, implemented, and monitored in keeping with the provisions of Chapter 405, Subchapter F of this title, relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs.

§404.168. References.

Reference is made to the following Texas laws, federal laws, departmental rules, and other standards:

(1) Texas Department of Mental Health and Mental Retardation (Texas Health and Safety Code, Chapters 531-535);

(2) Texas Mental Health Code (Texas Health and Safety Code, §§572.003, 573.022, 573.025, 576.001-.024, 611.002);

(3) Treatment of Chemically Dependent Persons (Texas Health and Safety Code, Chapters 461 and 462);

(4) 42 Code of Federal Regulations, Part 2;

(5) Public Law 99-319, The Protection and Advocacy Act for Mentally Ill Individuals (42 U.S.C. §10802, et. seq.);

(6) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(7) Texas Administrative Code (TAC), Title 40, Chapter 710, Subchapter A (relating to Abuse and Neglect of Persons Served by TXMHMR Facilities);

(8) TAC, Title 40, Chapter 710, Subchapter B (relating to Client Abuse and Neglect in Community Mental Health and Mental Retardation Centers);

(9) TAC, Title 40, Chapter 710, Subchapter C (relating to Patient Abuse in Private Psychiatric Hospitals);

(10) Chapter 405, Subchapter F of this title (relating to Voluntary and Involuntary Behavioral Interventions in Mental Health Programs);

(11) Chapter 405, Subchapter FF of this title (relating to Consent to Treatment With Psychoactive Medication);

(12) Fair Labor Standards Act;

(13) Joint Commission on the Accreditation of Healthcare Organizations, Comprehensive Accreditation Manual for Hospitals (1996);

(14) TDMHMR Mental Health Community Services Standards (1995), Chapter 3; and

(15) RAJ v. Jones settlement agreement.

§404.169. Distribution.

(a) This subchapter shall be distributed to members of the Texas Board of Mental Health and Mental Retardation, commissioner, assistant commissioner, medical director, and management and program staff of Central Office; superintendents and directors of all TDMHMR mental health facilities; and executive directors and chairpersons of the boards of all Texas community mental health and mental retardation centers; chief executive officers of all psychiatric hospitals in Texas; Advocacy Inc.; the Texas Mental Health Consumers; the Texas Alliance for the Mentally Ill; the Mental Health Association in Texas; and other interested advocacy organizations.

(b) The superintendent or director of each facility and the executive director of each community center shall provide a copy of this subchapter to the facility or center rights officer; the chair of the facility's or center's public responsibility committee; all appropriate staff; each individual who provides direct services under contract; and any other person who requests a copy.

(c) The chief executive officers of psychiatric hospitals shall provide a copy of this subchapter to the rights officer; all appropriate staff; each individual who provides direct services under contract; and any other person who requests a copy.

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

Issued in Austin, Texas, on June 7, 1996.

TRD-9608133

Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 19, 1996

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

25 TAC §§404.166-404.167

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §404.166 and §404.167, relating to rights of persons receiving mental health services. The repeal accommodates the contemporaneous proposal of new §404.166 and §404.167 in this issue of the *Texas Register.*

The proposed repeal would enable the addition of new sections to Chapter 404, Subchapter E, and the updating of information contained in the sections to be repealed.

Don Green, chief financial officer, has determined that for each year of the first five years the sections as proposed will be in effect, there will be no additional fiscal cost to state or local government or small businesses as a result of administering the rules as proposed. There will be no significant local economic impact. There is no anticipated cost to individuals required to comply with the proposed new sections.

Karen Hale, assistant commissioner, has determined that for each year of the first five year period the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the deletion and replacement of outdated sections.

Comments on the proposed new sections may be submitted to Linda Logan, director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication. A public hearing will be held in the auditorium of TDMHMR Central Office, 909 West 45th Street, Austin, Texas, on Tuesday, July 9, 1996, at 1:30 p.m. Persons requiring an interpreter for the hearing impaired should notify Laura Thomas, Office of Policy Development, within 72 hours prior to the hearing.

The repeals are proposed under Texas Health and Safety Code, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under Texas Health and Safety Code, §577.010, which authorizes the board to adopt rules and standards necessary to ensure the proper care and treatment of patients in psychiatric hospitals.

The repeals affect Texas Health and Safety Code §572.001 and §572.002; and Texas Health and Safety Code §572.0025.

§404.166. References.

§404.167. Distribution.

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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Ann Utley

Chairman, Texas MHMR Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: July 19, 1996

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

Chapter 405. Client (Patient) Care

Subchapter G. Behavior Therapy Programs

25 TAC §§405.141-405.155

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§405.141-405.155, concerning behavior therapy programs. The sections would be replaced by new sections in Chapter 404, Subchapter E of this title, relating to rights of persons receiving mental health services. The new sections are proposed in this issue of the *Texas Register.*

The subchapter would be repealed to enable the adoption of the new sections which set forth patient protection procedures when rights of individuals are limited and when highly restrictive procedures, including aversive procedures, are used.

Don Green, chief financial officer, has determined that for each year of the first five-year period that the new sections are in effect there would be no significant fiscal implications to state or local government or small businesses. There is no anticipated local economic impact.

Steven Shon, MD, medical director, has determined for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the deletion of outdated policy and procedures. There is no anticipated cost to individuals required to comply with the proposal.

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

A public hearing to accept oral and written testimony concerning the proposal will be held on Tuesday, July 9, 1996, at 1:30 p.m. in the auditorium of the TDMHMR Central Office (main building) at 909 West 45th Street in Austin, Texas. Individuals requiring an interpreter for the hearing impaired should contact Laura Thomas, Office of Policy Development (512/206-5283), at least 72 hours prior to the hearing.

The repeals are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

The repeals affect Texas Health and Safety Code, §576.024,

§405.141. Purpose.

§405.142. Application.

§405.143. Definitions.

§405.144. General Principles Regarding Control of Behavior Therapy Programs.

§405.145. Departmental Committee on Behavior Therapy: Membership, Meetings, and Duties.

§405.146. Facility Committee on Behavior Therapy: Membership, Meetings, and Duties.

§405.147. Approval of Existing Behavior Therapy Modification Programs.

§405.148. Conditions for Initiation or Approval of Behavior Therapy Programs.

§405.149. Special Conditions for Initiation or Approval of Programs Employing Aversive Procedures.

§405.150. Staff Training in Behavior Therapy.

§405.151. Evaluation of Behavior Therapy Programs.

§405.152. Exception to this Subchapter: Behavioral Crisis.

§405.153. Exception to this Subchapter: Unavailability of Responsible Party to Give Written Informed Consent.

§405.154. Distribution.

§405.155. Effective Date.

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

Issued in Austin, Texas, on June 7, 1996.

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Ann Utley
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: July 19, 1996
For further information, please call: (512) 206-4516

Chapter 406. ICF/MR Programs

Subchapter D. Reimbursement Methodology

25 TAC §§406.151, 406.156, 406.157

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes amendments to §406.151, §406.156, and §406.157 of Chapter 406, Subchapter D, governing reimbursement methodology.

The proposed amendments would add language which creates a new reimbursement methodology for the state operated Intermediate Care Facilities/Mental Retardation (ICF/MR) facilities, transfers the responsibility for the determination of reimbursement rates from the Texas Board of Human Services to the Texas Board of Mental Health and Mental Retardation, deletes language regarding alternate children's facility reimbursement rates, and corrects the abbreviation used to reference the department.

Don Green, chief financial officer, has determined that for the five-year period the proposed amendments are in effect there will be: for FY 96 a total impact of $7,004,333, of which $4,363,700 is federal funds and $2,640,634 is state funds; for FY 97 there will be a total impact of $32,483,983, of which $20,237,521 is federal funds and $12,246,461 is state funds; for FY 98 total impact is $33,678,280, of which $21,055,353 is federal funds and $12,622,927 is state funds; for FY 99 total impact is $34,913,369, of which $21,883,149 is federal and $13,030,221 is state funds; for FY 2000 total impact is $36,193,753, of which $22,700,090 is federal funds and $13,493,663 is state funds; for FY 2001 total impact is $37,521,093, of which $23,532,575 is federal funds and $13,988,518 is state funds. There is no anticipated local economic impact.

Ernest McKenney, director, Medicaid administration, has determined that for each year of the first five years the amendments are in effect the public benefit anticipated will be clarification of reimbursement methodology for the ICF/MR program. There is no anticipated economic cost to persons who are required to comply with the proposed sections. There will be no effect on small business.

A public hearing will be held at 1:30 p.m. on June 26, 1996, in room 240 of the TDMHMR Central Office at 909 West 45th Street in Austin to accept oral and written testimony concerning the proposed amendments. If interpreters for the hearing impaired are required, please notify Laura Thomas at least 72 hours prior to the hearing by calling (512) 206-4516.

Questions about the content of the proposal may be directed to Mr. McKenney. Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

This section is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The section affects Texas Human Resources Code, §§32.001-322.040, and Texas Civil Statutes, Article 4413(502), §16.

§§406.151. General Reimbursement Information.

The Texas Department of Mental Health and Mental Retardation (**TDMHMR**) [(TXMHMR)] reimburses Texas Medicaid contracted providers for care provided to recipients in intermediate care facilities for persons with mental retardation (ICF/MR) receiving ICF/MR I, ICF/MR V, ICF/MR VI, and ICF/MR/RC VIII levels of care. The **Texas Mental Health and Mental Retardation Board** [Texas Board of Human Services] determines reimbursement rates **annually** [that are statewide and uniform by class of service] as specified in §409.001 and §409.002 of this title (relating to General Specifications and Methodology). **There are two classes of services, community-based and state-operated. Community-based services are defined as services provided by any provider not directly operated by the Department of Mental Health and Mental Retardation (e.g. community MHMR centers, for-profit providers, and non-profit providers). State-operated services are defined as those services provided by a state agency (e.g., TDMHMR).**

(1)Community-based rates.

(A)[(1)] Uniform rates. Except for demonstration or pilot projects involving experimental classes as specified in §406.157 of this title (relating to Rate Setting Methodology), reimbursement rates are uniform statewide for the same **type of community-based services** class of service.

(B)[(2)] **Types of community-based services** [Classes of service]. **Types of community-based services** [Classes of service] are based upon the individual's level of care and the facility size category.

(2) State-operated rates. State-operated rates are set prospectively, based on each facility's historical cost pattern with adjustments for inflation.

§406.156. Cost Finding Methodology.

(a) Exclusion of and adjustments to certain reported expenses. Providers must eliminate unallowable expenses from the cost report.

(1) **TDMHMR** [TXMHMR] or its authorized agent excludes from the rate base any unallowable expenses included in the cost report and makes adjustments to expenses reported by providers to ensure that the rate base reflects costs that:

(A)-(C) (no change.)

(2) When there is reasonable doubt about the accuracy or allowability of a significant part of the information reported, **TDMHMR** [TXMHMR] or its authorized agent may eliminate individual cost reports from the rate base. These adjustments include, but are not necessarily limited to, the following.

(A) Revenue offsets. **TDMHMR** [TXMHMR] or its authorized agent offsets against reported expenses certain types of nonoperating revenues, after reasonable allowances for overhead costs. Types of revenues offset against costs include: income from beauty and barber shop operations, prior year overpayments, vending machine proceeds, gift shop receipts, and payment for meals by employees and guests. Interest income is used to offset working capital interest expense, not to exceed total interest costs. An exception is interest income from funded depreciation accounts or qualified pension funds, which is not treated as a revenue offset item. For facilities reporting central office overhead expenses, interest income is offset against interest expenses before the allocation of central office costs to individual ICFs/MR.

(B) Fixed capital asset costs. **TDMHMR** [TXMHMR] or its authorized agent defines a historical base for fixed capital asset costs, which consists of allowable buildings depreciation, mortgage interest, and buildings rental and lease expense. The initial values constituting the starting point of the historical base are the allowable amounts of fixed capital asset costs as of July 18, 1984, as determined from pertinent cost report data. For newly constructed facilities contracted after July 18, 1984, and for others where historical cost information is not available from **TDMHMR** [TXMHMR] or its authorized agent's records, fixed capital asset expenses are based on the historical cost to the first Medicaid provider of record after July 18, 1984. Annual increases in fixed capital asset costs to be included in the rate base are limited consistent with current Medicaid regulations, the Deficit Reduction Act of 1984, and the Consolidated Omnibus Reconciliation Act of 1985 in the following manner.

(i) (no change.)

(ii) If capital assets have undergone ownership changes since the previous reporting period, an increase in mortgage interest expense included in the rate base is limited to the lesser of:

(I) (no change.)

(II) an amount based on allowable buildings depreciation and an appropriate index of interest rates pertaining to the year of sale. **TDMHMR** [TXMHMR] or its authorized agent determines an interest rate index appropriate for this purpose as specified in §409.4 of this title (relating to Determination of Inflation Indices).

(iii) (no change.)

(C) Limits on other facility and administration costs. To ensure that the results of the cost analyses accurately reflect the costs that an economic and efficient provider must incur, **TDMHMR** [TXMHMR] or its authorized agent may place upper limits or caps on expenses for specific line items and categories of line items included in the rate base for the administration and facility cost centers. **TDMHMR** [TXMHMR] or its authorized agent may set upper limits at the 90th percentile in the array of all costs per unit of service or total annualized cost, as appropriate, for a specific line item or category of line item, as reported by all contracted facilities, unless otherwise specified. The specific line items and categories of line items that are subject to the 90th percentile cap are:

(i)-(xiv) (no change.)

(D) Occupancy adjustments. **TDMHMR** [TXMHMR] or its authorized agent adjusts the facility and administration costs of providers with occupancy rates below a target occupancy rate. The target occupancy rate is the lower of:

(i)-(ii) (no change.)

(E) Cost projections. As specified in §409.004 of this title (relating to Determination of Inflation Indices), **TDMHMR** TXMHMR] or its authorized agent projects certain expenses in the rate base to normalize or standardize the reporting period and to account for cost inflation between reporting periods and the period to which the prospective rate applies.

(b) Cost determination by **type of community-based service** [class of provider]. **Type of community-based services** [Class of provider]" incorporates references to large and small **community-based** facilities: large facilities are those with more than six Medicaid-contracted beds; small facilities are those with six or fewer Medicaid-contracted beds. For rate determination purposes, **TDMHMR** [TXMHMR] or its authorized agent establishes **three types of community-based services** [four classes of ICF/MR provider]:

(1) large ICF/MR V and large ICF/MR VI community-based **services** [provider];

(2) ICF/MR I, small ICF/MR V, and small ICF/MR VI community-based **services; and** [provider;]

(3) [state schools; and]

[(4)] ICF/MR VIII community-based **services** [provider].

(c) Cost determination by cost centers for large ICF/MR V and large ICF/MR VI community-based **services** [provider]. **TDMHMR** [TXMHMR] or its authorized agent combines adjusted expenses from the rate base into the following cost centers for large ICF/MR V and large ICF/MR VI community-based **services** [provider].

(1)-(2) (no change.)

(d) Cost determination by cost centers for ICF/MR I, small ICF/MR V, and small ICF/MR VI community-based **services** [provider]. **TDMHMR** [TXMHMR] or its authorized agent combines adjusted expenses from the rate base into the following cost

centers for ICF/MR I, small ICF/MR V, and small ICF/MR VI community-based **services** [provider].

(1)-(2) (no change.)

(e) Cost determination by cost centers for **state- operated facilities** [state schools]. **TDMHMR** [TXMHMR] or its authorized agent combines adjusted expenses from the rate base into the following cost centers for **state-operated facilities** [state schools].

(1)-(4) (no change.)

(5) Comprehensive medical cost center. The comprehensive medical cost center includes medical expenses for services provided directly to state school residents. Since these services are not provided directly to community-based residents by ICF/MR providers, reimbursement for this cost center is limited to those **state-operated facilities** [state schools] providing comprehensive medical care.

§406.157. Rate Setting Methodology.

(a) Classes of **community-based services** [providers]. Reimbursement rates are determined separately by **two** [level of care within each of the four] classes of ICF/MR providers. **These two classes are community-based ICF/MR providers and state-operated ICF/MR providers.**

(b) **Types of community-based services** [Classes of service]. A separate set of reimbursement rates corresponding to **types of community-based services** [classes of service] is determined within each provider class. **The types of service for community-based services are ICF/MR I, large ICF/MR V facilities, small ICF/MR V facilities, large ICF/MR VI facilities, small ICF/MR VI facilities, and small ICF/MR VIII facilities. Large facilities are those with more than six Medicaid-contracted beds. Small facilities are those with six or fewer Medicaid-contracted beds. There are no subtypes of provider services for state-operated ICF/MR facilities. These facilities are reimbursed for allowable costs expended at each state-operated ICF/MR facility prospectively inflated forward to the rate period.** [The classes of service for state schools are ICF/MR I, ICF/MR V, ICF/MR VI, and small facility ICF/MR V, and small facility ICF/MR VI. The classes of service for community-based providers are ICF/MR I, large ICF/MR V facilities, small ICF/MR V facilities, large ICF/MR VI facilities, small ICF/MR VI facilities, and small ICF/MR VIII facilities. Large facilities are those with more than six Medicaid-contracted beds. Small facilities are those with six or fewer Medicaid-contracted beds.]

(c) Rate determination **for community-based facilities**. The Texas Mental Health and Mental Retardation Board determines reimbursement in accordance with §409.001 and §§409.002-.007 of Chapter 409, Subchapter A of this title (relating to General Reimbursement Methodology for all Medical Assistance Programs). These rates are uniform, determined prospectively, cost related, and determined annually. To develop a separate set of reimbursement rate recommendations for each **type of community-based service** [class of service] within each provider class, TDMHMR or its authorized agent applies the following procedures.

(1) For each **type of community-based service** [class of service], a cost component for each cost center is calculated at the adjusted per diem expense corresponding to the provider delivering the median day of service. (In calculating the median day of service, days of service delivered by each provider included in the rate base are summed cumulatively in the order which corresponds to the array of adjusted per diem costs, from lowest to highest.)

(2) The cost component for each cost center is multiplied by an incentive factor, and the resulting rate components are summed by **type of community-based service** [class of service] to calculate the recommended total reimbursement rates. The Texas Mental Health and Mental Retardation Board determines the incentive factor based on consideration of staff recommendations and input from interested parties. The incentive factor must not exceed 1.07.

[(3) Alternate children's facility reimbursement rates for selected children's facilities are determined as follows.]

[(A) Definition of children. When referred to in this section, children are persons under 22 years of age.]

[(B) Determination of eligibility. Ada Wilson Children's Center, Vendor Number 3730, is the only facility eligible for alternate children's facility reimbursement rates.]

[(C) Method for determination of ICF/MR Level V alternative children's facility rates for the period beginning December 1, 1994. A facility must have an acceptable facility capacity reduction plan approved by the TDMHMR Office of Medicaid Administration and the Texas Health and Human Services Commission (THHSC) to remain eligible for payment at the ICF/MR Level V alternative children's facility rates after December 1, 1994. Any extensions or modifications to this plan must be approved by TDMHMR and THHSC. An eligible children's facility is reimbursed in the following manner:]

[(i) Rates are based on projected allowable cost-based expenses not to exceed the aggregate cost for services the facility provides as of September 30, 1994. Projected costs will be calculated by using pro forma estimates based on historical costs adjusted to reflect the anticipated expenses related to resident care, active treatment, health and safety, or other areas deemed necessary by TDMHMR for the particular children's population served. The cost-based rates will not include a mark-up or incentive factor.]

[(ii) Fixed capital assets are reimbursed in the form of a use fee. The use fee will be paid in lieu of building and building equipment depreciation, land and leasehold amortization, mortgage interest, and/or building and equipment lease expense. The annual use fee is calculated as 14 percent of the appraised value of buildings, improvements, and land, as determined by local taxing authorities. If such an appraisal is unavailable, the appraised value of the property is determined as the square footage of the facility devoted to ICF/MR services multiplied by the statewide median value per square foot of facilities in the large facility Level V class of service. The use fee will include only that part of the building square footage that is used in the provision of ICF/MR residential services. The per diem use fee is calculated by dividing 25 percent of the annual use fee by anticipated facility days of service during a fiscal quarter.]

[(iii) Any Medicaid payments not expended on Medicaid allowable costs will be recouped by the state.]

[(iv) This temporary method remains in effect only as long as the facility continues to reduce the certified capacity in compliance with the capacity reduction plan described in this subparagraph.]

[(4) Alternate state operated small facility rates effective September 1, 1994.]

[(A) Description of rate class. The state operated small facility rate class consists of Level V and VI group homes with six or fewer Medicaid-contracted beds that are operated by TDMHMR.]

[(B) Determination of state operated small facility rates. Eligible state operated small facilities are reimbursed in the following manner:]

[(i) Rates are based on projected costs of the respective ICF/MR Level V or Level VI community-based facilities as described in §406.156 of this title (relating to Cost Finding Methodology) with additional adjustments for wages and benefits paid by the state.]

[(ii) TDMHMR will continue to set rates for this class in this manner until enough Medicaid cost report data become available to determine rates on the basis of cost reports.]

[(iii) Cost reports from facilities in this class will not be included in the cost arrays that are used to determine reimbursement rates for other classes of providers.]

(3)[(5)]A temporary method will be used to determine the reimbursement rates for selected ICF/MR community-based facilities. This method will be used for the period of time beginning January 1, 1996, and ending December 31, 1996, or until formally replaced or modified through a state plan amendment, whichever comes first.

(A) Eligible facilities are those facilities that were named in the Private Provider Association of Texas versus the Health and Human Services Commission, et al., Settlement Agreement and are comprised of the following facilities:

(i) Community-based Level I facilities;

(ii) Large community-based Level V facilities;

(iii) Large community-based Level VI facilities;

(iv) Small community-based Level V facilities;

(v) Small community-based Level VI facilities; and

(vi) Small community-based Level VIII facilities [ICF/MR/RC base rate].

(B) For the facilities listed in subparagraph (A) (i)-(vi) of this paragraph, reimbursement rates for calendar year 1996 will be determined by inflating the reimbursement rates in effect for January 1, 1995, by an inflation factor of 2.75 %.

(C) Community-based facilities that are not specifically listed in subparagraph (A) (i)-**(vi)** [(v)] of this paragraph are not eligible for the automatic inflation adjustment for calendar year 1996.

(d) Rate determination for state-operated facilities. The Texas Mental Health and Mental Retardation Board determines reimbursement in accordance with this subchapter (relating to General Reimbursement Methodology for all Medical Assistance Programs). State-operated facility rates are effective May 1, 1996. Rates are facility specific, determined prospectively, and cost related.

(1) Description of rate class. The state-operated small facility rate class consists of all ICF/MR facilities that are operated by TDMHMR.

(2) Determination of state-operated facility rates. State-operated facilities are reimbursed in the following manner:

(A) The per diem rate for each facility is based on the total projected allowable costs for selected cost centers divided by the total days of service the facility delivered in the cost reporting period.

***(i)* Rates for state-operated ICFs/MR are based on the most current cost report.**

***(ii)* Rates for facilities not required to submit a cost report are based on a pro forma model. A six bed or less state-operated facility's rate are the average of all available similarly sized facilities per diem rates for that particular rate year. These facilities will be required to submit three-month cost reports to reflect costs incurred during the first 90 days of operation. These costs will be used to determine the facility's specific per diem rate.**

(B) Since provision is made to ensure that reasonable and necessary costs are covered, state-operated ICF/MR facilities do not qualify for additional supplemental reimbursement for heavy care individuals as determined under subsection (f) of this section.

(C) Cost reports from facilities in this class will not be included in the cost arrays that are used to determine reimbursement rates for other classes of providers.

(e)[(d)] Experimental class. **TDMHMR** [TXMHMR] may define experimental classes of service to be used in research and demonstration projects on new reimbursement methods. Demonstration or pilot projects based on experimental classes may be implemented on a statewide basis or may be limited to a specific region of the state or to a selected group of providers. Reimbursement for an experimental class is not implemented, however, unless the Texas Mental Health and Mental Retardation Board and the Health Care Financing Administration (HCFA) approve the experimental methodology.

(f)[(e)] Supplemental reimbursement rate determination. The reimbursement rate for community based ICF/MR VI individuals whose needs require a significantly greater than normal amount of care is supplemented on an individual client basis when the appropriate score is indicated for all of the six criteria on the level-of-care assessment form.

(1) The level-of-care assessment form must indicate the client meets the qualifying criteria by having the following scores on all of the items indicated: for item 51 a qualifying score of 5; for item 53 a qualifying score of 4; for item 55 a qualifying score of 3, 4, or 5; for item 56 a qualifying score of 3, 4, or 5; for item 59 a qualifying score of 3, 4, or 5; and for item 60 a qualifying score of 4 or 5.

(2) The department determines the appropriate amount of supplemental reimbursement in the following manner.

(A) The estimated time required by the class of direct care personnel is derived from appropriate and applicable time studies to determine the delivery cost for the supplemental ICF/MR VI rate. Each time estimate is multiplied by a projected hourly wage rate and by class personnel, including a factor for payroll, taxes and benefit expenses. The employee compensation costs are estimated from Medicaid provider cost reports and wage-and-hour survey data.

(B) The portion of the ICF/MR VI class rate which covers employee compensation costs for direct care personnel is determined.

(C) The amount of the ICF/MR VI supplemental reimbursement rate is determined by calculating the difference between the amounts in subparagraphs (A) and (B) of this paragraph.

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

Issued in Austin, Texas, on June 6, 1996.

TRD-9608002
Ann K. Utley
Chairman
Texas Mental Health and Mental Retardation Board
Earliest possible date of adoption: July 19, 1996
For further information, please call: (512) 206-4516

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 39. Public Notice

Subchapter A. Applicability and General Provisions

30 TAC §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25

The commission proposes new §§39.1, 39.3, 39.5, 39.7, 39.9, 39.11, 39.13, 39.15, 39.17, 39.19, 39.21, 39.23, 39.25, 39.51, 39.101, 39.103, 39.105, 39.107, 39.109, 39.151, 39.201, 39.251, and 39.253, concerning public notice of proceedings.

This proposal is part of the second phase (Phase II) of an ongoing project to reorganize, clarify, and consolidate the procedural rules of the commission. As part of Phase II, the commission recently adopted new procedural rules Chapters 1, 3, 5, 10, 20, 40, 50, 55, 70, 80, and 86, and amendments to Chapter 340 (see the May 28, 1996, issue of the *Texas Register* (21 TexReg 4689)).

Proposed new Chapter 39 is intended to replace several sections of Chapter 305, Subchapter E. The commission's adoption of the Phase II rules noted in the prior paragraph included the repeal of several sections of Chapter 305, Subchapter E. The commission plans to propose the repeal of the remaining sections of Chapter 305, Subchapter E, in the near future. Accordingly, if the proposals are ultimately adopted, Chapter 305, Subchapter E will be repealed in its entirety.

The proposed Chapter 39 is intended to address the numerous reports from staff, the regulated community, and citizens that the current rules on public notice are confusing. This confusion can lead to notice not being given as required as well as delays in the processing of applications. The proposed rules are intended to organize and clarify the required public notice for several types of applications; they are not intended to change the requirements. The chapter is organized so that virtually all of the notice requirements for a specific type of application are located in one section, and each section states the requirements in the order in which they must be satisfied. Chapter 39 would replace the current public notice rules found in Chapter 305, Subchapter E, and so generally speaking the requirements in Chapter 39 concern only the types of applications currently under Chapter 305, Subchapter E, including applications for permits for: municipal solid waste, industrial waste, and hazardous waste facilities; wastewater discharges; and injection wells. However, the proposed Chapter 39 also contains provisions on notice of hearing concerning an application under Chapter 116 (air quality permits) and notice of hearing concerning a contested enforcement case. The organization of Chapter 39, with its numerous undesignated sections, leaves "room to grow" so that the notice requirements for additional types of applications may be placed here in the future.

Persons seeking help in comparing this rule proposal and recodification to the existing rules, can obtain a marked version of this package showing the current statutory and rule requirements that are the basis for the public notice requirements, and a disposition/derivation table from the commission. Please contact Richard O'Connell at (512) 239-5528 for a copy of this information.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there will be no significant fiscal implications for state or local government as a result of enforcement or administration of the sections.

Mr. Minick also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be clarification of public notice requirements and procedures, greater consistency in notices issued to the public concerning applications before the commission, and the avoidance of unnecessary costs and delays in the application process. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

The proposed rules are intended to clarify and recodify the commission's rules on public notice of proceedings. The commission prepared a takings impact assessment of these rules and determined that the proposal will not create any burden on private real property rights.

A public hearing on the proposal will be held July 18, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and answer questions before and after the hearing.

Written comments may be mailed to Lisa Martin, TNRCC Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rules Tracking Log Number 96124-039-AD. Comments must be received by 5:00 p.m.,

July 18, 1996. For further information, please contact Richard O'Connell at (512) 239-5528.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new sections implement Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.1. Applicability.

This chapter applies to:

(1) applications for municipal solid waste, industrial solid waste, or hazardous waste permits under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(2) applications for wastewater discharge permits under Texas Water Code, Chapter 26.

(A) This paragraph includes:

(i) applications for the disposal of sewage sludge or water treatment sludge under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation);

(ii) applications for permits under Chapter 321, Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations).

(B) This paragraph does not include:

(i) applications for authorizations under Chapter 321 of this title (relating to Control of Certain Activities by Rule), other than applications under Subchapter B of this chapter;

(ii) applications for authorizations under Chapter 312 of this title, except applications for a permit under the chapter; and

(iii) applications under Chapter 332 of this title (relating to Composting);

(3) applications for underground injection well permits under Texas Water Code, Chapter 27, and under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361;

(4) applications for production area authorizations under Chapter 331 of this title (relating to Underground Injection Control);

(5) hearings under Chapter 80 of this title (relating to Contested Case Hearings) concerning applications for air quality permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(6) hearings on contested enforcement cases under Chapter 80 of this title.

§39.3. Purpose.

This chapter specifies notice requirements for applications, hearings on applications, and hearings on contested enforcement cases, including requirements derived from statutes.

§39.5. General Provisions.

(a) If the chief clerk prepares a newspaper notice that is required by this chapter and the applicant does not cause the notice to be published within 30 days of receipt of the notice from the chief clerk, the chief clerk may cause the notice to be published and the applicant shall reimburse the agency for the cost of publication within 30 days of publication.

(b) The chief clerk may require the applicant to provide necessary mailing lists in electronic form.

(c) When this chapter requires notice by mail, notice by hand delivery may be substituted. Mailing is complete upon deposit of the document, enclosed in a postpaid, properly addressed wrapper, in a post office or official depository under the care and custody of the United States Postal Service. If hand delivery is by courier-receipted delivery, the delivery is complete upon the courier taking possession.

(d) Unless otherwise provided in this chapter, public notice requirements apply to applications for initial permits or applications for the amendment, modification, or renewal of permits.

(e) If an applicant submits more than one application concerning a facility, notice may be combined to satisfy the requirements of more than one section of this chapter.

§39.7. Mailing Lists.

The chief clerk shall maintain mailing lists of persons requesting public notice of certain applications. Persons, including participants in past commission permit proceedings, may request in writing to be on a mailing list. The chief clerk may from time to time request confirmation that persons on a list wish to remain on the list, and may delete from the list the name of any person who fails to respond to such request.

§39.9. Deadline for Public Comment, Protests, and Hearing Requests.

Notice under this chapter will specify a deadline to file public comment, protests, and if applicable, hearing requests. After the deadline, final action on an application may be taken under Chapter 50 of this title (relating to Action on Applications).

§39.11. Text of Public Notice.

When notice by publication or by mail is required by this chapter, the text of the notice must include:

(1) the name and address of the agency;

(2) the name and address of the applicant and, if different, the location of the facility or activity to be regulated by the permit;

(3) a brief description of the business conducted at the facility or activity described in the application or the draft permit;

(4) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(5) a brief description of the comment procedures, and the time and place of any public meeting or public hearing;

(6) a statement of procedures by which the public may participate in the final permit decision and, if applicable, how to

request a hearing, or a statement that later notice will describe procedures for public participation;

(7) for wastewater discharge permits, a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(8) for notices of public meetings or hearings, the date, time, and place of the meeting or hearing, and a brief description of the nature and purpose of the meeting or hearing, including the applicable rules and procedures;

(9) the application or permit number;

(10) if the application is subject to final approval by the executive director under Chapter 50 of this title (relating to Action on Applications), a statement that the executive director may issue final approval of the application unless there is a protest or (if applicable) request for hearing filed with the chief clerk;

(11) if applicable, the deadline to file comments, protests, and, if applicable, hearing requests; and

(l2) a statement of whether the executive director has prepared a draft permit.

§39.13. Mailed Notice.

When this chapter requires mailed notice under this section, the chief clerk shall mail notice to:

(1) the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map;

(2) the mayor and health authorities of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(3) the county judge and health authorities of the county in which the facility is or will be located or in which waste is or will be disposed of;

(4) the Texas Department of Health;

(5) the Texas Parks and Wildlife Department;

(6) the Texas Railroad Commission;

(7) if applicable, state and federal agencies for which notice is required in 40 Code of Federal Regulations, §124.10(c);

(8) if applicable, persons on a mailing list developed and maintained in accordance with 40 Code of Federal Regulations, §124.10(c)(1)(ix);

(9) the applicant;

(10) if the application concerns an injection well, the Water Well Drillers Advisory Committee;

(11) persons on a relevant mailing list kept under §39.7 of this title (relating to Mailing Lists); and

(12) any other person the executive director or chief clerk may elect to include.

§39.15. Notice Not Required for Certain Types of Applications.

(a) Public notice is not required for the following:

(1) applications for the correction or endorsement of permits under §305.65 of this title (relating to Corrections of Permits);

(2) permittees' voluntary requests for suspension or revocation of permits under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits);

(3) Texas pollutant discharge elimination system minor amendments under Texas Water Code, Chapter 26;

(4) applications for transportation route special permits under §330.32 of this title (relating to Collection and Transportation Requirements).

(b) For the voluntary transfer of permits, no notice shall be required, except that notice of applications for the voluntary transfer of permits concerning hazardous waste facilities shall be made under the requirements of §39.105 of this title (relating to Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit) that relate to hazardous waste facilities. However, if an application concerns the voluntary transfer of an underground injection well permit, there are no notice requirements.

§39.17. Notice of Minor Amendment.

(a) The only required notice for applications seeking a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) is that the chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice). The deadline to file public comment or protests is ten days after mailing.

(b) Subsection (a) of this section does not apply to applications seeking a minor amendment of a wastewater discharge permit. For such applications, the notice requirements are specified in §39.151(c) of this title (relating to Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge).

§39.19. Notice of Executive Director's Recommendation to Deny Application.

If the executive director recommends denial of an application, the notice of that recommendation shall be given under the requirements for notice of draft permit for that type of application.

§39.21. Notice of Commission Meeting to Evaluate a Hearing Request on an Application.

If, under Chapter 55 of this title (relating to Request for Contested Case Hearings), a hearing request on an application is set for consideration during a commission meeting, the chief clerk shall mail notice to the applicant, executive director, public interest counsel, and the persons making the request no later than 30 days before the first meeting at which the commission considers the hearing request.

§39.23. Notice of Hearing Held by SOAH, Including Hearing on Hearing Requests.

(a) The chief clerk shall mail notice to the applicant, executive director, and public interest counsel. The chief clerk shall also mail notice to persons who filed protests or hearing requests concerning the application on or before the deadline specified under §39.9 of this title (relating to Deadline for Public Comment, Protests, and Hearing Requests). The notice shall be mailed no less than ten days before the hearing.

(b) Other requirements in this chapter concerning notice of hearing apply. However, if the commission refers an application to

SOAH and requests the judge to submit a written recommendation on the sole question of whether hearing requests meet the requirements of Chapter 55, Subchapter B of this title (relating to Hearing Requests), the only notice shall be as required in subsection (a) of this section.

(c) After an initial preliminary hearing, reasonable notice of subsequent prehearing conferences or the evidentiary hearing may be provided on the record in a prehearing conference or by written notice to the parties.

§39.25. Notice of Contested Enforcement Case Hearing.

For any contested enforcement case hearing, the chief clerk shall give notice to the parties in accordance with the APA, §2001.052. In addition, public notice and opportunity for comment before the commission regarding a proposed enforcement action shall be given under Chapter 10 of this title (relating to Commission Meetings).

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

Issued in Austin, Texas on June 10, 1996

TRD-9608107
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 4, 1996
For further information, please call: (512) 239–1966

Subchapter B. Public Comment

30 TAC §39.51

The new section is proposed under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new section implements Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.51. Response to Comments.

(a) This section applies to applications for a Texas pollutant discharge elimination system permit and applications under §305.69(c) and (d) of this title (relating to Solid Waste Permit Modification at the Request of the Permittee).

(b) The executive director shall file with the chief clerk all comments on an application that are received on or before the deadline to file public comment, protests, or hearing requests, or which are received during the comment period in accordance with the provisions of §305.69(c) and (d) of this title. This requirement does not apply when comments are filed by the commenters with the chief clerk.

(c) The executive director shall prepare a response to significant comments and make such response available to the public upon request. The response shall specify which provisions of the proposed action, if any, have been changed in response to comments and the reasons for the change. The executive director may make the response that is required by this section as part of the executive director's response to any hearing requests made under §55.25 of this title (relating to Hearing Request Processing). However, if an application is referred to SOAH for a hearing under Chapter 80 of this title (relating to Contested Case Hearings), the commission's final order satisfies the requirements of this subsection, and the executive director is not required to prepare a response.

Issued in Austin, Texas on June 10, 1996

TRD-9608108
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 4, 1996
For further information, please call: (512) 239–1966

Subchapter C. Public Notice of Solid Waste Applications

30 TAC §§39.101, 39.103, 39.105, 39.107, 39.109

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new sections implement Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.101. Application for Municipal Solid Waste Permit.

(a) Preapplication local review committee process. An applicant may decide to participate in a local review committee process under Texas Health and Safety Code, §361.063. If the applicant elects to enter the local review committee process, the applicant must submit to the executive director a notice of intent to file an application, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality.

(b) Notice of intent to obtain a permit.

(1) On the executive director's receipt of an application for, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(2) After the executive director determines that the application is administratively complete, the following actions shall be taken.

(A) The applicant shall publish notice of intent to obtain a permit at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed

to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located.

(B) The chief clerk shall publish notice of the application in the *Texas Register*.

(C) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(D) The executive director shall mail notice of this determination along with a copy of the application or summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located, and to the county judge and the health authority of the county in which the facility is located.

(c) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(3) The notice shall specify the deadline to file public comment, protests, or hearing requests, which shall be not less than 30 days after newspaper publication.

(d) Notice of public meeting.

(1) If the application proposes a new facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the application proposes to amend an existing permit, the requirements of this subsection apply if a person affected files a request for public meeting concerning the application with the chief clerk before the deadline to file public comment, protests, and hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. If the facility is located within 20 miles of a county border, the executive director may require the applicant to meet the requirements of this paragraph in the adjacent counties also. No later than the date of the public meeting, the applicant must submit an affidavit certifying compliance with this paragraph to the executive director. The applicant must also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(e) Notice of hearing.

(1) This subsection applies if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located and in a newspaper of circulation in the immediate vicinity in which the facility is located or proposed to be located.

(3) Mail notice.

(A) If the applicant proposes a new facility, the applicant shall mail notice of the hearing to each residential or business address located within « mile of the facility and to each owner of real property located within « mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file an affidavit certifying compliance with this paragraph with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(B) If the applicant proposes an amendment of a permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

§39.103. Application for Industrial or Hazardous Waste Facility Permit.

(a) Preapplication local review committee process. An applicant may decide to participate in a local review committee process under Texas Health and Safety Code, §361.063. If the applicant elects to enter the local review committee process, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. If the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall also be mailed to the mayor of the municipality.

(b) Notice of receipt of application. On the executive director's receipt of an application, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located, and to the persons listed in §39.13 of this title (relating to Mailed Notice).

(c) Review of permit application by other governmental agencies. After the executive director determines that the application is administratively complete, the executive director shall mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located. The executive director

shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(4) The notice shall specify the deadline to file public comment, protests, or hearing requests. For industrial waste applications, the deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the requirements of this subsection apply if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment, protests, or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. If the facility is located within 20 miles of a county border, the executive director may require the applicant to meet the requirements of this paragraph in the adjacent counties also. No later than the day of the public meeting, the applicant must submit an affidavit certifying compliance with this paragraph to the executive director. The applicant must also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing.

(1) The requirements of this subsection apply if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (concerning Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located. No later than two days before the hearing, the applicant must file with the chief clerk an affidavit certifying compliance with this paragraph. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(3) Mail notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within « mile of the facility and to each owner of real property located within « mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in subsection (a) of that section. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.

§39.105. Application for a Class 1 Modification of an Industrial Solid Waste, Hazardous Waste, or Municipal Solid Waste Permit

The notice requirements for Class 1 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee) for industrial solid waste or hazardous waste permits, or §305.70 of this title (relating to Municipal Solid Waste Class I Modifications) for municipal solid waste permits, except that the text of required notice shall follow the requirements of §305.69 of this title (for industrial solid waste or hazardous waste permits) and §39.11 of this title (relating to Text of Public Notice). When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

§ 39.107. Application for a Class 2 Modification of an Industrial or Hazardous Waste Permit.

The notice requirements for Class 2 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall follow the requirements of §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file with the chief clerk public comment or protests. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

§39.109. Application for a Class 3 Modification of an Industrial or Hazardous Waste Permit

(a) Notice requirements in other commission rules. The notice requirements for Class 3 modifications are in §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), except that the text of notice shall follow the requirements of §305.69 of this title and §39.11 of this title (relating to Text of Public Notice). The notice shall specify the deadline to file public comment, protests, or hearing requests. The deadline is specified in §305.69 of this title. When mailed notice is required, the applicant shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(b) Notice of public meeting.

(1) The executive director shall hold a public meeting on request of a person affected concerning a hazardous waste permit that is filed on or before the deadline to file public comment, protests, or hearing requests. If a public meeting is held, the requirements of this subsection apply. The public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under Health and Safety Code, §361.063 meets the requirements of this subsection if public notice is provided in accordance with this subsection. This subsection does not apply to a public meeting held by an applicant under §305.69 of this title.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. If the facility is located within 20 miles of a county border, the executive director may require the applicant to also meet the requirements of this paragraph in the adjacent counties. No later than the date of the public meeting, the applicant must submit an affidavit certifying compliance with this paragraph to the executive director. The applicant shall also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(c) Notice of hearing.

(1) The requirements of this subsection apply if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns an industrial solid waste facility, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located, and each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous industrial solid waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located. The applicant shall file with the chief clerk an affidavit certifying compliance with this subparagraph. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subparagraph.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.

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

Issued in Austin, Texas on May 30, 1996

TRD-9608109
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 4, 1996
For further information, please call: (512) 239–1966

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Subchapter D. Public Notice of Water Quality Applications

30 TAC §39.151

The new section is proposed under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new section implements Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.151. Application for Wastewater Discharge Permit, including Application for the Disposal of Sewage Sludge or Water Treatment Sludge.

(a) Notice of administratively complete application. The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(b) Notice of application and draft permit.

(1) The applicant shall publish notice that the executive director has prepared a draft permit at least once in a newspaper regularly published or circulated within each county where the proposed facility or discharge is located and in each county affected by the discharge. The executive director shall provide to the chief clerk a list of the appropriate counties, and the chief clerk shall provide the list to the applicant.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit. For any application involving an average daily discharge of five million gallons or more, the chief clerk shall mail notice to each county judge in the county or counties located within 100 statute miles of the point of discharge who has requested in writing that the commission give notice, and through which water into or adjacent to which waste or pollutants are to be discharged under the permit, flows after the discharge.

(3) The notice must set a deadline to file public comment, protests, or hearing requests with the chief clerk that is not less than 30 days after newspaper publication . However, the notice may be mailed to the county judges under paragraph (2) of this subsection no later than 20 days before the deadline to file public comment, protests, or hearing requests.

(4) For Texas pollutant discharge elimination system (TPDES) permits, the text of the notice shall include:

(A) in addition to the requirements in §39.11 of this title (relating to Text of Public Notice), a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(B) for applications concerning the disposal of sludge, use and disposal practice(s) and the location of the sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application.

(c) Limited notice for certain applications. The requirements in subsections (a) and (b) of this section do not apply if an application is described in one of the following paragraphs and the described notice requirements, if any, are completed:

(1) the application is a minor amendment of a permit under Chapter 305, Subchapter D of this title (relating to Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits) . In such instances , the chief clerk shall mail notice that the executive director has determined the application is technically complete to the mayor and health authorities for the city or town, and to the county judge and health authorities for the county in which the waste will be discharged. The notice shall state the deadline to file public comment or protests, which shall end no earlier than ten days after mailing notice;

(2) the application proposes the renewal of a confined animal feeding operation permit which was issued between July 1, 1974, and December 31, 1977, and the applicant does not propose to discharge into or adjacent to water in the state and does not seek to change materially the pattern or place of disposal.

(d) Notice of hearing.

(1) The requirements of this subsection apply if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Not less than 30 days before the hearing, the applicant shall publish notice at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, a person may reasonably believe persons reside who may be affected by the action that may be taken as a result of the hearing. The executive director shall provide to the chief clerk a list of the appropriate counties.

(3) Not less than 30 days before the hearing, the chief clerk shall mail notice to the persons listed in §39.13 of this title, except that mailed notice to adjacent or downstream landowners is not required for an application to renew a permit.

(4) For TPDES permits, the text of notice shall include:

(A) in addition to the requirements in §39.11 of this title, a general description of the location of each existing or proposed discharge point and the name of the receiving water;

(B) for applications concerning the disposal of sludge, the sludge use and disposal practice(s) and the location of the sludge treatment works treating domestic sewage and use or disposal sites known at the time of permit application.

(e) Notice concerning discharges with a thermal component. For requests for a discharge with a thermal component filed pursuant to Clean Water Act, §316(a), 40 Code of Federal Regulations (CFR) Part 124, Subpart D, §124.57(a), public notice, which is in effect as of the date of TPDES program authorization, as amended, is adopted by reference. A copy of 40 CFR Part 124 is available for inspection at the library of the agency, Park 35, 12015 North Interstate 35, Austin.

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

Issued in Austin, Texas on June 10, 1996

TRD-9608110

Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: September 4, 1996
For further information, please call: (512) 239–1966

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Subchapter E. Public Notice of Air Quality Applications

30 TAC §39.201

The new section is proposed under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new section implements Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.201. Application for a Preconstruction Permit.

(a) Applicability. This section applies to:

(1) hearings under Chapter 80 of this title (relating to Contested Case Hearings) on applications for permits, permit amendments or permit renewals under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); and

(2) hearings under Chapter 80 of this title on applications for a registration for a standard exemption required to provide public notice under Chapter 116 of this title.

(b) Notice of hearing. The applicant shall publish notice of the hearing in a newspaper of general circulation in the municipality in which the facility is located or is proposed to be located or in the municipality nearest to the location or proposed location of the facility. The notice must be published not less than 30 days before the hearing.

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

Issued in Austin, Texas on June 10, 1996

TRD-9608111
Kevin McCalla
Director, Legal Division
Texas Natural Resource Cnservation Commission
Proposed date of adoption: September 4, 1996
For further information, please call: (512) 239–1966

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Subchapter F. Public Notice of Other Specific Applications

30 TAC §39.251, §39.253

The new sections are proposed under Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the commission to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The proposed new sections implement Texas Water Code, §§5.103, 5.105, 26.011, 27.019, and Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§39.251. Application for Injection Well Permit.

(a) Preapplication local review committee process. An applicant may decide to participate in a local review committee process under Texas Health and Safety Code, §361.063. If the applicant elects to enter the local review committee process, the applicant must submit a notice of intent to file an application to the executive director, setting forth the proposed location and type of facility. The applicant shall mail notice to the county judge of the county in which the facility is to be located. In addition, if the proposed facility is to be located in a municipality or the extraterritorial jurisdiction of a municipality, a copy of the notice shall be mailed to the mayor of the municipality.

(b) Notice of receipt of application. On the executive director's receipt of an application for, or notice of intent to file an application, the chief clerk shall mail notice to the state senator and representative who represent the area in which the facility is or will be located.

(c) Notice of administratively complete application.

(1) The chief clerk shall mail notice to the School Land Board if the requirements of Texas Water Code, §5.115 apply concerning an application that will affect lands dedicated to the permanent school fund. The notice shall be in the form required by that section. The chief clerk shall also mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title (relating to Definitions).

(2) After the executive director determines that the application is administratively complete, the executive director shall mail a copy of the application or a summary of its contents to the mayor and health authority of a municipality in whose territorial limits or extraterritorial jurisdiction the solid waste facility is located. The executive director shall also mail a copy of the application or a summary of its contents to the county judge and the health authority of the county in which the facility is located.

(d) Notice of draft permit.

(1) The applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(2) The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice), to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title, and to local governments located in the county of the facility. "Local governments" shall have the meaning provided for that term in Texas Water Code, Chapter 26.

(3) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the application on one or more local radio stations that broadcast to an area that includes all of the

county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(4) The notice shall specify the deadline to file public comment, protests, or hearing requests. The deadline shall be not less than 30 days after newspaper publication, and for hazardous waste applications, not less than 45 days after newspaper publication.

(e) Notice of public meeting.

(1) If the applicant proposes a new hazardous waste facility, the executive director shall hold a public meeting in the county in which the facility is to be located to receive public comment concerning the application. If the applicant proposes a major amendment of an existing hazardous waste facility permit, the executive director shall hold a public meeting if a person affected files with the chief clerk a request for public meeting concerning the application before the deadline to file public comment, protests, or hearing requests. A public meeting is not a contested case proceeding under the APA. A public meeting held as part of a local review committee process under subsection (a) of this section meets the requirements of this subsection if public notice is provided in accordance with this subsection.

(2) The applicant shall publish notice of the public meeting once each week during the three weeks preceding a public meeting. The applicant shall publish notice in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. If the facility is located within 20 miles of a county border, the executive director may require the applicant to meet the requirements of this paragraph in the adjacent counties also. No later than the date of the public meeting, the applicant shall submit an affidavit certifying compliance with this paragraph to the executive director. The applicant shall also file the affidavit with the chief clerk. Acceptance of the affidavit creates a rebuttable presumption of compliance with this paragraph.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(f) Notice of hearing.

(1) The requirements of this subsection apply if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) Newspaper notice.

(A) If the application concerns a facility for the disposal of waste other than hazardous waste, the applicant shall publish notice at least once in a newspaper of general circulation in the county in which the facility is located and each county and area which is adjacent or contiguous to each county wherein the proposed facility is located.

(B) If the application concerns a hazardous waste facility, the hearing must include one session held in the county in which the facility is located. The applicant shall publish notice of the hearing once each week during the three weeks preceding the hearing in the newspaper of the largest general circulation that is published in the county in which the proposed facility is to be located or, if no newspaper is published in the county, in a newspaper of general circulation in the county. The published notice shall not be smaller than 96.8 square centimeters or 15 square inches with the shortest dimension at least 7.6 centimeters or three inches. The text of the notice shall include the statement that at least one session of the hearing will be held in the county in which the facility is located. No later than two days before the hearing, the applicant must file with the chief clerk an affidavit certifying compliance with this subparagraph. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subparagraph.

(3) Mail notice.

(A) If the applicant proposes a new solid waste management facility, the applicant shall mail notice to each residential or business address located within « mile of the facility and to each owner of real property located within « mile of the facility listed in the real property appraisal records of the appraisal district in which the facility is located. The notice shall be mailed to the persons listed as owners in the real property appraisal records on the date the application is determined to be administratively complete. The chief clerk shall mail notice to the persons listed in §39.13 of this title, except that the chief clerk shall not mail notice to the persons listed in subsection (a) of that section. The chief clerk shall also mail notice to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title. The notice must be mailed no more than 45 days and no less than 30 days before the hearing. Within 30 days after the date of mailing, the applicant must file with the chief clerk an affidavit certifying compliance with its obligations under this subsection. Acceptance of the affidavit creates a rebuttable presumption of compliance with this subsection.

(B) If the applicant proposes to amend or renew an existing permit, the chief clerk shall mail notice to the persons listed in §39.13 of this title, and to the persons who own mineral rights within the cone of influence, as that term is defined by §331.2 of this title.

(4) If the application concerns a hazardous waste facility, the applicant shall broadcast notice of the hearing on one or more local radio stations that broadcast to an area that includes all of the county in which the facility is located. The executive director may require that the broadcasts be made to an area that also includes contiguous counties.

(5) Notice under paragraphs (2)(A), (3), and (4) of this subsection shall be completed at least 30 days before the hearing.

§39.253. Application for Production Area Authorization.

(a) Applicability. This section applies to an application for a production area authorization under Chapter 331 of this title (relating to Underground Injection Control).

(b) Notice of administratively complete application. The chief clerk shall mail notice to the persons listed in §39.13 of this title (relating to Mailed Notice).

(c) Notice of executive director's preparation of draft production area authorization. The chief clerk shall mail notice to the persons listed in §39.13 of this title. The notice shall specify the deadline to file with the chief clerk public comment or protests, which is 30 days after mailing.

(d) Notice of hearing.

(1) The requirements of this subsection apply if an application is referred to SOAH for a contested case hearing under Chapter 80 of this title (relating to Contested Case Hearings).

(2) The applicant shall publish notice at least once in a newspaper of the largest general circulation that is published in the county in which the facility is located or proposed to be located. If a newspaper is not published in the county, the notice must be published in a newspaper of general circulation in the county in which the facility is located or proposed to be located.

(3) The chief clerk shall mail notice to the persons listed in §39.13 of this title.

(4) Notice under paragraphs (2) and (3) this subsection shall be completed at least 30 days before the hearing.

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

Issued in Austin, Texas on June 10, 1996

TRD-9608112
Kevin McCalla
Director, Legal Division
Texas Natural Resource Cnservation Commission
Proposed date of adoption: September 4, 1996
For further information, please call: (512) 239–1966

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 15. Coastal Area Planning

Subchapter A. Management of the Beach/Dune System

31 TAC §15.11

The General Land Office proposes an amendment to §15.11, concerning certification of local government dune protection and beach access plans (plans). The amendment is being proposed to certify the Nueces County La Concha master plan and to organize General Land Office certifications in §15.11.

On March 20, 1996, the Nueces County Commissioners Court adopted by order the La Concha master plan, which is an amendment to the county's dune protection plan. In the amendment to §15.11(f), the General Land Office certifies that the dune protection portion of the La Concha master plan is consistent with state law. For organizational purposes only, the certification is contained in §15.11(f) with the interim certification of the Nueces County dune protection plan.

The General Land Office is revising the composition of Chapter 15 in the amendment to 15.11(f) and the separate, simultaneous proposed repeal of §§5.70-15.79 to organize all certifications in §15.11. The reorganization has no substantive effect on Nueces County, other local governments, or citizens.

Ms. Caryn K. Cosper, deputy commissioner for the Resource Management Program, has determined that for the first five-year period the rule is in effect the fiscal implications for state or local governments as a result of enforcing or administrating the rule will be a decrease in cost because all impacts to dunes and dune vegetation are considered at once, with no additional permit-by-permit review required.

Ms. Cosper 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 or administering the rule will be organizational clarity and predictable, effective and economical administration of the development of the geographic area encompassed in the La Concha master plan. Ms. Cosper has further determined that there will be no cost to small or large businesses and individuals due to the reorganization of Chapter 15, and there will be a decrease in cost to small and large businesses and individuals affected by the La Concha master plan because there are no individual dune protection permits required for impacts to dunes and dune vegetation. The state and Nueces County will benefit from the certification of the La Concha master plan because all impacts within the geographic scope of the master plan are considered at once, with no additional permit-by-permit review required.

Comments may be submitted in writing to Ms. Cheli Cook, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495 (Fax: (512) 463-6311). Comments must be received no later than 5:00 p.m. on July 18, 1996.

The amendment is proposed under the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provides the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas' public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other minimum measures needed to mitigate for any adverse effect on public access and dune areas.

The amendment is also proposed pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

The Texas Natural Resources Code, Chapter 61, Subchapter B, §61.011 and §61.015(b), and Texas Natural Resources Code, Chapter 63, Subchapter E, §63.121, are affected by this proposed amendment.

§15.11. Certification of Local Government Dune Protection and Beach Access Plans.

(a)-(e) (no change.)

(f) **Nueces County.** [This section does not affect the General Land Office interim certification issued to Nueces County on October 9, 1992, as defined in §15.72 of this chapter (relating to Administration) which continues in effect.]

(1)The interim certification of the Nueces County plan, as adopted in the March 29, 1993, issue of the *Texas Register* (18 TexReg 1684), continues in effect until the General Land Office

either certifies a revised Nueces County plan in §15.11(a) or (b) or repeals this subsection.

(2)The General Land Office certifies that the dune protection portion of the La Concha master plan adopted by the Nueces County commissioners court on March 20, 1996, is consistent with state 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 May 24, 1996

TRD-9608068
Garry Mauro
Commissioner
General Land Office
Earliest possible date of adoption: July 19, 1996
For further information, please call: (512) 305-9129

Subchapter E. Interim Approval of Local Government Dune Protection and Beach Access Plans

31 TAC §§15.70-15.79

(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 General Land Office or in the Texas Register Office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas General Land Office proposes the repeal of §§15.70-15.79, concerning the interim approval of local government dune protection and beach access plans (plans). The General Land Office's interim approval process was developed at the request of two jurisdictions, Nueces and Cameron counties, who desired authorization to develop and begin implementation of their local programs for dune protection and public beach use and access prior to the General Land Office's final adoption of the state-wide Rules for Management of the Beach/Dune System (31 TAC §§15.1-15.10). A separate rule for interim approval of these two local plans is no longer needed.

Cameron County has revised its beach/dune plan; that plan is now certified in §15.11(a)(11). Nueces County has revised its plan as well, and the county is working with the General Land Office to receive certification of the revised plan in §15.11. The General Land Office is ensuring that the Nueces County interim approval will not lapse by virtue of this repeal by simultaneously amending §15.11(f), which will now provide that the interim certification of the Nueces County plan, adopted by order of the Nueces County Commissioners Court on March 25, 1992, remains in effect and is not affected by the repeal.

Ms. Caryn K. Cosper, deputy commissioner for the Resource Management Program, has determined that for the first five-year period the repeal is in effect, there will be no fiscal effects to state or local governments as a result of the repeal. Ms. Cosper has further determined that the repeal of these rules will have no monetary effect on state government.

Ms. Cosper also has determined that for each year of the first five years the proposed repeal of these rules is in effect the public benefit will be more clarity in the organization of the rules concerning the interim approval of local government plans in that all provisions relevant to local government plans will be located in a single subchapter. The proposed repeal does not have any effect on small business or on the persons required to comply with the rule. The repeal and reorganization of the rules does not substantively change requirements for Nueces County.

Comments may be submitted in writing to Connie K. Sanders, Texas General Land Office, Legal Services Division, Room 630, 1700 North Congress Avenue, Austin, Texas 78701-1495 (Fax: (512) 463- 6311). Comments must be received by 5:00 p.m. on July 18, 1996.

The amendment is proposed under the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provides the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas' public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other minimum measures needed to mitigate for any adverse effect on public access and dune areas. The amendment is also proposed pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection.

The Texas Natural Resources Code, Chapter 61, Subchapter B, §61.011 and §61.015(b), and Texas Natural Resources Code, Chapter 63, Subchapter E, §63.121, are affected by this proposed repeal.

§15.70. Policy.

§15.71. Definitions.

§15.72. Administration.

§15.73. Dune Protection Standards.

§15.74. Beachfront Construction Standards.

§15.75. Concurrent Dune Protection and Beachfront Construction Standards.

§15.76. Local Government Management of the Public Beach.

§15.77. Beach User Fees.

§15.78. Penalties.

§15.79. General Provisions.

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

Issued in Austin, Texas on May 24, 1996

TRD-9608069
Garry Mauro
Commissioner
General Land Office

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 73. Benefits

34 TAC §73.39

Pursuant to 32, Senate Bill 1231, 74th Legislature, the Employees Retirement System of Texas proposes new §73.39, concerning a 12 1/2% annuity increase for retirees with service credited in the employee class of membership and whose retirement occurred after August 31, 1995 and before September 1, 1996.

William S. Nail, General Counsel, has determined that there will not be fiscal implications as a result of enforcing or administering the rules.

Mr. Nail also has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule will be that state employees who have retired during the applicable time period will receive annuity increases. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The new section is proposed under Government Code §815.102 which provides the Employees Retirement System of Texas the authority to promulgate rules.

Adoption of new §73.39 affects Government Code, Title 8, Subtitle B.

§73.37. One-Time Increase to Certain Annuitants.

Pursuant to the authority granted the Board of Trustees in 32, Senate Bill 1231, Acts of the 74th Texas Legislature, annuities based on service credited in the employee class of membership for retirements or deaths that occur after August 31, 1995 and before September 1, 1996 shall be increased by 12 1/2%. This increase shall apply to the first payment payable after the first anniversary of the effective date of the retirement.

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

Issued in Austin, Texas on June 10, 1996

TRD-9608122

Charles D. Travis

Executive Director

Employees Retirement System

Earliest possible date of adoption: July 19, 1996

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

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 filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 4. AGRICULTURE

Part IV. Texas Animal Health Comission

Chapter 43. Tuberculosis

4 TAC §43.1

The Texas Animal Health Commission has withdrawn from consideration for permanent adoption the proposed rules, which appeared in the February 27, 1996, issue of the *Texas Register* (21 TexReg 1429).

Issued in Austin, Texas, on June 7, 1996.

TRD – 9608065
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Effective date: June 7, 1996
For further information, please call:

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Fair Dealing

22 TAC §109.144

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amended 109.144 which appeared in the February 2, 1996, issue of the *Texas Register*(21 TexReg 748).

Issued in Austin, Texas, on June 4, 1996.

TRD-9607931
Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

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 daysafter the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federalstatute or regula tion requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 43. Tuberculosis

Subchapter C. Eradication of TB in Cervidae

4 TAC §43.21

The Texas Animal Health Commission adopts amendments to Chapter 43, Tuberculosis, §43.21, General Requirements, without changes to the proposed text as published in the February 27, 1996, issue of the *Texas Register (21 TexReg 1429).*

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

No comments were received regarding adoption of the amendment.

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

The amendment implements the Agriculture Code, §161.041.

The agency hereby certifies that the rules 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 May 22, 1996.

TRD-9608094
Terry Beals, DVM
Executive Director
Texas Animal Health Commission
Effective date of adoption: July 5, 1996
For further information, please call: (512) 719-0714

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TITLE 22. EXAMINING BOARDS

Part IX. Board of Nurse Examiners

Chapter 217. Licensure and Practice

22 TAC §217.2

The Board of Nurse Examiners adopts an amendment to §217.2, concerning Licensure by Examination for Graduates of Basic Nursing Education Programs with no changes in the proposed text as published in the May 7, 1996, issue of the *Texas Register* (21 TexReg 3887).

The Board of Nurse Examiners spends considerable staff time and money processing applications on individuals who request authorization to write the National Council Licensure Examination for Registered Nurses (NCLEX-RN) who have a prior criminal conviction with grounds for denial. These applicants may currently avoid paying the $100 fee charged to Petitioners for a Declaratory Order.

The adopted amendment will eliminate the relitigation of these cases, all of which would have been declared ineligible to sit for the NCLEX-RN based upon a hearing before the Administrative Law Judge. The amendment will also cause the applicant to pay the same fee as Petitioners for a Declaratory Order.

One comment was received with respect to the Board's authority to investigate and process eligibility matters arising from applications, to the language of the preamble and the preclusion effect of prior eligibility determination.

Response: The statutory authority is clear in Article 4525a. Articulation by rule provides notice to the public and persons who may seek examination and licensure. With respect to the Board's authority regarding relitigation, the rule conforms to well established law regarding res adjudicata and the example given in the rule is clearly illustrative rather than exclusive.

The amendment is adopted under the Nursing Practice Act, (Texas Civil Statutes), Article 4514, §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it and Article 4525(a) which authorizes the Board to refuse to admit persons to the licensing examination.

Articles 4519a and 4525(a) are affected by this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608146
Katherine A. Thomas, MN, RN
Executive Director

Board of Nurse Examiners
Effective date: July 9, 1996
Proposal publication date: May 7, 1996
For further information, please call: (512) 305–6811

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Chapter 219. Advanced Practice Nursing Program

22 TAC §§219.1-219.3, 219.5, 219.6, 219.8, 219.11, 219.13, 219.15, 219.18

The Board of Nurse Examiners adopts amendments to §§219.1-219.3, 219.5, 219.6, 219.8, 219.11, 219.13, 219.15 and 219.18, concerning Definitions, New Programs, Accreditation, Administration and Organization, Faculty Qualifications, Faculty Policies, Curriculum, Students, Clinical Resources, and Closing of a Program with no changes to the proposed text as published in the May 7, 1996, issue of the *Texas Register* (21 TexReg 3888).

The amendments are being adopted to conform with the APN title language which changed in 1995. The 74th Legislature changed the title of advanced nurse practitioner to advanced practice nurse. In addition to the proposed change in title and usage from "advanced nurse practitioner program" to "advanced practice nursing program", a change is proposed in rule 219.11(b) relating to curriculum that incorporates the Texas Higher Education Coordinating Board requirements for clinical nurse specialist and nurse practitioner education.

In 1995, the Board of Nurse Examiners (BNE), in collaboration with the Texas Higher Education Coordinating Board (THECB), developed curricular guidelines for advanced practice nurses. These curricular components will be required for CNS and NP programs by the BNE beginning in January, 1997. These requirements have been clearly communicated to nursing programs under the authority of the THECB.

The adopted amendments will bring the rule language of the Board into harmony with statutory language, and clarify curricular requirements of the Board for those advanced practice nursing programs accredited by the Board.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under the Nursing Practice Act, (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

Article 4514, §8 is affected by this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608147
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: July 9, 1996
Proposal publication date: May 7, 1996
For further information, please call: (512) 305–6811

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Chapter 221. Advanced Practice Nurses

22 TAC §221.3

The Board of Nurse Examiners adopts an amendment to §221.3, concerning Advanced Practice Nurses, Education with no changes to the proposed text as published in the May 7, 1996, issue of the *Texas Register*(21 TexReg 3890).

The amendment is being adopted to reflect the appropriate APN title language which changed in 1995. The 74th Legislature changed the title of advanced nurse practitioner to advanced practice nurse. In addition to the proposed change in title and usage from "advanced nurse practitioner program" to "advanced practice nursing program", a change is proposed in rule 221.3(4) to incorporate the Texas Higher Education Coordinating Board (THECB) requirements for clinical nurse specialist (CNS) and nurse practitioner (NP) education.

In 1993, the Board of Nurse Examiners (BNE), in collaboration with the THECB, developed curricular guidelines for advanced practice nurses for CNS and NP roles and specialties. Nursing programs preparing CNSs and NPs are required to include specific courses within their curricula beginning January 1, 1997.

The adopted amendment will clarify that the nursing programs under the authority of the THECB must be in compliance with their accreditation requirements beginning January 1, 1997 and NP and CNS graduates must complete their courses for Board recognition after January 1, 1998.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Nursing Practice Act, (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

Article 4514, §8 is affected by this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608148
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: July 9, 1996
Proposal publication date: May 7, 1996
For further information, please call: (512) 305–6811

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Chapter 223. Fees

22 TAC §223.1

The Board of Nurse Examiners adopts an amendment to §223.1, concerning Fees with no changes to the proposed text as published in the May 7, 1996, issue of the *Texas Register*(21 TexReg 3890).

The Board of Nurse Examiners spends considerable staff time and money processing applications on individuals who request authorization to write the National Council Licensure Examination for Registered Nurses (NCLEX-RN) who have a prior conviction.

The adopted amendment will cause these applicants to pay the same amount as those individuals who currently file a petition for a Declaratory Order seeking the same approval. Therefore, all eligibility cases will now pay the same fee.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Nursing Practice Act, (Texas Civil Statutes), Article 4514, §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

Article 4527 is affected by this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608149
Katherine A. Thomas, MN, RN
Executive Director
Board of Nurse Examiners
Effective date: July 9, 1996
Proposal publication date: May 7, 1996
For further information, please call: (512) 305–6811

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 143. Medical Radiologic Technologist

25 TAC §§143.1–143.9, 143.11, 143.13

The Texas Department of Health (department) adopts amendments to §§143.1 - 143.9, 143.11, and 143.13; the repeal of 143.14; and new 143.14, 143.17 and 143.18, concerning the regulation of persons performing radiologic procedures. Sections 143.2, 143.5, 143.7, 143.9, 143.11, 143.13, 143.14, and 143.17 are adopted with changes to the proposed text published in the December 22, 1995, issue of the Texas Register (20 TexReg 10949). Sections 143.1, 143.3, 143.4, 143.6 143.8, and new 143.18 are adopted without changes and therefore will not be republished. The repeal is adopted as proposed and will not be republished.

Proposed new §143.16 and §143.19, which were simultaneously proposed, are withdrawn from consideration for permanent adoption.

Specifically, the sections provide for the regulation of persons performing radiologic procedures and cover purpose and scope, definitions, the Medical Radiologic Technologist Advisory Committee (MRTAC), fees, applicability, application requirements and procedures, types of certificates and applicant eligibility, examinations, standards for the approval of curricula and instructors, continuing education (CE) requirements, certifying persons with criminal backgrounds, disciplinary actions, mandatory training programs for non-certified technicians (NCTs), and registry of NCTs. New §§143.17 and 143.18 will implement Acts 1995, 74th Legislature, Chapter 613 (House Bill 1200), which amends the Medical Radiologic Technologist Certification Act (Act), Texas Civil Statutes, Article 4512m. The repeal of §143.14 will allow for new §143.14. Proposed new §143.16 and §143.19 are withdrawn as a result of comments.

New §§143.14, 143.17 and 143.18 are adopted in order to comply with the legislative mandates in House Bill 1200 (HB 1200). The new sections regarding training for NCTs have raised concerns about access to care. In its rule-making efforts the department sought input from the public, radiologic technologists, physicians, chiropractors, podiatrists, registered nurses (RNs), medical physicists, physician assistants (PAs), hospitals, and other individuals and organizations in the medical community. The rule-making has been underway since September 1995. In addition, public hearings were scheduled as follows: January 9, 1996, in Midland Texas; January 11, 1996, in Austin, Texas; January 16, 1996, in Arlington, Texas; and January 17 & 18, 1996, in Houston, Texas.

The department has specified the required number of hours of training for NCTs in §143.17. The subsection reflects the number of hours recommended to the Texas Board of Health (board) by the MRTAC. The "core" training which consists of 98 classroom/clock hours, at least one unit of human anatomy and radiologic procedures must be completed before a person may perform a radiologic procedure after January 1, 1998. The number of hours of training, in addition to the "core" hours, which must be completed will be as follows: skull - 16; chest - 15; spine -20; abdomen - 8, upper extremities - 15; lower extremities 15; and podiatric -5. For example, a person who performs x-rays of the chest must complete a total of 113 hours (98 + 15) by December 31, 1997. Likewise, a person who will perform skull, chest, spine, abdomen and extremities procedures must complete 187 hours (98 + 16 + 15 + 20 + 8 + 15 + 15) by December 31, 1997.

The impact on access to care is expected to be minimized by adjusting or rearranging job duties for persons who perform radiologic procedures but who will not comply with the training requirements by January 1, 1998; practitioners performing radiologic procedures, as necessary, whenever a certified technologist or NCT is unavailable after January 1, 1998; allowing exemptions in documented hardship situations; and allowing persons to comply with the training requirements over a two-year period ending December 31, 1997.

Persons who are required to comply with the training requirements are encouraged to exercise responsible consumer choice in selecting the training program which will best fulfill the needs of the person to be trained. The department will not offer or provide the training.

A summary of the comments received and the department's responses are as follows.

COMMENT: A comment was received regarding the definition of fluoroscopy in §143.2. The commenter stated the definition assumed that all fluoroscopy was performed using conventional methods.

RESPONSE: The department agrees with the commenter and has added wording to clarify that it covers both digital and conventional methods.

COMMENT: A comment was received regarding the deletion of definitions for "direct supervision" and "rural area" from §143.2.

RESPONSE: The department has deleted all of §143.19, therefore, these definitions have been removed.

COMMENT: Concerning §143.3, a commenter questioned whether the term "board," used in this subsection meant the Texas Board of Health or the MRTAC.

RESPONSE: No changes were made as a result of the comment. The term "board" was previously clarified in §143.2, Definitions, and in §143.3(a)(2) to mean the Texas Board of Health. Both items were not proposed for amendment and did not appear with the proposed rules published in the December 22, 1995, issue of the Texas Register.

COMMENT: Concerning §143.5(d)(3), a commenter asked that the department amend the wording to cover students of osteopathic medicine.

RESPONSE: The department agrees and has added the wording.

COMMENT: Two commenters expressed concerns about the wording in §143.6(e)(1)(J)(i)-(iii) and how the denial of an application would be impacted by the American with Disabilities Act (ADA). One of the commenters recommended that the department's legal counsel review these clauses with the ADA in mind.

RESPONSE: No changes were made as a result of the comments. The department included this language in order to comply with the statutory language in the Act, as amended by HB 1200. Section 2.11 of the Act authorized the department to take disciplinary actions for the reasons stated in the rule. The department acknowledges there will be concerns and questions raised regarding the ADA in situations where the department proposes disciplinary action under these clauses. The department will comply with the ADA as it applies to the rights of licensees and applicants for a professional license.

COMMENT: Several commenters asked that §143.7[(c)], which was proposed for deletion, be retained in the rules and that only the January 1, 1990, application deadline be deleted. Retaining and revising the rule would permit persons who had experience performing radiologic procedures from September 1, 1982 - August 31, 1987, to qualify for the general certificate or limited certificate, and continue to perform radiologic procedures without completing the training set out in §143.17.

RESPONSE: The department agrees that the Act allows these persons to become certified and has retained and revised this subsection. The department prefers that these persons become certified as medical radiologic technologists (MRTs) and limited medical radiologic technologists (LMRTs). Then these persons will be subject to the department's renewal and CE requirements, as well as the section in the rules related to violations and subsequent actions. In the alternative, the facilities where these persons perform radiologic procedures could apply for a hardship exemption and be exempt from the certification or training rules.

COMMENT: A comment was received regarding §143.7(c) [(d)] (3) and the application of ADA. The commenter remarked that the language was too broad and vague.

RESPONSE: No changes were made as a result of the comments. This paragraph was not proposed for a change. This wording, adopted in 1988, has never been used as a basis for denial of an application. However, the language is now under subsection (d)(3) in the final rules.

COMMENT: A commenter noted a typographical error in §143.7(e)(3), where the reference should be to the NMTCB, not the MNTCB.

RESPONSE: The department agrees and has made the correction.

COMMENT: Regarding §143.7(g) [(i)] (1), a commenter noted that the letter "d" should be added to the word "file."

RESPONSE: The department agrees and has corrected the typographical error and relettered the subsection as (h)(1).

COMMENT: Two commenters supported the changes in §143.9(b) and (c)(2) which replaced the Committee on Allied Health Education and Accreditation (CAHEA) with the name(s) of the appropriate Joint Review Committee(s).

RESPONSE: The department agrees and no changes were made as a result of the comments. The department acknowledges their support.

COMMENT: Concerning §143.9(d)(6)(E)(v), two commenters asked that the rule be changed to allow a practitioner to supervise students while the student is completing the clinical experience. One of the commenters stated that the justification was because the practitioners have the credentials to supervise students.

RESPONSE: The department acknowledges that practitioners have education and training in the diagnosis of conditions and diseases and in the interpretation of diagnostic films, rather than training and education in the performance of a radiologic procedure. The department changed the rule so that a practitioner, an MRT employed at the clinical facility or an LMRT employed a the clinical facility must supervise the student.

COMMENT: Concerning §143.9, a commenter stated that the rules were unclear as to whom could supervise students.

RESPONSE: The department agrees with the comment. The additional wording in §143.9(d)(6)(E)(v) should clarify who may supervise students.

COMMENT: The department received a comment regarding §143.9(d)(6)(I), where name of the agency authorized to regulate proprietary schools should be updated.

RESPONSE: The department changed the wording in this subparagraph from Texas Education Agency (TEA) to the Texas Workforce Commission (TWC).

COMMENT: Concerning §143.9(d)(6)(J), a commenter had questions and concerns about the wording and whether it was intended to limit the number of students. The commenter also stated that the rules were ambiguous regarding supervision and direction of students.

RESPONSE: The department disagrees with the comment and no changes were made. The department needs the information regarding enrollment to determine the adequacy of resources, staffing and facilities.

COMMENT: Regarding §143.9(d)(8)(A), a commenter stated that the ratio of students to technologists should be one to one. The justification was that department-approved educational programs should have the same standards as a Joint Review Committee approved program.

RESPONSE: No changes were made as a result of the comment. The department determined that the proposed ratio was adequate.

COMMENT: Another commenter asked that in §143.9(d)(8)(A), the ratio of students to the supervising MRT or LMRT also apply to a practitioner, and that the MRT or LMRT should be employed by the clinical facility.

RESPONSE: No changes were made as a result of the comment. The department believes the current wording is sufficient.

COMMENT: A comment stated that in §143.9(d)(8)(A), the clause "if the program is sponsored by an institution" was not needed.

RESPONSE: The department agrees and revised the wording.

COMMENT: Regarding §143.9(e)(1), a comment was received in support of increasing the basic theory from 120 to 132 clock hours for the categories of skull, chest, spine, extremities and chiropractic. The commenter also supported the increase for the podiatric category from 60 to 66 clock hours.

RESPONSE: The department agrees with the comment and no changes were made.

COMMENT: A comment on §143.11(k) regarding the partial exemption suggested that the wording be changed to clarify that " . . . one-half of the CE requirements will be considered non-ionizing and indirect."

RESPONSE: The department agrees with the request for clarification, but disagrees with the suggested language. A technologist receives no "credit" for successful completion of an examination. Rather, the technologist is excused from one-half of the required number credits. The concept of an "exemption" is different from the concept of a "credit." In addition, a "non-ionizing radiation" topic can never be an "indirect" topic, and vice-versa. An explanation of the term "indirect" can be found in §143.11(c)(3), which was not proposed for amendment. The wording in subsection (k) has been clarified to indicate that the balance of the CE credits must be directly related to the performance of a procedure utilizing ionizing radiation.

COMMENT: A comment was received asking that the magnetic resonance imaging (MRI) examination offered by the American Registry of Radiologic Technologists (ARRT) be added to §143.11(k).

RESPONSE: The department agrees and added the wording.

COMMENT: Concerning §143.14(b)(6), a commenter stated that the rule was vague as to whom had the power to determine an impairment.

RESPONSE: No changes were made as a result of the comment. The wording was taken directly from the statute. The application of both the rule and the statute fall under the rules for a contested case hearing, and by Chapter 2001, Government Code. Hence, the department may only propose disciplinary action. The hearing examiner prepares a proposal for decision which is forwarded to the Commissioner of Health. The hearing examiner would be in a position to determine whether the proposal was based on adequate or appropriate information regarding the person's incapacity.

COMMENT: Concerning §143.14(c)(8), comments were received regarding the performance of radiation therapy by a certified MRT whose education and training were in only diagnostic radiography (x-ray). The rationale for the comments were based on the fact that the entry level education for radiation therapists was being raised to a baccalaureate degree in the year 2000 due to the explosion of technological advancements in the field and the complexity of the curriculum.

RESPONSE: No changes were made as a result of the comments. The proposal to issue "specialty" certificates is not without merit, but requires a substantive change to the rules. The commenters' proposal would be best addressed through future rule-making.

COMMENT: Concerning §143.14 (c)(19), a commenter asked that the wording "in the workplace" be deleted from the rule.

RESPONSE: No changes were made as a result of the comment. The department disagrees with the comment because it is not unheard of for a patient to become a spouse, or for a spouse to become a patient.

COMMENT: Concerning §143.16, a comment was received requesting that the proposed rules be amended to include a category of dangerous and hazardous procedures which could be performed only by RNs, PAs, or certified MRTs.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16, another commenter stated that because training for RNs and PAs did not include any of the technical aspects of diagnostic radiology, there was no justification for an additional list of radiologic procedures which could be performed by RNs or PAs.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16 and RNs, a commenter stated that RNs commonly assist with fluoroscopy procedures under the direction of a practitioner. The commenter further stated that the rules of the Texas State Board of Nurse Examiners' (BNE) "Standards of Nursing Practice" require the RN to "accept only those nursing assignments that are commensurate with (their) own educational preparation, experience, knowledge and ability." The commenter asked that an RN who performed radiologic procedures, for which they have been trained, under the direction of a practitioner be exempted from the restrictions of this section.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Under §143.16 a commenter asked whether the operation of a gamma camera was a dangerous or hazardous procedure, and whether an RN could operate the camera.

RESPONSE: No changes were made as a result of the comment. The operation of a gamma camera does not constitute the performance of a radiologic procedure, as the gamma camera does not utilize ionizing radiation. The source of radioactivity is the radiopharmaceutical administered to the patient being imaged by the camera. A person who handles and administers the radiopharmaceutical to the patient performs a radiologic procedure according to the definition of radiologic procedure contained in the Act.

COMMENT: Regarding §143.16 a comment was received asking that the rules identify hazardous procedures which RNs and PAs can perform. The commenter stated that this would be helpful in rural areas where RNs and PAs perform radiologic procedures.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Several comments were received in support of the list of hazardous procedures.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16, several commenters agreed with the proposed list of dangerous or hazardous procedures.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16 (b) & (c), several commenters asked that the definitions of "dangerous" and "hazardous" be changed so that they are less ambiguous.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16, one commenter urged that the department seek input from the BNE and the Texas State Board of Medical Examiners (BME) before adopting a list of dangerous or hazardous procedures.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The department agrees with the comments. Input from these boards was requested in October 1995. Written comments from the BNE were received in January and February 1996. No written comments were received from the BME. The departmet has requested that these agencies submit proposed language which specifically addresses dangerous and hazardous radiologic procedures and training for RNs and PAs.

COMMENT: Several comments were received which went beyond the proposed language in §143.16 and urged the department to either issue specialty certificates for the various disciplines of radiologic technology: radiography, nuclear medicine technology and radiation therapy, or restrict the scope of practice for the certified MRT because of safety and liability issues. Many of the comments specifically asked the department to adopt rules that would allow only a registered radiation therapist to perform radiation therapy.

RESPONSE: The department agrees with the concerns and will reconsider the issue of recalling all general certificates and issuing specialty certificates at a later date. The proposal did not address these issues. New rules cannot be adopted at this time to address these concerns. The department urges technologists, organizations and other interested persons or groups to make note of the new §143.14. Violations and Subsequent Actions, subsection (c)(8). Complaints about certified MRTs violating this subsection may be submitted to the department through the complaint hotline: 1-800- 942-5540.

COMMENT: Regarding §143.16, many commenters remarked that there were no radiologic procedures which should be performed by persons who are not certified MRTs, and that all persons who perform radiologic procedures should be certified MRTs and LMRTs. No one should be allowed to be NCTs or exempt.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The department agrees that when incorrectly or inappropriately performed, all radiologic procedures are dangerous or hazardous. The department agrees that if all persons had to be certified and there were no exemptions, the rules could be greatly simplified. However, rule-making was done in response to a specific legislative mandate which allows NCTs and exemptions.

COMMENT: Concerning §143.16, a comment was received concerning on-the-job trained technologists who have many years of experience performing dangerous or hazardous procedures in hospitals which participate in the federal Medicare cost-reimbursement program or which are accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO). The commenter was concerned because even if the technologist completed the training in §143.17, the technologist would not be allowed to perform a dangerous or hazardous procedure. The commenter urged the department to make a

provision for this group so they would not become unemployable or apply for a hardship exemption.

RESPONSE: The department determined that a change in §143.7 was needed as a result of the comment. The department acknowledges the concerns about on the job trained technologists with many years of experience who did not apply for certification under the "special provisions for persons who have performed radiologic procedures during the five year period immediately preceding September 1, 1987 (September 1, 1982 through August 31, 1987)." Section 143.7(c) was rewritten to allow these technologists to apply for either the general or limited certificate, based on their length of experience. With certification, the technologist would not be restricted to only non-dangerous or non-hazardous procedures.

COMMENT: Two commenters had concerns about the impact of §143.16 on rural health clinics (RHCs). The commenters alleged that the section as proposed would be detrimental to the clinics because "the proposed rules begin to move some basic radiographic examinations into the realm of hazardous and/or dangerous examinations...inhibit[ing their] ability to train nurses to provide these services..."

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16, a commenter stated "[t]he list of 'dangerous' procedures was too broad when applied to hospitals." The commenter asked that NCTs in JCAHO accredited or Medicare-certified hospitals be allowed to perform computed tomography, interventional radiography, including angiography, fluoroscopy and or fluorography, and cineradiography.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Under §143.16, a commenter asked if personnel performing one specific dangerous procedure could be "grandfathered in," or be exempt from the mandatory training requirements and instead be allowed to take a very brief proficiency exam limited to the one specific dangerous procedure.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The mandatory training requirements are for persons who may not perform dangerous or hazardous procedures. The training requirements do not apply to the situation described in the comments. In order to perform a dangerous or hazardous procedure, the person must be certified by the department as an MRT. The person could be "grandfathered in" under the provisions of §143.7(c), if the person had two years of experience performing radiologic procedures during the five year period September 1, 1982 - August 31, 1987. To perform a dangerous procedure the person must be an MRT. To perform a hazardous procedure on or after January 1, 1997, the person must be an MRT or LMRT. A proficiency examination was not authorized in HB 1200.

COMMENT: A comment was received asking that §143.16 be amended so that senior students in a Joint Review Committee-accredited educational program could be employed to perform the procedures under the supervision of a certified MRT.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making. The employed students would be allowed to perform non-dangerous or non-hazardous procedures if they have completed the training requirements for NCTs set out in §143.17(d). Concerns about if and when students in traditional education programs have completed the NCT training requirements will also be addresed through future rule-making.

COMMENT: Regarding §143.16, a commenter agreed with pediatric radiography being listed as a hazardous procedure because these exams are some of the most challenging exams, even when performed by skilled technologists. The commenter indicated that these exams require expert knowledge in radiation safety, radiographic exposure, positioning and anatomy.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that pediatric radiography should remain in §143.16 because in general, proliferating tissues are more radiosensitive. According to the commenter [most] people do not reach a level of radioresistance until approximately age 20, and that special skills in both imaging and radiation protection are required for pediatric radiography.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that chest radiography is a difficult procedure that requires some talent for positioning in order to ensure that the entire lung field is included on the film.

RESPONSE: During the rule development process, chest radiography was identified as a hazardous procedure, but was later removed from the list. Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that radiographs of the ribs were not mentioned in the proposed rules at §143.16. The commenter assumed that they would be included in chest radiography although the technique is significantly different.

RESPONSE: No changes were made as a result of the comments. Training regarding rib radiography is covered under the chest component under §143.17 (d).

COMMENT: A commenter suggested that in §143.16, "[p]erhaps a better way to address the problem [of identifying dangerous or hazardous procedures] is to list those procedures that may be performed by NCT personnel."

RESPONSE: No changes were made as a result of the comments. The department's objective was to carry out the legislation which clearly indicates that the dangerous or hazardous procedures must be identified by rule. Proposed new §143.16

has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: In §143.16 (b), several commenters asked about RCVTs performing fluoroscopy in a cardiac catheterization lab. Some of the commenters requested an exemption from either the rule or from the penalties.

RESPONSE: The department acknowledges the concerns expressed, but has no authority to exempt the RCVTs from the rules or the penalties. The department will continue to study the issues and welcomes the continued input from the cardiovascular technology community.

COMMENT: Many commenters asked why the department would allow an LMRT to perform the dangerous procedures as set out in the proposed §143.16(b), including administrations of radiopharmaceuticals, brachytherapy and radiation therapy.

RESPONSE: The department agrees with the concerns expressed and did not intend to allow an LMRT to perform beyond the limited scope of practice. The wording will be clarified in future rule-making. An LMRT may not perform any dangerous procedures and may only perform those hazardous procedures which are within the LMRT's certification.

COMMENT: Several comments were received indicating agreement with the list of procedures which the NCT should not perform in §143.16 (b).

RESPONSE: The department acknowledges the comment in support of the proposal. Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: Regarding the proposed §143.16(b)(2), a commenter objected to the rule allowing a Registered Nurse (RN) to administer a radiopharmaceutical. The commenter asked that the rule indicate that the RN must be able to demonstrate that he/she was trained in the safe handling of radioactive materials in appropriately restricted areas since the injection of radiopharmaceuticals extended beyond the arena of just patient exposure (the patient becomes a source of radioactivity for a period of time and can expose others).

RESPONSE: More information is needed in order to make a decision about procedures an RN may perform. The concerns would be best addressed through future rule-making.

COMMENT: A comment was received indicating "[t]he phrase "... unless administered by a registered nurse" in §143.16 (b)(2) might be misleading. The commenter stated that it appeared to grant blanket approval for RNs to administer radiopharmaceuticals, regardless of training in the safe use of radiopharmaceuticals. The Bureau of Radiation Control (BRC) was responsible for reviewing user qualifications for all individuals who work with radiation, including personnel who handle and inject radioactive materials (technologists and nurses)."

RESPONSE: More information is needed in order to make a decision about procedures an RN may perform. The concerns would be best addressed through future rule-making.

COMMENT: A comment was received from the Texas Radiation Advisory Board (TRAB) on April 17, 1996, regarding §143.16(b) and (c). The TRAB recommended differentiating therapeutic nuclear medicine procedures as hazardous procedures, and diagnostic nuclear medicine procedures as dangerous procedures. Further, the TRAB recommended designating the administration of therapeutic quantities of radionuclides as a hazardous procedure.

RESPONSE: The comments, which were not received in time to be considered by the MRTAC, would be best addressed through future rule-making.

COMMENT: Another commenter suggested that more specific criteria for designating procedures as either dangerous or hazardous in §143.16 be added to (b) and (c). The commenter asked the department to recognize that the real danger or hazards associated with radiologic procedures was a missed diagnosis due to poor image quality as a result of operator error. The missed diagnosis could result in significant patient injury, suffering or death.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Several commenters asked that §143.16(b)-(d) be clarified regarding which radiologic procedures the LMRT may perform, and that a cross-reference be made to §143.7 regarding the LMRT's scope of practice. Several commenters suggested moving subsection (d) so that it appeared before the wording in (b) and (c).

RESPONSE: The department agrees with the commenters and will strengthen and clarify the wording in these subsections through future rule-making.

COMMENT: Concerning §143.16(c), two commenters asked that skull radiography, identified in the proposed rules as hazardous procedures, be modified to exclude anterior, posterior, lateral, Caldwell and Water's views. One of the commenters later added a fifth view, Townes, to the list of those that should be excluded from the hazardous procedures list. The commenters stated that NCTs could be properly trained to perform these views of the skull and that the appropriate training should be added to §143.17 regarding mandatory training for NCTs.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making. It is important to note here that if an NCT receives training on procedures which are included in the future rules, the NCT will not be permitted to perform the identified hazardous procedures.

COMMENT: Concerning §143.16(c), a commenter noted, "Pediatric radiography is not defined. It is unreasonable to proscribe routine procedures simply on the basis of a patient's age. There is no compelling rationale to make this distinction."

RESPONSE: The department will consider adding a definition for "pediatric" in §143.2 concerning definitions in future rule-making, when addressing hazardous procedures.

COMMENT: Several commenters stated that §143.16(c) was too restrictive and asked that skull, pediatric, spine, shoulder,

pelvic and sternum radiographs be excluded from the hazardous list.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration in order to allow more time for comments regarding hazardous radiologic procedures. The comments would be best addressed through future rule-making.

COMMENT: A comment was received that the list of hazardous procedures in §143.16(c) should be reconsidered as it applied to the hospital setting. A survey by the commenter indicated that many hazardous procedures are now performed by NCTs in a hospital setting. The commenter recommended that the list of hazardous procedures be revised to permit the performance of the procedures in a hospital which either participated in the federal Medicare cost reimbursement program or was accredited by the JCAHO.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A comment was received concerning the effective date of §143.16(c), regarding hazardous procedures. The commenter noted that many of the procedures identified as hazardous were being performed at the current time by persons who were not MRTs or LMRTs.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Commenters asked that §143.16(c)(4) regarding pediatric radiography be amended to exclude not only the extremities, but also the abdomen and chest. One of the commenters stated that these radiologic procedures were necessary in emergency situations and gave examples of aspirations of foreign objects or substances and life-threatening bowel obstructions.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: One commenter suggested that §143.16(c)(4) would preclude an Advanced Practice Nurse (APN) from performing chest x-rays to determine if a pediatric patient had pneumonia, and that the rules did not define what age determines who is a pediatric patient.

RESPONSE: A definition of "pediatric" will be addressed in future rule-making.

COMMENT: Concerning §143.16(c)(5), a commenter stated that oblique spine projections and L5-S1 spot films would fall under the procedures identified as hazardous, and that in the commenter's opinion there were no more hazards associated with these procedures than with the non-hazardous spine projections. In the opinion of the commenter, there was no justification for identifying these radiologic procedures as hazardous when more difficult examinations were not defined as hazardous.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.16(c)(5), commenters asked that the hazardous spine radiography procedures be changed from "spine radiography, excluding anterior-posterior/ posterior-anterior (AP/PA) and lateral views," to read "[f]lexion and [e]xtension spine radiography."

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning proposed §143.16(c)(5), a commenter stated that the spine radiography procedures identified as hazardous would require a practitioner to employ an MRT or LMRT to attain efficient use of personnel in a private office. The commenter further stated that the fiscal note in the proposed preamble oversimplified the economic impact to solo practitioners.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making. The department agrees that the economic impact to the health care community has not been identified. Until the rules are adopted, the department will not approve training programs. Because there are no approved training programs for NCTs, it is difficult to accurately speculate what the cost of the training might be. The department anticipates that the cost of training NCTs and/or the cost of employing certified MRTs and/ or LMRTs will be offset by savings of time, equipment, and supplies when procedures are performed correctly without repeated exposures. The department acknowledges that the overall impact, including costs and benefits, of the rules implementing the legislative mandate are unknown at this time. It is not the intent of the department to oversimplify or minimize the cost to those who are required to comply. The department regrets that it did not have all the information needed at the time to determine the actual cost to those required to comply. In providing the cost estimate in the proposed preamble, the department complied with the requirements set out by the Office of the Secretary of State.

COMMENT: Concerning §143.16 (c), a commenter stated that the inclusion of oblique spines and other special views was arbitrary and should be left to the practitioner's discretion and judgement regarding the employee's capabilities.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making. In HB 1200, the Texas Legislature authorized the board to determine the list of dangerous or hazardous procedures which may only be performed by a practitioner or MRT. The Legislature did not authorize the board to determine which procedures are best left to the practitioner's discretion or judgement.

COMMENT: Concerning §143.16 (c), a commenter stated that the list would no longer allow an NCT to perform excretory

urograms and oral cholecystograms under the guidance of a physician. The commenter stated the proposed rules "... were completely arbitrary, reflective of a trend to monopolize and not mandated by consideration of quality or public good."

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making. The purpose of the Act is to "protect the health and safety of the people of this state from the harmful effects of excessive radiation used for medical purposes by establishing minimum standards..." In 1995 the Texas Legislature authorized the board to, "... by rule, identify radiologic procedure that are dangerous or hazardous and that may only be performed by a practitioner or an MRT certified under [the] Act."

COMMENT: Regarding §143.16 (d), a commenter stated that "scope of practice" was a "vague assertion." The commenter stated that the "Texas License does not prescribe 'scope of practice' for licensed physicians, nor should it do so (unless there is explicit waiver for physicians and osteopathic physicians)."

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making. The commenter possibly misconstrued the proposed rule. In §143.16(d), the catch title for the subsection was "Scope of Practice." The rule was intended to clarify that the department's rules did not authorize LMRTs to perform beyond the scope of practice for the LMRT. In addition, the department's rules do not intend to authorize a practitioner, whether a podiatrist, chiropractor or licensed physician (allopathic or osteopathic), to perform radiologic procedures beyond the scope of the license. For example, the rules do not authorize a podiatrist to perform a chest x-ray.

COMMENT: Concerning 143.16(f) regarding mammography, several commenters in the radiation therapy community asked that a similar subsection be included for radiation therapy.

RESPONSE: The department agrees that radiation therapy should have similar stringent standards. House Bill 63 (HB 63), passed by the 73rd Texas Legislature, 1993, required the adoption of very strict standards for mammography systems. No equally stringent standard exists for radiation therapy systems at this time. If the legal authority existed for such measures, the department would consider adding the issue under future rule-making. Complaints regarding technologists performing radiation therapy may be made by calling the Professional Licensing and Certification Division - Complaint Hotline: 1-800-942-5540. Complaints regarding radiation therapy devices or equipment may be made by calling the BRC at (512) 834-6688.

COMMENT: A comment relating to §143.16(f) indicated that the commenter believed the wording intended to regulate who could interpret or read a mammogram.

RESPONSE: HB 63, also known as the Health and Safety Code §401.421, et seq., established standards regarding the qualifications of physicians who may interpret or read mammograms. The code also stated that a certified MRT was the person qualified to perform the radiologic procedure known as the mammogram. The code did not allow a licensed physician to perform a mammogram. The proposed §143.16 included a reference to the code and the rules adopted to implement the code, in order to aid the understanding of the reader. The reference will be included in future rule-making regarding dangerous and hazardous procedures. Mammography may be performed only in facilities which hold a current Texas Certificate for Mammography Systems (TCMS). Moreover, only interpreting physicians, technologists and physicists listed on the approved application for the facility may participate in the mammography system's operations. Persons needing more information about TCMS are encouraged to contact the BRC at (512)834-6688, or consult the Health and Safety Code §401.

COMMENT: A commenter remarked that the proposed subsection 143.16(h) required that persons obtain the evaluation of a licensed medical physicist when seeking an amendment to subsections (b) or (c), yet the department provided no indication that such an evaluation had been made regarding the procedures identified in subsections (b) or (c). The commenter asked for a report of the determination of the MRTAC on the hazardous nature of the procedures listed.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: Several commenters asked that §143.16(h) be either modified or deleted.

RESPONSE: Proposed new §143.16 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: Two comments were received regarding the wording in §143.17(a). The commenters indicated that the wording implied that a person who completed the training in this section would be "banned" for "barred" from becoming a certified MRT in the future.

RESPONSE: The department clarified that the training completed may not be used toward the educational requirements for a general or limited certificate described in §143.7.

COMMENT: A comment was received regarding §143.17(c), indicating that the instructors should be approved by the department, not just have to meet the instructor approval requirements.

RESPONSE: No changes were made as a result of the comment. The department agrees with the comment. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that the training specified in §143.17(d) appeared to be minimally acceptable and stressed that knowledge of anatomy alone was insufficient for proper training. The commenter indicated that persons taking x-rays needed a special type of training regarding patient positioning and technique selection, even on the most modern electronically phototimed equipment.

RESPONSE: The department agrees and no changes were made as a result of the comment.

COMMENT: Regarding §143.17(d), a commenter stated that the number of hours was not excessive and that there was

no justification for adopting a lower number of hours when the health status of the patient is involved.

RESPONSE: The department agrees and no changes were made as a result of the comment.

COMMENT: One commenter noted that the proposed §143.17(d) exceeded 120 hours and was inconsistent with the hours discussed during negotiations about HB 1200.

RESPONSE: No changes were made as a result of the comment. The number of hours specified in §143.17 (d) was recommended to the department by the MRTAC. The MRTAC was apprised of the "minimum of 120 hours" discussed during the legislative session. The MRTAC noted that 120 hours could not adequately cover the difficult subject matter set out in subsection (d).

COMMENT: Comments were received stating that the training requirements in §143.17(d) went beyond the "minimum of 120 hours" discussed during the legislative session.

RESPONSE: No changes were made as the result of the comments. The number of hours specified in §143.17 (d) was recommended to the department by the MRTAC. The MRTAC was apprised of the "minimum of 120 hours" discussed during the legislative session. The MRTAC noted that 120 hours could not adequately cover the difficult subject matter set out in subsection (d).

COMMENT: Several comments were received indicating the 40 hours of radiation safety in §143.17(d)(1)(A) were excessive.

RESPONSE: No changes were made as the result of the comments. The department agrees with the recommendation from the MRTAC which determined that 40 hours was appropriate due to the difficult nature of this important topic.

COMMENT: Regarding §143.17 (d), four comments were received stating that 143 hours of training were excessive to perform an x-ray of the wrist and ankle. The commenters asked for an exemption for these simple x-rays.

RESPONSE: No changes were made as a result of the comments. The correct number of hours which must be completed in order to perform these x-rays is 128. The hardship exemptions will be addressed through future rulemaking. The commenter is invited to review the hardship exemptions. Hardship applications will be available after the rules relating to hardship exemptions are adopted.

COMMENT: A comment was received regarding §143.17(d) which stated that the core training of 90 or more hours was excessive for an office assistant who would only perform a chest or finger x-ray, and that 15 hours of training was excessive for a finger x-ray.

RESPONSE: No changes were made as a result of the comment. The 98 hours of training for the "core" subjects and the 15 hours for upper extremities are the minimum number of hours recommended by the MRTAC.

COMMENT: Many comments were received in support of the number of hours and the anatomical areas identified in the training requirements in §143.17(d). Several commenters asked the department to resist reducing the training requirements because of pressure from the medical community.

RESPONSE: The department agrees and no changes were made as a result of the comments.

COMMENT: A commenter asked that the 98 hours specified in §143.17(d)(1)-(4) be reduced to 25 hours.

RESPONSE: No change was made as a result of the comment. The department disagrees with the suggestion and maintains that 98 hours is appropriate for the difficult nature of the subject matter, and to protect the public.

COMMENT: A commenter requested that the 98 hours set out in §143.17 (d)(1) be reduced to 80 hours and the 85 hours in (d)(2) be reduced to 65 hours.

RESPONSE: The department disagrees and no changes were made in (d)(1) as a result of the comment. The department has determined that 98 hours is appropriate. The department partially agrees with the comment in (d)(2), where the number was reduced to 78 hours. An additional 16 hours of training for the skull unit was added later. The hours for (d)(1) and (2) now total to 192 hours. However, there appears to be no need for a person to complete both the podiatric unit and the lower extremities unit. Thus, the actual number of hours required to perform procedures of the skull, chest, spine, abdomen, and upper and lower extremities totaled 187 hours.

COMMENT: A comment was received indicating that the number of hours in §143.17(d) should be increased to 400 clock hours of classroom training and 200 clock hours of clinical training.

RESPONSE: No changes were made to the rules as a result of the comment. The department disagrees and has determined that 187 hours is appropriate.

COMMENT: A commenter asked that the number of hours in §143.17(d) be reduced to a total of 120 hours. The commenter implied that fewer hours should be needed for persons who already had experience in radiologic technology.

RESPONSE: No changes were made to the rules as a result of the comment. The department considered establishing two sets of requirements, one for entry-level personnel and another level for persons who had previous experience. The department determined that this would be confusing, ambiguous and would possibly create numerous questions and concerns. There were persons who have had extensive experience in a short period of time, and others who have had narrow or limited experience over an extensive period of time. Setting up a two-tiered or multitiered training was determined to be too difficult to administer and would not appreciably reduce the number of hours needed to assure adequate radiation safety and protection.

COMMENT: A commenter noted that in §143.17 (d)(1)(B) that an NCT must have 25 hours in radiation equipment topics while the LMRT must have only 15 hours. The commenter also noted that the LMRT must have six hours for chest anatomy and the NCT must have 15 hours for the chest unit. The commenter asked the numbers of hours be reduced for the NCT.

RESPONSE: No changes were made as a result of the comments. Based on the overall number of hours for the NCT and the LMRT, the NCT must complete 27 per cent of the LMRT hours. Some of the classroom hours are higher for the NCT as

compared to the LMRT because there is no clinical component for the NCT training.

COMMENT: Concerning §143.17(d)(1)(D), several commenters questioned how patient care relating to radiologic procedures could possibly be covered in only eight hours.

RESPONSE: No changes were made as a result of the comments. The department appreciates the concerns of the commenters but did not accept the comments for a rule change. Presently, there are no patient care training requirements for NCTs currently performing radiologic procedures. The department believes that eight hours of training, excluding cardiopulmonary resuscitation and similar courses, is the minimum number of hours a person should complete. The department encourages practitioners and health care organizations to provide opportunities to staff who are involved in patient care to complete additional training in universal precautions; first aid; moving patients safely and body mechanics; aseptic and sterile techniques; recognizing emergency situations and reporting a code; managing patients with catheters, IV's, chest tubes and feeding tubes; managing pediatric, combative, elderly or disabled patients; patient confidentiality; medical records; medical ethics and more, in order to improve patient care.

COMMENT: A comment was received regarding §143.17(d) indicating that the commenter may have confused the terminology and/or training for NCTs with that for LMRTs in §143.9. The commenter stated that the LMRT should complete no more than 60 hours of training rather than the 98 hours proposed. The comment was construed to mean that the training for NCTs described in §143.17 should be reduced.

RESPONSE: The department disagrees and no changes were made as a result of the comment. The appropriate number of hours for the core training remains at 98 hours.

COMMENT: Several comments were received regarding §143.17(d) which asked that the training be specific to different practice settings and/or different geographic settings.

RESPONSE: No changes were made as the result of the comments. The department acknowledges that radiographic procedures need to be tailored for each practice setting, the preferences of each practitioner, and the special needs of each patient. The department, however, is responsible for establishing a registry of NCTs, and the type of training each NCT completed will be part of the registry. The training specified in this section is basic, entry-level training that provides a "platform" for more specific training needed in different practice settings and locales. The department believes that training labeled by practice setting, such as family practice, chiropractic, orthopedic, or rural, may confuse both the public and the medical community. During their careers, NCTs may work for different types of practitioners or in different locations. The department believes the current method of identifying the training requirements by anatomical units is simpler and the best method of designating the NCT's training on the registry.

COMMENT: A comment was received regarding §143.17(d), indicating that the commenter did not believe that geographic location (urban/suburban/rural) was related to the training required in order to perform a radiologic procedure.

RESPONSE: The department agrees and no change was made as the result of the comment.

COMMENT: Several commenters asked if the training described in §143.17(d) applied to their practice. The commenters asked what requirements would have to be fulfilled and how they would know whether the training would be accepted by the department.

RESPONSE: No changes were made as a result of the comments. The training requirements must be completed by each person performing radiologic procedures who is not currently certified as an MRT or LMRT by the department, or who is not a practitioner. The training must be completed by January 1, 1998. Once the rules are adopted, training program applications will be accepted and processed by the department. Each training program approved by the department will receive written notification. The department will make a list of approved programs available to interested parties.

COMMENT: Regarding §143.17(d), a commenter remarked that the training would not "... greatly improve the NCT's ability to safely perform the radiologic procedures required for a particular specialty." The commenter stated that "...the key to safe and quality radiography is on-the-job training where the technologist is required to actually demonstrate the ability to safely take quality radiographs."

RESPONSE: No changes were made as a result of the comment. The department agrees with the commenter that training alone is not an assurance of competency. The rules require that approved training programs must use written and oral examinations to periodically measure student progress. The department encourages practitioners to require staff, or applicants for employment, to demonstrate proficiency before performing a radiologic procedure on human beings, just as practitioners would observe the safe performance of other medical procedures such as taking a blood sample or measuring arterial blood pressure.

COMMENT: A commenter requested that the training requirements in §143.17(d) be reduced to one fifth or less."

RESPONSE: The number of hours in §143.17(d)(1) and (d)(2)(A)-(C) and (E)-(G) were not changed as a result of the comment. The number of hours for the abdomen in (d)(2)(D) was changed from 15 hours to eight hours.

COMMENT: Regarding §143.17(d), a comment was received in support of mandatory education and training. Based on the commenter's own personal experience and observations, most NCTs used no shielding or collimation, even on pediatric patients. The commenter further indicated that a PA who performed radiographic procedures repeated exams numerous times and did not identify films before they were processed.

RESPONSE: The department agrees with the concerns stated by the commenter and no changes were made to the rules as a result of the comment. Training for PAs would be best addressed through future rule-making.

COMMENT: A commenter disagrees with the training program approval procedures required in §143.17(e) - (g). The commenter further stated that the programs should be more flexible and administered by a practitioner, who should have the discretion to choose the teacher and the course of instruction.

RESPONSE: No changes were made as a result of the comment. The department agrees with the commenter and feels that sufficient flexibility already exists in the rules. A training program could be set up in a manner very similar to what the commenter requested. The minimum requirements were established in order to standardize the training throughout the state, bearing in mind that employees will inevitably change occupations and employers.

COMMENT: A comment was received stating that under §143.17(e) - (g), the rules should allow a practitioner to hire a certified MRT as a consultant to test, train and/or retrain the NCT. The commenter stated that the department could adopt a standardized and practical training manual specific to the provider's specialty.

RESPONSE: No changes were made as a result of the comment. The department agrees with the commenter's concepts and feels the rules already allow the type of training described. The department urges the commenter to develop the training program and apply for approval after the rules are effective. Concerning development of a practical training manual, the department encourages those who are uniquely qualified to develop a manual and make it available to practitioners and NCTs.

COMMENT: A comment was received regarding §143.17(f)(10) concerning the correct name for the agency which approves proprietary schools. The functions were transferred from the TEA to the TWC.

RESPONSE: The department agrees with the comment and updated the wording in this subparagraph.

COMMENT: Regarding §143.17(j), several commenters asked if an RN would qualify for any previously completed training.

RESPONSE: The department added wording in subsection (j) to clarify that continuing education accepted by the BNE, and which met the requirements of §143.17(d) would count toward previously completed education.

COMMENT: A comment was received regarding §143.17(j) requesting that the rules be amended to explicitly provide for RNs to receive a certain number of hours of credit for completion of a professional nursing program and urged the department to consult with the BNE.

RESPONSE: The department had not addressed the RN in the final rules other than to indicate that by September 1, 1996, the department would recommend proposed rules to the board. The comment would be best addressed through future rule-making.

COMMENT: Two comments were received asking that the credit in §143.17(j) not be tied to the CE credits for the MRT or LMRT.

RESPONSE: Other than the change mentioned in the previous comment/response, no further changes were made as a result of the comments. The department urges the commenters to carefully review the CE requirements for MRTs and LMRTs described in §143.11. The department feels the CE rules are very broadly written, and it is quite possible that any structured, preplanned education could meet the requirements. Any previously completed credit would have to meet the requirements of §143.17(d).

COMMENT: Under §143.17(j)(5) a commenter asked that the department consider additional documentation as proof of successful completion of previously completed training.

RESPONSE: The department agrees and additional wording has been added.

COMMENT: A commenter noted that the rules did not consider whether the radiologic procedure would be performed by health care professionals such as PAs and RNs , nor the locale in which the procedure would be performed.

RESPONSE: The department agrees with the commenter that the rules do not indicate that the training of PAs and RNs was taken into consideration. At the time the rules were being prepared for publication, the information regarding the education of PAs and RNs, as it applied to radiographic procedures, was not adequate to make an informed decision. The comment would be best addressed through future rule-making. More information is still needed in order to make a recommendation regarding the appropriate number of hours will be provided to the board by September 1, 1996.

COMMENT: A commenter stated that in §143.17, the rules did not take into account whether the person was an RN or PA, and asked that the course content be changed to delete those portions which are unnecessary for an RN or PA.

RESPONSE: The department agrees with the concern and plans to make a recommendation to the board by September 1, 1996, as to the training required of RNs and PAs.

COMMENT: Regarding §143.17, a comment was received indicating that only the curriculum relevant to radiography should be considered when adjusting the number of hours of training for RNs and PAs.

RESPONSE: The comment would be best addressed through future rule-making. The department plans to consider the specific training for RNs and PAs and make a recommendation to the board by September 1, 1996.

COMMENT: Under §143.17, several comments pertained to the performance of basic radiographic procedures in RHCs by non-certified persons. Some of the procedures performed were identified as dangerous procedures and no training was included for these procedures in §143.17. The commenters were asking for special consideration for RHCs.

RESPONSE: No changes were made as a result of the comments. The department considered the hardships for RHCs when describing the list of dangerous or hazardous procedures and when setting up the mandatory training requirements. The department believes that rural Texans deserve to have appropriately trained persons performing radiologic procedures. If a hardship exists, RHCs are encouraged to take advantage of the opportunity to apply for a hardship exemption for a practitioner, as set out in §143.19.

COMMENT: Many comments were received indicating that the training required in §143.17 would place a hardship and an "undue burden on private physician offices."

RESPONSE: No change was made as the result of the comments. The department shares the concerns of the commenters regarding the costs of training, the costs of time spent away

from the office to complete the training, and turnover of personnel. The department regrets that funding for the training programs was not included in the legislation. However, opportunities should be explored for training and for employing already trained persons which are not cost prohibitive. The department urges the medical community to collaborate on providing this training in the most cost effective manner using teleconference networks with medical schools and weekend seminars.

COMMENT: Concerning 143.17(c), a commenter asked why his "tech" must learn all the other views if the "tech" only performs AP and lateral chests. The commenter stated that the x-ray machine used had an "Autotech that figures out the proper exposure automatically by using a computer. The nurse needs only measure and position [the patient]. The exposure is perfect 99.9% of the time."

RESPONSE: The "tech" performing only chest radiography would be required to only complete the 98-hour core course plus 15 hours for the chest component by January 1, 1998. The department cannot write a curriculum based on the individual differences of x-ray machines, as there are hundreds of different machines currently in use state wide. Furthermore, if an NCT were listed on the registry, it would not indicate that the training completed was for a specific x-ray machine.

COMMENT: Several commenters suggested that the department offer a proficiency exam or testing mechanism in lieu of or in combination with the training requirements set out in §143.17.

RESPONSE: No changes were made as a result of the comments. The department believes that no legal authority exists to adopt an administrative procedure for a proficiency examination. However, the department requested an attorney general opinion on the matter, and if the opinion issued is favorable to the exam scheme, the department would address the comments through future rule-making.

COMMENT: Concerning §143.17, many comments were received requesting stronger training standards. Several comments were received "against HB 1200" because the training requirements were insufficient. Several commenters noted that pipe fitters' and hair dressers' training programs exceeded that required for NCTs. The commenters asked about the wisdom of the difference when radiology concerned the health of family members and cherished friends. Many commented that the hours required could not possibly cover patient care and gave specific examples.

RESPONSE: No changes were made as a result of the comments. The department appreciates the concerns of the commenters and acknowledges the irony. The department also notes that no license or certificate will be issued to the NCTs. NCTs will be placed on the department's registry. NCTs currently performing radiologic procedures may or may not have had the training. The Texas legislature mandated incremental improvements rather than a radical change, such as requiring all persons performing radiologic procedures to become LMRTs or MRTs.

COMMENT: A commenter asked that the rules be expanded so that students who are in the second year of a two year education program in radiologic technology would be deemed to meet the NCT training requirements in §143.17. Another commenter asked that persons who have completed an LMRT education program also be deemed to meet the training requirements in §143.17. The commenters cited the number of hours of training each of these groups have completed and stated the common goal should be patient safety.

RESPONSE: No changes were made as a result of the comments. The comments would be best addressed through future rule-making. The department agrees with the basic premise that students in the traditional and LMRT education programs should be recognized for the training they have already completed. It is an important issue and the department needs more time to look into the implications and the benefits of adopting rules which would provide linkages between the NCT training, LMRT education, and MRT education. The department referred the issues to the MRTAC for its recommendations by September 1, 1996.

COMMENT: A commenter asked that the Board of Health establish rules for RNs, PAs and podiatric procedures.

RESPONSE: The department agrees and the Board of Health will take up this issue later in the year.

COMMENT: Two commenters asked that NCTs with at least three years of active practice be allowed to take a proficiency examination in order to be listed on the department's registry described in §143.18.

RESPONSE: The department would need to propose new rules for this purpose if the legal authority exists for such an examination. The department is awaiting the issuance of an Attorney General Opinion on the matter before considering future rule-making.

COMMENT: Several commenters were against the rules in §143.19 allowing hardship exemptions because there are certified technologists in abundant supply and there was no need to grant an exemption.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: A commenter stated that the rules attempted to deal with isolated areas that needed hardship exemptions and that the application procedures were not an unreasonable way of dealing with this on a case by case basis.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: A comment was received indicating that the department had set up extensive requirements for applying for a hardship exemption under §143.19. The comments indicated that the department should consider extenuating circumstances in granting hardships. The commenter asked that the department consider additional criteria for granting a hardship.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that the hardship exemptions in §143.19 did not provide for meaningful relief to small solo or small group medical practices.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: A comment was received indicating that the intent of the hardship exemption was to provide for an "automatic" exemption from the training standards. The commenter stated that the rules add application requirements not found in HB 1200 and that the rules exceed the statutory authority. The commenter stated that "Section 2.05(l) . . . directs the department that any one of the following shall be deemed to be a hardship.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Concerning §143.19, a comment was received indicating that the language in HB 1200 clearly limited the discretion of the department in the granting or denial of an exemption. The commenter stated further that the rules would "unfairly restrict rights of hospitals, federally qualified health care centers (FQHCs) and practitioners . . . by adding application requirements which are not found in the statutes and which exceed the department's statutory authority."

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that even if a hardship under the rules in §143.19 was granted, the applicant must submit information to the BRC regarding the minimum training, education, and experience qualifications of the handlers of the radioactive materials.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated that great care needed to be exercised in granting exemptions established in §143.19, otherwise it would render as meaningless the training requirements in §143.17.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: A commenter stated that RHCs should be allowed to apply for an exemption under §143.19.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. An RHC is not one of the entities allowed to apply for a hardship exemption according to the statutory language. A practitioner who is the medical director of the RHC may apply.

COMMENT: A commenter was concerned that the proposed rules in §143.19 permit only rural applicants to apply for a hardship exemption, and that was not supported in the law.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: A commenter asked that the definition of "rural" be deleted from the rules at §143.2 and that the term rural be deleted from §143.19.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: Three commenters stated that the criteria to qualify for an exemption in §143.19(c)(4)(A) should be limited to a sworn statement from the applicant describing the applicant's attempts to attract and retain an MRT. The commenter stated that the "extensive wage survey data" was onerous and excessive.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter remarked that HB 1200 stated "a great distance" and the commenter disagreed with the 100-mile distance stated in §143.19(c)(4)(B). The commenter felt that a 10-mile distance would be appropriate in some cases.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter asked that the 100-mile distance in §143.19(c)(4)(B) be reduced to 30 miles, and that language be added to cover situations where the applicant hospital and the school of radiologic technology were less that 30 miles apart " . . . but the hospital and school are separated by urban density or suburban sprawl that make the travel between the two a hardship."

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A comment was received indicating that in §143.19(c)(4)(B), "50 miles would appear to be more workable."

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Two commenters stated that the 100-mile distance in §143.19(c)(4)(C) was arbitrary and the 100-mile distance would be a hardship in itself.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for

input. The comment would be best addressed through future rule-making.

COMMENT: A commenter asked that the 100-mile distance in §143.19(c)(4)(B) be reduced to 50 miles in order to qualify for a hardship exemption.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Two commenters stated that the proposed language in the "waiting list" exemption in §143.19(c)(4)(C) was " . . . excessive and not supported by law because it placed a duty on the applicant to provide information within a time certain when the applicant has no control over the time period in which a program director [of a school of radiologic technology] will choose to respond to an applicant's request for a letter." The commenter asked that the wording be changed to only require " . . . a sworn affidavit from the applicant stating that admissions to the school were pending due to a lack of faculty or space."

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: A commenter stated the requirement of the letter from the program director during the 90 days preceding application for a hardship exemption under §143.19(c)(4)(C) was "unfair, excessive and not supported by law."

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: Several comments were received regarding the "demand for graduates" exemption in §143.19(c)(4)(D), stating that the criteria were excessive and not supported by law. The commenters stated that requiring a letter from the program director of a school of radiologic technology indicating that the number of graduates did not meet the demands of the applicants was inappropriate. One commenter stated that the applicant was in the sole position of to determine what its needs were.

RESPONSE: Proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input. The comment would be best addressed through future rule-making.

COMMENT: One commenter stated that the objective criteria in §143.19(c)(4) protected applicants from arbitrary and capricious disapproval by the department. The commenter further stated that having broadly written requirements rather than specific requirements would require the department to exercise discretion in granting or denying a hardship exemption.

RESPONSE: The department acknowledges the support of the proposed rules. However, proposed new §143.19 has been withdrawn from consideration for permanent adoption to allow more time for input.

COMMENT: A commenter asked that the department not limit the hardship exemptions to those included in HB 1200.

RESPONSE: The commenter is urged to submit specific suggestions as to additional hardships allowed by the statutory language. The suggestions would likely require additional rules which would be best addressed through future rule-making.

COMMENT: A commenter stated that it was hoped " ... that HB 1200 would finally correct inadequacies of previous legislation ... Anyone wishing to dilute the requirements further are not interested in quality health care. People living in rural Texas should not be automatically exposed to a lower standard of health care,"

RESPONSE: The department agrees and no changes were made to the rules as a result of the comments.

COMMENT: A commenter stated that more improvement could only be accomplished by increasing the number of hours and carefully examining those procedures listed under dangerous or hazardous to include even more radiologic procedures. Protection from ionizing radiation during medical procedures cannot be improved if the rules are amended to contain less requirements.

RESPONSE: The department disagrees and no changes were made to the rules as a result of the comments. The department has determined that the dangerous or hazardous procedures identified in §143.16 are appropriate and that the training identified in §143.17 is adequate.

COMMENT: A commenter stated that the new rules appeared to be a money-making scheme for anyone wanting to open a school or who may employ NCTs. The commenter opined that the proposed rules would endanger more lives.

RESPONSE: The department disagrees and no changes were made to the rules as a result of the comments.

COMMENT: A commenter stated that " ... the department's method of indicating language to be deleted was very confusing. The use of a beginning bracket ([ ) at the start of a paragraph within a section to be deleted, but than (sic) not using an ending bracket ( ]) until the very end of a section made it difficult to determine exactly what was to be deleted." The commenter gave as an example Section 143.8. Examinations. , paragraph 5, where a beginning deletion bracket appeared, but no ending bracket appeared until the end of the newly numbered paragraph 5, where proposed amendments appeared.

RESPONSE: No changes were made to the rules as a result of the comments. The department believes the specific citation was a typographical error where the ending bracket was missing. All other pairs of brackets indicating deletion were checked by two groups within the department. We were also advised as to the correct form and style by staff of the Texas Register Division (TRD) of the Office of the Secretary of State. The commenter is encouraged to consult with the TRD staff, or refer to the TRD Form and Style Manual.

COMMENT: A commenter took exception with the fiscal note included in the proposed preamble, stating that the current cost of continuing education of $6.25 per hour would be an appropriate figure to use in determining the approximate cost of training an NCT. The commenter speculated the cost was

closer to $925 per person, rather than the $0 to $1000 stated in the preamble. The commenter further speculated that the total cost of training NCTs, if all NCTs completed all anatomical units, would approach $6.5 million, and that this would have a great deal more impact on health care than anticipated.

RESPONSE: The department agrees with the comment regarding the preamble. No changes were made to the rules as a result of the comments.

COMMENT: A comment was received stating support for a specialty certification in nuclear medicine technology.

RESPONSE: No changes were made to the rules as a result of the comment. The comment would be best addressed through future rule-making.

COMMENT: Several commenters stated they were against the new rules in §§143.15-143.19 because their offices were already being checked periodically by the BRC.

RESPONSE: No changes were made to the rules as a result of the comment. The BRC's focus was on the radiation producing machines, where these proposed rules relate to radiologic procedures and the credentials of the persons performing the procedures.

COMMENT: Numerous comments were received in support of HB 1200 and the new rules in §§143.14-143.19.

RESPONSE: The department agrees and no changes were made to the rules as a result of the comments.

COMMENT: Several comments were received against HB 1200. Many asked that the bill not be passed.

RESPONSE: No changes were made to the rules as a result of the comments. The department proposed the rules in response to HB 1200 which was passed by the 73rd Texas Legislature, Regular Session, 1995.

COMMENT: Numerous comments were received that were not in favor of the training requirements and the new registry. The commenters had questions and concerns about the costs and benefits of the new rules.

RESPONSE: The department does not agree or disagree with the comments. No changes were made to the rules as a result of the comments.

COMMENT: Many comments were received from the podiatric community regarding the proposed rules relating to the training requirements for NCTs who performed only podiatric radiography. Some of the commenters asked the department to delegate the determination of the training for podiatric assistants to the Texas State Board of Podiatric Examiners (BPE), and adopt a new section of the rules for this purpose.

RESPONSE: The department has not received an official proposal or other indication from the BPE regarding its scheme for approving training programs in podiatric radiography. The department would consider delegating or deferring the decision to another state agency provided objective criteria were included in order to protect the public from the hazards of excessive radiation. The department clearly understands that some podiatric x-ray equipment poses minimum threat of radiation overexposure; however, not all podiatrists utilize this type of equipment. The concerns and comments would be best addressed through future rule-making. The department encourages commenters and the podiatric community to submit a proposal before June 1, 1996.

Minor editorial changes were made for clarification purposes and to improve grammar and style.

The following provided comments on the proposed rules: American Society of Cardiovascular Professionals/Society for Cardiovascular Management; Texas Academy of Family Physicians; Texas Academy of Physician Assistants; Texas Chiropractic Association; Texas Employment Commission; Texas Hospital Association; Texas Medical Association; Texas Nurses Association; Texas Organization of Rural & Community Hospitals; Texas Osteopathic Medical Association; Texas Podiatric Medical Association; Texas Society of Radiologic Technologists; Texas State Board of Nurse Examiners; Texas State Board of Podiatric Medical Examiners; Senator Michael Galloway; El Centro College, Health and Legal Studies Division, Dallas County Community College District; County Day Clinic, Fort Worth; Texas Oncology School of Radiation Therapy, Sammons Cancer Center, Baylor University Medical Center, Dallas; Anderson Cancer Center, Houston; Houston; Richmond Imaging Associates, Houston; Frio Hospital; Durrett Chiropractic & Natural Health Care Clinic, Spring; Hendrick Medical Center, Abilene; Citizens Medical Center, Victoria; Department of Radiologic Oncology, Sammons Cancer Center, Texas Cancer Center, Arlington; Tyler Junior College; Metropolitan Hospital, San Antonio; Northeast Methodist Hospital, San Antonio; San Antonio Regional Hospital; Allison Cancer Center, Texas Oncology, P.A., Midland; McCamey Hospital; Mother Frances Hospital, Tyler; R. E. Thomason Hospital, El Paso; MASI Healthcare Services, Fort Worth; Shackelford County Hospital District, Albany; Methodist Medical Center, Dallas; Southern Bone & Joint Center Associates, McAllen; Family Wellness Center, Marble Falls; Family Practice Center, McAllen; Rio Grande Orthopaedic Institute; Family Physicians Clinic, McAllen; St. Paul Medical Center Cancer Center, Dallas; Health Education and X-ray Institute (HEXI), Houston; Medical Clinic of Houston; McGregor Medical Center, Houston; Houston Community College; Reagan Memorial Hospital, Big Lake; Anson General Hospital; Odessa College, Stonewall Hospital; Medical Arts Hospital, Lamesa; Advanced Healthcare Education Center (AHEC); Cuero Community Hospital; Austin Community College; M.D.Anderson Moncrief Cancer Center; Davenport X-ray Company, Dallas; Arlington Cancer Center; Texas Children's Hospital, Houston; Baylor College of Medicine, Houston; St. Luke's Episcopal Hospital, Houston; Ben Taub Hospital, Houston; Blinn College, Brenham; Harris County Health Department; Bay Area Medical Imaging Society; Houston Area Radiologic Technologist Society; and department staff.

While none of the commenters were against the rules in their entirety, they expressed concerns, questions and made recommendations.

The amendments are adopted under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.07(f), concerning

minimum standards for mandatory training; §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; §2.11(c)(5), concerning standards of practice of radiologic technology, and the Texas Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§143.2. Definitions.

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

Administrator-The department employee designated as the administrator of regulatory activities authorized by the Act.

AP-Anterior/posterior.

Committee-The Medical Radiologic Technologist Advisory Committee.

Federally qualified health center (FQHC)-A health center as defined by 42 United States Code, §1396d(2)(B).

Fluoroscopy-The practice of examining tissues using a fluorescent screen, including digital and conventional methods.

Fluorography-Hard copy of a fluoroscopic image; also known as spot films.

Instructor-An individual approved by the department to provide instruction and training in the discipline of medical radiologic technology in an educational setting.

Limited Medical Radiologic Technologist (LMRT)-A person who holds a limited certificate issued under the Act, and who under the direction of a practitioner, intentionally administers radiation to specific parts of the bodies of other persons for medical reasons. The limited categories are the skull, chest, spine, extremities, podiatric and chiropractic.

Non-Certified Technician (NCT)-A person who has completed a training program and who is listed on the registry. An NCT may not perform a radiologic procedure which has been identified as dangerous or hazardous.

PA-Posterior/anterior.

Registry-A list of names and other identifying information of non-certified technicians.

TRCR-Texas Regulations for the Control of Radiation, 25 Texas Administrative Code, Chapter 289 of this title (relating to Texas Regulations for the Control of Radiation). The regulations are available from the Standards Branch, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (phone 1-512-834-6688).

§143.5. Applicability.

(a) (No change.)

(b) Except as specifically exempted by subsections (c) and (d) of this section, the provisions of the Act and this chapter apply to any person representing that he or she performs radiologic procedures.

(c) This chapter does not prohibit the performance of a radiologic procedure by the following:

(1) A person who is a practitioner and performs the procedure in the course and scope of the profession for which that person holds the license; or

(2) a person who performs a radiologic procedure involving a dental x-ray machine, including panarex or other equipment designed and manufactured only for use in dental radiography and under the instruction or direction of a dentist, if the person and the dentist are in compliance with rules adopted under the Act, §2.08 by the Texas State Board of Dental Examiners (BDE).

(d) This chapter does not prohibit the performance of a radiologic procedure which has not been identified as dangerous or hazardous under §143.16 of this title (relating to Dangerous or Hazardous Procedures) by the following:

(1) a person who has successfully completed a training program for non-certified technicians, in accordance with §143.17 of this title (relating to Mandatory Training Programs for Non-Certified Technicians) and who performs the procedure under the instruction or direction of a practitioner if the person and the practitioner are in compliance with rules adopted under the Act, §2.08, by the Texas State Board of Chiropractic Examiners (BCE), Texas State Board of Medical Examiners (BME), Texas State Board of Nurse Examiners (BNE), or Texas State Board of Podiatry Examiners (BPE);

(2) a person who has successfully completed a training program for non-certified technicians, in accordance with §143.17 of this title and who performs the procedure in a hospital that participates in the federal Medicare program or is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO);

(3) students of medicine, osteopathic medicine, podiatry or chiropractic when under instruction or direction of a practitioner and if the student and the practitioner are in compliance with paragraph (1) of this subsection;

(4) a person who performs only in-vitro clinical or laboratory testing procedures as described in the Texas Regulations for the Control of Radiation (TRCR);

(5) a student enrolled in a radiologic technology program which meets the requirements of §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) or §143.17 of this title who is performing radiologic procedures in an academic or clinical setting as part of the program; or

(6) a person who performs radiologic procedures for a period of not more than ten days, while enrolled in and as a part of continuing education activities which meet the minimum standards set out in §143.11 of this title (relating to Continuing Education Requirements) and who is licensed or otherwise registered as a medical radiologic technologist in or by another state, District of Columbia, a territory of the United States, the American Registry of Radiologic Technologists (ARRT), the Nuclear Medicine Technology Certification Board (NMTCB), the Board of Registry of the American Society of Clinical Pathologists, the Canadian Association of Medical Radiologic Technologists, the British Society of Radiographers, the Australian Institute of Radiography, or the Society of Radiographers of South Africa; or

(7) a person who performs the procedure in a hospital, federally qualified health center (FQHC), or for a practitioner, if a

hardship exemption was granted to the hospital, FQHC or practitioner by the department during the previous 12-month period.

§143.7. Types of Certificates and Applicant Eligibility.

(a) General. The purpose of this section is to set out the types of certificates issued and the qualifications of applicants for certification as a medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT).

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

(4) A person certified as an MRT or LMRT shall carry or display the original certificate or current identification card at the place of employment. Photocopies shall not be carried or displayed but may be kept in a file.

(5) No one shall display, present, or carry a certificate or an identification card which has been altered, photocopied, or otherwise reproduced.

(6) (No change.)

(b) Special provisions for persons who were nationally certified on September 1, 1987. Upon payment of the application fee, submission of the application forms and approval by the department, the department shall issue a general certificate to a person who was registered by the American Registry of Radiologic Technologists (ARRT) or American Registry of Clinical Radiography Technologists (ARCRT) as a radiographer, was registered by the ARRT as a radiation therapy technologist, or was registered by the ARRT or certified by the Nuclear Medicine Technologist Certification Board (NMTCB) as a nuclear medicine technologist.

(c) Special provisions for persons who have performed radiologic procedures during the five-year period, September 1, 1982, through August 31, 1987. Upon payment of the certification fee, submission of the application forms and approval by the department, the department shall issue:

(1) a general certificate to a person who has performed radiologic procedures for not less than two years, as documented on form(s) prescribed by the department; or

(2) a limited certificate to a person who has performed radiologic procedures for not less than one year, as documented on forms prescribed by the department. The category or categories of the limited certificate shall be based upon the type of documented radiologic procedures performed by the applicant. However, a limited certificate in the chiropractic or podiatric categories may be issued provided the applicant submits written evidence satisfactory to the department of at least one of the following items:

(A) for the chiropractic limited certificate, that the applicant was certified by the American Chiropractic Registry of Radiologic Technologists (ACRRT) on September 1, 1987; and

(B) for the podiatry limited certificate, that the applicant was certified by the American Society of Podiatry Assistants (ASPA) on September 1, 1987.

(d) Minimum eligibility requirements for certification. The following requirements apply to all individuals applying for certification who do not meet the requirements of subsections (b) or (c) of this section:

(1) graduation from high school or its equivalent as determined by the Texas Education Agency;

(2) attainment of 18 years of age;

(3) freedom from physical or mental impairment which interferes with the performance of duties or otherwise constitutes a hazard to the health or safety of patients;

(4) submission of a satisfactory completed application on a form supplied by the department;

(5) payment of the appropriate fees; and

(6) eligibility for the specific certificate requested as set out in subsection (e), (f), (g), (h), or (i) of this section.

(e) Medical radiologic technologist. To qualify for a general certificate an applicant shall meet at least one of the following requirements in addition to those listed in subsection (d) of this section:

(1) possess current national certification as a registered technologist by the ARRT;

(2) have successfully completed the ARRT's examination in radiography, radiation therapy technology, or nuclear medicine technology;

(3) possess current national certification as a certified nuclear medicine technologist by the NMTCB;

(4) have successfully completed the NMTCB's examination in nuclear medicine technology; or

(5) be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are more stringent than or are substantially equal to the requirements for Texas certification.

(f) Limited medical radiologic technologist. To qualify for a limited certificate, an applicant shall meet the requirements in paragraph (4) of this subsection and subsection (d) of this section.

(1) The limited categories shall be as follows: skull; chest; spine; extremities; chiropractic; and podiatry.

(2) Holding a limited certificate in all categories shall not be construed to mean that the holder of the limited certificate has the rights, duties, and privileges of a general certificate holder.

(3) Persons holding a limited certificate in one or more categories may not perform radiologic procedures involving the use of contrast media, utilization of fluoroscopic equipment, mammography, tomography, bedside radiography, and nuclear medicine or radiation therapy procedures.

(4) To qualify for a certificate as an LMRT an applicant must provide documentary evidence satisfactory to the department of the following:

(A) the successful completion of a limited course of study as set out in §143.9 of this title (relating to standards for the Approval of Curricula and Instructors) and the successful completion of the appropriate limited examination in accordance with §143.8 of this title (relating to Examinations);

(B) current licensure or registration as a LMRT by another state, District of Columbia, or territory of the United States of America whose requirements are more stringent than or substantially

equal to the requirements for the Texas limited certificate at the time of application to the department; or

(C) current general certification as a MRT issued by the department. The MRT must surrender the general certificate and submit a written request for a limited certificate indicating the limited categories requested. The request shall be postmarked on or before the certificate expiration date and shall be accompanied by the general certificate and the certificate and/or identification card replacement fee.

(g) Temporary medical radiologic technologist (general or limited). To qualify as a temporary medical radiologic technologist (general or limited), an applicant shall meet at least one of the following requirements. These are in addition to those listed in subsection (d) of this section.

(1) For the general temporary certificate, an applicant must:

(A) have successfully completed or be within 28 calendar days of successful completion of a course of study in radiography, radiation therapy technology, or nuclear medicine technology which is accredited by the Committee on Allied Health Education and Accreditation (CAHEA);

(B) be approved by the ARRT as examination eligible;

(C) be approved by the NMTCB as examination eligible;

(D) be currently licensed or otherwise registered as a medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(2) For the temporary limited certificate, the applicant must have successfully completed or be within 28 days of successful completion of a course of study in limited practice approved in accordance with §143.9 of this title (relating to Standards for the Approval of Curricula and Instructors) by the department; or be licensed or registered as a limited medical radiologic technologist by another state, District of Columbia, or territory of the United States whose requirements are not substantially equal to the Texas requirements for certification at the time of application to the department.

(h) Special provisions for technologists on active military duty. An MRT or LMRT whose certificate has expired and was not renewed under §143.10(h) of this title (relating to Certificate Issuance, Renewals, and Late Renewals) may file a complete application for another certificate of the same type as that which expired.

(1) The application shall be on official department forms and be filed with the application processing fee.

(2) An applicant shall be entitled to a certificate of the same type as that which expired based upon the applicant's previously accepted qualifications and no further qualifications or examination shall be required except payment of the certification fee.

(3) The application must include a copy of the official orders or other official military documentation showing that the holder was on active duty during any portion of the period for which the applicant was last certified.

(4) An application is subject to disapproval in accordance with §143.6(e) of this title (relating to Application Requirements and Procedures).

(5) An applicant for a different type of certificate than that which expired must meet the requirements of this chapter generally applicable to that type of certificate.

(i) Alternate eligibility. An individual who does not qualify under subsections (a)-(h) of this section may qualify under §143.15 of this title (relating to Alternate Eligibility Requirements).

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

(a) (No change.)

(b) General certificate programs. All curricula and programs to train individuals to perform radiologic procedures must be accredited by the Joint Review Committee on Education in Nuclear Medicine Technology (JRCENMT) or the Joint Review Committee on Education in Radiologic Technology (JRCERT).

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

(1) be accredited by the JRCERT to offer a limited curriculum in radiologic technology; or

(2) be approved by the department and be offered within the geographic limits of the State of Texas. Subsections (d) - (h) of this section apply only to department-approved programs.

(d) Application procedures for limited certificate programs. An application shall be submitted to the department at least ten weeks prior to the starting date of the program to be offered by a sponsoring institution. Official application forms are available from the department and must be completed and signed by the program director of the sponsoring institution's program. Program directors shall be responsible for the curriculum, the organization of classes, the maintenance and availability of facilities and records, and all other policies and procedures related to the program or course of study.

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

(4) Notices will be mailed to applicants informing the applicant of the completeness or within 60 days of receipt of the application in the department. Applications which are received incomplete may cause postponement of the program starting date. The time of receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying 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).

(5) (No change.)

(6) The application shall include:

(A)-(B) No change.)

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

(D) a list of instructors approved by the department, in accordance with subsection (g) of this section, and any other persons responsible for the conduct of the program including management and administrative personnel. The list must indicate what courses

each will teach or instruct or the area(s) of responsibility for the non-instructional staff;

(E) a list of clinical facilities, letters of agreement from clinical facilities signed by the chief executive officer(s) of each facility, and clinical schedules, including the following items identified for each clinical site utilized. A clinical facility which is not listed on the application may not be utilized for a student's clinical practicum until the department has accepted the additional clinical facility. The items are:

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

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

(iv) (No change.)

(v) an acknowledgement that students may only perform radiologic procedures under supervision of a practitioner, a limited medical radiologic technologist (LMRT) employed at the clinical facility or medical radiologic technologist (MRT) employed at the clinical facility;

(vi) copies of the current identification cards issued by the department to the LMRTs or MRTs who will supervise the students at all times while performing radiologic procedures; and

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

(F) clearly defined and written policies regarding admissions, costs, refunds, attendance, disciplinary actions, dismissals, re-entrance, and graduation which are provided to all prospective students prior to registration. The admission requirements shall include the minimum eligibility requirements for certification in accordance with §143.7(c)(1)-(2) of this title (relating to Types of Certificates and Applicant Eligibility);

(G) the name of the program director who is an approved instructor in accordance with subsection (g) of this section, and who has not less than three years of education or teaching experience in the appropriate field or practice;

(H) a letter of acknowledgement and a photocopy of the current Texas license from a practitioner in the appropriate field of practice who is knowledgeable in radiation safety and protection and who shall be known as the designated medical director. The practitioner shall work in consultation with the program director in developing goals and objectives and in implementing and assuring the quality of the program;

(I) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175; and

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

(7) All applications must identify the type of curriculum according to the limited categories in accordance with §143.7(f) of this title. 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 (e) of this section. If the curriculum differs from that set out in subsection (e) of this section, a typed comparison in table format clearly indicating how the curriculum differs from the required curriculum, including the number of hours for each topic or unit of instruction, shall be included.

(8) In making application to the department, the program director shall agree in writing to:

(A) provide a ratio of not more than three students to one full-time certified medical radiologic technologist engaged in the supervision of the students in the clinical environment;

(B)-(G) (No change.)

(H) permit site inspections by departmental representatives to determine compliance and conformance with the provision of this section. In lieu of a site inspection, the department may accept the most recent site visit report from a recognized accrediting body set out in subsection (c)(1) of this section;

(I) understand and recognize that the graduates' success rate on the prescribed examination will be monitored by the department and utilized as a criteria for rescinding approval. In addition to this criteria, the department may rescind approval in accordance with §143.14 of this title (relating to Violations and Subsequent Actions); and

(J) comply with the Texas Regulations for the Control of Radiation (TRCR), including but not limited to, personnel monitoring devices for each student upon the commencement of the clinical instruction and clinical experience.

(9) A site visit may be necessary to grant approval of the program. If a site visit is required, a site visit fee must be paid in accordance with §143.4 of this title.

(e) Curricula requirements. Each student must complete a curriculum which meets or exceeds the following requirements:

(1) at least 132 clock hours of basic theory or classroom instruction in the categories of skull, chest, extremities, spine, and chiropractic, and not less than 66 clock hours of basic theory instruction for podiatric is required. The required clock hours of basic theory/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. The following subject areas and minimum number of hours (in parentheses) must be included in all programs and must be instructor directed. The recommended clock hours for each shall be:

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

(D) applied human anatomy and radiologic procedures-(20);

(E) patient care and management essential to radiologic procedures and recognition of emergency patient conditions and initiation of first aid-(10);

(F) medical terminology-(6); and

(G) medical ethics and law-(6); and

(2) a clinical practicum for each category of limited curriculum is required. The practicum must include clinical instruction and clinical experience under the instruction or direction of a practitioner and an MRT or LMRT in accordance with the following chart. Figure 1, 25 TAC, §143.9 (e)(2)

(A) (No change.)

(B) The clinical experience must commence immediately following the clinical instruction and be completed within 180 days of the starting date of the clinical experience. Variances from this must be approved in advance by the department and must demonstrate good cause. A request for a variance must be submitted in writing to the administrator. For the purposes of this section, a normal pregnancy or medical disability shall be good cause.

(C) (No change.)

(D) The program director shall be responsible for supervising and directing the evaluation of the students' clinical experience and shall certify in writing that the student has or has not successfully completed the required clinical instruction and clinical experience. Such written documentation must be provided to each student within 14 days of completion of the clinical experience. Students who successfully complete the required clinical experience 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)(iii) of this title. Persons who participate in the evaluation of students' clinical experience must be an MRT or LMRT and have a minimum of two years of practical work experience performing radiologic procedures.

(f) Limited certificate educational program approval.

(1) Provided the requirements are met, the sponsoring institution shall receive a letter from the department indicating approval of the educational program in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals).

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The applicant shall be notified in accordance with §113.1 of this title.

(3) (No change.)

(g) Instructor approval for limited certificate programs.

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

(A) (No change.)

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

(C) (No change.)

(2) (No change.)

(3) Within 21 days of receipt of the application in the department, a notice will be mailed 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 fees paid as set out in §143.6(f)(2) and (3) of this title.

(4) An applicant who is not approved by the department shall be given an opportunity to request a formal hearing within ten 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, the right to a hearing is waived and the proposal action shall be taken.

(h) Instructor qualifications for limited certificate programs.

(1) An instructor(s) shall have education and experience in teaching the subjects assigned, shall meet the standards required by a sponsoring institution, if any, and shall meet at least one or more of the following qualifications:

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

(C) be a practitioner who is in good standing with all appropriate regulatory agencies including, but not limited to, the department, the Texas State Board of Chiropractic Examiners (BCE), Texas State Board of Medical Examiners (BME), or Texas State Board of Podiatry Examiners (BPE), the Texas Department of Human Services, the United States Department of Health and Human Services.

(2) (No change.)

(i) Transition. The currently approved programs shall have one year from the date of adoption of this amended section to comply with the new requirements.

§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)-(7) (No change.)

(8) An MRT or LMRT who holds a current and active annual registration or credential card issued by the American Registry of Radiologic Technologists (ARRT), or Nuclear Medicine Technology Certification Board (NMTCB)indicating that the MRT is in good standing and not on probation satisfies the continuing education requirement for renewal of the general or limited provided the hours accepted by the agency or organization which issued the card meet or exceed the requirements set out in subsection (c) of this section. The department shall be able to verify the status of the card presented by the MRT or LMRT electronically or by other means acceptable to the department. The department may review documentation of the continuing education activities in accordance with subsection (f)(1) of this section. This procedure shall be effective for renewals beginning in 1997.

(9)-(10) (No change.)

(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 Joint Review Committee on Education in Radiologic Technology (JRCERT), Joint Review Committee on Education in Nuclear Medicine Technology (JRCENMT), or the Council on Chiropractic Education (CCE) and is directly or indirectly related to the disciplines of radiologic technology; or

(3) (No change.)

(e)-(j) (No change.)

(k) Partial exemption. The department may consider granting an exemption for one-half of the continuing education requirement if the technologist submits proof of successful completion during the renewal period of an examination accepted by the department in a topic dealing with non-ionizing radiation. The balance of the hours must be directly related to the performance of a radiologic procedure utilizing ionizing radiation in accordance with subsection (c)(1) of this section. The following are examinations accepted by the department:

(1) the registry examination offered by the American Registry of Diagnostic Medical Sonographers; and

(2) the advanced-level examination in magnetic resonance imaging offered by the ARRT.

(l) Denial of request for exemption. A technologist whose request for exemption is denied by the department may be granted a 120-day extension to complete the continuing education requirements and may request a hearing on the denial within 30 days after the date the department notified the technologist of the denied exemption. If no hearing is requested in writing within 30 days, the opportunity for hearing shall be waived.

(m) 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.

§143.13. Certifying Persons with Criminal Backgrounds to be Medical Radiologic Technologists.

(a) (No change.)

(b) Pleadings of nolo contendere or criminal convictions which directly relate to the profession of radiology.

(1) The department may suspend or revoke any existing certificate, disqualify a person from receiving any certificate, or deny to a person the opportunity to be examined for a certificate because of a person pleading nolo contendere to or being convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medical radiologic technologist (MRT) or limited medical radiologic technologist (LMRT).

(2) In considering whether a pleading of nolo contendere or a criminal conviction directly relates to the occupation of an MRT or LMRT, the department shall consider:

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

(3) (No change.)

(c) Procedures for revoking, suspending, or denying a certificate or temporary certificate to persons with criminal backgrounds.

(1) The administrator shall give written notice to the person that the department intends to deny, suspend, or revoke the certificate or temporary certificate after hearing in accordance with the provisions of the Administrative Procedure Act, the Government Code, Chapter 2001, and the formal hearing procedures in §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(2) (No change.)

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

issued in Austin, Texas, on June 7, 1996

9608088
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 8, 1996
Proposal publication date: December 22, 1995
For further information, please call: (512) 458-7236

♦ ♦ ♦

25 TAC 143.14

The repeal is adopted under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board) with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.07(f), concerning minimum standards for mandatory training; §2.09, concerning rules on applications for certificates and approval of curricula, training programs, and instructors; §2.11(c)(5), concerning standards of practice of radiologic technology, and the Texas Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§143.14. Violations and Subsequent Actions.

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

issued in Austin, Texas, on June 7, 1996

9608087
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 8, 1996
Proposal publication date: December 22, 1996
For further information, please call: (512) 458-7236

25 TAC §§143.14, 143.17, 143.18

The new sections are adopted under the Medical Radiologic Technologist Certification Act, Texas Civil Statutes, Article 4512m, §2.05(e), which provide the Texas Board of Health (board)with the authority to adopt rules necessary to implement the Act; §2.05(a), concerning rules on certificates, education programs, instructors, and the registry; §2.07(f), concerning minimum standards for mandatory training; §2.09, concerning rules on applications for certificates and approval of curricula,

training programs, and instructors; §2.11(c)(5), concerning standards of practice of radiologic technology, and the Texas Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§143.14 Disciplinary Actions.

(a) The Texas Department of Health (department) is authorized to take the following disciplinary actions for the violation of any provisions of the Medical Radiologic Technologist Certification Act (Act) or this chapter:

(1) suspension, revocation, or nonrenewal of a certificate;

(2) rescission of curriculum, training program, or instructor approval;

(3) denial of an application for certification or approval;

(4) assessment of a civil penalty in an amount not to exceed $1,000 for each separate violation of the Act;

(5) issuance of a reprimand; or

(6) placement of the offender's certificate on probation and requiring compliance with a requirement of the department, including submitting to medical or psychological treatment, meeting additional education requirements, passing an examination, or working under the supervision of a medical radiologic technologist (MRT) or other practitioner.

(b) The department may take disciplinary action against a person subject to the Act for:

(1) obtaining or attempting to obtain a certificate issued under the Act by bribery or fraud;

(2) making or filing a false report or record made in the person's capacity as an MRT;

(3) intentionally or negligently failing to file a report or record required by law;

(4) intentionally obstructing or inducing another to intentionally obstruct the filing of a report or record required by law;

(5) engaging in unprofessional conduct, including the violation of the standards of practice of radiologic technology established by the department;

(6) developing an incapacity that prevents the practice of radiologic technology with reasonable skill, competence, and safety to the public as the result of:

(A) an illness;

(B) drug or alcohol dependency; or

(C) another physical or mental condition or illness;

(7) failing to report to the department the violation of the Act by another person;

(8) employing, for the purpose of applying ionizing radiation to a person, a person who is not certified under or in compliance with the Act;

(9) violating a provision of the Act or this chapter, an order of the department previously entered in a disciplinary proceeding, or an order to comply with a subpoena issued by the department;

(10) having a certificate revoked, suspended, or otherwise subjected to adverse action or being denied a certificate by another certification authority in another state, territory, or country; or

(11) being convicted of or pleading nolo contendere to a crime directly related to the practice of radiologic technology.

(c) Engaging in unprofessional conduct means the following:

(1) making any misleading, deceptive, or false representations in connection with service rendered;

(2) engaging in conduct that is prohibited by state, federal, or local law, including those laws prohibiting the use, possession, or distribution of drugs or alcohol;

(3) performing a radiologic procedure on a patient or client which has not been authorized by a practitioner;

(4) aiding or abetting a person in violating the Act or rules adopted under the Act;

(5) any practice or omission that fails to conform to accepted principles and standards of the medical radiologic technology profession;

(6) performing a radiologic procedure which results in mental or physical injury to a patient or which creates an unreasonable risk that the patient may be mentally or physically harmed;

(7) misappropriating medications, supplies, equipment, or personal items of the patient, client or employer;

(8) performing or attempting to perform radiologic procedures in which the person is not trained by experience or education or in which the procedure is performed without appropriate supervision;

(9) performing or attempting to perform any medical procedure which relates to or is necessary for the performance of a radiologic procedure and for which the person is not trained by experience or education or when the procedure is performed without appropriate supervision;

(10) performing a radiologic procedure which is not within the scope of a limited medical radiologic technologist's (LMRT) certificate, as set out in §143.7(f) of this title (relating to Types of Certificates and Applicant Eligibility);

(11) disclosing confidential information concerning a patient or client except where required or allowed by law;

(12) failing to adequately supervise a person in the performance of radiologic procedures;

(13) providing false or misleading information on an application for employment to perform radiologic procedures;

(14) providing information which is false, misleading, or deceptive regarding the status of certification; registration with the American Registry of Radiologic Technologists (ARRT) or Nuclear Medicine Technology Certification Board (NMTCB); or licensure by another country, state, territory, or District of Columbia;

(15) discriminating on the basis of race, creed, gender, sexual orientation, religion, national origin, age, physical handicaps or economic status in the performance of radiologic procedures;

(16) impersonating or acting as a proxy for an examination candidate for any examination required for certification;

(17) acting as a proxy for an MRT or LMRT at any continuing education required under §143.11 of this title (relating to Continuing Education Requirements);

(18) obtaining, attempting to obtain, or assisting another to obtain certification or placement on the registry by bribery or fraud;

(19) making abusive, harassing or seductive remarks to a patient, client or co-worker in the workplace or engaging in sexual contact with a patient or client in the workplace;

(20) misleadingly, deceptively or falsely offering to provide education or training relating to radiologic technology;

(21) failing to complete the continuing education requirements for renewal as set out in §143.11 of this title;

(22) failing to document the continuing education requirements for renewal as required by the department;

(23) failing to cooperate with the department by not furnishing required documents or responding to a request for information or a subpoena issued by the department or the department's authorized representative;

(24) interfering with an investigation or disciplinary proceeding by willful misrepresentation of facts to the department or its authorized representative or by use of threats or harassment against any person;

(25) failing to follow appropriate safety standards or the Texas Regulations for the Control of Radiation (TRCR) in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(26) failing to adhere to universal precautions or infection control standards as required by the Health and Safety Code, Chapter 85, Subchapter I;

(27) defaulting on a guaranteed student loan, as provided in the Education Code, §57.491;

(28) assaulting any person in connection with the practice of radiologic technology or in the workplace;

(29) intentionally or knowingly offering to pay or agreeing to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, or corporation for securing or soliciting patients or patronage to or from a person licensed, certified or registered by a state health care regulatory agency. The provisions of the Health and Safety Code, §161.091, relating to the prohibition of illegal remuneration apply to MRTs and LMRTs;

(30) using or permitting or allowing the use of the person's name, certificate, or professional credentials in a way that the person knows, or with the exercise of reasonable diligence should know:

(A) violates the Act, this chapter or department rule relating to the performance of radiologic procedures; or

(B) is fraudulent, deceitful or misleading;

(31) knowingly allowing a student enrolled in an education program to perform a radiologic procedure without direct supervision; or

(32) knowingly concealing information relating to enforcement of the Act or this chapter.

(d) A person subject to disciplinary action under subsection (b)(6) of this section shall, at reasonable intervals, be afforded an opportunity to demonstrate that the person is able to resume the practice of radiologic technology.

(e) An instructor engages in unprofessional conduct if the instructor violates any of the provisions of subsections (b) or (c) of this section or if the instructor:

(1) is an MRT or LMRT who fails to renew the certificate;

(2) is a practitioner who fails to renew his or her license or who has the license suspended, revoked, or otherwise restricted by the appropriate regulatory agency;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, religion, national origin, age, physical handicaps, sexual orientation, or economic status;

(4) abandons an approved course of study or a training program with currently enrolled students;

(5) knowingly provides false or misleading information on the application for instructor approval or on any student's application for certification; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, §85.203.

(f) An education program engages in unprofessional conduct if the program, including its employees or agents, violates any of the provisions of subsections (b) or (c) of this section or if the program:

(1) makes any misleading, deceptive, or false representations in connection with offering or obtaining approval of an education program;

(2) fails to follow appropriate safety standards or the TRCR in the operation of diagnostic or therapeutic radiologic equipment or the use of radioactive materials;

(3) discriminates in decisions regarding student recruitment, selection of applicants, student training or instruction on the basis of race, creed, gender, sexual orientation, age, physical handicaps, economic status, religion or national origin;

(4) aids or abets a person in violating the Act or rules adopted under the Act;

(5) abandons an approved education program with currently enrolled students; or

(6) fails to provide instruction on universal precautions as required by the Health and Safety Code, Section 85, Subchapter I.

(g) The department may take disciplinary action against a student for intentionally practicing radiologic technology without direct supervision.

(h) In determining the appropriate action to be imposed in each case, the department shall take into consideration the following factors:

(1) the severity of the offense;

(2) the danger to the public;

(3) the number of repetitions of offenses;

(4) the length of time since the date of the violation;

(5) the number and type of previous disciplinary cases filed against the person or program;

(6) the length of time the person has performed radiologic procedures;

(7) the length of time the instructor or education program has been approved;

(8) the actual damage, physical or otherwise, to the patient or student, if applicable;

(9) the deterrent effect of the penalty imposed;

(10) the effect of the penalty upon the livelihood of the person or program;

(11) any efforts for rehabilitation; and

(12) any other mitigating or aggravating circumstances.

(i) Formal hearing requirements are as follows:

(1) The administrator may only initiate or propose disciplinary action. Final action may be taken by the department only after the person has had an opportunity for a formal hearing to contest the proposed action.

(2) The formal hearing shall be conducted in accordance with the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health).

(3) Prior to institution of formal proceedings, the administrator shall give written notice to the person or program of the facts or conduct alleged to warrant disciplinary action and the person or program shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(4) To initiate formal hearing procedures, the administrator shall give the person or program written notice of the opportunity for hearing. The notice shall state the basis for the proposed action. Within ten days after receipt of the notice, the person or program shall give written notice to the administrator that the hearing is requested. Receipt of the written notice is presumed to occur on the tenth day after the notice is sent to the last address known to the department unless another date is reflected on the return receipt.

(A) If no request for a hearing is given within ten days after receipt of the notice, the person or program is deemed to have waived the hearing and be in agreement with the allegations and proposed action. If the hearing has been waived, the department shall recommend disciplinary action to the commissioner.

(B) If the person or program requests a hearing within ten days after receiving the notice of opportunity for hearing, the department shall initiate the department's formal hearing procedures in accordance with Chapter 1 of this title.

(C) If the person or program fails to appear or be represented at the scheduled hearing, the person or program is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. An appropriate order may be entered without further notice except as required by law.

(j) The following applies after disciplinary action has been taken.

(1) The department may not reinstate a certificate to a holder or cause a certificate to be issued to an applicant previously denied a certificate unless the department is satisfied that the holder or applicant has complied with requirements set by the department and is capable of engaging in the practice of radiologic technology. The person is responsible for securing and providing to the department such evidence, as may be required by the department. The administrator or the department shall investigate prior to making a determination.

(2) During the time of suspension, the former certificate holder shall return the certificate and identification card(s) to the department.

(3) If a suspension overlaps a certificate renewal period, the former certificate holder shall comply with the normal renewal procedures in this chapter; however, the department may not renew the certificate until the administrator or the department determines that the reasons for suspension have been removed and that the person is capable of engaging in the practice of radiologic technology.

(4) If the commissioner of health revokes or does not renew the certificate, the former certificate holder may reapply in order to obtain a new certificate by complying with the requirements and procedures at the time of reapplication. The department may not issue a new certificate until the administrator or the department determines that the reasons for revocation or nonrenewal have been removed and that the person is capable of engaging in the practice of radiologic technology. An investigation may be required.

(5) If the commissioner rescinds the approval of an instructor or program, the formerly approved instructor or program may reapply for approval by complying with the requirements and procedures at the time of reapplication. Approval will not be issued until the administrator or the department determines that the reasons for revocation have been removed. An investigation may be required.

§143.17. Mandatory Training Programs for Non-Certified Technicians.

(a) Purpose. The purpose of this section is to set out the minimum standards for approval of mandatory training programs, as required by the Medical Radiologic Technologist Certification Act (Act), §2.05(f), which are intended to train individuals to perform radiologic procedures which have not been identified as dangerous or hazardous. Individuals who complete an approved training program may not use that training toward the educational requirements for a general or limited certificate as set out in §143.7 of this title (relating to Types of Certificates and Applicant Eligibility). Effective January 1, 1998, before a person performs a radiologic procedure, the person must complete all the hours in subsection (d)(1)(A)-(D) of this section, and at least one unit in subsection (d)(2)(A) - (G) of this section.

(b) Instructor direction required. All hours of the training program completed for the purposes of this section must be live and inter-active and directed by an approved instructor. No credit will be given for training completed by self-directed study or correspondence.

(c) Approved instructors.

(1) For purposes of this section, an individual is approved by the Texas Department of Health (department) to teach in a training program if the individual meets the requirements of §143.9(h)(1)-(2) of this title (relating to Standards for the Approval of Curricula and Instructors). The application for the training program must demonstrate that the instructors meet the qualifications. No application for individual instructor approval is required.

(2) A limited medical radiologic technologist (LMRT) may not teach, train, or provide clinical instruction in a portion of a training program which is different from the LMRT's level of certification. For example, an LMRT holding a limited certificate in the chest and extremities categories may not participate in the portion of a training program relating to radiologic procedures of the spine. The LMRT may participate in the portions of the training program which are of a general nature and those specific to the specific categories on the limited certificate.

(d) Training requirements. In order to successfully complete a program, each student must complete the following training:

(1) courses which are fundamental to diagnostic radiologic procedures:

(A) radiation safety and protection for the patient, self and others - 40 classroom hours;

(B) radiographic equipment, including safety standards, operation and maintenance-25 classroom hours;

(C) image production and evaluation-25 classroom hours; and

(D) methods of patient care and management essential to radiologic procedures, excluding CPR, BCLS, ACLS and similar subjects - 8 classroom hours; and

(2) one or more of the following units of applied human anatomy and radiologic procedures of the:

(A) skull (five views: Caldwell, Townes, Waters, AP/PA, and lateral) - 16 classroom hours;

(B) chest - 15 classroom hours;

(C) spine - 20 classroom hours;

(D) abdomen, not including any procedures utilizing contrast media - 8 classroom hours;

(E) upper extremities, - 15 classroom hours;

(F) lower extremities, - 15 classroom hours; and/or

(G) podiatric - 5 classroom hours.

(e) Application procedures for training programs. An application shall be submitted to the department at least 30 days prior to the starting date of the training program. Official application forms are available from the department and must be completed and signed by an approved instructor, who shall be designated as the training program director. The training program director shall be responsible for the curriculum, the instructors, and determining whether students have successfully completed the training program.

(1) Official application forms must be executed in the presence of a notary public and shall be accompanied by the application fee in accordance with §143.4 of this title (relating to Fees). Photocopied signatures will not be accepted.

(2) Application forms and fees shall be mailed to the address indicated on the application materials. The department is not responsible for lost, misdirected, or undeliverable application forms. An application received without the application fee will be returned to the applicant.

(f) Application materials. The application shall include, at a minimum:

(1) the beginning date and the anticipated length of the training program;

(2) the number of programs which will be conducted concurrently and whether programs will be conducted consecutively;

(3) the number of students anticipated in each program;

(4) the daily hours of operation;

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

(6) the name of the training program director;

(7) a list of the names of the approved instructors and the topics each will teach, and a list of management and administrative personnel and any practitioners who will participate in conducting the program;

(8) clearly defined and written policies regarding the criteria for admission, discharge, readmission and completion of the program;

(9) evidence of a structured pre-planned learning experience with specific outcomes;

(10) a letter or other documentation from the Texas Workforce Commission, Proprietary Schools Section indicating that the proposed training program has complied with or has been granted exempt status under the Texas Proprietary School Act, Texas Education Code, Chapter 32 and 19 Texas Administrative Code, Chapter 175; and

(11) specific written agreements to:

(A) provide the training as set out in subsection (d) of this section and provide not more than 75 students per instructor in the classroom;

(B) advise students that they are prohibited from performing radiologic procedures which have been identified as dangerous or hazardous in accordance with §143.16 of this title (relating to Dangerous or Hazardous Procedures) unless they become an LMRT, medical radiologic technologist (MRT) or a practitioner;

(C) use written and oral examinations to periodically measure student progress;

(D) keep an accurate record of each student's attendance and participation in the program, accurate evaluation instruments and grades for not less than five years. Such records shall be made available upon request by the department or any governmental agency having authority;

(E) issue to each student who successfully completes the program a certificate or written statement including the name of the student, name of the program, dates of attendance and the types of radiologic procedures covered in the program completed by the student;

(F) retain an accurate copy for not less than five years and submit an accurate copy of the document described in subparagraph (E) of this paragraph to the department within 30 days of the issuance of the document to the student; and

(G) permit site inspections by employees or representatives of the department to determine compliance with this section.

(g) Application approval.

(1) The administrator shall be responsible for reviewing all applications for training program approval. The administrator shall approve any application which is in compliance with this section. A letter of approval shall be issued for a period of one year.

(2) A program shall be denied approval if the application is incomplete or not submitted as set out in this section. The training program director shall be notified in accordance with §113.1 of this title (relating to Processing Permits for Special Health Services Professionals.)

(3) If approval is proposed to be denied, the training 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 training program director'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 (relating to Texas Board of Health). If no hearing is requested, the right to a hearing is waived and the proposed action shall be taken.

(h) Application processing. The department shall use the same process as described in §143.6(f) of this title (relating to Application Requirements and Procedures), except the time periods are as follows:

(1) letter of acceptance - 30 days;

(2) letter of application deficiency - 30 days;

(3) letter of approval - 42 days; and

(4) letter of denial of approval - 42 days.

(i) Renewal.

(1) The training program director shall be responsible for renewing the approval of the training program on or before the anniversary date of the initial application.

(2) The department shall send a renewal notice to the training program at least 60 days prior to the anniversary date. The department is not responsible for lost, misdirected, undeliverable or misplaced mail.

(3) The renewal is effective if the official renewal form and fee in accordance with §143.4 of this title are postmarked or delivered to the department on or before the anniversary date.

(4) Failure to submit the renewal form and renewal fee in accordance with §143.4 of this title by the deadline will result in the expiration of the training program's approval.

(5) A training program which does not renew the approval shall cease representing the program as an approved training program. The program director shall notify, or cause the notification of currently enrolled students that the training program is no longer approved under this section. The notification shall be in writing and must be issued within ten days of the expiration of the approval.

(6) The training program may reapply for approval and meet the then current requirements for approval under this section.

(j) Previously completed training. A person who has completed part or all of the training described in subsection (d) of this section shall be considered to have completed an approved training program for part or all of the training but shall be required to complete the remainder of the training program described in subsection (d) of this section prior to the person's placement on the registry, as set out in §143.18 of this title (relating to Registry of Non-Certified Technicians).

(1) Unless the person is a registered nurse or certified physician assistant, the previously completed training shall be acceptable only if completed within two years of the time of the person's initial placement on the registry.

(2) Previously completed training shall be acceptable only if it was:

(A) completed at an education program approved under §143.9 of this title;

(B) live, inter-active, and instructor-directed and meets the requirements for acceptance as continuing education credit for MRTs and LMRTs as set out in §143.11 of this title (relating to Continuing Education Requirements); or

(C) accepted for continuing education credits by the Board of Nurse Examiners.

(3) If a person has completed part of the training described in subsection (d) of this section, the program director of the training program shall verify that the previously completed hours comply with this section.

(4) If a person has completed all of the training described in subsection (d) of this section, the department shall verify that the previously completed hours comply with this section at the time of the person's placement on the registry.

(5) Verification of previously completed training shall be made by reviewing only original certificates, official transcripts, printed course curriculum, syllabi, outlines or other documentation acceptable to the department issued in the name of the person who is seeking credit for previously approved training. Photocopied certificates or transcripts will not be accepted for review.

(6) This subsection shall expire on January 1, 1998.

(k) The Board of Health shall consider adopting rules later this years to describe the training programs for RNs, PAs, and podiatric procedures.

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

issued in Austin, Texas, on June 7, 1996

TRD–9608086
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: July 8, 1996
Proposal publication date: December 22, 1995
For further information, please call: (512) 458-7236

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter G. Application for Medicaid

40 TAC §15.612

The Texas Department of Human Services (DHS) adopts an amendment to §15.612, concerning processing deadlines for Medicaid applications, in its Medicaid Eligibility rule chapter. The amendment is adopted without changes to the proposed text as published in the April 5, 1996, issue of the Texas Register (21 TexReg 3001) and will not be republished.

The justification for the amendment is to clarify processing deadlines for applications.

The amendment will function by ensuring that clients under age 65 years, who do not need to have eligibility established by DHS's Disability Determination Unit, will receive timely benefits.

DHS received one comment from Legal Aid of Central Texas regarding the adoption of the proposed amendment. The commenter suggested that references to disability established by Medicare for the Qualified Medicare Beneficiary (QMB) and Specified Low-Income Medicare Beneficiary (SLMB) programs be deleted. DHS disagrees. The references were included specifically to ensure that staff understand that a separate disability determination for QMB and SLMB applicants is not necessary and that eligibility must be determined within 45 days. DHS is adopting the rule without changes.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which provides the department with the authority to administer public and medical assistance programs and under Texas Government Code §531.021, which provides the Health and Human Service Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code §§22.001-22.030 and §§32.001-32.042.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 5, 1996.

TRD-9607939
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 1, 1996
Proposal publication date: April 5, 1996
For further information, please call: (512) 438-3765

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Chapter 90. Intermediate Care Facilities Serving Persons with Mental Retardation or a Related Condition

Subchapter F. Inspections, Surveys, and Visits

40 TAC §90.193

The Texas Department of Human Services (DHS) adopts new §90.193 without changes to the proposed text published in the April 30, 1996, issue of the *Texas Register* (21 TexReg 3690).

Justification for the new section is to allow providers another way to handle dispute resolution.

The new section will function by allowing the election of arbitration by Intermediate Care Facility for the Mentally Retarded (ICF/MR), as an alternative to the hearing process and relating to the renewal and/or suspension of a license, assessment of a civil or a monetary penalty, or the assessment of a penalty under the Human Resources Code.

The department received no comments regarding the adoption of the new section.

The new section 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.

The new section implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.030.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on July 10, 1996.

TRD-9608152
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Effective date: July 15, 1996
Proposal publication date: April 30, 1996
For further information, please call: (512) 435-3765

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Part XIX. Texas Department of Protective and Regulatory Services

Chapter 720. 24–Hour Care Licensing

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §§720.24-720.37 and §§720.39-720.62; and new §§720.24-720.60, in its 24-Hour Care Licensing rule chapter. The new §§720.24-720.29, 720.32-720.35, 720.39-720.45, and 720.47-720.59 are adopted with changes to the proposed text published in the March 12, 1996, issue of the *Texas Register* (21 TexReg 2034). The repeal of §§720.24-720.37 and §§720.39-720.62; and new §§720.30,

720.31, 720.36-720.38, 720.46 and 720.60 are adopted without changes and will not be republished.

The justification for the repeals and new sections is to include substantive changes resulting from amendments to V.T.C.A., Family Code, §161.103 and §162.308, 74th Legislature, Regular Session (1995); and to make editorial revisions, which will clarify the minimum standards, make them easier to read, and more useful to care providers and licensing staff.

The repeals and new sections will function by ensuring that legislative changes will be included and the rules will be clearer and easier to use.

During the public comment period, TDPRS received no comments regarding adoption of the repeals and new sections; however, TDPRS is adopting the rules with minor editorial changes for clarification. References to "Licensing Division" have been deleted. The words "child-placing" before the word "agency" has been added in the first reference to the agency in some sections and has been deleted in certain areas of the rule where not needed. In §720.25(6), the words "assigned in the agency's policies" are added to clarify the word "responsibilities." The word "current" is deleted from references to copies, policies, and organizational charts.

Subchapter A. Standards for Child-Placing Agencies (24–Hour Care and Adoption)

40 TAC §§720.24-720.37, §§720.39-720.67

The repeals are adopted under V.T.C.A., Human Resources Code, Chapters 40 and 42, which provides the department with the authority to propose and adopt rules to ensure compliance with state and federal law and to facilitate the implementation of departmental programs.

The repeals implement V.T.C.A., Human Resources Code, Chapter 40 and 42.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 5, 1996.

TRD-9607919
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
Effective date: July 1, 1996
Proposal publication date: March 12, 1996
For further information, please call: (512) 438-3765

Subchapter A. Standards for Child-Placing Agencies

40 TAC §§720.24-720.60

The new sections are adopted under V.T.C.A., Human Resources Code Chapters 40 and 42, which provides the department with the authority to propose and adopt rules to ensure compliance with state and federal law and to facilitate the implementation of departmental programs.

The new sections implement V.T.C.A., Human Resources Code Chapter 40 and 42.

§720.24. Structure of a Child-Placing Agency.

The agency must

(1) be legally established to operate within Texas and comply with all applicable statutes;

(2) along with the application for a license, submit documentation of the legal basis for operation to the Texas Department of Protective and Regulatory Services (TDPRS);

(3) notify TDPRS of any planned change in the agency's legal basis for operation at least five working days before that change is made;

(4) observe the conditions of the license;

(5) report any planned change impacting the conditions of the license to TDPRS at least five working days before the change is made;

(6) have legal authority to place a child before making the placement; and

(7) not act as an agent for unlicensed agencies, institutions, or individuals. When birth parents take an active role in the selection of an adoptive placement, the agency making the adoptive placement must ensure that the placement selected is in the child's best interest.

§720.25. Governing Body of the Child-Placing Agency.

The agency must

(1) have a governing body that is responsible for, and has authority over, the agency's policies and activities;

(2) submit a written copy of the names, addresses, and titles of the officers or executive committee of the governing body with the application for a license;

(3) submit written notice of any change in the composition of the governing body to the Texas Department of Protective and Regulatory Services (TDPRS) within 10 working days of such change;

(4) inform TDPRS of any change in the information about governing body officers or executive committee members within 10 working days of learning about such change;

(5) have policies that clearly state the responsibilities assigned to the governing body; and

(6) have a governing body that must carry out the responsibilities assigned in the agency's policies.

§720.26. Fiscal Accountability.

(a) General fiscal requirements. The child-placing agency must

(1) be established and maintained on a sound fiscal basis;

(2) maintain complete financial records; and

(3) have a fee policy that clearly describes what fees are charged and what services are covered by the fees.

(b) Fiscal requirements for new agencies. New agencies must

(1) set up a financial record keeping system approved by a certified public accountant (CPA) to meet generally accepted accounting standards (GAAS) as described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services).

(2) submit a 12-month budget to the Texas Department of Protective and Regulatory Services (TDPRS) when the signed application is submitted;

(3) have reserve funds or documentation of available credit at least equal to operating costs for the first three months of operation; and

(4) have predictable funds sufficient for the first year of operation.

(c) Fiscal requirements for agencies providing adoption services.

(1) General requirements. Agencies providing adoption services must

(A) have an annual audit by an independent CPA. The audit must be performed in accordance with generally accepted auditing standards (GAAS) as described in §720.64 of this title (relating to Audit and Accounting Standards for Child-Placing Agencies Providing Adoption Services). In lieu of an audit, agencies may submit a special report prepared by a CPA that meets the intent of the audit requirement.

(B) submit the following information to the TDPRS annually:

(i) audit information pertaining to adoption fees and expenditures. The information must include an opinion letter from the CPA performing the audit verifying that the information submitted accurately reflects adoption related income and disbursements. Agencies submitting a special report in lieu of an audit must meet the intent of the standard in regard to the special report.

(ii) other financial information, as requested, required for the licensing review to determine that adoption related income and disbursements are reasonable, appropriate, and in compliance with minimum standards.

(C) ensure that annual income from adoption fees and any reimbursements related to adoption expenses, and gifts, donations, grants, or other sources of income related to adoption services does not exceed the agency's annual allowable and reasonable expenditures for providing adoption-related services to children, birth parents, adoptive applicants, and adoptive parents. The agency may carry over a maximum of three months adoption-related operating expenses as a reserve fund from fiscal year to fiscal year. Only allowable and reasonable expenditures may be included in such calculations.

(D) not make any payments for adoption referrals.

(E) have an adoption fee or adoption fee schedule equally applied to all clients.

(2) Financial assistance to birth parents.

(A) An agency must not influence or attempt to influence birth parents to make a decision to relinquish their child by offering any form of financial or other material incentive.

(B) An agency must not make any payments to, or on behalf of, birth parents for goods or services that have already been paid for. An agency must not seek reimbursement for any expense not met by the agency.

(C) An agency may make allowable and reasonable expenditures on behalf of birth parents only when a demonstrated need for expenditures exist. Unless an agency can demonstrate that the basic health or safety of the birth parent or child is in imminent danger, the agency may not, by action or advice, disrupt an existing arrangement where needs are met and then make expenditures to meet those needs.

(D) When making allowable and reasonable expenditures on behalf of birth parents, children, and adoptive parents, an agency providing adoption services must maintain financial records that clearly state the specifics of each transaction.

(i) An agency may provide cash payments to birth parents to cover costs of food, household supplies, personal hygiene and grooming products, and gasoline or public transportation. Each disbursement may cover a period of up to one month.

(ii) An agency may provide a cash payment(s) to birth parents for the purchase of necessary clothing.

(iii) An agency making allowable expenditures on behalf of birth parents must establish in its policies a maximum amount per category per time period based on such generally accepted criteria as the cost-of-living index.

(iv) Each transaction must be documented by receipts. Receipts must include date, payee identification, purpose, and clear indication that funds were expended for services rendered or goods provided. Canceled checks do not meet the documentation requirement.

(E) An agency providing adoption services may only make direct payments to a birth parent as permitted in subparagraph (D) of this paragraph.

(F) If the birth parent chooses not to relinquish a child for adoption, the agency must not require repayment from that birth parent for any services. This policy must be posted in the agency's offices and the agency must provide this information to birth parents in writing.

§720.27. Child-Placing Agency Policies.

The agency must

(1) have clearly stated, governing body approved policies that at least meet minimum standards and are fully implemented;

(2) have policies that include a statement that describes the agency's services, including the eligible population and the needs the agency will meet for that population;

(3) make policies available for review upon request by the Texas Department of Protective and Regulatory Services (TDPRS) and clients of the agency;

(4) operate according to its written policies;

(5) report any changes in the written policies to TDPRS at least five working days before implementing the change; and

(6) maintain copies of all policies. Policies must indicate governing body approval and effective date.

§720.28. Client Rights.

Child-placing agencies must

(1) ensure that clients (defined as birth parents, foster parent applicants, or adoptive applicants who enter into a relationship with the agency) have access to information necessary to make informed decisions;

(2) inform clients that minimum standards, compliance status reports, and the agency's policies are available for review upon request;

(3) have a written appeal process for agency clients in regard to all actions and decisions taken by the agency affecting those clients;

(4) inform clients of the right to appeal agency actions and decisions that affect them and of the procedures for making an appeal; and

(5) inform clients of the procedures for making a complaint to the Texas Department of Protective and Regulatory Services.

§720.29. Children's Rights.

(a) General rights. The child-placing agency must ensure that

(1) children's rights are protected while a child is in substitute care and in adoptive placements prior to consummation of the adoption.

(2) children are not abused or neglected.

(3) children are placed and supervised appropriately in the least restrictive environment capable of meeting their needs. The placement must meet the child's physical and emotional needs, and must provide consideration for sibling relationships and cultural needs.

(4) children have an appropriate education.

(5) children have an opportunity to participate in community functions and recreational activities and to have their social needs met.

(b) Family contact.

(1) Children must have the opportunity for sibling visits and contact when a sibling group is not placed in the same home or facility.

(2) Unless parental rights have been terminated or relinquished, or unless contacts are not in the child's best interest, contacts between children and their parents must be allowed according to the agency's policies.

(A) Unless the child's best interest or a court order necessitates restrictions, children must be allowed to send and receive mail and to have telephone conversations with family members or managing or possessory conservators.

(B) When either the child or his family requests contact, but that contact is not in the child's best interest, level I child-placing staff must determine the communication restrictions. Reasons for the restrictions must be explained to the child and documented in his record.

(C) If restrictions continue longer than one month and the child or his family continues to request contact, level I child-placing staff must evaluate these restrictions at least monthly. Reasons for the continued restrictions must be explained to the child and documented in his record.

(D) If communications or visits are limited for practical reasons (such as expense), the limits must be determined with the child and his parents or managing conservator. The limits must be documented in the child's record.

(c) Personal rights.

(1) Children must have personal clothing suitable to their age and size. Children must have some choice in selecting their clothing.

(2) Children must be given training in personal care, hygiene, and grooming. Each child must be supplied with equipment for personal care, hygiene, and grooming.

(3) Money a child earns or is given as a gift or allowance must be his personal property.

(4) A child's money must be accounted for separately from the agency's funds or the funds of the facility or family with whom he is placed.

(5) A child must not be required to use his personal money to pay for room and board, unless it is a part of the service plan and approved in writing by the parents or managing conservator and the agency.

(6) A child must be allowed to bring personal possessions to the facility or home where he is placed and allowed to acquire other personal possessions. Any limits on the kinds of possessions a child may or may not receive must be discussed with the child and his parents or managing conservator.

(7) Before involving a child in any fund raising or publicity for the agency, the written informed consent must be obtained of the child (if the child is able to give consent) and of the child's parents or managing conservator.

§720.32. Serious Incident Reports.

The child-placing agency must

(1) complete written reports for serious incidents involving staff or children within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff or children involved, the nature of the incident, and the surrounding circumstances.

(2) report the following types of serious incidents to the Texas Department of Protective and Regulatory Services (TDPRS) and the child's parents or managing conservator by the next workday:

(A) suicide attempts;

(B) abusive treatment and abusive activity among children, including alleged abuse;

(C) incidents that critically injure or permanently disable a child; and

(D) a child's death.

(3) have current written policies and procedures to follow when a child is absent without permission. These must include:

(A) time frames for determining when a child is absent without permission;

(B) actions that child-placing agency staff must take to locate the child; and

(C) procedures (including time frames) that staff must follow to notify the parents or managing conservator and the appropriate law enforcement agency.

(4) If a child is not found, absence without permission must be reported to the child's parents or managing conservator and to the appropriate law enforcement agency.

(5) If a child is absent without permission, the circumstances surrounding his absence, efforts to locate the child, and notification of the child's parents or managing conservator and the appropriate law enforcement agency must be documented. If the parent or managing conservator cannot be located, attempts to report the child's absence must be documented.

§720.33. Client Records.

The child-placing agency must

(1) maintain complete individual client records.

(2) ensure that client records are kept confidential and inaccessible to unauthorized persons.

(3) ensure that information in client records may only be disclosed for direct and authorized services to the child or family, or as part of the professional administration of the agency.

(4) ensure that adoption records are kept confidential in accordance with the placement model, for example, open adoption, identified adoption, designated adoption, and closed adoption.

(5) ensure that client records are available to the Texas Department of Protective and Regulatory Services (TDPRS) for review.

(6) ensure that for children placed in substitute care, agencies maintain complete case records for at least 10 years after the child is discharged from care. After 10 years, at least the following must be retained permanently:

(A) any health records that physicians advise will be of medical importance to the child; and

(B) information concerning the termination of parental rights or the court order.

(7) ensure that for children placed in adoption, complete client records are maintained permanently.

§720.34. Personnel Policies.

The child-placing agency must

(1) have an organization chart showing the administrative structure and staffing, including the lines of authority;

(2) have a written job description for each employee;

(3) have volunteer policies describing the way volunteers will be used by the agency, if an agency uses volunteers; and

(4) have written policies covering volunteer qualifications, screening and selection procedures, orientation, and training programs, if agency volunteers have contact with clients.

§720.35. General Personnel Requirements.

General personnel requirements are that

(1) the child-placing agency must reassign or remove from direct contact with clients any employee, volunteer, or foster parent against whom any of the following legal decisions are returned:

(A) an indictment alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act;

(B) an indictment alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency; and

(C) an official criminal complaint accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(2) such reassignment or removal, as described in paragraph (1) of this subsection, must remain in effect pending resolution of the charges.

(3) no one may serve as a staff, volunteer, or foster parent having contact with clients, or be approved as an adoptive parent, who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Texas Department of Protective and Regulatory Services (TDPRS) has ruled that proof of rehabilitation has been established.

(4) no one may serve as a staff, volunteer, or foster parent having contact with clients or be approved as an adoptive parent for whom "reason to believe" (or a comparable determination in another state) has been determined for child abuse or neglect, unless TDPRS determines that such service is acceptable.

(5) the agency must report any occurrences under paragraphs (1)-(3) of this section to TDPRS by the end of the first workday after learning of the occurrence.

(6) persons whose behavior or health status presents a danger to clients must not be allowed at the agency or at homes verified by the agency.

(7) before having contact with children in care, staff, volunteers, foster parents, foster family household members, and employees in foster family homes must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities.

(8) the agency must have a personnel file for each employee, volunteer, and foster parent whose work relates to child-placing activities, work with birth parents, and children in care. Each file must contain the following:

(A) date of employment;

(B) documentation that the person meets the qualifications for the position;

(C) tuberculosis test reports, if required, for persons having contact with children;

(D) criminal background check and child abuse/ neglect report information system check reports;

(E) documentation that the person meets training requirements; and

(F) date and reason for separation, if applicable.

§720.39. Training Requirements.

(a) Agency training plan or program. The child-placing agency must have a written training plan or program for all child-placing staff, foster parents, or agency home child-care staff. The plan must include stated time frames for assessment of each staff's training needs, training content, and number of training hours required.

(b) Pre-service training requirements.

(1) All child-placing staff, foster parents, or agency home child-care staff must receive an orientation to the agency's policies and the services provided.

(2) The agency must ensure that all foster parents or agency home child-care staff complete eight hours of pre-service training in areas appropriate to the needs of children for whom they will be providing care. Pre-service training must be completed before children are placed for care.

(3) Prior to being assigned child-care responsibilities, the primary caretaker (at a minimum) in a foster family unit, all agency home child-care staff, and all agency foster group home parents must successfully complete training from a certified instructor in infant/child cardiopulmonary resuscitation (CPR) and first aid.

(c) Ongoing training requirements.

(1) Level I child-placing staff must obtain at least 20 clock hours of job-related training annually. At least 10 of the clock hours obtained each year must relate directly to child-placing responsibilities.

(2) Other child-placing staff must obtain at least 30 clock hours of job-related training during the first year of assignment to child-placing responsibilities and at least 20 clock hours annually hereafter. All qualifying clock hours must relate directly to child-placing responsibilities.

(3) Foster parents or agency home child-care staff must have at least the following training:

(A) Infant/child CPR training and first aid training must be updated as required to maintain certification. Infant/child CPR training and first aid training must meet criteria established by the Texas Department of Protective and Regulatory Services' Licensing Division.

(B) For agency foster family homes providing therapeutic foster care, the foster family unit must complete at least 50 clock hours of training annually. Agency home child- care staff and agency group home foster parents must each complete at least 50 clock hours of training.

(C) For agency foster family homes that do not provide therapeutic foster care, the foster family unit must complete at least 20 clock hours of training annually. Agency home child-care staff and agency group home foster parents must each complete at least 20 clock hours of training.

(D) Annual training hour requirements are in addition to initial first aid and CPR training. First aid and CPR updates may be included in the annual training requirements.

(4) At least 75% of the required annual training for child-placing staff, foster parents, or agency home child-care staff must consist of course work from an accredited educational institution; workshops, seminars, other direct training provided by qualified agencies, organizations, and individuals; in-service training; or self-instruction programs. To qualify, in-service training and self-instruction programs must include stated learning objectives, curriculum and learning activities, and an evaluation component.

(5) All training must be documented-including date, subject, number of hours, and training provider.

(6) When staff or foster parents complete training in excess of the minimum requirements, up to one-half of the following year's annual training requirement may be carried over from the previous year.

§720.40. Placement of a Child in Substitute Care.

(a) If a child-placing agency provides foster care services, the agency must have written foster care policies that include

(1) specific selection criteria for accepting foster parent applicants or agency home child-care staff.

(2) specific selection criteria for making decisions about the number, ages, and needs of children who may be placed with foster parents or in agency homes where child care staff are employed.

(3) screening procedures for foster parents or agency home child-care staff.

(4) a statement of the rights and responsibilities of the agency and foster parents or foster families in regard to the relationship between the agency and the foster family. The statement must include the following information:

(A) roles;

(B) training agreements;

(C) communication process;

(D) financial reimbursement;

(E) placement procedures;

(F) support services;

(G) information sharing;

(H) participation in the treatment process; and

(I) the agency's grievance procedure.

(b) The agency must have a written pre-service training policy for foster parents or agency home child-care staff. The policy must include the type and amount of pre-service training in relation to the ages and needs of the children who will be placed in the home.

(c) The agency must screen applicants, make specific placement decisions, and provide pre-service training according to its stated policies.

(d) An agency must not permit an agency home to provide more than one type of care if this conflicts with the children's best interest, or with the use of staff or space in the home.

(e) The agency must have a policy that covers the following rights of children in agency care:

(1) contact between the child and the child's family;

(2) any limitations to the child's contact with the family;

(3) the child's right to receive gifts, telephone calls, letters, other communications;

(4) the right to confidentiality;

(5) the right to be free of coercion regarding participation in public events, media presentations, and fund-raising events;

(6) the right to be free from any harsh, cruel, unusual, unnecessary, demeaning, or humiliating discipline or punishment or from any physical punishment; and

(7) the right to continued contact with siblings.

§720.41. Substitute Care Intake.

(a) Except in an emergency placement, intake information must be gathered, documented, reviewed, and the intake process and decision to place must be approved by level I child-placing staff prior to placement.

(b) In an emergency placement, the intake study must be completed within 30 days of the placement, including approval by level I child-placing staff.

(c) The agency must obtain all available information regarding the child being considered for substitute care placement including:

(1) health, social, educational, genetic and family history, and other information required by the Texas Family Code, Section 16.032;

(2) history of any previous placements, including date and reason for placement;

(3) the child's understanding of and response to consideration of placement; and

(4) the child's legal status.

(d) A child must have a medical examination by a licensed health practitioner within 30 days prior to placement or within 30 days after placement. A child who is being transferred from a licensed agency and who has had a medical examination within the past year is exempt. The signed and dated examination report must be placed in the child's record.

(e) Children three years old or older must have a dental examination by a licensed dentist or a dental hygienist working under the supervision of a licensed dentist within one year before placement. Otherwise, an appointment for a dental examination must be made within 60 days after placement. Documentation of the appointment or of the dental exam must be placed in the child's record.

(f) Children must be tested for tuberculosis according to the recommendations of local public health authorities or the regional office of the Texas Department of Health in the county in which the child has been living.

(g) Unless the agency is the managing conservator at the time of placement, there must be a written agreement between the agency and the child's parents or managing conservator. A copy of the agreement must be in the child's record. The agreement must include the following:

(1) authorization for the agency to care for the child;

(2) a medical consent form signed by a person authorized to give consent by the Texas Family Code; and

(3) a statement of the reason for placement and anticipated length of time in care.

(h) Agencies must provide written notification to parents or managing conservators regarding the following:

(1) the agency's rules regarding visits, gifts, mail, and telephone calls;

(2) the type and frequency of reports the agency will make to parents or managing conservators;

(3) the agency's discipline policies;

(4) the agency's policy or program concerning religious training; and

(5) information concerning trips.

§720.42. Substitute Care Placement.

(a) When the child-placing agency places children into a regulated child-care facility, the responsibility for the child's care becomes a joint responsibility between the agency and the regulated child care facility. The facility must meet the appropriate minimum standards. The agency is not required to duplicate activities, such as service planning, being carried out by the facility. In regard to time frames and any specifics of care, the minimum standards for the regulated child care facility apply.

(b) In a non-emergency placement, all information from the intake study relating to the child's needs and the agency's plans for care and management must be shared with the foster parents or staff responsible for the child's care prior to placement.

(c) In an emergency placement, the agency must provide all available intake study information relating to the child's needs and the agency's plans for care and management to foster parents or staff responsible for the child's care at or before the time of placement.

(d) In an emergency placement, within 10 working days of completion of the intake study, the agency must provide all information from the intake study relating to the child's needs and the agency's plans for care and management to foster parents or staff responsible for the child's care.

(e) The agency must document the intake information shared with foster parents or staff responsible for the child's care, including date(s) in the child's record.

(f) In a non-emergency placement, children over six months of age must visit the foster home or child care facility at least once before placement. The visit must be documented in the child's record.

(g) If an agency uses the agency home of another agency, there must be a written agreement between the agencies specifying the roles and responsibilities of each agency.

(h) The agency must document in the child's record that a child with special needs is placed in a foster home or child care facility capable of meeting such needs, or that the agency has in place other arrangements to ensure the needs are met.

§720.43. Initial Service Plan.

(a) Within 30 days after placement, the child-placing agency must develop an initial service plan for the child. For children placed in emergency shelters, the agency must develop, review, and update the discharge plan as required by emergency shelter standards.

(b) The agency must make diligent efforts to involve the following persons in the service planning process:

(1) the child (as appropriate);

(2) the parents or managing conservator; and

(3) the foster parents or child care facility.

(c) Persons participating in the plan development must be documented in the child's record.

(d) The service plan must identify and include the following:

(1) the child's needs, in addition to basic needs related to day-to-day care and development must include

(A) areas of special needs that must be considered include medical, dental, developmental, educational, social, and emotional needs; and

(B) for children 16 years of age and older, the plan must include preparation for adult living.

(2) specific strategies to meet the child's needs, including instructions to foster parents or staff responsible for the care of the child. Instructions must include specific information about:

(A) supervision;

(B) discipline and behavior management; and

(C) trips and visits away from the home.

(3) expected outcomes of placement for the child, including the permanency plan for the child and estimated length of time in care.

(e) Agency staff must have face-to-face contact with the child at least quarterly. Contacts must be documented in the child's record.

(f) The agency must obtain professional consultation and treatment for children with developmental disabilities or with problems adjusting to the social, home, or school environment. Any record of specialized testing or treatment must be documented in the child's record.

§720.44. Service Plan Review.

(a) The child-placing agency must develop a policy for reviewing plans of service appropriate to the needs of the children served. The policy must address issues of placement disruption and planned subsequent placements in addition to regular reviews. The policy must be reviewed and approved by the Texas Department of Protective and Regulatory Services (TDPRS).

(b) The child's parents or managing conservator must be notified of a service plan review in advance. Documentation of the notice must be included in the child's record.

(c) The agency must make diligent efforts to involve the following persons in the service plan review:

(1) the child;

(2) the child's parents or managing conservator;

(3) child-placing agency staff; and

(4) foster parents or child-care facility staff.

(d) Participation must be documented in the child's record.

(e) The service plan review must include:

(1) an evaluation of progress towards meeting identified needs;

(2) any new needs identified since the plan was developed or last reviewed and strategies to meet these needs, including instructions to foster parents or staff responsible for the child's care;

(3) any changes to the expected outcomes of placement, the permanency plan, and the estimated length of time in care; and

(4) reasons for continued placement, if the review shows no progress towards meeting the identified needs of the child.

§720.45. Subsequent Placement.

(a) Non-emergency subsequent placements.

(1) Level I child-placing staff must approve a planned move before a child is moved from one placement to another.

(2) The agency must arrange for at least one pre-placement visit in the child care facility or foster home before moving a child over six months of age. This must be documented in the child's record.

(b) Emergency subsequent placements.

(1) Level I child-placing staff must approve the move within 10 working days of placement.

(2) Agency staff must discuss the circumstances that make the move necessary with the child, as appropriate to the child's age and ability to respond orally and behaviorally to such a discussion. The discussion must take place prior to the move and must be documented in the child's record.

(3) The child's understanding of, and response to, the move must be documented in the child's record.

(4) Prior to placement, social, medical, psychological, and school history as it relates to the child's needs and plans for care and management must be shared with the foster parents or child-care facility staff. The information provided must be documented in the child's record.

§720.47. Foster Care Study.

(a) The foster home study process for all family applicants must include at least the following documented contacts:

(1) at least one individual interview with each foster parent;

(2) at least one additional interview with the foster parents, either jointly or as a family group;

(3) at least one interview with each child and any other person living full or part time with the family;

(4) at least one visit to the foster home when all members of the household are present; and

(5) at least one contact-by telephone, in person, or by letter-with each adult child of the foster family no longer living in the home.

(b) The agency must conduct a foster home study for all family applicants being considered for verification as an agency foster family home or agency foster group home. The agency must obtain all available information about the foster home applicants regarding:

(1) motivation for providing foster care;

(2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide foster care;

(3) quality of marital and family relationships in relation to the family's ability to provide foster care;

(4) foster parents' feelings about their childhood and parents, including any history of abuse or neglect and their resolution of such experience;

(5) values, feelings, and practices in regard to child discipline and care;

(6) sensitivity to, and feelings about, children who may have been subjected to abuse, neglect, separation from, and loss of their biological family;

(7) sensitivity to, and feelings about, birth families of children in substitute care;

(8) attitude of the extended family regarding foster care;

(9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide foster care for and assist in maintaining the cultural or ethnic identity of children from different backgrounds;

(10) sensitivity to, and feelings about, maintaining sibling relationships;

(11) expectations of, and plans for, foster children; and

(12) the family's ability to work with specific kinds of behaviors and backgrounds.

(c) Staff responsible for the foster home study must evaluate information obtained during the study process and must make specific recommendations about the family's capacity to work with children. This must include, but is not limited to, such characteristics as age, sex, special needs, and number of children.

(d) The agency must obtain the following information prior to approving an agency home or agency foster group home for placement:

(1) documentation that all members of the household and any employees of the foster family have been tested for tuberculosis according to the recommendations of the Texas Department of Health or local public health authorities.

(2) an approved fire inspection report. If fire inspections are not available, the Texas Department of Protective and Regulatory Services' (TDPRS's) fire safety checklist may be used.

(3) an approved health inspection report. If health inspections are not available, TDPRS's health inspection checklist may be used.

(4) a sketch of the floor plan of the home showing room dimensions and purposes of rooms.

§720.48. Foster Home Verification.

(a) Before verifying an agency home, the child-placing agency must perform an inspection to document that the home meets appropriate minimum standards. Verification must include either that firearms are not and will not be present in the home, or that all appropriate precautions are taken.

(b) Before issuing an agency home verification, the agency must document that level I child-placing staff have approved the home for placement, including the number, age, and sex of the children for whom the home is approved.

(c) The agency must ensure that the agency home has sufficient appropriately qualified staff to provide proper care and treatment, and to protect the health and safety of children in care.

(d) An agency must not place a child into a home until the home has been studied and verified as an agency home. The agency must not place more children in an agency home than the number for which the home is approved.

(e) An agency home verification form must be given to each approved agency home after the foster home study and after any change that affects the conditions of the verification certificate.

(f) The agency must sign a written agreement with the foster parents at the time the agency home is verified. Both the agency and the foster parents must have a copy of the agreement, and a copy must be filed in the foster home record. This agreement must specify the following:

(1) what the financial agreement is between the agency and the foster home;

(2) that the foster home agrees not to accept a non-relative child for 24-hour care from any source other than through the agency;

(3) that the agency has the right to remove the child at the agency's discretion;

(4) that the agency must consent to discharge a child from the home;

(5) that visits by the child's parents or relatives must be arranged through the agency;

(6) that the agency is responsible for regular supervision of the foster home;

(7) the agency's policies regarding child care, discipline, supervision of children, and children's visits or trips away from the foster home; and

(8) the agency's policies regarding reports to the agency from the foster parents regarding foster children and other events or occurrences impacting the provision of foster care.

§720.49. Foster Home Management.

(a) The child-placing agency must evaluate all minimum standards for each agency home at least every two years, and whenever a change is made that affects the conditions of the verification certificate or the composition of the foster family. Such changes include the admission of a person for care age 18 years or older related to the foster family or the children in care. They also include the addition of any resident in the home age 18 years or older. The re-evaluation study must document that appropriate minimum standards are met.

(b) Supervisory visits must be made at least quarterly to each agency home in which children are placed. These visits must be documented in the foster home record. Documentation must include notes on standards evaluated for compliance, any noncompliance found, and plans for correction. The agency must follow-up on any noncompliance and document that corrections have been made.

(c) Supervisory visits are not required for homes in which no children are being cared for. Such homes must be re-evaluated before additional placements are made.

(d) The agency must ensure that the agency home has sufficient adult caregivers or staff with needed qualifications to protect the health and safety of the children in care.

(e) Verification of an agency home applies only to the location of the residence at the time the study is made. If the family moves, the agency must not use the home until temporary verification for the new location is issued. Temporary verification is valid for no longer than six months from the date of issuance. Temporary verification may not be renewed. Verification of the agency home at the new address must be completed before the expiration of the temporary verification, or the agency may not use the home.

(f) All verifications and revocations must be reported to the Texas Department of Protective and Regulatory Services on the forms supplied.

§720.50. Adoption Policies.

(a) Child-placing agencies making adoptive placements must have written adoption policies.

(b) Adoption policies must include:

(1) qualifications, screening and selection criteria and procedures for adoptive parents or families;

(2) training policy and program for the adoptive parent or family; and

(3) a statement of the rights and responsibilities of the agency and adoptive parents in regard to the agency-adoptive family relationship prior to consummation of the adoption.

(c) Agencies making adoptive placements must specify in their service provision policy the degree to which birth parents are involved in planning for and placing their child.

(d) Agencies making adoptive placements must include counseling services and post- adoption services in their service provision policies.

(e) Agencies must not have policies or make adoption placement decisions on the presumption that placing a child in a family of the same race or ethnicity as the race or ethnicity of the child is in the best interest of the child.

§720.51. Adoption Service Plan.

(a) A service plan must be developed for each child or sibling group (if siblings will be placed for adoption into the same home). For children with a foster care service plan prior to preparation for adoption, the adoption service plan may be a continuation of the foster care service plan.

(b) The adoption service plan must consider the needs of the birth family (unless parental rights have been involuntarily terminated), the needs of the child or sibling group, and needs of the prospective or identified adoptive family.

(c) The adoption service plan must address the needs relating to the adoption process for the birth family, the child or sibling group, and the adoptive family.

(d) The adoption service plan must include specific strategies to meet the needs identified and must include an estimate of the time required to consummate the adoption.

(e) The agency must develop a policy for reviewing plans of service appropriate to the needs of the children served. The policy must be reviewed and approved by the Texas Department of Protective and Regulatory Services.

§720.52. Birth Parent Preparation.

(a) Child-placing agency staff must have at least two face-to-face contacts with both birth parents prior to placement. Alternatively, agency staff must document in the adoption record diligent efforts to accomplish this contact and must also document the reasons why the contacts could not be made.

(b) Prior to establishing any formal relationship, the agency must provide written information to the birth parents regarding the following:

(1) alternatives and options to adoption for the birth parent and child;

(2) the services the agency provides, including counseling and post-adoption services;

(3) adoption registries;

(4) legal rights and responsibilities of the birth parents in regard to:

(A) relinquishment of parental rights;

(B) waivers of relinquishment;

(C) affidavit of status;

(D) termination of parental rights; and

(E) designating the father of a child as "unknown."

(5) any assistance available through the agency to meet housing, medical and prenatal care and other needs.

(c) Birth parents must not be pressured to make a decision about placing their child.

(d) An affidavit for voluntary relinquishment of parental rights must not be signed by the birth parent until 48 hours after the birth of the child.

§720.53. Adoptive Child Preparation.

(a) For children six months of age and older, child-placing agency staff must make a minimum of three face-to-face contacts with the child being prepared for adoption. For infants ages zero to six months, one face-to-face contact is required. Contacts must be documented in the adoption record.

(b) The agency must obtain professional assessments of the physical, mental, and emotional status of a child being considered for adoption and must obtain a developmental assessment. These assessments must be current at the time of placement-within 30 days for children ages zero to 18 months; within three months for children ages 18 months to five years; and within six months for children ages five years and older. The agency must provide any recommended testing for the child being considered for adoption. The assessments and results must be documented in the adoption record.

(c) The agency must provide counseling to children two years of age and older being considered for adoption. Counseling must

include exploration of the child's understanding of what is taking place and the child's feelings about adoption, separation, and loss issues related to the birth family.

(d) The agency must refer any child who has a disability or who, because of developmental delays or history may have a disability, to the Social Security Administration to determine eligibility for Supplemental Security Income.

§720.54. Adoptive Applicant Preparation.

(a) The preparation process for adoptive applicants must include at least the following documented contacts:

(1) at least one individual interview with each applicant;

(2) at least one additional interview with the adoptive applicants, either jointly or as a family group;

(3) at least one interview with each child and any other person living full-time or part-time with the family;

(4) at least one visit to the home when all members of the household are present; and

(5) at least one contact-by telephone, in person, or by letter-with each adult child of the adoptive applicants no longer living in the home.

(b) Prior to establishing any formal relationship, the agency must provide written information to adoptive applicants regarding:

(1) the services the agency provides, including counseling and post-adoptive services;

(2) fee policies and payment procedures;

(3) agency requirements and procedures;

(4) legal requirements for adoption, including their right to have independent legal counsel for legal consummation; and

(5) adoption registries.

§720.55. Required Information.

(a) The child-placing agency must obtain information from birth parents about their expectations for adoptive placement, if placement is chosen, and the degree and type of involvement, if any, they desire with the adoptive family.

(b) The agency must obtain all available information regarding the child being considered for adoption including:

(1) health history, social history, educational history, genetic and family history, and other information required by the Texas Family Code, §§162.005-162.007;

(2) history of any previous placements, including date and reason for placement;

(3) the child's understanding of adoptive placement; and

(4) the child's legal status.

(c) The agency must obtain all available information about the adoptive applicants regarding the following:

(1) motivation for adoption;

(2) health status (physical, mental, and emotional) of all persons living in the home in relation to the family's ability to provide an adoptive home;

(3) quality of marital and family relationships in relation to the family's ability to provide an adoptive home;

(4) applicants' feelings about their childhood and parents, including any history of abuse or neglect and their resolution of such experience;

(5) values, feelings, and practices in regard to child discipline and care;

(6) sensitivity to, and feelings about, children who may have been subjected to abuse, neglect, separation from, and loss of their biological family if the applicants are considering options in addition to adoption of a newborn;

(7) sensitivity to, and feelings about, birth families of children placed for adoption; expectations about any on-going relationship with the birth family;

(8) attitude of the extended family regarding adoption;

(9) sensitivity to, and feelings about, different socioeconomic, cultural, and ethnic groups in relation to the family's ability to provide an adoptive home and to maintain the cultural or ethnic identity of a child from a different background;

(10) expectations of, and plans for, adoptive children;

(11) behavior, background, special needs status, or other characteristics of a potential adoptive child that the family cannot accept; and

(12) financial status and ability to support a child, including employment history and insurance coverage.

(d) Prior to placing a child in an adoptive home, the agency must document the number, age, and sex, if applicable, of the children for whom the home is approved.

§720.56. Pre-Placement Requirements.

(a) Prior to placement, the child-placing agency must maintain at least quarterly contact with birth parents unless parental rights have been involuntarily terminated. During this contact, agency staff must discuss the following topics with the birth parents:

(1) preparation for childbirth, when applicable;

(2) relinquishment or waiver of parental rights;

(3) termination of parental rights; and

(4) counseling in regard to separation, loss, and grief issues.

(b) If applicable, the agency must maintain at least quarterly contact with the child being considered for adoptive placement. The contact must include:

(1) continued preparation for adoption; and

(2) updated information concerning the adoption.

(c) Prior to placement, the agency must maintain at least quarterly contact with the adoptive applicants. During this contact, agency staff must provide education and training in regard to:

(1) bonding with adoptive children;

(2) parenting issues and concerns; and

(3) children with special needs, if appropriate.

(d) If a child has not been placed with the adoptive applicants within six months of the time the adoptive home study is completed, the adoptive home study must be brought up- to-date within the 30-day period before a child is placed in the home. The written update must include:

(1) review and any required updating of each category of information in the adoptive home study; and

(2) documentation of at least one additional visit to the home when all household members are present within the last six months.

§720.57. Adoptive Placement Requirements.

(a) Except in the case of children one month old and younger, a child must have at least one visit with the adoptive family prior to placement.

(b) Before placing the child into a home, the child-placing agency must have a written agreement with the adoptive parents. A signed copy of this agreement must be given to the adoptive parents and a copy must be placed in the case record. The agreement must specify the following:

(1) that the adoptive parents and the agency agree to complete the adoption at a specified time;

(2) that the adoptive parents agree to supervision by the agency during the time prior to completion of the adoption;

(3) that the adoptive parents must notify the agency before removing the child from Texas prior to the completion of the adoption;

(4) that either the adoptive parents or the agency can return the child to the agency at the discretion of either the adoptive parents or the agency before the adoption is completed; and

(5) what the fee and schedule of payment are.

(c) Written consent for medical care of the child must be given to the adoptive parent at the time of the child's placement in the home. A copy of the signed medical consent form must be filed in the child's record or in the adoptive home record.

(d) Before placing a child into a home, the agency must discuss information about the child and his or her birth parents with the adoptive parents. Prior to or at the time of placement, the agency must also provide written information to the adoptive parents that includes all available information on the child and his family, excluding identifying information, if appropriate.

(e) Before placing a child into a home, the agency must discuss basic care and safety issues with the adoptive parents, and ensure that the home provides an environment safe for the child or children to be placed. This must include firearm safety, water safety, and basic home health and fire safety.

(f) Before placing a child into a home, the agency must give information to prospective adoptive parents about the Texas Department of Protective and Regulatory Services adoption assistance programs, including the non-recurring adoption expenses program.

(g) By the time of placement the adoptive parents must be given the following:

(1) written authorization to care for the child; and

(2) written information if the child is not completely free for adoption at the time of placement.

§720.58. Pre-Adoption Consummation Activities.

(a) During the supervisory period the child-placing agency must:

(1) offer counseling services to the adoptive family. These services may be provided through referrals outside the agency.

(2) ensure that children's needs are met in the adoptive placement.

(3) maintain responsibility for the child until the court has entered the adoption decree.

(b) Post-placement supervision must include:

(1) For children under the age of two years (with the exception of children with special needs), the agency must have a minimum of five supervisory contacts with the adoptive parents within the first six months of placement.

(A) two contacts must be face-to-face, with the entire family;

(B) at least one of these contacts must be in the adoptive home; and

(C) the contacts specified in subparagraphs (A) and (B) of this paragraph must be documented.

(2) For children with special needs and children ages two years or older, the agency must have monthly face-to-face contacts with the adoptive family during the first six months. Two of these contacts must be in the adoptive home, with the entire family and must be documented.

(3) After the first six months of placement, the agency must have at least quarterly face-to-face contacts in the adoptive home until the adoption decree is entered.

(4) The adoptive placement must be re-evaluated if it has not been completed within one year.

(c) During the post-placement period, the agency must document any changes in the adoptive family in health, financial condition, or composition which may affect the child.

(d) The agency must make every effort to see that the adoption is consummated as stipulated within the written agreement.

(e) If the placement is unsatisfactory, the agency must remove the child from the adoptive home.

(f) If a child comes back into agency care, the circumstances necessitating this and the child's needs must be documented in the child's record.

§720.59. Post-Adoption Services.

(a) After the adoption is consummated, the child-placing agency must offer counseling services to the birth parents, the adoptive child, and the adoptive family. These services may be provided through referrals outside the agency.

(b) The agency must make diligent efforts to inform birth parents, in writing, about developing genetic conditions, terminal illness, or death of their child when this information comes to the attention of the agency.

(c) The agency must make diligent efforts to inform adoptive parents or the adult adoptee, in writing, about developing genetic conditions, terminal illness, or death of a birth parent when this information comes to the attention of the agency.

(d) Upon request, the agency must provide an adult adoptee with a de-identified copy of the adoption record. The record must include the county and court of jurisdiction for the adoption. If an adoptee is less than 18 years of age, the request for the information must come from or must include the written consent of the child's adoptive parents or managing conservator.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 5, 1996.

TRD-9607918

C. Ed Davis

Deputy Commissioner for Legal Services

Texas Department of Protective and Regulatory Services

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Proposal publication date: March 12, 1996

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

Chapter 725. General Licensing Procedures

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §§725.3044, 725.3045, 725.3047, 725.3049, 725.3050, 725.3056, 725.3065, 725.3068, 725.3069, 725.3071, 725.3075-725.3077, and 725.4013; and new §725.3078 in its General Licensing Procedures chapter. The amendments to §725.3044, §725.3050, §725.3056, §725.3068, and §725.3069 are adopted with changes to the proposed text published in the February 27, 1996, issue of the *Texas Register* (21 TexReg 1504). The amendments to §§725.3045, 725.3047, 725.3049, 725.3065, 725.3071, 725.3075-725.3077, and 725.4013; and new §725.3078 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments and new section is to include maternity homes in the rules regarding agency and institutional licensing procedures and appeals of licensing staff decisions.

The amendments and new section will function by ensuring that risks to the health, safety, and welfare of pregnant women served by maternity homes will be reduced.

No comments regarding adoption of the amendments and new section were received by TDPRS during the public comment period; however, TDPRS is adopting §§725.3044, 725.3050, 725.3056, 725.3068, 725.3069 with minor editorial changes for clarification as follows:

In §725.3044(h), 725.3068, and 725.3069, TDPRS has changed the title of "deputy for licensing" back to "director of licensing" which was the language in the rule before the proposal was published.

In §725.3050, paragraph (4) is separated to create two paragraphs. The second sentence of the proposed paragraph is numbered paragraph (5).

In §725.3056(2), language regarding serious illness is reworded for clarification. Proposed paragraph (5) is divided into two paragraphs causing creating of paragraph (6). Paragraph (6), which was proposed with no change is renumbered to (7). The language in new paragraph (7) has not changed and is published in the adoption due only to the renumbering of the paragraph. Proposed paragraph (7) is renumbered to (8).

Subchapter EE. Agency and Institutional Licensing Procedures

40 TAC §§725.3044, 725.3045, 725.3047, 725.3049, 725.3050, 725. 3056, 725.3065, 725.3068, 725.3069, 725.3071, 725.3075-725.3078

The amendments and new section are adopted under the Human Resources Code, Chapters 40 and 42, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code, §249.

The amendments and new section implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code, §249.

§725.3044. Application.

(a) Each governing body planning to operate a facility subject to licensing or certification must complete an application and send it to licensing staff. Facilities subject to licensing must attach a $35 non-refundable application fee plus $35 (or $50 for a child-placing agency or maternity home) provisional license fee to the department's Licensing Fee Schedule and send these to the department. The provisional license fee may be refunded if the department does not issue the provisional license.

(b) The requirements do not apply to

(1) (No change.)

(2) Non-profit 24-hour child care facilities that

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

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

(c)-(g) (No change.)

(h) The applicant may appeal any dispute about the amount of time the department took to decide that an application was complete or to approve or deny an application. To appeal, the applicant must submit a written request within 30 days after the department's time limit expires. The applicant must send the request stating the nature of the dispute to the director of licensing. If the department exceeded the time limit without establishing good cause, the appeal is decided in the applicant's favor. In this case, the department must reimburse the application fee.

(i) The requirements regarding an application received after revocation or denial of a license are as follows.

(1) If Texas Department of Protective and Regulatory Services (TDPRS) denies an application for a license because of noncompliance with standards or violation of the child care or maternity home licensing law, time limits for an appeal must have ended and the facility must have closed and remained closed before a new application for a license can be accepted. If a facility ceases operation before the end of the time to request an appeal, and if that facility waives in writing the right to request an appeal, licensing staff accept

a completed application. If the facility begins operation before the provisional license is issued, licensing staff deny the application. An application fee and provisional license fee must be sent to TDPRS when a completed application is sent to licensing staff. The cost of reimbursing TDPRS for publishing the notice of revocation, as required by the Human Resources Code, Chapter 42, §42.077, must be added to the application fee.

(2) (No change.)

§725.3050. License.

A facility is eligible for a license providing:

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

(4) The annual license fee of $35 plus $1 for each child the facility is licensed to serve, $100 for a child-placing agency, or $50 plus $2.00 for each client the maternity home is licensed to serve has been paid.

(5) An annual fee for a license may be refunded if the licensee pays the fee but the department does not issue the license.

§725.3056. Denial or Revocation of a License without a Standard-by-standard Evaluation.

Licensing staff may deny or revoke a license/certificate without completion of a standard-by-standard evaluation if they determine that a dangerous situation exists or that an incident resulting in one of the following has occurred in a regulated facility as a result of a violation of minimum standards or the law:

(1) Death of a child or maternity home client.

(2) Serious injury or illness affecting a child or a maternity home client.

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

(5) Presence of a person at the facility that is a violation of standards or causes a serious threat of violation to exist.

(6) Presence of a person at the facility when that person's behavior is believed to constitute an actual or potential threat to the children or maternity home clients in care.

(7) Refusal by facility personnel to admit licensing staff for inspection of the facility.

(8) Violations of standards which threaten serious harm to children or maternity home clients.

§725.3068. Requesting an Administrative Review.

A licensee/applicant/certificate holder may request an administrative review when he disagrees with a decision or action of a licensing representative or a state supervisor. He makes the request to the director of licensing and describes the decision or action in dispute. When the request concerns a decision or action involving a time limit or limits for correction of non-compliance with standards, the licensee/applicant/certificate holder must make the request for administrative review before the end of the time limits.

§725.3069. Purpose of an Advisory Opinion.

An advisory opinion which is acted upon becomes a declaratory order, and is valid for the duration of the applicable minimum standards in effect at the time of the opinion or for a lesser period specified in the opinion. The requestor must make a written request for an advisory opinion to the licensing representative. He must include in the written request a detailed description of the plan or planned changes and must submit the request in triplicate. The requestor must include in the request the specific questions the advisory opinion is to address. The director of licensing only issues advisory opinions based on requests for answers to specific questions related to cited minimum standards.

§725.3071. Reasons for Probation or Evaluation.

A facility may be placed on probation or evaluation if it has:

(1) Failed on more than one occasion to comply with standards, but the health, safety, and well-being of children in care or maternity home clients are not in immediate danger;

(2) (No change.)

(3) Committed a single, serious violation of the standards if there is not a situation which continues to immediately endanger children or maternity home clients.

§725.3078. Change of Administrator or Director.

A new maternity home administrator or director must submit a personal history statement and a $20 fee to the Texas Department of Protective and Regulatory Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on June 5, 1996.

TRD-9607916
C. Ed Davis
Deputy Commissioner for Legal Services
Texas Department of Protective and Regulatory Services
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For further information, please call: (512) 438-3765

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Subchapter OO. Appeals of Licensing Staff Decisions

40 TAC §725.4013

The amendment is adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code, §249.

The amendment implements the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 727. Licensing of Maternity Facilities

The Texas Department of Protective and Regulatory Services (TDPRS) adopts the repeal of §§727.101-727.111, 727.201, 727.301, 727.302, 727.401, 727.402; 727.501-727.514, 727.601, 727.602, 727.701-727.707, 727.801-727.806, 727.901-727.903, 727.1001-727.1006, and new §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111, 727.201, 727.203, 727.205, 727.207, 727.301, 727.303, 727.305, 727.401, 727.403, 727.405, 727.407, 727.409, and 727.411 in its Licensing of Maternity Facilities chapter. New §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111, 727.201, 727.203, 727.205, 727.207, 727.301, 727.303, 727.305, 727.403, 727.405, and 727.411 are adopted with changes to the proposed text published in the February 27, 1996, issue of the *Texas Register* (21 TexReg 1507). The repeal of §§727.101-727.111, 727.201, 727.301, 727.302, 727.401, 727.402; 727.501-727.514, 727.601, 727.602, 727.701-727.707, 727.801-727.806, 727.901-727.903, 727.1001-727.1006 and new §§727.401, 727.407 and 727.409 are adopted without changes and will not be republished.

The justification for the repeals and new sections is to establish the minimum requirements for issuance and maintenance of a maternity home license.

The repeals and new sections will function by ensuring that risks to the health, safety, and welfare of pregnant women served by maternity homes will be reduced.

TDPRS received five sets of comments regarding adoption of the repeals and new sections. The comments were received from Residential Child Care Licensing staff, current and potential maternity homes, and the Consortium of Texas Certified Nurse-Midwives. A summary of the comments and TDPRS's responses follow:

Comment: One comment questions whether the requirement for a fee policy means that the maternity home may charge birth mothers or pass through fees to adoptive families.

Response: TDPRS believes that the "guidelines" as described in §727.107(a)(3) provide specifications about maternity home fee policy.

Comment: A commenter stated that the standard in §727.111 regarding serious incident reports, is not clearly written.

Response: TDPRS agrees and is adopting the rule with changes to make clear that facilities are required to report any incidents of abusive treatment, including alleged abuse, as well as abusive activity among clients.

Comment: One comment suggests adding a requirement in §727.203 for three references to an individual's personnel file.

Response: TDPRS believes that the general personal requirements in §727.203 are correct as proposed. Personal references have not proved useful in the regulation of other types of facilities and are not now required in personnel records for other types of facilities. A maternity home may choose to require references for prospective employees as part of its own hiring policies and practices.

Comment: One comment suggests that in §727.205, an administrator be a full- time employee.

Response: TDPRS believes the rule is accurate as proposed. Requiring the administrator to be full-time does not appear to be a necessary minimum standard. Information from previous regulatory agencies indicates few problems and no serious incidents that would indicate a pressing need for a full-time administrator. In this section, TDPRS has made editorial clarifications by changing the word "home" to "facility" in subsection (a)(1) and (b)(2). In subsection (c)(2)-(4) the term "staff person" is changed to "staff."

Comment: One comment, regarding §727.207, questions if 15 clock hours of annual training include first aid and CPR updates or if the 15 hours of annual training is in addition to first aid and CPR.

Response: TDPRS has included in §727.207 language that clarifies how first aid and CPR training is counted in relation to annual training requirements. TDPRS has made a minor editorial change in subsection (a) changing the term "staff person's" to "staff's."

Comment: One comment regarding §727.303(d) and (g) suggests that the facility not be required to give a copy of the service plan and service plan reviews to the client.

Response: TDPRS has rewritten the rule to give a maternity home the option of providing a client with a summary, rather than a copy, of the service plan and service plan reviews. A full and complete service plan might well contain information that a client or her family is not ready or able to handle. Requiring the facility to provide that kind of information could interfere with the client's ability to benefit from the program or could lead to the facility keeping critical information out of the service plan.

Comment: One comment suggests adding requirements for medication storage in §727.405.

Response: TDPRS believes that the rule as proposed provides sufficient requirements for medication storage. Medications in a maternity home are not usually stored centrally. Each client handles her own medications. Maternity home clients are not "in care" in the same sense as patients, clients, or residents in other types of facilities.

Comment: General comments were received requesting replacement of the term "medical care" with the term "health care" and the term "physician" with the term "health care provider."

Response: TDPRS is adopting the rules with changes. The term "health care" is substituted for "medical care" and "health care provider" for "physician" throughout the standards. "Health care," with its broader definition of attention to the physical, emotional, and social well being of the individual better reflects the needs of a woman in a maternity home than the term "medical care" which connotates a focus on curing a disease. Use of the term "health care provider" recognizes that there are other qualified providers such as certified nurse-midwives who may be more accessible and acceptable to women in maternity home settings.

Comment: One comment suggests removal of the requirements for information on the potential client's history (medical, education, social, and psychological) and description of special needs from the admission assessment requirements.

Response: TDPRS has determined that all the proposed parts of the admission assessment need to be retained. Sufficient information must be available to the maternity home so that an informed decision about the maternity home's ability to meet the client's needs can be made.

TDPRS is adopting the rules with the following minor editorial changes.

For clarification, TDPRS is changing the references to "home" in §727.101(3) to "facility" and is adding "at least five working days" to indicate when notification must be made prior to a change in the legal basis for operation. Also in §72.101(4), TDPRS is replacing the phrase "prior to that change taking place" to "at least five working days before that change is made." References to licensing division are deleted in this section and in various other proposed sections.

In §727.103, TDPRS is adding the word "maternity" to clarify the type of home mentioned in the section. Also in subsection (c), the words "its assigned" responsibilities is replaced with responsibilities "assigned in the maternity home's policies."

In §727.109(1), the word "current" which describes policies, is removed; in §727.109(2) the word "facility" is substituted for "home" to describe the services; and the word "maternity" is added to describe "home." In §727.109(3) the word "current" is removed and the words "of the most recent version" is added to clarify which copies to maintain. In §727.107(6) the words "at least five working days before" is substituted for "prior to" regarding reporting timeframes.

In §272.111, "suicide attempts" is clarified by adding the words "by a client." In §727.111(2)(B) the words are rearranged for clarification. Subparagraph (D) is added to include serious illness of a client to the types of serious incidents. Subparagraph (D) was renumbered to (E) and the words rearranged for clarity. In paragraph (3), the word "current" was deleted and in subparagraph (C) the words "maternity home" were added to designate which staff must follow procedures. In subsection (6), the words "living unit" were substituted with "part of the facility in which clients reside."

In section §727.201, TDPRS has deleted the word "current" that describes the organizational chart.

In section §727.203(f) the word "all" is added to describe which staff must be tested and deleted the word "any" which describes the family members to be tested.

In §727.301(a)(1), the word "current," which describes written admission, is deleted. In subsection (a)(2) and (6)(A) and (C), (7), and (8) the word "maternity" is added to clarify type of home. In paragraph (5), the word "including" is added before level of supervision.

In §727.305(c), TDPRS has added the words "upon discharge" to indicate when a maternity home must inform clients of record maintenance procedures.

In §727.403, the word "maternity" is added before the word home to specify type of home and "maternity home" is added to indicate type of staff.

In §727.411(5), the words "from the date of discharge" are added to clarify how long records are retained.

Subchapter A. Application Procedures

40 TAC §§727.101-725.111

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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C. Ed Davis

Deputy Commissioner for Legal Services

Texas Department of Protective and Regulatory Services

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

Subchapter A. Structure of a Maternity Home

40 TAC §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111

The new sections are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

§727.101. Legal Basis for Operation.

The maternity home must

(1) be legally established to operate within Texas and comply with all applicable statutes;

(2) along with the application for a license, submit documentation of the legal basis for operation to the Texas Department of Protective and Regulatory Services (TDPRS);

(3) notify TDPRS of any planned change in the facility's legal basis for operation at least five working days before that change is made;

(4) report any planned change impacting the conditions of the license to TDPRS at least five working days before that change is made; and

(5) be licensed as a child-placing agency before engaging in any child-placing activity.

§727.103. Governing Body of the Maternity Home.

(a) The maternity home must

(1) have a governing body that is responsible for, and has authority over the maternity home's policies and activities;

(2) submit a written copy of the names, addresses, and titles of the officers or executive committee of the governing body with the application for a license;

(3) submit written notice of any change in the composition of the governing body to the Texas Department of Protective and Regulatory Services (TDPRS) within ten working days of such change; and

(4) inform TDPRS of any change in the information about governing body officers or executive committee members within ten working days of learning about such change.

(b) The maternity home's policies must clearly state the responsibilities assigned to the governing body.

(c) The governing body of the maternity home must carry out the responsibilities assigned in the maternity home's policies.

§727.105. General Administration.

The maternity home must

(1) allow the Texas Department of Protective and Regulatory Services (TDPRS) to visit and inspect the facility at all times;

(2) make its records available to and open for TDPRS to review;

(3) display the license at the facility;

(4) observe the conditions of the license;

(5) not offer other types of care in the facility; and

(6) obtain the written informed consent of a client and the parents or managing conservator of a minor client before involving a client in any fund raising or publicity for the facility.

§727.107. Fiscal Accountability.

(a) General fiscal requirements. The maternity home must

(1) be established and maintained on a sound fiscal basis;

(2) maintain complete financial records;

(3) have a fee policy that clearly describes what fees are charged and what services are covered by the fees; and

(4) not accept any payment for adoption referrals.

(b) Fiscal requirements for new maternity homes. New maternity homes must

(1) submit a 12-month budget to the Texas Department of Protective and Regulatory Services when the signed application is submitted;

(2) have reserve funds or documentation of available credit at least equal to operating costs for the first three months of operation; and

(3) have predictable funds sufficient for the first year of operation.

§727.109. Maternity Home Policies.

The maternity home must

(1) have clearly stated, governing body approved policies that at least meet minimum standards and are fully implemented.

(2) have policies that include a statement that describes the facility's services. The statement must describe who the maternity home will serve and what services the maternity home will provide.

(3) maintain copies of the most recent version of all policies. Policies must indicate governing body approval and effective date.

(4) have policies available for review upon request by the Texas Department of Protective and Regulatory Services (TDPRS) and maternity home clients.

(5) operate according to its written policies.

(6) report any changes in the written policies to TDPRS at least five working days before implementing the change.

§727.111. Serious Incident Reports.

The maternity home must

(1) complete written reports for serious incidents involving staff or clients within 24 hours of learning about the occurrence. Each report must include the date and time of the occurrence, the staff or clients involved, the nature of the incident, and the surrounding circumstances.

(2) report the following types of serious incidents to the Texas Department of Protective and Regulatory Services (TDPRS) and to a minor client's parent or managing conservator by the next workday:

(A) a suicide attempt by a client;

(B) abusive treatment, including alleged abuse, and abusive activity among clients;

(C) incidents that critically injure or permanently disable a client;

(D) serious illness of a client; and

(E) death of a client.

(3) have written policies and procedures to follow when a client is absent without permission. These must include

(A) time frames for determining when a client is absent without permission;

(B) actions that maternity home staff must take to locate the client; and

(C) procedures, including time frames, that maternity home staff must follow to notify the parents or managing conservator of a minor client and the appropriate law enforcement agency.

(4) report when a minor client is not found. Absence without permission must be reported to the client's parents or managing conservator and to the appropriate law enforcement agency.

(5) document if a minor client is absent without permission, the circumstances surrounding the absence, efforts to locate the client, and notification of the client's parents or managing conservator and the appropriate law enforcement agency. If the parent or managing conservator cannot be located, attempts to report the client's absence must be documented.

(6) report to TDPRS, by the next workday, disasters or emergencies, such as fires or severe weather, that requires any part of the facility in which clients reside to close.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Standards for Licensure

40 TAC §727.201

The repeal is adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeal implements the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Maternity Home Personnel

40 TAC §§727.201, 727.203, 727.205, 727.207

The new sections are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

§727.201. Personnel Policies.

The maternity home must

(1) have an organization chart showing the administrative structure and staffing, including lines of authority;

(2) have a written job description for each employee;

(3) have volunteer policies describing the way volunteers will be used, if the home uses volunteers; and

(4) have written policies covering volunteer qualifications and orientation and training programs if volunteers have contact with clients.

§727.203. General Personnel Requirements.

(a) The maternity home must reassign or remove from direct contact with clients any employee or volunteer against whom

(1) an indictment is returned alleging commission of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act; or

(2) an indictment is returned alleging commission of any misdemeanor classified as an offense against the person or family, or of public indecency; or

(3) an official criminal complaint is accepted by a district or county attorney alleging commission of a misdemeanor classified as an offense against the person or family, or of public indecency.

(b) Reassignment or removal of any employee or volunteer from direct contact with clients must remain in effect pending resolution of the charges as specified in subsection (a)(1)-(3) of this section.

(c) No one may serve as a staff or volunteer having contact with clients who has been convicted of any felony classified as an offense against the person or family, or of public indecency, or of violation of the Texas Controlled Substances Act, or of any misdemeanor classified as an offense against the person or family or of public indecency, unless the Texas Department of Protective and Regulatory Services (TDPRS) has ruled that proof of rehabilitation has been established.

(d) The maternity home must report any occurrences as stated in subsections (a)-(c) of this section to TDPRS by the end of the first workday after learning of the occurrence.

(e) Persons whose behavior or health status present a danger to clients must not be allowed at the maternity home.

(f) Before having contact with clients, all staff, volunteers and family members or other persons residing at the maternity home must be tested for tuberculosis according to the recommendations of the Texas Department of Health or local health authorities.

(g) The maternity home must have a personnel file for each employee and volunteer whose work relates to maternity home services. Each file must contain

(1) the date of employment;

(2) documentation that the person meets the qualifications for the position;

(3) tuberculosis test reports, if required, for persons having contact with clients;

(4) criminal background check reports;

(5) documentation that the person meets training requirements; and

(6) the date and the reason for separation, if applicable.

§727.205. Personnel Qualifications and Responsibilities.

(a) Administrative responsibilities.

(1) The maternity home must have an administrator who is responsible for

(A) the overall administrative responsibility for the facility;

(B) managing the maternity home according to the policies adopted by the governing body; and

(C) ensuring that the maternity home's operation complies with minimum standards specified in this chapter.

(2) The maternity home administrator must meet one of the following qualifications:

(A) a master's or higher degree and at least one year of experience in human services' management, supervision, or administration;

(B) a bachelor's degree and at least two years of experience in management, supervision, or administration, one year of which must have been in human services;

(C) an associate's degree and at least four years of experience in management, supervision, or administration, one year of which must have been in human services; or

(D) a high school diploma or general educational development (GED) certificate and at least six years of experience in management, supervision, or administration, one year of which must have been in human services.

(b) Service program responsibilities.

(1) The maternity home must employ a person who is responsible for the overall services provided by the facility. This person must

(A) approve maternity home admissions;

(B) develop and update service plans for maternity home clients or approve service plans developed or updated by less qualified staff; and

(C) provide general program oversight.

(2) The person responsible for maternity home services must have at least a bachelor's degree in a human services field and two years of experience in human services or a bachelor's degree in any field and at least four years of supervised maternity home experience.

(c) Other maternity home staff.

(1) The maternity home must employ sufficient qualified staff to protect the health, safety, and well-being of clients and provide maternity home services.

(2) Staff who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must have at least a bachelor's degree and direct supervision from a person who meets the requirements specified in subsection (b)(2) of this section.

(3) Other staff working with clients must have at least a high school diploma or GED certificate.

(4) At least one staff must be immediately accessible at the maternity home at all times when clients are present. At least one other staff must be immediately available in case of emergency.

(5) The maternity home must ensure that staff and volunteers are supervised

(A) to protect clients' health, safety and well-being; and

(B) to ensure that assigned duties are performed adequately.

§727.207. Training Requirements.

(a) The maternity home must have a written training plan or program for all staff. The plan must include stated time frames for assessment of each staff's training needs, training content, and number of training hours required.

(b) New staff who will work with clients must receive an orientation to the facility's policies and services.

(c) Client care staff must successfully complete training from a certified instructor in cardiopulmonary resuscitation (CPR) and first aid before assuming their responsibilities. CPR and first aid training must be updated as required to maintain certification. CPR and first aid training must meet criteria established by the Texas Department of Protective and Regulatory Services (TDPRS).

(d) The maternity home administrator, the person responsible for the service program, and any staff who provide casework services, including admissions assessment, counseling, placement planning, and discharge planning, must obtain at least 20 clock hours of job-related training annually.

(e) Maternity home staff working with clients must receive at least 15 hours of training each year related to maternity home services. Annual training hour requirements are in addition to initial first aid and CPR training. First aid and CPR updates may be included in the annual training requirements.

(f) Persons who hold related professional licenses or credentials that require continuing education will be considered as meeting the training requirements by meeting the requirements to maintain their professional license or credential.

(g) At least 75% of the required annual training must consist of course work from an accredited educational institution, workshops, seminars, or other direct training provided by qualified agencies, organizations and individuals. In-service training and self-instruction programs may be counted in the formal training component if the training includes stated learning objectives, curriculum and learning activities, and an evaluation program. Training must be documented, including date, subject, number of hours, and training provider.

(h) When maternity home staff complete training in excess of the minimum requirements, up to one-half of the following year's annual training requirement may be carried over from the previous year.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Construction Standards for Maternity Facilities

40 TAC §§727.301, §727.302

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

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Subchapter C. Service Management

40 TAC §§727.301, 727.303, 727.305

The new sections are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

§727.301. Admission.

(a) Admission Policies.

(1) The maternity home must have written admission policies and criteria describing the age and type of client served.

(2) The maternity home may only admit clients who meet the admission policies and criteria and for whom the maternity home has an operational program.

(3) A maternity home whose policies permit the admission of a client whose behavior or history indicates that she may be a danger to herself or others must arrange for the client to be evaluated by a qualified professional. The evaluation may be done by

(A) a psychiatrist;

(B) a psychologist;

(C) a licensed Master Social Worker, Advanced Clinical Practitioner;

(D) an obstetrician/gynecologist; or

(E) a licensed professional counselor.

(4) The evaluation of a client who may be a danger to self or others must be done within 72 hours following admission. The evaluation must be documented in the client's record and include:

(A) an assessment of the potential danger to self or others;

(B) an assessment of the client's need for care, treatment, and supervision; and

(C) recommendations for care, treatment, supervision, and further evaluation, if any, if the client is admitted to the maternity home.

(5) A maternity home that admits a client who may be a danger to self or others must document precautions including level of supervision taken until the professional evaluation is performed and implemented.

(6) A maternity home that admits a client who may be a danger to self or others must

(A) evaluate the client's needs, as identified in the professional assessment, in relation to the maternity home's admission policy and criteria;

(B) evaluate the potential danger to the client or others, as identified in the professional assessment, in relation to the safeguards and services the maternity home can provide; and

(C) arrange for the client's discharge as soon as possible if the evaluation indicates that the maternity home's program cannot meet her needs or that the maternity home cannot provide necessary safeguards.

(7) If the maternity home decides to provide care for a client who may be a danger to self or others, the maternity home must include the professional assessment and recommendations in the client's service plan and ensure that recommendations are followed.

(8) Maternity homes that have admission policies, rules for group living, or other requirements that may make the maternity home an inappropriate choice for a prospective client must provide the prospective client with a list of licensed maternity homes so that she can locate a facility that better meets her needs.

(b) Admission procedures.

(1) The maternity home must complete an admission assessment, including pregnancy testing, for each client within five working days of admission to determine that the program will be able to meet the client's needs.

(2) The admission assessment must be in writing and must include information on each of the following:

(A) the circumstances that led to the client's referral;

(B) the client's plan for her baby;

(C) the client's history including

(i) health history information and information about the pregnancy;

(ii) educational background and records that may be needed to enroll the client in school or a general educational development program;

(iii) social history with a description of the family situation and relationships, previous placements, and work history; and

(*iv*) psychological history (if applicable and available) including any results of testing, evaluation, or assessment;

(D) a description of any special needs (physical, emotional, or intellectual) the client might have;

(E) the client's expectations of maternity home placement; and

(F) the level of parent or family involvement with the client during her stay at the maternity home.

(3) Clients must have a health examination by a health care provider within 30 days before admission or an examination must be arranged or scheduled within two work days after admission. The arrangement or scheduling must include an assessment by a health care provider to ensure that the client is not in immediate need of medical treatment.

(4) Clients must be tested for tuberculosis according to the recommendations of their health care provider.

(5) A written placement agreement between the maternity home and the parents or managing conservator of a minor client must be completed at or before placement. A copy of the placement agreement must be in the client's record. The placement agreement must include:

(A) authorization for the minor client to reside at the maternity home; and

(B) a medical consent form signed by a person authorized to give consent by the Texas Family Code.

(6) If a minor client has been living independent of her parents or her parents refuse to sign the placement agreement, the minor client may admit herself to the maternity home. This must be documented in the client's record.

(7) Maternity homes must inform clients and the parents or managing conservators of minor clients, in writing, at or before admission of:

(A) rules and guidelines for group living that maternity home clients will be expected to follow, including visits, gifts, mail, and telephone calls;

(B) the type and frequency of reports the maternity home will make to parents or managing conservators of minor clients;

(C) the maternity home's religious policy or program, if any; and

(D) the maternity home's fee policy.

§727.303. Service plan.

(a) Within 15 working days of admission, the maternity home must develop a service plan with the client.

(b) The service plan must include:

(1) the client's individual needs in addition to basic needs for food, clothing, shelter, and routine health care related to the pregnancy, delivery, and postpartum period;

(2) a specific description of how the maternity home will address any needs of the client in addition to basic needs; and

(3) a specific description of what the maternity home expects of the client in terms of meeting the service plan.

(c) The service plans for minor clients must address the level of supervision the maternity home will provide for the client.

(d) The maternity home must give a copy or summary of the service plan to the client and the parents or managing conservator of a minor client.

(e) The maternity home must carry out the service plan.

(f) The maternity home must develop a policy for reviewing plans of service. The policy must state how frequently plans will be reviewed.

(g) The maternity home must review the service plan at least as frequently as stated in the home's policy with the client. The review must be in writing and show what has been accomplished in meeting the client's needs, any change in the client's needs, and any change in how the client's needs will be met. The maternity home must give a copy or summary of the service plan review to the client and to the parents or managing conservator of a minor clients.

§727.305. Discharge.

(a) The maternity home must involve the client and the parents or the managing conservator of a minor client in discharge planning.

(b) The date and circumstances of the client's discharge must be documented in the client's record.

(c) Upon discharge, the maternity home must inform clients of how long and where client records will be maintained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. General Requirements for All Facilities Facility Construction

40 TAC §§727.401, §727.402

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Client Services

40 TAC §§727.401, 727.403, 727.405, 727.407, 727.409, 727.411

The new sections are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The new sections implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

§727.403. Housing.

(a) Health and safety. The maternity home must

(1) construct, maintain, clean, and repair buildings so that there are no hazards to the health and safety of clients.

(2) establish and maintain grounds so that there are no hazards to the health and safety of clients.

(3) have approved fire, health, and safety inspections. The maternity home must submit approved inspection reports with the application for the license. The maternity home must obtain approved inspections annually. Inspection reports must be kept on file at the maternity home. The maternity home must

(A) have an annual fire inspection with a written report by a local or state fire marshal. The maternity home must be in compliance with corrections, conditions, or restrictions specified in the report.

(B) have an annual sanitation inspection with a written report by a local or state sanitation official. The maternity home must be in compliance with any corrections, restrictions, or conditions stated in the report.

(C) have an annual gas-pipe inspection, if gas is used. The inspection must be documented.

(D) have an inspection by an inspector certified by the Liquefied Petroleum Gas Division of the Railroad Commission, if the maternity home has a liquid petroleum gas system.

(4) have written plans and procedures for assuring the health and safety of clients in case of a disaster or emergency, such as fire or severe weather. Maternity home staff must know these procedures and a copy must be available at the maternity home for Texas Department of Protective and Regulatory Services to review.

(5) have first aid supplies readily available to maternity home staff, including a sterile emergency delivery pack, in designated locations.

(b) Living space. Maternity homes must

(1) provide adequate living space, appropriate furnishings, and bathroom facilities for clients.

(2) have bedrooms with at least 75 square feet of floor space per occupant with a maximum of four clients per bedroom. Bedrooms must have at least one window with outside exposure.

(3) provide each client with her own bed and provisions for personal storage space.

(4) have at least 40 square feet per client of indoor activity space exclusive of halls, kitchen, bathrooms, and any other space not regularly available to clients. Where bedrooms exceed the minimum square footage requirements, the difference may be counted towards indoor activity space.

(5) have bathrooms located convenient to client bedrooms.

(6) have at least one lavatory and commode for each six clients and one tub or shower for each 10 clients.

(7) have food preparation and dining areas appropriate to the food service program.

§727.405. Health Care.

The maternity home must

(1) have written policies and procedures for providing routine health care relating to pregnancy and delivery and for emergency diagnosis and treatment of other health and dental problems.

(2) ensure that clients have access to prenatal health care, delivery and immediate postpartum health care, and postpartum convalescent health care for the period post delivery and prior to discharge from the maternity home.

(3) ensure that each client is informed of the need for a postpartum examination, unless the examination is provided before her discharge from the facility.

(4) provide for other emergency health care diagnosis and treatment as needed, when such is ordered by the client's primary health care provider.

(5) ensure that maternity home staff do not provide any medication or treatment to a client except on written orders of a licensed health care provider. If, in an emergency, instructions are given verbally, the health care provider must write and sign orders within 24 hours.

(6) ensure that a minor client's health care provider has authorized, in writing, a self-medication program or that maternity home staff administer the minor client's medication.

§727.411. Client Records.

The maternity home must ensure that

(1) records for each client are kept accurate and current.

(2) client records are locked and kept in a safe location.

(3) client records are not released to any agency, organization, or individual without the written consent of the client.

(4) client records and information are kept confidential. All maternity home staff and consulting, contracting, and volunteer professionals and others with access to information about the client must be informed, in writing, of their responsibility to maintain client confidentiality.

(5) client records are retained permanently when the client chooses to relinquish her child for adoption. The maternity home has the option of transferring the record to the licensed child-placing agency that handled the adoption. Records for other clients must be retained for a minimum of two years from the date of discharge.

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Subchapter E. Medication Aides

40 TAC §§727.501-727.514

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

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Subchapter F. Inspections, Surveys, and Visits

40 TAC §727.601, §727.602

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

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Subchapter G. Abuse, Neglect, and Exploitation; Complaint and Incident Reports and Investigations

40 TAC §§727.701-727.707

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

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Subchapter H. Enforcement

40 TAC §§727.801-727.806

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

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Subchapter I. Trustees for Facilities

40 TAC §§727.901-727.903

The repeals are adopted under the Human Resources Code, Chapters 40 and 42, and Health and Safety Code §249, which provides the department with the right to adopt rules to implement V.T.C.A., Health and Safety Code §249.

The repeals implement the Human Resources Code, Chapters 40 and 42 and Health and Safety Code §249.

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Subchapter J. Provisions Applicable to Facilities Generally

40 TAC §§727.1001-727.1006

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Part XX. Texas Workforce Commission

Chapter 809. Child Care and Development

(Editor's Note: Effective June 1, 1996, the Job Opportunities and Basic Skills Training (JOBS), Food Stamp Employment and Training (E&T), and Child Care and Development programs operated by the Texas Department of Human Services (TDHS) will transfer to the Texas Workforce Commission (TWC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes authority and jurisdiction of these three programs from TDHS.)

Pursuant to 1 TAC §91.23(e) the specified TDHS rules located in 40 TAC Chapters 10 and 72 are being transferred to 40 TAC Chapters 809 and 811. A table which lists the old and new section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 809

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Chapter 811. Job Opportunities and Basic Skills

(Editor's Note: Effective June 1, 1996, the Job Opportunities and Basic Skills Training (JOBS), Food Stamp Employment and Training (E&T), and Child Care and Development programs operated by the Texas Department of Human Services (TDHS) will transfer to the Texas Workforce Commission (TWC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes authority and jurisdiction of these three programs from TDHS.

Pursuant to 1 TAC §91.23(e) the specified TDHS rules located in 40 TAC Chapters 10 and 72 are being transferred to 40 TAC Chapters 809 and 811. A table which lists the old and new section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 811(a)

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Chapter 815. Unemployment Insurance

(Editor's Note: Effective June 1, 1996, the Texas Workforce Commission (TWC) will replace the Texas Employment Commission (TEC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes the entire authority and jurisdiction of all Texas Employment Commission programs and various job training programs administered by other state agencies.)

Pursuant to 1 TAC §91.23(e) the TEC rules located in 40 TAC Chapter 301 are being transferred to 40 TAC Chapter 815. A table which lists the old and new section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 815

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Chapter 817. Child Labor

(Editor's Note: Effective June 1, 1996, the Texas Workforce Commission (TWC) will replace the Texas Employment Commission (TEC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes the en-

tire authority and jurisdiction of all Texas Employment Commission programs and various job training programs administered by other state agencies.)

Pursuant to 1 TAC §91.23(e) the TEC rules located in 40 TAC Chapter 303 are being transferred to 40 TAC Chapter 817. A table which lists the old and new section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 817

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Chapter 819. Interagency Matters

(Editor's Note: Effective June 1, 1996, the Texas Workforce Commission (TWC) will replace the Texas Employment Commission (TEC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes the entire authority and jurisdiction of all Texas Employment Commission programs and various job training programs administered by other state agencies.)

Pursuant to 1 TAC §91.23(e) the TEC rules located in 40 TAC Chapter 305 are being transferred to 40 TAC Chapter 819. A table which lists the old and new section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 819

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 17, 1996.

Chapter 821. Interagency Matters

(Editor's Note: Effective June 1, 1996, the Texas Workforce Commission (TWC) will replace the Texas Employment Commission (TEC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes the entire authority and jurisdiction of all Texas Employment Commission programs and various job training programs administered by other state agencies.)

Pursuant to 1 TAC §91.23(e) the TEC rules located in 40 TAC Chapter 307 are being transferred to 40 TAC Chapter 821. A table which lists the old and new section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 821

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 17, 1996

Chapter 811. Job Opportunities and Basic Skills

(Editor's Note: Effective June 1, 1996, the Job Opportunities and Basic Skills Training (JOBS), Food Stamp Employment and Training (E & T), and Child Care and Development programs operated by the Texas Department of Human Services (TDHS) will transfer to the Texas Workforce Commission (TWC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes authority and jurisdiction of these three programs from TDHS.

Clients served by the JOBS and E & T programs administered by TWC also receive services from TDHS. Due to the integration of services, seven TDHS rules located in 40 TAC Chapter 3 are being duplicated under the TWC 40 TAC Chapter 811 and 40 TAC 813. TDHS and TWC need these rules for operation of programs of both agencies.)

Pursuant to 1 TAC §91.23(e) the specified TDHS rules located in 40 TAC Chapter 3 are being duplicated in 40 TAC Chapter 811 and 813. A table which lists the existing section numbers and their corresponding new duplicated section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 811(b)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 24, 1996.

Chapter 813. Food Stamp Employment and Training

(Editor's Note: Effective June 1, 1996, the Job Opportunities and Basic Skills Training (JOBS), Food Stamp Employment and Training (E&T), and Child Care and Development programs operated by the Texas Department of Human Services (TDHS) will transfer to the Texas Workforce Commission (TWC). House Bill 1863, 74th Regular Legislative Session, created a new state agency, the Texas Workforce Commission. The TWC assumes authority and jurisdiction of these three programs from TDHS.

Clients served by the JOBS and E&T programs administered by TWC also receive services from TDHS. Due to the integration of services, seven TDHS rules located in 40 TAC Chapter 3 are being duplicated under the TWC 40 TAC Chapter 811 and 40 TAC 813. TDHS and TWC need these rules for operation of programs of both agencies.)

Pursuant to 1 TAC §91.23(e) the specified TDHS rules located in 40 TAC Chapter 3 are being duplicated in 40 TAC Chapter 811 and 813. A table which lists the existing section numbers and their corresponding new duplicated section numbers is being published in this issue of the Texas Register in the Tables and Graphics Section.

Figure: 40 TAC Chapter 813

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on May 24, 1996.

TABLES AND GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and grphics 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,

Graphic Material will not be reproduced in the Acrobat version of this issue of the Texas Register due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

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).

State Office of Administrative Hearings

Monday, July 1, 1996, 9:00 a.m.

7800 Shoal Creek Blvd.

Austin

Utility Division

AGENDA:

A Hearing on the Merits will be held at the above date and time in SOAH DOCKET NO. 473–96–0626 — Application of Gulf States Utilities Company to revise its fixed fuel factors (PUC DOCKET no. 15489)

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701–1649 (512/936–0728)
Filed: June 10, 1996, 11:32 a.m.

TRD-9608177

Texas Department of Agriculture

Tuesday, June 18, 1996, 10:00 a.m.

TAMU Experiment Station, Highway 281

Stephenville

Texas Peanut Producers Board

AGENDA:

Roll Call

Introduction of Guests

Discussion and Action: Minutes of last meeting; national promotion

Oath of Office for new board members

Election of Officers

Marketing Report

Discussion: Other Business

Adjourn

Contact: Ms. Mary Webb, Executive Director, Texas Peanut Producers Board, P. O. Box 398, Gorman Texas 76454 (817/734–2855)
Filed: June 10, 1996, 11:33 a.m.

TRD-9608180

Thursday, June 20, 1996, 10:30 a.m.

Board Room, Texas Sheep & 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 1995 Officers and Directors

Discussion and Action: New Business — Review of telephone messages; Annual Reports from various associations; Review "hot spots" proposals; Biennial Election planning; scheduling of next meeting.

Unfinished Business — Review status of Castleberry update, Pecos River Club; Sul Ross University, Progress on Predators in the Classroom Project; Schleicher County Producers Association, First Quarter Audit of non-paying auctions, Girvin Wildlife Management Club Equipment Request; Report from Gary Nunley — Animal Damage Control.

Other Business

Adjourn

Contact: Ms. Minnie Savage, Executive Secretary, Texas Sheep and Goat Commodity Board, 233 West Twohig, Sangelo, Texas 76902–3543 (915/659–8777)
Filed: June 10, 1996, 1:35 p.m.

TRD9608294

Tuesday, July 9, 1996, 10:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

AGENDA:

Administrative hearing to reveiw alleged violation of Texas Agriculture code Annotated, §§103.001–.015 (Vernon Supp. 1996) by Pace Foods, Ltd. as petitioned by Texas Western Company.

Contact: Ms. Joyce Arnold, P. O. Box 12847, Austin, Texas 78711, (512/475–1668)
Filed: June 11, 1996, 10:00 a.m.

TRD9608295

Texas Department of Licensing and Regulation

Tuesday, June 25, 1996, 9:00 a.m.

920 Colorado, E.O. Thompson Bldg., room 420

Austin, Texas

AGENDA

Enforcement Division, Boxing

According to the complete agenda, the Department will hold an Administrative Hearing to consider the application of Saoul Mamby, who is over 35 years of age, for a boxing license in accordance with 16 TAC §61.27(s), the Texas Revised Civil Statutes, arts. 8501–1 (the Act) and 9100; the Texas Govt. Code, Chapter 2001 (APA) and 16 TAC, Chapter 61.

Contact:Paula Jamje, (512) 463–3192
Filed: Monday, June 10, 1996, 3:28 pm

TRD-9608246

Tuesday, June 25, 1996, 10:30 a.m.

920 Colorado, E.O. Thompson Bldg., room 420

Austin, Texas

AGENDA

Enforcement Division, Air Conditioning

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administrataive penalties against the Respondent, Larry Vernon DeBoard, for engaging in air conditioning and refrigeration contracting without a license in violation of the Texas Revised Civil Statutes, art. 8861 (the Act) §3B, pursuant to the Act and art. 9100; Texas Govt. Code, Chapter 2001 (APA), and 16 TAC Chapter 75.

Contact:Paula Jamje, (512) 463–3192
Filed: Monday, June 10, 1996, 3:28 pm

TRD-9608247

Wednesday, June 26, 1996, 9:00 a.m.

920 Colorado, E.O. Thompson Bldg., room 420

Austin, Texas

AGENDA

Enforcement Division, Auctioneering

According to the complete agenda, the Department will hold an Administrative Hearing to consider possible assessment of administrative penalties against and revocation of the auctioneer license of the Respondent, Larry William Dunn, for violations of the Texas Revised Civil Statutes Ann., art. 8700 (the Act) §5C and 16 TAC §§67.21(a), 67.100(e) and 67.101(4). Additionally, the Department will consider the claims of Steven J. Lemberg, Edward Stephens, Susan P. Morton, Estate of John E. Prothro, John E. Prothro, Jr., Karen Prothro Puckett, and Jennifer Prothro, claimants against Larry William Dunn, and determine the amounts due the aggrieved parties pursuant to the Act §5C and Article 9100; the Texas Govt. Code, ch. 2001 (APA); and 16 TAC ch. 67

Contact:Paula Jamje, (512) 463–3192
Filed: Monday, June 10, 1996, 3:28 pm

TRD-9608248

Center for Rural Health Initiatives

Friday, June 26, 1996, 1:30 p.m.

Martha Ann Woman's Club, 1600 Martha Ann Blvd, Garden Room

Snyder

Executive Committee

AGENDA:

1. Call to order
2. Introductions
3. Opening remarks
4. Public testimony
5. Closing remarks

Contact: Laura Jordan, P. O. Drawer 1708, Austin, Texas 78767
Filed: June 10, 1996, 1:15 p.m.

TRD-9608185

Monday, June 28, 1996, 1:30 p.m.

Titus County Memorial Hospital, 2001 N. Jefferson, Garden Room

Mt. Pleasant

Executive Committee

AGENDA:

1. Call to order
2. Introductions
3. Opening remarks
4. Public testimony
5. Closing remarks

Contact: Laura Jordan, P. O. Drawer 1708, Austin, Texas 78767
Filed: June 10, 1996, 1:15 p.m.

TRD-9608184

Monday, July 19, 1996, 1:30 p.m.

John R. Regan Building, Capitol Complex, SW corner of 15th and Congress, Room 106

Austin

Executive Committee

AGENDA:

1. Call to order

2. Introductions

3. Opening remarks

4. Public testimony

5. Closing remarks

Contact: Laura Jordan, P. O. Drawer 1708, Austin, Texas 78767
Filed: June 10, 1996, 1:15 p.m.

TRD-9608186

Texas Department of Criminal Justice

Thursday, June 20, 1996, 1:00 p.m.

Parole Day Resource Center, 414 S. Main, Heritage Plaza Bldg.

San Antonio, TX

Programs Committee

AGENDA

Call to Order

1:00 p.m. Report on the Expansion of Day Resource Centers

1:30 p.m. Presentation on the Texas Association of X-Offenders, Inc.

2:00 p.m.Update on the Indivdualized Treatment Plan

2:15 p.m. Update on Crime Victims Clearinghouse

2:45 p.m. Report on Automated Victim Notification System

3:00 p.m. Update on Video Programming for Special Offender Population

3:10 p.m. Substance Abuse Felony Punishment: Facility Presentation

3:40 p.m. Update on Chaplaincy Program Activities (a) Family Programs (b)Audio Library (c)Volunteer Program

4:10 p.m. kUpdate on Community Service Projects (a) Food Banks (b) Habitat for Humanity

4:30 p.m. Windham School District Administrative Update

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463–9472 at least two work days before the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, (512) 475–3250.
Filed:Monday June 10, 1996, 1:24 p.m.

TRD-9608189

Texas Education Agency (TEA)

Friday-Saturday, June 21–22, 1996, 8:30 a.m.

Doubletree Hotel Austin Robertson Room Austin, Robertson Room, 6506 Interstate Highway 35 North

Austin

Continuing Advisory Committee (CAC) for Special Education

AGENDA:

Friday, beginning at 8:30 a.m., a work session will be held covering topics including CAC guidelines, synthesizing the findings from regional meetings on the advisory committee survey, and local advisory committee suggestions. Beginning at 1:00 p.m., the committee will hear welcoming remarks and good news; approve the February 16–17, minutes; and discuss the following: development of essential knowledge and skills, current issues in special education, unmet needs from a legal perspective, and old business.

Saturday, the committee will: hear conference reports CAC members, review the results of the advisory committee survey, and receive an update from TEA on State Board of Education and commissioner of education rules, CAC appointments, and alternative assessment contracts. The committee will also discuss the results of the regional and local advisory committee suggestions, the Academics 2000 reading initiative, and proposed federal legislation. The committee will approve letters, plan the next meeting. and adjourn.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78752, (512) 463–9414.
Filed: June 11, 1996, 12:58 p.m.

TRD-9608287

Texas Energy Coordination Council

Wednesday, June 19, 1996, 11:00 a.m.

Capitol Extension, 1200 Congress Avenue, Room E1.016

Austin

AGENDA:

Contact: Susan Peterson, 10100 Burnet Road, CES, Room 7100, Austin, Texas 78758, (512) 475–6774.
Filed: June 11, 1996, 3:06 p.m.

TRD-9608314

Finance Commission of Texas

Friday, June 21, 1996, 8:30 a.m.

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

AGENDA:

A. Call the Meeting to Order; Review and Approval of Minutes of the April 26, 1996 Finance Commission Meeting

B. Finance Commission Matters

1. Update and Possible Vote on Finance Commission Building Repairs

2. Discussion of an Vote to Approve Request to Transfer Regular Appropriations to Capital Budget for Savings and Loan Department and Office of Consumer Credit Commissioner

3. Discussion of and Vote to Approve Department of Banking Investment Policy

4. Discussion of and Vote to Approve Department of Banking Investment Officer

5. Discussion of and Possible Vote on Department of Banking Audit Function

6. Discussion of and Vote to Approve Strategic Plans of Finance Commission and Finance Commission Agencies

7. Discussion of Legislative Appropriations Requests for 1998–1999 Biennium for the Finance Commission Agencies

8. Discussion of and Possible Vote to Approve a Resolution in Support of the Finance Commission Salary Administration Plan

9. Update and Possible Vote on Project to Fulfill Finance Commission Responsibility Under §1.011(f) of the Texas Banking Act

C. Report from the Banking Department; Industry Status, Departmental Operations;

Discussion of and Vote to Adopt New §3.22, §4.9, §12.61, §15.81;

Discussion of and Vote to Adopt Amendments to §4.3;

Discussion of and Vote to Publish for Comment the Proposed Repeal of §§3.41–3.45;

Discussion of and Vote to Publish for Comment the Proposed New §§3.41–3.45, §3.91, §§4.11–4.12, §29.2;

Discussion of and Vote to Publish for Comment the Proposed Amendment to 15.41;

D. Report from the Savings and Loan Department: Industry Status, Departmental Operations

E. Report from the Office of Consumer Credit Commissioner; Industry Status, Departmental Operations; Discussion of and Possible Vote on Legislative Policy Recommendations Concerning Credit Code Provisions

F. Executive Session

Contact: Everette D. Jobe, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475–1300.
Filed: June 11, 1996, 4:19 p.m.

TRD-9608323

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General Land Office

Tuesday, June 18, 1996, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Roo, 831

Austin

AGENDA:

School Land Board

Approval of previous board meeting minutes; adoption of resolution for former School Land Board Member, Richard M. Landsman; pooling applications, Brookland Field, Newton Co.; Wildcat Field, Duval Co., Giddings (Austin Chalk, Gas) Field, Washington Co.; Keystone (San Andres) and Holt), Winkler Co.; State Tract 339–L Field, Matagorda and Brazoria Counties; applications to lease highway right of way for oil and gas, Washington Co. Grimes Co.; Anderson Co.; and Webb Co.; coastal public lands, easement applications and renewals, Cow Bayou, Orange Co., Eckerts Bayou, Galveston Co.; Carancahua Bay, Jackson Co.; and Clear Lake, Galveston Co.; structure permit terminations, requests, amendments and renewals, Laguna Madre, Kleberg, Laguna Madre, Kenedy Co.; Carancahu Creek, Jackson Co.; Espiritu Santo, Calhoun Co.; Executive Session-pending or contemplated litigation; Executive Session and Open Session-consideration of proposed lease with option to purchases, First and Trinity Warehouse Property, Travis Co.; Executive Session and Open Session-consideration of proposed acquisition, Comal and Guadalupe Cos.; Executive Session and Open Session-consideration and update of tracts, terms and conditions for the July 16, 1996 sealed bid land sale; Executive Session and Open Session-consideration of land exchange, Fort Bliss, El Paso County; Executive Session and Open Session-consideration of proposed development and road access. Brewster County; Executive Session and Open Session-consideration of land acquisition, North Padre Island, Kleberg Co.

Contact: Linda K,. Fisher, Stephen F. Austin Building, 1700 North Congress, Austin, Texas 78701, Room, 836. (512) 463–5016.
Filed: June 10, 1996, 3:53 p.m.

TRD-9608254

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Texas Higher Education Coordinating Board

Campus Planning Committee

Thursday, June 20, 1996 9:15 a.m.

University of Texas at Dallas

McDermott Building, McDermott Suite

Dallas, Texas

AGENDA

The University of Texas at Dallas-New Activity Center; The University of Texas at Arlington-Purchase four lots including a 20,811 square foot structure; The University of Texas at Tyler-Purchase a lot at 3410 Varsity Drive including a 17,330 square foot structure.

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711 (512) 483–6101.
Filed: June 11, 1996, 2:41 p.m.

TRD-9608302

Campus Planning Committee

Thursday, June 20, 1996 1:40 p.m.

University of Texas at Austin

Flawn Academic Center, Fourth Floor Dobie Room

Austin, Texas

AGENDA

The University of Texas at Austin-Welch Hall West Wing renovation; and Dorothy Gebamer Building renovation; The University of Texas M.D. Anderson Cancer Center-Primate Husbandry Facility in Bastrop; The University of Texas Health Science Center at Houston-Student Apartments addition; and Purchase 5.1 acre of land; The University of Texas at San Antonio-Downtown Campus Building-Phase II (First state presentation of plan) .

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711 (512) 483–6101.
Filed: June 11, 1996, 2:41 p.m.

TRD-9608301

Campus Planning Committee

Friday, June 28, 1996 9:30 a.m.

IBT Building, 2121 West Holcombe Boulevard

Board Room 1119

Houston, Texas

AGENDA

Texas Engineering Experiment Station— Good Lab Practices Facility; Texas Am University-Southern Crop Improvement Facility (First state presentation of plan); Texas A&M University-Corpus Christi-University Center (first state presentation of plan); Tarlelton State University-Preliminary approval to purchase nine parcels containing 191,098 square feet.

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711 (512) 483–6101.
Filed: June 11, 1996, 2:42 p.m.

TRD-9608299

Campus Planning Committee

Friday, June 28, 1996 9:30 a.m.

University of Houston

Ezekiel Cullen Building, Room 220E

Houston, Texas

AGENDA

University of Houston-Capital renewal and deferred maintenance projects; Texas Southern University-School of Business Building; Reapproval of Fairchild Hall renovation; and Reapproval of College of Education renovation; The University of Texas Southwestern Medical Center at Dallas-North Campus Research Facility-Phase III.

Contact: Don Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711 (512) 483–6101.
Filed: June 11, 1996, 2:42 p.m.

TRD-9608298

Texas Department of Insurance

Thursday, June 20, 1996 9:30 am

John H. Reagan Bldg., 105 West 15th Street, Room 109

Austin, Texas

AGENDA

454–94–2015.G2.

In the Matter of THE TITLE INSURANCE RATE HEARING (rescheduled from 6–10–96).

Contact: Bernice Ross, (512) 463–6328
Filed: Monday, June 10, 1996, 4:00 p.m.

TRD-9608255

Texas Department of Health

Friday, June 21,996 9:0 am

Room M–618, 1100 West 49th Street

Austin, Texas

Kidney Health Care Advisory Committee

AGENDA

The Committee will meet to discuss and possibly act on: updates on (Kidney Health Care Annual Seminar; status of Fiscal Year 1995 budget; status of FiscalYear 1996–1997 budget; kidney health rules revisions; and end-stage renal disease licensing rules); fiscal year 1997 benefits; fiscal year 1998– fiscal years 1999 budget package; Cyclosporine distribution project; upcoming legislative issues for the Texas Department of Health; drug issues (Coverage of Cell Ceptl Calcitriol; and use of intravenous Infed); proposed revision to reimbursable drug list (Prograf; Trental; and Duragesic Patches); other business not requiring action (National Library of Medicine Grant Proposal; and Conversion to Local Area Network (LAN) Based Computer System); and public comment.

Contact:Juanita Waley, (512) 458–7796. To request accomodation under ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458–7627 or TDD at (512) 458–7708 at least two days before the meeting.
Filed:Tuesday, June 11, 1996, 1:28 p.m.

TRD-9608293

Texas Commission on Law Enforcement Officer Standards and Education

Thursday, June 20, 1996 1:30 pm

Hyatt Regency DFW, West Tower

DFW Airport, Texas

AGENDA

Call to Order, invocation, Pledge of Allegiance, welcoming remarks; Executive Director's Report; Update on firearms training specialization study; Ad hoc rules review committee report; Discussion of final adoption of proposed repeal of §§213.1, 213.3, 213.10, 213.20, 213.50, 213.60 and 211.86 new §223.7, and amendments of §§211.9 and 211.20; Discussion of drafts of proposed new §§215.10, 215.20, 215.30, 215.40, 219.50, 219.60, 217.1, 217.5, and repeal of §§211.65, 211.74, 211.8, 211.97, and 211.68, and adjourn.

Contact: Vera Kocian, (512) 450–0188
Filed: Tuesday, June 11, 1996, 11:17 a.m.

TRD-9608276

Texas Commission on Law Enforcement Officer Standards and Education

Friday, June 21, 1996 9:30 am

Hyatt Regency DFW, West Tower, DFW Airport, Texas

AGENDA

Call to Order, invocation, Pledge of Allegiance, welcoming remarks, Approval of minutes of the March 14–15, 1996, Commission meetings; Receive report and take action on recommendations of the Texas Peace Officers' Memorial Advisory Commitee; Discussion of and take action to authorize the Wxecutive Board of the Commission to act on behalf of the Commission in routine budget/strategic plan preparation; Recognition of out-going Commissioners; Discussion of and take action on final adoption of proposed repeal of §§213.1, 213.3, 213.10, 213.20, 213.50, 213.60, 213.86, new §223.7, and amendments of §§211.9 and 211.20; Discussion of an take action on drafts of proposed new §§215.10, 215.20, 215.30, 215.40, 219.40, 219.50, 219.60, 217.1, 217.8, 211.97, and 211.68, set meeting date and location of September 1996 Commission meeting; take license

action on Agreed Final Order for suspension of license; Receive report on permanent and temporary voluntary surrenders of licenses; Receive comments on any subject without discussion; adjourn.

Contact:Vera Kocian, (512) 450–0188
Filed: Tuesday, June 11, 1996, 11:17 am

TRD-9608275

Texas Commission on Law Enforcement Officer Standards and Education

Friday June 21, 1996, 1:00 pm or upon adjournment of the TCLEOSE quarterly meeting

Hyatt Regency DFW, West Tower

DFW, Texas

Texas Peace Officers' Memorial Advisory Committee

AGENDA

Call to Order. roll call of members, welcoming remarks

Approval of the minutes of the May 20, 1996, POMAC meeting

Chairman's report on actions of the TCLEOSE Commissioners concerning recommendations of the POMAC

Review of cost figures provided by Architect Linda Johnston to construct and maintain the memorial

Discussion and take action if required of other ideas or suggestions for fund raising outside of professional fund raiser

Receive reports and/or comments from Committee members

Set meeting date(s) and lcoation(s) for upcoming meeting(s)

Adjourn

Contact: Vera Kocian, (512) 406–3613
Filed: Tuesday, June 11, 1996, 11:18 a.m.

TRD-9608274

Texas Mental Health and Mental Retardation Board

Wednesday, June 19, 1996 9:00 a.m.

909 West 45th Street (Auditorium)

Austin, Texas

Audit and Financial Oversight Committee

AGENDA

1. Citizens Comments

2. Presentation on the Management of Performance Contracts

3. Financial Status Report

4. Audit Activity Update

5. Internal Control Self-Assessment

6. Community MHMR Center Financial Ratios

7. Follow-up System for Unresolved Audit Findings

8. Update on State Auditor's Review of Management Controls at TDMHMR

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506
Filed: June 11, 1996, 3:33 p.m.

TRD-9608317

Wednesday, June 19, 1996 10:45 a.m.

909 West 45th Street (Auditorium)

Austin, Texas

Medicaid Committee

AGENDA

1. Citizens Comments

2. Presentation of the HCS Rate Setting Methodology Options

3. Selection by the Board of the HCS Rate Setting Methodology Option

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506
Filed: June 11, 1996, 3:33 p.m.

TRD-9608318

Wednesday, June 19, 1996 1:30 p.m.

909 West 45th Street (Auditorium)

Austin, Texas

Planning and Policy Development Committee

AGENDA

1. Citizens Comments

2. State and School Closure Update

3. Update Regarding State Facilities Governing Body Activities

4. Legislative Update

5. Update on Issues Surrounding the Multiple Disability Units of State Hospitals and Persons with Mental Retardation and Mental Illness

6. Update on the Development of the Implementation Plan for the Recommendations Contained in the Final Report of the Ad Hoc Committee on Mental Retardation and Managed Care

7. Consideration of Approval of the Strategic Plan for FY 1997–2001

8. Consideration of Approval of the West Texas Centers for Mental Health and Mental Retardation Plan

9. Consideration of Approval of Adoption of New Chapter 408, Subchapter D, Governing Additional Mandatory Standards for Selected Providers of Community-based Mental Retardation Supports and Services

10. Consideration of Approval of Update to the Long Term Care Plan for FY 96–97

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506
Filed: June 11, 1996, 3:33 p.m.

TRD-9608319

Wednesday, June 19, 1996 2:45 p.m.

909 West 45th Street (Auditorium)

Austin, Texas

Business and Asset Management Committee

AGENDA

1. Citizens Comments

2. Consideration of Approval of a Capital Improvement Project on the Beaumont State Center Campus (Pool Replacement Enclosure)

3. Consideration of Approval of the Renaming of Shady Grove Park on the Brenham State School Campus

4. Consideration of Approval of FY 1996 Operating Budget Adjustments

5. Consideration of Approval of the FY 1997 Operating Budget

6. Consideration of Items Regarding the Conveyance of Approximately 200 Acres at Travis State School to Vision Village, Inc.

7. Update on Major Construction Projects

8. Update on Real Property Transactions Previously Approved by the Board (per complete agenda) Additional items to be considered per complete agenda

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506
Filed: June 11, 1996, 3:33 p.m.

TRD-9608316

Thursday, June 20, 1996 11:00 a.m.

909 West 45th Street (Auditorium)

Austin, Texas

AGENDA

I. Call to order; roll call

II. Citizens comments

III. Approval of minutes of April 25, 1996 meeting

IV. Issues to be Considered

1. Chairman's Report: Resolution regarding the Board's five-year commitment to merit increases

2. Commissioner's Report: Medical Director's Report; Mental Health Performance Indicators

3. Selection by the Board of the HCS Rate Setting Methodology Option

4. Consideration of Approval of the Strategic Plan for FY 1997–2001

5. Consideration of Approval of the West Texas Centers for Mental Health and Mental Retardation Plan

6. Consideration of Approval of Adoption of New Chapter 408, Subchapter D, Governing Additional Mandatory Standards for Selected Providers of Community-based Mental Retardation Supports and Services

7. Consideration of Approval of Update to the Long Term Care Plan for FY 96–97

Additional items to be considered per complete agenda.

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206–4506, (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206–4506
Filed: June 11, 1996, 3:34 p.m.

TRD-9608315

Texas Natural Resource Conservation Commission

Wednesday, June 24, 1996, 9:30 a.m.

12118 North Interstate Highway 35–Building E-Rom 201S

Austin

AGENDA:

The purpose of the hearing will be to determine whether Emergency Order Number 96–1011–IHW, granted by the Texas Natural Resource Conservation Commission (TNRCC) on June 6, 1996 to Amoco Petroleum Products (Amoco) should be affirmed, modified or set aside by the Commission. The Order authorizes Amoco to inject wastewater consisting of an aqueous solution of methyl tertiary butyl ether (MTBE) into the Company's permitted Class I injection wells Numbers WDW-80, WDW-127 and WDW-128. The injection of the wastewater shall conform to the operating limits for injection pressure, injection rate, injection volume, pH and specific gravity as provided in the permits for WDW-80, WDW-127 and WDW-128. The injection wells are located on Amoco's Texas City Refinery's plant property in Galveston County, Texas. Emergency authorization in inject the wastewater into the injection wells is necessary to mitigate the existing significant fire hazards and potential health effects at the Company's Texas City Refinery. The Emergency Order, if affirmed, is to be subject to the terms and conditions set forth in Emergency Order 96–1011–IHW. There are no alternative permitted facilities reasonably available for the disposal of this waste. Authorization to dispose of the wastewater, pursuant to the Order, shall terminate 90 days from the date of issuance of the Order, or upon issuance of permitted amendments for WDW-80, WDW-127 and WDW-128, whichever is earlier.

Contact: Alexandre Bourgeois, P.O. Box 13087, Austin, Texas 78711–3087, (512) 239–0600.
Filed: June 10, 1996, 4:33 p.m.

TRD-9608261

Texas Board of Occupational Therapy Examiners

Wednesday, June 19, 1996, 10:00 a.m.

Rehab Unit, Columbia Medical Center, 3301 Matlock

Austin

Investigations Committee

AGENDA:

I. Call to order

II. Review and possible action regarding the following cases:

95–28; 96–01; 96–02; 96–07; 96–08; 96–10; 96–11; 96–12; 96–13; 96–14; 96–15; 96–16; 96–17; 96–18; 96–18; 96–19;

III. Review and possible action on miscellaneous correspondence.

IV. Adjournment

Contact: Alicia Dimmick Essary, 333 Guadalupe Boulevard, Suite 2–510, Austin, Texas 787–3942.
Filed: June 11, 1996, 3:48 p.m.

TRD-9608313

Friday, June 21, 1996, 9:30 a.m.

333 Guadalupe, Suite 2–510

Austin

Board

AGENDA:

I. Call to order

II. Approval of minutes of December 1, 1995 and March 29, 1996 meetings.

III. Public comment

IV. Report from Texas Occupational Therapy Association

V. Report from National Board for Certification in Occupational Therapy and discussion of and possible action on changes in their procedures.

VI. Discussion and possible action on proposed rule changes to the following sections: Section 362.1. Definitions; Section 365.1. Type of Licenses; Section 373.1 Supervision; Section 374. Disciplinary Actions

VII. Discussion of an possible action on plans for a joint meeting with the Physical Therapy Board.

VIII. Discussion and possible action on physical agent modalities.

IX. Discussion of and possible action on possible changes to the Texas Occupational Therapy Practice Act.

X. Report from the Investigations Committee; Review and possible action on case #95–28; Discussion and possible action on General Investigative Activity; NBCOT disciplinary process redesign effort; Facility Inspections

XI. OT Coordinator's Report

XII. Executive Director's Report

XIII. Executive Session pursuant to Section 551.071 of the Government Code, Consultation with Attorney Regarding Pending or Contemplated Litigation.

XIV. Presiding Officer's Report

XV. Items for future consideration

XVI. Discussion and possible action on the next meeting date.

XVII. Adjournment

Contact: Alicia Dimmick Essary, 333 Guadalupe Boulevard, Suite 2–510, Austin, Texas 787–3942.
Filed: June 11, 1996, 3:58 p.m.

TRD-9608321

Texas State Board of Plumbing Examiners

Wednesday, June 19, 1996, 8:30 a.m.

929 East 41st Street

Austin

Continuing Education Committee

AGENDA:

1. Roll Call; 2. Staff/visitors; 3. Review/approve minutes of previous meeting; 4. Review Board action on committee recommendations; 5. Liability for correct continuing education (CE) class; 6. Hot check letter to providers; 7. "Vision Texas"; 8. Associated Buildings and Contractors (ABC) report on Construction Education Foundation (CEF) and status; 9. CEF advertising CE; 10. ABC involvement with CEF and status of ABC; 11. Plumbing Education Council (PECT) report on 95–96 classes; 12. Class sign-in procedures; 13. Monitored classes; 14. Class no shows; 15. Texas Engineering Extension Service (TEEX)-Texas A&M University System request for instructor approval; 16. Board rule §361.26(b); 17. PECT report on 96–97 book; 18. Class improvements; 19. Instructor requirements; 20. 97–98 book; 21. Board requirements for 97–98 book provider; 22. 97–98 book provider requirements for Board; 23. Provider application; 24. Report on board CE instructor classes; 25. Grants to further education; 26. Adjourn

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458–2145 Ext. 222.
Filed: June 11, 1996, 12:57 p.m.

TRD-9608291

Wednesday, June 19, 1996, 1:00 p.m.

929 East 41st Street

Austin

Rules Review Committee

AGENDA:

1. Roll Call; 2. Staff/visitors; 3. Review/approve minutes of previous meeting; 4. Report on rules §§361.1, 361.6, 361.7, 363.5, 363.6, 363.11, 365.1, 365.2, 365.3, 363.5, 365.6, 367.3. and 367.4; 5. Report on rules §§361.27, 361.28, 365.10, 365.14, and 367.7; 6. Rule regarding magnetic signs; 7. Possible rule regarding job site signs; 8. Rule §361.1; 9. Possible rule regarding drain cleaners; 10. Rule §361.26(b); 11. Possible rule regarding grandfathering from education requirements; 12. Hardships; 13. Inspectors in

unincorporated areas; 14. Inspectors in municipalities of less than 5,000; 15. Unlicensed inspectors in municipalities of less than 5,000; 16. Possible rule regarding enforcement outside municipalities; 17. Printing of License Law book; 18. Adjourn.

Contact: Mary Lou Lane, 929 East 41st Street, Austin, Texas 78751, (512) 458–2145 Ext. 222.
Filed: June 11, 1996, 12:57 p.m.

TRD-9608290

Texas Property and Casualty Insurance Guaranty Association

Board of Directors

Thursday, June 20, 1996, 9:00 a.m.

9420 Research Boulevard, Echelon III

Suite 400

Austin, Texas

AGENDA

Call to order, read the Antitrust Statement, hear public participation, approve minutes of the April 30, 1996, board meeting, discuss and take possible action on the following items: Action items-Finance and Audit Committe Report, Legal and Claims Committee Report, presentation of statement of purpose and responsibilities for the Personnel Committee, formulation of the Governmental Task Force, Pension plan presentation, discuss and take possible action on the following items: Informational items-NAIC/Guaranty Fund Issues update, Texas Workers Compensation Insurance Facility update, claims update-environmental, Executive Session-Regulatory report, Conservators report, report on pending claims litigation 1. Lone Star Steel, 2. Waldrep, Attorney's report regarding the Pension Plan, and discuss and take possible action on the items considered in Executive Session.

Contact: Marvin Kelly, 9420 Research Boulevard, Echelon III, Suite 400, Austin, Texas 78759, (512) 345–9335.
Filed: June 12, 1996, 9:00 a.m.

TRD-9608335

Texas State Board of Examiners of Psychologists

Tuesday, June 25, 1996 10:30 a.m.

Texas Wesleyan University, School of Law, Room 215, Library, 2535 East Grauwyler Road

Irving, Texas

Search Committee

AGENDA

The Search Committee of the Texas State Board of Examiners of Psychologists will meet to discuss applicants for the position of Executive Director.

Contact: Jennifer Noack, Acting Executive Director, 333 Guadalupe, Suite 2–450, Austin, Texas 78701, (512) 305–7700
Filed: June 12, 1996, 9:43 a.m.

TRD-9608347

Texas Public Finance Authority

Wednesday, June 19, 1996, 10:30 a.m.

William P. Clements Building, 300 West 15th Street, Committee Room 5, 5th Floor

Austin

Board Meeting

AGENDA:

1. Call to order.

2. Approval of Minutes of the May 22, 1996, Board Meeting.

3. Consider a Request for Financing from the Texas Youth Commission in the amount of $42,776,955 for construction projects, and select a method of sale.

4. Consider the selection of a Remarking Agent and Dealer for the Texas Public Finance authority Tax Exempt Commercial Paper Revenue Notes, Series B (Master Lease Purchase Program).

5. Consider approval of a Request for Proposal for selection of a Certified Public Accountant for work on the Annual Financial Report.

6. Discussion of the Historically Underutilized Business certification process applicable to investment banking and bond counsel firms.

7. Other business.

8. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should contact Jeanine Barron or Patricia Logan at (512) 463–5544. Request should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701.
Filed: June 11, 1996, 11:18 a.m.

TRD-9608271

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Public Utility Commission of Texas

Friday, June 28, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 10645–Application of Credit Loans, Inc. doing business as Loan Star Communications for a Service Provider Certificate of Operating Authority. This applications was filed on June 11, 1996. Applicant plans to resell local exchange service including tone dialing, custom call, Caller ID, toll restriction, bill number screening and all other services which are available on a resale basis from the underlying exchange carriers within the applicant's service area. The area to be covered corresponds with the area presently being serviced by the underlying carrier, Lufkin-Conroe Telephone Exchange, Southwestern Bell, General Telephone Exchange and United Telephone Exchange. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by June 21, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458–0100.
Filed: June 11, 1996, 4:50 p.m.

TRD-9608327

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Friday, June 28, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 16029–Application of Lone Star Net, Inc. for a Service Provider Certificate of Operating Authority. This application was filed on June 7, 1996. Applicant plans to provide local exchange telephone service, basic local telecommunications service, switched access service and any other service for which a SPCOA is required. Applicant seeks certification for all geographic regions certificate by Southwestern Bell Telephone Company, GTE Southwest, Inc, Central Telephone Company of Texas, United Telephone Company of Texas, Inc. Sugerland Telephone Company and Lufkin-Conroe Telephone Exchange, Inc. and incorporates as its boundaries of these incumbent local exchange companies as of the date the applicant's certificate is granted and including any new geographic areas which may from time to time be added to the service area boundaries of these incumbent local exchange companies. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by June 21, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458–0100.
Filed: June 11, 1996, 10:33 a.m.

TRD-9608181

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Friday, June 28, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 16030–Application of Southwestern Bell Telephone Company for a Certificate of Operating Authority. This application was filed on June 7, 1996. Applicant plans to provide a full range of telecommunications services, including, but not limited to, local exchange service, basic local telecommunications service, and switched access service in the proposed areas. SWB will also provide long distance, WATS, 800 ISDN, data services, custom calling services, Caller ID and other optional services. SWB will rely on GTE Southwest, Inc. other certificated local exchange companies in the certificated areas, competitive access providers, PCS providers and its own facilities, as appropriate, to provide its services. The proposed service area boundary for this application will follow the boundaries of the following listed GTE Southwest, Inc. exchanges: Carrollton, Denton, DFW Airport, Garland, Grapevine, Irving, Keller, Lewisville, Plano and Rowlett. Persons who wish to intervene or other participate in these proceedings should make appropriate filings or comments to te Commission by June 21, 1996.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458–0241.
Filed: June 10, 1996, 10:33 a.m.

TRD-9608182

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Structural Pest Control Board

Public Hearing and Regular Board Meeting

Wednesday, June 26,1996, 9:00 a.m.

Joe C. Thompson Conference Center

2405 East Campus Drive, Room 2.122

Austin, Texas

AGENDA

I. Approval of Board Minutes of March 28, 1996.

II. Public Comment and Public Hearing on §593.23 and §591.21.

III. Consider for Adoption §593.23 and §91.21.

IV. Termite Task Force Committee Report on Termite Treatment Standards.

V. Consider Proposals for Decisions in Hearings.

VI. Review of Agreed Administrative Penalties and Consent Agreements.

VII. Jack Stuffebaum dba Ag-Ed group to appear to request to the board a change in continuing education.

VIII. Discussion on Vector Control by Texas Department of Health.

IX. Consider Proposals for Amendments to various sections of the law.

X. Discussion of Policy on Control of Lice.

XI. Discussion of Budget draft for FY1998–1999.

XII. Executive Director's Report.

XIII. Set date for next board meeting.

Contact: Benny Mathis, 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835–4066.
Filed: June 11, 1996, 1:16 p.m.

TRD-9608292

Texas Southern University

Friday, June 28, 1996 8:30 a.m.

3100 Cleburne, Robert J. Terry Library, 5th Floor,

Houston, Texas

Special Meeting of the Board of Regents

AGENDA

Meeting to consider: The 1996–97 Annual Budgets; and other Legal Matters pending before the committee; Executive Session.

Contact: Janet Lightfoot, 3100 Cleburne, Houston, Texas 77004, (713) 529–8911
Filed: June 11, 1996. 11:53 a.m.

TRD-9608286

Texas Department of Transportation

Tuesday, June 18, 1996, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Approve minutes. Awards/recognitions/resolutions. National Maximum Speed Zones. Rulemaking: 43 TAC Chapter 1, 3, 9, 17, 21, 23, 25, and 28. Programs: 1997 Preventive Maintenance Program. Environmental Projects. Multimodal Transportation. Strategic Plan. Contract Awards/Rejections/Defaults/Assignments/Claims. Routine Minute Orders. Executive Session for legal counsel consultation, land acquisition matters, and management personnel evaluations, designation, assignments and duties. Open comment period. Delegations: New Braunfels Chamber of Commerce; and Denton and Tarrant Counties.

Contact:Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463–8630.
Filed: June 10, 1996, 4:24 p.m.

TRD-9608258

Thursday, June 27, 1996, 9:00 a.m.

410 East Fifth Street, Second Floor

Austin

Motor Vehicle Board

AGENDA:

Call to order; roll call. Approval of minutes of Motor Vehicle Board Meeting on April 11, 1996. Public hearing and consideration of proposed Rule 101.66. Public hearing and consideration of proposed amendments to Rules 105.4 and 105.10. Consideration of proposal for decision. Consideration of agreed final orders. Orders of dismissal. Other: a. Litigation status report; b. Review of consumer complaint recap report including decisions made by examiners, division director and board members; c. Recap of enforcement activities; d. Division budget status. Executive Session under §551.074, Government Code, discussion of personnel. Adjournment.

Contact: Brett Bray, 410 East Fifth Street, First Floor, Austin, Texas 78701, (512) 505–5100.
Filed: June 10, 1996, 4:24 p.m.

TRD-9608259

Texas Water Development Board

Fianance Committee

Wednesday, June 19, 1996, 10:30 a.m.

S.F.A. Building, Room 513F

1700 North Congress

Austin, Texas

AGENDA

1. Consider approval of the minutes of the meeting of May 15, 1996.

2. Consider a grant/loan to the City of Mercedes (Hidalgo County) for the design and construction of water and wastewater system Improvements (Economically Distressed Areas Program).

3. Consider a grant/loan to the Catarina Water Supply Water Supply Corporation (Dimmit County) for the design and construction of water system improvements and upgrading septic tanks (Economically Distressed Areas Program).

4. Consider a 764,10 contingency commitment to the City of Mercedes (Hidalgo County) for the replacement of the I/A Technology wastewater treatment system for De Anda and Saenz colonias.

5. Briefing and discussion on the Colonia Plumbing Loan Program.

6. Briefing on present and future EDAP projects.

7. Report on the status of approved contracts.

8. May consider items on the agenda of the June 19, 1996 board meeting.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711 (512) 463–7847
Filed: June 11, 1996

TRD-9608306

Texas Water Development Board

Wednesday, June 19, 1996, 1:30 p.m..

S.F.A. Building, Room 118

1700 North Congress

Austin, Texas

AGENDA

The board will consider; minutes; financial and committee reports; financial assistance for cities of Ingleside on the Bay, La Feria, Edgewood, Princeton, Mercedes, Moore Water Supply Corporation, El Paso Water Utilities Public Service Board, Town of Combs, and Charterwood Municipal Utility District; extension of commitment for Travis County WC&ID #14; amendment to Board Resolution #96–21 to change reference to the City of Austin, transfer of funds and reallocation of funds; authorizing the Executive Administrator and Development Fund Manager to solicit proposals for an underwriting team for future board negotiated bond issues and transactions; authorizing the executive administrator and development fund manager to take necessary action for $55,00,000 bond sale and selection of underwriters; establishing an emergency loan program for small communities; proceeding with amendments to board rules regarding the grant/loan calculation for EDAP projects; the board's Legislative Appropriations Request; request from Jckson Water Supply Corporation to amend Deed of Trust to allow RECD to receive parity lien on the Corporation's property & water revenues; policies and procedures related to operation of the Colonia Plumbing Loan Program; Executive Session regarding PLS vs. TWDB litigation and performance evaluation of the Executive Administrator.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711 (512) 463–7847
Filed: June 11, 1996, 3:38 p.m.

TRD-9608307

Texas Water Resources Finance Authority

Wednesday, June 19, 1996, 1:30 p.m.

Stephen F. Austin, Building, Room 118, 1700 North Congress

Austin

Texas Water Resources Finance Authority

AGENDA:

1. Consider approval of the minutes of the meeting on January 18, 1996 and March 21, 1996.

2. Consider authorizing the Executive Administrator and Development Fund Manager to solicit proposals for an underwriting team for future Authority negotiated bond issues and transactions.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463–7847.
Filed: June 11, 1996, 3:38 p.m.

TRD-9608308

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Texas Council on Workforce and Economic Competitiveness

Thursday June 20–Friday June 21, 1996, 9:00 a.m.

Lago Vista, Conference Center, 1918 American Drive

Lago Vista, Texas

AGENDA

The Texas Council on Workforce and Economic Competitiveness will hold a meeting on Thursday, June 20 and Friday June 21, 1996. Thursday, June 20, 9:00 a.m.- Welcome; Action on FY97, FY98, FY99 operating budgets; Statement of Meeting Purpose and Objectives; Discussion of Council Goals; Friday, June 21, 9:00 a.m.- Development of Council Action Plans, Identification of short- and long-term strategies; legislative issues; 12:00 p.m.- meeting ends.

Notice: Persons with Disabilities who plan to attend this meeting and who made need auxiliary aids or services should contact Val Blaschke, (512) 912–7158 (or Relay Texas (800) 735–2988), at least two days before this meeting so that appropriate arrangements can be made.

Contact: Val Blaschke, TCWEC, P.O. Box 2241, Austin, Texas 78768, (512) 912–7158
Filed: June 11, 1996, 3:06 p.m.

TRD-9608305

Texas Workforce Commission

Tuesday June 18, 1996 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin, Texas

AGENDA

Prior meeting notes; Staff reports; Consideration and possible proposal for adoption of rules regarding additional transitional child care eligibility criteria; Consideration and possible final adoption of rules regarding the Job Training Partnership Act; Discussion, consideration and possible action on adoption of Internal Audit Charter; Discussion, consideration and possible action with regard to submitted applications for certification of various local workforce development boards; Discussion, consideration and possible action with regard to transfer of programs pursuant to H.B. 1863; Consideration and action on tax liability cases listed on Texas Workforce Commission Docket 25; Executive session to consult with staff attorney regarding the Open Meetings Act; Actions, if any, resulting from executive session; Consideration and action on whether to assume continuing jurisdiction on unemployment compensation cases; Consideration and action on higher level appeals in unemployment compensation cases listed on Texas Workforce Commission Dockets 24 and 35; and Set date and discuss agenda for next meeting.

Contact: Esther Hajdar, Director of Legal Services, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463–7833
Filed: June 10, 1996, 9:00 a.m.

TRD-9608256

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.

Coastal Coordination Council

Notice of Availability and Request for Public Comment

The Coastal Coordination Council (Council) announces the availability of state agency requests for certification of agency rules and rule amendments and approval of agency thresholds by the Council pursuant to the Coastal Coordination Act (Act), Texas Natural Resource Code, §33.2052, and Texas Administrative Code Title 31, §505.20 and §505.26.

The Act requires that certain state agency rules be consistent with the goals and policies of the Texas Coastal Management Program (CMP). Agencies may request that the Council certify that the agency's rules meet this legal requirement. The Council will certify an agency's rules if the rules incorporate or otherwise require the agency to act consistently with the CMP goals and policies. Once certified, the agency's rules are incorporated into the CMP and may serve as the basis for Council review of federal agency actions in the coastal zone to ensure federal agencies comply with state rules as required by the federal Coastal Zone Management Act (16 United States Code Annotated §;1451-1464).

The Act also requires that certain permits and other approvals issued by state agencies be consistent with the CMP goals and policies, as well as allowing the Council to review those actions. If its rules are certified by the Council, the agency may also set "thresholds" that limit the Council's review of individual agency actions to those that have unique or significant impacts. The Council approves an agency's thresholds when it certifies the agencies rules. To be approved, thresholds must be set at a level that is reasonably calculated to ensure that actions that may have unique and significant adverse effects on coastal natural resource areas are reviewable by the Council.

The Council hereby requests public comment on the agencies' request for certification of rules and rule amendments and approval of thresholds. The Council will consider the request for certification and approval of thresholds at its next regularly scheduled meeting on July 26, 1996.

State agency rules and rule amendments requested for certification and thresholds submitted for approval by the Council pursuant to §;505.20 and 505.26 are:

General Land Office: 31 TAC §;15.1-15.11 Management of the Beach/Dune System.

School Land Board and General Land Office: 31 TAC §16.4 Thresholds for Referral for Specific Activities in Coastal Natural Resource Areas.

Public Utility Commission: 16 TAC §23.31(k) Certificates of Convenience and Necessity.

State Soil and Water Conservation Board: 31 TAC §523 Agricultural and Silvicultural Water Quality Management.

Texas Natural Resource Conservation Commission: 30 TAC §261 Introductory Provisions; Subchapter B-Environmental, Social and Economic Impacts Statements; Subchapter C-Guidelines for Preparation of Environmental Impact Studies. §279 Water Quality Certification. ˘281 Applications Processing, Subchapter B-Consistency with Texas Coastal Management Program. §293 Water Districts; §§293.1-293.6 General Provisions; §§293.11- 293-18 Creation of Water Districts; §§293.41-293.59 Issuance of Bonds; §293.60 Conditional Approval; §293.111 Sanitary Sewer System Rules and Regulations; §§293.301-293.311 Procedures and Design Criteria for Approval of Water System Projects; §293.331 Procedures and Design Criteria for Approval of Wastewater System Projects. §297 Water Rights, Substantive; Subchapter A- Definitions, Subchapter E-Issuance and Conditions of Water Permit or Certificate of Adjudication, Subchapter F-Amendments to Water Rights; Corrections to Water Rights. §307 Texas Surface Water Quality Standards; §307.3 Definitions and Abbreviations; §307.4 General Criteria; §307.5 Antidegradation; §307.6 Toxic Materials; §307.7 Site-specific Uses and Criteria; §307.8 Application of Standards; Appendices A-D as they pertain to TNRCC designated tidal segments located within the CMP boundary (See 30 TAC §281.48(c)-Appendix C.) §309 Effluent Limitations. §321 Control of Certain Activities by Rule; Subchapter A-Boat Sewage disposal, §§321.1-321.14 and §321.18; Subchapter B-Commercial Livestock and Poultry Production Operations, §§321.31-321.33, §§321.35-321.46; Subchapter C-Meat Processing; Subchapter D-Sand and Gravel Washing; Subchapter E-Surface Coal Mining, Preparation and Reclamation Activities, §§321.71-321.75, §§;321.77-321.81; Subchapter F-Shrimp Industry; Subchapter G-Hydrostatic Test Discharges, §§321.101-321.104, §§321.106-321.109; Subchapter H-Discharge to Surface Waters from Treatment of Petroleum Fuel Substance Contaminated Waters; Subchapter K-Concentrated Animal Feeding Operations, §§321.181-321.184, §§321.191-321.197. §334 Underground and Aboveground Storage Tanks; Subchapter A, §334.2-Definitions, §334.3 Statutory Exemptions, §334.4 Commission Exclusions, and §334.5 General Prohibitions; Subchapter C-Technical Standards; Subchapter F Aboveground Storage Tanks. §330 Municipal Solid Waste; Subchapter A, §330.2-Definitions, §330.4 Permit Required, and §330.5 General Prohibitions; Subchapter E Permit Procedures, §§330.51- 330.58, Subchapter L-Location Restrictions, §330.301 Floodplains and §330.302 Wetlands. §335 Industrial

Solid Waste and Municipal Hazardous Waste; Subchapter A, §335.1-Definitions, §335.2-Permit Required, and §335.4-General Prohibitions; Subchapter B, §335.41-Purpose, Scope and Applicability, and §335.43-Permit Required; Subchapter E, §335.111-Purpose, Scope and Applicability, and §335.112- Standards, §335.120-Containment for Waste Piles, §335.121- General Operating Requirements (Land Treatment Facilities), and §335.124-General Operating Requirements (Landfills); Subchapter F, §335.151-Purpose, Scope and Applicability, §335.152- Standards, §335.168-Design and Operating Requirements (Surface Impoundments), §335.170-Design and Operating Requirements (Waste Piles), §335.171-Design and Operating Requirements (Land Treatment Units), §335.173-Design and Operating Requirements (Landfills), §335.177-General Performance Standard, and §335.180-Impact of New Hazardous Waste Management Facilities on Local Land Use; Subchapter G-Location Standards for Hazardous Waste Storage, Processing or Disposal, §§335.201-335.204.

Persons may request a copy of the request for certification and approval of thresholds, including a copy of all rules and the agency's reasoned justification supporting the request. For copies please contact Janet Fatheree, Council Secretary, General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495 (Phone: (512) 463-5385 or 1-800-852-3224; FAX (512) 475-0680).

Comments on the request for certification and approval of thresholds may be submitted to Janet Fatheree, Council Secretary, General Land Office, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495 (FAX: (512) 475-0680). In order to be considered, comments must be received by 5:00 p.m. on Monday, July 15, 1996.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608344
Garry Mauro
Chairman
Coastal Coordination Council
Filed: June 12, 1996

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Comptroller of Public Accounts

Notice of Request for Proposals for Professional Legal Services

Notice of Request for Proposals: Pursuant to House Bill 1214, passed last year by the 74th Legislature and which amended Chapter 54, Texas Education Code, to add Subchapter F, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP) for the purpose of hiring legal counsel to assist the Comptroller with professional legal services in connection with the prepaid higher education tuition program. House Bill 1214 provides that the program be administered by a seven member Prepaid Higher Education Tuition Board (Board). The Comptroller is the executive director and chairperson of the Board, and the program operates within the Comptroller's Office. The fund created to hold funds from contracts and investments of the program is known as the Texas Tomorrow Fund. The Board is authorized to enter into one or more contracts for the performance of services relative to maintaining the program. The Comptroller, as executive director of the Board, is issuing this RFP in order that the Board and the Comptroller may move forward with retaining services necessary to administer the program, provided that the proposer recommended by the Comptroller pursuant to this RFP process will be subject to approval by the Board. The Comptroller and the Board have identified professional legal services as a service required to maintain the program. The successful proposer will be expected to begin performance of the contract upon approval by the Comptroller and the Board.

Contact: Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Tuesday, June 18, 1996, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter. All written inquiries and letters of intent to propose should be received at the above-referenced address prior to 4:00 p.m. (CZT) on Friday, June 28, 1996.

Closing Date: Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Friday, July 19, 1996. Proposals received after this time and date will not be considered.

Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the Deputy Comptroller, who will then make a recommendation to the Comptroller. The Comptroller will make the final selection as to a proposer to be recommended to the Board. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. Neither the Comptroller nor the Board is under any legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller or the Board to pay for any costs incurred prior to the execution of a contract. The anticipated schedule of events is as follows: Issuance of RFP-June 18, 1996, 4:00 p.m. (CZT); Letters of Intent and Questions Due-June 28, 1996, 4:00 p.m. (CZT); Proposals Due-July 19, 1996, 4:00 p.m. (CZT); and Contract Execution-upon Comptroller and the Board approval.

Issued in Austin, Texas, on June 11, 1996.

TRD–9608273
Arthur F. Lorton
Senior Legal Counsel
Computer of Public Accounts
Filed: June 10, 1996

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Texas Education Agency

Correction of Errors

The Texas Education Agency withdrew §74.24. The rule appeared in the May 17, 1996, issue of the *Texas Register* (21 TexReg 4309).

On page 4309, an error as published appeared in the signature block of the notice of withdrawal of proposed new §74.24. The title of the certifying official is incorrectly identified as "Commissioner, Policy Planning and Research." The correct title is "Associate Commissioner, Policy Planning and Research."

On page 4275, an error as published appeared in the *Texas Register* table of contents for Texas Education Agency (TEA) adoptions. The listing "19 TAC §§74.21–74.30" should read "19 TAC §§74.21–74.23 and 74.25–74.30."

The Texas Education Agency proposed new §§66.21, 66.24, 66.27, 66.30, 66.33, 66.36, 66.39, 66.42, 66.45, 66.48, 66.51, 66.54, 66.57,

66.60, 66.63, 66.66, 66.69, 66.72, 66.75, and 66.78. The rules appeared in the May 17, 1996, issue of the *Texas Register* (21 TexReg 4295).

On page 4295, an error as submitted appeared in proposed new §66.27. Under subsection (b), paragraphs (4)-(6) should be numbered paragraphs (3)-(5).

On page 4298, an error as submitted appeared in proposed new §66.60. In subsection (c), the reference to "SBOE Operating Rules, §2.9," should read "SBOE Operating Rules, §2.10."

On page 4299, an error as submitted appeared in proposed new §66.66 subsection (c)(4) should end with a period.

The Texas Education Agency adopted new §§74.1–74.3, 74.11–74.14, 74.21–74.23, and 74.25–74.30. The rules appeared in the May 17, 1996, issue of the *Texas Register* (21 TexReg 4311).

On page 4316, an error as submitted appeared in the preamble to adopted new §§74.1–74.3, 74.11–74.14, 74.21–74.23, and 74.25–74.30. The following comment, which was attributed to the Texas Music Education Association should be attributed to the Texas Music Educators Association. "Rather than recommending one more credit in social studies or science, give students a choice such as that in Option III of the recommended high school program."

On page 4321, an error as published appeared in adopted new §74.11. In subsection (d)(11), a comma should appear after the letter "D" in the phrase "Chapter 75, Subchapter D of this title."

On page 4321, an error as submitted appeared in adopted new §74.12. The following catchline should be added to subsection (a) to comply with Texas Register style guidelines. "General requirements."

On page 4322, an error as submitted appeared in adopted new §74.12 on page 4322. The following catchline should be added to subsection (d) to comply with Texas Register style guidelines: "Approval of substitutions by State Board of Education."

On page 4324, the same error as published appeared five times in adopted new §74.13. In each of paragraphs (9)-(11) of subsection (d), and in subsection (e)(2) and subsection (f), a comma should appear after the letter "D" in the phrase "Chapter 75, Subchapter D of this title."

On page 4325, an error as published appeared in the header information for adopted new Chapter 74, Subchapter C. The line identifying the section in Subchapter C, "19 TAC §§74.21–74.30," should read "19 TAC §§74.21–74.23 and 74.25–74.30."

On page 4326, an error as submitted appeared in adopted new §74.28. In the second sentence of subsection (c), the title of the State Board of Education document, Procedures Concerning Dyslexia and Related Disorders, appears enclosed in quotation marks. The space that appeared in the rule text between the word "Disorders" and the closing quotation mark should be deleted.

A similar error appeared on the same page in adopted new §74.30. In subsection (a)(1), the title of the document, Community College General Academic Course Guide Manual (Part One), which is followed by a semicolon, appeared enclosed in quotation marks. The space that appeared in the rule text between the semicolon and the closing quotation mark should be deleted.

On page 4327, another error as submitted appeared in adopted new §74.30. In subsection (a)(6), the word "Studies" in the phrase "Social Studies" should be lowercased.

The Texas Education Agency (TEA) adopted new §§75.1021–75.1025. The rules appeared in the May 17, 1996, issue of the *Texas Register* (21 TexReg 4329)

On page 4329, an error as published appeared in adopted new §75.1023. In subsection (g), the first occurrence of the word "students" should be in the possessive form "student's."

An error as published appeared in the first TEA open meeting notice, which begins on page 4339. The name of the group holding the meeting, "State Board of Education (SBOE) Committeee of the Whole," was omitted.

On page 4340, three errors as published appear in the open meeting notice for the State Board of Education ((SBOE) Committee on School Finance. The time of the meeting, listed as "1:00 p.m.," should read "1:00 p.m. or upon completion of the joint meeting of the committee on Students and School Finance which convenes at 1:00 p.m." In the address for the contact person, the name of the city, "Austin," was omitted; and the zip code, listed as "7701–1494," should read "78701–1494."

Also on page 4340, an error as published appeared in the agenda of the pen meeting notice for the State Board of Education (SBOE) Committee on Students. The word "or" in the phrase "Texas Essential Knowledge and Skills or Mathematics" should read "for."

On page 4341, an error as published appeared in the open meeting notice for the State Board of Education (SBOE) Committee on the Permanent School Fund (PSF). In the address for the contact person, the zip code, listed as "7701–1494," should read "78701–1494."

Also on page 4341, an error as published appeared in the agenda of the open meeting for the State Board of Education (SBOE). The phrase "Proposed repeal of 19 TAC Chapter 75, Subchapter K, Extracurricular Activities, and proposed new 19 TAC Chapter 89" should read "Proposed repeal of 19 TAC Chapter 75, Subchapter K, Extracurricular Activities, and proposed new 19 TAC Chapter 76, Extracurricular Activities; proposed repeal and readoption of 19 TAC Chapter 89."

The Texas Education Agency submitted Open Meeting Notices, which appeared in the May 14, 1996, issue of the *Texas Register* (21 TexReg 4248).

On page 4248, an error as published appeared in the first Texas Education Agency (TEA) open meeting notice. The name of the group holding the meeting listed as "State Board of Education (SBOE)," is incomplete. The full name of the group is "State Board of Education (SBOE) Committee on Personnel."

The Texas Education Agency submitted a correction of error, which was published in the May 14, 1996, issue of the *Texas Register* (21 TexReg 4259).

On page 4260, three errors as published appeared in the notice. The first two errors are located in the forth paragraph of the notice. In the second sentence of the paragraph, the first occurrence of the word "districts" should read "districtss," as the notice at that point is identifying a misspelled word. The second occurrence of the word "districts" should read "district's," as the notice at that point is identifying the correct spelling of the word intended. The third

error occurs in the last paragraph of the notice. The last sentence of the paragraph was omitted. The paragraph should conclude with the following sentence. "The same UIL item was omitted from the open meeting notice for the State Board of Education (SBOE), which begins on page 3235."

Call for Written Comment

Working with the Texas Education Agency (TEA), Westat, Inc. is designing assessment systems to evaluate the progress of limited English proficient (LEP) and special education students who are currently exempted from the Texas student assessment program. Westat, Inc. is also designing an assessment system for students who have attempted and failed to successfully complete the exit level tests in the Texas student assessment program. The goal of this system is to produce a mechanism by which a student can demonstrate the knowledge and skills measured by the exit level tests and receive a diploma. The commissioner of education will propose such systems to the legislature by December 1, 1996, as required by the Texas Education Code, §39.027(c) and §28.025(d).

As one part of this project, TEA seeks the written comment of a broad range of Texas constituencies - educators, parents, interested members of the public, and students. The TEA welcomes written comments, suggestions, and recommendations from any concerned individual on issues pertinent to the assessment of LEP students, special education students, and exit level students under the state assessment system. The type of input TEA is particularly interested in receiving is delineated below.

Input regarding assessment procedures for currently exempted LEP students.

The TEA seeks input on the following: consistent procedures for including LEP students in the current assessment system; the soundness and appropriateness of current procedures related to the testing or exclusion of LEP students; educationally appropriate procedures for evaluating the progress of LEP students who are currently exempted from statewide testing; appropriate and equitable ways to include the performance of LEP students in the state's accountability system; the use of tests written in students' native languages; educationally appropriate accommodations that might be provided to LEP students who take the Texas Assessment of Academic Skills (TAAS) English-version tests; the amount of instruction in English that should be provided before requiring testing with the English TAAS; and the role of the local school district in administering an alternative assessment system.

Input regarding assessment procedures for currently exempted special education students.

The TEA is soliciting comments on the following: consistent procedures for including special education students in the current assessment system; the soundness and appropriateness of current procedures related to the testing or exclusion of special education students; educationally appropriate procedures for evaluating the progress of special education students who are currently exempted from statewide testing; appropriate and equitable ways to include the performance of special education students in the state's accountability system; educationally appropriate accommodations that might be provided to special education students who take the TAAS tests; and the role of the local school district in administering an alternative assessment system.

Input regarding assessment procedures for students not passing the exit level tests.

The TEA is requesting comments on the following: alternative administration procedures or other adaptations of the current TAAS tests; alternative assessment methods or instruments to assess the competencies required for high school graduation; alternative assessment methods that could be used reliably and consistently as appropriate measures for exiting high school; the appropriateness of establishing equivalent performances on other currently available tests; the feasibility of alternative assessment approaches; eligibility requirements for participation in an alternative assessment system; and the role of the local school district in administering an alternative assessment system.

Written reactions and comments on the above and related issues should be submitted directly to Diane Ward, Westat, Inc., by mail to 1650 Research Boulevard, Rockville, Maryland, 20850, by facsimile to (301) 517-4134, or by e-mail to WARDD1@WESTAT.COM. All information provided will become part of public documentation for the project. Written materials should be submitted by July 15, 1996, to ensure adequate time for review and consideration by the contractor and its advisory panels.

Issued in Austin, Texas, on June 12, 1996.

TRD-9608349
Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency
Filed: June 12, 1996

Employees Retirement System of Texas

Correction of Error

The Employees Retirement System of Texas proposed amendments to §§81.1, 81.7, and 81.11. The rules appeared in the May 24, 1996, issue of the *Texas Register* (21 TexReg 4520).

The following error was discovered: On page 4520, §81.1. Definitions. Definition of "Salary" was omitted. It should read: "Salary-The salary to be used for determining optional term life and disability income limitations will be the employee's regular salary, including longevity, shift differential**,** [and] hazardous duty pay[,] **and benefit replacement pay,** received by the employee as of the employee's first day of active duty within a contract year. No other component of compensation shall be included. Non-salaried elective and appointive officials or members of the legislature may use the salary of a state district judge or their actual salary as of September 1 of each year.

Notice of Recession 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 April 26, 1996, to Bee County Regional Medical Center, 1500 East Houston, Beeville, Texas 78102, holder of Certification of Mammography Systems Number M00607.

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 June 10, 1996.

TRD–9608263
Susan K. Steeg

General Counsel, Office of General Counsel
Texas Department of Health
Filed: June 10, 1996

Notice of Request For Proposals (RFP) For HIV Prevention Activities

INTRODUCTION: The Texas Department of Health (TDH) requests proposals for two HIV Prevention programs in Texas for the Calendar Years 1997 and 1998 (January 1, 1997 through December 31, 1998). Proposals may be submitted for one or both of the following programs: HIV Prevention Counseling and Partner Elicitation (PCPE), **formerly** called Counseling, Testing, Referral and Partner Elicitation (CTRPE); and/or HIV Health Education and Risk Reduction (HERR). Project proposals will be reviewed and awarded on a competitive basis.

PURPOSE: The purpose of this program is to assist local communities to:

prevent the transmission of HIV;

reduce associated morbidity and mortality among HIV-infected persons and their partners by enhancing referral to medical, social and prevention services;

initiate needed HIV prevention services according to the Comprehensive HIV Prevention Plan; and

complement existing HIV prevention programs.

ELIGIBLE APPLICANTS: Eligible entities include governmental, public, or private nonprofit entities located within the state of Texas including: city or county health departments or districts, community-based organizations, and public or private hospitals. Individuals are not eligible to apply. Applicants must have experience and/or expertise in working with the target population(s). **Entities that have had state or federal contracts terminated within the last 24 months for deficiencies in fiscal or programmatic performance may not apply.** Applicants must provide historical evidence of fiscal and administrative responsibility as outlined in the Administrative History Certification of the grant instructions.

AVAILABLE FUNDS: Award of these funds is contingent upon annual federal grant awards to TDH from the Centers For Disease Control and Prevention (CDC). This announcement is made prior to the award of 1997 CDC funds to allow applicants sufficient time to respond to the application due date. Award of these funds is contingent upon satisfactory completion of the grant application and the negotiation process. The projected amount available is approximately $7.6 million. TDH expects to fund up to 100 projects. Current budgets average $78,000 for similar counseling and testing projects, and $71,000 for HERR projects.

DEADLINE: The original and six copies of the application(s) must be received by the Manager, Grants and Contracts Branch, HIV/STD Health Resources Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m., September 3, 1996. No facsimiles will be accepted.

REVIEW AND AWARD CRITERIA: Each application will be screened for minimum eligibility, completeness, and satisfactory fiscal and administrative history. Applications which are deemed ineligible or incomplete will **not** be reviewed. Applications which arrive after the deadline for submission will **not** be reviewed. Eligible, complete applications will be reviewed by a panel of reviewers and scored according to the quality of the application, the priority of the targeted population, and the appropriateness of the interventions for the target population. Target populations and interventions must be planned in compliance with the 1996 *Comprehensive HIV Prevention Plan.* TDH reserves the right to make funding decisions based on the need to provide HIV prevention services across geographic areas and to allocate resources based on an analysis of current resources already available in a particular community in order to avoid the duplication of services.

FOR INFORMATION: For a copy of the RFP, and other information, contact Ms. Laura Ramos, HIV/STD Health Resources Division, at (512) 490-2525. No copies of the RFP will be released prior to July 1, 1996.

Issued in Austin, Texas, on June 11, 1996.

TRD-9608328
Susan K. Steeg
General Counsel, Office of General Counsel
Texas Department of Health
Filed: June 11, 1996

Texas Department of Human Services

Request for Proposals

The Texas Department of Human Services announces the availability of Refugee Social Services funds to purchase English as a Second Language (ESL) services, Health and Emergency Services, Orientation and Child Care services in only those areas of the State with significant numbers of refugees but no current contract provider for these specific services.

Federal regulations require the State to solicit comments from local agencies and individuals regarding the need for specific refugee social services allowed by federal regulations. The results of comments received during May 1996, indicate the following contract services are not currently available in the following areas of the State: Amarillo: ESL and Health/Emergency Services; Austin: ESL, Health/Emergency Services and Child Care; Houston: Health/ Emergency Services; San Antonio: ESL and Orientation Services .

LEGAL AUTHORIZATION: The Refugee Act of 1980 (Public Law 96-212), as amended, and Title 45 of the Code of Federal Regulations, part 400, give the State the authority to contract with public or private agencies for the provision of Refugee Social Services.

SUBMISSION REQUIREMENTS: Funds will be awarded on a competitive basis to applicants that can demonstrate the greatest aptitude for effectively providing the desired services under contracts with the Texas Department of Human Services. Applicants shall propose a detailed services plan and budget for one or more of the services listed in this announcement.

All public or private agencies and organizations or individuals that can demonstrate the expertise necessary to carry out the described services are encouraged to submit proposals. Proposals must be typewritten or computer-printed, using font size 11, and double-spaced. Pages must be stapled, not bound or paper-clipped. The maximum number of pages per proposal is 15, excluding attachments. If more than 15 pages are submitted, only the first 15 pages will be evaluated. A total of 5 copies must be mailed or hand-delivered

(NOT FAXED) to: Debbie Desmond; Texas Department of Human Services; P.O. Box 149030, Mail Code W-623; Austin, Texas 78714-9030.

Any questions or requests for clarification on the RFP must be directed in writing to Debbie Desmond, at the above address. Verbal requests for information or clarification will not be addressed.

APPLICATION DEADLINE DATE : PROPOSALS MUST BE RECEIVED NO LATER THAN 5:00 P.M. CST, July 31, 1996.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608244
Glen Scott
General Counsel, Legal Services
Texas Department of Human Services
Filed: June 10, 1996

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Texas Department of Insurance

Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Unicare Life & Health Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

Issued in Austin, Texas, on June 11, 1996.

TRD–9608344
Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: June 11, 1996

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Texas Department of Mental Health and Mental Retardation

Notice of Consultant Proposal Request

In accordance with the Texas Government Code, Chapter 2254, Subchapter B, the Texas Department of Mental Health and Mental Retardation (TDMHMR) announces its intention to enter into a consulting contract to assist the department in drafting Medicaid State Plan amendments and department rules concerning new rate methodologies for ICF/MR and HCS.

The firm selected will also be required to assist the department in rate negotiations and documentation of findings for compliance with the Boren Amendment.

The consulting services sought by TDMHMR in this Request for Proposals (RFP) relate to services previously provided by Deloitte & Touche Consulting Group. TDMHMR intends to award the consulting contract to the Deloitte & Touche Consulting Group unless a better offer is received.

Proposals for this project will be accepted through July 1, 1996. Any interested firms or individuals should contact Ernest McKenney, Director of Medicaid Administration, at the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas 78711-2668, (512) 206-5668 (voice) or (512) 206-5673 (facsimile).

The firm awarded a contract must have demonstrated expertise in developing and applying model based reimbursement methodologies for ICFs-MR and 1915(c) waiver programs targeted to persons eligible for ICF-MR services. The consultant's previous work should reflect a knowledge of the ICF/MR and HCS programs in Texas. The consultant must demonstrate knowledge of the Texas ICF/MR and HCS programs, provider bases, and the providersþ cost structures.

Proposals must be in writing and must set forth full, accurate, and complete information as required in the RFP. Oral instructions or offers will not be considered.

The consulting contract will be negotiated and awarded on the basis described in the RFP. TDMHMR reserves the right to reject any and all offers.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608338
Linda Logan
Director
Texas Department of Mental Health and Mental Retardation
Filed: June 12, 1996

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Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following Medicaid program: Rehabilitation Services for Persons with Mental Illness.

The public hearing is held in compliance with Title 25, Texas Administrative Code, Chapter 409, Subchapter A, §409.002(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The hearing will be held at 9:00 a.m., Wednesday, July 3, 1996, in the TDMHMR Central Office auditorium (main building) at 909 West 45th Street in Austin, Texas.

Persons who wish to offer testimony but who are unable to attend the hearing may submit written comments which must be received by noon the day of the hearing. The written comments should be sent to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668 or faxed to (512) 206-5725.

Interested parties may obtain a copy of the reimbursement briefing package by calling the Data Analysis Section at 512/206-5680. If interpreters for the hearing impaired are required, please contact the Data Analysis Section at the number given above at least 72 hours in advance of the hearing.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608337
Linda Logan
Director
Texas Department of Mental Health and Mental Retardation
Filed: June 12, 1996

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Texas Natural Resource Conservation Commission

Consulting Services Contract Amendment Proposal Request

This major consultant services contract amendment proposal request is filed under Chapter 2254 of the Texas Government Code. The Texas Natural Resource Conservation Commission (commission) seeks to procure additional private consulting services that have previously been provided by Ross and Associates Environmental Consulting, Ltd. (Ross & Associates) of Seattle, Washington. The Commission intends to award the contract amendment for the consulting services to Ross & Associates, unless a better offer is received. The Commission intends to enter into one or two contract amendments, depending on availability of USEPA grant funds, in order to provide for those additional services currently provided by Ross and Associates.

Ross & Associates currently provides facilitation and support services to the Commission and environmental regulatory agencies from other states in their participation with the United States Environmental Protection Agency (EPA) in national hazardous waste policy and rule development. The Commission will select offers based on demonstrated competence in facilitation with hazardous waste regulatory issues between the states and the states and the EPA, knowledge of the various Hazardous Waste Identification Rules proposals, the regulatory issues involving the definition of solid waste, how these initiatives might relate to federal rulemaking and the reasonableness of the proposed fee.

The contract period is expected to last from approximately July 15, 1996, through December 31, 1996.

Prospective bidders may obtain additional information by writing to Susan Ferguson, Director, Waste Policy and Regulations Division, MC 203, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or by calling (512) 239-6756. All offers should be mailed to the same address or delivered in a sealed envelope to TNRCC, Waste Policy and Regulations Division, Room 4301, 4th Floor, Building F, 12015 Park 35 Circle, Austin, Texas 78753. Any offers must be received on or before 5:00 CDT on July 5, 1996, in order to be considered.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608353
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Filed: June 12, 1996

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Public Notice

The Executive Director of the Texas Natural Resources Conservation Commission (TNRCC) by this notice is issuing a public notice of intention to delete (delist) a facility from the State Registry (State Superfund List) of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site proposed for delisting is the PIP Minerals State Superfund Site which was originally placed on the State Superfund Registry list on January 22, 1988 (13 TexReg 427-428). The 2.29-acre site is located at 3303 « Beaumont Avenue in Liberty, Texas. The site is north of Old Beaumont Road and east of the Route 146 Bypass in Liberty County, Texas. Located on the northeastern part of the site is a warehouse with floor dimensions of 80 feet by 100 feet. The warehouse is a metal shell on a concrete slab.

The site was used for a drilling-mud mixing operation and a storage facility for drilling mud additives and drilling chemicals from 1982 until 1985. Six tanks containing diesel fuel and drilling fluids and approximately 60 drums containing sodium bichromate and other materials were left at the site. The site also contained two areas where sodium bichromate and other wastes were allegedly buried. Trenching activities done in 1988 revealed that there were no buried wastes on site, and all drums and tanks were removed from the site by 1991.

An Investigative Study and Baseline Risk Assessment were completed in February, 1996 on the PIP Minerals site. The results documented some soluble/hexavalent chromium at several locations on the property. Concentrations of barium above background were also noted in several site soils and ditch-bottom sediments.

The Investigative Study report, which was approved by TNRCC on February 29, 1996, concluded that sampling and analysis from suspected hot spots confirmed even under the most conservative future land use (residential use), the existing levels of chromium and/ or barium do not pose a threat to human health or the environment. A qualitative evaluation of the potential for adverse effects to crops and animals concluded that no adverse impacts are predicted under conservative current and future land use projections.

This notice is issued in response to a request from a potentially responsible party (PRP) pursuant to 30 TAC ˘335.344(a). The letter, submitted on March 5, 1996, to the executive director requests the executive director to delete (delist) the PIP Minerals site from the State Registry based on the findings and conclusions presented in these above referenced reports which demonstrate that the site does not pose a danger to human health or the environment and that no further remedial action is necessary. TNRCC has determined this property can be safely used for residential development without any further remediation.

Pursuant to 30 TAC ˘335.344(b) "The Commission shall hold a public contested case hearing ... on requests filed pursuant to subsection (a) of this section, provided that a written request for hearing is filed with the chief clerk of the commission by any PRP... or any interested person, within 30 days after receipt of a determination by the executive director made pursuant to a request filed in accordance with subsection (a) of this section. At least 30 days prior to the date set for hearing, notice shall be provided ... to all PRPs and other interested persons, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request shall bear the cost of the publication of the notice." Publication of such notice may cost more than $100, depending on the newspapers' rates for such publications, the length of the notice, and the number of times such notice is published.

TNRCC agrees with the potentially responsible party's request to delist the site, and that pursuant to 30 TAC ˘335.344(c): the sources of potential contamination were removed prior to conducting the Investigative Study; based on conclusions included in the Investigative Study and Baseline Risk Assessment reports, no further action is appropriate for the site, and is safe for residential occupancy; and the site no longer poses an imminent and substantial endangerment to public health and safety or the environment, and therefore, taking further action is not appropriate.

All inquiries regarding the Pip Minerals State Superfund Site should be directed to Bruce McAnally, TNRCC Community Relations Unit, at telephone number 1-800-633-9363. A site repository, containing documents and testing results, pertinent to the Pip Minerals site is on file at the Liberty Municipal Library, 1710 Sam Houston, in Liberty.

Issued in Austin, Texas, on June 12, 1996.

TRD–9608334
Kevin McCalla
Director, Legal Division
Texas Natural Resource and Conservation Commission
Filed: June 12, 1996

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Public Utility Commission of Texas

Notice of Filing of Proposal for Independent System Operator and Request for Comments.

A group of public utilities and other interested persons has filed a proposal for an independent system operator for the Electric Reliability Council of Texas. This filing was made in accordance with Section 23.67 of the Commission's Substantive Rules. If approved by the Commission, an independent system operator would facilitate the operation of a more competitive wholesale electric market by creating an entity that is independent of any utility that owns transmission facilities to receive requests for transmission service and determine whether adequate transmission capacity exists to accommodate such requests.

The proposal filed with the Commission was developed by a group of utilities and other entities that have an interest in the wholesale electric market. The entities that participated in the development of this proposal include investor-owned utilities, cooperative utilities, municipal utilities, power marketers, and independent power producers. The Commission staff also participated in these discussions.

Under the proposal filed with the Commission, the existing Electric Reliability Council of Texas would be reorganized to carry out its current duties relating to the reliability of electric service and new responsibilities relating to access to the transmission network in ERCOT. Any entity that intends to participate in the wholesale electric market in Texas would be able to join the new organization, and the rules of governance of the ERCOT Independent System Operator would give equal voting strength to each of six market groups. The proposal describes the guiding principles of the organization as (1) ensuring the provision of continuous and reliable electric service to consumers within ERCOT; (2) continuing to build reliability standards on the foundation established by the North American Electric Reliability Council; (3) ensuring that transmission services are available on a non-discriminatory basis at rates, terms and conditions that are comparable to the utilities' use of their systems; and (4) ensuring equal representation from wholesale market participants in the decision making of the organization. One of the key functions of the new organization would be to operate an electronic information network to provide market participants information concerning the availability of transmission service.

The Public Utility Commission of Texas will consider whether to approve this proposal and is seeking comments from interested persons on whether it should do so. Interested persons may file comments on the proposal no later than 30 days after the publication of this notice.

The proposal filed with the Commission describes in detail the organization, rules of governance, functions and funding plan for the ERCOT Independent System Operator. Copies of the proposal may be obtained from the filing clerk of the Public Utility Commission. Written inquiries should be addressed to James Galloway, Filing Clerk, Public Utility Commission, 7800 Shoal Creek Blvd., Austin, Texas 78757. Mr. Galloway telephone number is 512-458-0181. The proposal has also been posted on the Commission's home page on the World Wide Web, at the following site: http://www.puc.texas.gov.

Comments on the proposed rule (18 copies) may be submitted to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project No. 16018.

For additional information, please contact Jess Totten, Assistant Director, Office of Policy Development, at the address listed above, at telephone number (512) 458-0272, or by e-mail at jesstott@puc.texas.gov.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608331
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: June 12, 1996

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Notice of Workshop and Request for Comments

The Public Utility Commission of Texas plans to hold a workshop on July 19, 1996, for Project Number 15485, Alternative Rate Making Treatments for Fuel Cost Recovery. The workshop will be held at 10:00 a.m. at the Commission's offices.

The Commission is interested in receiving comments from interested parties on issues related to alternative rate making treatment for fuel cost recovery. A list of specific questions is available from Jennifer Luckey at the Commission at (512) 458-0108. Not all issues or

questions will be addressed in panels at the workshop. Some issues will only be addressed in the written comments. Staff will determine which issues are most appropriate for panels after review of the written comments, and additional issues may be added as warranted.

Interested persons may provide the Commission with 15 copies of their written responses to those questions by filing them with the filing clerk of the Commission at 7800 Shoal Creek Boulevard, Austin, Texas, 78757. In their responses, parties should indicate whether they would like to participate in any panels at the workshop and which questions they would most like to address.

Responses are to be filed by July 9, 1996, and should refer to Project Number 15485. Parties should also file an electronic copy of their responses with Jennifer Luckey of the Office of Regulatory Affairs (512-458-0108), preferably in Microsoft for Windows Word6 format (alternatively in a DOS compatible text format).

Issued in Austin, Texas, on June 11, 1996.

TRD–9608266
Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
Filed: June 11, 1996

Railroad Commission of Texas

Notice of LP-Gas Advisory Committee Meeting

The Railroad Commission of Texas will hold a meeting of the LP-Gas Advisory Committee on July 9, 1996, in the William B. Travis Building, Room 7-100, 1701 N. Congress, Austin, Texas, from 9:30 a.m. to 2:00 p.m. to consider the following matters: 9:30 a.m.–Convene in Room 9-147; call to order; opening remarks; review of meeting minutes; old business 2:00 p.m.–Schedule next quarterly meeting; adjourn Items for Discussion 1. Galvanizing of ASME tanks 2. Legislative proposals for next session 3. Formation of new industrial gas/welding advisory committee 4. Consumer informational brochure being developed by AFRED 5. Open discussion

For further information, call Kellie Martinec, Rules Coordinator, Office of General Counsel, at (512) 475-1295.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608106
Mary Ross McDonald
Assistant Director, Office of General Counsel, Gas Services Section
Railroad Commission of Texas
Filed: June 10, 1996

Update of Surface Mining and Reclamation Division's Mailing List for Notification of Rulemakings

The Surface Mining and Reclamation Division (SMRD) of the Railroad Commission of Texas (RRC) is updating its list of individuals who have requested notification of rulemaking by the SMRD pursuant to §2001.026 of the Texas Government Code. This update is being prepared because the SMRD has accumulated a number of names and addresses that past mailouts have been sent to and returned to the SMRD as undeliverable due to name or address problems.

Any individual or other entity interested in receiving a notice of a proposed rulemaking proceeding by the SMRD is invited to send written notice of such interest to the following address: The Railroad Commission of Texas Office of General Counsel Attention Carol Goodman 1701 North Congress P.O. Box 12967 Austin, Texas 78711-2967

Those individuals who have previously expressed an interest in receiving notice of a proposed rulemaking proceeding by the SMRD should also send written notice of their desire to remain on the current mailing list and provide current address information so that their address may be confirmed. A separate notice of this updating procedure is being sent to each name and address currently listed on the SMRD mailing list.

After the expiration of 30 days from publication of this notice, any names on the past mailing list for persons requesting advance notice of proposed rulemaking proceedings for the SMRD and for whom the above requested written notice is not received will be removed from such list and will no longer receive such notice of proposed rulemaking.

Issued in Austin, Texas, on June 10, 1996.

TRD–9608104
Mary Ross McDonald
Assistant Director, Office of General Counsel, Gas Services Section
Railroad Commission of Texas
Filed: June 10, 1996

University of Houston System

Legal Counsel Services Proposal Request

The University of Houston System (the "System") is seeking to employ Legal Counsel (the "Counsel") for Intellectual Property legal issues for the term of the contract. Upon approval of the Attorney General of Texas, the System will execute an agreement with Counsel for a one year term with optional extensions as required and as approved by the Attorney General. The System will retain the right to terminate the contract for any reason and at any time upon payment of fees and expenses then earned.

I. PROPOSAL SCHEDULE

Issuance of Request for Proposal: June 10, 1996

Final Response Date: July 10, 1996 –1:00 p.m.

Selection of Legal Counsel: As soon as possible

Work to Begin: As soon as possible

II. PROPOSAL SUBMISSION

1. All proposals must be received no later than 1:00 p.m. on July 1, 1996. Proposal responses, modifications or addenda to an original response received by the System after that specified time and date for responses will not be considered. Each proposer is responsible for ensuring that the response reaches the System before the proposed due date and time.

2. The submitted proposal must be executed by a duly authorized representative of the proposer. An unsigned proposal will be rejected.

3. Proposers should submit one original and two copies of their proposal to: Office of General Counsel university of Houston System

1600 Smith, Suite 3400 Houston, Texas 77002 Please mark the envelopes containing proposals with the following note in the lower left hand corner: "IN RESPONSE TO PROPOSAL REQUEST " 4.

All proposals become the property of the System. Proposals must set forth accurate and complete information as required by this request. Oral proposals will not be considered. Any proposal may be modified or withdrawn at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of the System.

5. The System reserves the right to make amendments to the proposal request and to extend the response filing time or date, by giving written notice in the Texas Register.

6. The System has the sole discretion, and reserves the right, to reject any and all proposals received in response to this request and to cancel the request if it is deemed in the best interests of the System to do so. Issuance of the proposal request in no way constitutes a commitment by the System to award a contract, nor to pay any legal services incurred either in the preparation of a response to this proposal request or for the production of any contract for legal services.

III. SERVICES REQUIRED OF LEGAL COUNSEL

The System is seeking Legal Counsel to provide usual and necessary legal services in connection with Intellectual Property issues. The successful proposer will enter into an agreement to perform the following services, as requested:

1. Handle all normal procedures associated with the legal aspects of patent applications and intellectual property .

2. Handle initial patent application with U.S. Patent Office as well as foreign applications.

3. Patent prosecution and maintenance, including defense of claims, reexamination, infringement and interference proceedings.

4. Experience handling disclosures from Natural Sciences & Mathematics , Dept. of Chemistry.

IV. PROPOSAL REQUIREMENTS

Law firms responding to this proposal must have an office in Texas. The firm should have a place of business in Houston, Texas, or be willing to either waive, or specifically limit, the expenses attributable to travel. All travel expenses are to be borne by the law firm unless specifically indicated in the expenses submitted. (Section IV.3)

The following is a list of the information to be provided by each proposer. Failure to include all the information listed below may result in disqualification of a proposal.

1. A complete description of your firm's ability to represent the System as Legal Counsel which should include, but is not limited to, the following:

(a.) description of your firm's past experience as Legal Counsel for other state agencies and other institutions of higher education.

(b.) The identity of each of the attorneys who would be directly assigned to work with the System; a description of his/her specific function; and a description of his/her qualifying experience and legal background in Intellectual Property with emphasis on legal experience, if any, in chemistry.

(c.) The availability of the lead partner /attorneys for consultation and working group sessions.

2. Completion of the attached form entitled "Minority Representation." Other information addressing efforts made by your firm to encourage and develop the participation of women and minorities in the provision of legal services in financing of bonds for issuers may also be included, but is not required.

3. A statement of the number of University of Houston Law Center graduates employed by your firm.

4. Fee Schedules: Provide an itemization of all costs and charges for performing the legal services described in Section III above, in the form of a comparison schedule computed as:

(a.) A per hour rate charge which will also include the specific hourly rate for each lawyer assigned to perform services on behalf of the System, and the estimated amount of time for completion of each task; and

(b.) A flat fee computed to include all fees, charges and expenses. This fee amount shall include an express statement in the proposal response that the flat fee shall in no event exceed the quoted amount, and shall include a cap on all expenses for travel or other costs

V. PROPOSAL EVALUATION

1. The criteria for selection shall be based on the responses to the Proposal Requirements in Section IV. The System intends to select the proposal that demonstrates the highest degree of competency and the necessary qualifications and experience in providing the requested legal services at fair and reasonable prices.

2. The acceptance of a proposal will not be made solely on the basis of lowest cost, although cost will weigh heavily in the evaluation process.

3. The System reserves the right to negotiate the proposal that, in its discretion, best meets the System's needs.

4. Acceptance of a proposal will be contingent upon approval of the System Board of Regents and Attorney General.

5. If one of the submitted proposals is accepted, remaining law firms will be notified of the decision in a timely manner.

Issued in Houston, Texas, on May 29, 1996.

TRD—9608297
James E. Crowther
General Counsel
University of Houston System
Filed: June 11, 1996

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